

Part 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11923-DPW

CONNECTU LLC
Plaintiff

v.

MARK ZUCKERBERG, et al
Defendants
.....

BOSTON, MASSACHUSETTS
JUNE 22, 2006

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE ROBERT B. COLLINGS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: Jonathan Gelchinsky, Esquire
Finnegan, Henderson, Farabow, Garrett &
Dunner, LLP
55 Cambridge Parkway
Cambridge, MA 02142
(617) 452-1600

John F. Hornick, Esquire
Margaret A. Esquenet, Esquire
Finnegan, Henderson, Farabow, Garrett &
Dunner, LLP
901 New York Avenue, N.W.
Washington, DC 20001
(202) 408-4000

For the Defendants: G. Hopkins Guy, III, Esquire
I. Neel Chatterjee, Esquire
Monte cooper, Esquire
Orrick, Herrington & Sutcliffe LLP
1000 March Road
Menlo Park, CA 94025
(650) 614-7400

Court Reporter:

Proceedings recorded by digital sound recording, transcript
produced by transcription service.

MARYANN V. YOUNG
Certified Court Transcriber
240 Chestnut Street
Wrentham, Massachusetts 02093
(508) 384-2003

For the Defendants:

Jeremy P. Occek, Esquire
Steven Bauer, Esquire
Proskauer Rose, LLP
One International Place
Boston, MA 02110
(617) 526-9600

Rudy Gadre, Esquire
General Counsel for Facebook Inc.

MARYANN V. YOUNG
Certified Court Transcriber
240 Chestnut Street
Wrentham, Massachusetts 02093
(508) 384-2003

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Divya Narendra	6		Page 12 stipulation as to	
			citizenship; witness excused.	
Mark Zuckerberg	14	138, 155	184	--
<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>IDENT.</u>	<u>IN EVID.</u>	
14	Harvard Document HU-151-152	32		
13a	TFB 6974-6976-3 Pages	38		
13	TFB 6977-1 Page			38
26	Lease for Westbrook in Los Alts			63
34	Lease for Menlo Park, Sherman Avenue			66
10	10	TFB 56-83 FaceBook Inc. Corporate Docs.		79
13	15	New Play Info Sheet		80
14	16	Agreement between FaceBook Inc. and		
15		Zuckerberg 7/29/04		84
16	19a-k	Series of Agreements		96
17	18	W-4 for 2003		99
18	28	Original Agreement with Equinex		106
19	29	Silicon Valley Bank Statement		107
20	31	Silicon Valley Bank Billing Statement		110
21	30	Silicon Valley Bank Certification of Deposit		111
22	27	Invoice from Savvy		115
23	21	Form 1040 for 2004		120
24	37	Tax Return - TFB 7636-49 (unredacted)		125
25	22	California Resident Income Tax Return 2004		129

<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>IDENT.</u>	<u>IN EVID.</u>
2	<u>Defendants' :</u>		
3	B	Copy of M. Zuckerberg's driver's	
4		License, 2 Russell Place, Dobbs Ferry	167
5	E	Voter Registration Form	170
6	K	Sublet agreement for La Jennifer Way	171
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Court called into session)

THE CLERK: The Honorable Robert B. Collings presiding. The case of ConnectU v. Mark Zuckerberg, et al, Civil Action No. 04-11923 will now be heard before this Court. Will counsel please identify themselves for the record.

MR. HORNICK: Good morning, Your Honor, John Hornick for plaintiff, ConnectU. I want to apologize, I had a terrible case of bronchitis this week. I'm hoping I don't have a coughing fit today. I have with me my colleague, Margaret Esquet and also my colleague John Gelchinsky from our Cambridge office. And also in the courtroom today we have five summer associates from our Cambridge office who are here to observe. Three of them are, I'm sorry, one of them is from Boston College, one is from NYU and three are from Harvard University.

THE COURT: Okay. Good morning.

MR. GUY: Good morning, Your Honor. I'm Hopkins Guy with Orrick, Herrington & Sutcliffe for the defendants FaceBook and for Mark Zuckerberg. With me is Neel Chatterjee and Monte Cooper of my firm. Also, Steve Bauer with the Proskauer Rose firm. Also we have Rudy Gadre. If you could stand, Rudy. He's general counsel at the FaceBook.

THE COURT: Thank you.

MR. GUY: Thank you.

1 THE COURT: Good morning. All right, the case is
2 here for an evidentiary hearing on the issue of the citizenship
3 of Messrs. Zuckerberg and Narendra at the time the original
4 complaint was filed, and the plaintiff may begin presentation
5 of evidence.

6 MR. HAMPTON: Your Honor, if I might just interrupt
7 quickly. Daniel Hampton on behalf of defendant Eduardo
8 Saverin.

9 THE COURT: Oh, I'm sorry.

10 MR. HAMPTON: I apologize, Your Honor. And with me
11 is Annette Hurst from Heller Ehrman whose been recently
12 admitted pro hac vice in the case, also representing Eduardo
13 Saverin. We also have a couple of observers in the courtroom.

14 THE COURT: All right. Sorry, I didn't realize over
15 in the corner there. All right, you may proceed.

16 MR. HORNICK: Yes, Your Honor. We will call our
17 witness, Mr. Narendra.

18 THE COURT: Okay. Come forward, stand in the witness
19 box and raise your right hand.

20 (Plaintiff witness, Divya Narendra, sworn)

21 THE COURT: Please be seated.

22 MS. ESQUENET: Your Honor, two issues. First, we
23 would like the Court to lay the rule on witnesses and exclude
24 any witnesses not currently testifying from the courtroom for
25 the time being?

1 THE COURT: Yeah. Any objection?

2 MR. GUY: I'm sorry, I didn't hear the--

3 THE COURT: She wants to sequester witnesses.

4 MR. GUY: No objection, Your Honor.

5 THE COURT: All right. Anyone that's going to be a
6 witness please leave the courtroom and remain outside.

7 MS. ESQUENET: And, Your Honor, is there a particular
8 place that Your Honor would like me to stand to question the
9 witness or is the table appropriate in this court?

10 THE COURT: That's fine.

11 DIRECT EXAMINATION

12 BY MS. ESQUENET:

13 Q Mr. Narendra, could you please state your full name for
14 the record?

15 A Divya Camar Narendra.

16 Q Could you please tell the Court where you were born?

17 A I was born in New York City.

18 Q And where did you grow up?

19 A I grew up in New York City.

20 Q Where did you do your schooling?

21 A Up until high school I went to school in New York City.

22 Q And where did you go after high school?

23 A After high school I went to college in Cambridge,
24 Massachusetts.

25 Q What year did you begin college?

1 A 2000.

2 Q Which school did you go to?

3 A Harvard College.

4 Q Did you always live on campus at Harvard College?

5 A During the school years I always lived on campus. Over
6 the summer periods sometimes I would live on campus, sometimes
7 I would live at home and elsewhere.

8 Q Did you return to New York for breaks and summer
9 vacations?

10 A Generally speaking, yes.

11 Q Mr. Narendra, did Harvard ever ask you to provide a
12 permanent address?

13 A Yes, they did.

14 Q And what address did you provide when you were at Harvard?

15 A I gave my parents' home address, 69-47 Cliverdale (ph)
16 Boulevard in New York City.

17 Q And you mentioned that was your parents' address?

18 A Yes, that's my parents' address.

19 Q Is that where you grew up?

20 A Yes.

21 Q Do you still consider that your permanent address?

22 A No, I don't.

23 Q Why not?

24 A After graduating college I moved to my apartment in
25 Manhattan at 16 Park.

1 Q And when did you graduate?

2 A I graduated in 2004.

3 Q Could you specify the date?

4 A Around June of 2004.

5 Q June of 2004. And did you move immediately upon
6 graduation?

7 A Yes.

8 Q Since June 2004 you've been residing in 16 Park Avenue in
9 New York City, New York?

10 A That's correct.

11 Q Mr. Narendra, I'd like you to turn your attention to
12 September 2, 2004. Where were you living then?

13 A I was living at 16 Park in New York.

14 Q Did you own the apartment at the time?

15 A Yes.

16 Q When did you buy the apartment?

17 A It was purchased in June of 2004.

18 Q Were your personal belongings in the apartment at the time
19 in September of 2004?

20 A Yes.

21 Q Did you keep any personal belongings anywhere else?

22 A Not really. Most of my personal belongings were in my
23 apartment, and the ones that weren't were at my parents' place
24 in Queens.

25 Q Did you keep any personal belongings outside of New York

1 State?

2 A No.

3 Q You said you graduated in June of 2004 and moved back to
4 New York City upon graduation, is that accurate?

5 A That's accurate.

6 Q And why did you move back to New York City?

7 A I had taken a job at Credit Suisse Securities in their New
8 York office which started pretty much right after I graduated.

9 Q When did you start at Credit Suisse specifically?

10 A July 9, 2004.

11 Q Has your office always been in New York City since
12 starting your employment with Credit Suisse?

13 A Yes, it's always been in New York.

14 Q Were you working on Credit Suisse on September 2nd of 2004?

15 A Yes.

16 Q When did you accept your offer to be employed by Credit
17 Suisse?

18 A Sometime in the beginning of 2004.

19 Q Are you currently working for Credit Suisse?

20 A Yes.

21 Q In their New York Office?

22 A Correct.

23 Q On average, how many hours a week do you work for Credit
24 Suisse?

25 A During what time period?

1 Q When you first began in July of 2004?

2 A I would say around then I was working around 80 hours a
3 week.

4 Q And what about in September of 2004?

5 A Probably a little bit more than that.

6 Q Could you estimate how many hours a week at the time?

7 A Say 80 to 100 hours a week.

8 Q Is that typical since your employment at Credit Suisse?

9 A Yeah, it's been a pretty full workload for the last two
10 years.

11 Q Did you pay income taxes in New York in 2004?

12 A Yes.

13 Q And did you pay income taxes in any other state in 2004?

14 A No.

15 Q Do you have a New York driver's license?

16 A Yes.

17 Q Did you have one in 2004?

18 A Yes.

19 Q Have you ever had a driver's license in any other state?

20 A No, I have not.

21 Q Do you consider yourself a citizen of New York?

22 A Yes, I do.

23 Q Have you ever considered yourself a citizen of any other
24 state?

25 A No.

1 Q Mr. Narendra, are you a founder of the
2 HarvardConnection.com website?

3 A Yes, I am.

4 Q Did the name of the website change at any point?

5 A Yes. Well so, the name of the website was virtually
6 HarvardConnection.com up until the point where The FaceBook
7 essentially launched. So while Mark was working on, working
8 with us on the website it was always harvardconnection.com.
9 After the FaceBook launched, we decided to change the name and
10 turn it into ConnectU.com, which sort of came alongside
11 changing the actual - we essentially scraped the code from
12 Harvard Connection and sort of started, you know, with a new
13 code set and a new look and also a new name, ConnectU.

14 Q You testified that was when Mark was working with you. Is
15 that Mr. Mark Zuckerberg?

16 A That's correct.

17 MR. GUY: Objection, Your Honor. This doesn't seem
18 to have anything to do with citizenship.

19 THE COURT: How does it have anything to do with
20 citizenship?

21 MS. ESQUENET: Your Honor, we have, plaintiff has
22 made the argument that Mr. Narendra was not a member of
23 ConnectU on the relevant date, September 2--

24 THE COURT: That's not--

25 MS. ESQUENET: --2004.

1 THE COURT: --that's not what this evidentiary
2 hearing is about. The evidentiary hearing is on the
3 citizenship of these two individuals at the time the complaint
4 was filed. So the objection is sustained.

5 MR. GUY: Your Honor, if we can short-circuit this.
6 We will stipulate that Mr. Narendra was a citizen of the state
7 of New York. That seems to be where Ms. Esquenet is going. We
8 can short-circuit all of this if we just accept that.

9 THE COURT: Is that satisfactory?

10 MS. ESQUENET: We actually made that offer several
11 weeks ago to defendants--

12 THE COURT: No, my question is, is that satisfactory?

13 MS. ESQUENET: Yes, that is satisfactory. We
14 stipulate to Mr. Narendra's citizenship in New York.

15 THE COURT: All right. Thank you. Is there any
16 further need to have any questioning of Mr. Narendra?

17 MS. ESQUENET: Could I have a moment, Your Honor?

18 THE COURT: Sure.

19 MR. HORNICK: Your Honor, my only concern is that we
20 have filed a supplemental brief making argument and presenting
21 evidence that Mr. Narendra was not a member on September 2nd
22 and, therefore, it doesn't really matter where he was citizen.

23 THE COURT: That's not what this evidentiary hearing
24 is about is it?

25 MR. HORNICK: Well that's fine, Your Honor.

1 THE COURT: It's about the citizenship of the
2 parties.

3 MR. HORNICK: I'm just concerned--

4 THE COURT: I haven't gotten any motion to expand the
5 scope of this evidentiary hearing.

6 MR. HORNICK: That's fine, Your Honor. I just am
7 worried about the cross-examination.

8 THE COURT: Well there isn't going to be any because
9 the issue has been resolved as to Mr. Narendra.

10 MR. HORNICK: Thank you.

11 THE COURT: Okay. Any reason why this gentleman
12 cannot be excused?

13 MR. GUY: We excuse the witness, Your Honor.

14 THE COURT: All right. Thank you very much,
15 Mr. Narendra. You're excused.

16 THE WITNESS: Thank you.

17 (Witness excused)

18 THE COURT: I'll hear the next witness, please, for
19 the plaintiff.

20 MR. HORNICK: Your Honor, we have no objection to the
21 defendants doing direct examination of their witness and then
22 we'll cross-examine him.

23 THE COURT: Is that satisfactory?

24 MR. GUY: Your Honor, I want to make sure and I'd
25 like to have a clear record that it is their burden, it is

1 their burden to prove by preponderance. We'd like them to
2 close their evidence on that point and so we would like them to
3 call the witness first.

4 THE COURT: Okay. Go ahead.

5 MR. HORNICK: That's fine, Your Honor, we'll call the
6 witness first. We call Mr. Mark Zuckerberg.

7 THE COURT: Would someone call him in the--

8 UNIDENTIFIED: They've gone out to get him, Your
9 Honor.

10 (Pause)

11 THE COURT: Please come forward, sir, stand in the
12 witness box and raise your right hand.

13 (Plaintiff witness, Mark Zuckerberg, sworn)

14 THE COURT: Please be seated.

15 DIRECT EXAMINATION

16 BY MR. HORNICK:

17 Q Good morning, Mr. Zuckerberg. How are you today?

18 A Pretty good. How are you?

19 Q Now, I understand that you've been the CEO of the FaceBook
20 Inc. since it incorporated; is that right?

21 THE COURT: Excuse me, could we have his name and his
22 place of residence, please?

23 MR. HORNICK: Oh I'm sorry, Your Honor.

24 BY MR. HORNICK:

25 Q Mr. Zuckerberg, could you state your name and residence

1 for the record, please?

2 A My name is Mark Elliott Zuckerberg. I go by Mark
3 Zuckerberg. I'm currently living in Palo Alto, California.

4 Q What's your address in Palo Alto, California?

5 A 259 Ramona Street.

6 Q Before you lived at 259 Ramona Street where did you live?

7 A The last place I lived for any number of months straight
8 was 3 Vasilakos Court in Menlo Park.

9 THE COURT: All right. Noreen, could you put the
10 microphone closer to him, please.

11 THE CLERK: We just need you to sit right up closer--

12 THE COURT: Yeah.

13 THE WITNESS: Okay.

14 THE COURT: Speak right into the microphone--

15 THE WITNESS: Right.

16 THE COURT: --cause you've got a soft voice and it's
17 not carrying too well.

18 THE WITNESS: Sure. I'll also talk louder.

19 THE COURT: That's better.

20 THE WITNESS: Yeah.

21 THE COURT: Okay. Put the question again, please.

22 BY MR. HORNICK:

23 Q What was the period of time during which you lived at
24 Vasilakos Court?

25 A I think it was for about three months in the summer of

1 2005.

2 Q And before you lived at Vasilakos Court, where did you
3 live?

4 A I lived at 1324 Sherman Avenue in Menlo Park.


5 Q How long did you live at Sherman Avenue?

6 A From mid-January 2005 to I think around mid-June of 2005
7 or early June.

8 Q Where did you live before you lived at Sherman Avenue?

9 A I lived at 1743 Westbrook Avenue in Los Altos, California.

10 Q How long did you live at Westbrook?


11 A  I've stayed there I guess it would be from mid-September
12 2004 to mid-January until I moved into Sherman.

13 Q Can you say more specifically when in mid-September of
14 2004 you moved into Westbrook?

15 A I think we have dates from the deposition, but I don't
16 remember off the top of my head. I think it was around maybe
17 September 14th or so, September 15th.

18 Q Where did you live before you lived at Westbrook?

19 A The last place I stayed for a significant period of time
20 before that was, I guess it was 819 Jennifer Way in Palo Alto.

21 Q  and how long did you stay at Jennifer Way in Palo Alto?

22 A I think it was just under three months.

23 Q What time period was that?

24 A Mid-June 2004 up until a few days before moving into
25 Westbrook in September.

1 Q And where did you live before you lived at Jennifer Way?

2 A Before that I was in New York for I think two or three
3 weeks at my home and then before that at Harvard.

4 Q When you say you were at your home in New York, what was
5 that place?

6 A What was the address?

7 Q Yes.

8 A 2 Russell Place Dobbs Ferry, New York. ✓

9 Q That's your parents' address, correct?

10 A Sure--

11 Q That's where you grew up?

12 A --my parents address, my home, yeah.

13 Q That's where you grew up, right?

14 A Yeah.

15 Q All right. Now it's correct to say that you have been the
16 CEO of TheFaceBook Inc. since it incorporated, correct?

17 A I believe so, yeah.

18 Q And you attended Harvard during the spring 2004 term,
19 correct?

20 A Yes.

21 Q You lived on campus at that time; isn't that right?

22 A Yes.

23 Q And June in 2004 you left Massachusetts and you went to
24 California for the summer, correct?

25 A I don't know if I was in Massachusetts at all in June

1 2004.

2 Q Okay. So in June of 2004 you went to California for the
3 summer, correct?

4 A Yes.

5 Q Okay. Now when you lived at the Jennifer Way address in
6 Palo Alto you signed the lease for that apartment, correct?

7 A I believe so.

8 Q And do you recall what address you provided on the
9 Jennifer Way lease?

10 A I think it was the 2 Russell Place address for my home in
11 New York.

12 Q Did you actually put that address on the lease or did
13 someone else put it on the lease for you?

14 A I didn't write the lease, but I must have given them the
15 address.

16 Q And when you signed that lease you had no other address at
17 that time, isn't that right, other than the address you could
18 give for your parents?

19 A Yeah, other than my permanent home, yeah.

20 Q You no longer had an address at Harvard at that time,
21 correct?

22 A Actually, I'm not sure if that's true. The same mailbox
23 may have carried over from year to year at Harvard. But I mean
24 that's where I was staying at the time.

25 Q But you had left your Harvard dorm room, correct?

1 A I'm not sure if that lease was set before then or not. I
2 mean, I knew that I was looking at places while I was at
3 Harvard.

4 Q When you were at Harvard and you moved to California for
5 the summer, you left your dorm room, correct?

6 A Yeah.

7 Q And you took everything out of it right?

8 A I didn't, I mean I removed things from my dorm room. I
9 didn't take them to California.

10 Q But there was nothing of yours, your belongings were, none
11 of those were left in the dorm room after you moved out and
12 went to California for the summer, correct?

13 A I mean, not my specific dorm room. I moved them into
14 storage in the Kirkland House.

15 Q Now when you were living at Jennifer Way in the summer of
16 2004 you received mail there, correct?

17 A Yeah.

18 Q And while you were living there at Jennifer Way, you hired
19 lawyers, correct?

20 A Yes.

21 Q And they were California lawyers, correct?

22 A Yes.

23 Q It was the Heller Ehrman law firm, correct?

24 A Yes.

25 Q Now, while you were in California in the summer of 2004

1 isn't it true that you wanted to unify TheFaceBook.com's
2 operations in one place?

3 MR. GUY: Objection, vague, Your Honor.

4 THE WITNESS: I don't--

5 THE COURT: The objection's what?

6 MR. GUY: Objection is vague, Your Honor. Unify,
7 just what does he mean by that?

8 THE COURT: Well, if the witness doesn't understand
9 the question he may say so. I don't know what Federal Rule of
10 Evidence there is that says an objection can be made on the
11 grounds it's vague. If you understand the question you may
12 answer it, sir, otherwise the attorney will rephrase it.

13 A I'll try to answer. I wanted everyone to be in California
14 for the summer. I thought it would be most efficient if we
15 were in one place but I wasn't set on moving out there.

16 BY MR. HORNICK:

17 Q But that wasn't my question. What I asked you is when you
18 were there for the summer, did you want to unify
19 TheFaceBook.com's operations in one place?

20 A I feel like there are a lot of different components to
21 that. So--

22 Q All right, well, let's take you back to April 25th of 2006.
23 Do you recall being deposed in a different case on that date?

24 A I don't remember--

25 Q Okay.

1 A --the specific date.

2 Q We'll be more specific.

3 A Sure, yes.

4 Q Are you aware that FaceBook Inc. has a lawsuit pending
5 against ConnectU in California, correct?

6 A Yes.

7 Q And you recall being deposed in that case?

8 A Yeah.

9 Q Okay. Do you recall whether that deposition was in April
10 of this year?

11 A It may have been, sure.

12 MR. HORNICK: Just one second.

13 (Pause)

14 MR. HORNICK: Your Honor, how would you like us to
15 proceed with exhibits? I know that there was this, almost set
16 up but I don't think it was working; is that right? It doesn't
17 actually focus on the screen, is that right?

18 MR. GUY: I believe it works.

19 MR. HORNICK: Oh, you do? Okay. All right, in that
20 case I think we can probably use the--

21 THE COURT: We deal with exhibits the way we always
22 deal with exhibits in an evidentiary hearing. They're marked
23 for identification, and then when they're moved to admission,
24 if they're admitted the identification suffix comes off.

25 MR. HORNICK: Well, Your Honor, what I meant was I

1 actually have not presented evidence in this courtroom, and I
2 wasn't sure how, whether you wanted us to use the overhead or
3 whether you would like copies to be handed to the Court.

4 THE COURT: It's completely up to you.

5 (Pause)

6 MR. GUY: Your Honor, may the witness be shown a
7 copy?

8 THE COURT: Well, let's see if we're going to use it
9 first.

10 MR. GUY: Okay.

11 THE COURT: Is there a teenager in the room that can
12 help them out?

13 MR. GUY: Your Honor, we had offered to split this
14 with them and they had refused so this is their first time
15 using it. We're happy to show them how to do it but they
16 didn't want to offer or learn before.

17 MR. HORNICK: No one asked me, Your Honor. I don't
18 know what he's talking about.

19 THE COURT: All right.

20 MR. GUY: We're happy to turn it on for them.

21 THE COURT: This is typically the type of thing that
22 goes on between counsel in this case, and I don't want any part
23 of it.

24 MR. HORNICK: Please do. I'd love your assistance.
25 Thank you.

1 (Pause)

2 BY MR. HORNICK:

3 Q All right, Mr. Zuckerberg, what we have done here is we've
4 put on the screen a page of testimony from your deposition on
5 April 25th of 2006 in the California case, and you have before
6 you a copy of that transcript. You do recall being deposed in
7 that case, correct?

8 A Yes.

9 Q All right. Now on page 164 of that transcript you were
10 asked a question - do you have 164 in front of you?

11 A Yes.

12 Q Yeah. On 164 at line 13 you were asked a question: "If
13 the Savvy contract, which is March 24, 2004, can you tell me
14 when you actually stopped using managed?"

15 And then you provided an answer to that question. Do you
16 see that?

17 A Yes.

18 Q Okay. Then on the next page, if you go to page 165,
19 toward the end of your answer beginning on line 10, you said,
20 "So when we moved out to California we wanted to unify in one
21 place. That's when we ended up with Equinex." Do you see
22 that?

23 A Yes.

24 Q And that was your testimony at the time; is that right?

25 A Yeah.

1 Q Was that correct at the time?

2 A Yes.

3 Q Okay. And then you were asked a question, "Okay, but
4 you're talking about Savvy server activity in October of 2004,
5 right?" And you answered, "Yeah." Do you see that?

6 A Yes.

7 Q Okay.

8 MR. GUY: Your Honor, he did not read the entire
9 answer in that sentence. If he would, please, for the--

10 THE COURT: I think you left out still.

11 MR. HORNICK: Oh, I apologize, Your Honor.

12 MR. GUY: No, and the line before that. He also left
13 out the, after the comma.

14 MR. HORNICK: I will read--

15 THE COURT: No, he didn't.

16 MR. GUY: That's when we ended up with Equinex.

17 THE COURT: I heard him read that.

18 MR. HORNICK: I read that.

19 THE COURT: He read that.

20 MR. GUY: All right.

21 BY MR. HORNICK:

22 Q And then you asked the question, question, "Okay, but
23 you're still talking about Savvy server activity in October of
24 2004, right?" And then you answered, "Yeah", correct?

