

# EXHIBIT A

## "WORK FOR HIRE" CONTRACT

### SECTION 1- GENERAL PROVISIONS

#### 1. Definitions

The following terms have the meaning specified when used herein:

PURCHASER - Paul Ceglia

CONTRACTOR/SELLER - Mark Zuckerberg, his agents, employees, suppliers, or sub-contractors, furnishing materials equipment, or services.

CUSTOMER - StreetFax LLC the entity contracting for construction or other services from the Purchaser or which the goods and/or services provided hereunder are for incorporation into the work or are required to facilitate completion of Purchaser's contract with such entity.

PRIME CONTRACT - This contract between Purchaser and Seller.

#### 2. Entire Agreement

The contract between the Purchaser and Seller as a Purchase agreement and "work made for hire" reflects two separate business ventures, the first being for the work to be performed directly for the StreetFax Database and the Programming language to be provided by Seller.

Second it is for the continued development of the software, program and for the purchase and design of a suitable website for the project Seller has already initiated that is designed to offer the students of Harvard university access to a website similar to a live functioning yearbook with the working title of "The Face Book"

It is agreed that Purchaser will own a half interest (50%) in the software, programming language and business interests derived from the expansion of that service to a larger audience.

#### 3. Payment Terms

No insurance or premium charges or price increases will be allowed unless authorized by Purchaser in writing. No increase in price from that stated on the face hereof will be considered throughout the duration of the order.

The Agreed upon Cost that the Seller and the Buyer have agreed upon are as follows: Buyer agrees to pay the seller the Sum of \$1000 a piece for the work to be performed for Streetfax and \$1,000 for the work to be performed for "The Page Book".

Late fees are agreed to be a 5% deduction for the seller if the project is not completed by the due date and an additional 1% deduction for each day the project is delayed beyond that point.

The agreed upon project due date for the StreetFax software is May 31, 2003. *Project will be done by May 21, 2003*

The agreed upon completion for the expanded project with working title "The Face Book" shall be January 1 2004 and an additional 1% interest in the business will be due the buyer for each day the website is delayed from that date.

Additional funds may be provided for either project on an as needed basis at the sole discretion of the Buyer.

#### 4. Changes

a) BY PURCHASER - Purchaser agrees that no further revision shall be implemented until or unless approved by the seller. Those revisions

shall be transmitted for written approval to seller.

b) BY SELLER - The Seller agrees that no further revision shall be implemented until or unless approved by Buyer. Those revisions shall be transmitted for written approval to the Street Fax Purchasing Department.

#### 5. Purchaser's Property/Seller's Responsibility

For the StreetFax database Buyer agree to pay for and maintain the cost of upkeep for the servers needed for it's operation.

For "The Face Book" Seller agrees to maintain and act as the sites webmaster and to pay for all domain and hosting expenses from the funds received under this contract, and Seller agrees that he will maintain control of these services at all times.

Data, drawings, tooling, patterns, materials, specifications, and any other items or information supplied to Seller under this order are the property of the Purchaser and must be returned upon completion of this order. Such items or information are to be used solely in the performance of the work by the seller and shall not be used or disclosed for any other purpose whatsoever without Purchaser's prior express written consent.

#### 6. Settlement of Controversies

In the event that this purchase order is for materials or equipment which is excluded from this Prime Contract, and in the case of disputes between the Purchaser and the Customer or between the Purchaser and the Seller regarding materials or equipment to be furnished by the Seller, the Seller agrees to be bound to the same extent that the Purchaser is bound by the terms of the Prime Contract, and by any and all decisions and determinations made thereunder, provided that the Seller shall have the right to participate in the settlement of any dispute to the extent that the Seller will be affected thereby.

No interest shall accrue on any payment(s) otherwise due the Seller, which is withheld or delayed as a result of any such dispute, except to the extent that the Purchaser is ultimately paid interest on monies due the Seller. The Seller shall not be held liable if the Seller follows instructions of the Purchase and it is later determined that the Purchaser's instructions were not in compliance with the terms and specifications of the Prime Contract. Pending final disposition of a dispute hereunder, the Seller shall carry on the work unless otherwise agreed I writing by the purchaser.

In all instances the final authority should rest with the final Specifications.

#### 7. Patent Indemnity

Purchaser hold seller harmless for an infringement sellers work may constitute on patents held by and third party that result from the direct request for the work made by purchaser in this "work made for hire" agreement.

The Seller hereby agrees to be responsible for all claims against the Purchaser of the Customer for alleged infringement of patents by reason of the Purchaser's or Customer's possession, use, or sale of any materials or equipment furnished hereunder by the Seller or by reason of the performance of any work hereunder by the Seller. The Seller agrees to defend at it's sole expense all suits against the Purchaser and/or the Customer and to save and hold harmless the Purchaser and the Customer from and against all costs, expensed, judgements, and damages of any kind which the Purchaser or the Customer may be obliged to pay or incur by reason of any such alleged or actual infringement of a patent or patents. The Purchaser and the Customer agree to render whatever assistance it reasonably can I the way of information and access to records for the defense of any such suit.

This indemnity shall not extend to alleged or actual infringements resulting from the Seller's compliance with the Purchaser's or Customer's design, instructions, processes, or formulas provided, however, that the Seller agrees to be responsible if it is reasonable to assume the the Seller should have been aware of a possible alleged or actual infringement resulting from the Purchaser's or Customer's design, instructions, processes, or formulas and fails to notify the Purchasers of such possibility.

**8. Assignment of Subcontracting**

Neither this order nor any rights, obligations, or monies due hereunder are assignable or transferable (as security for advances or otherwise) without the Purchaser's prior written consent, and except as to purchases of raw materials or standard commercial articles or parts, the Seller shall not subcontract any major portion of the work encompassed by this order without the Purchaser's prior written approval. The Purchaser shall not be required to recognize any assignment or subcontract made without its prior written consent.

The buyer accepts that there will be two other subcontractors working on this project their work will be accepted provided a noncompete and "work made for hire agreement" are in place.

**9. Proprietary Rights**

It is acknowledged that this is a work made for hire agreement and that all Intellectual property rights or patent rights are that of StreetFax Inc. All code in portion or in its complete form remain the property of StreetFax Inc. If the items to be supplied hereunder have been designed in accordance with specifications or data furnished or originated by the Purchaser or its Customer, such items shall not be reproduced except with the approval of the Purchaser and, as applicable, its Customer and all drawings, photographs, data, software, and other written material or information supplied in connection therewith shall at all times remain the property of the Purchaser or its Customer and be returned promptly upon request at the completion, termination or cancellation of this order. In the event that StreetFax defaults on its payment terms rights would be granted to seller.

**10. Termination**

**A. DEFAULT** - The Purchaser may terminate this order or any part thereof by written notice if the Seller:

- a) fails to make deliveries or to complete performance of its obligations hereunder within the time specified or in accordance with the agreed schedules unless such failure is due to acts of God, strike or other causes which are beyond the control of the Seller.
- b) Fails to comply with the terms and conditions of the purchase order and does not cure such failure within a period of ten (10) calendar days after written notice thereof.
- c) Makes an assignment for the benefit of creditors without prior written consent of the Purchaser, becomes insolvent or subject to proceedings under any law relating to bankruptcy, insolvency, or the relief of debtors.

Should the Purchaser elect to terminate for default, the Purchaser may take possession of all or any of the items to be supplied hereunder which are in the Seller's possession without regard to stage of completion and may complete or cause the work to be completed on such items or may manufacture or procure similar items. Any additional costs or expense incurred by the Purchaser over and above the original purchase price from the Seller plus freight costs shall be for the account of the Seller.

In all events, the Purchaser shall not be or become liable to the Seller or any third party claiming through or under the Seller for any portion of the price of any items that Purchaser elects not to accept following notice of termination for default.

**11. Liens**

The Seller agrees to deliver the items to be supplied hereunder free and clear of all liens, encumbrances, and claims of laborers or material men and the Purchaser may withhold payment pending receipt of evidence in form and substance satisfactory to it of the absence of such items, claims and encumbrances.

**12. Governing Law**

This Purchase Order and any material relating thereto shall be governed by the laws of the state in which the Purchaser's office that issues the order is located.

**13. Recovery of Damages**

If the Seller should recover any damages as a result of antitrust violations in any manner due to price fixing on the part of another manufacturer or Seller, the Seller shall pay over to the Purchaser any damages the Purchaser has suffered as a result of the same price fixing within a reasonable time after the damages are recovered by the Seller.

**14. Notice of Labor Disputes**

a) Whenever the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, the Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Purchaser.

b) The Seller shall insert the substance of this clause including this paragraph (b) in any subtier supply agreement hereunder as to which a labor dispute may delay the timely performance of this order except that each such subtier supply agreement shall provide that in the event its timely performance is delayed or threatened by delay by an actual or potential labor dispute, the subtier Seller shall immediately notify its next higher tier Seller or Sellers, as the case may be, of all relevant information with respect to such dispute.

**15. Indemnity Requirements for Contractors/Seller**

Contractor/Vendor shall defend, indemnify and save Street Fax from any and all claims, suits, losses, damages, or expenses, whether caused or contributed to by the negligence of Street Fax, its agents, or employees, or otherwise, on account of injuries to or death of any and all persons whomsoever, including the Contractor/Vendor, subcontractors, employees of Contractor/Vendor, the subcontractor, and of Street Fax and any and all damage to property to whomsoever belonging, including property owned by, rented to, or in the care, custody, or control of the parties hereto arising or growing out of, or in any manner connected with the work performed under this contract, or caused or occasioned, in whole or in part by reason of or arising during the presence of the person or of the property of Contractor/Vendor, subcontractors, their employees, or agents upon or in proximity to the property of Street Fax Notwithstanding the foregoing, nothing herein contained is to be construed as an indemnification against the sole negligence of Street Fax.

**16. Publicity**

Seller shall not publish photographs or articles, give press releases or make speeches about or otherwise publicize the existence or scope of this Purchase Order, or any generalities or details about this Purchase Order without first obtaining the written consent of Buyer.

**17. Seller's Disclosure**

Any information relating to the Seller's designs, manufacturing processes or manufactured products which the Seller may disclose to the Buyer in connection with the performance of the contract may be used by the Buyer for any purpose relating to the contract and to its performance without liability therefor to the Seller.

**18. General Notes**

Seller shall reference this purchase order number on all documents and/or correspondence related to this order.

The signatures below will execute this contract.

Buyer - Paul Cuglia, StreetFax

Seller - Mark Zuckerberg

MR Zuck 04.28.03

# EXHIBIT B

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 17, 2016.

PRESENT: Hon. John W. Sweeny, Jr., Justice Presiding,  
Dianne T. Renwick  
Sallie Manzanet-Daniels  
Judith J. Gische, Justices.

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Facebook, Inc., et al.,  
Plaintiffs-Respondents,

-against-

DLA Piper LLP (US), et al.,  
Defendants-Appellants,

M-443  
Index No. 653183/14

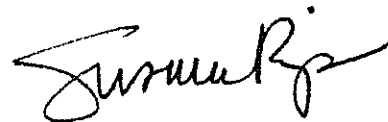
Paul Argentieri & Associates, et al.,  
Defendants.  
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Plaintiffs-respondents having moved for reargument of, or in the alternative, for leave to appeal to the Court of Appeals, from the decision and order of this Court, entered on December 29, 2015 (Appeal No. 16162),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:



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defendants); and Lippes Mathias Wexler Friedman LLP, Dennis C. Vacco and Kevin J. Cross (collectively, the Lippes defendants) to dismiss the complaint under CPLR 3211(a)(7), unanimously reversed, on the law, without costs, the motions granted, and the complaint dismissed. The Clerk is directed to enter judgment accordingly.

This case arises from dealings dating back over a decade between plaintiff Mark Elliot Zuckerberg and nonparty Paul Ceglia. The underlying facts of this case are as follows:

On April 28, 2003, Ceglia hired Zuckerberg to design a website for a company called Street Fax, Inc. Ceglia and Zuckerberg executed a two-page contract (the Street Fax Contract) and Zuckerberg performed some work under the contract, although he was not paid in full by Ceglia.

In December 2003, Zuckerberg conceived of Facebook, which he launched on February 4, 2004.

On June 30, 2010, Ceglia, through defendant attorney Paul Argentieri, filed a complaint in Allegheny County Supreme Court against Facebook and Zuckerberg (the Ceglia action), alleging that on April 28, 2003, Zuckerberg and Ceglia purportedly entered into a "Work For Hire Contract." This purported contract allegedly reflected Ceglia's agreement to pay Zuckerberg for

developing the Street Fax website and a separate website with the working title of "The Face Book," and Ceglia's purported acquisition of a 50% interest in the software, programming language and business interests derived from any expansion of The Face Book, along with an additional 1% interest for each day the website was delayed beyond January 1, 2004. At the time they filed the complaint, Ceglia's representatives obtained an ex parte TRO from the court restraining Facebook from transferring, selling, or assigning any assets owned by it. The TRO was served on Facebook on July 6, 2010, and expired on or before July 23, 2010.

On July 9, 2010, the case was removed to federal court based on diversity jurisdiction. From the outset of the litigation, Zuckerberg took the position that the Work For Hire Contract was a forgery and the Ceglia action was fraudulent.

In early 2011, Ceglia and Argentieri offered a contingency fee arrangement to various law firms via a "Lawsuit Overview" document, which mapped out the strategy and bases of the lawsuit. Several law firms, including the DLA Piper and the Lippes defendants, as well as Kasowitz, Benson, Torres and Friedman, LLP (Kasowitz), agreed to represent Ceglia.

On March 30, 2011, a forensic e-discovery consultant



working with Kasowitz discovered the original Street Fax Contract on Ceglia's computer hard drive and concluded it had been altered to create the "Work For Hire Contract" by adding references to Facebook. Kasowitz notified Argentieri of these findings several times and immediately withdrew as Ceglia's counsel.

On April 11, 2011, the DLA Piper and the Lippes defendants (DLA-Lippes) filed an amended complaint in the Ceglia action repeating Ceglia's claims against Facebook based on the Work For Hire Contract, and quoting, but not attaching, purported emails between Zuckerberg and Ceglia discussing the development of Facebook.

On April 13, 2011, Kasowitz sent a letter to the DLA-Lippes defendants, informing them that on March 30, it had seen documents on Ceglia's computer that established that the Work For Hire Contract was a forgery and that it had communicated these findings to Argentieri on March 30, April 4, and April 12. The letter further stated that Kasowitz would agree, pending an investigation that defendant Vacco of Lippes Mathias had promised to undertake, to refrain from reporting its findings to the Federal Court.<sup>4</sup> This investigation was indeed undertaken as

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<sup>4</sup>The complaint in the instant action alleges, *on information and belief*, that shortly after notifying Argentieri of its

discussed *infra*.

