

EXHIBIT M

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MATTHEW CAMPBELL, MICHAEL HURLEY,)
and DAVID SHADPOUR,)
)
Plaintiffs,)
) Case No.
vs.) C 13-05996 PJH
)
FACEBOOK, INC.,)
)
Defendant.)
-----)

VIDEOTAPED DEPOSITION OF MICHAEL HURLEY
San Francisco, California
Thursday, July 9, 2015
Volume I
*** CONFIDENTIAL ***

Reported by:
CARLA SOARES
CSR No. 5908
Job No. 2082438
Pages 1 - 193

1 A No. 09:09:13

2 Q Who is representing you today as your
3 counsel?

4 A David Rudolph and Melissa Gardner, and
5 then also the listed lawyers on the complaint. 09:09:26

6 Q Do you have any past association with any
7 of these lawyers or law firms?

8 A Only Melissa Gardner. I've known her for
9 a few years, since I think 2001.

10 Q What's the -- how did you first meet her? 09:09:45

11 A In college.

12 Q And that was at Western Washington
13 University?

14 A Correct.

15 Q And you guys have remained friends since 09:09:58
16 then?

17 A Yes.

18 Q Has she ever represented you in any -- in
19 a legal capacity at all before this case?

20 A No. 09:10:06

21 Q What did you do to prepare for your
22 deposition today?

23 A I met with David Rudolph and Melissa
24 Gardner on two occasions. One was yesterday, for
25 about four hours, four or five; and then I met, 09:10:27

1 BY MR. JESSEN: 09:38:07

2 Q At any point in time. We're going to look
3 at some of your messages earlier. But you
4 understand Facebook has a feature that allows users
5 to send messages? 09:38:14

6 A Yes.

7 Q Do you recall when you first used that
8 particular feature, the Facebook Messages feature?

9 A I don't recall.

10 Q If I told you -- well, strike that. 09:38:34

11 You filed this lawsuit against Facebook in
12 December 2013. You've continued to use Facebook
13 since you filed suit; is that correct?

14 A Yes.

15 Q Why? 09:38:52

16 A Because it still offers me a way to
17 connect with my friends. I still have many people I
18 know that are all over the world. It's convenient.

19 Q And have you continued to use the Messages
20 product since you filed suit? 09:39:12

21 A The best I can recall, I have not sent any
22 messages. I have received I think at least one
23 since that time.

24 Q During the time you've been a Facebook
25 user, have you ever let anyone else use your 09:39:29

1 does that sound right? 09:41:06

2 A I believe so, yeah.

3 Q You're not a big -- you're not a big user
4 of the Messages product; is that accurate?

5 MR. RUDOLPH: Objection. Form. 09:41:16

6 THE WITNESS: I don't send many messages.

7 BY MR. JESSEN:

8 Q And it's probably safe to assume you're
9 not likely to send messages in the future through
10 that product. 09:41:26

11 MR. RUDOLPH: Objection. Form.

12 THE WITNESS: Yes.

13 BY MR. JESSEN:

14 Q Do you recall the last time you sent a
15 message on Facebook that included a URL? 09:41:45

16 A I don't recall the exact --

17 Q Fair enough.

18 What is your understanding of the service
19 that Facebook provides?

20 A My understanding is that basically 09:42:25
21 Facebook provides the ability to interact with
22 friends, stay in contact, and that's basically it.
23 Stay in contact with friends.

24 Q Do you have an understanding of how
25 Facebook makes money? 09:42:49

1 Are you saying that the "Like" button -- 10:35:39
2 sort of like there's a count -- you understand
3 there's a count next to some "Like" buttons?

4 A Yes.

5 Q I just want to understand. Are you saying 10:35:48
6 that if you shared a URL in a message, that URL on
7 the actual website, there was a "Like" button social
8 plug-in, are you just saying the number went up, or
9 are you saying people somehow knew that me, Michael
10 Hurley, had actually shared that URL? 10:36:02

11 MR. RUDOLPH: Objection. Form. It's not
12 clear whether the question goes to Mr. Hurley's
13 interpretation of the complaint or you're asking
14 generally about his understanding now.

15 MR. JESSEN: Just generally. 10:36:18

16 MR. RUDOLPH: Okay.

17 THE WITNESS: So I generally understand
18 that the "Like" button count -- the "Like"
19 count goes up associated with the basically
20 following of that URL by the Facebook -- or the 10:36:32
21 plug-in.

22 I don't necessarily know if it is attached
23 to me, but it came from the message.

24 BY MR. JESSEN:

25 Q So the number went up? 10:36:52

1 BY MR. JESSEN: 10:39:33

2 Q Since you filed your complaint against

3 Facebook, the initial complaint in December of 2013,

4 how many times have you met with your attorneys in

5 this case? 10:39:45

6 A Including today?

7 Q Sure.

8 A So three.

9 Q So would that be the mid June meeting, the

10 meeting with your counsel yesterday, and then you're 10:40:00

11 including the deposition today?

12 A Correct. Yes.

13 Q No other meetings apart from those three

14 instances?

15 A Correct. 10:40:14

16 Q Do you speak with counsel on the phone at

17 all?

18 A I speak with Melissa Gardner on the phone

19 almost weekly.

20 Q About the case? 10:40:29

21 A Something about the case is generally

22 mentioned sometime during the call.

23 Q But I gather -- I mean, are the calls

24 primarily not related to the case or --

25 A Correct. 10:40:48

1 Q Was that after you filed the lawsuit or 10:42:23
2 before?

3 A That was before, I believe.

4 Q What do you mean when you say you
5 volunteered for the case? 10:42:34

6 A I mean that I volunteered.

7 Can you rephrase the question, I guess?

8 Q Yeah. You mentioned -- you said you
9 volunteered for the case, and I just wanted to
10 understand what you meant by that. 10:42:55

11 A Sure. Okay. Basically in one of the
12 conversations with Melissa Gardner, we were just
13 speaking about normal, you know, catching-up-type
14 stuff, and then she mentioned that it had been found
15 that Facebook had scanned private messages, and that 10:43:19

16 if I knew anybody that would be interested in, you
17 know, being part of a class action against Facebook.

18 I couldn't really think of anybody, but I
19 volunteered as I was concerned about my messages
20 having been scanned. 10:43:45

21 Q Do you recall when that conversation was?

22 A Sometime in December of 2013. I don't
23 remember the exact date.

24 Q Before the complaint was filed?

25 A Correct. 10:43:56

1 Q And then did you have a -- was Mr. Slade 10:43:59
2 on that -- strike that.

3 Was that a telephone conversation?

4 A Yes, that was a telephone conversation.

5 Q And was that just a telephone conversation 10:44:10
6 between you and Ms. Gardner?

7 A Yes.

8 Q And then subsequent to that, you had a
9 phone conversation with Ms. Gardner and Mr. Slade?

10 A Yes. 10:44:20

11 Q Were there other conversations you had
12 with Ms. Gardner or Mr. Slade or any of the other
13 attorneys before filing suit?