25 A Yes.

1 Q Okay. And then you said, then you were asked, "And you
2 moved out to California in June of 2004", and you said,
3 "Uh-huh", correct?

4 A Yes.

5 Q Okay. And then you were asked, "So again, I ask you, I
6 ask you, is that, can you identify the time at which you
7 stopped using the managed servers." Do you see that?

8 A Yes.

9 Q And then you were asked, I'm sorry, you answered, "So I
10 think that we stopped using the manage servers and the savvy
11 servers after we were set up at Equinex." Do you see that?

12 A Yes.

13 Q And that was your testimony at the time, correct?

14 A Yes.

15 Q Okay. Now I'd like to turn to page 156.

16 (Pause)

17 BY MR. HORNICK:

18 Q Now on page 156 - let me start with 155 you were asked,
19 "When you say you pulled all of your servers out of there, what
20 do you mean." Do you recall being asked that question?

21 A Where is this? Sorry.

22 Q This is on page 155, line 22.

23 A Okay.

24 Q And then you answered--

25 A Yes.

1 Q --you answered, I don't know if we pulled our physical
2 servers. We stopped using those servers because their servers
3 had become unreliable too. Do you see that?

4 A Yes.

5 Q And you were referring then to what? Which servers were
6 they?

7 A It was the network of Savvy.

8 Q The Savvy network servers, correct.

9 A Yeah, well the network mostly, not the servers.

10 Q The servers that were being hosted by Savvy, correct?

11 A Yeah. I mean it was the network that was mostly
12 unreliable not the actual machines, yeah.

13 Q And then you said, "They had some days when they were down
14 for like six hours or more and we were paying a lot of money we
15 didn't think that was good." Do you see that?

16 A Yes.

17 Q Okay. And then you said, "Since we were out in California
18 we just found a facility nearby", correct?

19 A Yes.

20 Q And that was Equinex, correct?

21 A Yes.

22 Q Okay. And you bought some servers in California, correct?

23 A Yes.

24 Q Okay. And then you said that you put them there, you mean
25 you put the servers at Equinex, correct?

1 A Yes.

2 Q Equinex was a California facility, correct?

3 A Yes.

4 Q Okay. And then you said you transferred all the data.

5 You say, "Transfer all the data from that location and run the
6 site from California", correct?

7 A Yes.

8 Q Okay. So what you meant was that you transferred all the
9 data from the servers that were with Savvy, correct?

10 A Yes.

11 Q You transferred that data to the servers that were now at
12 Equinex in California, correct?

13 A Yes.

14 Q And you ran TheFaceBook.com website from California?

15 A Yes.

16 Q And this was at what time?

17 A I think this was around late August or September 2004.

18 Q Mr. Zuckerberg, I'd like you to take a look at the first
19 page of that deposition transcript that you have before you.

20 This deposition, is a transcript of the deposition that was
21 taken of you in the California case, correct?

22 A Yes.

23 Q And you read this deposition transcript after it was
24 taken, correct?

25 A I have.

1 Q And you made whatever corrections you wanted to make to
2 it, correct?

3 A Yes.

4 Q And you signed an errata sheet for that deposition
5 transcript, correct?

6 A Yes.

7 MR. HORNICK: Your Honor, do you have any objection
8 to us moving all our exhibits into evidence at the end or would
9 you like us to do it as we proceed?

10 THE COURT: I think it's probably easier to do it as
11 you proceed.

12 MR. HORNICK: All right. Well, I'd like to move this
13 particular Exhibit 7 into evidence at this time.

14 THE COURT: What's Exhibit 7?

15 MR. HORNICK: This is the deposition transcript of
16 Mr. Mark Zuckerberg taken in the California case on April 25th
17 of 2006.

18 THE COURT: Well, it's already in the record. You
19 pointed it out to him. I don't think there's any reason for
20 the whole deposition to go in.

21 MR. GUY: Thank you, Your Honor.

22 MR. HORNICK: Well, Your Honor, in that case we'll
23 just move in the pages that we've used at this time. We may be
24 using additional papers at a later time.

25 THE COURT: No, I don't know why you need to move

1 them in. He's acknowledged that that was his testimony. It
2 is in evidence.

3 MR. HORNICK: Okay.

4 THE COURT: It will appear in the transcript of these
5 proceedings. I don't think there's any need. We have enough
6 paper in this case.

7 BY MR. HORNICK:

8 Q We're handing you, Mr. Zuckerberg, a copy of Exhibit 14.

9 A Yes.

10 (Pause)

11 BY MR. HORNICK:

12 Q Now, you have before you what we've marked as Exhibit 14,
13 which is a document that was produced by Harvard University
14 during production numbers HU-151 and 152. Do you see that
15 before you?

16 A Yeah.

17 Q Do you remember me asking you about this exhibit during
18 your deposition on June 8th, two weeks ago?

19 A Yes.

20 Q Well when, there came a time when you cancelled your
21 housing at Harvard for the fall of 2004; isn't that right?

22 A Yes.

23 Q And when was that that you cancelled the housing?

24 A I mean, as we talked about before I don't remember the
25 exact date, but I mean I think that I sent something into them

1 so they have records of that and this is probably that.

2 Q Let's look at page, the second page of this exhibit, which
3 is - it has number HU-152 in the lower corner. Do you see
4 that? Do you have it before you?

5 A Yes.

6 Q Okay. And on the last - and this is entitled housing
7 history Mark Zuckerberg. Do you see that?

8 A Yes.

9 Q And the last line of this document says Kirkland House
10 [unassigned], and then it says contract cancelled. Do you see
11 that?

12 A Yes.

13 Q And it says L on 8/13/04. Do you see that?

14 A Yes.

15 Q Now does this refresh your recollection as to whether you
16 cancelled your housing for the fall of 2004 on or before August
17 13th of 2004?

18 A I still don't remember, but if this is accurate, then I
19 assume that that means that I did.

20 Q Sometime before Harvard cancelled your housing for the
21 fall of 2004 you notified them that you wanted to cancel your
22 housing for the fall of 2004, correct?

23 A Yeah, I seem to remember that.

24 Q And that was because you had decided not to go back to
25 Harvard for the fall of 2004, correct?

1 A For the fall, yes.

2 Q Now, did you ever request a leave of absence from Harvard?

3 A I don't remember. I'm not sure exactly how that works. I
4 just failed to not register but I don't know. I'm not sure.

5 Q Now, we've handed you a document that we have marked as--

6 MR. HORNICK: Before we do that I suppose I should
7 move Exhibit 12 into evidence.

8 THE COURT: Exhibit 12 or 14?

9 MR. HORNICK: Was it 14?

10 MS. ESQUENET: 14.

11 MR. HORNICK: 14, sorry, Your Honor, yes.

12 MR. GUY: Your Honor, we object. There's no
13 foundation for this. This is a document from Harvard. He's
14 used it to refresh the witness' recollection. He has that
15 testimony. We have an objection to admission of this document.

16 MR. HORNICK: I don't think we have any objection
17 that this is an authentic document produced by Harvard
18 University, Your Honor.

19 MR. GUY: I think they're offering it for the truth
20 of what it purports, Your Honor--

21 THE COURT: Well--

22 MR. GUY: --that the L on 8/13/04 would mean letter
23 and I--

24 THE COURT: Well, you've got to lay a foundation. If
25 you want to get that in as a business record then you've got to

1 lay the proper foundation. So it would be marked and to the
2 clerk it would be marked as Exhibit 14 for identification.

3 (Exhibit No. 14, marked for identification)

4 MR. HORNICK: Thank you, Your Honor. Well, Your
5 Honor, for the purposes of a foundation we have the first page
6 of this exhibit which is HU-151, which is certification from
7 Harvard University from a Joshua Macintosh who certifies that
8 he's employed by the director of housing at Harvard College,
9 and in that capacity he is the custodian of certain records of
10 Mark Zuckerberg. And copies of Mr. Zuckerberg's housing
11 records as described in a subpoena that we issued to Harvard
12 University on May 23rd are provided and attached hereto, to the
13 certification. And he certifies that the records that he
14 attaches, which is HU-152 are true and accurate copies of the
15 originals, which are kept in the ordinary course of business at
16 Harvard University. And that is signed by--

17 THE COURT: Well, if he came in and testified to that
18 I suppose it would be a different question, but you've got to
19 authenticate a document you want to introduce into evidence. A
20 certification, it's not a self authenticating document is what
21 I'm saying, and if you could show me a rule of evidence that
22 would permit that to be admitted I'd be glad to consider it,
23 but I think you need the custodian of the record to testify
24 that it's kept in the ordinary course of business, it's the
25 ordinary course of business to keep the record and that's true

1 and accurate copies of the records kept in the ordinary course
2 of business. So it's marked for identification at this time
3 only.

4 MR. HORNICK: All right. Thank you, Your Honor.
5 We'll consider whether we need to authenticate it further and
6 we have the testimony.

7 THE COURT: I don't think you've authenticated it at
8 all--

9 MR. HORNICK: Well--

10 THE COURT: --and that's the reason for my ruling.

11 MR. HORNICK: My point, Your Honor, is that we'll
12 consider whether we need to authenticate it as the Court's
13 instructed and--

14 THE COURT: Okay.

15 MR. HORNICK: --for the time being we have the
16 testimony.

17 BY MR. HORNICK:

18 Q Now, we'll turn to Exhibit 13. What we have here is a
19 document that was produced by the defendants in this case. It
20 bears a production number of TFB-6974 through 6977. Do you see
21 that Mr. Zuckerberg?

22 A Yes.

23 Q All right. Now, I'd like you to turn specifically to the
24 last page of this document, which has the production number
25 TFB-6977. Do you have that before you?

1 A Yes.

2 Q And now this is a letter from Harvard University to you,
3 correct, addressed to you?

4 A Yes.

5 Q It's addressed to you at your parents' address, correct?

6 A Sure.

7 Q And it's dated August 24th of 2004, correct?

8 A Yes.

9 Q All right. Now it says, "Dear Mark, at its meeting the
10 administrative board of Harvard College voted to grant you a
11 leave of absence as of May 28, 2004." Do you see that?

12 A Yes.

13 Q Is it your understanding that you were granted a leave of
14 absence by Harvard University as of May 28th of 2004?

15 A Based on this document I guess so.

16 Q It's your understanding--

17 THE COURT: I'm sorry, I didn't hear your answer,
18 sir.

19 THE WITNESS: Based on this document I guess so.
20 Sorry, I'll try to get closer.

21 THE COURT: Well, we don't guess in court. You can
22 testify as to your best recollection, but please don't answer
23 based on guesses. So you may answer the question, please,
24 without reference to guessing.

25 BY MR. HORNICK:

1 Q So the question was is it your understanding that Harvard
2 University granted you a leave of absence effective May 28th of
3 2004?

4 MR. GUY: Objection, Your Honor. I'll ask that he
5 lay a foundation as to whether he's ever seen this document
6 before.

7 THE COURT: No. You don't need to lay a foundation
8 for something to refresh someone's recollection. The objection
9 is overruled.

10 MR. GUY: Thank you.

11 BY MR. HORNICK:

12 Q My question specifically, Mr. Zuckerberg, was is it your
13 understanding that you were granted a leave of absence by
14 Harvard University as of May 28th of 2004?

15 A Yes.

16 Q Now, did you request that leave of absence?

17 A I don't remember doing so, but this document seems to say
18 that I did or that someone else did on my behalf if that's
19 possible?

20 Q Did someone else request a leave of absence on your
21 behalf?

22 A I don't know.

23 Q Who would have requested a leave of absence on your
24 behalf?

25 A I'm not sure. Maybe my parents, I'm not sure how that

1 works.

2 Q Did you ask your parents to request a leave of absence on
3 your behalf?

4 A I don't think so.

5 Q Did you receive this letter from Harvard University?

6 A I wasn't at home when this letter was sent home. So -
7 sir, could you clarify that?

8 Q Is it your understanding that this letter was sent to you
9 from Harvard University?

10 A I think so, yeah.

11 Q Did you ever see this letter before you were deposed on
12 June 8th?

13 A I don't remember it. It doesn't, I don't know. I don't
14 really remember seeing it.

15 Q How did your lawyers get this letter to produce to us?

16 MR. GUY: Objection. Lacks foundation.

17 THE COURT: He may answer if he knows.

18 A I don't know.

19 MR. HORNICK: Your Honor, we would move this exhibit
20 into evidence on the basis that it was produced by the
21 defendants. I don't think they can reasonably challenge its
22 authentication even though the witness doesn't know if he ever
23 saw the document before. I don't think there can be any
24 question that this is a document that was received, sent to
25 Mr. Zuckerberg, at some, received by him and by his parents and

1 then somehow given to counsel and somehow produced to us.

2 MR. GUY: No objection to that one, Your Honor.

3 THE COURT: No objection?

4 MR. GUY: No objection.

5 THE COURT: All right. You had pre-marked that as
6 17?

7 MR. HORNICK: 13, Your Honor.

8 THE COURT: 13, all right. That's admitted as
9 Plaintiff's Exhibit 13.

10 MR. GUY: Your Honor, I don't believe that they ever
11 focused on any of the other letters. It was only the last page
12 they focused on. That would be that letter. If we can just
13 have that--

14 THE COURT: Well, he's admitting - he's moving
15 admission of the whole document. What is your position with
16 respect to the whole document?

17 MR. GUY: Position is they haven't examined him on
18 any of the others, and they really don't relate to this issue.
19 So I would ask that only the back page TFB-6977 be admitted.

20 THE COURT: And what's your objection to the first
21 two?

22 MR. GUY: Well, they're different documents, Your
23 Honor, and I don't think the witness has been questioned on
24 them at all.

25 THE COURT: Well, it's not a pre-requisite for

1 admissibility that the witness can be questioned about them.

2 MR. GUY: Well, they haven't been authenticated and
3 there's no foundation laid for--

4 THE COURT: All right, all right. He's objecting on
5 the lack of authentication, so you're going to have to do more
6 on that. But I will admit the last page and we'll make - let's
7 make that 13 in evidence, and let's make the first three pages
8 13(a) for identification.

9 (Plaintiff's Exhibit 13A, marked for identification)

10 (Plaintiff's Exhibit 13, admitted)

11 THE COURT: Let me give this back to you. Noreen,
12 that's 13(a) for identification. That's 13 in evidence.

13 BY MR. HORNICK:

14 Q Mr. Zuckerberg, you sent something to Harvard University
15 asking them that they do something with respect to the fall of
16 2004, correct?

17 A Yeah, that's what I remember.

18 Q But you don't know whether you requested a leave of
19 absence or whether you requested or said you wouldn't need
20 housing or whether you did both in that correspondence,
21 correct?

22 A I think specifically it was housing but it may have been
23 both.

24 Q Now this was a letter that you sent to Harvard?

25 A I think it was more of a form.

1 Q Form, but you don't have a copy of that form, correct?

2 A No.

3 Q And if you sent any other kind of correspondence to
4 Harvard requesting a leave of absence or not to use housing for
5 the fall of 2004, you don't have a copy of that, correct?

6 A No.

7 Q Now when you sent in your housing form saying that you
8 wouldn't need housing for the fall of 2004, you had decided to
9 stay in California and not to go back to school for the fall of
10 2004, correct?

11 A Sorry, could you repeat that?

12 Q Yes. When you sent in your housing form you had decided
13 to stay in California and not go back to school for the fall of
14 2004, correct?

15 A I assume so, yeah.

16 Q Well, you did or you didn't?

17 A I mean, I don't recall exactly what I was thinking at that
18 time. I may have just thought that it was likely that I
19 wouldn't go back and, therefore, I didn't want housing. But I
20 assume that that's what I was thinking at that time.

21 Q Well, let's look at some deposition testimony that you
22 gave in the California deposition on April 25th.

23 (Pause)

24 BY MR. HORNICK:

25 Q Now, you have before you, again, what we've marked for

1 identification as Exhibit 7. Mr. Zuckerberg, this is your
2 deposition testimony from the April 25, 2006 deposition in the
3 California case, correct?

4 A Yeah.

5 Q Okay.

6 THE COURT: Excuse me, could you focus that a little
7 better. It's awfully blurry.

8 MR. HORNICK: I'm not sure we can, Your Honor. You
9 worked on this this morning and you weren't able to focus it
10 any better than this so, right?

11 UNIDENTIFIED: Yes, that's correct.

12 THE COURT: Okay.

13 MS. ESQUENET: Your Honor, we have a spare copy if
14 you'd like.

15 THE COURT: No, that's all right. I'll make do.

16 BY MR. HORNICK:

17 Q Now beginning at line three at page 184, you were asked a
18 question, "Let me take a look and see." And then the
19 questioner said, "at some point in time did you make the
20 decision to actually stay in California full time." Do you see
21 that?

22 A Yes.

23 Q And then your attorney objected and then you answered at
24 line eight, "Yeah, I didn't go back to school." That was your
25 answer at that time, correct?

1 A Yes.

2 Q And you - that was a correct answer when you gave it,
3 correct?

4 A Yeah.

5 Q Okay. Now that deposition as I said was April 25th of
6 2004, correct?

7 A Yes.

8 Q And that was before the Court's May 1st order calling your
9 citizenship into question, correct?

10 THE COURT: I'm sorry, what did you say the date of
11 the deposition was?

12 MR. HORNICK: April 25th of 2006. I'm sorry, Your
13 Honor--

14 THE COURT: Thank you.

15 MR. HORNICK: --I did say 2004.

16 THE COURT: You did.

17 BY MR. HORNICK:

18 Q And that was before the Court's May 1, 2006 order calling
19 your citizenship into question, correct?

20 A Yeah. I mean, I don't know the exact dates but yeah.

21 Q Now, when you moved to California in the summer of 2004
22 you liked being there, right?

23 A I'm sorry?

24 Q You liked being in California; isn't that right?

25 A It was a fun summer.

1 Q It was a fun summer, okay. You wanted to be in
2 California because that's where the start-up companies were
3 located; isn't that right?

4 A Well, those are the reasons I came out for the summer, a
5 reason.

6 Q And at that time in the summer of 2004 TheFaceBook.com
7 website depended on you, didn't it?

8 A Yes.

9 Q Okay. And if you had left TheFaceBook it wouldn't have
10 done well, correct?

11 A Yeah. I mean that's all in the deposition.

12 Q And you had solidified all of TheFaceBook's operations in
13 California over the summer of 2004, correct?

14 A So by operations you're referring to where the servers
15 were?

16 Q Servers were in California, correct?

17 A I mean, yeah, but they were in California before we
18 managed, anyway, but yeah, yes.

19 Q Okay. And the operations were in California?

20 A By operations you mean the servers, right?

21 Q Your running of the website was also in California as of
22 the summer of 2004, correct?

23 A But that's just because we were there, but yes, yes.

24 Q Okay. Dustin Moskovitz was your roommate at Harvard,
25 correct?

1 A Yes.

2 Q And he was with you in the summer of 2004 in California,
3 correct?

4 A Yes.

5 Q And he's still there, right?

6 A He is.

7 Q And Andrew McCollum he was your friend; is that right?

8 A Yes.

9 Q Still your friend, right?

10 A Yes.

11 Q And he was in California in the summer of 2004 as well?

12 A Yes.

13 Q All right. And since September of 2004 you've remained in
14 California, correct?

15 A I'm still there. I haven't remained there like ever
16 since. I mean I've gone back, but yes, I'm still there.

17 Q You've gone back where?

18 A I've gone other places. I've gone back to Boston, back to
19 New York.

20 Q But you've been living in California since the summer of
21 2004?

22 A Yeah.

23 Q Now, did you ever inform Harvard University that you would
24 return to school in the fall of 2005?

25 A No, I didn't because I didn't go back to school. But it's

1 not my understanding that I had to.

2 Q And you have not informed Harvard of your wish or of a
3 wish to return to school at any time, correct?

4 A Yeah, that's correct. I mean, it's my understanding that
5 I can just tell them when I when I want to go back and then I
6 can go back.

7 Q Let's have Exhibit 13 again.

8 THE COURT: Excuse me, what year had you completed in
9 June of 2004? What year in school?

10 THE WITNESS: Oh, my sophomore year.

11 THE COURT: Thank you.

12 THE WITNESS: Yeah.

13 BY MR. HORNICK:

14 Q Well, we're going to go, put back before you Exhibit 13,
15 last page of that exhibit.

16 THE COURT: Actually, that's 13(a) now because--

17 MR. HORNICK: 13(a), thank you, Your Honor.

18 BY MR. HORNICK:

19 Q And--

20 THE COURT: I'm sorry, no. I made a mistake. That's
21 13. I apologize. That's the one that's in evidence.

22 MR. HORNICK: Ah, okay. This is Exhibit 13.

23 THE COURT: Go ahead, sorry.

24 MR. HORNICK: No problem, Your Honor.

25 BY MR. HORNICK:

1 Q Now, I'm going to refer you specifically to the third
2 paragraph of this letter from Harvard University to you dated
3 August 24th of 2004. And I wanted to ask you based upon your
4 understanding or based upon that letter, I don't really care
5 which, what was the deadline for your request to return to
6 Harvard for the spring of 2005?

7 A For the spring of 2005?

8 Q Yes.

9 A Hold on.

10 (Pause)

11 A I mean, it doesn't say here.

12 BY MR. HORNICK:

13 Q Doesn't say here, all right. Let's look at--

14 A But this is just for housing not for returning in general.

15 Q All right, well let me rephrase the question then. What
16 is your understanding of the deadline to request housing at
17 Harvard University for the spring of 2005?

18 A I have no understanding of that.

19 Q All right. Let's look at this paragraph. It says here,
20 third paragraph, "If you haven't already done so I'm enclosing
21 the application for returning students form which you should
22 return to the undergraduate housing office in University Hall
23 by February 1 for the following fall term and by September 30
24 for the following spring term." Do you see that?

25 A Yeah.

1 Q Okay. Now, is it your understanding that the deadline
2 for you to request housing for the spring 2005 term was
3 September 30th of 2004?

4 A I mean, it doesn't say 2004 but, sure.

5 Q All right. Did you request housing for the spring of 2005
6 by September 30th of 2004?

7 A No.

8 Q All right. And what was the deadline to request housing
9 at Harvard University for the fall of 2005?

10 A For the fall 2005 it says February 1st, right.

11 Q So by February 1st of 2005 you had to request housing for
12 the fall of 2005, correct?

13 A Yeah, if I wanted housing.

14 Q Did you do that?

15 A No.

16 Q No. What was the deadline to request housing for the
17 spring of 2006?

18 A I don't know.

19 Q It would have been September 30th of 2005, correct?

20 A I have no idea.

21 MR. GUY: Objection. Lacks foundation, calls for
22 speculation.

23 THE COURT: He can answer if he knows.

24 THE WITNESS: I don't.

25 BY MR. HORNICK:

1 Q Now, this letter isn't telling you that you have to meet
2 these dates by a particular year, correct?

3 A It's not, no.

4 Q And you testified that it doesn't matter when you go back
5 to Harvard, correct?

6 A Yeah, that's true.

7 Q All right. So it's your understanding based upon your
8 reading of this letter that was addressed to you, that your
9 deadline to request housing for the spring of 2006 would have
10 been September 30th of 2005?

11 A No. I mean I feel like these dates can probably change.
12 I'm not sure.

13 Q So the letter doesn't mean anything to you; is that right?

14 A I think it's referring to the next terms, but I--

15 Q Does it say that?

16 A No, but that would be how I read it.

17 Q Okay.

18 A I mean I could be wrong but.

19 Q All right. Did you request housing for the spring of 2006
20 term at any time?

21 A Spring 2006?

22 Q Yes.

23 A No.

24 Q All right. And did you request housing for the fall of
25 2006 at any time?

1 A No.

2 Q All right. Now after you left Harvard at the end of the
3 spring 2004 term, whatever belongings you didn't take with you
4 to California and whatever belongings you didn't store at your
5 parents' house you gave away, correct?

6 A No, that's not correct.

7 Q All right. Let's have Exhibit 4.

8 (Pause)

9 MR. HORNICK: I'd like to point out to everyone in
10 court included that in referring to this exhibit we are using
11 here what was a rough draft of the transcript. This was the
12 best one that we had available when we submitted this to the
13 Court on June 10th, and, therefore, the page number, when I
14 refer to a page number in the transcript, I'm referring to this
15 number. This is the number that when we had this only in
16 electronic form this is the number that appeared to break the
17 pages. So I am not referring to the page at the bottom of the
18 page that says page referring to the number that appears--

19 THE COURT: And this is the same deposition you talked
20 about--

21 MR. HORNICK: Yes. This is--

22 THE COURT: --we referred to earlier.

23 MR. HORNICK: --same one that I--

24 THE COURT: Okay.

25 MR. HORNICK: --referred to earlier. That's right,

1 Your Honor.

2 BY MR. HORNICK:

3 Q Now during your deposition I asked you the question, "Did
4 there come a time when you moved your personal belongings from
5 Massachusetts to California." Correct?

6 A Yes.

7 Q And then your attorney objected and then you answered, "I
8 mean, I still haven't moved all my personal belongings from
9 Massachusetts to California. But there are specific things,
10 which I guess I needed which I couldn't get again, which I
11 probably moved. A bunch of the stuff I just left there and
12 gave to other people to use." Do you see that?