On June 2, the parties moved and cross-moved for expedited discovery concerning the Work For Hire Contract, complete with affidavits and expert evidence both for and against the authenticity of the contract. On June 29, on the eve of the hearing for expedited discovery, the DLA-Lippes defendants withdrew from the case without explanation.<sup>5</sup> The Federal Magistrate ordered expedited discovery into the authenticity of the Work For Hire Contract and the purported emails.

During the expedited discovery period, Ceglia hired the Milberg defendants, which first entered an appearance on March 5, 2012. They moved to withdraw from representing Ceglia on May 20, 2012.

On November 26, 2012, Ceglia was indicted for mail and wire fraud as a result of his scheme to defraud plaintiffs. He subsequently fled the jurisdiction and is currently a fugitive.

On March 26, 2013, following discovery, the Federal

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findings, and *prior* to April 11, 2011, the date the amended complaint in the Ceglia action was filed, Kasowitz advised the DLA and Lippes defendants what had been discovered concerning the Street Fax Contract.

<sup>5</sup>Ceglia was represented by 23 other attorneys after the DLA-Lippes defendants withdrew.

Magistrate recommended that the District Court dismiss the Ceglia action with prejudice, finding that the Work for Hire Contract and purported emails were all forgeries and that the lawsuit was a massive fraud on the court. This recommendation was adopted by the District Court on March 25, 2014, and the complaint was dismissed.

Based on these factual allegations, plaintiffs commenced the instant action, asserting claims for malicious prosecution and attorney deceit against defendants-appellants (defendants), among others, alleging that they initiated the Ceglia lawsuit without probable cause, and thereafter continued it even as they knew, or reasonably should have known, that it was fraudulent, without merit, and based on fabricated evidence from the moment the original complaint was filed and at all times while the action was pending.

Defendants moved to dismiss the complaint, alleging, among other things, that the allegations regarding malicious prosecution failed to demonstrate that they acted with "actual malice," that they lacked "probable cause" to maintain the action, or that plaintiffs sustained a "special injury." With respect to the claims brought under Judiciary Law § 487 for attorney deceit, defendants argued that the complaint should be

dismissed because it failed to allege with the requisite particularity that they intended to deceive the court or plaintiffs, that they engaged in a chronic and extreme pattern of legal delinquency, or that they were aware of the fraud and deceit during the Ceglia action. Plaintiffs opposed those respective motions and the motion court denied all motions. For the following reasons, we now reverse.

On a motion to dismiss pursuant to CPLR 3211, we must accept as true the facts as alleged in the complaint and accord plaintiffs the benefit of every favorable inference (see *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]). However, “[f]actual allegations presumed to be true on a motion pursuant to CPLR 3211 may properly be negated by affidavits and documentary evidence” (*Wilhelmina Models, Inc. v Fleisher*, 19 AD3d 267, 269 [1st Dept 2005], citing *Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999], *affd* 94 NY2d 659 [2000]; see also *Matter of Sud v Sud*, 211 AD2d 423, 424 [1st Dept 1995]).

With respect to the civil malicious prosecution claim, that cause of action should have been dismissed. The tort of malicious prosecution requires proof of each of the following elements: “(1) the commencement or continuation of a . . .

proceeding by the defendant against the plaintiff, (2) the termination of the proceeding in favor of the [plaintiff], (3) the absence of probable cause for the . . . proceeding and (4) actual malice" (*Broughton v State of New York*, 37 NY2d 451, 457 [1975], *cert denied sub nom. Schanbarger v Kellogg*, 423 US 929 [1975]). Additionally, a plaintiff must also allege and prove "special injury" (*Engel v CBS, Inc.*, 93 NY2d 195, 201 [1999]).

With respect to the element of probable cause, a plaintiff must allege that the underlying action was filed with "a purpose other than the adjudication of a claim" and that there was "an entire lack of probable cause in the prior proceeding" (*Engel*, 93 NY2d at 204). Moreover, the lack of probable cause must be "patent" (*Butler v Ratner*, 210 AD2d 691, 693 [3d Dept 1994], *lv dismissed* 85 NY2d 924 [1995]). In this context, the Court of Appeals has stated as follows:

"Probable cause is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that he has lawful grounds for prosecuting the defendant in the manner complained of. The want of probable cause does not mean the want of any cause, but the want of any reasonable cause, such as would persuade a man of ordinary care and prudence to believe in the truth of the charge" (*Burt v Smith*, 181 NY 1, 5-6 [1905]).

In a malicious prosecution action, the burden of proof to establish a want of probable cause is on the plaintiffs (*id.* at

10).

Here, the Allegheny court's granting of a TRO at the inception of the Ceglia action, prior to any of the defendants' representation of Ceglia, created a presumption that Ceglia had probable cause to bring the case. This presumption must be overcome by specifically pleaded facts (see *Hornstein v Wolf*, 67 NY2d 721, 723 [1986]). Moreover, a plaintiff's factual allegations regarding lack of probable cause and malice may be disproved by the evidentiary material submitted by defendant in support of a motion to dismiss (*Shaffer v Gilberg*, 125 AD3d 632, 635 [2d Dept 2015]).

Applying these principles to this case, we find that the allegations in the instant complaint concerning defendants' lack of probable cause are entirely conclusory, and are thus inadequate to support the lack of probable cause element of the malicious prosecution claim (see *Web Mgt. v Sphere Drake Ins.*, 302 AD2d 273, 273 [1st Dept 2003]). Despite plaintiffs' claims that the Work For Hire Contract was an obvious forgery, the Allegheny court granted a TRO after reviewing it. Defendants produced experts who took issue with plaintiffs' experts on that score and the authenticity of the document was vigorously contested throughout the Ceglia litigation. Moreover, the DLA-

Lippes defendants conducted a quite thorough investigation after being advised of Kasowitz's findings, going so far as subjecting Ceglia to a polygraph test, which he passed. The Kasowitz letter alone is not sufficient to support a claim that any further representation of Ceglia was patently unsupported by probable cause.

Inasmuch as plaintiffs cannot demonstrate the existence of the element of probable cause, we need not consider the remaining elements of actual malice or special injury. The cause of action for malicious prosecution should have been dismissed.

We turn now to the Judiciary Law claims. Relief under a cause of action based upon Judiciary Law § 487 "is not lightly given" (*Chowaiki & Co. Fine Art Ltd. v Lacher*, 115 AD3d 600, 601 [1st Dept 2014]) and requires a showing of "egregious conduct or a chronic and extreme pattern of behavior" on the part of the defendant attorneys that caused damages (*Savitt v Greenberg Traurig, LLP*, 126 AD3d 506, 507 [1st Dept 2015]). Allegations regarding an act of deceit or intent to deceive must be stated with particularity (see *Armstrong v Blank Rome LLP*, 126 AD3d 427, 427 [1st Dept 2015]); the claim will be dismissed if the allegations as to scienter are conclusory and factually insufficient (see *Briarpatch Ltd., L.P. v Frankfurt Garbus Klein*

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& *Selz, P.C.*, 13 AD3d 296, 297-298 [1st Dept 2004], *lv denied* 4 NY3d 707 [2005]; *Agostini v Sobol*, 304 AD2d 395, 396 [1st Dept 2003])).

Here, the allegations that defendants knew of Ceglia's fraud are conclusory and not supported by the record. Although plaintiffs allege that the DLA-Lippes defendants had been advised by Kasowitz that the Work For Hire Contract was a forgery *prior* to the filing of the amended complaint in the Ceglia action on April 11, the record unequivocally shows that the Kasowitz letter to that effect was dated April 13, two days *after* the amended complaint was filed. There is nothing to indicate that this information had been communicated to the defendants prior to the issuance of that letter. Moreover, plaintiffs offer no support for their claim that defendants had actual knowledge of the fraudulent nature of the claim based on statements made to them by Ceglia. In fact, the opposite is true. As noted, Ceglia consistently maintained that the Work For Hire Contract was genuine and even passed a polygraph test covering the contract and his other claims. Statements made in pleadings upon information and belief are not sufficient to establish the necessary quantum of proof to sustain allegations of fraud (see *Angel v Bank of Tokyo-Mitsubishi, Ltd.*, 39 AD3d 368, 370 [1st

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Dept 2007])). Even assuming that the DLA-Lippes defendants knew of Kasowitz's finding before they filed the amended complaint, and regardless of the fact that the Milberg defendants knew about the Street Fax Contract when they represented Ceglia, at any of those times, there was no conclusive proof of Ceglia's fraud that rendered their representation deceptive. In fact, the dispute over the authenticity of the contract remained central to the Ceglia litigation throughout that action, and was the subject of expert testing and opinion, both in favor of, and against, its authenticity. As a result, the Judiciary Law § 487 claim should have been dismissed.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: DECEMBER 29, 2015

  
CLERK

# EXHIBIT C

Mark Zuckerberg  
2734 Harvard Yard Mail Center  
Cambridge, MA 02138  
914.646.8593

StreetFax Back-End Technical Specification

*Non-technical Explanation:*

To make the specification more readable, I will give an overview of the functionality of the system described by the set of scripts and applications below.

The first section deals with logon and security. The first script makes sure that the interface through which users log into the system is completely secure, using the latest methods of commercial cryptography. It will verify if the user has the privileges to enter the system, and if they do, it admits them. The second script protects the system from being entered through a page other than the logon page. If the only security was at the logon screen, then a person could just go to a different page and bypass the logon completely. This script will ensure that the user is logged in before it grants access to any page on the site. The third script in this section will allow the site administrators to create and edit usernames and account information. This is critical for customers who do not create their accounts through the site.

The second section deals with e-commerce. Much of the discussion here is about the different options of registration with SSL and VeriSign. The scripts we develop will use these technologies to perform secure e-commerce transactions. It will allow users to register on a subscription and individual-use basis. All actions performed by users in this section of the site will be logged in a database and can be used to generate reports later on.

The third section deals with searching the database of images. The user will enter two streets to search for their intersection, and then a script we write will search the database. If multiple intersections are found, the user will be shown a list with the towns and states to choose from. If, after reviewing the choices, there is still no an accurate match, the user will be routed to another page which will ask them to specify a state and city for a more detailed search. From their selection, the user is taken to another page with the list of intersections matching their search in the specified area. The user can choose an intersection to search for images. If only a single intersection is returned from the original search, then the images from that intersection are automatically brought up. The images will be displayed in alphabetical order with any signs at the top of the page above the photographs of the intersections. The script that retrieves the images from the database will also construct the necessary sentence describing the image from information in the database. If at any point no intersection is found, the user will be taken to a site that asks them if they want to pay to have those images acquired for them within 24 hours, this screen will appear as a half page with the nearest possible matches above it. They can search these pictures by clicking on any one of the intersections to

view it, and then by navigating back and selecting the next intersection. There will also be a script to get the number of images matching an intersection.

The fourth section deals with saving and retrieving adjuster comments and layout settings from the database. This will allow adjusters to write comments and retrieve them later on. They will also be able to specify a layout for the screen, but we have not designed the possible layouts yet so no further explanation can be given at this point. A sample outline has been received consisting of 4 different layout types.

The fifth, sixth, and seventh sections deal with the very back-end implementation and architecture of the server and database. The database will be robust enough to be able to efficiently search the collection of images and be able to store them in a number of conventions, although the convention of "direction+street1+street2" will be accepted for now. The server will be equipped with the latest and most flexible web server, database server, and a solid hosting package. It was also have a built in interface for retrieving intersections from a given area and editing their database entries.

The eighth section deals with the client/photographer interface. Once a client requests an image, the photographer whose territory the intersection is in is notified that they need to take the picture. The dispatcher is also notified that the photograph needs to be taken by a new entry on the open requests page. This open requests page will give information on when the request was made, who made the request, and what intersection was requested. After 40 minutes, if the photographer assigned to that territory has not responded to the notification and confirmed its receipt, the specific request on the open requests page will turn a different color. When the photographer does respond to this initial request, the open requests page will display this and an email will be automatically generated and sent back to the adjuster informing them that their request has been received and accepted by the nearest photographer, and that their photos will be provided guaranteed. At selected intervals, if the photographer has not yet responded or uploaded the images, the dispatcher is again notified that the photographs still need to be taken. The system will continue to email the photographer and update the open requests page with the time remaining and status on the situation until the images are uploaded to the system. On the street, once the images have been taken, the photographer can upload them to the server, which will require the photographer to sign in to their homepage prior to upload. From here, the photographer must enter the request's claim number, which will be automatically generated with each new request. After the appropriate claim number has been entered, the server uploads the pictures to the site and updates the open requests page by graying the area. At this point, a link appears and the dispatcher has five minutes to approve or reject the photographs before the server automatically notifies the adjuster through email that their pictures are on site. There will be a link in the email that will allow the adjuster to link directly to the page which has his or her images. If the dispatcher rejects the pictures, then no notice is given to the adjuster and the process is taken over manually.

The ninth and tenth sections deal with allotting time for administrative discussions and algorithm planning.

*Database Structure and Scripting:*

## 1. Logon Scripts

- a. A script to validate logon information by referencing the user information table in the database. Validation includes taking the username and password and making sure they match and that the account is still valid. This script will also acquire the privileges of the user to ensure that only searches they are entitled to will be performed. It will use special security measures and encryption to maintain the integrity of users' passwords. This script will also log all user logons in a separate table in the database. Estimated Development Time: 1 day.
- b. A script to check for the logon key on all other privileged parts of the site. This script will protect against people bypassing the logon screen and accessing user-only parts of the site. EDT: ½ day.
- c. A script to add users and edit users. EDT: ½ day.

## 2. Financial Scripts

- a. A script to interface with the credit card validation component. This script will use security measures like secure socket layer (SSL) to ensure the integrity of the transactions. Two different scripts will need to be developed to deal with subscription and individual use transactions. All transactions will be logged in a separate table in the database. *Note:* The credit card validation component and SSL certificate will carry additional costs. There are several options for e-commerce, and these can be discussed later. EDT: 4 days.

