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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG,
Individually, and FACEBOOK, INC.

Defendants.

Civil Action No. 1:10-cv-00569-RJA

DECLARATION OF JAMES A. BLANCO IN SUPPORT OF MOTION FOR SANCTIONS AGAINST DEFENDANTS FOR SPOILIATION OF EVIDENCE

I, JAMES A. BLANCO submit this declaration in support of Plaintiff's Motion for Sanctions against Defendants for Spoliation of Evidence and hereby declare under penalty of perjury and pursuant to 28 U.S.C. 1746 that the following is true and correct:

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

EXAMINER'S PROFESSIONAL BACKGROUND AND WORK HISTORY:

2. I am a Forensic Document Examiner and I maintain a full time practice in

1 Forensic Document Examinations. My business addresses are 55 New Montgomery
2 Street, Suite 712 San Francisco California 94105 and 655 North Central Avenue 17th
3 Floor, Glendale California 91203 and 1629 K Street N.W. Suite 300 Washington, DC
4 20006. I have been in the field of Forensic Document Examinations for over twenty
5 five years. My training, experience and qualifications as a Forensic Document
6 Examiner are set forth in my three page curriculum vitae which is attached and
7 incorporated hereto as EXHIBIT 1. My training included review of such notable cases
8 as the Zodiac Killer and the Howard Hughes Will.

9 3. I formally subscribe to the Collaborative Testing Services tests which are
10 controlled tests with known results. These are the same tests given to forensic
11 document experts in government laboratories that are accredited by ASCLAD
12 (American Society of Crime Laboratory Directors). I continue to pass these ongoing
13 tests maintaining a zero personal examiner error rate. In my government positions I
14 also accurately passed all of the “CTS” tests.

15 4. I was formerly commissioned with the Federal Bureau of Alcohol, Tobacco and
16 Firearms working as a full time Forensic Document Examiner employee in their
17 Western Regional Forensic Science Crime laboratory. In this position I worked cases
18 for the numerous field offices (“Posts of Duty”) in the United States and in the U.S.
19 Protectorates and Territories of the Special Agents of ATF which also occasionally
20 involved joint investigation cases involving DEA and FBI questioned documents cases.
21 I left this position on good terms for a full time Forensic Document Examiner employee
22 position with the California Department of Justice where I examined cases for
23 hundreds of government and law enforcement agencies throughout the State of
24 California. I left this position on good terms to enter private practice as a Forensic
25 Document Examiner and have been in full time private practice now for fifteen years.

26 5. In addition to civil casework, I also maintain the exclusive contract with the
27 California Secretary of State’s Office for Forensic Document services wherein I service
28 their Forensic Document casework regarding voting fraud cases, and I also work cases

1 for numerous other government agencies both inside and outside of California
2 including the Montana Division of Criminal Investigation, the Federal Defenders
3 offices in Anchorage, Florida, Puerto Rico, and other agencies.

4 6. I have rendered expert opinions regarding questioned documents on over 6,000
5 occasions. I have qualified and testified as an expert witness concerning questioned
6 documents in excess of two hundred times in both Federal and Superior Courts in
7 numerous States and also abroad in Mexico, Singapore and the High Court of South
8 Africa. I have never been prevented from testifying in any venue.

9 7. I was present at the law offices of Harris Beach in Buffalo, NY on July 15, 2011
10 and observed the entire day of examinations of the original questioned "*Work For Hire*
11 *Contract*" by the Facebook's document experts Peter Tytell, Gus Lesnevich (and his
12 assistant Khody Detwiler), as well as Michael Zontini of Foster and Freeman who was
13 working closely with the Facebook document experts, especially with Peter Tytell who
14 spent much of his time using the VSC machine¹. Although the two-page questioned
15 document being examined and that I later examined is titled the "Work For Hire
16 Contract" I will refer to it as the "Facebook Contract" to be consistent with legal filings
17 in the case. I had been informed that the experts for Facebook had already spent the
18 entire previous day examining the Facebook Contract.

19 8. Over the course of the day I was not allowed to get too close to the examinations
20 in progress by the Facebook experts. Counsel for Facebook as well as Facebook experts
21 made it clear that I was to stay on the far side of the room and only watch from a
22 distance.

23 9. I observed Facebook's experts repeatedly exposing the Facebook Contract to UV
24 light as well as other light sources. Even though I was on the other side of the room, I
25 could see the lights of the VSC glowing from around the sides. I further noted that the
26 documents were repeatedly tested on the "ESDA" machine. This machine tests for the
27 presence of latent handwriting impressions on documents. In preparation to place

28 ¹ VSC stands for "Video Spectral Comparator" and is a document imaging system of Foster and Freeman.

1 documents on the ESDA machine, they are first humidified. I noted that the ESDA
2 machine was being used quite a lot over the course of the day. From what I observed,
3 the documents in question were being repeatedly humidified, then subjected to intense
4 lighting.

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

13 11. My concern at that time rose to such a level that I shared it with Plaintiff's
14 Counsel.

15 12. Indeed, by the time I was finally allowed to examine the document pages after
16 5:00 pm on July 15th, I observed deterioration (fading/yellowing) of the Facebook
17 Contract pages and I also noted that the writing pen inks were virtually gone. That is,
18 I observed only traces of writing pen inks for the interlineation on page one and for the
19 signatures and date entries on page two. The level of ink evaporation and deterioration
20 on both pages of the Facebook Contract sheets was extensive. So much ink had
21 vanished in places that what can be observed mostly are just depressions in the paper
22 with very faint traces of ink hues.