13 A Yes.

14 Q That was correct testimony at the time, correct?

15 A Yeah. The question that you just asked unless I misheard
16 it was did I give stuff away at the end of the school year.
17 And I mean, I guess like the spring term ended May 28th. And I
18 heard your question as did you give away your stuff that you
19 didn't take to New York then, and the answer that I gave was,
20 no, because I put a lot of stuff into storage because I was
21 planning on coming back to Harvard in the fall. So at the end
22 of the summer when I went back to Harvard and I had all the
23 stuff in the storage, some of that stuff I then took and put in
24 my house in New York and some of the stuff like my mattress I
25 just gave to a friend.

1 Q Well, the next question I asked you was, "Do you have
2 things in storage in Massachusetts?" Correct?

3 A Yes.

4 Q And you answered, "No."

5 A I have nothing in storage now, yeah.

6 Q You have nothing in storage now. So you're saying that
7 you gave away your remaining personal belongings in
8 Massachusetts sometime after you went to California in the
9 summer of 2004?

10 A Yeah, it was in September of 2004.

11 Q When in September of 2004 did you give away your remaining
12 personal belongings in Massachusetts?

13 A It was in between Jennifer and Westbrook.

14 Q All right, so that was--

15 A So in the few day period there when I didn't have a place
16 to go and I went back to the east coast.

17 Q All right. So that few day period between the time that
18 you moved out of Jennifer Way and the time that you moved into
19 Westbrook was around September 11th of 2004, correct?

20 A Yeah. It was, yeah, those few days.

21 Q So it was at that time around September 11th that you gave
22 away your remaining personal belongings in Massachusetts?

23 MR. GUY: Objection. That mischaracterize his
24 testimony. He's done that twice now.

25 THE COURT: Well, if it mischaracterizes his

1 long. I believe that the Court's order was very clear on
2 this issue. I will conclude my remarks with that.

3 Thank you.

4 THE COURT: Thank you. Let me hear counsel for the
5 plaintiff.

6 MR. HORNICK: Well, Your Honor, the defendants'
7 argument is that Mr. Zuckerberg was a citizen of New York on
8 September 2nd, 2004. They never would have raised this argument
9 if it didn't appear that it would have helped them with their
10 diversity argument after the *Pramco* case came out. But the
11 fact of the matter is that Mr. Zuckerberg's citizenship is
12 irrelevant because Mr. Narendra was not a member of ConnectU on
13 September 2nd of 2004.

14 THE COURT: Well, that's another issue.

15 MR. HORNICK: It is another issue, Your Honor.

16 THE COURT: It's not before me now. Do you not wish
17 to argue on the question of his citizenship as of September 2nd?

18 MR. HORNICK: Yes, I am going to argue on that point.

19 THE COURT: Get to that right away please. I'll talk
20 to you about the other issue when you're done.

21 MR. HORNICK: The evidence shows that Mr. Zuckerberg
22 was a California citizen on September 2nd of 2004. He denied
23 New York residency in response to the amended complaint. The
24 Court noted that in the May 1st order, and under the law,
25 citizenship is determined by domicile and domicile requires a

1 physical presence in a place and an intent to remain there
2 indefinitely. The *Garcia* case in the First Circuit supports
3 that and there are plenty of other cases cited in our brief to
4 that affect.

5 Now, when the Court issued its May 1st order, the
6 Court noted that there was no evidence on where these two
7 gentlemen were citizens. But now the Court has a wealth of
8 evidence. There is the June 8th deposition of Mr. Zuckerberg.
9 There's the April 25th deposition of Mr. Zuckerberg. There's
10 today's testimony. There's Mr. Narendra's testimony and
11 there's Mr. Narendra's deposition that was taken last week, all
12 in the record before the Court.

13 THE COURT: Where? Where is this record before the
14 Court?

15 MR. HORNICK: Everything except Mr. Narendra's
16 deposition was submitted to the Court with the brief that we
17 filed on June 10th.

18 THE COURT: Have you asked leave and it has not been
19 granted in which the defendants object - the only evidence
20 before me is the evidence I've heard at this hearing, and
21 that's what I'm going to decide the case on the basis of. I
22 specifically ordered an evidentiary hearing for the specific
23 purpose of avoiding the filing of that type of thing. So the
24 issue is going to be decided on the evidence that's been
25 presented here today. So that's what you really need to argue

1 on the basis.

2 MR. HORNICK: I'd just like to comment, Your Honor,
3 that the order did give us permission to take discovery and
4 after we--

5 THE COURT: It didn't give you permission to file
6 anything. It gave you permission to do discovery and then
7 we're going to have an evidentiary hearing. So I re-iterate, I
8 will decide this case on the basis of the evidence adduced at
9 this hearing and nothing more.

10 MR. HORNICK: I understand that, Your Honor, but
11 *Pramco* changed everything and it was never briefed. It was
12 never briefed before this Court. That's why we filed a
13 supplemental brief and there was new evidence that was
14 developed since the time of our last briefs that were filed,
15 new evidence that was only provided to us when the defendants
16 provided discovery in response to the Court's order.

17 THE COURT: Well, did you present that evidence
18 today?

19 MR. HORNICK: Well, we would have, Your Honor, but we
20 weren't given the opportunity and it is in the brief that we
21 submitted.

22 THE COURT: How were you not given the opportunity?

23 MR. HORNICK: The issue that has come up, two issues
24 have come up since we were able to brief this case.

25 THE COURT: Are you talking about something beyond

1 Mr. Zuckerberg's citizenship as of September 2nd?

2 MR. HORNICK: Yes, I am, Your Honor.

3 THE COURT: Well, I told you I don't want to hear
4 that.

5 MR. HORNICK: I understand.

6 THE COURT: I'll deal with that in a moment. I want
7 to hear your argument on the issue that we had the evidentiary
8 hearing on today.

9 MR. HORNICK: Yes.

10 THE COURT: Which is the issue of which state he was
11 a citizen on September 2nd, 2004.

12 MR. HORNICK: Yes.

13 THE COURT: So, and I'm going to decide that on the
14 basis of the evidence adduced at this hearing. So please argue
15 accordingly.

16 MR. HORNICK: Yes. Well, Your Honor, Mr. Zuckerberg
17 left school effective May 28th of 2004, and although it may be
18 our burden to prove that there's diversity, I believe that
19 under those circumstances, it is the defendants' burden to
20 prove that Mr. Zuckerberg was a student on that date, on
21 September 2nd of 2004. Mr. Zuckerberg decided to stay in
22 California no later than August 13th of 2004. He had spent most
23 of his remaining college money by that time. His friends were
24 there. He thought it would be cool to live in California,
25 which is the land of the startup companies. He had no definite

1 plans of returning to Harvard. He never told Harvard that
2 he would return. He gave away his Massachusetts possessions or
3 got them out of Massachusetts, which, although it may not
4 relate to whether he lived in New York, it does relate to
5 whether he was still a student and whether he would be a
6 student again. He bought a car and he registered it in
7 California or at least he maintained its registration there.
8 He ran the FaceBook.com and FaceBook, Inc. from California. He
9 signed corporate documents relating to FaceBook in California
10 and he signed a lot of them. He provided a California
11 residence on many of those documents or at the very least he
12 did not change the California residence that appeared on those
13 documents when they were put before him for his signature. At
14 least one of those documents he backdated to a time prior to
15 September 2nd of 2004 and he put the address on it himself,
16 Westbrook Avenue. He earned a living in California. He should
17 have filed a tax return in California for 2004. Someone did in
18 fact prepare a tax return for him for the year 2004, but August
19 13th of 2004, he had decided to live in California for an
20 indefinite period of time and he never left.

21 Now, despite what he might have said on the stand
22 about what his intent was to stay in California, under the
23 *Sonio* case, which is cited in the brief that you have, the
24 plaintiff's testimony regarding his intention was inconsistent
25 with his course of conduct as established by the facts, and

1 that's what we have here today. In addition to the
2 examples that I've given of how Mr. Zuckerberg's testimony
3 supports the fact that he was a California citizen by September
4 2nd of 2004, as I said he has lived in California since June of
5 2004 and he has been away from the state for only two to three
6 weeks since that time. Under the *Garcia* case, the place of
7 residence is a factor to support domicile. As of September 2nd,
8 2004, he operated a successful business there that depended on
9 him. He had consolidated the FaceBook's operations in
10 California before that date. He entered into deals with
11 Equinex. He had acquired servers. He entered into deals with
12 internet service providers. He'd establish routers. He had
13 done everything that he needed to do to establish FaceBook Inc.
14 and the FaceBook.com website in California and to keep it there
15 and that's where it stayed.

16 As of September 2nd of 2004, he had no intention or
17 plans for returning to New York. He testified to that affect
18 today. An intention not to return to the former domicile
19 favors the new domicile. There's the *Everett v. Brief* case,
20 which was out of the Southern District of New York. The cite
21 for that is 1995 Westlaw 3563, November 1, 1995, and there's
22 also the *Gordon v. Steele* case, 376 F.Supp. 575, Western
23 District of Pennsylvania, 1974. Mr. Zuckerberg was, when
24 Mr. Zuckerberg was not in California in 2004, he testified that
25 it was his intent to go back there. Domicile is where a person

1 "has his true fixed home and principle establishment and
2 which whenever he is absent he has the intention of returning."
3 That's in the *Valentine* case, First Circuit 1991. In mid
4 September of 2004, he leased an unfurnished home in California.
5 He bought furniture to furnish it. He opened utility accounts
6 in his name. He ran the website and the FaceBook Inc. from
7 that address. He later acquired a second car under a lease in
8 California and he registered that car in California. Leasing
9 an unfurnished home under the *Sanial* case is a factor to
10 support domicile. *Sanial* by the way is 279 F.Supp. at 943.
11 Before and after September 2nd of 2004,
12 Mr. Zuckerberg provided a California address in Delaware
13 corporate documents. He could have provided a Delaware
14 address. He could have provided a New York address, but in
15 Delaware corporate documents, he provided a California address
16 when his address was called for. Even his California lawyers
17 used a California address. He even questioned them about it
18 and they said it was okay. And he thought at the time it
19 didn't matter and it only matters now because they think that
20 they can get out of this case because of a lack of subject
21 matter jurisdiction. Statements of residence on corporate
22 documents are "strong" evidence entitled to significant weight
23 under the First Circuit's decision in *Lundquist*, which is 946
24 F.2d. at 12, and the presumption that he was a student, that
25 student, that presumption would give the presumption that he

1 was, because he was a student he had his parents' domicile,
2 but it's rebutted here because he was not a student on
3 September 2nd of 2004. He had been granted a leave of absence
4 for an indefinite period of time. In Harvard's eyes they say
5 you can stay out as long as you want and you don't ever have to
6 come back or you can come back after I assume 20 years, but you
7 don't have to have an indefinite period of time. So in
8 Harvard's eyes he was on an indefinite leave of absence, and in
9 his own eyes, he says I was there for at least one term, maybe
10 two, an indefinite period of time, but in any event, he was not
11 a student on September 2nd of 2004. He was physically present
12 in another state and he intended to remain there indefinitely
13 as of that date. He barely stayed with his parents from the
14 time he was 15 years old. He rarely visited, then or now,
15 couldn't remember most of his business. By September 2nd of
16 2004, he had virtually no parental support whatsoever. We
17 heard about a few accounts that he had but he never saw those
18 accounts. Most of those were his own money. He managed them
19 online from California, even though the statements were going
20 to his parents' address. Under the *Hamilton v. Accu-tech* case,
21 13 F.Supp. 2d. 366 Eastern District of New York, and the
22 *Glasford v. Schreier* case, 2004 Westlaw 1469469 at 8 Southern
23 District of New York in 2004, the discontinuation of parental
24 support is evidence of change of domicile and to rebut
25 presumption that one is a student. This case is analogous to

1 the *Bair v. Peck* case, District of Kansas, 738 F.Supp.
2 1354. In that case while attending the University of Colorado
3 in Boulder, Bair decided to work at a ski resort in Keystone,
4 Colorado. The presumption that "he would return to Kansas
5 after his studies were completed was disproved", and Kansas was
6 his home state, "the presumption that he would return to Kansas
7 after his studies were completed was disproved by the fact that
8 he stayed and worked in Colorado even without attending
9 school." That's exactly what happened here, and the court in
10 that case said, "when a young adult has taken those steps which
11 objectively show a commitment for an indefinite period of time
12 to become a member of the community in which he or she resides,
13 the courts should not be reluctant to infer domicile," and
14 that's what we have here today. And on the subject of voting,
15 on the subject of voting, *Leon v. Caribbean Hospital Corp.*, 848
16 F.Supp. 317 District of Puerto Rico, 1994, voter registration
17 is indicative of very little for a person who has previously
18 shown no interest in participating in the electoral process.
19 And that's what we have here.
20 Mr. Zuckerberg didn't even know that he registered to vote. He
21 has never voted. He doesn't care about voting. He's
22 participated not at all in the electoral process.

23 In *Stefanik v. Friendly Ice Cream*, District of
24 Massachusetts, 1998, the court said that the mere conclusory
25 averment of voter registration offered for the first time in

1 response to a Motion for Summary Judgment is not adequate
2 evidence to carry plaintiff's burden in the fact of a
3 jurisdictional challenge.

4 And then finally, in *McDevitt v. Square*, District of
5 DC, 1990 Westlaw 91615, voter registration is not conclusive
6 evidence of citizenship for diversity purposes.

7 Thank you, Your Honor.

8 THE COURT: All right. Thank you very much. All
9 right. I'll take that matter under advisement.

10 Now, with respect to Mr. Narendra, what is the
11 plaintiff's offer of proof please?

12 MR. HORNICK: On the issue of citizenship, Your
13 Honor, we are willing to stipulate to the fact that
14 Mr. Narendra is a New York citizen. We actually had offered--

15 THE COURT: No, that's already been done.

16 MR. HORNICK: Oh.

17 THE COURT: No, I'm talking about, you said when you
18 were arguing, you were getting into these other areas, I told
19 you I just wanted you to argue just the question of
20 Mr. Zuckerberg's citizenship as of September 2nd, 2004, and
21 that's been done. Now, I'm getting to this next point you said
22 that you had some evidence with respect to Mr. Narendra that's
23 relevant or you claim is relevant to the issue before the Court
24 of jurisdiction and I want to hear your offer of proof.

25 MR. HORNICK: Yes, Your Honor. Well,

1 Mr. Narendra was not a citizen of New York. I'm sorry, he
2 was a citizen of New York, but he was not a member of ConnectU
3 LLC on September 2nd 2004. When the *Pramco* case came out in
4 January of this year, and not until the *Pramco* came out because
5 it was a case of first impression, it was not the law in this
6 circuit that you looked at the citizenship of the members of an
7 LLC to determine diversity.

8 THE COURT: I want to know what your offer of proof
9 is. Is your offer of proof that he was not a member of
10 ConnectU as of September 2nd, 2004; is that it?

11 MR. HORNICK: Yes, that's right. There's a
12 declaration--

13 THE COURT: Now, what's the evidence that supports
14 that statement?

15 MR. HORNICK: We submitted a declaration on June 10th
16 that says that he was not a member of ConnectU. We submitted
17 declarations of the other, of the two members. There were two
18 members of ConnectU on that date. We submitted declarations of
19 those two gentlemen. That's Mr. Tyler Winklevoss and
20 Mr. Cameron Winklevoss, and in addition, we submitted with the
21 brief that we filed on June 20th some documents and two of those
22 documents are ConnectU's application to register to do business
23 in the state of Connecticut, one of which was filed in August
24 of 2004, the other of which was filed in mid-September of 2004.
25 They identify Cameron Winklevoss and Tyler Winklevoss as the

1 members of ConnectU LLC and we also submitted the August
2 5th, 2005 operating agreement of ConnectU LLC, which although it
3 specifies Mr. Narendra as a member, it is a document that
4 wasn't signed until August of 2005. So the proof is that as of
5 September 2nd of 2004, there was no documentary evidence in
6 existence that Mr. Narendra was a member of ConnectU LLC, and
7 we have testimony from, in the form of a declaration that's
8 been submitted to the Court supporting that and we have
9 testimony of the two members on that date who also say that Mr.
10 Narendra was not a member on that date.

11 THE COURT: All right. Thank you.

12 MR. HORNICK: Uh-huh.

13 THE COURT: All right. What is the defendants'
14 position with respect to this Narendra issue?

15 MR. CHATTERJEE: Your Honor, there are two issues.
16 One is, I'll give you the offer for substantively but the
17 second issue is really a discovery issue related to this. As
18 to the evidentiary issue, I think they're precluded from making
19 this argument.

20 THE COURT: Why?

21 MR. CHATTERJEE: They entered an operating agreement
22 on August 5th, 2005 when Mr. Narendra was named as a member.
23 That agreement on its face is backdated to April 6th, 2004 and
24 the agreement has an integration clause. Because they
25 integrated that, all the prior oral agreements, which are what

1 Mr. Narendra is talking about are irrelevant under the law
2 and we provided citations in the papers we submitted over the
3 last several days. I could provide you with a short memorandum
4 if Your Honor wants it, but it's extrinsic parol evidence that
5 should not be considered by the Court. The operating agreement
6 that says on its face dated as of April 6th, 2004 is the
7 document which governs and it unequivocally states that Mr.
8 Narendra was a member as of that date. That I think is where
9 the question is, but should Your Honor look beyond that
10 evidence, there's a substantial amount of evidence that
11 supports the fact that Mr. Narendra was a member of the LLC at
12 the time the agreement was signed.

13 I'll give you an example. There's a separate law
14 suit in California as Your Honor may be aware where FaceBook is
15 a plaintiff and they named Mr. Narendra as a defendant, and in
16 that case, Mr. Narendra challenged the jurisdiction of the
17 Court and they prevailed. Mr. Narendra is not a party to that
18 case. The Court did allow discovery on the issue of
19 jurisdiction. We served an interrogatory that asked
20 Mr. Narendra to identify who all the officers and directors
21 were of the ConnectU document. Here's what he said,
22 "Interrogatory number 14, Your Honor, Members of ConnectU
23 include Cameron Winklevoss, Tyler Winklevoss, Howard Winklevoss
24 and Divya Narendra as set forward in the limited liability
25 company operating agreement were cited in the interrogatory",

1 and then they quote "operating agreement and found at Bates
2 numbers C"--

3 THE COURT: Did the interrogatory ask any question as
4 to time, as of what time?

5 MR. CHATTERJEE: I'm getting to that, Your Honor.
6 The following sentence is key in this regard.

7 THE COURT: All right, sorry. I thought you'd
8 finished.

9 MR. CHATTERJEE: It says, "And found at Bates number
10 C0011285 through C011335, these persons have all been members
11 since ConnectU was formed." That's what Mr. Narendra said
12 under penalty of perjury when he answered the interrogatory.
13 That was before Your Honor issued the order. Now we received a
14 supplemental response to that interrogatory from just ConnectU
15 yesterday, but, Your Honor, Mr. Narendra has not changed his
16 answer. This is what he said before Your Honor issued the
17 order. If that were not enough, Your Honor, we have a document
18 from September 27th, 2005 and this is an email between Divya
19 Narendra and Cameron Winklevoss cc'ing a woman named Maria
20 Antonelli who is the financial manager for ConnectU. And in
21 that document, Mr. Narendra provides Cameron Winklevoss and
22 Maria Antonelli his address and related information to get tax
23 related documents. This is September 27th, 2005. Again, before
24 Your Honor issued the order. In response to that, a number of
25 tax returns are created. There's a Connecticut composite

1 income tax return. That's the partnership tax return that
2 a group of partners can submit to the state that's identified
3 as being from 4/06/2004 through 12/31/2004. The time that
4 ConnectU was formed through the end of the year 2004, that
5 unequivocally lists Mr. Narendra as a member. We have a K-1
6 that was issued to Mr. Narendra on October 6th, 2005. Once
7 again, the K-1 identifies him as a limited partner or other LLC
8 member. We have the partnership income tax return, Form 1065,
9 again dated 4/06/04 through 12/31/04, and once again, in that
10 tax document it identifies Mr. Narendra as a member during that
11 time period. It was only after Your Honor issued the order
12 that they submitted these declarations for which we've had no
13 opportunity to seek discovery. Every piece of evidence before
14 that where they had to make statements as to who the members
15 were indicated that Mr. Narendra was a member at the time
16 ConnectU was formed as an LLC on April 6th, 2004.

17 Your Honor, I can talk about the details--

18 THE COURT: No, that's all right. Now, tell me what
19 the discovery problem is.

20 MR. CHATTERJEE: The discovery issue, Your Honor, is
21 we actually did seek discovery from Cameron Winklevoss and
22 Tyler Winklevoss as well as a 30(b)(6). We received these
23 documents, these taxes we only received yesterday and they have
24 not let us take any of the discovery related to that because
25 their position was it was outside the scope of Your Honor's

1 order. And so obviously if Your Honor thought discovery
2 was necessary, we really don't think it gives them what the
3 operating agreement says.

4 THE COURT: Why isn't it necessary? I mean, don't we
5 have conflicting evidence on both sides and don't I have to
6 resolve the conflicting evidence, except for the first argument
7 about the, as a matter of law you seem to be indicating because
8 of the integration clause and the backdating that the matter is
9 foreclosed, but if I disagree with that, don't we have a
10 situation where we have conflicting facts that I would have to
11 resolve at an evidentiary hearing?

12 MR. CHATTERJEE: Yes, Your Honor, and we would have
13 to have the chance to take the depositions that we asked for
14 and we probably want to be able to seek additional documents to
15 make sure there isn't, there are further documents that confirm
16 what they said before Your Honor issued your order.

17 THE COURT: Thank you. What's do you, what's the
18 plaintiff's response to integration clause argument?

19 MR. HORNICK: Well, the response, Your Honor, is that
20 as of September 2nd of 2004, that operating agreement did not
21 exist. There was an oral agreement in place at that time.
22 Now, although you might have a later agreement that then
23 operates retroactively, if you're looking at the state of facts
24 on September 2nd, 2004 to determine diversity, there was no
25 operating agreement in existence on that date. There was an

1 oral agreement in existence on that date.

2 THE COURT: But his point is that when you have a
3 written, later written agreement that contains an integration
4 clause, you can't rely on any of the prior oral agreements.

5 MR. HORNICK: Well, Your Honor, I don't think that's
6 the law, and I'll get into that in a moment, but it doesn't
7 make any sense. If there's an oral agreement between two
8 parties that exist for say a five year period of time, and then
9 a written agreement comes along later and it operates into the
10 future and it even operates retroactively, although you might
11 be able to apply it retroactively for certain purposes, the
12 fact is that an oral agreement still existed between those
13 parties for a particular period of time. Under the law, the
14 parol evidence rule is not applicable to a collateral
15 agreement, and this was a collateral agreement. It was not the
16 same.

17 THE COURT: Why do you say collateral? If it covers
18 the same subject matter that's in the later agreement that's
19 written with an integration clause, how could it be said to be
20 collateral?

21 MR. HORNICK: It didn't cover the same information.
22 The operating agreement, the written operating agreement that
23 came in August of 2005, was a very complex document that
24 covered a lot of issues. The oral agreement that existed in,
25 that existed from the time that ConnectU was formed up until

1 the time that they signed a written agreement, which was
2 almost a year and a half later, was an oral agreement that was
3 much simpler. It was all that was needed to--

4 THE COURT: Yeah, but they, the point is that the
5 written agreement, it might have covered a lot more, it might
6 have been a lot more complex, but it did cover the same subject
7 matter as the oral agreement, which is the point the defendants
8 are making.

9 MR. HORNICK: It covered that issue, that's right,
10 Your Honor, but if you were looking at the state of facts, the
11 state of facts on September 2nd of 2004, you cannot say that
12 there was a later agreement because you can only look at what
13 the state of facts were on that date and on that date there was
14 no August 5th, 2005 agreement. It's logically impossible. So
15 if the Court is going to--

16 THE COURT: No, it's more a question of what you're
17 permitted to prove. Let me ask you this. Have you responded
18 to the integration argument?

19 MR. HORNICK: No, Your Honor, it was just submitted
20 to the Court yesterday, I believe it was yesterday, and with
21 respect to the interrogatory answer that was made in
22 California, first of all, Mr. Narendra is no longer a party in
23 that case.

24 THE COURT: It doesn't matter. It's a statement made
25 under oath. It's evidence. I was asking offer of proof of

1 what the evidence is. That would clearly be admissible.

2 MR. HORNICK: ConnectU, which is still in that case,
3 and ConnectU was the one that had members, filed an amended
4 interrogatory response in that case to clarify the answer and
5 makes it clear that Mr. Narendra is not--

6 THE COURT: It doesn't supersede what Mr. Narendra's
7 answer is. If he in fact signed that interrogatory under the
8 pains and penalty of perjury, that is evidence. The fact that
9 ConnectU tried to amend it or did amend it, may have some
10 bearing on that litigation, but it doesn't have any bearing on
11 the fact that the statement was made under oath and it's
12 evidence, evidence on the question.