## 3. Search Scripts

- a. A script to interface with the database of images, which is given two street names. If no such intersection exists, then the names of intersections which are similar to the one entered are returned and the search can be repeated. If multiple intersections match the street names entered, then a new page comes up which asks the user to specify a state or city. From the selection, if there are still multiple matches, another page comes up that lets the user choose which intersection they want to retrieve images of. All searches will be logged, along with which user performed them, in a separate table in the database. EDT: 3 days.
- b. A script to retrieve images from the database, given a unique intersection in some state. The script will display all images found in the database along with a sentence describing the image, its orientation, and the street it was taken from. If no images are found, it will ask the user if they would like those images to be acquired. If so, a notice will be sent to an email address or list of email addresses. Either way, the fact that no results came up will be recorded in a separate table in the database along with the user's response to acquiring the images. EDT: 3 days.
- c. A subscript to reference the main script and return how many intersections and/or images match a given set of intersections. EDT: ¼ day.

- d. A subscript to include speed limits in the capacity of the search engine. This script will return images of the speed limits in the queried regions using the keywords described. A full explanation of all keywords will be needed to write this script. EDT: 2 days.
- 4. Adjuster Preference Scripts
  - a. A script to store adjusters' comments about images from their queries in the database. This script will take the comments that adjusters enter about the images and it will save the comments in the database for later retrieval when the same images are viewed. EDT: ½ day.
  - b. A script to query adjusters' comments about images from the database. This script will return and display the current adjuster's saved comments about the currently viewed images in the allotted area for marking notes. EDT: ½ day.
  - c. A script to store adjusters' viewing preferences about the layout of the screen. Several different layout options will be available (they are not specified here but they will be in the final specification), and this script will save each adjuster's settings in the database. EDT: ½ day.
  - d. A script to query adjusters' viewing preferences from the database and incorporate these settings into the display. The script will apply the given display settings into the screen format. As mentioned in 4.c, the different settings available to the adjusters will be specified in the final version of the spec. EDT: 1½ days.
  - e. *A script that allows Back End Administrators to view & edit all intersections within a given city through a drop down menu bar.*
- 5. Database Architecture
  - a. An application to build the appropriate table structure from the image files in the system. This program will make an entry in the main table in the database for each image file in the database. This is the conversion necessary to get from the raw image collection to the organized database we will use in the site. The program will be robust enough to handle images within different directory structures as long as the same naming convention is used throughout the file system. This will allow images of a given intersection to be stored in a separate folder, or in a conglomerate folder with images from other intersections, as long as each image follows the same naming convention. For this version of the specification, the file naming convention in use unilaterally will be "directional+street1+street2". EDT: 3½ days.
  - b. Configuration of an efficient table structure in the database. This construction will provide the framework for the database so that it can be populated with all of the necessary data fields. EDT: 2 days.

#### *Server Specification and Applications:*

- 1. Package Research
  - a. As we have not yet decided how to host the final application, some research must be done to figure out the best option in this area. It seems doubtful that we will be able to find a non-specific contract agreement with some well-known hosting company that will meet our specifications for access requirements and applications that need to be run. Therefore, it might seem



best to purchase a server and take care of hosting ourselves. We will look into all of these options. EDT: 1½ days.

2. Server Configuration

- a. Stable Internet configuration. EDT: 1 day.
- b. Apache web server configuration. EDT: ¾ day.
- c. PHP pre-processor configuration. EDT: ¾ day.
- d. MySQL configuration and phpMyAdmin interface installation. EDT: ¾ day.
- e. Photographer access configuration. EDT: ¾ day.

3. Photographer Application

- a. A web interface between the photographers and the dispatcher. A script that will automate sending emails to client, photographer, and dispatcher. The client will be emailed upon receipt of their request and again once the request has been completed to tell them that their images are ready. The correct photographer will be contacted to take the images, and then will be warned on regular intervals if the photographs have not been taken and uploaded to the server. An email will be sent to the photographer to confirm the upload of the images when the job is done. An email will be sent to the dispatcher to notify him of the request, and warning emails will be sent on regular intervals to tell the dispatcher if the request has not yet been filled. A confirmation email will be sent to the dispatcher to confirm that the request has been filled. *Note:* This is a major change from the original specification. The original photographer application was discarded and this one replaced it for the initial development. EDT: 4 days.

*Internal and External Administration:*

1. Communication

- a. Correspondence through emails and phone with you about progress, questions, and other general information exchange. EDT: 1 day.
- b. Correspondence and meetings with my team about progress, development, and other general information exchange. EDT: 1 day.
- c. Quality Assurance of all work done by my team. EDT: 3 days.

*Algorithm Design:*

1. Planning and Design

- a. Architecting the main algorithms in the search engine, database population, file naming, and general site security. EDT: 2 days.

*Enhancements (Not Included):*

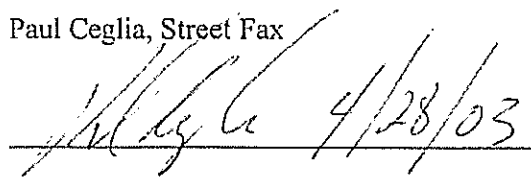
1. Police Reports and Building Inspection

- a. These will essentially require new sections of the database and new database population algorithms. It seems to make sense to save these aspects of the project until later unless they are absolutely necessary in the first version of StreetFax.

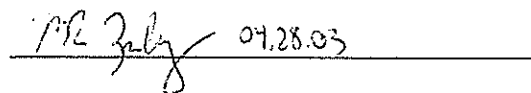
2. Highlighted Maps
  - a. This feature will be difficult to implement since it will require someone to go through the database and add information to all of the old entries. At this point, that does not seem like an economical use of resources. We can try to implement this enhancement later on, perhaps using a different algorithm.
3. Automated Database Applications
  - a. It was a little unclear to me what sort of automated database cleanup you wanted, but I definitely see room for redundant entry filtering, data linking, and priority sorting to help increase the efficiency of the system. This can come after the basic development.
  - b. Scripts that query the database to find results from a specific photographer and that email photographers when photographs have not been submitted on time. This functionality also seems less important in getting the system up and running.
4. Robust Photographer Interface
  - a. This feature will take the form of a powerful custom server application that photographers can log into to use dynamic functionality within the assignment and request systems. It will also provide the photographers with extra tools for batch uploading and perhaps editing of their images.
5. Anti-Hacker System
  - a. An additional system to ensure the security of the server and maintain the integrity of the information inside. Since some of the data, namely credit card numbers and passwords, is sensitive, this extra functionality is highly recommended in the long term.

This specification will be approved with appropriate signatures below.

Paul Ceglia, Street Fax

A handwritten signature in dark ink, appearing to read 'P. Ceglia', followed by the date '4/28/03' written in a similar style.

Mark Zuckerberg

A handwritten signature in dark ink, appearing to read 'Mark Zuckerberg', followed by the date '04.28.03' written in a similar style.

# EXHIBIT D

General Conditions of Purchase

# STREET FAX

## SECTION 1- GENERAL PROVISIONS

### 1. Definitions

The following terms have the meaning specified when used herein:

PURCHASER – Street Fax Inc.

CONTRACTOR/SELLER – The entity, its agents, employees, suppliers, or sub-contractors, furnishing materials equipment, or services hereunder, as identified on Purchase Order.

CUSTOMER – the entity contracting for construction or other services from Purchaser or which the goods and/or services provided hereunder are for incorporation into the work or are required to facilitate completion of Purchaser's contract with such entity.

PRIME CONTRACT - The contract between Purchaser and Corner and all provisions, specifications and drawing referenced therein.

### 2. Entire Agreement

The contract between the Purchaser and Seller shall consist of and be contingent upon the Seller's acceptance of the Purchase Order, the provisions written on the face thereof, all provisions, specifications, and drawings referred to therein and these printed terms and conditions with appendixes. In the event of conflict between the provisions written on the face of this Purchase Order and those contained in these printed terms and conditions, the provisions written on the face of the Purchase Order shall prevail. This Purchase Order shall not be modified either orally or by failure of either party to enforce their rights hereunder. It is a condition of this Purchase Order that provisions printed on or otherwise contained in any quotations, order acknowledgement, shipping document, or other instrument of the seller shall be of no force or effect.

### 3. Payment Terms

No insurance or premium charges or price increases will be allowed unless authorized by Purchaser in writing. No increase in price from that stated on the face hereof will be considered throughout the duration of the order.

The Agreed upon Cost that the Seller and the Buyer have agreed upon are as follows: Buyer agrees to pay seller the Sum of five hundred dollars(\$500) at the onset of this contract. Upon completion Buyer agrees to pay seller an additional one thousand dollars (\$1,000.00) US dollars within Thirty days of delivery of the Final approved work. Late fees are agreed to be a 5 % deduction for the seller if project is not completed by due date and an additional 1% deduction for each day the project is late thereafter. Buyer agrees to pay a 2% late fee per month on the balance owed the seller and further agrees to pay a minimum of \$500 per month to seller or acknowledges that failure to comply will result in the seller having the right to offline the site Streetfax.com and remove his work until it is paid in full.

### 4. Changes

- a) BY PURCHASER – Purchaser agrees that no further revision shall be implemented until or unless approved by seller. Those revisions shall be transmitted for written approval to seller.
- b) BY SELLER – The Seller agrees that no further revision shall be implemented until or unless approved by Street Fax. Those revisions shall be transmitted for written approval to the Street Fax Purchasing Department.

### 5. Purchaser's Property

Does not include the price of renting the server, and registering VeriSign and SSL.

Data, drawings, tooling, patterns, materials, specifications, and any other items or information supplied to Seller under this order are the property of the Purchaser and must be returned upon completion of this order. Such items or information are to be used solely in the performance of the work by the seller and shall not be used or disclosed for any other purpose whatsoever without Purchaser's prior express written consent.

### 6. Settlement of Controversies

In the event that this purchase order is for materials or equipment which will be incorporated in the Customer's work under the Prime Contract, and in the case of disputes between the Purchase and the Customer or between the Purchaser and the Seller regarding materials or equipment to be furnished by the seller, the Seller agrees to be bound to the same extent that the Purchaser is bound by the terms of the Prime Contract, and by any and all decisions and determinations made thereunder, provided that the Seller shall have the right to participated in the settlement of any dispute with the customer to the extent that the Seller will be affected thereby.

No interest shall accrue on any payment(s) otherwise due the Seller, which is withheld or delayed as a result of any such dispute except to the extent that the Purchaser is ultimately paid interest on monies due the Seller. The Seller shall not be held liable if the Seller follows instructions of the Purchase and it is later determined that the Purchaser's instructions were not in compliance with the terms and specifications of the Prime Contract. Pending final disposition of a dispute hereunder, the Seller shall carry on the work unless otherwise agreed in writing by the Purchaser.

In all instances the final authority should rest with the final Specifications.

### 7. Patent Indemnity

Purchaser hold seller harmless for any infringement sellers work may constitute on patents held by any third party that result from the direct request for work made by purchaser in this "work made for hire" agreement.

The Seller hereby agrees to be responsible for all claims against the Purchaser of the Customer for alleged infringement of patents by reason of the Purchaser's or Customer's possession, use, or sale of any materials or equipment furnished hereunder by the Seller or by reason of the performance of any work hereunder by the Seller. The Seller agrees to defend at its sole expense all suits against the Purchaser and/or the Customer and to save and hold harmless the Purchaser and the Customer from and against all costs, expensed, judgments, and damages of any kind which the Purchaser or the Customer may be obliged to pay or incur by reason of any such alleged or actual infringement of a patent or patents. The Purchaser and the Customer agree to render whatever assistance is reasonably can in the way of information and access to records for the defense of any such suit. This indemnity shall not extend to alleged or actual infringements resulting from the Seller's compliance with the Purchaser's or Customer's design, instructions, processes, or formulas provided, however, that the Seller agrees to be responsible if it is reasonable to assume that the Seller should have been aware of a possible alleged or actual infringement resulting from the Purchaser's or Customer's design, instructions, processes, or formulas and fails to notify the Purchasers of such possibility.

### 8. Assignment of Subcontracting

Neither this order nor any rights, obligations, or monies due hereunder are assignable or transferable (as security for advances or otherwise) without the Purchaser's prior written consent, and except as to

purchases of raw materials or standard commercial articles or parts, the Seller shall not subcontract any major portion of the work encompassed by this order without the Purchaser's prior written approval. The Purchaser shall not be required to recognize any assignment or subcontract made without its prior written consent.

Subcontractors must have a "work made for hire agreement" in place with StreetFax.com before commencing their work.

#### 9. Proprietary Rights

It is acknowledged that this is a work made for hire agreement and that all Intellectual property rights or patent rights are that of StreetFax Inc. All code in portion or in its complete form remain the property of StreetFax Inc. If the items to be supplied hereunder have been designed in accordance with specifications or data furnished or originated by the Purchaser or its Customer, such items shall not be reproduced except with the approval of the Purchaser and, as applicable, its Customer and all drawings, photographs, data, software, and other written material or information supplied in connection therewith shall at all times remain the property of the Purchaser or its Customer and be returned promptly upon request at the completion, termination or cancellation of this order. In the event that StreetFax defaults on its payment terms rights would be granted to seller.

#### 10. Termination

A. DEFAULT – The Purchaser may terminate this order or any part thereof by written notice if the Seller:

- a) fails to make deliveries or to complete performance of its obligations hereunder within the time specified or in accordance with the agreed schedules unless such failure is due to acts of God, strike or other causes which are beyond the control of the Seller.
- b) Fails to comply with the terms and conditions of the purchase order and does not cure such failure within a period of ten (10) calendar days after written notice thereof.
- c) Makes an assignment for the benefit of creditors without prior written consent of the Purchaser, becomes insolvent or subject to proceedings under any law relating to bankruptcy, insolvency, or the relief of debtors.

Should the Purchaser elect to terminate for default, the Purchaser may take possession of all or any of the items to be supplied hereunder which are in the Seller's possession without regard to stage of completion and may complete or cause the work to be completed on such items or may manufacture or procure similar items. Any additional costs or expense incurred by the Purchaser over and above the original purchase price from the Seller plus freight costs shall be for the account of the Seller.

In all events, the Purchaser shall not be or become liable to the Seller or any third party claiming through or under the Seller for any portion of the price of any items that Purchaser elects not to accept following notice of termination for default.

#### 11. Liens

The Seller agrees to deliver the items to be supplied hereunder free and clear of all liens, encumbrances, and claims of laborers or material men and the Purchaser may withhold payment pending receipt of evidence in form and substance satisfactory to it of the absence of such items, claims and encumbrances.

#### 12. Governing Law

This Purchase Order and any material relating thereto shall be governed by the laws of the state in which the Purchaser's office that issues the order is located.

#### 13. Recovery of Damages

If the Seller should recover any damages as a result of antitrust violations in any manner due to price fixing on the part of another manufacturer or Seller, the Seller shall pay over to the Purchaser any damages the Purchaser has suffered as a result of the same price fixing within a reasonable time after the damages are recovered by the Seller.