14 A Not that I recall.

15 Q And other than what we've already been 10:44:34
16 discussing, you don't recall any other telephone
17 conversations with counsel since you filed suit?

18 A Not other than Melissa Gardner, no.

19 Q How often do you communicate with your
20 attorneys about the case regarding -- strike that. 10:44:53

21 How often do you and your attorneys
22 contact each other by email about the case?

23 A I don't know the exact dates or times, but
24 fairly often, usually for document delivery and
25 such. 10:45:14

1 Q Do you recall if it was before Christmas 10:47:38
2 or after Christmas 2013?

3 A I don't, honestly.

4 Q Would you say you're actively involved in
5 the strategy and decision-making in this case? 10:48:01

6 MR. RUDOLPH: Objection. Vague.

7 THE WITNESS: I mean, my counsel is in
8 charge of, like, the strategy. I do keep in contact
9 with them.

10 BY MR. JESSEN: 10:48:31

11 Q Would it be fair to say that your counsel
12 is directing the course of the litigation and not
13 you?

14 MR. RUDOLPH: Objection. Form.

15 THE WITNESS: Yes. 10:48:45

16 BY MR. JESSEN:

17 Q Have you served any discovery requests on
18 Facebook in this case?

19 A I have not personally, but I believe there
20 have been some from my counsel, yes, in this 10:49:07
21 complaint.

22 Q Do you have an understanding of what kind
23 of discovery has been served on Facebook by
24 plaintiffs?

25 A I believe there was some relating to how 10:49:30

1 the messaging system works. That's my general 10:49:33
2 understanding.

3 Q Have you looked at any of Facebook's
4 responses to those requests?

5 A Not that I can recall, no. 10:49:50

6 Q Did you participate in drafting any of the
7 discovery requests that have been served on
8 Facebook?

9 A No.

10 Q And have you provided discovery responses 10:50:04
11 in this case?

12 MR. RUDOLPH: Objection. Vague.

13 THE WITNESS: What do you mean by
14 "discovery responses"?

15 BY MR. JESSEN: 10:50:17

16 Q Well, do you understand that -- sorry. I
17 didn't mean to interrupt you.

18 Do you understand that Facebook has sent
19 discovery requests to you through your attorneys?

20 You understand that? 10:50:31

21 A Yes.

22 Q And you have provided written responses to
23 that -- to those requests.

24 Do you understand that?

25 A Yes. 10:50:39

1 your communications with your lawyers -- because I 11:29:56
2 don't want to know about those -- but do you have a
3 general understanding outside of those
4 communications as to why everything but the URLs was
5 redacted? 11:30:07

6 A In my understanding, the rest of the
7 message doesn't apply to the complaint.

8 Q Do you know whether you can send Facebook
9 messages to non-Facebook users?

10 A I do not. 11:30:34

11 Q Do you know whether or not you've ever
12 sent a Facebook message to a non-Facebook user?

13 A Not that I can recall.

14 Q Are you aware of anyone using a
15 non-Facebook account to send you a message through 11:30:52
16 the Facebook Messages product?

17 A Not that I'm aware of.

18 Q Referring to the messages referenced in
19 Exhibit 10, are you claiming that all of these
20 messages were unlawfully scanned by Facebook or only 11:31:16
21 some of them?

22 MR. RUDOLPH: Objection. Vague, calls for
23 a legal conclusion.

24 THE WITNESS: I have no way to know for
25 sure. But in general, I'm claiming that at least 11:31:56

1 some of these have been scanned. 11:32:04

2 BY MR. JESSEN:

3 Q What's your basis for saying you think at
4 least some of them have been scanned?

5 A Basically the first two on the bottom of 11:32:59
6 the first page from 2014, I -- that might be outside
7 the claim time.

8 Q Understood. Any other basis?

9 A No.

10 Q I'll represent to you that it appears -- 11:33:25
11 and we're also going to look at a chart that was
12 prepared -- that there are 17 messages reflected in
13 Exhibit 10.

14 Do you have -- what's your best estimate
15 as to the number of messages you sent or received 11:33:44
16 that did not include a URL?

17 A I don't know the exact number, but my best
18 estimate would probably be 40 to 50, somewhere
19 around there.

20 Q Over what period of time would those 11:34:10
21 messages have been sent or received?

22 A Since I started using Facebook.

23 Q Do you still have copies of your actual
24 Facebook messages going back to the time you started
25 using Facebook? 11:34:43

1 received messages -- Facebook messages from that 11:54:54
2 contained a URL?

3 A I mean, according to the chart and the
4 exhibits, I would say -- well, for the time in the
5 complaint, I would say six. And then I believe 11:55:21
6 seven is the current number because of that message
7 I received.

8 Q In 2014?

9 A Correct.

10 Q It looks to me like you have sent a total 11:55:36
11 of three messages, three Facebook messages,
12 containing URLs.

13 Do you agree?

14 A That I've sent? That would be correct.

15 Yes. 11:56:02

16 Q Can you estimate how many people you've
17 sent messages to that did not include a URL?

18 A I would go with my prior answer. About
19 15.

20 Q Have you ever sent a Facebook message 11:56:35
21 containing a URL that included a URL preview that we
22 discussed earlier?

23 A Yes.

24 Q How many messages do you think you've sent
25 that contained a URL preview? 11:57:02

1 A Not that I'm aware of. 12:00:00

2 Q Have you also received Facebook messages
3 that contained a URL preview?

4 A Not that I can recall.

5 Q Have you ever included a URL -- a URL -- 12:00:52
6 strike that.

7 Have you ever included a URL in a message
8 and then had a URL preview generated before you sent
9 the message and then deleted the preview before
10 sending your message? 12:01:08

11 A Not that I can recall.

12 Q The URL preview you saw in the message you
13 sent to Melissa Gardner in July 2011, that preview
14 was generated before you sent the message, and you
15 left it intact before sending it? 12:01:27

16 A Yes.

17 Q When you typed that URL into the message
18 to Melissa Gardner on July 14th, 2011, and the
19 preview -- the URL preview was generated, what was
20 your understanding as to how that preview had been 12:01:50
21 created?