13 I think what I would like to do is to give you the
14 opportunity to respond to the integration - let me just ask the
15 defendant, is this integration argument the only argument that
16 you say defeats them as a matter of law on this subject of
17 Mr. Narendra being a member or not as of September 2nd?

18 MR. CHATTERJEE: No, Your Honor, there is a second
19 issue. I think there are three issues that are matters of law.
20 The first one is the parol evidence issue.

21 THE COURT: The integration agreement?

22 MR. CHATTERJEE: The integration clause. I'll call
23 it the integration clause.

24 THE COURT: Let's call it the integration issue.

25 MR. CHATTERJEE: The second is given Mr. Narendra's

1 binding statement that he made and the fact that he made it
2 to support a Motion to Dismiss that he prevailed upon, he
3 cannot recant that statement and say that he meant something
4 different.

5 THE COURT: So is it some sort of judicial estoppel?

6 MR. CHATTERJEE: It's judicial estoppel and there's
7 also case law we've cited in our Motion to Strike saying he
8 can't change the sworn testimony that he's given. It says what
9 it says.

10 THE COURT: Okay. That's the sworn testimony
11 argument, and what's the third?

12 MR. CHATTERJEE: And the third one, Your Honor, is we
13 have put in our Motion to Strike, and this was something that
14 came up, that came to life because of this issue is that
15 ConnectU had not registered as a foreign LLC in the state of,
16 in the state of Massachusetts and in order in diversity actions
17 for plaintiff to proceed on their claim in federal court, they
18 have to have registered in the state of Massachusetts as a
19 foreign LLC first. They have not done that. They still have
20 not done that and they in fact cannot do it at this point
21 because the LLC has failed to exist and that is a prerequisite
22 to standing.

23 THE COURT: All right. Thank you. What I'm going to
24 do is give you, Mr. Hornick, an opportunity to respond to those
25 three legal arguments in a brief. We'll take a look at it and

1 decide what we're going to do after. If I find that the,
2 that none of the legal arguments carry the day, I will handle
3 the matter the same way I handled this matter of citizenship.
4 I will give a period of time for discovery on the issue and
5 then we'll have an evidentiary hearing because I think the
6 facts are in conflict, but I do think that we ought to deal
7 with these legal questions first, so what timeframe do you
8 want, Mr. Hornick?

9 MR. HORNICK: Well, Your Honor, I would say three
10 weeks, Your Honor. I think we have a lot of conflicts right
11 around the 4th of July.

12 THE COURT: Yeah, I know, fireworks displays and all
13 that sort of thing. Hold on just a second.

14 All right. July 13th. I'll give you a brief
15 opportunity to reply. How much time do you need?

16 MR. CHATTERJEE: Your Honor, I think we would
17 probably need about two weeks after that to put in our reply.

18 THE COURT: All right, the 27th.

19 MR. HORNICK: Your Honor, may I comment, you
20 mentioned discovery, Mr. Narendra was disposed on this issue
21 for eight hours last Friday. So, you know, they're arguing
22 that they weren't given an opportunity to have discovery and
23 they were given that opportunity.

24 THE COURT: Well, they also, I noticed in the papers,
25 the question of the, you know, the typical type of disputes you

1 people have over the Winklevoss' depositions, and I'm not
2 going to get into that now, but I will give a period of time
3 for discovery if in fact these matters of law do not resolve
4 the issue.

5 All right, thank you, very much and that concludes
6 the proceeding in this case, and we'll do our two new criminal
7 cases.

8 MR. HORNICK: Your Honor, can I ask you, you asked me
9 to think about a sanction earlier.

10 THE COURT: Oh, right.

11 MR. HORNICK: It's very simple.

12 THE COURT: Is the sanction, you know, as things
13 developed which is one of the reasons that I deferred it, the
14 only exhibits that they got in were exhibits that you didn't
15 object to and none of the other exhibits were admitted so what
16 you claim as their late revelation of an exhibit list seems to
17 have not prejudiced you in any way.

18 MR. HORNICK: Well, may I make a suggestion?

19 THE COURT: Sure, you can make a suggestion, but it
20 seems to me as I say where the only exhibits that got in were
21 the ones that you didn't object to, I'm not sure that you're
22 prejudiced, but go ahead.

23 MR. HORNICK: We sought to introduce Exhibit 14,
24 which were Harvard documents, pages HU 151 and 152, which are
25 on the Defendants' exhibit list.

1 THE COURT: Yeah, I saw that. I saw that. Is
2 there any, why shouldn't I admit those documents if they're in
3 your proposed exhibit list? This is 13 and 13(a) where you
4 were complaining about the other--

5 MR. CHATTERJEE: Yes.

6 MR. HORNICK: No 14, Your Honor.

7 THE COURT: No, it was 13.

8 MR. HORNICK: No, it was 13.

9 MR. CHATTERJEE: Well, 13a and 14.

10 THE COURT: Wait a minute, is 14 admitted? Hold on
11 just a second. I mean, I'm just not too happy about playing
12 games where you are objecting to exhibits that you are in fact
13 proposing. 14 is identification only, yes, and that I did see
14 in your exhibit file and 13A, were those in defendants'
15 exhibits? Those are the letters November 20th, 2003?

16 MR. HORNICK: It's Exhibit J, Your Honor.

17 THE COURT: And is that, if those are in your
18 proposed exhibits, is there any reason why I shouldn't admit
19 these for all purposes?

20 MR. CHATTERJEE: They were admitted, Your Honor, but
21 we want to make sure our exhibits get in as well, if that's the
22 end of it. If that's the end of it.

23 THE COURT: Yeah - if both of you are proposing the
24 same exhibit, I will, do you want me to, I'll call it a joint
25 exhibit. I'll call it a neutral exhibit. I'll call it

1 anything you want me to call it, but, you know, I'm just
2 not going to play games. So I'm going to admit 14 and 13A,
3 which I understand are the same as the, your exhibits and let's
4 get them for the record, Mr. Hornick--

5 MR. HORNICK: I and J.

6 THE COURT: I and J. They were our Exhibits 13A and
7 14, and they were their Exhibits I and J. And if you want to
8 take a look a look at 13A and 14 and just verify that they're
9 the same, I'll certainly let you do that. Okay?

10 MR. CHATTERJEE: And, Your Honor, with respect to our
11 Exhibit B, E and K, they will be admitted? They are admitted
12 without objection or further objection?

13 MR. HORNICK: No.

14 THE COURT: Well, wait a minute, I did admit some
15 exhibits that were not objected to.

16 MR. CHATTERJEE: That's right. But they have a
17 continuing objection based on the exhibit list issue and if
18 it's resolved, it's resolve.

19 THE COURT: No, I don't see any continuing, you know,
20 when I asked them do you have any objection and they said no,
21 that goes in, so I'm not going to foot around with that.

22 You took those exhibits out, Ms. Russo?

23 All right, thank you very much and we'll remain in
24 session for the criminal matter.

25 MR. HORNICK: Thank you, Your Honor.

1

MR. CHATTERJEE: Thank you, Your Honor.

2

//

CERTIFICATION

I, Maryann V. Young, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.

July 3, 2006

Maryann V. Young

1 A As of September 2nd?

2 Q Yes.

3 A That wasn't what we were doing. We were there for one
4 term or maybe two and then we were going back to school.

5 Q Now, in the August and September timeframe of September
6 2004, do you recall whether you bounced any checks on your
7 student checking account?

8 A Yeah, I did, when we ran out of money.

9 Q And how were they handled?

10 A What do you mean?

11 Q In other words how were they paid?

12 A Oh, well, when I transferred money from the savings
13 account, then I paid them.

14 Q And what banks handled those accounts?

15 A Which accounts?

16 Q The ones which the non-sufficient funds occurred?

17 A Fleet.

18 Q And what state were they located in?

19 A New York.

20 MR. GUY: Your Honor, if I may have a moment?

21 THE COURT: Sure.

22 MR. GUY: Thank you.

23 (Pause)

24 BY MR. GUY:

25 Q If you'll turn to Exhibit K. This is the sublease at the

1 La Jennifer Way address. Mr. Zuckerberg, why did you
2 sublease a place to stay in California?

3 A For the reasons we discussed before. I mean, I had a
4 couple of friends that were going to be out there for the
5 summer who had internships in California already and I wanted
6 to hang out with them. California, especially, Silicon Valley,
7 it's kind of a special part of the world where--

8 THE COURT: What facts are you trying to elicit that
9 he hasn't already testified to? I mean, he said all that this
10 morning and I heard it.

11 MR. GUY: All right. I'll move on, Your Honor.

12 THE COURT: Please.

13 BY MR. GUY:

14 Q In the summer of 2004, as of that time, had you ever
15 bought a car before?

16 A Before the Ford?

17 Q Yes.

18 A No.

19 Q That was the first car you'd ever bought?

20 A Yeah.

21 MR. GUY: I have no further questions, Your Honor.

22 THE COURT: Okay. Go ahead.

23 MR. HORNICK: Just - thank you, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. HORNICK:

1 Q Mr. Zuckerberg, your counsel asked you about
2 FaceMatch?

3 A Yeah.

4 Q What computer did you write FaceMatch on?

5 A Whichever laptop I had at the time.

6 Q Which one was that?

7 A It was a Dell Inspiron.

8 Q Dell what?

9 A Inspiron was the model of the computer.

10 Q Did that laptop ever crash?

11 A Yes.

12 Q When?

13 A Multiple times.

14 Q I think specifically there were hard drive failures, but--

15 A Did a hard drive in that computer ever crash after you
16 wrote FaceMatch?

17 MR. GUY: Your Honor, this goes outside the scope of
18 my examination and not relevant to the inquiry.

19 THE COURT: How is this relevant, Mr. Hornick?

20 MR. HORNICK: Your Honor, he opened the door on
21 FaceMatch, and I have some follow-up questions which are
22 directly relevant to this witness' credibility, and they're
23 also directly relevant to another motion that's before the
24 Court.

25 THE COURT: I know, except we're not having an

1 evidentiary hearing on that motion at this particular time.

2 I'm going to exclude it. Come on, move on.

3 BY MR. HORNICK:

4 Q Your counsel also asked you what did you need to make the
5 FaceBook website accessible to the student body at Harvard; do
6 you recall that?

7 A Yeah.

8 Q And you said, first you need to program it. That was your
9 answer, do you recall that?

10 A Yes.

11 Q What computer did you program it on?

12 A FaceBook.

13 MR. GUY: Objection, Your Honor.

14 THE COURT: Yeah, it seems to me you're going to this
15 other issue, Mr. Hornick, and I'm not disposed to permit you to
16 do so, so--

17 MR. HORNICK: Well, that was my last question on that
18 issue, Your Honor, but I think it would be helpful to everyone
19 if we could get an answer to that question.

20 THE COURT: No, we're not - no, that's not what this
21 evidentiary hearing is for. If I order an evidentiary hearing
22 on that issue, we'll have an evidentiary hearing on that issue,
23 but I'm not permitting you to do it now. Now, move onto
24 another subject area.

25 BY MR. HORNICK:

1 Q Yes, you testified, Mr. Zuckerberg, that at the end of
2 the spring 2004 term FaceBook had about 29 to 30 schools; is
3 that right?

4 A Yeah.

5 Q And when was that specifically that FaceBook had 29 to 30
6 schools?

7 A I don't know. It was by the time I left Harvard for the
8 end of the spring term.

9 Q So that was when?

10 A By May 28th, I guess.

11 Q All right. And FaceBook continued to grow over the
12 summer; isn't that right?

13 A Yes.

14 Q Did you add schools in June?

15 A I don't now if we added schools in June, but I know we
16 added a few schools over the summer.

17 Q Do you know how many you added over the summer?

18 A No.

19 Q By the end of August of 2004, how many schools did
20 FaceBook.com have?

21 A I don't know exactly.

22 Q Can you give us an estimate?

23 A It was probably less than 50.

24 Q All right. Then you testified that you were expecting to
25 add a lot more schools around the time that people went back to

1 school in the fall, correct?

2 A Yes.

3 Q How many were you expecting to add when people went back
4 to school in the fall?

5 A I don't remember how many we were adding, but I remember
6 that I think we had around 100 after that, maybe more.

7 Q When was that that you added 100 or more?

8 A We were able to do that once we were fully moved into the
9 Equinex facility.

10 Q Now, you signed that Equinex agreement around the 9th or
11 10th or 11th of August, correct?

12 A Yeah.

13 Q When were you fully moved in?

14 A I think it wasn't until maybe the second week of
15 September. There was a bunch of stuff we had to do after we
16 signed that agreement, so that just like gave us the space in
17 Equinex, and then after that we had to go make deals with the
18 internet providers inside of there and set up our routers and
19 stuff because the servers run the actual site itself, but you
20 need other equipment to route internet traffic within your
21 internal system.

22 Q So when was it that you were fully set up with Equinex
23 that you could add those 100 plus schools?

24 A It was in September.

25 Q Can you be more specific?

1 A It was before we moved out of La Jennifer. I remember
2 doing it in La Jennifer.

3 Q So you moved out of La Jennifer around September 11th of
4 2004, correct?

5 A Yeah.

6 Q So you added 100 plus schools to FaceBook sometime before
7 September 11th of 2004?

8 A I don't know if we added 100 but we were at 100 or more,
9 around there.

10 Q And when you - at the end of the spring term 2004, how
11 many registered users did FaceBook.com have?

12 A Again, I don't know the exact number off the top of my
13 head, but I think it was 150,000 or more. I mean, it might
14 have been even 200,000, but I'm not sure.

15 Q And by August 31st of 2004, how many registered users did
16 FaceBook.com have?

17 A I think by that time we definitely had 200,000. Maybe it
18 was even 250,000.

19 Q How many FaceBook.com users were there by the end of
20 September 2004?

21 A I'm not sure.

22 Q Can you provide an estimate? You had another plus schools
23 online by that time. I'm sorry, you had at least 100 schools
24 online by that time.

25 A Yeah, I mean, I don't remember exactly. The only data

1 point that I have is that we had a party when we had a
2 million users and that was like December 1st or December 2nd or
3 sometime around there.

4 Q So between the time you left Harvard at the end of May
5 2004 and early December 2004, you went from 150,000 to 200,000
6 to a million users, correct?

7 A Yes.

8 Q How many schools did you have by the time that you had
9 that celebration party?

10 A I don't remember exactly.

11 Q Can you give me an estimate?

12 A No.

13 Q Now, your counsel asked you as of September 2nd of 2004,
14 if you hadn't gotten funding, would you have stayed in
15 California, and you said, probably not, correct?

16 A Yeah, that's what I said.

17 Q But as of September 2nd of 2004, you had signed a contract
18 with Equinex, correct?

19 A Yeah.

20 Q And you were buying servers, correct?

21 A Yeah.

22 Q Had you bought the servers by September 2nd?

23 A Yeah.

24 Q And you were installing them in the Equinex facility?

25 A Yes.

1 Q And you're entering into those other contracts that
2 you talked about?

3 A Yes.

4 Q And you were getting routers set up, right?

5 A Yes.

6 Q This was all by September 2nd?

7 A Yes.

8 Q How much of your money that was put aside for school that
9 you have left by September 2nd?

10 A I already said, I don't know the exact number.

11 Q Do you know how much money was put aside for you for
12 school?

13 A I don't know the exact number there either.

14 Q Do you know how much of that money you spent during the
15 summer of 2004?

16 A I don't know exactly.

17 Q Was anyone else contributing money to support FaceBook.com
18 as of September 2nd, 2004?

19 A So on that date you mean?

20 Q On or before that date.

21 A How much before?

22 Q Up until September 2nd of 2004, who else contributed to
23 FaceBook.com?

24 A Eduardo Saverin.

25 Q How much did he contribute by September 2nd?

1 A I'm not sure. It might have been \$10,000 or somewhere
2 in that order. I'm not sure off the top of my head.

3 Q How were you paying FaceBook's expenses as of September 2nd
4 of 2004?

5 A I don't remember. I mean, by that point, I don't know if
6 we had the bank account yet. I'm not sure. I don't know, I
7 was probably paying for it from my personal account.

8 Q Was there anywhere else that money could have been coming
9 from as of September 2nd to pay the FaceBook's expenses?

10 A Well, it was definitely coming from me, but I'm not sure
11 which account specifically it came from.

12 Q But other than you, was money coming from anyone else or
13 any other source to pay FaceBook expenses on or before
14 September 2nd of 2004?

15 A Not besides Eduardo.

16 Q Was Eduardo contributing any money to FaceBook expenses in
17 August of 2004?

18 A I don't think so.

19 Q Was he contributing any money to FaceBook expenses in July
20 of 2004?

21 A I think that's about the end, yeah.

22 Q Had you spent all of the money by September 2nd of 2004
23 that Mr. Saverin contributed up to July of 2004?

24 A Yeah.

25 MR. GUY: Your Honor, I interpose an objection as to

1 the relevance of this.

2 THE COURT: Overruled.

3 A And the reason why I'm answering yes is because it's not,
4 it wasn't as if he set aside a sum of money for us to use. I
5 believe, although I don't remember because this was a long time
6 ago, he paid for specific things so then at some point he
7 stopped paying for specific things.

8 Q And when did he stop paying for specific things?

9 A Sometime in July.

10 Q July of 2004, right? July of 2004, yeah?

11 A Yeah.

12 Q Okay. When did you get your first funding from an outside
13 source?

14 A It was September.

15 Q When in September of 2004?

16 A It was pretty early.

17 Q How early?

18 A I don't remember the exact date. It was I think while we
19 were still at La Jennifer.

20 Q So sometime before September 11 of 2004, you got your
21 first Venture funding, correct?

22 A Yes.

23 Q And how much was that?

24 A The primary investor was a half a million dollars and then
25 there was some other ones. I don't know, maybe the total was

1 \$550,000.

2 Q When did you know you would be getting that money?

3 A I guess you don't really know for certain until you have
4 it and the deal closes, but I was pretty certain by
5 mid-August or late August.

6 Q So by mid to late August of 2004, you knew that you would
7 be getting, or you believed that you were going to be getting
8 about \$550,000, correct?

9 A Yeah.

10 Q And you had a deal with Equinex in California, correct?

11 A Yes.

12 Q And you were buying servers and installing them, correct?

13 A Uh-huh.

14 Q And your testimony is still that if you hadn't gotten that
15 money you would have gone back to Harvard; is that right?

16 A Yeah.

17 Q What would you have done with all those servers at
18 Equinex?

19 A Well, around that time we also had someone who joined us
20 as an operation's person just to manage the servers. So I mean,
21 you need someone to be managing the servers regardless of where
22 you are, I mean, if you want to spend time doing other things
23 because that's a pretty big job itself. The question is just
24 are you employing some other service that will do it for you
25 like manage.com or Savvy was supposed to or are you taking on

1 that burden by yourself. So, and by the time we were at a
2 specific scale, we had to do it by ourselves, but it's not like
3 we weren't working with someone to have the stuff managed
4 before that. Even while we were at school we were working with
5 Manage and then, Savvy and they had our servers and they were
6 in different places and we weren't there. I mean, the whole
7 time that we were doing that we were dealing with money and
8 advertisers and the scale was smaller. We didn't have Peter
9 Theil giving us a half a million dollars, but we had, you know,
10 Eduardo contributing on the order of \$10,000 and myself. So I
11 mean, it wasn't a fundamentally different thing at that point.

12 Q So are you saying that if you hadn't gotten the Venture
13 funding by September 11th, that you would have gone back to
14 Harvard but that FaceBook would have continued without you in
15 California?

16 A I mean, the operations, the technical operations and the
17 site itself were definitely staying in California, but I mean,
18 it's tough for me to say exactly what would have happened, but
19 if I had gone back then probably would have meant that everyone
20 else went back too, so the programming of the site would have
21 resumed from Harvard just as it had been in the spring.

22 Q She'd already told Harvard you weren't coming back for the
23 fall?

24 A Yeah, I guess that's true.

25 Q Now, you mentioned something before about advertising, did

1 you have any advertising revenue before September 2nd of
2 2004?

3 A Yeah.

4 Q So, besides the money that you were putting into the
5 FaceBook and besides the money that Mr. Saverin put into the
6 FaceBook, you had some advertising revenue coming in as well,
7 correct?

8 A It was a very small amount.

9 Q How much?

10 A I don't remember exactly but it wasn't very substantial.

11 Q Were there any other sources of revenue for the FaceBook
12 before September 2nd that you haven't told us about?

13 A No, I think it was that.

14 Q Now, your counsel asked you several times about your
15 intention to stay in California as of September 2nd of 2004 and
16 twice you said, I may stay for a term, that your intent was to
17 stay for a term or maybe two. Do you recall saying that?

18 A Yes.

19 Q You said your intent was to stay for a term or maybe two.
20 So isn't it true that if that was your intent at that time,
21 that you had an intent to stay in California for a period of
22 time that was indefinite?

23 A No. I mean, I think that, when I think indefinite I think
24 that there's no certain closure to the period at all, but I
25 mean, this was one thing. We're staying for the fall term, and

1 then if it spills over and we're not ready to go back, then
2 at that point we'll also decide to take the spring term off.

3 Q Was it ever in your mind, I should say, was it in your
4 mind at that time that if the site was still going well and
5 when that time comes around to decide whether we're going to
6 take a third term off, we may take that third term off?

7 A It wasn't really about the site doing well. It was about
8 things scaling and not having an - and not having enough time
9 to do school too. So I mean that one of the things that I got
10 pretty wrong was that I figured it would stabilize at a certain
11 point and that regardless of how big it was, it would just get
12 to a point where it's like I can run it as long as it wasn't
13 growing at a massive rate and changing at a massive rate, and I
14 also could go back to school and that was the plan, but I mean,
15 that was wrong. It's just always growing and changing and I
16 would not have time to be in school right now.

17 Q Was it in your mind as of September 2nd that when it came
18 time to decide whether to go back to school for that third term
19 or whether to take a third term off, that you may not be able
20 to do so because the site was still demanding too much of your
21 time?

22 MR. GUY: Your Honor, this is an ambiguous question
23 as to time. If it's as of September 2nd, it should be stated
24 for the record.

25 THE COURT: Well, I thought that's how he prefaced

1 his question. Is that what you are asking about, sir?

2 MR. HORNICK: Yes, sir.

3 THE COURT: All right. Answer the question as of
4 September 2nd, please?

5 A Yeah, it just wasn't a question. I mean, just like when I
6 left the end of the spring term in 2004, I could have been
7 thinking about, you know, like what happens if I end up staying
8 in California after the summer, but I just wasn't. You know,
9 and I mean, the plan here was that we were going to take the
10 fall term off and then there's a chance that if it spilled
11 over, then we'd end up taking the spring term off, but I didn't
12 even think that was likely, and I definitely wasn't thinking
13 beyond that.

14 BY MR. HORNICK:

15 Q Now, you've been asked on several occasions when you came
16 to this decision to stay in California for the full term,
17 correct?

18 A Yeah.

19 Q You've never been able to say where you were at the time,
20 correct?

21 A I mean, I pretty much said that I was probably in the
22 house at La Jennifer.

23 Q But you don't know who exactly you were with at the time,
24 correct?

25 A That's true.

1 Q You don't know exactly when the decision was made,
2 correct?

3 A Yeah.

4 Q So how can you say that you reached a definite decision at
5 a definite time that you were going to take the fall term off
6 and at most the spring term and then you were definitely going
7 back to Harvard?

8 A I mean, that was just the intent.

9 Q Did you ever discuss that intent with anyone at the time?

10 A I don't know.

11 Q Do you recall specifically at that time having the intent
12 that you would take no more than two terms off?

13 A I wasn't thinking about it like that. My intent was to
14 take fall term off and the, you know, perhaps spring if it came
15 to that, but that was very unlikely. I mean, it's like if I
16 had, you know, did I decide to go back to Harvard in the fall
17 when I left Harvard in the spring thinking that I would, no.
18 That just was my intent.

19 Q Your counsel started to ask you earlier about your
20 driver's license, which was your, the one that wasn't admitted,
21 the one that didn't have an expiration date on it, and he asked
22 you if you have it, and you said, I think I still have it. Why
23 did you say you think you still have it?

24 A Because when I got my California driver's license, the
25 people in the DMV punched a hole in it, and I remember playing

1 with the hole punch card at my desk at the office, so,
2 unless I threw it out or something I would still have it there.

3 Q When did you get your California driver's license?

4 A I guess that would be a few months ago or two months ago.

5 Q Now, that driver's license that got the hole punched in
6 it, did you have to apply for it or did they simply issue it
7 automatically after you turn 21 years old?

8 A I don't remember.

9 Q Do you remember applying for that, for a new driver's
10 license when you turned 21?

11 A No.

12 Q When your, your counsel asked you about a document and he
13 said, why use the Dobbs Ferry address and you said again as you
14 said during the deposition, it was place I always could go back
15 to. Do you recall saying that?