#### 14. Notice of Labor Disputes

- a) Whenever the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, the Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Purchaser.

- b) The Seller shall insert the substance of this clause including this paragraph (b) in any subtier supply agreement hereunder as to which a labor dispute may delay the timely performance of this order except that each such subtier supply agreement shall provide that in the event its timely performance is delayed or threatened by delay by an actual or potential labor dispute, the subtier Seller shall immediately notify its next higher tier Seller or Sellers, as the case may be, of all relevant information with respect to such dispute.

Work agreement. The scope of this contract is based on the following agreement for work to be performed:

#### CONSULTING (10 hours)

- review of business concept, site services and goals, target audience
- determining user interface design with respect to site functionality
- clarifying roles of designer/developer and programmer

#### DESIGN (10 hours)

- incorporating existing concepts/logo into a professional, easy-to-use graphical interface
- laying out a flexible template that can be used throughout the site to present various dynamically generated textual and graphical content

#### DEVELOPMENT (10 hours)

- converting designs to working HTML
- optimizing imagery and code for optimum efficiency and browser compatibility
- setting up style sheets and template code for easy plug-and-play implementation of dynamic content

TOTAL PROJECT BID: \$1500.00

#### PROVISIONS

- work to begin/proceed upon signing of contract and receipt of pre-payment (previously determined to be \$500)
- design limited to one round of revisions
- design limited to one homepage design and one universal subpage design
- development to include delivery of all static pages and a single template to serve for all dynamic pages
- development limited to pages included on the site map sent 4/12/2003
- development to begin upon delivery of complete and finalized content for all static pages (1-6, 8-10, 11, 12, 22, 25 and 26)
- any additional work (further design/content revisions, additional templates, additional pages, etc.) to be billed on top of the total project bid

#### 24. Indemnity Requirements for Contractors/Seller

Contractor/Vendor shall defend, indemnify and save Street Fax from any and all claims, suits, losses, damages, or expenses, whether caused or contributed to by the negligence of Street Fax, its agents, or employees, or otherwise, on account of injuries to or death of any and all persons whomsoever, including the Contractor/Vendor, subcontractors, employees of Contractor/Vendor, the subcontractor, and of Street Fax and any and all damage to property to whomsoever belonging, including property owned by, rented to, or in the care, custody, or control of the parties hereto arising or growing out of, or in any manner connected with the work performed under this contract, or caused or occasioned, in whole or in part by reason of or arising during the presence of the person or of the property of Contractor/Vendor, subcontractors, their employees, or agents upon or in proximity to the property of Street Fax Notwithstanding the foregoing, nothing herein contained is to be construed as an indemnification against the sole negligence of Street Fax.

#### 25. Publicity

Seller shall not publish photographs or articles, give press releases or make speeches about or otherwise publicize the existence or scope of this Purchase Order, or any generalities or details about this Purchase Order without first obtaining the written consent of Buyer.

26. Seller's Disclosure

Any information relating to the Seller's designs, manufacturing processes or manufactured products which the Seller may disclose to the Buyer in connection with the performance of the contract may be used by the Buyer for any purpose relating to the contract and to its performance without liability therefor to the Seller.

27. General Notes

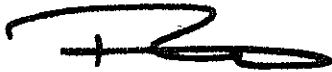
Seller shall reference this purchase order number on all documents and/or correspondence related to this order.

CONTRACTOR/SELLER:

Randy Kato  
527 Gates Avenue #4  
Brooklyn, NY 11216

Signed:

Dated: May 5, 2003

A handwritten signature in black ink, appearing to be 'Randy Kato', written over a horizontal line.

# EXHIBIT E



## General Conditions of Purchase

## STREET FAX

## SECTION 1. GENERAL PROVISIONS

## 1. Definitions

The following terms have the meaning specified when used herein:

**PURCHASER** - Street Fax Inc.

**CONTRACTOR/SUBS** - The entity, its agent, employee, affiliate, or sub-contractor, furnishing materials, equipment, or services hereunder, as identified on Purchase Order.

**CUSTOMER** - the entity contracting for construction or other services from Purchaser or which the goods and/or services provided hereunder are for incorporation into the work of the customer to facilitate completion of Purchaser's contract with such entity.

**PRIME CONTRACT** - The contract between Purchaser and Customer and all pertinent, specifications and drawings referenced therein.

## 2. Terms Agreement

The contract between the Purchaser and Seller shall consist of and be contingent upon the Seller's acceptance of the Purchase Order, the provisions herein on the face thereof, all pertinent specifications and drawings referred to therein and these printed terms and conditions with appendant. In the event of conflict between the provisions herein on the face of this Purchase Order and those contained in these printed terms and conditions, the provisions herein on the face of the Purchase Order shall prevail. The Purchase Order shall not be modified either orally or by failure of either party to enforce their rights hereunder. It is a condition of this Purchase Order that provisions printed on or otherwise contained in any quotations, order acknowledgments, shipping documents, or other instrument of the Seller shall be of no force or effect.

## 3. Payment Terms

No insurance or premium charges or price increases will be allowed unless authorized by Purchaser in writing. No insurance requirements that stated on the face hereof will be considered throughout the duration of the order.

The Agreed upon term that the Seller and the Buyer have agreed upon are as follows: Buyer agrees to pay seller the sum of \$1,000 at the onset of this contract. The Buyer agrees to pay seller \$2,000 on the due date of the project, and upon completion Buyer agrees to pay seller an additional \$13,000 US dollars within Thirty days of delivery of the final approved program. Late fees are agreed to be a 5% deduction for the seller if project is not completed by due date and an additional 1% deduction for each day the program has been late. Buyer agrees to pay a 5% late fee per month on the balance owed the seller and further agrees to pay a minimum of \$2,000 per month to seller as acknowledgment that failure to comply will result in the seller having the right to offline the site from the internet and remove his program.

The Agreed upon project due date is May 31, 2013.

*Buyer and Seller has provided by signed, dated*

## 4. Changes

a) **BY PURCHASER** - Purchaser agrees that no further revision shall be implemented until or unless approved by a Buyer. These revisions shall be transmitted for written approval in writing.

b) **BY SELLER** - The Seller agrees that no further revision shall be implemented until or unless approved by Street Fax. These revisions shall be transmitted for written approval in the Prime Purchase Order.

## 5. Purchaser's Property

Does not include the price of renting the server, and registering VeriSign and SSL. The Buyer agrees to fence these expenses in

addition to the price of the contract, and will maintain control of these services at all times.

Plans, drawings, marking, patterns, materials, specification, and any other items or information supplied to Seller under this contract are the property of the Purchaser and must be returned upon completion of the order. Such items or information are to be used solely in the performance of the work by the seller and shall not be used or disclosed for any other purpose whatsoever without Purchaser's prior express written consent.

## 6. Settlement of Controversies

In the event that this purchase order is for materials or equipment which will be incorporated in the Customer's work under the Prime Contract, and in the case of dispute between the Purchaser and the Customer or between the Purchaser and the Seller regarding materials or equipment to be furnished by the seller, the Seller agrees to be bound in the same extent that the Purchaser is bound by the terms of the Prime Contract, and by any and all decisions and determinations made thereunder, provided that the Seller shall have the right to participate in the settlement of any dispute with the Customer to the extent that the Seller will be affected thereby.

The Seller shall remain on any payment or otherwise due the Seller, which is withheld or delayed as a result of any such dispute, except in the event that the Purchaser is ultimately found to be in breach due to the Seller. The Seller shall not be held liable if the Seller follows instructions of the Purchaser and it is later determined that the Purchaser's instructions were not in compliance with the terms and specifications of the Prime Contract. Pending final disposition of a dispute hereunder, the Seller shall carry on the work unless otherwise agreed in writing by the Purchaser.

In all instances the final authority shall rest with the final specifications.

## 7. Patent Infringement

Purchaser holds seller harmless for any infringement with work may constitute an patent held by any third party that result from the direct request for work made by purchaser in this "work made for hire" agreement.

The Seller hereby agrees to be responsible for all claims against the Purchaser or the Customer for alleged infringement of patents by means of the Purchaser or Customer's possession, use, or sale of any machinery or equipment furnished hereunder by the Seller or by means of the performance of any work hereunder by the Seller. The Seller agrees to defend at its own expense all claims against the Purchaser and/or the Customer and to settle and hold harmless the Purchaser and the Customer from and against all costs, expenses, judgments, and damages of any kind which the Purchaser or the Customer may be obliged to pay or incur by reason of any such alleged or actual infringement of a patent or patents. The Purchaser and the Customer agree to make whatever reasonable or reasonable care in the way of information and advice to research for the defense of any such suit. This agreement shall not extend to alleged or actual infringements resulting from the Seller's compliance with the Purchaser or Customer's design, information, patterns, or formulas provided, however, that the Seller agrees to be responsible if it is necessary to assure that the Seller should have been aware of a possible alleged or actual infringement or resulting from the Purchaser or Customer's design, information, patterns, or formulas and take to avoid the infringement of such possibility.



#### 8. Assignment of Subcontracting

Neither this order nor any rights, obligations, or remedies hereunder are assignable or transferable (an security for advances or otherwise) without the Purchaser's prior written consent, and except as to purchases of raw materials or standard commercial articles or parts, the Seller shall not subcontract any major portion of the work encompassed by this order without the Purchaser's prior written approval. The Purchaser shall not be required to accept any component or subcontract made without its prior written consent.

The buyer agrees that there will be two other subcontractors working on this project their work will be accepted provided a memorandum and "work made for him agreement" are in place.

#### 9. Proprietary Rights

It is acknowledged that this is a work made for him agreement and that all intellectual property rights in patent rights are that of Street Via Inc. All work in person or in its complete form remains the property of Street Via Inc. If the items to be supplied hereunder have been designed in accordance with specifications or data furnished or originated by the Purchaser or its Customer, such items shall not be reproduced except with the approval of the Purchaser and, as applicable, its Customer and all drawings, photographs, data, software, and other written material or information supplied in connection therewith shall at all times remain the property of the Purchaser or its Customer and be returned promptly upon request at the completion, termination or cancellation of this order. In the event that Street Via defaults on its payment terms rights would be granted to seller.

#### 10. Termination

3. CANCELLATION - The Purchaser may terminate this order or any part thereof by written notice if the Seller:

- fails to make delivery or to complete performance of its obligations hereunder within the time specified or in accordance with the agreed schedule unless such failure is due to acts of God, strike or other causes which are beyond the control of the Seller;
- fails to comply with the terms and conditions of the purchase order and does not cure such failure within a period of ten (10) calendar days after written notice thereof;
- makes an assignment for the benefit of creditors within a period of ten (10) calendar days after written notice thereof.

Should the Purchaser elect to terminate for default, the Purchaser may take possession of all or any of the items to be supplied hereunder which are in the Seller's possession without regard to stage of completion and may complete or cause the work to be completed on such terms or on any manufacture of products similar thereto. Any additional costs or expense incurred by the Purchaser over and above the original purchase price from the Seller plus freight costs shall be for the account of the Seller.

In all events, the Purchaser shall not be or become liable to the Seller or any third party claiming through or under the Seller for any portion of the price of any items that Purchaser elects not to accept following notice of termination for default.

#### 11. Lien

The Seller agrees to deliver the items to be supplied hereunder free and clear of all liens, encumbrances, and claims of laborers or material men and the Purchaser may withhold payment pending receipt of evidence in form and substance satisfactory to it of the absence of such liens, claims and encumbrances.

#### 12. Governing Law

This Purchase Order and any material relating thereto shall be governed by the laws of the state in which the Purchaser's office that issues the order is located.

#### 13. Recovery of Damages

If the Seller should recover any damages as a result of indirect violations in any manner due to price fixing on the part of another manufacturer or Seller, the Seller shall pay over to the Purchaser any such damages as a result of the same price fixing within a reasonable time after the damages are recovered by the Seller.

a) Whenever the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, the Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Purchaser.

b) The Seller shall accept the substance of this clause including the paragraph (a) in any contract supply agreement hereunder as in which a labor dispute may delay the timely performance of this order except that each such contract supply agreement shall provide that in the event its timely performance is delayed or threatened by delay by an actual or potential labor dispute, the Seller shall immediately notify its next highest tier Seller or Sellers, in the case may be, of all relevant information with respect to such dispute.

#### 14. Indemnity - Reimbursement for Contractor/Seller

Contractor/Vendor shall defend, indemnify and save Street Via Inc. from any and all claims, suits, losses, damages, or expenses, whether caused or contributed to by the negligence of Street Via, its agents, or employees, or otherwise, or a result of injuries to or death of any and all persons whatsoever, including the Contractor/Vendor, subcontractors, employees of Contractor/Vendor, the subcontractor, and of Street Via and any and all damage to property to whatsoever belonging, including property owned by, rented to, or in the care, custody, or control of the parties hereto arising or growing out of, or in any manner connected with the work performed under this contract, or caused in occasional, in whole or in part by reason of or arising during the presence of the person or of the property of Contractor/Vendor, subcontractors, their employees, or agents upon or in proximity to the property of Street Via. Notwithstanding the foregoing, nothing herein contained is to be construed as an admission against the sole negligence of Street Via.

#### 15. Publicity

Seller shall not publish photographs or articles, give press interviews, or make speeches about or otherwise publicize the existence or terms of this Purchase Order, or any generalization about this Purchase Order without first obtaining the written consent of Buyer.

#### 16. Seller's Disclosure

Any information relating to the Seller's designs, manufacturing processes or manufactured products which the Seller may disclose to the Buyer in connection with the performance of the contract may be used by the Buyer for any purpose relating to the contract and in its performance without liability to refer to the Seller.

#### 17. Confidential Notes

Seller shall reference this purchase order number on all documents and/or correspondence related to this order.

The signatures below will execute this contract.

Buyer - Paul G. [Signature]

Seller - Mark Zuckerman

7/28/09

# EXHIBIT F

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

5 -----x  
6 PAUL D. CEGLIA,

7  
8 Plaintiff,

9  
10 vs.

11 MARK ELLIOT ZUCKERBERG,  
12 Individually, and  
13 FACEBOOK, INC.,  
14

15 Defendants.  
16 -----x

17  
18 July 19, 2012

19  
20 10:11 a.m.

21 Videotaped deposition of MICHAEL  
22 F. McGOWAN, held at the offices of Gibson,  
23 Dunn & Crutcher LLP, 200 Park Avenue, New  
24 York, New York, pursuant to notice, before  
25 Cary N. Bigelow, Court Reporter, a Notary  
Public of the State of New York.