22 MR. RUDOLPH: Objection. Form.

23 THE WITNESS: I believe I used the
24 cut-and-paste function. I'm not good at remembering
25 URL addresses. But I didn't have an understanding. 12:02:10

1 I just saw a picture showed up. 12:02:16

2 BY MR. JESSEN:

3 Q What do you mean when you say you used the
4 cut-and-paste function?

5 A For the URL. I didn't type in the URL. I 12:02:24
6 used cut-and-paste.

7 Q So you were at -- let's just look at the
8 particular URL. I'm not going to read the whole
9 thing for the record because it's really long. But
10 it's the first one. It's in row 1 of Exhibit 1 to 12:02:38
11 your initial interrogatory responses. And it's
12 [REDACTED] and some other stuff.

13 So were you at that particular website?
14 Tell me how you sort of --

15 A To my best recollection, yes. 12:02:55

16 Q You were at the website?

17 A I was at that website, read through the
18 article. I basically cut or copied the URL, and
19 then pasted it into the message.

20 Q And at that point the preview was 12:03:13
21 generated?

22 A Yes.

23 Q And then you left the preview intact prior
24 to sending?

25 A Yes. 12:03:39

1 to send the message. 12:07:40

2 Q How many different web browsers have you
3 used over the years to log into Facebook?

4 A I would say probably three, I believe.

5 Q Which ones have you used? 12:08:28

6 A I think Mozilla Firefox, Google, or
7 Chrome, I should say, and mostly Internet Explorer I
8 believe would be the other.

9 Q Were there different periods of time
10 that -- different periods of time that you used 12:08:56
11 different browsers, or was it you would just go back
12 and forth sort of during the same periods?

13 A I would just kind of go back and forth.
14 At a computer sometimes it wouldn't work right, so
15 you'd switch it up. 12:09:13

16 Q Sure. Do you know if those browsers had
17 JavaScript enabled?

18 A I don't know.

19 Q If you look at Exhibit 1 to your initial
20 interrogatory responses, which we've marked as 12:09:40
21 Exhibit 6, the far right column lists URLs that were
22 included in Facebook messages.

23 Do you know how many of the websites
24 associated with these URLs contained a Facebook
25 "Like" button social plug-in at the time the 12:10:01

1 messages were sent? 12:10:03
2 A I don't know.
3 Q Do you know if any of them did?
4 A I do not.

5 MR. JESSEN: Do you guys want to take a 12:10:25
6 lunch break now?

7 MR. RUDOLPH: Sure.

8 THE VIDEO OPERATOR: We are off the record
9 at 12:10 p.m.

10 (Recess, 12:10 p.m. - 1:05 p.m.) 12:10:29

11 THE VIDEO OPERATOR: We are back on the
12 record at 1:05 p.m.

13 BY MR. JESSEN:

14 Q Okay. If I could direct your attention
15 back to the message we were looking at before the 13:06:01
16 break, specifically the message that you sent to
17 Melissa Gardner on July 14th, 2001 (sic), with the
18 [REDACTED] URL.

19 A It's 2011.

20 Q Sorry. I definitely misspoke there. 13:06:19
21 Do you recall the general subject matter
22 of this message?

23 A I believe it was -- well, as you can see
24 in the URL, [REDACTED]

25 [REDACTED] And if I remember correctly, at the time 13:06:53

1 [REDACTED] at the 13:06:55
2 moment. So I said you should check these out.

3 Q Understood.

4 Do you know whether the website associated
5 with this URL at the time you sent the message had a 13:07:11
6 Facebook "Like" button social plug-in?

7 A I do not, no.

8 MR. RUDOLPH: Counsel, I apologize. I was
9 having some trouble with my realtime, and I missed a
10 question. 13:07:31

11 I wanted to interpose a privacy objection
12 to the previous two questions. Potentially invades
13 the privacy of the sender or the recipient. But I'm
14 obviously not instructing the witness not to answer.

15 BY MR. JESSEN: 13:07:55

16 Q At the time you sent this message, do you
17 know what understanding Ms. Gardner had about
18 whether or not this particular message was being
19 scanned or intercepted by Facebook?

20 A I do not. 13:08:05

21 Q Since you're not aware of whether the
22 website associated with this URL had a Facebook
23 "Like" button social plug-in, I assume that you also
24 don't know whether or not your sharing of this URL
25 incremented the "Like" count on that website. 13:08:35

1 URL preview was generated before you sent this 13:11:25
2 message.

3 A Correct.

4 THE VIDEO OPERATOR: Hurley Exhibit 11.

5 (Exhibit 11 was marked for identification 16:48:10
6 and is attached hereto.)

7 BY MR. JESSEN:

8 Q You've been handed what has been marked as
9 Hurley Exhibit 11, and I'll represent to you that
10 this is a printout of the current [REDACTED] home 13:12:08
11 page for [REDACTED] I'll also represent
12 there's no Facebook "Like" button social plug-in on
13 this page.

14 Do you agree with me?

15 A I do not see one currently. 13:12:26

16 Q Do you know whether or not the [REDACTED]
17 [REDACTED] page had a "Like" button social plug-in
18 when you sent your message to [REDACTED] on July 11,
19 2012?

20 A I do not. 13:12:46

21 Q If I told you that [REDACTED] has never
22 had a Facebook "Like" button social plug-in on any
23 of its pages, would you have any reason to dispute
24 that?

25 A Not that I'm aware of. 13:13:02

1 Q Would you consider this message to be part 13:13:06
2 of your case as well?

3 A Yes.

4 Q And why is that?

5 A Because it's a message I sent during the 13:13:13
6 specified claim period with a URL in it.

7 Q So if I understand you correctly, you're
8 saying if you sent a message with a URL in it during
9 the specified claim period, that -- even if the
10 sharing of that message never incremented a "Like" 13:13:35
11 count on a third-party website, that that is still
12 within the scope of your complaint?

13 MR. RUDOLPH: Objection. Form. Calls for
14 a legal conclusion.

15 THE WITNESS: I'm not a lawyer, but under 13:14:05
16 my understanding, yes.

17 BY MR. JESSEN:

18 Q And that's because you thought there was
19 still some sort of scanning going on of the URL?

20 MR. RUDOLPH: Objection. Form. 13:14:22

21 THE WITNESS: Yes. I don't have a way to
22 know that it didn't happen.

23 BY MR. JESSEN:

24 Q Well, do you have a way to know that it
25 did? 13:14:35

1	A	I don't know.	13:14:39
2	Q	Where does [REDACTED] live?	
3	A	In [REDACTED]	
4	Q	Do you know her street address?	
5	A	I do not.	13:15:17
6	Q	Do you know how we can reach her?	
7	A	I would guess through her email which I	
8		don't know off the top of my head.	
9	Q	Do you know if she's aware of this	
10		lawsuit?	13:15:47
11	A	No.	
12	Q	No, she's not aware, or no, you don't	
13		know?	
14	A	I don't know.	
15	Q	Do you know if [REDACTED] consented to any	13:16:10
16		interception or scanning of this message?	
17	A	I do not.	
18	Q	Do you know what understanding she had at	
19		the time regarding whether or not this message you	
20		sent her was being scanned or intercepted by	13:16:29
21		Facebook?	
22	A	I do not.	
23	Q	Are you aware, Mr. Hurley, that during the	
24		relevant time period, Facebook's developer guidance,	
25		which is publicly available, disclosed the fact that	13:16:48

1 a URL attachment to a message was one of the things 13:16:53
2 that went into a "Like" count on a third-party
3 website?