16 A Yeah.

17 Q You viewed our parents' place as a place to go back to but
18 not the place that you live, correct?

19 A I mean, that's not what I said.

20 Q Why would you say it's a place you could go back to if it
21 wasn't actually a place where you live?

22 A I mean, when I'm done here, I'm going to go back home to
23 California now.

24 Q You should have before you - can you put before you,
25 Mr. Zuckerberg, Exhibits 27 and 29, which have already been

1 admitted into evidence.

2 A 27 and 29?

3 Q 27 and 29, they're the Savvy invoices and the Silicon
4 Valley Bank statements.

5 A Or 29?

6 Q 27 and 29. Now, we've established that these documents
7 are addressed to the Dobbs Ferry address, correct?

8 A Yeah.

9 Q Did you receive these documents?

10 A Directly?

11 Q In anyway?

12 A I don't remember. My parents may have forwarded them onto
13 me.

14 Q They forwarded them to you in California, correct?

15 A That's where I was, yeah.

16 MR. HORNICK: Excuse me, Your Honor, what I'm doing
17 is we heard about these financial statements, and I didn't
18 really know that this was going to be brought up today because
19 of the exhibit list, so I'm trying to identify certain
20 testimony from the deposition that I'd like to ask about. If
21 it would be more to the Court's convenience, we can take a
22 short break so I could--

23 THE COURT: I've got to do two criminal matters, so
24 why don't we take a 20 minute break and resume at 3:30 in this
25 matter.

1 (Recess)

2 THE COURT: All right. We're resuming the civil
3 matter at this point in time, and we will have the continuation
4 of your redirect examination of the witness, please.

5 MR. HORNICK: Thank you, Your Honor.

6 BY MR. HORNICK:

7 Q Mr. Zuckerberg, your counsel asked you about the Citibank
8 Account, the Citibank card that you have. Do you recall that?

9 A Yeah, he asked me what credit cards I had.

10 Q During your deposition you testified that you rarely put
11 anything on that card, correct?

12 A Yeah, that's correct.

13 Q And you never see the statements to that account?

14 A Yeah. I haven't seen them.

15 Q And you testified that your father pays the bill for that
16 credit card?

17 A Yeah.

18 Q And that if you charge something on it you usually pay him
19 back, correct?

20 A Yeah.

21 Q You were also asked about the Smith Barney account.
22 That's the account that you have with your mother's name on it
23 as well, correct?

24 A Yes.

25 Q And that account is the one that holds the money that

1 they've put aside for your college education, correct?

2 A Yes. There are like a few accounts with Smith Barney. I
3 mean, I think that it's, like I just group that as one thing.

4 Q At least one of those Smith Barney accounts is the one
5 that has your college money in it, right?

6 A Yes.

7 Q Is there any other Smith Barney account that you know of
8 that has--

9 A None that I know of but I mean, I think that there are
10 some stocks and things for me and I think that's a different
11 kind of account than one that just holds cash, right?

12 Q I don't know. Do you know?

13 A I don't, but I assume it is so that's why I just said what
14 I did.

15 Q You never see these statements for those accounts, those
16 Smith Barney accounts, correct?

17 A I mean, I haven't, no.

18 Q When you go to New York, you don't ask to see those
19 statements, correct?

20 A That's correct.

21 Q And when you go to New York you don't ask to see the
22 statements for the Citibank Credit Card, correct?

23 A That's correct.

24 Q Nobody sends you those statements, correct?

25 A No. I don't have the Citibank card anymore.

1 Q Pardon?

2 A I don't have that card anymore.

3 Q When did you get rid of it?

4 A I don't know.

5 Q Can you give us an estimate of when you got rid of it?

6 A No.

7 Q Was it during 2004?

8 A I'm not sure.

9 Q Was it after 2004?

10 A I'm really not sure.

11 Q Did you still have it in 2004?

12 A At some point during 2004, yes.

13 Q Did you still have it on December 2nd of 2004?

14 A I think so.

15 Q So sometime between September 2nd and the end of 2004, you
16 got rid of that account, correct?

17 A I don't--

18 MR. GUY: Objection. It mischaracterizes his
19 testimony.

20 THE COURT: He testified he didn't remember when he
21 stopped the account, Mr. Hornick.

22 BY MR. HORNICK:

23 Q Yes. Do you remember when you stopped the account?

24 A No.

25 Q No. The Fleet account that was a student checking

1 account, correct?

2 A Yes.

3 Q And the money that was in that account was your money,
4 correct?

5 A Yes.

6 Q Money that you earned in jobs that you worked, correct?

7 A Yes.

8 Q You were the one that deposited the money into that
9 account, correct?

10 A It may have been direct deposited. I'm not sure. I mean,
11 originally there was also some money put in there either from
12 the Citizens Bank account or--

13 Q Citizen Bank account was the one that you had while you
14 were at Exeter?

15 A Yeah.

16 Q So when you got rid of the Citizen Bank account when you
17 left Exeter, some of that money might have been transferred
18 into the Fleet account, right?

19 A (No verbal response given)

20 Q Can you answer audibly yes.

21 A Yes.

22 Q There were some times when the Fleet account had
23 insufficient funds, correct?

24 A Yes.

25 Q And I asked you during the deposition if your mother and

1 father sent those notices to you or did they call you and
2 your answer was no; is that right?

3 A Yeah. I don't remember if they did. I don't think they
4 did.

5 Q The way you knew that there was insufficient funds in that
6 account was because you tracked that account online, correct?

7 A Yeah, during that time.

8 Q What time was that?

9 A Over the summer when I had hardly any money.

10 Q The summer of 2004?

11 A Yes.

12 Q And when you saw that the account was low you transferred
13 money from a different account into that account, correct?

14 A Yes.

15 Q And you did that from California?

16 A I was in California, yeah.

17 MR. HORNICK: I have no further questions, Your
18 Honor, but you asked me to think about the sanction, right?

19 THE COURT: Not yet.

20 MR. HORNICK: Okay.

21 MR. GUY: No further questions, Your Honor.

22 THE COURT: All right. Just me ask a couple of
23 questions, if I may.

24 The lease on, I think it was Jennifer Street or
25 Avenue ended on September 10th according to the documents before

1 me of 2004. Does that comport with your recollection?

2 THE WITNESS: Confirm my recollection of?

3 THE COURT: When the lease on Jennifer ended?

4 THE WITNESS: Yeah, I'm sure it ends at whatever date
5 it says it ends.

6 THE COURT: And it appears from Exhibit 26 that you
7 signed the lease for the, for the Westbrook Avenue address on
8 the same date, September 10th, 2004. Do you want to - maybe we
9 haven't established that that's your signature. Yeah, I think
10 you did.

11 THE WITNESS: Yeah, I--

12 THE COURT: Do you have 28 in front of you or could
13 someone put 28 in front of the witness, please.

14 MR. HORNICK: You mean 26, Your Honor?

15 THE COURT: 26. Yes, I do mean 26, sorry.

16 THE WITNESS: Are you talking about the Westbrook?

17 THE COURT: Yes.

18 THE WITNESS: Yeah.

19 THE COURT: And you see the last page of that
20 agreement, it says tenant on the upper right-hand corner and I
21 believe - well, let me ask you, is that your signature?

22 THE WITNESS: Yeah, it's my signature but nothing
23 else written there is mine. So I didn't put that date there.

24 THE COURT: Well, are you saying that that's not the
25 date on which you signed it?

1 THE WITNESS: I'm saying I'm not sure.

2 THE COURT: All right. Now, when did you go to - if
3 the lease ended with Jennifer on the 10th, when did you, when
4 did you go to New York?

5 THE WITNESS: Then or the 11th. I'm not sure. We may
6 have ended up staying in, at La Jennifer for an extra day.

7 THE COURT: All right.

8 THE WITNESS: Yeah, but that's when I went to new
9 York.

10 THE COURT: Did you at the time that you went to New
11 York know that this lease had - had you signed the lease at the
12 time you went to New York for Westbrook?

13 THE WITNESS: I don't think so.

14 THE COURT: At the time you went to New York, had
15 you, did you know that you were going to be renting at
16 Westbrook?

17 THE WITNESS: I don't think I knew that we were going
18 to be renting at Westbrook, but I knew that we were looking for
19 a place. Sean was taking care of that mostly.

20 THE COURT: Do you recognize Sean's writing? Is
21 that, is he the one that signed it and put the printing on the
22 form?

23 THE WITNESS: It looks like there are a few different
24 handwritings than the one next to Sean.

25 THE COURT: Well, you see his signature?

1 THE WITNESS: Yeah, I think the--

2 THE COURT: Is that his signature?

3 THE WITNESS: Yeah, that's his signature and it's his
4 handwriting I think below that, and I think that's the same
5 handwriting for me.

6 THE COURT: Okay.

7 THE WITNESS: Yeah.

8 THE COURT: All right. So you're saying that you
9 were unaware that he had signed the lease on September 10th, at
10 least Mr. Parker had?

11 THE WITNESS: Yeah, that's what I remember.

12 THE COURT: The lease was for a year?

13 THE WITNESS: Yes.

14 THE COURT: Was it your intention to stay for the
15 full amount of the lease?

16 THE WITNESS: No, I mean, what had happened was it
17 was difficult for us to find a place both because it's sort of
18 odd to rent a house like that for month to month and also
19 because we were really young hardly anyone wanted to rent to us
20 or really no one wanted to rent to us. So I mean, the reason
21 why Sean was taking this process is because he was a few years
22 older and had more experience and like in the Valley, but the
23 reason why we ended up taking a year lease is because that's
24 all we could find at that point.

25 THE COURT: All right. Now, refresh my recollection,

1 Sean, how old was he?

2 THE WITNESS: I think he was 24. He turned 25 in
3 December that year.

4 THE COURT: And what was, he had come from where?

5 THE WITNESS: He was in the Valley when we got there.
6 I had met him one time before when I was in New York before
7 coming out to California and then I just kind of bumped into
8 him randomly once I was out in California.

9 THE COURT: And when was that during the summer?

10 THE WITNESS: When I bumped into him randomly?

11 THE COURT: Yeah.

12 THE WITNESS: That was like in the first week that I
13 was out there.

14 THE COURT: Did he come to join you and live at
15 Jennifer?

16 THE WITNESS: Yeah.

17 THE COURT: And when was that roughly?

18 THE WITNESS: That was in probably the first week or
19 so that we were out there.

20 THE COURT: And again what role did he play with
21 respect to the FaceBook?

22 THE WITNESS: In the beginning he just advised me on
23 a bunch of stuff and then he introduced me to Peter Theil and
24 then got that investment lined up and then he formerly joined
25 as president after we incorporated.

1 THE COURT: Which was during that summer?

2 THE WITNESS: Yes.

3 THE COURT: What was his intention with respect to
4 remaining in California or not if you know?

5 THE WITNESS: I'm not sure. I mean, he had been in
6 California for a while so I think that he may have intended to
7 stay or he probably just wasn't thinking about it that much. I
8 mean, he traveled a lot.

9 THE COURT: Had he graduated from college?

10 THE WITNESS: He never went to college.

11 THE COURT: He never went to college, sorry.

12 THE WITNESS: He was one of the co-founders of
13 Napster (ph), which was going to have to write before he went
14 to college, yeah.

15 THE COURT: All right. Thank you.

16 Okay. Thank you, you may step down.

17 (Witness excused)

18 THE COURT: Next witness please.

19 MR. HORNICK: There are no other witnesses, Your
20 Honor.

21 THE COURT: Okay. Does the defense have any
22 witnesses?

23 MR. GUY: None, Your Honor.

24 THE COURT: All right. I'll hear brief, well, first
25 of all, Ms. Russo, would you take out of here the exhibits that

1 were admitted for the defense and then return the book
2 without those exhibits to counsel for the defendant.

3 I'll hear the arguments and I'll hear the defendants
4 first.

5 MR. GUY: Your Honor, we're here today on the limited
6 purpose of diversity of citizenship. We have in this situation
7 two citizens of the state of New York. One very quickly
8 admitted he was a citizen and has so stipulated. There's no
9 dispute as to that. With respect to Mark Zuckerberg, you have
10 an individual in which all the evidence points to and should be
11 found to be a citizen of the state of New York. The burden of
12 proof is on the plaintiff here, ConnectU, to prove that Mark
13 Zuckerberg is a citizen of a different state than where he grew
14 up, where he was originally domicile.

15 With respect to the burden, they have a burden of
16 moving forward with a preponderance of the evidence. They have
17 not done so. Furthermore, at the time of the filing of
18 September 2nd, 2004, there would have been and Mark Zuckerberg
19 would have enjoyed two presumptions under the law. One of them
20 is a presumption of continuing domicile where one had already
21 been established and that was in New York. He was entitled to
22 that presumption in this situation. It was a long established
23 domicile. He lived at the same address his entire childhood.
24 He always returned there. He never had any intent when he went
25 away to college to either develop residence in New Hampshire or

1 in Massachusetts.

2 Furthermore, I would argue that for this particular
3 individual you have someone that in the summer of 2004 was 20
4 years old. He finished two years of college at Harvard. He
5 had every intention of returning when he went to California in
6 the summer. Events that summer led him to believe that he
7 should explore and have some fun as he said and should also
8 continue with the FaceBook during the fall. He took a leave of
9 absence at that time. Everything is consistent with
10 maintaining a New York domicile as of September 2nd, 2004.

11 The second presumption is that he was a student at
12 the time and again, as we see many, many students, we see them
13 go to school, we see them--

14 THE COURT: What presumption are you talking about
15 now?

16 MR. GUY: The presumption that he was a student at
17 the time, the time his status, we believe, was as a student.
18 He was away from his home. There's no presumption that there's
19 any--

20 THE COURT: Where do you get this presumption that
21 he's a student? I mean, I know you can argue from the evidence
22 that he was but where's the presumption?

23 MR. GUY: The presumption is that as a student he
24 would be entitled to maintain his domicile as his home. So for
25 instance there was no changing domicile when he's moving from

1 Massachusetts for example or New Hampshire into--

2 THE COURT: Is that a presumption when he's not
3 actually in school?

4 MR. GUY: Well, it means that when he was at
5 Massachusetts--

6 THE COURT: No, I understand that, but we're talking
7 about September of 2004.

8 MR. GUY: Yeah.

9 THE COURT: Are you saying that there's some
10 presumption there that because he's taking a break from school
11 that there's a presumption that the domicile that he had when
12 he was in school remains the domicile and, if so, what's the
13 legal basis for saying that such a presumption exists as
14 opposed to - I don't recall there was a use of the word
15 presumption.

16 MR. GUY: Yes.

17 THE COURT: I mean, you can argue what the evidence
18 says, but you're saying that there's a presumption and I don't
19 get it.

20 MR. GUY: All I'm saying with the issue of
21 presumption is that while he was at Exeter and while he was at
22 Harvard there is a presumption that he remain a New York
23 citizen. So you don't have this idea of an intervening
24 citizenship in either New Hampshire or Massachusetts.

25 THE COURT: I understand that argument, yes, thank

1 you.

2 MR. GUY: And, again, I'll keep my remarks brief,
3 registration to vote is a weighing factor. In this situation
4 we have shown that he is registered to vote in Westchester
5 County, New York, that he did register. We've seen his
6 handwriting on the card. He did not remember that during his
7 deposition. He has not changed that. The evidence indicates
8 that he has maintained a New York driver's license throughout
9 this entire period of time. Furthermore, the important
10 accounts that he maintained for even the FaceBook and himself
11 he maintained in New York. Those important accounts include
12 Silicon Valley Bank. They also include the important accounts
13 that he had for his own student checking, for his own savings
14 account and for his brokerage account. All of which were out
15 of New York. In addition, important contracts that he entered
16 into on behalf of the FaceBook, those important contracts for
17 the servers all had Dobbs Ferry addresses on them, New York
18 addresses. So for important addresses, he used his permanent
19 address. It's the same address he indicated when he applied to
20 Harvard as his permanent address. So given this evidence, your
21 Honor, as of September 2nd, 2004, the evidence clearly shows
22 certainly a sufficiency to defeat the preponderance of evidence
23 the plaintiffs must show and defeat their burden. That
24 domicile has not changed.

25 Your Honor, I know we've been here at this all day

18/4/4

1 A Well, it was sort of something people at Harvard know,
2 but I mean the best example was like at some point Bill Gates
3 came and gave a speech to some of the people in the CS
4 department where he was like, I encourage all of you guys to
5 take some time off and do something at some point because the
6 great thing about Harvard is they let you take as much time off
7 as you want. You know, if Microsoft ever falls through, I'm
8 going back to Harvard.

9 Q And Bill Gates said that?

10 A Yeah.

11 Q And you were in the CS department at Harvard at that time?

12 A Yeah, I was concentrating in computer science.

13 THE COURT: All right, we're going to take a lunch
14 break. We're going to reconvene in this case at two. I'll be
15 reconvening for criminal matters at 1:30. You can leave your
16 stuff on the table, if you just sort of push it to the front so
17 that the criminal attorneys just have a little space. All
18 right, 2:00.

19 THE CLERK: All rise.

20 (Recess)

21 //
22 //
23 //
24 //
25 //

A F T E R N O O N S E S S I O N

1
2 THE COURT: Continuing the evidentiary hearing in
3 ConnectU LLC case v. Mark Zuckerberg. Mark Zuckerberg remains
4 on the stand and I remind you, Mr. Zuckerberg, you continue to
5 be under oath and the questioning may resume.

C R O S S E X A M I N A T I O N R E S U M E S

6
7 BY MR. GUY:

8 Q Mr. Zuckerberg, I want to return to the summer of 2004
9 briefly, and with respect to the others that were in the house
10 with you at La Jennifer Way and my question is, what did the
11 others do in the fall of 2004?

12 A Sure. Just to go through who the others were again, it
13 was Dustin Moskovitz, Andrew McCollum, Steven Dawson Haggerty,
14 Derek Shultank, Adam D'Angelo, and then Sean.

15 Q Okay. In going through that list, all of those except for
16 Sean were students at U.S. University; is that correct?

17 A Yeah.

18 Q All right. Can you go through those and describe what
19 their decision was with respect to going back to school in the
20 fall of 2004.

21 A Sure. So, Dustin chose to stay for a term and ended up
22 staying out there with me. Andrew McCollum chose to stay for a
23 term, ended up returning to school at the end of the spring
24 term that year. Eric Shultank and Steve Dawson Haggerty both
25 went back to school and are still at school.

1 Q Went back to school in the fall of 2004?

2 A Yeah. Adam D'Angelo went back to school in the fall of
3 2004, went to school for that year and then took a term off and
4 worked at FaceBook in the fall of 2005 and then went back to
5 school after that, and that's everyone. Sean never went to
6 school.

7 Q Now, with respect to your decision, when you first went
8 out to California, was it your intention to drop out of
9 Harvard?

10 A No, I wasn't even thinking about it.

11 Q All right. By the end of the summer of 2004, was it your
12 intent to drop out of Harvard?

13 A No.

14 Q What was your intention at the end of the summer of 2004?

15 A Just like I was saying before we took a break, we were
16 growing the site pretty rapidly and at the end of the, at the
17 end of the spring term we were around 30 schools, maybe 28 or
18 29 or so, and then over the course of the summer we launched or
19 we prepared for the launch of a bunch of new schools, which was
20 then made possible once we moved into the Equinex facility and
21 had more server capacity and we figured that we could go back
22 to school at that point but that it would pretty difficult and
23 that our time would be pretty divided between working on
24 FaceBook and working on school work, even worse than it had
25 been the previous spring term. So we figured that we'd be

1 better off taking a term off and seeing how that went and
2 we assumed that at the end of, at the end of that term that
3 we'd be in a better position and that we could probably like
4 stabilize stuff enough to go back to school or if not, then
5 definitely by the end of that spring term.

6 Q All right. I hoped this would be working by now.

7 MR. HORNICK: Your Honor, we're going to make an oral
8 Motion to Strike all exhibits that the defendants wish to
9 introduce today.

10 THE COURT: They haven't offered evidence, exhibits
11 yet, so why don't you wait--

12 MR. HORNICK: I'll wait.

13 THE COURT: --until that happens, please.

14 BY MR. GUY:

15 Q If you'd return to that Exhibit EE, the binder.

16 MR. HORNICK: Your Honor, I'd like to raise that
17 motion now.

18 THE COURT: What's the basis?

19 MR. HORNICK: We had an agreement with counsel to
20 exchange exhibit lists yesterday. In fact, it was defendants'
21 counsel's idea to exchange exhibits lists and now I would like
22 to hand up to the Court the exhibit list that was provided to
23 us as the basis on which we could prepare for this hearing
24 today. This is 11 pages of, I can only describe it as garbage.
25 It is totally uselessness. It did not give us fair notice of

1 the exhibits that we were going to be, having to deal with
2 today. There's even one letter in there from counsel to me
3 that doesn't provide the date and there are catchalls at the
4 end that include every document in this case. We did not have
5 a fair opportunity to prepare with respect to the exhibits that
6 the defendants might raise. So I would move that they not be
7 permitted to enter any exhibits today and as an alternative, I
8 would move that their Motion to Strike the declarations that we
9 filed be denied, and that our Motion for Leave to File a
10 Supplemental Brief be granted.

11 MR. GUY: Your Honor, may I be heard?

12 THE COURT: Yeah, sure.

13 MR. GUY: The exhibit list as you will see includes a
14 letter in the, a letter in the one column. The exhibit numbers
15 here in the left-hand column are as we described to them. We
16 were attempting to remove duplications and all of the exhibits
17 that we'll be using today are on the first two pages, Your
18 Honor.

19 MR. HORNICK: Your Honor, we had no way of knowing
20 that. I mean, this is 11 pages of documents full of
21 duplications which they admitted in an email that they sent us.
22 We can make no use of this whatsoever. If you look at page 7,
23 for example--

24 THE COURT: He's only going to introduce the exhibits
25 on the first two pages, so why should I look at page 7?

1 MR. HORNICK: Well, Your Honor, this is a list
2 that they provided us yesterday. They have provided a much
3 more circumscribed list today when we started. So yesterday
4 when we were supposed to be trying to figure out what we were
5 going to be doing today preparing for this, we had this whole
6 document that we had to deal with and there was no way that we
7 could know which documents on this list were going to be used
8 and which ones weren't going to be used.

9 On Exhibit 7, for example, there is a letter from
10 Monte Cooper to John Hornick. It gives no other identifying
11 information for example, and there are other examples in here
12 as well. I just don't see how this exhibit list was fair
13 notice of the exhibits that would be considered today.

14 MR. GUY: Your Honor, the exhibit list in our
15 agreement was the exhibits were to be on the list and
16 pre-marked and the ones that are pre-marked are the ones that
17 we are using today. We haven't added anything to that list.
18 That's in contrast, I believe, what counsel has done today,
19 which they told us at the beginning of today are the two
20 exhibits that weren't on their list. This was an idea that we
21 had to try and make sure that we had fair warning. We did
22 attempt to pre-mark the exhibits there. They never gave us any
23 objection to this yesterday. They called up and said your list
24 is too long. We said, well, the ones we're really going to use
25 are the ones that are already pre-marked. That's obvious from

1 the list. We were also looking at the other documents.

2 THE COURT: Well, is that correct, they told you
3 yesterday that the ones that they were going to use are the
4 ones that are pre-marked?

5 MR. HORNICK: No, Your Honor. I didn't know which
6 ones they were going to use, and there's a huge number of
7 exhibits in this list, and our exhibit list by comparison has
8 35 exhibits on it and a couple of sub exhibits.

9 THE COURT: I'm getting, I almost take it as, you
10 know, not very beneficial to even listen to you when one says
11 that it was represented to the other that the only ones they
12 were going to use are the ones that are marked and the other
13 denies that any such representation was made.

14 MR. HORNICK: Right, Your Honor, I had no
15 communications with them yesterday at all. The only
16 communication I got was the cover email to this exhibit list.
17 I will read it to the Court. It says, "Dear John, Attached is
18 our Exhibit list. We are still reviewing to try to reduce the
19 duplicates. Tomorrow morning, we will provide you with a set
20 of the exhibits we expect to use at the hearing per our
21 agreement." That is the sole communication we had yesterday
22 relating to exhibits.

23 THE COURT: Who did you speak to to tell them you
24 were just using the ones that were marked?

25 MR. GUY: We had a previous agreement that they were

1 to be on the list and pre-marked and the ones that are on
2 the list and pre-marked are the ones with the letters, Your
3 Honor. It's as simple as that.

4 THE COURT: Oh, so you didn't tell him yesterday the
5 only ones you were using were the ones that were pre-marked?

6 MR. GUY: No, it was in our agreement. Our agreement
7 before was and has been and we were the ones who offered the
8 agreement that they would be on the list and pre-marked.

9 THE COURT: Well, I'm not going to do what you wanted
10 me to do as a sanction, so what else do you want me to do?

11 MR. HORNICK: Well, as a primary sanction I ask that
12 no exhibits be introduced today, and as an alternative, I ask
13 that the defendants' Motion to Strike the three declarations--

14 THE COURT: I told you I'm not going to do that.

15 MR. HORNICK: You're not going to do any of those
16 things?

17 THE COURT: Correct.

18 MR. HORNICK: Well, in that case, Your Honor, I don't
19 think there is any way that we can be prepared with respect to
20 this unfairness.