1 M. McGowan

2 MR. SOUTHWELL: I'm going to object to  
3 this line as beyond the scope of the  
4 court-authorized discovery at this point.

5 I think you can proceed with that  
6 question, I am not sure how much more you  
7 intended to ask on it.

8 MR. BOLAND: Well, your objections are  
9 noted, but unless there's a privilege issue  
10 here, we're driving on.

11 Q. What other assets do you -- please  
12 describe the assets belonging to Mr. Zuckerberg  
13 as you just referred to it in your answer to my  
14 previous question.

15 A. There were approximately --  
16 approximately 28 devices belonging to  
17 Mr. Zuckerberg that were presented to us for  
18 examination.

19 Q. What were those devices?

20 A. The devices included original hard  
21 drives as well as forensic images of devices that  
22 I understand were created during the course of  
23 prior litigations.

24 Q. When you say forensic images of devices,  
25 what type of devices are you referring to?

1 M. McGowan

2 A. Primarily computer hard drives.

3 Q. What else?

4 A. In addition, there was -- and I don't  
5 recall if these were forensic images or if these  
6 were devices, were they originals, but external  
7 media such as Iomega Clik devices, it's a form of  
8 storage.

9 Q. Were you the person who evaluated all  
10 those, analyzed all those devices?

11 A. I analyzed -- yes, I analyzed them, I  
12 had a system at work, but I was the -- I did  
13 examine all of them, I was the primary person  
14 conducting that examination.

15 Q. And where was that conducted?

16 A. It was conducted in San Jose,  
17 California, at the offices of the McManis  
18 Faulkner law firm.

19 Q. And who else was present during that  
20 examination?

21 A. Also present was one of my -- a  
22 colleague of mine at Stroz Friedberg.

23 Q. Who?

24 A. He has since left the firm, but his  
25 name is Michael Kunkel, K-u-n-k-e-l.

1 M. McGowan

2 Q. Is he a qualified computer forensics  
3 expert?

4 A. What do you mean by that term?

5 Q. Does he have an EnCase certification?

6 A. I haven't reviewed his CV in some time.  
7 I consider him to be a qualified computer  
8 forensics examiner.

9 Q. And where does he work now, if you  
10 know?

11 A. I don't know. He moved -- for family  
12 reasons he moved to Texas. I don't recall where  
13 he's employed.

14 Q. Do you know if he's still in computer  
15 forensics?

16 A. I believe so.

17 Q. Why did he leave Stroz Friedberg?

18 A. As I mentioned, he wanted to get back  
19 to Texas for personal reasons.

20 Q. Did you take notes during your analysis  
21 of these 28 devices?

22 A. We did not take written notes.

23 Q. Did you take audio notes?

24 A. No.

25 Q. Did you take any notes?

1 M. McGowan

2 A. We prepared spreadsheets identifying  
3 what it was we were examining, we noted our --  
4 noted our results electronically.

5 Q. How electronically? What does that  
6 mean?

7 A. Part of our work included keyword  
8 searches, so we would document what we searched,  
9 what was the search criteria that was used and to  
10 the extent that data was identified relevant to  
11 the searches we made a copy, we made a copy of  
12 that information.

13 Q. Do you still have the list of keyword  
14 searches that you did on that media saved  
15 somewhere in your files or someone else's files  
16 at Stroz Friedberg?

17 A. We do, yes.

18 Q. When did this examination occur of  
19 these 28 devices belonging to Mr. Zuckerberg?

20 A. In around September of 2010.

21 Q. How long did that work take in  
22 California?

23 A. It was more than several days, I don't  
24 recall the full length, the exact length of how  
25 long it took.

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M. McGowan

Q. And who paid you to do the work?

A. We were paid -- we conducted this work for Gibson, Dunn on behalf of Facebook, I believe it's Facebook that's paying our bills.

Q. Well, who does the check come from that goes to Stroz Friedberg, from Gibson, Dunn or Facebook?

A. I don't see the checks, but my understanding is the engagement letters calls for Facebook to pay our bills.

Q. And did you provide any reports or any written results to anyone of your analysis of those 28 devices belonging to Mr. Zuckerberg?

A. We did not prepare a written report.

Q. Did you communicate with anyone from defense counsel after evaluating those 28 devices?

A. Yes.

Q. Can you describe how that occurred? Was that a conference call or phone call on your own? How did that happen?

A. I think it was several phone calls that I had with Mr. Benjamin, counsel of Gibson, Dunn, as we conducted our -- as we conducted our work, so there were several of those.



1 M. McGowan

2 There may have been e-mail  
3 correspondence, I don't recall which form it  
4 took, but I recall that Mr. Benjamin was the  
5 primary person at Gibson, Dunn with whom we were  
6 in communication at that time.

7 Q. What categories of electronic evidence  
8 did you find on those 28 devices?

9 A. What categories --

10 Q. Of electronic evidence did you find on  
11 those 28 devices.

12 A. I guess I'm not sure --

13 Q. Was there a Web history on some of  
14 them?

15 A. I'm not sure specifically about that.

16 Q. Was there instant messaging records?

17 A. Yes.

18 Q. Were there e-mails?

19 A. Yes, I believe so.

20 Q. Were there e-mails authored -- were  
21 there e-mails sent by Mr. Zuckerberg?

22 A. I don't recall.

23 Q. Were there e-mails received by  
24 Mr. Zuckerberg?

25 A. I don't recall.

1 M. McGowan

2 I remember that I -- primarily we  
3 conducted searches using keywords designed to  
4 identify copies of the contract, communications  
5 with Mr. Ceglia, other issues related to this  
6 case. We did not -- we didn't find any copies of  
7 the contract, didn't find any correspondence with  
8 Mr. Ceglia.

9 Those were our primary findings from  
10 our examination of the Zuckerberg assets.

11 Q. Do you know if you found e-mails  
12 between Mr. Zuckerberg and Mr. Ceglia from the  
13 time period of March 2003 to June 2003?

14 A. I just said we didn't find any  
15 correspondence with Mr. Ceglia.

16 Q. Were there e-mails on any of those  
17 devices, stored on those devices from  
18 Mr. Zuckerberg's Harvard e-mail account?

19 A. I don't recall.

20 Q. Would you have records? Would Stroz  
21 Friedberg have records of what you found in your  
22 analysis?

23 A. Yes.

24 Q. And who would have those?

25 A. Primarily we have the messages that we

1 M. McGowan

2 had identified or the data that we had identified  
3 pursuant to the search, the search criteria,  
4 that's the primary body of information that we  
5 have from that, from that work.

6 Q. I'm talking about the 28 devices.

7 A. Yes.

8 Q. Were there any communications you found  
9 on those 28 devices about StreetFax?

10 A. I don't recall specifically.

11 Q. Any e-mails you found on those 28  
12 devices regarding Karin Peterson?

13 A. I don't recall.

14 Q. Did you find any source code related to  
15 the StreetFax project that Mr. Zuckerberg worked  
16 on for Mr. Ceglia on any of those 28 devices?

17 A. I don't believe so.

18 Q. Was this part of the work that you did  
19 in arriving at the conclusions that are in your  
20 report?

21 A. I know that the report, our report  
22 was -- it was submitted -- discussing our report  
23 we conducted, our examination we conducted  
24 pursuant to the expedited discovery order of the  
25 Ceglia media, so our report does provide a

1 M. McGowan

2 summary of the opinions we reached and the  
3 materials we considered there.

4 Q. Let's throw a hypothetical at you here.

5 If you would have found e-mails  
6 relevant to expedited discovery --

7 MR. BOLAND: Scratch that. Not  
8 e-mails.

9 Q. Had you found any data on those 28  
10 devices relevant, in your opinion, to the Court's  
11 expedited discovery order would you have provided  
12 that in your report, Exhibit 1 that's in front of  
13 you?

14 A. What's Exhibit 1?

15 Q. It's your report.

16 A. Oh, okay, Rose Exhibit 1.

17 MR. SOUTHWELL: Objection to the form.

18 Q. Do you need the question again?

19 A. No, I'm all set there.

20 The Court's expedited discovery order,  
21 as I understand it, called for us to report our  
22 finding on the Ceglia media, that was the  
23 specific purpose of it, and that's what we did  
24 here.

25 Q. That's not my question.

1 M. McGowan

2 My question is if in your analysis of  
3 the 28 devices had you found any information that  
4 in your opinion was contemplated by the Court's  
5 expedited discovery order, would you have put it  
6 in that report?

7 MR. SOUTHWELL: Objection, asked and  
8 answered.

9 Q. Just yes or no, would you have put it  
10 in the report?

11 A. I went over what my opinion of the  
12 Court's expedited discovery order calls for and  
13 in my opinion it doesn't call for -- it doesn't  
14 call for anything related to the Zuckerberg  
15 assets.

16 Q. So your answer is no, you would not  
17 have put it in the report, even if you thought it  
18 was contemplated by the Court's expedited  
19 discovery order you wouldn't have put it in the  
20 report?

21 MR. SOUTHWELL: Objection, he just said  
22 it wasn't.

23 Q. Let me break it down for you.

24 Let's say -- hypothetical time -- you  
25 found an e-mail on the 28 devices, assets that

1 M. McGowan

2 you analyzed that was from Paul Ceglia to Mark  
3 Zuckerberg discussing the StreetFax business,  
4 let's hypothetically say you found that e-mail on  
5 one of those 28 devices, would you have put that  
6 in your report?

7 A. On that alone, I'm not sure that is  
8 enough of a basis in terms of -- without further  
9 context for knowing what the e-mail said.

10 In this case, what we do is quite  
11 clear, we're -- on the one hand we did conduct a  
12 search of the Zuckerberg assets, didn't find  
13 anything related to, related here, and focused on  
14 the Ceglia media as properly -- as I feel  
15 properly responsive to the Court's expedited  
16 discovery order.

17 So I'm not sure in just an e-mail from  
18 Paul Ceglia to Mark Zuckerberg, I'm not sure that  
19 would give me enough basis to know whether or not  
20 what it said and whether or not it's relevant,  
21 but as I went over earlier, as I understand the  
22 Court's expedited discovery order was for us to  
23 report our examination of the Ceglia media and  
24 our findings.

25 Q. So this is not my question, you are

1 M. McGowan

2 rephrasing it not how I asked it.

3 If you found an e-mail on one of those  
4 28 devices between Mr. Zuckerberg and Paul  
5 Ceglia -- and here's the key thing you're  
6 missing -- discussing the StreetFax agreement,  
7 would you have produced, would you have  
8 referenced that and talked about that e-mail in  
9 your report?

10 MR. SOUTHWELL: Objection. You are  
11 starting to badger and harass the witness.

12 MR. BOLAND: I am not badgering.

13 MR. SOUTHWELL: He is answering your  
14 questions. You may not like the answer, you  
15 may not like the answer, but he is answering  
16 your questions.

17 MR. BOLAND: The question he answered,  
18 he answered a question of whether there was  
19 an e-mail between Paul Ceglia and Mr.  
20 Zuckerberg, is that enough. That's not my  
21 question.

22 A. That was the earlier question.

23 Q. An e-mail between Paul Ceglia and Mark  
24 Zuckerberg discussing the StreetFax business, if  
25 you'd have found an e-mail like that on one of

1 M. McGowan

2 those 28 devices would you put it in the report?

3 A. Sorry, which one? Is it the contract,  
4 the business? What's the e-mail discussing?

5 Q. Let's break it down.

6 An e-mail between Paul Ceglia and Mark  
7 Zuckerberg discussing the StreetFax business, if  
8 you had found an e-mail that discusses that,  
9 would you have put it in the report?

10 A. This is an e-mail that also was located  
11 elsewhere in the Harvard account?

12 Q. Just all by itself, never saw it  
13 before, no other e-mail like it in the world, it  
14 discusses the StreetFax business between  
15 Mr. Zuckerberg, Mr. Ceglia, it's on the 28  
16 devices, would you have put it in the report?

17 A. I think it's hard for me to answer in  
18 the abstract.

19 What we did is as we found evidence we  
20 considered whether -- our charge was is it  
21 reasonably related to the authenticity of the  
22 StreetFax contract and the purported e-mails,  
23 so --

24 Q. My question is not what your charge is,  
25 it's a hypothetical question.



1 M. McGowan

2 A. Well, I guess I --

3 Q. You are not answering the question,  
4 sir, and please listen to the question.

5 I'm not saying what was your charge,  
6 what do you think your charge was, charge was not  
7 even in my question.

8 Hypothetical. If you found an e-mail  
9 from Ceglia and Zuckerberg discussing the  
10 StreetFax business, would you have put that  
11 information that you found that e-mail discussing  
12 the StreetFax business in your report?

13 That's the question.

14 MR. SOUTHWELL: Objection. This is --  
15 you are just badgering him. He's already  
16 clearly stated what he put in the report --

17 MR. BOLAND: You can't coach him by --  
18 you can object to the form, Alex, but no  
19 coaching.

20 MR. SOUTHWELL: I'm not coaching. I'm  
21 try go make it clear. You seem to keep  
22 asking the same thing over and over again.

23 MR. BOLAND: Because he's not  
24 answering the question.

25 MR. SOUTHWELL: He is answering.

1 M. McGowan

2 MR. BOLAND: I'll ask it for the next  
3 hour because it's a very clear question he  
4 is refusing to answer, and I suspect I know  
5 why.

6 Q. Please answer the question.

7 It's not a difficult question. The  
8 hypothetical you have to assume is an e-mail --  
9 we all know what that is -- between Mr. Ceglia  
10 and Mr. Zuckerberg -- so far we know what that  
11 is -- and it discusses the StreetFax business.

12 Assuming that existed on one of these  
13 28 devices and existed nowhere else on any Ceglia  
14 media, would you have reported that fact in your  
15 report?

16 That's it, that's all I want to know.

17 A. And it would depend -- I think one of  
18 the facts it would depend on is the content of  
19 that e-mail.

20 Is it -- does it discuss -- does it  
21 bear on the -- does it bear on the contract? Is  
22 there information in it that either points in  
23 favor or cuts against either of the contract,  
24 either the version that was produced by  
25 Mr. Ceglia or the version that we found on the

1 M. McGowan

2 Seagate hard drive? Is there information in that  
3 e-mail that's consistent with or inconsistent  
4 with any of the purported e-mails?

5 So those would be factors that I think  
6 I'd need -- I think would shape -- would shape my  
7 evaluation of that e-mail.

8 MR. BOLAND: All right. We'll take  
9 about a 10-minute break.

10 (Recess taken.)