4 MR. RUDOLPH: Objection. Form. Assumes
5 facts not in evidence. 13:17:04

6 THE WITNESS: I believe that is mentioned
7 in the complaint, yes.

8 BY MR. JESSEN:

9 Q Do you know if [REDACTED] was aware of that
10 at the time this message was sent? 13:17:51

11 A I do not.

12 Q Do you know if [REDACTED] ever saw an
13 article or press coverage regarding the fact that
14 Facebook was processing messages?

15 A I do not. 13:18:03

16 Q And again, you don't know if the
17 craigslist website at that time had a Facebook
18 "Like" button social plug-in, so is it fair to say
19 you also don't know whether your sharing of this URL
20 with [REDACTED] would have increased the "Like" count 13:18:33
21 on that plug-in?

22 A Yes.

23 Q Again, [REDACTED] is a friend of
24 yours?

25 A Um-hum. Yes, I should say. 13:19:02

1 A Yes. 13:20:37

2 Q What was the general subject matter of
3 this message?

4 A It was how to -- or [REDACTED]

5 [REDACTED] 13:20:53

6 [REDACTED]

7 Q And who is [REDACTED]

8 A She's a friend and former roommate.

9 Q Do you know whether or not the website
10 associated with that URL had a Facebook "Like"
11 button social plug-in at the time you sent this
12 message? 13:21:19

13 A I do not.

14 Q Do you know what understanding [REDACTED]
15 had at the time you sent the message regarding
16 whether or not the message was being scanned or
17 intercepted by Facebook? 13:21:34

18 A I do not.

19 Q Do you know if she had ever visited the
20 Facebook developer page regarding -- that indicated
21 that URL attachments were included in the "Like"
22 count? 13:21:53

23 A I do not.

24 Q I assume you also don't know whether she
25 saw articles or press coverage regarding the fact 13:22:04

1 that Facebook was processing messages. 13:22:06

2 A I do not.

3 Q You don't know whether or not [REDACTED]

4 consented to the -- any interception or scanning of

5 the message, correct? 13:22:18

6 MR. RUDOLPH: Objection. Form. Vague.

7 THE WITNESS: I do not.

8 BY MR. JESSEN:

9 Q And where does [REDACTED] live?

10 MR. RUDOLPH: Objection. Requests for 13:22:34

11 third parties' home addresses are invasive of

12 third-party privacy rights.

13 THE WITNESS: She lives in [REDACTED]

14 [REDACTED]

15 BY MR. JESSEN: 13:22:51

16 Q Do you know her street address?

17 A I do not.

18 Q Do you know how we would get in touch with

19 her?

20 A Probably through email. 13:22:57

21 Q Do you know her email address?

22 A I do not off the top of my head.

23 THE VIDEO OPERATOR: Hurley Exhibit 12.

24 (Exhibit 12 was marked for identification

25 and is attached hereto.) 16:48:10

1 running objection on that one, too. 13:26:27

2 MR. RUDOLPH: Thank you.

3 MR. JESSEN: Sure.

4 Q Do you know how we can reach her?

5 MR. RUDOLPH: Same objection to the extent 13:26:32

6 the request is seeking contact information for third

7 parties. That's invasive of the third party's

8 privacy rights.

9 Will you permit me a running objection for

10 that one as well? 13:26:45

11 MR. JESSEN: Yes.

12 MR. RUDOLPH: Thank you.

13 THE WITNESS: I believe email would

14 probably be best.

15 BY MR. JESSEN: 13:26:51

16 Q Do you know her email address?

17 A I do not.

18 Q Is she aware of your lawsuit?

19 A Not that I know of.

20 Q And I assume that -- obviously Ms. Gardner 13:27:06

21 is aware of your lawsuit. What about [REDACTED] or

22 [REDACTED] Are they aware of your lawsuit against

23 Facebook?

24 A Not that I'm aware of.

25 Q Do you know whether [REDACTED] consented 13:27:23

1 to any interception or scanning of the message she 13:27:25
2 sent you on July 31st, 2013?

3 A I do not.

4 Q Do you know what understanding she had
5 about whether the message was being scanned or 13:27:37
6 intercepted by Facebook?

7 A I do not.

8 Q Do you know whether she ever visited the
9 Facebook developer page that stated that URL
10 attachments were included in the "Like" count? 13:27:47

11 A I do not.

12 Q Do you know if she ever saw an article or
13 press coverage regarding the fact that Facebook
14 processes messages?

15 A I do not. 13:27:56

16 Q Do you know if she ever saw a URL preview
17 before sending a Facebook message with a URL?

18 A I do not.

19 Q And you don't remember -- tell me if I'm
20 wrong -- but when you received this message on 13:28:15
21 July 31st, 2013, whether there was a URL attachment
22 to the message?

23 A I do not.

24 Q Do you know what kind of browser
25 [REDACTED] was using when she sent this message? 13:28:32

1 A I do not. 13:33:23

2 Q Let's go ahead and take a look at Message

3 No. 9 on the table, which I believe is also the

4 third message from the top on Exhibit 10.

5 Would you agree this is a message from 13:34:03

6 [REDACTED] to you on August 8, 2011, at 7:09

7 a.m. Pacific time?

8 A Yes.

9 Q And she included two URLs in the message.

10 Do you see that? 13:34:33

11 A Yes.

12 Q Did I pronounce her name correctly, by the

13 way?

14 A It's "[REDACTED]" but it's up for

15 debate. 13:34:49

16 Q We were debating that yesterday, including

17 whether or not you had to have sort of a fancy

18 Italian accent when you said it.

19 Who is she?

20 A She is a friend from college and former 13:35:01

21 roommate.