23 13. I took high resolution color scans of the Facebook Contract pages to archive a
24 record of the condition of the pages at the time that I received them for examinations.
25 To be clear, my images were taken after the Facebook experts had performed about
26 twenty hours of testing and analysis. I come to that time estimate since I was advised
27 that the examinations by Facebook Experts went from around 9:00 am the previous
28 day (Thursday July 14th 2011) until after 9:00 pm that same evening, and then adding

1 those twelve hours to the eight hours of processing I observed as of Friday July 15th,
2 2011 gave me the rough estimate of twenty hours. The images I took at 5:00 pm on
3 July 15th 2011 are consistent with the fading/yellowing appearance of the two-page
4 Facebook Contract at the top of the image of documents revealed in the July 25 2011
5 video at 9:28:05. I have been informed that this image is when the documents were
6 unsealed for further investigation in Chicago after the Buffalo production. Note that
7 now the Facebook Contract is yellowed in comparison to the six page *Technical*
8 *Specification* document whereas when the documents were first presented for
9 inspection on Thursday morning on July 14th 2011 in Buffalo, before the Facebook
10 experts started their examinations, the Facebook Contract is whiter than the *Technical*
11 *Specification* document.

12 14. The imagery of the scans that I took show the discoloration now evident in the
13 questioned Facebook Contract, and my imagery also shows the writing pen ink
14 damage, which both in my opinion, could very well have been the result of the repeated
15 exposure of the documents to UV and other light sources during the testing by
16 Facebook's experts as well as, and in conjunction with the other examinations, testing
17 and imaging of the Facebook Contract by the Facebook experts.

18 15. I observed Facebook's experts repeating the same tests on the Facebook Contract
19 repeatedly and performing far more testing than was needed to make proper scientific
20 determinations about the authenticity of the document.

21 16. The VSC imaging system is typically used to analyze and compare writing pen
22 inks and to compare optical brighteners of papers and, or to check overt and covert
23 security features on document pages such as Passports and other Identity documents.
24 No such security features were present on the Facebook Contract pages, consequently
25 only writing pen ink and machine toner could be tested which precludes the need for
26 excessive processing.

27 17. Since mechanical printing and handwriting appeared on the faces (fronts) of
28 each of the document pages, it is likely that Facebook experts did not spend much time

1 exposing the reverse sides to the VSC lights. Since the front sides of the Facebook
2 Contract pages are more deteriorated/“yellowed” than the reverse sides, that supports a
3 contention that overexposure and over processing by Facebook experts contributed to
4 the document pages now revealing a more deteriorated condition on their front sides
5 than on their reverse sides.

6 18. Over the course of my attendance at the document inspection I found the
7 repeated examinations of the questioned documents by the Facebook experts to be
8 excessive especially in respect to UV exposure.

9 19. Even the least destructive setting of UV (365 nanometers) can still be damaging
10 surprisingly over short periods of time. I performed tests on my VSC4-Plus unit using
11 just the 365 nanometer UV light and then covering the main document with narrow
12 strips of paper. Even this setting at only one hour gave the test document “tan lines”
13 demonstrating the damage that can be caused by UV long range light.

14 20. The book Suspect Documents Their Scientific Examination by Wilson R.
15 Harrison is a recognized primer in the field of Forensic Document Examination and a
16 technical authority. Harrison’s book gives the following warnings² regarding the
17 dangers of over exposure of documents to both UV and infrared lights:

18 “As ultra-violet light is highly actinic, the exposure of a document to a powerful source
19 should be restricted to the minimum, for the dyestuffs in some coloured inks and in many
20 typewriter ribbons are fugitive and may fade appreciably even during comparatively short
21 exposures. This fading may have serious consequences for there may be no known procedure
22 whereby the colour may be restored.... **The deep yellowing of the cheaper grades of paper
and the rapid fading of coloured inks**, especially those used in typewriter ribbons, when
they are exposed to sunlight immediately spring to mind in this connection. Eventual
deterioration is experienced by the best qualities of paper and the majority of inks, only the
process takes longer”...

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

27 _____
28 ²SUSPECT DOCUMENTS THEIR SCIENTIFIC EXAMINATION By Wilson R. Harrison, M.S.c., Ph.D.
Pages 82, 89, 90, 458, 459

1 Another study revealed that “Thus, every hour of UV irradiation accelerates the aging
2 by approximately 182 days.”³ Consequently, it should be clear that UV exposure can
3 cause serious damage to both paper and inks on documents.

4 21. I have not yet prepared a report in this case but some of my preliminary findings
5 are as follows based upon my examinations and analysis of the original Facebook
6 Contract:

7 a) I also evaluated the signature on page two of the Facebook Contract and
8 confirmed, by comparison to other legal documents signed by Mr. Zuckerberg in
9 other cases, that the signature on page two of the Facebook Contract is Mr.
10 Zuckerberg’s.

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

15 c) The impression from the handwritten interlineation appearing on page
16 one is present as a latent handwriting impression on page two. What that means
17 is that page one was over the top of page two at the time that the handwritten
18 interlineation was made on page one.

19 d) Using a micrometer I measured both pages of the Facebook Contract and
20 each page measured (“micked”) at .011 thousands.

21 e) I examined the opacity and the coddling features (texture) of pages 1 and
22 2 of the Facebook Contract and these features were the same between both
23 pages.

24 22. None of these examinations revealed evidence to suggest that page 1 had been
25 substituted out for some supposed other previous page 1 for the Facebook Contract.

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

1 ///

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

4 DATED: October 31, 2011.

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6

/s/ James Blanco

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Declarant

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