11 THE VIDEOGRAPHER: The tape is rolling.

12 BY MR. BOLAND:

13 Q. So we are back on the record,  
14 Mr. McGowan.

15 Do you know who David Cressy is,  
16 spelled C-r-e-s-s-y?

17 A. David Cressy? Without more context I'm  
18 not sure I can place that name.

19 Q. Okay.

20 The 28 devices that we were talking  
21 about before we broke, was there anything on  
22 those 28 devices related to Paul Ceglia at all?

23 A. I don't believe so. I recall we had  
24 run searches for his name, for his e-mail  
25 address. I don't believe we had identified

1 M. McGowan

2 materials related to Paul Ceglia.

3 Q. That list of search terms you provided  
4 for those 28 devices -- not provided.

5 The list of search terms used for those  
6 28 devices, who created that list?

7 A. We created it in consultation with  
8 Gibson, Dunn, we drew phrases from the contract  
9 and then worked with Gibson, Dunn to develop  
10 other keywords designed to get at -- designed to  
11 surface what were likely to be relevant documents  
12 in this case.

13 Q. And who at Gibson, Dunn worked with you  
14 on creating that list of search terms?

15 A. As I mentioned, we were primarily  
16 dealing with Mr. Benjamin for this portion of  
17 the work.

18 Q. And did you communicate with him by  
19 e-mail about -- prior to the analysis of those 28  
20 devices, about the analysis of those 28 devices?

21 A. Yes.

22 Q. And if you recall, how many of those 28  
23 devices were used by Mr. Zuckerberg in 2003 and  
24 2004, the time frame where he had a business  
25 relationship with Mr. Ceglia?

1 M. McGowan

2 A. I don't recall.

3 Q. Do you know if any of them were used by  
4 him during that time frame?

5 A. Yes.

6 Q. And you just don't know the number of  
7 how many?

8 A. I don't know the number.

9 Q. Were any of those computers used by him  
10 much later in time or anytime after 2004, if you  
11 recall?

12 A. I know one of them that sticks in my  
13 mind, one of the devices had last been used in  
14 2005, but I don't recall how much later devices  
15 were used.

16 Q. And were some of those devices you  
17 analyzed involved in the Winklevoss ConnectU  
18 case, if you know?

19 A. In the ConnectU case?

20 Q. Yes.

21 A. I believe so.

22 Q. Were some of those devices involved in  
23 a case between Mr. Zuckerberg and Eduardo  
24 Saverin, if you know?

25 A. Do you know what the cite of that is?

1 M. McGowan

2 I think I have seen it mostly by captions.

3 Q. No, I don't know the cite off the top  
4 of my head.

5 If you don't recall based on just  
6 Eduardo Saverin being one of the parties, then  
7 that's fine if you don't recall.

8 A. That's right, I don't recall.

9 Q. Do you realize, do you know now that  
10 Paul Ceglia and Mark Zuckerberg in fact had a  
11 business relationship in 2003-2004 related to  
12 StreetFax that Mr. Zuckerberg is not disputing?

13 Are you aware of that?

14 A. I am aware of that.

15 Q. And do you think it's odd that you  
16 didn't find any e-mail correspondence between  
17 Mr. Ceglia and Mr. Zuckerberg on any of those 28  
18 devices, given that they had a business  
19 relationship?

20 A. I don't know if it's odd or not. I  
21 don't know -- the devices were presented to me  
22 for inspection. I don't know, without knowing  
23 more about how they were used, when they were  
24 used, I'm not sure I could -- I'm not sure I have  
25 an opinion one way or another in terms of the

1 M. McGowan

2 absence of communication between the two on these  
3 devices.

4 Q. You've seen the Harvard e-mails from  
5 Mr. Zuckerberg's Harvard e-mail account that were  
6 produced related to the expedited discovery order?

7 A. I have seen the Harvard e-mails that  
8 were produced pertaining to the expedited  
9 discovery order.

10 Q. Were any of those e-mails, copies of  
11 them, present on those 28 devices, if you know?

12 A. I don't believe so.

13 Q. And what's the basis for your belief  
14 that none of them, copies of those e-mails do not  
15 appear on those 28 devices?

16 A. I know that we've conducted searches  
17 for Mr. Ceglia's name and e-mail addresses, the  
18 several e-mail addresses, those were in the  
19 Harvard e-mails, those were the Harvard e-mails  
20 that Mr. Zuckerberg and Mr. Ceglia exchanged and  
21 so based on the fact that we didn't identify any  
22 communications between the two of them on the  
23 Zuckerberg assets, the approximately 28 devices,  
24 that's my basis for -- that's my basis period.

25 Q. Did you search for e-mails in which

1 M. McGowan

2 Mr. Zuckerberg communicated with other people,  
3 not Mr. Ceglia, about StreetFax?

4 A. StreetFax would have been included as  
5 one of the search criteria. I don't recall the  
6 full list of search criteria, sitting here, but  
7 that would have been one of the terms used.

8 Q. So is your answer -- what's your answer  
9 to my question?

10 Did you find any e-mails between  
11 Mr. Zuckerberg and someone who is not Paul Ceglia  
12 discussing StreetFax?

13 MR. SOUTHWELL: Objection.

14 A. I'm sorry, I thought your question was  
15 did we search for.

16 Q. No. Did you find?

17 If it was search for, I will correct  
18 myself.

19 Did you find any e-mails sent or  
20 received by Mr. Zuckerberg on those 28 devices  
21 but not involving sent or received from  
22 Mr. Ceglia, but they discussed StreetFax?

23 A. I'm not sure one way or another on  
24 that.

25 Q. The set of search terms you used to



1 M. McGowan

2 search the 28 devices, was it identical to the  
3 search terms used to search the Harvard e-mail  
4 account of Mr. Zuckerberg?

5 A. No.

6 Q. And did you determine by looking at  
7 those 28 devices whether Mr. Zuckerberg used any  
8 of those devices to access his Harvard e-mail?

9 A. We didn't reach a conclusion on that  
10 point.

11 Q. Were you asked to look for that?

12 A. No.

13 Q. Did you ever speak with Mr. Zuckerberg?

14 A. I have not, no.

15 Q. Did you find any references to  
16 StreetFax at all on those 28 devices?

17 A. I'm not sure the results on that one.

18 Q. So it's possible there are references  
19 to StreetFax on those 28 devices?

20 A. I'm not sure on that one, one way or  
21 another on that.

22 Q. I'm just asking if it's possible, since  
23 you don't know.

24 Is that possible that there's  
25 references to StreetFax on those 28 devices?

1 M. McGowan

2 A. It's possible. I don't -- I don't  
3 recall the results of that search.

4 Q. Were any of your results of your  
5 searches documented in any way or do those  
6 results solely rely on your memory?

7 A. As part of the search process we  
8 applied the search criteria and then obtained  
9 high-level search results in terms of just how  
10 many documents or how many hits per keyword, so  
11 it's documented at that phase and then we  
12 exported the search results and so we have a set,  
13 we have the set of materials that match the  
14 search criteria as well, so with the original  
15 keyword list, the what I would call the keyword  
16 breakdowns, keyword hit breakdowns and the  
17 results themselves.

18 Q. Did you provide those to defense  
19 counsel?

20 A. We did, yes.

21 Q. Do you know if Mr. Zuckerberg reviewed  
22 that information?

23 A. I don't have any basis to know one way  
24 or another whether he reviewed it.

25 Q. Can you name everyone that has had

1 M. McGowan

2 access to those results, everyone at Stroz  
3 Friedberg that has had access to those results?

4 A. The results being the search statistics  
5 or the documents that resulted?

6 Q. The entire analysis of those 28  
7 devices, whatever documentation arose or was  
8 generated from that analysis, who at Stroz  
9 Friedberg has had access to that information that  
10 you know of?

11 A. That I'm aware, that I know of, it's  
12 the individuals who had been working on this  
13 portion of the analysis: myself, Mr. Kunkel,  
14 Mr. Rose.

15 The results themselves were made  
16 available, the documents that matched the search  
17 criteria were made available for review in our  
18 electronic discovery search platform. I don't  
19 know the names of the individuals, but there  
20 would be additional individuals who would have  
21 been involved in making the documents available  
22 for review by Gibson, Dunn.

23 Q. And do you know who at Gibson, Dunn  
24 accessed those materials?

25 A. I know that Mr. Benjamin, I believe

1 M. McGowan

2 that Mr. Benjamin did, but beyond that, I'm not  
3 certain.

4 Q. Do you know if the StreetFax source  
5 code is on those 28 devices?

6 A. I think you asked me that. I don't  
7 believe so.

8 Q. And what's the basis for your belief  
9 that it's not there?

10 A. I don't recall -- in the materials I  
11 reviewed I don't recall seeing any source code,  
12 any StreetFax source code.

13 Q. Did you conduct a search for StreetFax  
14 source code as part of your search?

15 A. We conducted search -- the keywords  
16 would have included terms such as StreetFax. We  
17 did not specifically conduct a search -- I myself  
18 have not seen the StreetFax -- it's not as if we  
19 received it, drew search terms from it and  
20 applied a search, but I believe in the searches  
21 that we did conduct I'm not aware of having  
22 identified it.

23 Q. And Facebook source code, did you do a  
24 search for that on those 28 devices?

25 A. We did not, no.

1 M. McGowan

2 Q. Now, if the word "StreetFax" doesn't  
3 appear in the StreetFax source code, then it's  
4 logical you wouldn't have found the StreetFax  
5 source code; true?

6 A. If the word "Street" -- it would depend  
7 on whether any of the other keywords we had  
8 run -- if any of the other keywords appeared then  
9 it would have been surfaced through our searches.  
10 If none of the word searches, none of the terms  
11 appeared in the source code then it would not  
12 have been returned as part of the searches.

13 Q. And so Mr. Benjamin reviewed the  
14 results of this, the searches you ran on the 28  
15 devices; true?

16 A. Mr. Benjamin was provided access to the  
17 results.

18 Q. And would you consider that a report,  
19 providing a report to him or not?

20 A. Would I consider what providing a  
21 report?

22 Q. Providing him access to the results of  
23 your search of the 28 devices, is that  
24 equivalent, in your mind, to providing him a  
25 report of your results?

1 M. McGowan

2 A. Not as I'm thinking of a report, no.

3 Q. Were you told not to take notes of your  
4 analysis, handwritten notes?

5 A. No.

6 Q. Do you typically not take notes when  
7 you're doing analysis?

8 A. Oftentimes I document it electronically  
9 as we're conducting it just so that it's  
10 available and not on a scrap of paper I'm going  
11 to lose, so oftentimes it's just the electronic  
12 documentation.

13 Q. And did you take electronic  
14 documentation searching these 28 devices?

15 A. Yes, we went over the materials that we  
16 prepared there in response to your earlier  
17 questions, yes.

18 Q. Did anyone tell you to take -- make  
19 that electronic documentation, using your point,  
20 did anyone tell you to do that or did you just do  
21 it as a matter of standard practice?

22 A. I do it as a matter of standard practice.

23 Q. Do you sometimes issue reports  
24 following your analysis of electronic assets?

25 A. Yes, sometimes we issue a written

1 M. McGowan

2 report documenting our analysis.

3 Q. And were you told not to issue a report  
4 relating to your analysis of the 28 devices?

5 A. No, we weren't told, we weren't told  
6 not to issue a report.

7 Q. Why didn't you issue a report, then?

8 A. We weren't requested to issue a report.

9 Q. So can you just describe for me, just  
10 give me a summary of exactly how you analyzed  
11 these 28 devices? What process did you go  
12 through?

13 A. So as I mentioned, we first identified,  
14 first identified the unique assets. By that I  
15 mean that the 28 devices in some cases were  
16 forensic images of other devices that were  
17 already included in the set. In some cases it  
18 was forensic images of forensic images, like a  
19 Russian nest, Russian doll through the various --  
20 I understand there were various past efforts, so  
21 the first step of our process was just  
22 identifying among the materials that we had been  
23 presented with what are the -- what are the  
24 original sources or what are the unique devices  
25 that we have in front of ourselves.

1 M. McGowan

2 If a forensic image had already been  
3 created we verified it and to the extent we had  
4 an existing forensic image that already existed,  
5 we relied on that, made a copy of that as opposed  
6 to contributing to sort of the proliferation of  
7 duplicate copies.

8 To the extent that a device, it was an  
9 original device for which a forensic image had  
10 not already been created we attempted to create a  
11 forensic image of it and where successful  
12 verified that and included that in the results or  
13 in the set to search.

14 The searches themselves, we conducted  
15 searches using the EnCase forensic software and a  
16 search product called DT Search of both the  
17 active contents, the information, the active and  
18 recoverable data on the computer as well as an  
19 allocated space search, an allocated space  
20 component of the hard drives where fragments of  
21 deleted data, text fragments may exist, so that  
22 was the search process, review of the search  
23 results and making -- and then making those data  
24 available for review by Gibson, Dunn.

25 Q. Did you do this in the offices, the



1 M. McGowan

2 conference room or whatever of that law firm you  
3 mentioned before?

4 A. Yes. That last -- all except for that  
5 last stage where the results themselves were  
6 taken out at our data center, they were processed  
7 in a format that could be made available for  
8 review, but up until that point in time the  
9 identification, preservation and searching, that  
10 was done at McManis Faulkner's offices.

11 Q. If you know, were these 28 devices  
12 being stored at that law firm prior to you  
13 analyzing them or were they brought to that law  
14 firm from some other location for you to analyze?

15 A. I believe that most if not all of the  
16 devices had been -- were being stored, stored at  
17 that law firm had been brought out for our  
18 inspection.

19 Q. Do you know how they were stored?

20 A. I do not know.

21 Q. Can you take a look at Rose Exhibit 1,  
22 page 90, please.

23 A. Okay.

24 Q. And hold that page for a second.

25 Are you aware that there are electronic

1 M. McGowan

2 assets being held by a company called Parmet &  
3 Associates related to this case?

4 A. Being held by them?

5 Q. Yes.

6 A. No, I'm not aware of that.

7 Q. Did you search any assets provided by a  
8 company called Parmet & Associates?

9 A. Provided by them?

10 Q. Or being held by them, let's put it  
11 that way.

12 Did you search any assets that are  
13 currently being held by Parmet & Associates?

14 A. Not held by Parmet, no.

15 Q. Have you ever been to the offices of  
16 Parmet & Associates?

17 A. No.

18 Q. Did you see a chain of custody document  
19 for the 28 devices that you were given to analyze  
20 at the law firm that we just mentioned?

21 A. There was forensic documentation on the  
22 hard drive itself about the imaging, but not a  
23 written chain of custody form.