22 Q Where does she live?

23 A She lives in [REDACTED]

24 Q Do you know her street address?

25 A I do not off the top of my head. 13:35:24

1 Q Do you know how I can reach her? 13:35:26

2 A Probably email would be best.

3 Q Do you have her email address?

4 A I don't right now, no.

5 Q Is she aware of your lawsuit against 13:35:35

6 Facebook?

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

8 Q Do you know if she consented to the

9 interception of -- or scanning of this message by

10 Facebook? 13:35:48

11 A I do not.

12 Q Do you know what understanding she had

13 about whether or not the message she sent you was

14 being scanned or intercepted by Facebook?

15 A I do not. 13:36:00

16 Q Do you know if she ever visited the

17 Facebook developer page that stated that URL

18 attachments were included in the "Like" count?

19 A I do not.

20 Q Do you know if she ever saw an article or 13:36:10

21 press coverage regarding the fact that Facebook was

22 processing messages?

23 A I do not.

24 Q Do you know if she ever saw a URL preview

25 before sending a message with a URL? 13:36:20

1 A I do not. 13:36:22

2 Q Do you recall whether there was a URL
3 attachment to the message she sent you on August 8,
4 2011?

5 A Yes. 13:36:41

6 Q You -- there was a URL attachment?

7 A Yeah. It's listed on the chart here.

8 Q I'm sorry. What do you mean? I'm sorry.

9 When I say "URL attachment," I mean -- I'm sorry.

10 URL preview. My bad. My bad. Sorry. 13:36:56

11 There's a connection between the URL
12 attachment and the URL preview, but I apologize for
13 the -- for the confusion. Let me try it again.

14 Was there -- do you recall whether or not
15 there was a URL preview in that message that she
16 sent you? 13:37:09

17 A I do not.

18 Q I assume you don't know what kind of a
19 browser she was using when she sent this message.

20 A I do not. 13:37:22

21 Q You don't know if she had JavaScript
22 enabled on that browser?

23 A I do not.

24 Q What was the general subject matter of
25 this message? 13:37:31

1 Q Do you know her email address? 13:39:42

2 A Not right now. Not off the top of my

3 head, no.

4 Q I gather you're not -- you don't know if

5 she's aware of your lawsuit. 13:39:50

6 A I do not.

7 Q If I wanted to reach her, what would be

8 the best way?

9 A Probably email.

10 MR. JESSEN: Do you guys want to do a 13:40:04

11 deposition in [REDACTED]

12 Q Do you know if [REDACTED] consented

13 to the interception or scanning of any of these

14 three message she sent you in 2014?

15 A I do not. 13:40:24

16 Q Do you know what understanding she had

17 when she sent these three messages regarding whether

18 or not the messages were being scanned or

19 intercepted by Facebook?

20 A I do not. 13:40:37

21 Q Do you know if [REDACTED] ever

22 visited the Facebook developer page that stated that

23 a URL attachment was included in the "Like" count?

24 A I do not.

25 Q Do you know if she ever saw articles or 13:40:51

1 press coverage regarding the fact that Facebook was 13:40:53
2 processing messages?

3 A I do not.

4 Q Do you know if she ever saw a URL preview
5 before sending a Facebook message with a URL? 13:41:02

6 A I do not.

7 Q Do you recall whether these three messages
8 represented in Rows 5, 6 and 7 on your chart had URL
9 previews in them?

10 A I do not. I don't recall. 13:41:16

11 Q Do you know whether or not any of those
12 URLs had a Facebook "Like" button social plug-in at
13 the time she sent these messages?

14 A I do not.

15 Q Do you know what kind of browser she was 13:41:40
16 using when she sent these messages?

17 A I do not.

18 Q Do you know if she had JavaScript enabled?

19 A I do not.

20 Q Just walking through 5, 6 and 7, and I'm 13:41:52
21 happy to break it up if you like, can you just sort
22 of tell me, maybe taking one at a time, the general
23 subject matter of these messages?

24 MR. RUDOLPH: I'm going to take this

25 opportunity to designate this transcript 13:42:06

1 A To the best of my knowledge, there was 13:43:21
2 not.

3 Q Okay. And then what about No. 7 in the
4 table? What was the general subject matter of that
5 message? 13:43:30

6 A Sure. So No. 7, I believe that was ██████
7 ██
8 ████████ ██ ████████████
9 ██
10 ████████ ██ 13:43:49
11 ██
12 ██
13 ████████ ██
14 ████████

15 Q Do you recall if you responded to that 13:44:06
16 message?

17 A I do not recall at this time.

18 Q Okay. Let's take a look at No. 10 in the
19 table which I believe is the fourth message down on
20 Hurley Exhibit 10. 13:44:37

21 Does that appear to be correct to you?

22 A Yes, it appears to be correct.

23 Q This is a message from ████████████████████ to
24 you, dated July 21st, 2011, correct?

25 A Yes. 13:44:56

1 Q And who is [REDACTED] 13:44:58

2 A Honestly, I do not recall.

3 Q Do you know if she was a stranger or you

4 had some connection with her?

5 A To the best of my knowledge, if I remember 13:45:32

6 right, in the message she was asking, like, "Is this

7 this Mike Hurley?"

8 She was looking for someone who I was not.

9 So I don't know who she was. I just got that

10 message out of the blue. 13:45:44

11 Q I gather you don't know where she lives.

12 A I do not.

13 Q I gather you don't know whether she's

14 aware of your lawsuit.

15 A Correct. I do not. 13:46:01

16 Q You don't know whether or not she

17 consented to the -- any interception or scanning of

18 this message to you?

19 A I do not.

20 Q You don't know what understanding she had 13:46:12

21 about whether or not the message was being scanned

22 or intercepted by Facebook?

23 A I do not.

24 Q You don't know if she ever visited the

25 Facebook developer page that stated that URL 13:46:22

1 attachments were included in the "Like" count? 13:46:24

2 A I do not.

3 Q You don't know if she ever saw articles or
4 press coverage regarding the fact that Facebook was
5 processing messages? 13:46:33

6 A I do not.

7 Q You don't know if she ever saw a URL
8 preview before sending a message with a URL?

9 A I do not.

10 Q Do you recall if this message had a URL 13:46:43
11 preview in it?

12 A I do not.

13 Q I assume you don't know what kind of
14 browser she was using when she sent the message.

15 A I do not. 13:46:53

16 Q You don't know if she had JavaScript
17 enabled on that browser?

18 A I do not.

19 Q And do you know if that URL had a Facebook
20 "Like" button social plug-in? 13:47:03

21 A I do not.

22 Q Let's take a look at row 12 on the table
23 that we've been consulting. And I believe this
24 correlates with the last message on Hurley 2 in
25 Exhibit 10. 13:47:41

1 at 2:00 p.m. 14:00:52

2 (Recess, 2:00 p.m. - 2:12 p.m.)