21 THE COURT: Well, I think what I'll do is since we're
22 all here, let me hear this, let me hear the testimony, and I'll
23 rule on the, whether the exhibits can be admitted, and then
24 I'll see at the conclusion whether some further curative action
25 has to be taken with respect to the plaintiff's position. So

1 let's move along as long as we're all here and ready to go
2 forward. You be thinking, Mr. Hornick, as we go along as to
3 what you want me to do other than the things that you asked me
4 to do.

5 Go ahead.

6 BY MR. GUY:

7 Q I apologize for the focus here, Your Honor. If you'll
8 look at Exhibit EE, the Defendants' line, do you recall in
9 August of 2003 you spoke with the, that you spoke with a
10 reporter from the Stanford University newspaper?

11 A I don't remember it being in August, but I remember having
12 that conversation, yes.

13 Q Well, what do you recall telling the reporter about your
14 intention in terms of remaining in California through the fall?

15 THE COURT: Are you offering a prior statement of
16 your own client?

17 MR. GUY: No, Your Honor, I'm asking whether he spoke
18 with others and what he said at the time.

19 BY MR. GUY:

20 Q If you can answer.

21 THE COURT: Well, why is that, why are prior
22 statements of your client admissible when offered by you as
23 opposed to the opposing counsel?

24 MR. GUY: Because it gives a state of mind of this
25 witness and intent is an issue, and so what he told a reporter

1 about his intent with respect to remaining in California is
2 specific to the issue we have before the Court.

3 MR. HORNICK: I'll object, Your Honor. He can
4 testify as to his state of mind without looking at this
5 document.

6 MR. GUY: I'll direct my attention to this statement
7 here. Meanwhile, Zuckerberg is residing in Palo Alto for the
8 summer and talks about fall.

9 THE COURT: That's someone else's statement. That's
10 not his, so I wouldn't allow that in. I think you - I don't -
11 unless there's some claim of recent fabrication, I don't think
12 that the, your client's statements at the time are admissible.
13 Let me just - in being offered by you as opposed to being
14 offered by the opposing side.

15 MR. GUY: Well, Your Honor, they're challenging his
16 intent. I think that's sufficient. It does to show his state
17 of mind at the time what he told others.

18 THE COURT: Hold on just a second.

19 (Pause)

20 THE COURT: If it's offered for the truth of what his
21 intent was, it's not offered just because he said it because if
22 he just said it, it wouldn't be relevant, if it's offered for
23 the truth of his intent, so it is in fact hearsay, so it's got
24 to come within an exception to the hearsay rule.

25 MR. GUY: 8033.

1 (Pause)

2 THE COURT: But that excludes, 8033 excludes a
3 statement of memory or belief to prove a fact remembered or
4 believed, and you're offering this statement to prove that in
5 fact that was his intention, so it seems to me 8033 is
6 inapplicable. What is applicable is 801(b)(1)(B), which is
7 offering statements consistent with his testimony to rebut and
8 express or implied charge of recent fabrication or improper
9 influence or motive, and I'm not sure we've gotten quite that
10 far yet.

11 MR. GUY: Your Honor, on 8033, the point is that he
12 was not stating anything from memory as of the time of the
13 statement. It was his intent at that moment and so it does
14 come within 8033.

15 THE COURT: I'm going to exclude it. Move on.

16 BY MR. GUY:

17 Q Mr. Zuckerberg, you were shown an exhibit earlier that was
18 admitted as Exhibit 13, a letter from Kirkland House in August
19 24, 2004.

20 A Do you want me to grab it?

21 Q Yes, if you would.

22 BY MR. GUY: Plaintiff's Exhibit 13, Your Honor.

23 THE COURT: Yes, I have it right before me.

24 BY MR. GUY:

25 Q At its meeting, the administrative board at Harvard voted

1 to grant you a leave of absence as of May 28th, 2004. Did
2 you ever request Harvard to grant you a leave of absence on
3 that date or as of that date?

4 A I definitely didn't request a leave of absence on that
5 date. My guess is that the reason why it's as of that date is
6 because--

7 THE COURT: No, we don't want any guesses. I told
8 you that earlier.

9 BY MR. GUY:

10 Q Just testify what you know.

11 A All right. I think that that's because that was the last
12 date of the spring term.

13 Q Okay. Did you ever request that the leave of absence be
14 effective as of May 28th, 2004?

15 A I don't think specifically, but I don't remember
16 requesting it so, I'm sure--

17 Q Do you recall making a request in August of 2004 to
18 Harvard?

19 A Yeah.

20 Q And was that to the Harvard Academic Administration or to
21 somebody else?

22 BY MR. HORNICK: Objection, leading.

23 BY MR. GUY:

24 Q Do you recall who the request was made to?

25 A I mean, I seem to remember making a request to cancel

1 housing, but I'm not sure if it did this as well.

2 Q As of the time that you sent the letter to Harvard, was it
3 your intention to drop out of Harvard?

4 A No.

5 Q Was it your intention never to return to Harvard?

6 A No.

7 Q Was it your intention to leave Harvard for an indefinite
8 period of time?

9 A No, it was my intention to leave Harvard for a term or
10 maybe two.

11 Q At that time was graduating from Harvard important to you?

12 A I wanted to finish Harvard so I guess graduating, yeah.

13 Q All right.

14 MR. GUY: I'm going to go through some other
15 documents, Your Honor.

16 THE COURT: Okay. Go ahead.

17 MR. GUY: We offer into evidence Defendants' Exhibit

18 A. It's a birth certification, certified document of a vital
19 statistic.

20 THE COURT: Is there any dispute as to the fact that
21 he was born in New York, White Plains as he testified--

22 MR. HORNICK: There's no dispute that he was born in
23 New York, Your Honor, but the document is not going to
24 authenticate it.

25 MR. GUY: Your Honor, it's self-authenticating under

1 902.

2 THE COURT: Well, I don't see any seal.

3 MR. GUY: That's a seal right under the signature.

4 THE COURT: It's a copy.

5 MR. GUY: We can offer the original, Your Honor.

6 THE COURT: You can?

7 MR. GUY: Yes, we can.

8 THE COURT: All right. Let's - where is it?

9 MR. GUY: We do not have it here, but we can offer
10 it.

11 THE COURT: Well, this is the time for offering it,
12 so I'm not going to admit it. It seems to me it's useless
13 because he's testified that he was born in White Plains on a
14 certain date, and I can't imagine that anyone is going to
15 refute it so come on, let's get real and get to the exhibits
16 that deal with the issue before me.

17 BY MR. GUY:

18 Q All right. Let's go to Exhibit B. Can you turn to
19 Defendants' Exhibit B.

20 Can you identify what has been marked as Defendants'
21 Exhibit B, Mr. Zuckerberg?

22 A That's my driver's license.

23 Q And when did you first receive a California - I'm sorry, a
24 New York driver's license?

25 A Well, I got my learner's permit right after I turned 16,

1 and I guess my full driver's license when I turned 18.

2 Q All right. Is this your full driver's license that you
3 received after you turned 18?

4 A Yeah.

5 Q And what address is on this New York driver's license?

6 A 2 Russell Place in Dobbs Ferry.

7 Q Okay. If you'll turn to the next--

8 MR. GUY: We would offer Exhibit B into evidence,
9 Your Honor.

10 THE COURT: Any objection?

11 MR. HORNICK: No.

12 THE COURT: All right. Now do you want these admitted
13 as B as opposed to a number? We can do that, I don't have a
14 problem with that.

15 MR. GUY: We've already pre-marked everything A, B,
16 C--

17 THE COURT: All right.

18 MR. GUY: --to keep them separate from the
19 plaintiff's exhibits.

20 THE COURT: All right. Defendants' Exhibit B is
21 admitted.

22 (Defendants' Exhibit B, admitted)

23 BY MR. GUY:

24 Q If you'll turn to Exhibit C. Can you identify this
25 document?

1 A Yeah. This is the driver's license that I got after I
2 turned 21. So the difference between this one and the previous
3 page is, well, first the issue date and then there's no under
4 21 letters right next to the picture.

5 Q Okay. From what time to what time did you have a New York
6 driver's license?

7 A From I guess, I had my permit when I turned 16, and that
8 turned into a license when I was 18, and then I just got a
9 California license a few months ago, maybe two months ago.

10 Q On September 2nd, 2004, what driver's license did you have?

11 A New York.

12 Q Did you have any other state driver's license other than
13 New York at that time?

14 A No.

15 MR. GUY: We'd offer Defendants' Exhibit C into
16 evidence, Your Honor.

17 MR. HORNICK: Object. It's an incomplete document.
18 It does not show when it expires, for example.

19 THE COURT: Was this original produced at a
20 deposition or--?

21 MR. GUY: This is a copy of the original, Your Honor.

22 THE COURT: Where's the original?

23 MR. GUY: I'm not sure.

24 BY MR. GUY:

25 Q You don't still have it?

1 A I think I still have it. I'm not carrying it now.

2 MR. GUY: We could produce the original, Your Honor.
3 I don't see any reason that this would deviate from the
4 original though.

5 THE COURT: Well, I'm going to - I think it's frankly
6 irrelevant. You've got a New York state driver's license in
7 evidence that goes from June 24, 2004, expires May 14, 2005,
8 which is probably eight or nine months past the appropriate
9 period, so I'm going to exclude Exhibit C. Sustain the
10 objection.

11 Next question.

12 BY MR. GUY:

13 Q Mr. Zuckerberg, during your direct examination, I'll ask
14 you to refer to Defendants' Exhibit E. The issue of your voter
15 registration came up?

16 A Yeah.

17 Q I'd like you to turn to the second page in this document,
18 I apologize for the quality. Do you recognize the handwriting
19 on this document, the second page of Defendants' Exhibit E?

20 A Yeah, it's my handwriting.

21 Q And can you read record portion of the document that is in
22 your handwriting?

23 A I have my name there and my address.

24 Q What was your address at that time?

25 A 2 Russell Place in Dobbs Ferry. I put down my birthday

1 and I signed it. I also wrote DE next to the day that I
2 signed it.

3 Q What date did you sign it?

4 A It looks like September 9th, 2002.

5 Q And did you ever advise Westchester County that you no
6 longer had an intent to be registered to vote?

7 A Not that I know of.

8 Q Did you ever register to vote in any other state in the
9 United States?

10 A No.

11 MR. GUY: I would offer Defendants' Exhibit E into
12 evidence?

13 THE COURT: Any objection?

14 MR. HORNICK: No objection.

15 THE COURT: All right. That's admitted. E is
16 admitted.

17 (Defendants' Exhibit E, admitted)

18 BY MR. GUY:

19 Q Turn to Defendants' Exhibit K, please?

20 MS. ESQUENET: You said K?

21 MR. GUY: K, yes.

22 BY MR. GUY:

23 Q Could you identify what has been pre-marked as Defendants'
24 Exhibit K.

25 A Sure it's my sublet agreement for the La Jennifer Way

1 house when I first got out to California.

2 Q And above the words subleasee on the front page of
3 Defendants' Exhibit K, what is the address there?

4 A It's my home address in Dobbs Ferry.

5 Q In New York?

6 A Yeah.

7 Q And at the time that you signed this lease, it was your
8 understanding it would only be for the summer; is that correct?

9 A Yeah.

10 Q And the phone number there, the 415 area code phone
11 number, who is that?

12 A I don't see where you're talking about.

13 Q I'm sorry, 914.

14 A That's mine.

15 Q And what area code is that for?

16 A 914 is Westchester, New York.

17 MR. GUY: Offer this into evidence, Your Honor.

18 THE COURT: Any objection?

19 MR. HORNICK: No, Your Honor.

20 THE COURT: All right, K is admitted.

21 (Defendants' Exhibit K, admitted)

22 BY MR. GUY:

23 Q Now, I want to go back to this idea of the co-location
24 servers that were used for The FaceBook. I have what is
25 already marked as Exhibit 27 and admitted into evidence.

1 If you could look at Exhibit No. 27. This is an
2 invoice from Savvy.

3 Mr. Zuckerberg, can you describe the importance of having
4 servers to a website like The FaceBook in the summer of 2004?

5 A You need servers to run a website.

6 Q All right. Would you call them essential?

7 A Yeah, you need to servers for some other kind of computer,
8 yeah.

9 Q All right. And this situation with respect to the Savvy
10 servers, the address for The FaceBook is listed as a Dobbs
11 Ferry address; is that correct?

12 A Yes.

13 Q All right. In 2004, at a number of different times, and
14 in particular the summer of 2004, and September 2004 you were
15 asked to give your addresses in a variety of different
16 situations; is that correct?

17 A Yeah.

18 Q All right. Can you describe for me in that timeframe what
19 addresses you gave and why?

20 A I mean, I give a lot of addresses a lot of different
21 times, so it's kind of tough to recall every single one, but I
22 mean, but I think the main ones that keep coming up are this
23 Dobbs Ferry address, which is my home address in New York and
24 then the addresses of the few places that I stayed in
25 California and an address for myself at Harvard.

1 Q And why would you give one address versus another at
2 any given time?

3 A Um--

4 Q Strike that. Why would you give the Dobbs Ferry address?

5 A Well, there are a bunch of reasons why I might give that.
6 If I needed to receive mail, it's someplace that I can always
7 go back to and always be sure that it would be there for an
8 extended period of time, so it would make sense to give my
9 Dobbs Ferry address.

10 Q And in the case of the servers for The FaceBook, you gave
11 the Dobbs Ferry address; is that correct?

12 A Yeah, I mean, if there's an agreement that had a pretty
13 long term and I need to have a place that the invoices could be
14 sent to that I go, that I got them and that I knew could
15 repeatedly be delivered.

16 Q And with respect to these invoices, in the upper
17 right-hand corner, they were received at the Dobbs Ferry
18 address in August of 2004?

19 MR. HORNICK: Objection, leading.

20 BY MR. GUY:

21 Q What date, your understanding, was this invoice received,
22 what date?

23 A I assume sometime in August.

24 Q All right. Turn the next page, page 2. Do you have any
25 understanding of when this invoice was received?

1 A Sometime in September.

2 Q Of what year?

3 A 2004.

4 Q And third page of Exhibit 27, can you tell me when this
5 page was received?

6 A Early November.

7 Q And with respect to the last page, what's your
8 understanding of when that last invoice was received?

9 A Mid-November.

10 Q The Dobbs Ferry address was also in Exhibit 29,
11 Plaintiff's Exhibit No. 29. Do you see that, the Silicon
12 Valley Bank?

13 A Yeah.

14 Q And do you have an understanding when this bank statement
15 shown on the first page of Plaintiff's Exhibit 29 was received
16 at the Dobbs Ferry address?

17 A The statement is dated the end of August, so I assume
18 somewhere around then; is that right?

19 Q And if you'll flip in, the third page into the document,
20 TFB 7140, do you have any understanding when this bank
21 statement was received at the Dobbs Ferry address?

22 A I mean, those are also August 8, so I assume at some point
23 right after that.

24 Q Okay. If you'll turn to TFB 7141 of Plaintiff's Exhibit
25 29, do you have any understanding when this bank statement was

1 received at the Dobbs Ferry address?

2 A This is at the end of September so assume a few days like
3 after that.

4 Q All right. Move one.

5 Refer you to Plaintiff's Exhibit No. 27 that has been
6 admitted into evidence. You previously dated this document at
7 August 8th and August 9th; is that correct?

8 THE COURT: I don't think you're looking at 27.

9 MR. HORNICK: That's not the right number

10 MR. GUY: I'm sorry, Exhibit 28. Defendants' Exhibit
11 28, Equinex agreement.

12 THE COURT: Thank you.

13 A I'm sorry, what did you ask?

14 BY MR. GUY:

15 Q I asked, you previously dated this document in the August
16 8th to August 9th timeframe.

17 MR. HORNICK: Objection, leading.

18 THE COURT: It's introductory and it accurately
19 states his testimony, so I'll allow it.

20 A Yeah.

21 BY MR. GUY:

22 Q If you'll turn to the page that bears your signature, FACE
23 2231. Now this agreement, that is your signature; is that
24 correct?

25 A Yeah.

1 Q And this agreement was for additional servers for The
2 FaceBook?

3 MR. HORNICK: Objection, leading.

4 THE COURT: Yeah.

5 MR. GUY: Fine, Your Honor, strike it.

6 BY MR. GUY:

7 Q Can you describe what this agreement was for?

8 A Equinex was a co-location facility. It wasn't for
9 servers. We bought out servers separately and put them there.
10 It was a facility where we could keep them and they had power
11 and cooling and internet connection in the space.

12 Q Can you explain to the Court the relevance of a
13 co-location facility for The FaceBook at this time?

14 A Sure. I mean, you need a place to put all your servers
15 and servers need power to run. They need to be cool or else
16 they melt and malfunction and you need an internet connection
17 or else people can access them from outside and we talked about
18 this a little bit before, but--

19 THE COURT: Yeah. I think we did talk about this
20 before and--

21 MR. GUY: Let me move on to the next question.

22 THE COURT: Just repeating what this witness'
23 testimony was when Mr. Hornick asked it I don't think serves a
24 useful purpose, sir.

25 BY MR. GUY:

1 Q Let me ask this question. Can you describe for the
2 Court the relevant importance of this co-location facility to
3 The FaceBook as of August of 2004?

4 A What do you mean relevant importance?

5 Q Well, was it important to have a co-location facility at
6 that time?

7 A Yeah.

8 Q Was it essential to running the company?

9 A Yeah. I mean, you can't run on site unless you have
10 servers and you can't run the servers unless you have a place
11 to put them and you can cover them and cool them and connect up
12 the internet. So, I mean, Equinex was important because for
13 the first time we weren't going on net servers. We had, we're
14 getting a facility where we had stations and we can put as many
15 servers in as we wanted. There's been a lot of skill patchwork
16 which is important because we're running from being about 30
17 schools or 28 or 29 to, you know, over 100, and then it'd grow,
18 you know, beyond that. So we needed a place where we can just
19 put just a bunch more equipment.

20 Q So for this agreement, what address did you give?

21 A It was the Dobbs Ferry.

22 Q Now, in 2004 can you describe for the Court the bank
23 accounts that you had.

24 A In 2004?

25 Q Yes.

1 A I had a student checking account with Fleet which is
2 Bank of America now. I think that was in New York. I had a
3 savings account that I guess my parents kept for me, just a
4 joint account with my mother. That was at Smith Barney, I
5 think.

6 Q Was that in New York, do you know?

7 A I don't know, but I assume so.

8 Q And the statements for those accounts. Do you know where
9 those statements went?

10 A New York house.

11 Q Did you have any credit card accounts in 2004?

12 A Yeah, I had two. It was a credit/debit card that was
13 linked to the student checking account that I had with Fleet
14 and there was another credit card that I had that was a joint
15 account with my father, Citibank MasterCard.

16 Q And the statements for those two accounts, do you know
17 where they went?

18 A Yeah, they went to my home in New York.

19 Q Now, when you moved into the Westbrook address in Los
20 Altos, California, can you describe for the Court what
21 furnishings you actually had at that house that you moved?

22 A At the time I moved in?

23 Q Yes.

24 A There was nothing.

25 Q All right. And what did you buy for that house?

1 A Well, after not having anything to sleep on for two
2 nights, I bought a mattress, then I got a couch and we
3 eventually got a table and chairs so we could sit and work at a
4 table instead of the floor.

5 Q All right. Did you have a dresser to keep your clothes
6 in?

7 A No.

8 Q Where did you keep your clothes?

9 A I used the pile approach.

10 Q Did you have any - other than a pile of clothes in your
11 office, I mean in your house, I mean--

12 A I mean, there was a closet, but I mean, no.

13 Q All right. Now, those two addresses, the La Jennifer
14 address and the address at Westbrook in Los Altos, were there
15 any offices in those houses?

16 A There were no formal offices, no, just working houses,
17 mostly like in the living rooms or dining rooms, around a
18 table.

19 Q And so the business, if you will, of FaceBook was being
20 conducted out of a kitchen or dining room; is that your
21 testimony?

22 A Pretty much, yeah.

23 Q Was there any other office that FaceBook had in the summer
24 of 2004 or the fall of 2004?

25 A No.

1 Q Where was the first office that the FaceBook had that
2 was not a kitchen or a dining room?

3 A When we finally got an office in downtown Palo Alto in
4 January of 2005.

5 Q Now, in, as of September 2nd, 2004, had the FaceBook
6 received funding from any Venture Capital Investors?

7 A As of which date?

8 Q September 2nd, 2004?

9 A It hadn't yet, no.

10 Q If the FaceBook had not gotten funding in the fall of
11 2004, do you have any understanding of what you would have
12 done?

13 A I guess we would have--

14 THE COURT: No, we're not guessing. I've told you
15 that, sir. You can, if you had an intention, you may state
16 what the intention was. You can give the best memory of your
17 intention, but you may not guess, so I strike your answer and
18 you may respond to the question appropriately, please.

19 A I think that whenever I say guessing, if I could just
20 replace that with I think, but I mean I think we would have
21 just grown slower and used less money.

22 BY MR. GUY:

23 Q Would you have remained in California?

24 A I don't know, probably not.

25 Q Now, let's go back to your taxes. There's much made of

1 that in the direct. Prior to 2004, the tax year 2004, you
2 had part time jobs; is that correct?

3 A Yeah.

4 Q In 2003 and years before?

5 A Yeah.

6 Q And do you have any understanding of how your taxes were
7 filed for tax years before, including 2003?

8 A I mean, now it's my understanding that my father had my
9 accountant, I guess, write it up and they filed it.

10 Q And in 2004 what happened, your present understanding?

11 A It's my understanding that my father had my accountant,
12 his accountant write it up, but then he sent it to me to have
13 it, I guess to have me to file it, and I just didn't.

14 Q And until your deposition and this litigation, did you
15 have any awareness that your 2004 taxes had not been filed?

16 A No.

17 Q As of 2004 had you ever filed your own taxes ever?

18 A No.

19 Q Had you ever prepared your own taxes?

20 A No.

21 Q Had you even mailed the tax return in?

22 A I don't think so, no.

23 Q As of September 2, 2004, can you describe for the Court
24 any intent you had to live or remain in California
25 indefinitely?

1 parents' address as your permanent address at that time so
2 that's"--

3 A I don't see this.

4 Q At the very bottom of the page, I'm sorry, beginning on
5 line 24--

6 MR. GUY: I'm sorry, Your Honor, which transcript for
7 the record are we in?

8 MR. HORNICK: This is Exhibit 4--

9 THE WITNESS: Oh okay.

10 MR. HORNICK: This is the rough transcript of the
11 June 8, 2006 deposition, page 68, line 24.

12 BY MR. HORNICK:

13 Q And I asked you, "You used your parents' address as your
14 permanent address at that time so that things like important
15 mail would always reach you regardless where you happened to be
16 living, correct?" Do you see that?

17 A Yes.

18 Q And you answered, "Umm, I used that address because that's
19 the place I could always go back to and collect that stuff
20 because that was my home." Do you see that?

21 A Yes.

22 Q And that was your testimony on June 8th of 2006, correct?

23 A Yes.

24 Q Now you said that's the place I could always go back to,
25 right?

1 A Yeah.

2 Q You weren't actually living there in New York, correct?

3 A I mean, I wasn't staying there at the time, yeah.

4 Q You thought of that as a place you could go back to. That
5 was your parents' home, correct?

6 A Sure.

7 Q In fact you hadn't lived in your parents' house since you
8 went to Exeter in your junior year of high school, correct?

9 A Sure. I mean I haven't stayed there, yeah.

10 Q I'm sorry?

11 A I haven't stayed there, yeah, for, I mean an extended
12 period of time.

13 Q We've put before you what's been marked as Exhibit 28,
14 which is the Exhibit 26 from your June 8, 2006 deposition. And
15 I know that this document is almost illegible and it was
16 produced that way, but I'm asking you as the CEO of FaceBook
17 Inc. if you can tell the Court what this document is?

18 A It's the original agreement with Equinex, the co-location
19 facility.

20 Q Agreement between TheFaceBook Inc. and Equinex, correct?

21 A Yes.

22 Q And can you tell us what the date of this agreement is?

23 A It's kind of hard to make out, but I mean there are also a
24 few dates at the top from the faxes. So I mean--

25 Q Can you read those dates?

1 A It's August 9th or August 8th, 2004.

2 Q So is it your understanding that on or about August 8th or
3 9th of 2004 the FaceBook Inc. entered into an agreement with
4 Equinex?

5 A Yes.

6 Q And you signed this document on page 2231, correct?

7 A Yes.

8 Q And I asked you earlier, Equinex is located in California,
9 correct?

10 A Yes.

11 Q And you used on this document your parents' address,
12 correct, Dobbs Ferry, New York?

13 A Yes.

14 Q Now, when you signed this document sometime in around
15 August 9th or so of 2004, your summer sublet was about to come
16 to an end, correct?

17 A Yes.

18 Q You didn't have any other place lined up to live, correct?

19 A Yeah, not at that time.

20 Q So you used your parents' address on this document, right?

21 A I don't know if that's the exact reason.

22 Q FaceBook Inc. had no other address at that time, correct?

23 A Going forward I guess it didn't have an address.

24 Q At the time you signed this document FaceBook Inc. didn't
25 have its own address, correct?

1 MR. GUY: Asked and answered.

2 A It didn't have its own address I guess. I mean it was
3 using the La Jennifer Way address for a bunch of stuff
4 apparently.