24 Q. And are you aware that there's  
25 electronic assets potentially related to this

1 M. McGowan

2 case being held by Parmet & Associates?

3 A. I think you asked me that.

4 No, I'm not.

5 Q. Has anyone from Stroz Friedberg, to  
6 your knowledge, gained access to those assets to  
7 analyze them, the ones at Parmet & Associates?

8 A. Among the devices that we had been  
9 presented, presented to us, I believe there was  
10 references to Parmet, but we have not been  
11 provided -- those would have been at McManis'  
12 offices, we haven't -- to my knowledge, no one  
13 has been provided access to assets directly held  
14 by Parmet & Associates.

15 Q. What are the references to Parmet &  
16 Associates you just mentioned, what does that  
17 mean?

18 A. That among the 28 devices were some  
19 that, according to the documentation, had been  
20 preserved by Parmet & Associates in the past and  
21 were presently being held by McManis Faulkner.

22 Q. Documentation, was it paper  
23 documentation you are talking about or  
24 documentation on the drives themselves?

25 A. I was thinking of the drives

1 M. McGowan

2 themselves, yes.

3 Q. And so just to be clear, when you  
4 analyzed these 28 devices, you had no chain of  
5 custody related to those devices, they just  
6 landed on that table and you analyzed them, you  
7 don't know where they came from before that time  
8 as far as in a written documentation form?

9 A. There was no chain of custody  
10 documentation. There was -- I had reviewed  
11 declarations that had been filed in a prior case  
12 that described, that described the media of where  
13 they had come from, so there is some written  
14 documentation, but in that format.

15 Q. Did those declarations have hash values  
16 for all of those 28 devices so you could confirm  
17 you were looking at the same thing?

18 A. I am not sure the declarations did.  
19 The hash values would have been among the  
20 electronic media, the materials that I referred  
21 to on the drives.

22 Q. And isn't it a better practice if you  
23 can have it, is to have chain of custody for  
24 assets that you're going to analyze in a computer  
25 forensics analysis?

1 M. McGowan

2 A. A better practice than --

3 Q. When you got EnCase certified, wasn't  
4 it -- weren't you taught that you would ask, you  
5 would ask for a chain of custody for any evidence  
6 you were analyzing, if you can get it?

7 A. I think having a chain of custody is  
8 good practice.

9 Q. All right.

10 On page -- what page did I tell you to  
11 go to? 90? I think I told you page 90.

12 A. Page 90, yes.

13 Q. That is, if I am correct, page 2 -- no,  
14 I'm sorry, page 1 of the StreetFax contract as  
15 you identify it in your report; true?

16 MR. SOUTHWELL: I'm going to object to  
17 the document that's before the witness,  
18 which is, as we stated yesterday, is  
19 different than what was actually filed in  
20 the Stroz report, so I just want to make  
21 that clear.

22 MR. BOLAND: Very well.

23 Q. So it's a smaller than 8-1/2-by-11 size  
24 print of the TIFF image that is page 1 of the  
25 StreetFax contract, as you identify in your

1 M. McGowan

2 report; is that true on that page?

3 A. On this page, yes, what you have handed  
4 me is a smaller version of it.

5 Q. And page 2, I think, is another exhibit  
6 in your attachments there, I think it's Exhibit  
7 F, I thought it was.

8 A. Okay.

9 Q. Perhaps I'm wrong.  
10 Let's look at Exhibit F, see if that's  
11 page 2.

12 A. Right, Exhibit F, yes.

13 Q. You would agree with me that that TIFF  
14 image is an image of a paper document, that's the  
15 contention that's being made in your report,  
16 that's an image of a paper document?

17 A. It appears to be yes. This is -- I'm  
18 pausing because the version that you are showing  
19 me is much smaller than the version of the  
20 StreetFax contract that I am accustomed to seeing  
21 in print.

22 Q. But you don't dispute -- we already got  
23 your testimony earlier -- that's the actual size,  
24 physical size of that file, the measurements are  
25 in Mr. Broom's report and you conceded those

1 M. McGowan

2 measurements were accurate.

3 MR. SOUTHWELL: Objection,  
4 mischaracterizes.

5 Q. Do you disagree with me that that's the  
6 actual size, physical size of that file as you  
7 found it?

8 A. I think to be clear here we're talking  
9 about -- there's a couple of different things,  
10 there's the size of the original, there's the  
11 size of the TIFF image and then there would be  
12 the size when printed out, so the measurements  
13 pertain to the dimensions of the TIFF image, the  
14 TIFF image as it's displayed, as it's displayed  
15 electronically.

16 Q. Right. I'm talking about do you  
17 disagree that the size of this TIFF image is 2.4  
18 by 3.2 inches?

19 Is there some other measurement for  
20 this TIFF that you think, a different size that  
21 you determined it was?

22 A. I think it's -- so the measurements,  
23 they are going to depend on -- the size is  
24 measured in pixels and how that appears, for  
25 example, the size that appears on your laptop

1 M. McGowan

2 monitor versus a big screen versus a CRT, all of  
3 that is going to depend on the dots-per-inch that  
4 your monitor is set for.

5 Q. No, sir, we're going to go back --

6 MR. SOUTHWELL: He was not finished  
7 with his answer.

8 Q. Go right ahead, but -- we'll clear this  
9 up.

10 Go ahead.

11 A. So that size, the physical size is  
12 going to be dependent both upon -- I mean, the  
13 size of a TIFF image is measured in pixels. If  
14 you want to translate into dimensions it's going  
15 to depend on what the pixels are and also the  
16 dots per inch that it's presently being displayed  
17 at.

18 Q. Do you disagree with me, sir, that the  
19 metadata associated with these two TIFF images  
20 indicates that they were 480 by 646 pixels at 200  
21 DPI? Do you disagree with that?

22 A. I think one of them was smaller than  
23 the other, I don't think they were both the same  
24 size.

25 Q. Okay.



1 M. McGowan

2 What's your basis for that?

3 A. I think just that area that you're  
4 speaking of right there, I've been -- the place  
5 we have it most handy is the Broom report on page  
6 21 where Scan0001 was 480 by 646 and Scan0002 was  
7 480 by 657, so they are slightly different size.

8 Q. Do you disagree with those numbers that  
9 Mr. Broom put in his report?

10 A. I do not disagree with those numbers.

11 Q. And the 200 DPI, do you disagree with  
12 that, as embedded in the metadata?

13 A. No. The 200 DPI is the resolution of  
14 the TIFF image.

15 Q. Of the TIFF image, right.

16 So I don't care what a monitor  
17 resolution is for this question.

18 The resolution of the TIFF image is 200  
19 DPI; correct?

20 A. Of the TIFF image, yes.

21 Q. And you previously testified you do not  
22 disagree with Mr. Broom's conversion from pixels  
23 to inches; correct?

24 A. From that measurement, no, I do not  
25 disagree.

1 M. McGowan

2 Q. Right. These are the pixels, we just  
3 acknowledged, we agreed these are the pixels, the  
4 measurements of those two TIFF images and he  
5 converted them to 2.4 by 3.2 inches, which is the  
6 physical size of that file, you would agree with  
7 that?

8 A. It's an electronic file.

9 Q. Right.

10 A. That would be the size at the -- that  
11 would be the size of the image without any --  
12 that would be the size of the image --

13 Q. At a hundred percent resolution?

14 A. -- at a hundred percent resolution at  
15 200 DPI.

16 Q. Right.

17 So anything else, if that image is  
18 printed out in any other size other than 2.4 by  
19 3.2 inches, that's not a hundred percent  
20 resolution, is it?

21 A. Well, printing is something -- is  
22 something different.

23 Q. Listen to my question.

24 If you printed it at exactly a hundred  
25 percent resolution, so I don't care what printer

1 M. McGowan

2 you use, what monitor, it's irrelevant. If you  
3 print this image at a hundred percent resolution,  
4 when you measure it with a ruler on that printed  
5 page, that image is going to be 2.4 by 3.2 inches  
6 in dimension; is it not, sir?

7 A. I'm not sure it is because it's the  
8 pixels, pixels is defined, it's the smallest  
9 addressable unit.

10 Q. But it's already been converted to  
11 inches and you've agreed to the conversion to  
12 inches, so if you print the image at a hundred  
13 percent resolution, that image measured with a  
14 ruler on the printed page is going to be 2.4 for  
15 scan 1, 2.4 by 3.2 inches, is it not?

16 And sir, if you don't know, it's an  
17 acceptable answer. If you don't know, you don't  
18 know.

19 A. So if you print -- if you print the  
20 image --

21 Q. At a hundred percent resolution.

22 A. And leaving aside differences between  
23 printer size pixels and the images of the digital  
24 pixels and then add a hundred percent resolution,  
25 it would be -- if you were using a program and

1 M. McGowan

2 were able to -- and printed it at that it would  
3 be those, it would be those measurements.

4 Q. All right.

5 So for scan 1 the measurement of the  
6 printed image of scan 1 TIFF printed at a hundred  
7 percent resolution would be 2.4 by 3.2 inches;  
8 true?

9 And I'm reading right from page 21 of  
10 Broom's report, I'm not trying to trick you with  
11 the numbers.

12 Is that correct, sir, that's what you  
13 just said?

14 A. No, I -- that's if you print it at a  
15 hundred percent resolution --

16 Q. Yes.

17 A. -- which there's, by default wouldn't  
18 be how an image would be printed. Windows  
19 provides the ability, when you print, the options  
20 you get are to expand it, so the TIFF images  
21 would generally be -- printed TIFF images would  
22 generally be expanded to fit the size of a page.

23 Q. Right.

24 But I'm not talking about that, I'm  
25 talking about a hundred percent resolution.

1 M. McGowan

2 So you'd agree with me the hundred  
3 percent resolution, the first Scan0001.tif, if  
4 printed, would be 2.4 inches by 3.2 inches as you  
5 measure it on the page?

6 A. If printed at 100 percent resolution.

7 Q. And then Scan0002.tif, if printed at a  
8 hundred percent resolution, would measure 3.23  
9 inches by 2.4 inches?

10 MR. SOUTHWELL: Where are you getting  
11 that from?

12 MR. BOLAND: I'm just asking him the  
13 question.

14 Q. It would measure 2.4 inches by 3.23  
15 inches?

16 MR. BOLAND: Actually, let me withdraw  
17 that question.

18 Q. Since the Scan002.tif is slightly  
19 larger --

20 A. Right.

21 Q. -- by it looks like 11 pixels, you  
22 would expect the printed size of that image at a  
23 hundred percent resolution to be fairly close to  
24 2.4 times 3.2 inches; wouldn't you agree? 11  
25 pixels isn't that much.

1 M. McGowan

2 A. Yes, if printed at a hundred percent  
3 resolution.

4 Q. Right.

5 You can print TIFF images at larger  
6 resolution: 200 percent, 300 percent and so  
7 forth; correct? You can set your printer to  
8 print it at a larger resolution?

9 A. Either your printer or the software,  
10 for example, but generally it's oftentimes not  
11 just by percentages, but if you used the default  
12 program in Microsoft Windows, you'd hit Print,  
13 your first two options, the options presented to  
14 you will be to scale to fit the size of the page.

15 Q. Okay.

16 The two printed versions of the TIFF  
17 images, Exhibit F, I think, and then the one on  
18 page 90, whatever that was, Exhibit --

19 A. Exhibit H is the one that's on.

20 Q. Right.

21 Do those appear to be approximately 2.4  
22 by 3.2 inches?

23 I'm not asking you to say exactly, but  
24 do they appear to be about 2-1/2 inches and a  
25 little over three inches tall, as printed?

1 M. McGowan

2 A. Not having a ruler here, but it appears  
3 to be approximately those dimensions to me.

4 Q. Fair enough. And I'll note, of course,  
5 you don't have a ruler and I'm not asking you to  
6 say exactly.

7 So this is an image of a paper  
8 document.

9 You are not a paper document expert;  
10 correct?

11 A. I am not, yes.

12 Q. So you have nothing to say about the  
13 authenticity of any paper documents in this case;  
14 correct?

15 A. I haven't examined any paper documents  
16 in this case.

17 The only thing that, as we discussed  
18 earlier, it's only to the extent that it's -- the  
19 only inferences I have are to the extent that  
20 it's a paper document of -- it's a paper copy of  
21 a document which I examined electronically and  
22 reached opinions about it that way.

23 Q. I'm asking about the paper document of  
24 which this is an image of a paper document.

25 You don't have any evidence to offer,

1 M. McGowan

2 you don't have any qualifications to testify  
3 about the authenticity of the paper document from  
4 which this image was made; correct, sir?

5 A. Does that paper image, does that paper  
6 document exist?

7 I am not aware of --

8 Q. Please just answer the question.

9 You have nothing, no testimony to offer  
10 about the paper document from which this image  
11 was created because you are not a paper document  
12 expert; correct?

13 A. I don't have any -- I don't have any  
14 opinions to offer. I don't believe that  
15 document, I am not aware of that document  
16 existing, but I don't have any opinions to offer  
17 about it.

18 Q. Very good.

19 And likewise, if I gave you a picture  
20 of the Brooklyn Bridge --

21 Are you familiar with the Brooklyn  
22 Bridge?

23 A. Yes.

24 Q. If I gave you a picture of the Brooklyn  
25 Bridge, I think you would agree with me you are



1 M. McGowan

2 not qualified to talk about, based on that  
3 picture, the structural integrity of the Brooklyn  
4 Bridge?

5 A. That's correct, I am not qualified to  
6 talk about the structural integrity of the  
7 Brooklyn Bridge.

8 Q. And have you ever seen the paper  
9 document -- you've never seen the paper document  
10 from which that image was made?

11 A. Yes. It's my understanding that it  
12 doesn't exist.

13 Q. You've never seen it?

14 A. I have never seen it.

15 Q. So your testimony, your conclusions in  
16 your report are solely about the TIFF image  
17 that's contained in your report, not about the  
18 underlying paper document from which the TIFF  
19 image was created; right?

20 A. Could I clarify one thing?

21 We were speaking -- I mentioned I am  
22 not aware of it existing. We were actually  
23 speaking about the second page. I believe the  
24 second page of the Work For Hire, the Work For  
25 Hire document and the StreetFax contract are the

1 M. McGowan

2 same.

3 When I was speaking about I'm not aware  
4 of it having existed I was talking specifically  
5 about the first page of the StreetFax contract  
6 which I'm not aware of, I'm not aware of it  
7 existing in print format.

8 Q. So it's your opinion, based on your  
9 analysis, that the second page of the StreetFax  
10 contract is the same as the second page of the  
11 paper contract which the paper experts have  
12 evaluated in this case; is that true?