3 THE VIDEO OPERATOR: We are back on the
4 record at 2:12 p.m.

5 BY MR. JESSEN: 14:12:11

6 Q Mr. Hurley, have you been harmed by
7 Facebook's conduct that you're challenging in this
8 case?

9 A Yes.

10 Q How so? 14:12:20

11 A My privacy was invaded, and basically my
12 right to exclude Facebook from the conversation,
13 basically the direct message between me and the
14 other party, as well as basic corruption of my
15 speech by possibly basically the web crawler or 14:12:43
16 Facebook program basically upping the "Like" counts
17 of a website of a URL in a message.

18 Q Have you been harmed in any other way?

19 A There are the actual damages that are
20 basically a product -- or the value of the 14:13:21
21 information that was, I guess, gleaned by the
22 scanning.

23 Q Anything else?

24 A Not that I can think of.

25 Q What do you mean when you say "the value 14:13:45

1 of the information gleaned by the scanning"? 14:13:47

2 A It's mentioned in the complaint somewhere.

3 I'd have to look it up. But the information

4 basically taken from the URL can be used for

5 marketing purposes, or I guess not -- yeah. 14:14:09

6 Q Do you have any evidence that information

7 gleaned from these messages was used for marketing

8 purposes?

9 A Not from these specific messages.

10 Q But that's what your case is about, right? 14:15:17

11 It's about messages with URLs. And so are you

12 saying that you don't have any evidence that URLs

13 contained in messages were ever used for marketing

14 purposes?

15 MR. RUDOLPH: Objection. Form. Misstates 14:15:35

16 prior testimony.

17 THE WITNESS: I'll look in the

18 interrogatory document real quick here.

19 BY MR. JESSEN:

20 Q Which one are you looking at? 14:15:53

21 A 7, I believe, is the one I'm looking at.

22 In my prior answer, I was thinking or

23 referring to the actual "Like" count in these

24 message cases.

25 But as you can see in -- let's see -- 14:18:10

1 BY MR. JESSEN: 14:27:04

2 Q Earlier you also mentioned that one of
3 your types of harm was that your speech had been
4 corrupted.

5 What do you mean by that? 14:27:14

6 A My speech was corrupted in that -- the
7 passive "Like" function where the URL was scanned,
8 and then once the -- basically the link was followed
9 by the program, if there was a "Like" button
10 available, it would increase by up to two. 14:27:38

11 Q And how is that your speech being
12 corrupted?

13 A I did not personally click "Like" on the
14 page or -- well, yeah.

15 Q But isn't it true that you don't know 14:27:59
16 whether a URL you included in a message ever
17 increased a "Like" button social plug-in count on
18 any website at any time?

19 A I do not.

20 Q Have you suffered any economic harm? 14:28:26

21 A I don't know.

22 Q Are you aware of any economic harm that
23 you've suffered?

24 A Not that I'm aware of.

25 Q Other than you, are you aware of other 14:28:47

1 THE WITNESS: I don't know. 14:42:17

2 BY MR. JESSEN:

3 Q You're not aware of any economic harm
4 you've suffered?

5 MR. RUDOLPH: Objection. Asked and 14:42:20
6 answered.

7 THE WITNESS: Correct.

8 BY MR. JESSEN:

9 Q You also mentioned profits that Facebook
10 made from the alleged scanning. What's your basis 14:42:35
11 for thinking that Facebook has made any profit at
12 all based upon the scanning that you're challenging?

13 MR. RUDOLPH: Objection. Form.

14 THE WITNESS: It's mentioned on page 9 of
15 Exhibit 7, on No. 15, or line 15, I should say. 14:43:42
16 Facebook's business model is predicated on
17 harvesting and monetizing user data.

18 BY MR. JESSEN:

19 Q I see that. But my question is, do you
20 have any evidence that Facebook has used the 14:44:06
21 contents of any of your messages, including URLs, to
22 make any profit at all?

23 MR. RUDOLPH: Objection. Asked and
24 answered.

25 THE WITNESS: I do not. 14:44:25

1 else? 14:45:43
2 A I don't know.
3 Q Have you tried?
4 A No.

5 Q You don't have any information that 14:45:49
6 Facebook has ever targeted an advertisement to you
7 based upon anything you've ever put in a message,
8 correct?
9 MR. RUDOLPH: Objection. Form.
10 THE WITNESS: Not that I know of. 14:46:00

11 BY MR. JESSEN:

12 Q Or in a message you've received?

13 A Not that I know of.

14 Q Assuming for the sake of argument that
15 your messages did have some financial value, how 14:46:23
16 would you go about calculating what the value was?

17 MR. RUDOLPH: Objection. Calls for expert
18 testimony.

19 THE WITNESS: I would leave that to a
20 damages expert. 14:46:37

21 BY MR. JESSEN:

22 Q Would different users -- the value of
23 different users' messages have to be calculated
24 individually?

25 MR. RUDOLPH: Objection. Calls for expert 14:46:49

1 in here, it looks like it's \$10,000 overall. 14:48:43

2 BY MR. JESSEN:

3 Q And would your answer be the same for the
4 California Invasion of Privacy Act, \$5,000 overall
5 as opposed to \$5,000 per message? 14:48:54

6 MR. RUDOLPH: Objection. Calls for a
7 legal conclusion.

8 THE WITNESS: I'm not a lawyer, once
9 again, but the way I understand it, yes.

10 BY MR. JESSEN: 14:49:02

11 Q Is it accurate that you first became aware
12 that Facebook, to use your term, scans private
13 messages containing URLs in or around December 13th
14 during the telephone conversation with Melissa
15 Gardner? 14:49:45

16 MR. RUDOLPH: Objection. I think that
17 misstates prior testimony. I think you said
18 December 13th.

19 MR. JESSEN: I meant December 2013.
20 Sorry. I did misspeak, it looks like. 14:49:59

21 Q Let me back up. Remember earlier you
22 talked about having a conversation with Melissa
23 Gardner where you volunteered to be a plaintiff?

24 A Yes.

25 Q Was it during that conversation that you 14:50:09

1 learned of the, quote, scanning that you're 14:50:10
2 challenging in this complaint?

3 A Yes.

4 Q You didn't know about the alleged scanning
5 before then, right? 14:50:22

6 A Correct.

7 Q Did you know about any kind of processing
8 of Facebook messages before your conversation with
9 Ms. Gardner in December 2013?