5 Q FaceBook Inc.'s address at the time you signed this
6 agreement was where you were, correct?

7 A I mean, I'm not sure what the formal address was but sure,
8 wherever I needed to get stuff at or if I could get stuff at
9 it.

10 Q Until FaceBook Inc. got its own office FaceBook Inc. was
11 located wherever you happened to be, correct?

12 A I mean, I feel that there's probably a formal definition
13 of where the corporation is located, but where it was operating
14 was probably where I was operating to the extent that I and a
15 few people around me were the company.

16 Q Well, when did FaceBook Inc. first get its own office?

17 A I think that was in January of 2005.

18 MR. HORNICK: I'd like to move into evidence Exhibit
19 28.

20 THE COURT: Any objection?

21 MR. GUY: None, Your Honor.

22 THE COURT: Admitted.

23 (Plaintiff's Exhibit No. 28, admitted)

24 BY MR. HORNICK:

25 Q I'm putting before the witness a document that's been

1 marked as Exhibit 29, which was number 39 during your June 8,
2 2006 deposition. Can, Mr. Zuckerberg, can you tell the Court
3 what this document is?

4 A It looks like a Silicon Valley Bank account statement.

5 Q It's addressed to TheFaceBook Inc., correct?

6 A Yes.

7 Q And it's addressed to TheFaceBook Inc. at your parents'
8 address in New York, correct?

9 A Yes.

10 Q When was this account opened?

11 A I don't know.

12 Q You didn't open this account, did you?

13 A I don't think so.

14 Q Do you know who did open it?

15 A I don't know. I think it may have been Sean Parker.

16 Q Well, whoever opened this account, why did that person use
17 your parents' address when they opened a bank account for
18 TheFaceBook Inc.?

19 A I don't know.

20 MR. HORNICK: I'd like to move Exhibit 29 into
21 evidence.

22 MR. GUY: No objection, Your Honor.

23 THE COURT: It's admitted.

24 (Plaintiff's Exhibit No. 29, admitted)

25 BY MR. HORNICK:

1 Q Mr. Zuckerberg, you've been handed a document that's
2 been marked as Exhibit 31 which was Exhibit 41 during your June
3 8, 2006 deposition. Can you tell the Court what this document
4 is?

5 A It's a Silicon Valley Bank document. It's labeled company
6 billing statement.

7 Q And if you look through this document you'll see in fact
8 that's it billing statements for several months of 2004. Could
9 you confirm that, please?

10 A Sure. I see more than one in here.

11 Q And these Silicon Valley Bank statements are addressed to
12 TheFaceBook Inc., Mark Zuckerberg at the Westbrook Avenue
13 address, correct?

14 A Yes.

15 Q Can you tell us what months these statements are for?

16 A They're for different months. The first one seems to be
17 labeled January 2005. Then there seems to be another one in
18 December.

19 Q December of what?

20 A 2004, unless I'm misreading. Yeah, December 2004.

21 Q What page is that that you're referring to?

22 A 7592.

23 Q All right. Any the other months?

24 A No. I thought there was a November one here the last time
25 I looked at it but I can't find it.

1 Q Well, if you look at - I'll refer you to page--

2 THE COURT: Mr. Zuckerberg, you're mumbling again.

3 THE WITNESS: Sorry.

4 THE COURT: That last part of what your answer I
5 completely missed. Would you state distinctly what your
6 answer is, please?

7 THE WITNESS: I said that I seem to remember there
8 being a November one in here from the deposition but I don't
9 see it now.

10 THE COURT: Thank you.

11 BY MR. HORNICK:

12 Q I'll refer you to page 7596. Is this the November
13 statement that you believed was in this document?

14 A 7596? Oh, yeah, it does say that in the corner.

15 Q So sometime between the time that - do you know when the
16 Silicon Valley Bank account was opened?

17 A No.

18 Q Sometime in the summer of 2004, correct?

19 A I don't know.

20 Q Well, sometime - it's opened in the name of FaceBook Inc.,
21 correct?

22 A Apparently, yeah.

23 Q All right. So it would have been sometime after July 29th
24 of 2004 that that bank account was opened, correct?

25 A I assume so.

1 Q All right. And now here we have Silicon Valley Bank
2 statements addressed to TheFaceBook Inc., Mark Zuckerberg at
3 the Westbrook Avenue address from November of 2004, correct?

4 A Yeah.

5 Q All right. So sometime between July 29th of 2004 when the
6 account was opened and November of 2004 somebody changed the
7 address on this statement, on this account from your parents'
8 address to the Westbrook Avenue address, correct?

9 A I guess, yeah.

10 Q Did you do that?

11 A I don't remember if I did.

12 Q Do you know who did?

13 A No.

14 MR. HORNICK: I'd like to move Exhibit 31 into
15 evidence.

16 THE COURT: Any objection?

17 MR. GUY: No objection.

18 THE COURT: I'm sorry?

19 MR. GUY: No objection, Your Honor.

20 THE COURT: All right, admitted.

21 (Plaintiff's Exhibit 31, admitted)

22 BY MR. HORNICK:

23 Q Mr. Zuckerberg, you've been handed Exhibit 30 which, it's
24 a document marked as Exhibit 30, which was Exhibit 40 during
25 your June 8, 2006 deposition. Can you tell the Court what it

1 is?

2 A It's a Silicon Valley Bank labeled Certificate of Deposit
3 Authorization form.

4 Q And it's made out in the name of TheFaceBook Inc.,
5 correct?

6 A Yes.

7 Q And the address that's provided there is Los Altos,
8 correct?

9 A Yes.

10 Q That phone number 914, what's that phone number?

11 A Westchester.

12 Q Westchester what?

13 A I'm sorry, that's my phone number. 914 is the Westchester
14 area code.

15 Q And that's your cell phone, correct?

16 A Yes.

17 Q Yes. And you signed this Certificate of Deposit
18 Authorization Form for Silicon Valley Bank, correct?

19 A Yes.

20 Q And you signed it as CEO of FaceBook Inc., correct?

21 A Yes.

22 Q And when did you sign it?

23 A The date is October 15, 2004.

24 Q Did you write in this address Westbrook Avenue?

25 A No.

1 Q Who did?

2 A I don't know.

3 Q When you signed this document did you object to whoever
4 prepared this document having provided the Westbrook Avenue
5 address?

6 A I don't know.

7 MR. HORNICK: I'd like to move Exhibit 30 into
8 evidence.

9 THE COURT: Any objection?

10 MR. GUY: None, Your Honor.

11 THE COURT: Admitted.

12 (Plaintiff's Exhibit No. 30, admitted)

13 BY MR. HORNICK:

14 Q Mr. Zuckerberg, you've been handed a document marked as
15 Exhibit 27 which was Exhibit 25 during your June 8, 2006
16 deposition. Can you tell the Court what it is?

17 A It looks like an invoice from Savvy, which was a co-lo
18 facility for us.

19 Q That was your co-location facility before Equinex,
20 correct?

21 A Yes, one of them.

22 Q And this invoice is addressed to TheFaceBook, correct?

23 A Yes.

24 Q It's not addressed to TheFaceBook Inc., correct?

25 A That's correct.

1 Q And the address that's provided under TheFaceBook is
2 Dobbs Ferry, New York, your parents' address, correct?

3 A Yes.

4 Q When did TheFaceBook first enter into a relationship with
5 Savvy?

6 A I don't remember the exact date.

7 Q It was sometime in March or April of 2004, correct?

8 A Yeah, around that timeframe.

9 Q While you were still at Harvard, correct?

10 A Yes.

11 Q Before you decided to go to California for the summer,
12 correct?

13 A Yes.

14 Q And when you went to California for the summer you didn't
15 tell Savvy that you moved to California, correct?

16 A I don't think I did. I'm not sure.

17 Q In fact at the time you moved to California you were
18 thinking of transferring your co-location facility from Savvy
19 to Equinex, correct?

20 A Wait, sorry, could you repeat that?

21 Q At the time that you went or I should say when you went to
22 California in the summer of 2004, you were thinking of moving
23 your co-location facility from Savvy to Equinex, correct?

24 A I don't think that's true. I think that, I mean, we've
25 had a few different co-lo's, sir. First it was Managed and the

1 Equinex. Sorry, first Managed, then Savvy, and then Equinex
2 and then we've had after that too. I mean, each move was for a
3 reason not just because we randomly felt like moving. So I
4 mean manage.com provided a certain kind of service where you
5 could rent the servers for \$85 a month. So that made a lot of
6 sense when we were at Harvard and we were just starting and
7 didn't have money. And then Savvy provided a better service, a
8 faster Internet connection, but it was very expensive and they
9 kept our servers and managed them for us. Equinex was just a
10 co-location facility, so it was just a place where you put the
11 servers. So by the time that we were talking about launching
12 more schools, moving to a facility like that, and then having
13 someone who we hired by ourselves manage the servers, so I mean
14 at first it was ourselves and then it was somebody who we hired
15 to stay there and manage the stuff started to make more sense,
16 and that's just how larger operations run. So I mean I don't
17 think that we actually thought about moving to Equinex until we
18 thought about the capacity that we were going to need going
19 forward.

20 Q Which was when?

21 A Probably sometime during the summer, but I don't think it
22 was when we were moving out there.

23 Q All right.

24 A Because I know that I hadn't heard of Equinex until like
25 at least sometime into the summer.

1 Q So when you say the summer, you mean the summer of 2004,
2 correct?

3 A Yes.

4 Q Okay. Now this particular invoice is dated August 1st of
5 2004, correct?

6 A August 1st, yes.

7 Q Now, as of August 1st of 2004, you were only about a month
8 away from your summer sublet ending, correct?

9 A Yes.

10 Q And you didn't have any other address lined up that you
11 could have provided for Savvy for The FaceBook Inc., correct?

12 A I guess not at that time, yeah.

13 MR. HORNICK: I'd like to move Exhibit 27 into
14 evidence.

15 THE COURT: Any objection?

16 MR. GUY: No, Your Honor.

17 THE COURT: Admitted.

18 (Plaintiff's Exhibit No. 27, admitted)

19 BY MR. HORNICK:

20 Q Mr. Zuckerberg, you're aware that you are obligated to
21 file tax returns for your annual income, correct?

22 A You asked me this during my deposition and I said yes
23 because it sounded like you were kind of asserting it. I'm not
24 actually sure if you have to file tax returns, but I know you
25 have to pay taxes.

1 Q Do you know how you would pay taxes without filing a tax
2 return?

3 A Yeah, you could just get your taxes withheld from you,
4 from your paycheck from wherever you're employed, right?

5 Q All right. So after your taxes are withheld from wherever
6 you're employed, is it your understanding that in after that
7 year has ended you would have to file a tax return and you
8 would either get a refund or you would have to pay more if you
9 hadn't withheld enough during that work year?

10 MR. GUY: Objection, compound, Your Honor.
11 Ambiguous, I'm not sure what he's asking.

12 THE WITNESS: Yeah, could you restate that?

13 THE COURT: If you want, I'll say as a matter of law
14 that anyone with a certain degree of income, whether it's
15 withheld or not has to file an income tax return, if that will
16 help you. I'll take judicial notice of that.

17 MR. HORNICK: Thank you, Your Honor.

18 BY MR. HORNICK:

19 Q Did you have taxable income for the year 2004,
20 Mr. Zuckerberg?

21 A Yeah.

22 Q Did you personally prepare a federal or state tax return
23 for the year 2004?

24 A No.

25 Q Did anyone do that for you?

1 A Did anyone prepare one?

2 Q Did anyone prepare a federal tax return for you for the
3 year 2004?

4 A I'm not sure. I think my father had his accountant do
5 that stuff for me generally.

6 Q Did your father's accountant prepare a federal tax return
7 for you for the year 2004?

8 A I'm not sure. I know he prepared a tax return.

9 Q What do you mean a tax return?

10 A I mean, I saw it at the deposition.

11 Q Well, I'm asking you if anyone prepared a tax return for
12 you for the year 2004?

13 A So, I'm saying that, yes, it's my understanding that a tax
14 return was prepared for me by my father's accountant.

15 Q Okay.

16 A Did anyone file a federal tax return for you for the year
17 2004?

18 A No.

19 Q Do you know why?

20 A No.

21 Q Did you file a tax return in any state for the year 2004?

22 A It's my understanding that I haven't yet.

23 THE COURT: That you haven't what?

24 THE WITNESS: That I haven't yet.

25 THE COURT: You haven't yet.

1 BY MR. HORNICK:

2 Q Do you know why you haven't filed a state tax return for
3 the year 2004?

4 A No.

5 Q Do you know if you or someone on your behalf has obtained
6 an extension of time for you to file a federal tax return for
7 the year 2004 where that extension of time is still good today?

8 A I don't think so.

9 Q Do you know if anyone, whether you or someone on your
10 behalf, has obtained an extension of time for you to file a
11 state tax return for the year 2004 where that extension of time
12 is still good today?

13 A Again, I'm not sure but I don't think so.

14 Q But you believe you - strike that.

15 Mr. Zuckerberg, we've placed before a document bearing -
16 that's been marked as Exhibit 21, which was Exhibit 19 during
17 your deposition. Can you tell us what it is?

18 A It looks like a Form 1040 for, like an income tax return
19 for 2004.

20 Q For you, correct?

21 A Yes.

22 Q It gives your Sherman Avenue address, correct?

23 A Yes.

24 Q You didn't move into Sherman Avenue until January of 2005,
25 correct?

1 A Yes.

2 Q Do you know who prepared this document?

3 A I think it says on the next page, Alan Gilman.

4 Q Do you know who that is?

5 A I don't personally, but I think it's my father's
6 accountant.

7 Q Do you know what a 1040 U.S. Individual Income Tax Return
8 is?

9 A No.

10 Q Do you know if this is what you file with the federal
11 government when you file a tax return?

12 A I don't.

13 Q Do you see at the top it says extension granted to
14 8/15/05?

15 A Are we on the first page?

16 Q First page, I'm sorry.

17 A Yes.

18 Q I asked you before if you know if anyone obtained an
19 extension that's good today. Do you know if anyone obtained an
20 extension of time - strike the question.

21 Did you or anyone on your behalf obtain an extension of
22 time to file a U.S. federal income tax return that would give
23 you an extension after August 15th of 2005?

24 A I don't think so.

25 Q Do you know why?

1 A No.

2 Q I asked you all these questions during your June 8th
3 deposition, correct?

4 A You asked a bunch of these questions.

5 Q Uh-huh. Did you make any effort between then and now to
6 find out if anybody had filed a tax return for you for the year
7 2004, federal tax return?

8 A I think at this point someone has taken care of filing it
9 for me, but I don't, I mean my understanding at this point is
10 that it has not been taken care of.

11 Q I asked you if between June 8th of 2006 and today you made
12 any effort to find out if anyone filed a tax return on your
13 behalf?

14 A I mean, it's my understanding that that hasn't been done
15 so, no.

16 Q That wasn't my question. I asked you if between June 8th
17 of 2006 and today you made any effort to find out if a federal
18 tax return was filed on your behalf for the year 2004.

19 A I mean, my understanding was already no, so, no, I did
20 make effort.

21 Q So you're saying your understanding was that on June 8th it
22 hadn't been filed, correct?

23 A Yeah.

24 Q But you didn't make any efforts between June 8th and today
25 to find out why it hadn't been filed, whether it had been

1 filed, if it was going to be filed, correct?

2 A No, that's not true. I said that someone is working on
3 getting it filed.

4 Q Who?

5 A My assistant and my accountant.

6 Q Who's your accountant?

7 A I don't know his full name, Tom, Ben something.

8 Q He's located in California, correct?

9 A Yes.

10 Q And your assistant is located in California, correct?

11 A Yes.

12 MR. HORNICK: I'd like to enter Exhibit 21 into
13 evidence.

14 THE COURT: Any objection?

15 MR. GUY: No objection, Your Honor.

16 THE COURT: Admitted.

17 (Plaintiff's Exhibit No. 21, admitted)

18 MR. HORNICK: I'd like to hand the witness a document
19 that was produced to us yesterday by your counsel. So it's not
20 on the exhibit list.

21 BY MR. HORNICK:

22 Q Mr. Zuckerberg, can you tell us what this document is?

23 A I think it's the same version, I'm sorry, it's the same
24 document but un-redacted.

25 Q Un-redacted. So this is an un-redacted version of a tax

1 return that was prepared for you by someone for the year
2 2004, correct?

3 A Yes.

4 Q And it still hasn't been - so this isn't a copy of a tax
5 return that's been filed, correct?

6 A I don't think so.

7 Q Okay. Now this tax return shows that you had online seven
8 of the first page, it shows that you had \$19,783 wages,
9 salaries, tips, et cetera in 2004, correct?

10 A Yeah, that's what it says.

11 Q Now, if you turn to page 20, that's 20 at the top of the
12 page, which is I should state for the record that this is,
13 bears production numbers TFB-7636 through 49.

14 (Pause)

15 MR. HORNICK: I understand that this is the same
16 Bates numbers as the document we just previously marked but
17 it's un-redacted.

18 BY MR. HORNICK:

19 Q All right. So at the top of page 20, I'm sorry, on page
20 20 there is a place there that says employee's name. Do you
21 see that? Toward the top on the left.

22 A We're on page 20? Ah, employer's name?

23 Q Oh, I'm sorry, employer's name?

24 A Yes.

25 Q And under that it says FaceBook. Do you see that?

- 1 A Yes.
- 2 Q And it says amount paid \$19,333, correct?
- 3 A Yes.
- 4 Q And under that it says Harvard. Do you see that?
- 5 A Yes.
- 6 Q And under amount paid it says \$450, correct?
- 7 A Yes.
- 8 Q And the total there is \$19,783, correct?
- 9 A Yes.
- 10 Q And that's the same amount that appeared on line seven on
11 the first page of this document, correct?
- 12 A Yeah.
- 13 Q So you had \$19,333 of income from FaceBook for the year
14 2004, correct?
- 15 A That's what it says, yeah.
- 16 Q And you earned all that income in California, correct?
- 17 A I don't know. I mean I assume I wasn't back paid or
18 anything and that would mean that, yes.
- 19 Q You assume you weren't what?
- 20 A Back paid or anything.
- 21 Q What do you mean by back paid?
- 22 A Like - after at some point in some of the documents that
23 you showed that was when I formally started as an employee.
24 But I mean I'd been working since the beginning of the year on
25 it, right, so I mean I assume that there was no back pay. And

1 if everything was being paid going forward then it would have
2 all been in California.

3 Q Okay. So before - from the time that you started
4 FaceBook.com website to the time it was incorporated, July 29th
5 of 2004, did you pay yourself a salary?

6 A Well, we had no money so that would have just been me
7 transferring money to myself so I'm assuming no.

8 Q So did you, Mark Zuckerberg, have any income from
9 FaceBook.com before it was incorporated?

10 A Sorry, sir, are you asking whether I physically received
11 money from FaceBook before that or whether I was like paid for
12 work done before that?

13 Q Did you physically receive any money from FaceBook.com
14 prior to July 29th of 2004?

15 A No.

16 Q All right. So all of the income that you received
17 relating to FaceBook for the year 2004 you received after
18 FaceBook Inc. incorporated, correct?

19 A Yes.

20 Q All right. And for the entire time that FaceBook Inc. has
21 been incorporated it has been located in California, correct?

22 A I mean, it depends on what you mean by located. I mean,
23 it's a Delaware company.

24 Q But it's principal place of business has always been in
25 California, correct?

1 A I guess since we got that document to do business in
2 California. I mean, I have been in California since it's been
3 incorporated if that's what you're asking.

4 Q FaceBook Inc. has never had a place of business in any
5 state other than California, correct - strike the question.

6 During the year 2004 FaceBook Inc. never had a place of
7 business in any state other than California, correct?

8 A Yeah, I don't think we got offices in other states until
9 after that.

10 Q Let's turn to page 30. Now, this page says taxable year
11 2004, correct?

12 A Yes.

13 Q And then it says California W-2 attachment, correct?

14 A Yes.

15 Q And it has your name under that, right?

16 A Yes.

17 Q It's your understanding that - strike that question.

18 Let's turn to the next page, 31. This has a heading capital
19 loss carry over, correct?

20 A Yes.

21 Q It says for the year 2004, correct?

22 A Yes.

23 Q In the upper left hand corner it says California, correct?

24 A Yes.

25 Q And then it has your name, Mark Zuckerberg, correct?

1 A Yes.

2 Q And then, it shows some figures or some figures in the
3 right hand corner, top right hand column, correct?

4 A Sure.

5 MR. HORNICK: I would like to move this document into
6 evidence.

7 THE COURT: What's your next exhibit number?

8 MR. HORNICK: Can we make it 37, Your Honor?

9 THE COURT: All right. Any objection?

10 MR. GUY: None, Your Honor.

11 THE COURT: That will be 37 in evidence, and if you'd
12 hand it to the clerk, please.

13 (Plaintiff's Exhibit No. 37, admitted)

14 BY MR. HORNICK:

15 Q Mr. Zuckerberg, these documents that were produced to us
16 yesterday you've produced un-redacted version of your, of the
17 drafts un-filed 2004 federal tax return. Why is it that you
18 didn't produce an un-redacted copy of the 2004 California tax
19 return?

20 A I don't know.

21 Q Do you know if your assistant is in the process of
22 preparing for you a California tax return for the year 2004?

23 THE COURT: Excuse me a second. This Exhibit 37, you
24 just want the one page?

25 MR. HORNICK: No, Your Honor.

1 THE COURT: Oh, I'm sorry. Okay. Thank you. I'm
2 sorry, I didn't have that. You may answer the question,
3 Mr. Zuckerberg.

4 A I don't know specifically.

5 BY MR. HORNICK:

6 Q All right, so you don't know specifically. Do you have a
7 general idea?

8 A So the question was if she is preparing or having someone
9 prepare for me a California tax return?

10 Q For the year 2004?

11 A I mean, I assume if that's what needs to be done that's
12 what's happening.

13 Q I may have asked you this earlier but did you file a state
14 tax return in California for the year 2004?

15 A I assume no. I don't think so.

16 Q Mr. Zuckerberg, you've been handed a document that's been
17 marked Exhibit 22, which was Exhibit 20 during your June 8, 2006
18 deposition. Can you tell the Court what it is?

19 A It's labeled California Resident Income Tax Return 2004.

20 Q It has your name on it, correct?

21 A Yes.

22 Q With the Sherman Avenue address, correct?

23 A Yes.

24 Q You didn't move to Sherman Avenue until January of 2005,
25 correct?

1 A Yes.

2 Q You were living, when you were living in California in
3 2004, it was either on Jennifer way or Westbrook Avenue,
4 correct?

5 A Yes.

6 Q You don't know if this California Resident Income Tax
7 Return for the year 2004 has been filed for you, correct?

8 A I don't.

9 Q And you don't know if any California income tax return has
10 been filed for you for the year 2004, correct?

11 A I don't think one has at this point.

12 Q These tax returns Exhibit 21 and 22, the federal return
13 being 21 and the California return being 22, these were
14 provided to your counsel to give to us, correct?

15 A I assume so.

16 Q You didn't do that, correct?

17 A That's correct.

18 Q You don't even know who gave these documents to your
19 counsel to give to us, do you?

20 A I don't know specifically.

21 Q Now, I asked you all these questions about the California
22 tax return on June 8th, and my question now is between that date
23 and today, did you make any effort to find out if a California
24 tax return had been filed for you?

25 A It's my understanding that it hasn't.

1 Q Okay. And now somebody's working on that if it's
2 necessary, correct?

3 A That's my understanding, yeah.

4 Q All right. But you haven't personally made any effort to
5 make sure that if you had income in California in the year 2004
6 that someone is preparing a California return for you for that
7 year, correct?

8 A Well, my personal effort is having someone do it on my
9 behalf.

10 Q But you understand it is your personal obligation to file
11 tax returns, correct?

12 A Now I do. I mean, before I didn't think so and then you
13 cleared that up for me so, yes.

14 Q You didn't think so when you were deposed on June 8th?

15 A I didn't know. I mean, my sense at that point was that
16 you were sort of asserting that that was the case so I assumed
17 it was. Then after that I was told that that wasn't the true.
18 Now, I'm told by someone who I trust more that it is true so.

19 Q Who's that?

20 A The Judge.

21 Q Okay. I can't argue with that.

22 MR. HORNICK: I'd like to move Exhibit 22 into
23 evidence.

24 THE COURT: Any objection?

25 MR. GUY: No objection, Your Honor.

1 THE COURT: Admitted.

2 (Plaintiff's Exhibit No. 22, admitted)

3 BY MR. HORNICK:

4 Q When we touched on this earlier you went to Exeter in the
5 year 2000, correct?

6 A Yeah.

7 Q You were in high school at that time, correct?

8 A Yeah.

9 Q It was your - when you went to Exeter it was your junior
10 year of high school?

11 A Yeah - (unintelligible - #12:37:40).

12 Q How old were you when you went to Exeter?

13 A Oh, maybe 16. Was I 16?

14 Q You lived on campus at Exeter, right?

15 A Yes. Sorry, I'm still thinking about the last question. I
16 was definitely 16.

17 Q And you lived on campus while you were at Exeter, correct?

18 A Yes.

19 Q Okay. And since you went away to live at Exeter when you
20 were 16, you have visited your parents only occasionally,
21 correct?