13 A. I haven't conducted a paper -- I  
14 haven't conducted a paper document analysis of  
15 it. From my review of the text I believe that  
16 the content is the same on the second page.

17 Q. Did you review the signatures that  
18 appear on the second page of the TIFF, the  
19 StreetFax contract, and the second page of the  
20 paper contract, at least if you have seen a scan  
21 of it, did you review those signatures? Do you  
22 think those look the same to you?

23 A. I -- earlier on, I think when it was  
24 first identified in August of 2011 I recall  
25 looking at the two of them together. I don't

1 M. McGowan

2 recall, but it's been a while, so I don't recall  
3 details, the details of how the two appear.

4 Q. Is it your belief, your opinion, your  
5 expert opinion, that page 2 of the StreetFax  
6 contract is a TIFF image created from page 2 of  
7 the paper contract that was evaluated by the  
8 paper experts?

9 A. I don't have an expert opinion on that.

10 Q. And we already went through earlier you  
11 don't know how -- you can't conclude with any  
12 certainty how that TIFF image was actually  
13 created; correct?

14 A. Correct, I cannot conclude how the TIFF  
15 image had been created and whether, for example,  
16 it was scanned directly onto the Seagate hard  
17 drive or whether it had been introduced from  
18 another media.

19 Q. And do you know -- and you don't know  
20 if that TIFF image from the moment of its  
21 creation to the time it was placed onto the media  
22 where you found it was altered at any point  
23 during that time, before it got onto the location  
24 where you found it, you can't say whether it was  
25 altered at all?

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C E R T I F I C A T E

STATE OF NEW YORK       )  
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COUNTY OF NEW YORK     )

I, CARY N. BIGELOW, Court Reporter,  
a Notary Public within and for the State of  
New York, do hereby certify:

That MICHAEL F. MCGOWAN, the witness  
whose testimony is hereinbefore set forth,  
was duly sworn by me and that such  
testimony given by the witness was taken  
down stenographically by me and then  
transcribed.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 23rd day of July, 2012.

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CARY N. BIGELOW

# EXHIBIT G

**CONCLUSION**

Based on the foregoing, Defendants' Motion to Dismiss (Doc. No. 318), should be GRANTED because clear and convincing evidence establishes the StreetFax Document is the authentic contract and the Work for Hire Document is a recently created fabrication; alternatively, the Defendants' Motion to Dismiss (Doc. No. 318), should be GRANTED based on Plaintiff's spoliation of evidence, but DENIED based on litigation misconduct. Defendants' Motion for Judgment on the Pleadings (Doc. No. 320), should be DISMISSED as moot. The Clerk of the Court should be directed to close the file.

Respectfully submitted,

*/s/ Leslie G. Foschio*

\_\_\_\_\_  
LESLIE G. FOSCHIO  
UNITED STATES MAGISTRATE JUDGE

DATED: March 26, 2013  
Buffalo, New York

# EXHIBIT H

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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PAUL D. CEGLIA,

Plaintiff,

-vs-

10-CV-569A

MARK ELLIOTT ZUCKERBERG and  
FACEBOOK, INC.,

Defendants.

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Proceedings held before the  
Honorable Leslie G. Foschio, U.S.  
Courthouse, 68 Court Street, Buffalo,  
New York on June 30, 2011.

APPEARANCES:

JEFFREY ALAN LAKE, ESQ.,  
Appearing for Plaintiff.

ORIN S. SNYDER, ESQ.,  
MATTHEW BENJAMIN, ESQ.,  
TERRANCE P. FLYNN, ESQ.,  
Appearing for Defendants.

AUDIO RECORDER: Sandra Wilson

TRANSCRIBER: Michelle L. McLaughlin, RPR,  
Official Reporter,  
U.S.D.C. W.D.N.Y.  
716/332-3560

(Proceedings recorded by electronic sound  
recording, transcript produced by computer.)



1           THE CLERK: On the record. Ceglia versus  
2           Zuckerberg and Facebook. Appearing for the  
3           plaintiff is Jeffrey Lake and appearing for the  
4           defendants are Orin Snyder, Matthew Benjamin and  
5           Terrence Flynn. We're here for oral argument on  
6           the parties' motions for expedited discovery and  
7           also a scheduling conference.

8           THE COURT: Good afternoon. You are  
9           Mr. Lake?

10          MR. LAKE: Yes, your Honor. Good  
11          afternoon.

12          THE COURT: Welcome to our court.

13          MR. LAKE: Thank you very much.

14          THE COURT: Mr. Snyder.

15          MR. SNYDER: Good afternoon, your Honor.

16          THE COURT: That's first chair,  
17          Mr. Benjamin and what's your name again? By the  
18          way, with all these changes of counsel, we can only  
19          hope and assume that there won't be anything  
20          affecting Mr. Flynn, because we are always  
21          interested in making sure that our former U.S.  
22          attorneys are gainfully employed.

23          MR. FLYNN: Thank you, your Honor.

24          THE COURT: All right. We've got the  
25          motions. We know what they say. We've read them.

1 Very intriguing to say the least.

2 And we're ready to hear from Mr. Snyder, and  
3 then we'll hear from Mr. Lake, and we'll ask  
4 questions along the way.

5 I guess I would want to emphasize that any  
6 questions I may ask are not intended to indicate  
7 the Court's views on the merits. Obviously this is  
8 a very significant case, subject to the defendant's  
9 views about the authenticity of the underlying  
10 agreement. Rather, the questions are intended to  
11 assist me in understanding, if I can use the term,  
12 the big picture, so that I can make an informed and  
13 reasonable decision on, first of all, the question  
14 of whether these motions should be granted at all,  
15 or need to be granted, and if so, in what form, and  
16 to then inform the Court about how to handle the  
17 case as we go forward to the extent that we need to  
18 go forward.

19 Then, of course, I fully understand the two  
20 questions are totally intermixed, especially in the  
21 defendant's view. So just bear with me with my  
22 questions and understand that I'm not trying to in  
23 any way second guess any of your theories or  
24 arguments, but I'm just trying to understand better  
25 what we're trying to accomplish.

1           So, Mr. Snyder, you have the floor for the  
2 moment.

3           MR. SNYDER: Thank you, your Honor. May I  
4 approach, your Honor?

5           THE COURT: Oh, that's the other thing.  
6 If you prefer to be seated and at counsel table for  
7 whatever reason, you're welcome to do it. If you  
8 prefer to stand and deliver, use the podium.

9           MR. SNYDER: Thank you. Good afternoon,  
10 your Honor.

11          THE COURT: Good afternoon.

12          MR. SNYDER: Your Honor, our motion  
13 presents overwhelming evidence that this plaintiff  
14 is committing what we believe is an unmitigated  
15 fraud on this court which strikes at the heart of  
16 the integrity of the judicial process and this  
17 court's processes. We seek expedited discovery to  
18 fully expose the nature and magnitude of the fraud,  
19 although we believe our papers have gone way beyond  
20 the requisite showing of prima facie evidence of  
21 fraud to establish an overwhelming case of fraud.

22          I think the case begins, your Honor, to give  
23 the Court background, this plaintiff waited seven  
24 years to file a lawsuit claiming a multi-billion  
25 dollar interest in one of the most well-known

1 companies in the world. There are statute of  
2 limitation and laches problems which affect the  
3 case, but we believe the case can and should end  
4 before those issues even need to be resolved.

5 This case is based on a fraudulent contract and  
6 fabricated emails. The case --

7 THE COURT: Fraudulent in the sense that  
8 it's nonexistent?

9 MR. SNYDER: The contract attached to the  
10 complaint and the amended complaint is a doctored,  
11 fraudulent document which this plaintiff, perhaps  
12 in concert with others, manufactured for the  
13 purpose of bringing this lawsuit.

14 THE COURT: That's one thing I'm not quite  
15 clear on, and I may have missed something in the  
16 papers. Is it Mr. Zuckerberg's position that he  
17 never signed anything?

18 MR. SNYDER: No, your Honor.  
19 Mr. Zuckerberg did sign --

20 THE COURT: Could I finish the question?

21 MR. SNYDER: I'm sorry. Yes, your Honor,  
22 of course.

23 THE COURT: Anything in any written  
24 instrument that carried both his signature and  
25 Mr. Ceglia's, the plaintiff?

1 MR. SNYDER: As Mr. Zuckerberg attested to  
2 in his declaration, your Honor, he did sign a  
3 contract with this plaintiff in 2003 before  
4 Facebook was even a figment of his imagination,  
5 much less a concept or a company, concerning an  
6 entity known as StreetFax. StreetFax was a failing  
7 and ultimately failed company that this plaintiff  
8 tried to get off the ground. Mr. Zuckerberg, who  
9 was a freshman at Harvard looking for extra income,  
10 answered an ad on Craigslist and performed limited  
11 computer services.

12 THE COURT: Such as?

13 MR. SNYDER: Such as coding, programming  
14 work. Mostly coding, creating software for this  
15 system, StreetFax, which had to do with taking  
16 pictures of street intersections and --

17 THE COURT: What did Mr. Ceglia contribute  
18 to that project?

19 MR. SNYDER: The StreetFax project?

20 THE COURT: Yes.

21 MR. SNYDER: It was ironically, your  
22 Honor, and I say this not to -- to cast aspersions,  
23 but Mr. Ceglia ironically started StreetFax --

24 THE COURT: But you wouldn't mind if it  
25 did consistent with your --

1 MR. SNYDER: Well, it's the record, your  
2 Honor.

3 THE COURT: -- published position.

4 MR. SNYDER: Well, the facts compel this  
5 comment, your Honor. StreetFax ironically was  
6 borne out of Mr. Ceglia's theft of that company  
7 from people for whom he worked.

8 THE COURT: Is that in the record  
9 anywhere?

10 MR. SNYDER: It's in the public record.

11 THE COURT: I mean, in the papers that are  
12 before me? I don't remember reading that.

13 MR. SNYDER: I don't believe so, your  
14 Honor.

15 THE COURT: So this is new information to  
16 me?

17 MR. SNYDER: New information, but there  
18 was a litigated --

19 THE COURT: He somehow stole StreetFax?

20 MR. SNYDER: Yes, and there was a  
21 litigation in Boston federal court where the  
22 founders of a predecessor entity sued him, and  
23 there ultimately was a settlement out of which  
24 Mr. Ceglia obtained the right to use the StreetFax  
25 name. It was his -- so it wasn't even his idea.

1 It was a company that he used to work for that had  
2 the exact same identical idea and concept. So  
3 Mr. Zuckerberg did, in fact --

4 THE COURT: Same identical idea and  
5 concept as?

6 MR. SNYDER: Taking photographs of street  
7 intersections and uploading them on the Internet.

8 THE COURT: That's the project that he  
9 engaged with Mr. Zuckerberg about?

10 MR. SNYDER: Yes, your Honor. So  
11 Mr. Zuckerberg for a period of months performed  
12 limited services --

13 THE COURT: So what was Mr. Ceglia's role  
14 in this project, this coding programming software?

15 MR. SNYDER: As best as we can understand  
16 from the limited information we have, he was  
17 running the company. He was looking for customers,  
18 trying to find financing, and the kind of things  
19 that one does trying to get a fledgling startup  
20 company --

21 THE COURT: Did he give Mr. Zuckerberg the  
22 — specifications for the software that he was  
23 attempting to write or build for this street  
24 intersection identification program?

25 MR. SNYDER: Yes, your Honor. They had

1       conversations about the project, and  
2       Mr. Zuckerberg, who, even at that time, was a  
3       proficient software developer and coder, was able  
4       to develop software code to enable that system to  
5       operate. Ironically, Mr. Ceglia did not pay  
6       Mr. Zuckerberg for the work performed.

7               THE COURT: I see all of that -- those  
8       allegations in there.

9               MR. SNYDER: Sure.

10              THE COURT: But he did receive some money?

11              MR. SNYDER: A modest sum of money but --

12              THE COURT: How much?

13              MR. SNYDER: I believe he was paid in  
14       total about in \$9,000 and was owed --

15              THE COURT: 9,000?

16              MR. SNYDER: -- more than that, and --

17              THE COURT: Not exactly modest to a  
18       college student.

19              MR. SNYDER: It wasn't, but he did a  
20       considerable amount of work.

21              THE COURT: I'm sure.

22              MR. SNYDER: So he --

23              THE COURT: He was a proficient coder too.

24              MR. SNYDER: At the time he was, even at  
25       the time he was.



1 THE COURT: Received no training,  
2 self-taught?

3 MR. SNYDER: Self-taught, but also took  
4 computer courses in high school and in college.

5 THE COURT: Okay. Which Mr. Ceglia, he  
6 had no competence in that regard, that technical  
7 way?

8 MR. SNYDER: To the extent we're  
9 knowledgeable of his technical skills, they were  
10 limited, and he certainly needed to engage an  
11 independent contractor to perform those services  
12 for him. But what's clear is that that project had  
13 absolutely nothing to do with anything related to  
14 Facebook, a social media network, or any related  
15 concepts.

16 And -- and, your Honor, the emails which we've  
17 told your Honor about which exist today on the  
18 Harvard University server, 176 of them actually,  
19 all tell a narrative of a relationship between  
20 Mr. Zuckerberg on the one hand and StreetFax and  
21 Mr. Ceglia on the other that relates only entirely  
22 exclusively to StreetFax.

23 THE COURT: And they in no way corroborate  
24 or are consistent with those emails that are  
25 purportedly genuine emails between the plaintiff

1 and Mr. Zuckerberg that are attached to the  
2 complaint?

3 MR. SNYDER: Correct, your Honor. In  
4 fact, they tell a narrative that, when read  
5 side-by-side with the fictional narrative told in  
6 the amended complaint, make the narrative in the  
7 amended complaint not only fantastical, but almost  
8 impossible as a matter of logic and reason, because  
9 at the same time that the authentic emails that —  
10 reside today on the Harvard server and date  
11 from 2004 indicate a deadbeat Mr. Ceglia unable to  
12 pay Mr. Zuckerberg, begging for forbearance,  
13 begging for forgiveness --

14 THE COURT: That's in the --

15 MR. SNYDER: Right.

16 THE COURT: I see those.

17 MR. SNYDER: The Court --

18 THE COURT: Are your -- do the emails that  
19 are in your papers, are those all the emails? —

20 MR. SNYDER: Those are three, your Honor.

21 THE COURT: Those are the three.

22 MR. SNYDER: The reason we only attached  
23 three is interesting, your Honor. We believe that  
24 if we attached all of them, it would just provide  
25 this plaintiff with a roadmap for how to even