10 MR. RUDOLPH: Objection. Vague. 14:50:34

11 THE WITNESS: I did not.

12 BY MR. JESSEN:

13 Q So the basis for your allegations in the
14 complaint and in the first amended complaint is
15 based upon what Ms. Gardner told you? 14:50:49

16 MR. RUDOLPH: Objection. Misstates prior
17 testimony.

18 THE WITNESS: It's based on the articles
19 and findings of the articles in the complaint. That
20 supports what I was told by Ms. Gardner. 14:51:25

21 BY MR. JESSEN:

22 Q Did you first learn about those during
23 that conversation with Ms. Gardner?

24 A Yes.

25 Q During that phone call, did you 14:51:44

1 immediately agree to become a plaintiff in this 14:51:46
2 case?

3 MR. RUDOLPH: Objection. Vague, misstates
4 prior testimony.

5 THE WITNESS: We spoke about just normal 14:52:08
6 kind of day-to-day catching up stuff for a while.
7 And once the subject was brought up and she asked if
8 I knew of anybody, I volunteered right away.

9 BY MR. JESSEN:

10 Q During the call? 14:52:18

11 A Yes, during the call.

12 Q She told you during that call that she had
13 become aware that Facebook was scanning private
14 messages containing URLs?

15 A Yes. 14:52:35

16 Q Did she provide a basis for that
17 information?

18 MR. RUDOLPH: So in light of Mr. Hurley's
19 testimony, I'm going to instruct Mr. Hurley not to
20 answer unless he can do so without relaying 14:52:47
21 information or contents of his communications with
22 Ms. Gardner that occurred after he agreed to become
23 a -- or volunteered to become a plaintiff in that
24 case.

25

1	Is it accurate to say you never	14:56:19
2	contemplated bringing a lawsuit against Facebook	
3	before you spoke with Ms. Gardner?	
4	MR. RUDOLPH: Objection. Asked and	
5	answered.	14:56:25
6	THE WITNESS: Yes.	
7	BY MR. JESSEN:	
8	Q Prior to the time that you volunteered to	
9	be a plaintiff on the call, did Ms. Gardner say	
10	anything about there possibly being a monetary	14:56:49
11	recovery from the lawsuit?	
12	A No.	
13	Q Just so I understand, when you were	
14	speaking with her on the phone -- well, strike that.	
15	During that conversation, did you ask her	14:57:15
16	for any legal advice?	
17	A Could you define "legal advice" in this	
18	context?	
19	Q Did you ask her for her legal opinion on	
20	any particular issue?	14:57:48
21	MR. RUDOLPH: So -- you can answer.	
22	THE WITNESS: Okay. Not that I recall.	
23	BY MR. JESSEN:	
24	Q And at the time you had this telephone	
25	call, you were not aware that there were other class	14:58:17

1 A No. 15:00:38

2 Q Patrick Dahlstrom?

3 A No.

4 Q Lionel Glancy?

5 A No. 15:00:44

6 Q John Tostrud?

7 A No.

8 Q You've never been represented by any of
9 those attorneys before this lawsuit?

10 A No. 15:00:53

11 Q And you've known Ms. Gardner since 2001?

12 A Yes.

13 Q And you guys met in college?

14 A Yes.

15 Q And you've remained friends since then? 15:01:08

16 A Yes.

17 Q Would you say that you have a close
18 relationship with her?

19 MR. RUDOLPH: Objection. Vague.

20 MR. JESSEN: Strike that. 15:01:29

21 Q Would you consider her to be a close
22 friend?

23 A Yes.

24 Q Have you guys traveled together at all?

25 A Yes. 15:01:42

1 Q Where have you gone? 15:01:43

2 A One time we went from Bellingham to

3 Kentucky, to Lexington, and back.

4 Q When was that?

5 A That was -- gosh. I think that was the 15:02:01

6 summer of 2002, I believe.

7 And then we traveled -- I don't know that

8 we traveled together, but a few college friends met

9 up in New Orleans in January for a few days.

10 Q January of this year? 15:02:23

11 A Of this year. Yes.

12 Q Any other travels with her?

13 A I believe I drove between -- I think it's

14 Bellingham and -- I think Bellingham and Portland at

15 one point. 15:02:54

16 Q When would that have been?

17 A Gosh. That would have been I think

18 probably 2004, I believe. There were probably a

19 couple of times in around -- sort of between 2008

20 and 2011 where I picked her up from her family home 15:03:31

21 [REDACTED], and drove back to my

22 house in [REDACTED] and then back.

23 That's about all I can think of at the

24 moment.

25 Q The trip in the summer of 2002 I think you 15:03:50

1 said between Bellingham, Washington, and Kentucky, 15:03:54
2 was that a road trip, driving?
3 A Yes.
4 Q Do you know her family?
5 A Yes, I've met them a few times. 15:04:15
6 Q Would you describe your relationship as
7 merely a friendship or has it ever been more than
8 that?
9 MR. RUDOLPH: Objection. Vague.
10 THE WITNESS: Friendship. 15:04:41
11 BY MR. JESSEN:
12 Q Just a friendship?
13 A Yeah.
14 MR. RUDOLPH: Objection. Asked and
15 answered. 15:04:48
16 BY MR. JESSEN:
17 Q Who is paying the fees and expenses of
18 your lawyers in this case?
19 A To the best of my knowledge, it's Loeff
20 Cabraser. 15:05:08
21 Q Are you paying any of the plaintiffs'
22 lawyers fees or expenses?
23 A Not currently.
24 Q Do you expect to in the future?
25 A Not that I'm aware of. 15:05:18

1 with? 15:08:28

2 A Lief Cabraser.

3 Q Okay. And did you negotiate the terms of
4 that agreement?

5 A No. 15:08:35

6 Q They just sent you an agreement and you
7 signed it?

8 A Yes.

9 Q Okay. Let's talk about your reading
10 habits a little bit. Maybe it will be interesting. 15:08:52

11 Let me know if you read any of the
12 following newspapers, or if you've read any of the
13 following newspapers, let's say, since 2008:

14 The Portland Tribune?

15 A Possibly. 15:09:13

16 Q What about the Portland Press Herald?

17 A Not that I'm aware of.

18 Q New York Times?

19 A Yes.

20 Q The Los Angeles Times? 15:09:26

21 A Not that I'm aware of.

22 Q Time Magazine?

23 A I believe so.

24 Q Business Insider?

25 A I don't recall. 15:09:44

1 Q Wall Street Journal? 15:09:46

2 MR. RUDOLPH: Objection as to time frame.

3 I know you said starting in 2008. I just want to

4 clarify whether you mean up until the present or

5 prior to the filing of the complaint. 15:10:00

6 MR. JESSEN: Either one.

7 Q Let's talk about prior to filing of the

8 complaint.

9 A Okay. Sorry.

10 Q So I guess October 2008 until 15:10:10

11 December 2013.

12 A I just want to mention one thing.

13 Q Sure.

14 A A lot of -- I have a couple of news apps

15 on my phone and stuff, so a lot of that content 15:10:25

16 comes from multiple different papers and magazines

17 and stuff. So I don't necessarily remember exactly

18 every one I -- or the link that goes to wherever it

19 goes.

20 Q I understand. Yeah. It's not a -- I'm 15:10:35

21 just asking to the best of your recollection.

22 A Sure.

23 Q What news apps do you have on your phone?

24 A The ones I have right now are News

25 Republic, BBC News. What's the other one? NPR, and 15:10:47

1 ABC, or ABC News, I should say. I believe those are 15:10:58
2 the only ones I use currently.

3 Q During that referenced time period, have
4 you ever read The Wall Street Journal?

5 A I believe so. 15:11:14

6 Q How about Sports Illustrated?

7 A Yes.

8 Q Let's talk about websites, and I'm curious
9 to know if you ever visited any of these websites.
10 Forbes.com? 15:11:28

11 A Not that I'm aware of.

12 Q It's the same time period as earlier.

13 A Sure.

14 Q Foxnews.com?

15 A Not that I'm aware of. 15:11:38

16 Q Huffington Post?

17 A Yes.

18 Q Huffington Post Tech?

19 A Not that I'm aware of.

20 Q CNET? 15:11:48

21 A Yes.

22 Q Vice.com?

23 A I believe so.

24 Q The Wall Street Journal Digits blog?

25 A Not that I'm aware of. 15:12:06

1 Q Mashable? 15:12:08

2 A Not that I'm aware of.

3 Q Politico?

4 A Not that I'm aware of.

5 Q Wired? 15:12:15

6 A I believe so, yes.

7 Q Tech Radar?

8 A Not that I'm aware of.

9 Q The Daily Beast?

10 A I believe so. 15:12:26

11 Q MSNBC.com?

12 A Not that I recall.

13 Q The Next Web?

14 A Not that I recall.

15 Q The Onion? 15:12:38

16 A Yes.

17 Q That's a good one. PC Mag?

18 A Yes.

19 Q Gizmodo?

20 A Not that I'm aware of. 15:12:51

21 Q CNN.com?

22 A Yes.

23 Q The Guardian?

24 A Not that I'm aware of.

25 Q Tech Spot? 15:13:02

1	A	Not that I'm aware of.	15:13:03
2	Q	The Wall?	
3	A	Not that I'm aware of.	
4	Q	Daily Tech?	
5	A	Not that I'm aware of.	15:13:11
6	Q	Stack Overflow?	
7	A	Not that I'm aware of.	
8	Q	Inside Facebook?	
9	A	Not that I'm aware of.	
10	Q	What about Slate?	15:13:23
11	A	Not that I'm aware of.	
12	Q	CNN tech?	
13	A	Not that I recall.	
14	Q	Consumerist?	
15	A	Not that I'm aware of.	15:13:35
16	Q	Julian Evans' blog?	
17	A	Not that I recall.	
18	Q	Social Times?	
19	A	Not that I recall.	
20	Q	The Verge?	15:13:47
21	A	Not that I recall.	
22	Q	Web Pro News?	
23	A	Not that I recall.	
24	Q	Motherboard?	
25	A	Not that I recall.	15:13:59

1	Q	NPR?	15:14:00
2	A	Yes.	
3	Q	BBC?	
4	A	Yes.	

5	Q	Have you ever reviewed any pages on	15:14:42
6		Facebook regarding its social plug-in technology?	
7	A	Not that I recall.	

8	Q	And I believe you testified about this	
9		earlier, but just to confirm, you never reviewed the	
10		Facebook developer guidance which was publicly	15:15:01
11		available which stated that the number of inbox	
12		messages containing a link to a page will count as	
13		"Likes"?	
14	A	Correct.	

15	MR. RUDOLPH:	Objection. Form.	15:15:16
16	THE WITNESS:	Sorry. Correct.	
17	BY MR. JESSEN:		
18	Q	Earlier -- we talked a lot today about	
19		your allegation that Facebook was scanning	
20		people's -- scanning URLs contained in private	15:16:04
21		messages.	
22		What's your understanding about -- we	
23		obviously take issue with that, but what's your	
24		understanding about why Facebook was doing that?	
25	MR. RUDOLPH:	Objection. Form. Calls for	15:16:18
			Page 184

1 MR. RUDOLPH: Objection. Form. 15:40:17

2 THE WITNESS: Not as I'm concerned, no.

3 BY MR. JESSEN:

4 Q From your perspective it's not?

5 A Yeah. 15:40:28

6 Q You obviously can't speak on behalf of
7 other Facebook users.

8 MR. RUDOLPH: Objection. Form. Asked and
9 answered.

10 THE WITNESS: I can't. 15:40:36

11 BY MR. JESSEN:

12 Q Do you object to any kind of processing or
13 scanning of a message that's not necessary to send
14 the message?

15 MR. RUDOLPH: Objection. Form. Vague, 15:40:48
16 ambiguous as to "processing."

17 THE WITNESS: Yeah, could you define
18 "processing"?

19 BY MR. JESSEN:

20 Q Let's take "processing" out of the 15:41:13
21 question.

22 Do you object to any kinds of -- and I'm
23 using your term "scanning" -- do you object to any
24 kind of scanning of a Facebook message that's not
25 necessary to send the message? 15:41:24

1 A Yes. 15:41:34

2 Q What exactly is necessary to send a
3 Facebook message?

4 MR. RUDOLPH: Objection. Form. Calls for
5 expert testimony, calls for speculation. 15:41:40

6 THE WITNESS: I'm not an electronics
7 expert. I don't know.

8 BY MR. JESSEN:

9 Q You don't know what's necessary to send a
10 Facebook message, but if there's a process involved 15:41:50
11 in sending it that's not necessary, you do object to
12 that; do I have that right?

13 MR. RUDOLPH: Objection. Misstates prior
14 testimony. Again, ambiguous as to "process."

15 BY MR. JESSEN: 15:42:28

16 Q You can answer if you understand.

17 A I would say yes.

18 MR. JESSEN: No further questions,
19 Counsel.

20 MR. RUDOLPH: I have no questions. 15:42:48

21 MR. JESSEN: Thank you very much for your
22 time today, Mr. Hurley.

23 THE VIDEO OPERATOR: This is the end of
24 today's deposition of Mr. Michael Hurley. We are
25 off the record at 3:42 p.m. Thank you. Total 15:42:55

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [x] was [] was not requested

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21

22 Dated: July 16, 2015

23

24



25

CARLA SOARES

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