22 A Yeah.

23 Q And you spent the summer away from them after your senior
24 in high school year, correct?

25 A Yeah.

1 Q And during your deposition you couldn't recall whether
2 you had spent the summer with your parents after your junior
3 high school year, correct?

4 A Yeah, I don't think I spent the entire summer with them,
5 the summer after my junior year.

6 Q How much of it did you spend with them the summer after
7 your junior year?

8 A I assume at least a couple of weeks.

9 Q During your deposition on June 8th you couldn't estimate
10 how many days you visited your parents during 11th grade,
11 correct?

12 A Yeah, that's correct.

13 Q And you couldn't estimate how many days you visited your
14 parents during 12th grade, correct?

15 A That's correct.

16 Q And you couldn't estimate how many days you visited your
17 parents during your first year at Harvard, correct?

18 A Yeah.

19 Q And you couldn't estimate how many days you visited your
20 parents during your second year at Harvard, correct.

21 A Yeah, but I mean just because I couldn't estimate doesn't
22 mean that I didn't visit them or that I didn't visit them with
23 any frequency. I just don't know the exact number of days.

24 Q Did you live with your parents during the summer between
25 your first and second years at Harvard?

1 A No.

2 Q And the summer after your second Harvard year you went to
3 California, correct?

4 A Yes.

5 Q You've been there ever since, correct?

6 A For the most part, yes.

7 Q Now, when you were asked during your April 25, 2006
8 deposition you could not even remember when you had made your
9 last visit to your parents. Do you remember that?

10 A I couldn't remember if I had visited them since, since
11 winter break, if I'd visited them more recently.

12 THE COURT: I'm sorry, what timeframe are you asking
13 about?

14 MR. HORNICK: The question was when he was asked
15 during his April 25, 2006 deposition--

16 THE COURT: Right.

17 MR. HORNICK: --when he last visited his parents. He
18 couldn't remember.

19 THE COURT: Last visited them as of April of 2006?

20 MR. HORNICK: Right.

21 THE COURT: Okay. Did you understand that to be the
22 question, Mr. Zuckerberg?

23 THE WITNESS: Yes. And I mean my clarification was
24 that I hadn't, I couldn't recall if I had visited them between
25 the last time that I definitely recalled visiting them for an

1 extended period of time, which was the winter break, which
2 was either, I think it was December and the beginning of
3 January 2005, 2006, if there was anything in between there. I
4 mean, I now recall that there actually was one time when I was
5 in New York and I meet them for a little while, but I mean that
6 wasn't an extended visit.

7 THE COURT: Excuse me, what winter break are you
8 referring to?

9 THE WITNESS: Oh, I mean, I guess there's no formal
10 winter break when you're not at school, anymore but that's
11 still kind of my timeframe.

12 THE COURT: All right. So, okay.

13 THE WITNESS: Sorry.

14 THE COURT: You're talking about a time when you were
15 not in school 2005-2006 where if you had been in school you
16 would have been on break, is that what you're referring to?

17 THE WITNESS: Yeah.

18 THE COURT: Okay. Thank you.

19 THE WITNESS: Yeah. I mean cause like all my friends
20 and stuff are--

21 THE COURT: I just couldn't figure out when you were
22 talking about winter break when you weren't in school that's
23 all.

24 THE WITNESS: Yeah.

25 THE COURT: You cleared that up.

1 THE WITNESS: Yeah. Well the other people I was
2 with were on winter break from school so that's kind of why I
3 was there.

4 THE COURT: Okay. Next question.

5 BY MR. HORNICK:

6 Q If you could pull before you the center of those two
7 transcripts, which is Exhibit 7. Turn to page 196, please.
8 And on April 25th of 2006 you were asked when was the last time
9 you were in Dobbs Ferry. That's your parents' address,
10 correct?

11 A Yes.

12 Q And your answer was I don't remember, correct?

13 A Wait, on 196?

14 Q Yes, line 14 you were asked--

15 A Oh, yes, yes, yes, yes, yeah.

16 Q So that was your answer, I don't remember, correct? Yes?

17 A Yeah.

18 Q But it wasn't that it was so far back that I don't
19 remember. It's that I didn't want to give misinformation
20 because I couldn't recall whether there was a time in between
21 that winter break time or the time that we're calling winter
22 break and the time of the deposition.

23 Q After you moved to California the only financial
24 assistance that your parents have provided for you is to pay
25 for your cell phone and health insurance until FaceBook started

1 paying for the health insurance, correct?

2 MR. GUY: Objection, Your Honor, could I have that
3 question back, please?

4 MR. HORNICK: Sure.

5 THE COURT: Well, we don't have a reporter here so--

6 MR. GUY: No, I apologize.

7 THE COURT: --it's a little bit difficult to do it
8 back. Why don't you repeat it, please?

9 MR. HORNICK: I'll be happy to.

10 THE COURT: All right.

11 BY MR. HORNICK:

12 Q After the time that you moved to California in the summer
13 of 2004, isn't it true that the only financial assistance that
14 your parents have provided for you is to pay for your cell
15 phone and your health insurance until FaceBook Inc. started to
16 pay for the health insurance?

17 A That sounds accurate, but I mean I also wouldn't be
18 surprised if, you know, there was something else that they paid
19 for at some point.

20 Q Can you point to anything else?

21 A Not off the top of my head, no.

22 Q The health insurance that your parents were paying for
23 that allowed you to see California doctors, correct?

24 A I think so but I'm not sure. I didn't see any California
25 doctors.

1 Q Now, when you were deposed on June 8th you were asked if
2 you are registered to vote--

3 A Uh-huh.

4 Q And you said I don't think so, correct?

5 A That's what I said, yeah.

6 Q And when you were deposed on April 25th you were asked if
7 you are registered to vote and you said you couldn't remember
8 registering; is that correct?

9 A Yep.

10 Q Now you remember, right?

11 A I still don't actually remember registering to vote, but
12 now my counsel has told me that they've found my voter
13 registration so that's somewhat convincing that I had.

14 Q You don't remember registering to vote? Do you know where
15 it is that you registered to vote?

16 A The documents say Westchester County.

17 Q Do you remember going in to any office and registering to
18 vote?

19 A Nope.

20 Q Do you know why you would have registered to vote when you
21 did register to vote?

22 A No.

23 Q Do you recall when it was that you registered to vote?

24 A I think it's dated.

25 Q Do you recall when you registered to vote?

1 A I don't remember registering to vote. I mean, I recall
2 that the date on the registration was sometime in September I
3 think of 2002.

4 Q And you've never voted correct?

5 A That's my understanding but apparently my memory sucks.

6 Q No, no, no, no, no. Okay. All right. What year did you
7 become eligible to vote?

8 A I did know I think that's when you're 18.

9 Q Okay. What year were you 18?

10 A I guess that would be 2002.

11 Q Do you recall voting in the last presidential election?

12 A I don't think so.

13 Q Do you know who you would have voted for if you had voted?

14 A That's--

15 MR. GUY: Your Honor, objection.

16 BY MR. HORNICK:

17 Q You don't have to tell me who. I asked you if you know
18 who you would have voted for if you had voted.

19 THE COURT: You may answer that yes or no.

20 A Yeah.

21 BY MR. HORNICK:

22 Q Do you recall voting for that person?

23 A I don't recall voting for that person.

24 Q You don't recall ever voting for anybody in any election,
25 right?

1 A Yeah, that's correct.

2 MR. HORNICK: I have no further questions, Your
3 Honor.

4 THE COURT: All right. We'll have examination by
5 counsel for the defendant.

6 MR. GUY: Your Honor, may I approach and conduct the
7 examination next to the--

8 THE COURT: Sure.

9 MR. GUY: Your Honor, we have a binder of all of the
10 exhibits and if I may just hand that up to your clerk.

11 THE COURT: Sure.

12 UNIDENTIFIED: Your Honor, may I also provide it to
13 the witness?

14 THE COURT: Sure.

15 CROSS EXAMINATION

16 BY MR. GUY:

17 Q Now Mr. Zuckerberg, you've been answering a number of
18 questions here. Let me take you back very quickly. Where were
19 you born?

20 A White Plains.

21 Q In what state?

22 A New York.

23 Q And have you ever lived outside of the United States?

24 A No.

25 Q Where did you go to elementary school?

1 A Concord Road school in Ardsley.

2 Q All right. And what state is that in?

3 A That's in New York. Ardsley's the town right next to
4 Dobbs Ferry.

5 Q And what address did you grow up at in Duxbury, New York.

6 A The same one, 2 Russell Place, Dobbs Ferry.

7 Q Did you live there your entire childhood?

8 A Yeah.

9 Q And where did you go to high school initially?

10 A I went to two high schools. First, I went to Ardsley High
11 School for the first two years. And then I went to Philips
12 Exeter.

13 Q All right. When you went to Philips Exeter, what state is
14 that in?

15 A That's in New Hampshire.

16 Q Did you ever live there except as a student?

17 A No.

18 Q Were you always a student when you were living in New
19 Hampshire?

20 A Yeah. I mean there may have been like a day before
21 registration or something but for the most part, yes, I was a
22 student.

23 Q All right. How old are you right now?

24 A I'm 22.

25 Q All right. And September 2, 2004 how old were you?

1 A 20.

2 Q Now, did you ever consider Philips Exeter to be your
3 permanent home or residence?

4 A No, I was only there for two years.

5 Q And what was your intention upon graduation from Philips
6 Exeter?

7 A I was going to go to college.

8 Q You were not going to remain in New Hampshire, were you?

9 A I mean, unless I went to college in New Hampshire, then
10 no.

11 Q And when did you graduate from Exeter?

12 A Spring of 2002.

13 Q And where did you go to college, I believe you already
14 established that?

15 A I went to Harvard for a couple of years.

16 Q Did you ever consider Harvard to be your permanent home?

17 A No.

18 Q Did you ever consider it to be your permanent residence?

19 A No. I mean I was only there for a short period of time.
20 And I mean I was only going to be there for a little while
21 until I graduated and went somewhere else.

22 Q From the time you first attended Harvard until the time
23 you left, did you ever have any intention to remain in
24 Massachusetts indefinitely after you graduated from Harvard?

25 A No. I mean, I don't know where I would have gone, but I

1 assume the intent, the intent after college is to get a job
2 somewhere or go to more school somewhere.

3 Q Now, you had a number of jobs while you were at Harvard,
4 is that correct, in addition to going to school?

5 A Yeah.

6 Q And could you describe those for me?

7 A Sure. So I mean the main one was I did some programming
8 at the David Rockefeller Center for Latin American studies. I
9 helped them develop their website and some internal programs.
10 I also worked I guess for part of the summer between my
11 freshman and sophomore years at a lab in the Harvard Biology
12 labs just doing some programming for them. I guess during that
13 time I also in addition to just projects that I made on my own,
14 I did some contract work for people, well one thing in
15 specific, and I guess like as far as jobs go at the end of my
16 freshman year I stayed at Harvard for a few days to get housing
17 in between the end of the school year and when I could move
18 into my summer apartment at the business school, and in order
19 to get housing for that week I had to like do some random tasks
20 at some alumni reunion.

21 Q All right. What timeframe is this you're talking about?

22 A This would be during the two years that I was at Harvard.

23 Q 2002 to 2004?

24 A Yeah, fall 2002 to spring of 2004.

25 Q All right. Describe for me your background in as a

1 computer programmer?

2 A Where do you want me to start?

3 Q Well, go back, when did you first have an interest in
4 computer programming?

5 A Well, I mean I first got a computer when I was in sixth
6 grade I think. So, I mean right after I got that I started
7 just playing around with, and I mean it was within a year that
8 I wanted to start learning how to program, so I bought a book
9 initially, tried programming. It was too hard for me so I
10 quit. Then I don't know, I guess like a little while after
11 that I started learning other languages and just making random
12 things. By the time that I went to Exeter I guess I made some,
13 some like more complicated things. So I mean I made--

14 Q Were you programming at that time?

15 A Yeah.

16 Q Can you describe that for the Court?

17 A Describe?

18 Q The kind of programming you were doing--

19 A I mean a lot of the stuff that I--

20 Q --when you 16 or 17 years old?

21 A A lot of the stuff that I made I just made for myself,
22 like little tools and stuff to get things done quicker.

23 Q I'd make games for myself that I thought were fun, just
24 like dorky things. But like the first major thing that I did
25 was for my senior project at Exeter I developed with one of my

1 friends an MP3 player, which is a music player that could
2 observe the person who was using the player and learn their
3 listening habits, and then if the person asked it could
4 construct a stream of songs for them based on what they liked
5 playing and what they liked listening to around what stuff and
6 just play stuff for the person that the person liked.

7 Q Can you describe for the Court what an MP3 is?

8 A It's just like music on your computer.

9 Q All right. Was there any commercial interest in this
10 program you developed? By the way what did you call that
11 program?

12 A Synapse.

13 Q Synapse.

14 MR. HORNICK: Your Honor, objection as to relevance
15 to this whole line?

16 THE COURT: Well, I assume he's leading up to
17 something so I'll let him go forward.

18 MR. GUY: Thank you, Your Honor.

19 BY MR. GUY:

20 Q What sort of programming did you do for Synapse, I'm sorry
21 - was there any commercial interest in the Synapse program?

22 A Sure, I mean some companies approached us.

23 Q Can you name any that came to you?

24 A Yeah. I mean, there was Winamp, which was owned by AOL
25 and Microsoft.

1 Q They were actually interested in your software that you
2 had designed?

3 A Yeah.

4 Q And this is software you designed when you were still at
5 Exeter in high school, is that correct.

6 A Yeah, and then afterwards too I kept on working on it.

7 Q All right. And you continued your programming at Harvard;
8 is that correct.

9 A Yeah.

10 Q Now, in 2004 can you describe for me how you started
11 FaceBook?

12 A What do you mean?

13 Q Well, how did it begin?

14 A Well, I mean, I made a bunch of stuff while I was at
15 Harvard that was mostly just to get information out to people
16 around you. So I mean and like understand their environment
17 better, so I mean earlier in my sophomore year I had made this
18 program Course Match which would tell you who was in your
19 classes and what classes the people in your classes were likely
20 to take and sort of like recommend stuff to you like that.

21 Q Was that for the Harvard student body the--

22 A I mean, I just made it for myself because I thought it
23 would be interesting, but then I let other people use it and it
24 was kind of cool. I guess FaceBook just kind of continued with
25 that. There's a need at Harvard at the time for a FaceBook and

1 online directory for students and I made it.

2 Q All right. Did you also develop before FaceBook a program
3 called FaceMatch?

4 A Yeah.

5 Q Okay. Can you describe that for us briefly?

6 A It was somewhat of a joke, but I mean basically what it
7 was is it took all of Harvard's students I.D. pictures, and it
8 would, and it basically like allowed the student body
9 population to rank all the photos according to the
10 attractiveness of the people in the photos by using the chess
11 ranking algorithm for taking two players and which had
12 different ranks and assigned new ranks based on who won a
13 match. So I mean, it would show two at a time and then you can
14 click on one and that person would be more attractive.

15 Q And this was pictures of the undergraduate student body at
16 Harvard; is that correct?

17 A Yeah.

18 Q Did you get in any trouble for doing that?

19 A Yeah.

20 Q Okay. Were you placed on probation for doing that?

21 A Yeah.

22 Q And how did this lead into the FaceBook? How did it
23 relate to your development or creation of the FaceBook?

24 A I mean, it was just kind of continuing along with the
25 Internet developing stuff about people around in the community.

1 But I mean one thing in particular is that - the thing that,
2 one of the things that I got in trouble for was supposed
3 violation of privacy because I didn't have the right to use
4 peoples photos without them. Part of the editorial around the
5 school after that and in *The Crimson*, the school's newspaper,
6 was that there should be an online FaceBook and that's what
7 this highlighted, but it really needed to ensure that people
8 had control over their own privacy and could control who saw
9 what they put up. So I mean, I basically took that article
10 that they wrote and made a site with those exact privacy
11 controls and that was FaceBook.

12 Q All right. And when was FaceBook launched?

13 A February 4, 2004.

14 Q All right. And can you describe for me the way in which
15 the student body at Harvard accepted FaceBook?

16 A I mean a lot of people started using it pretty quickly. I
17 think within couple of weeks there were more than 4,000 people
18 using it.

19 Q Did that surprise you?

20 A It was more than I expected, yeah.

21 Q Now, what does it take to put a website together so that
22 as many as a thousand people can use it?

23 A I mean, there are just a bunch of different things you do.

24 Q Okay. I mean can you run it off of a computer in your
25 dorm room.

1 A I mean it depends on what it's doing.

2 Q Well, in the case of the FaceBook, what did you need in
3 order to make that website accessible to the student body at
4 Harvard?

5 A So I mean first you need to program it, right the code.
6 Then you needed to get a server to run it off of, or multiple
7 servers depending on the scale at which you're running it, and
8 that gets into the co-location stuff that I was answering
9 before.

10 Q Okay.

11 A Originally, we just went with the servicemanage.com
12 because they let us rent servers on a month-to-month basis.
13 The original price was \$85 a month and we only needed one. So
14 it was relatively cheap to run the service, and they'd do what
15 was called management of the servers, so if the server crashed
16 they'd reboot it. They'd make sure that it had an Internet
17 connection. Stuff that normally if you're just in a standard
18 co-location facility you'd have to make sure that stuff was
19 working by yourself. So I mean today we have a bunch of people
20 at the company who just focus on making sure that the servers
21 are running correctly. But we didn't use manage.com back then
22 to monitor that server for us that all that I'd have to worry
23 about would be programming.

24 Q All right. Let me take you to a date in February in 2004
25 when TheFaceBook was launched. At that time did you have any

1 intention to go to California for any reason?

2 A No.

3 Q All right. And the last day of school of the spring term

4 I believe was May 28th of 2004?

5 A Yeah, that was the date that the last final exam was.

6 Q Okay. And by that time did you have an intent to go to

7 California for the summer?

8 A Yes.

9 Q Okay. So what changed between February of 2004 and May of
10 2004 to change your mind?

11 A What made me want to go to California?

12 Q Yes.

13 A I guess I just hadn't really thought about it. I mean,
14 like I wasn't sure what I was going to do during the summer,
15 and I mean I think at some point I started looking for some job
16 over the summer, but then it occurred to me that I should just
17 run FaceBook because that was the best thing that I was working
18 on and it was, it was just an interesting thing to do. It was
19 growing. I mean, by that time--

20 Q When is--

21 A --after we launched FaceBook at Harvard and we had about
22 like I think it was like 4,000 people or so in the first couple
23 of weeks, then all these people from other schools had started
24 writing into us and asking that we launch it at their schools.
25 So for the rest of that spring term we spent of it just trying

1 to launch as many schools as possible, and by the end we had
2 up to I think 29 or 28 schools.

3 Q This was by what timeframe?

4 A I mean, this was by the time that I left Harvard for the
5 end of the spring term.

6 Q So what was the goal of going to California for the
7 summer?

8 A I mean, it was really just like a place to hang out for
9 the summer but there were a few reasons why I went. I mean,
10 one was that Andrew McCollum was going separately. He had an
11 internship at EA sports so he was just going to be out there
12 and I wanted to hang out with him. Another is that I had
13 another friend who had another internship too.

14 Q Did you have any intention to expand the FaceBook to other
15 schools over the summer?

16 A Yeah, I mean that's primarily what we worked on over the
17 summer. But I mean--

18 Q All right. Can you describe for me I believe there's
19 testimony that you've given that your summer sublet was at La
20 Jennifer way in Palo Alto; is that right?

21 A Yeah.

22 Q Describe for me what it was like being at the summer
23 sublet over the summer of 2004?

24 A What do you mean?

25 Q Well, what was it like working there? What was it like

1 being there? Just tell me.

2 A It was fun.

3 Q Okay. All right. What did you do everyday?

4 A Woke up, walked from my bedroom to the living room and
5 programmed.

6 Q Okay. What time did you wake up in the morning?

7 A It probably wasn't the morning.

8 Q Okay. How late did you stay up programming?

9 A I don't know, like it's quiet at night.

10 Q Okay.

11 A You can get work done.

12 Q Did you work all night sometimes?

13 A Yeah. I mean although, I guess that's relative when
14 you're on shifted hours like that.

15 Q Okay. And who else was living in the La Jennifer Way
16 address? First of all we'll start with who were the other
17 sub-lessees?

18 A So I mean the people listed in the lease were myself,
19 Dustin, Eric Shultank, Steven Dawson Haggerty and Andrew
20 McCollum. And then my friend Adam D'Angelo also came and lived
21 there. And we met Sean, he crashed there for a while.

22 Q Were all of these people, were they all students?

23 A Everyone except for Sean.

24 Q All right. And had all of these students had they
25 attended school at least two years?

1 A No. Eric Shultank and Steven Dawson Haggerty had been
2 freshmen before they came out.

3 Q Okay. Did you ever refer to them as interns?

4 A Yes.

5 Q Okay. Were they interns for your FaceBook.com website?

6 A That's just what we called them. Yeah, I mean they worked
7 on it over the summer.

8 Q All right. Can you describe how they worked on the
9 FaceBook over the summer?

10 A Probably very similar to how we worked.

11 Q Same hours?

12 A Yeah. Eric like to work earlier in the morning, but I
13 don't know--

14 Q Okay. Were you all doing programming?

15 A Yeah. Well, I mean when you say they all, you're
16 referring to those two guys, right?

17 Q Yes. And were the others, Dustin and Andrew, were they
18 also doing programming?

19 A Well, yeah, but I mean Dustin was working on the site and
20 Andrew has his internship at EA and then he was also doing some
21 stuff on the side. Adam was doing some random projects and
22 helped out with FaceBook stuff sometimes.

23 Q And when you went to the La Jennifer Way address in Palo
24 Alto when you first arrived there, did you bring any of your
25 belongings with you?

1 A Like one bag.

2 Q Okay. How did you get it there?

3 THE COURT: I'm sorry, I didn't hear your answer?

4 THE WITNESS: I said one bag.

5 THE COURT: One bag, thank you.

6 THE WITNESS: Yeah.

7 BY MR. GUY:

8 Q And how did you get there?

9 A I took a plane.

10 Q Okay. Did you ever, during the summer of 2004, did you
11 ever have any of your belongings shipped out to you?

12 A No.

13 Q Did you ever have any furniture shipped out to you from
14 home--

15 A No.

16 Q --or from school?

17 A I mean, it was a furnished place so no.

18 Q Okay. And it was your understanding that it was only a
19 summer sublet when you first began to rent there; isn't that
20 right?

21 A Yes.

22 Q What was your intention in terms of staying in California
23 as of the time that you first arrived at the Jennifer Way
24 address in the summer of 2004?

25 A Well, I mean I wasn't really even thinking about it. I

1 mean, the intention was just to go back to Harvard at the end
2 of the summer. This was a cool place to spend the summer, my
3 friends were there, this is Silicon Valley, sort of a mythical
4 place for start-up. I thought that that would be interesting.
5 It was interesting, but I mean the plan wasn't to settle there
6 at all. I mean, in the term before that we'd run the operation
7 from Harvard, our servers had been elsewhere and Dustin and I
8 were just in our room doing a bunch of the coding. So I mean
9 we knew that was possible and I mean the intent was even though
10 we were setting up a bunch of stuff in California, I mean
11 before it had been set up in New York but we were still in
12 Boston, so we figured we can go back to school and still run it
13 from there, but the one thing that changed as the summer went
14 on is the scale of the operation got slightly bigger. So like
15 at the end of spring term we were around 28, 29, 30 schools. I
16 think it was maybe around 150 or 200,000 users, and I think
17 that by the end of the summer we were ready to launch at more
18 than 100 schools. And we knew that we could go back to school
19 and run it at that point, but like we didn't fully get to focus
20 on our school work in the spring term, and we figured it would
21 just kind of be a waste to split our attention and Harvard has
22 this awesome policy where they just let you take as much time
23 off as you want whenever you want it.

24 Q Do you recall anybody at Harvard ever describing that
25 policy to you?

1 testimony the witness may say so.

2 THE WITNESS: I'm sorry, could you repeat that?

3 MR. HORNICK: Yes.

4 BY MR. HORNICK:

5 Q So you gave away the remainder of your personal belongings
6 in Massachusetts around September 11th of 2004, correct?

7 A Well, the ones I didn't bring back to New York, yes.

8 Q Okay.

9 (Pause)

10 BY MR. HORNICK:

11 Q Mr. Zuckerberg, this, I believe I might have said earlier
12 that this is a testimony that we referred to earlier, but I
13 believe this might be the first time that we've referred to
14 this deposition transcript. Could you look at the first page
15 of this transcript, please?

16 A Yeah, sure.

17 Q All right. Now you were deposed by me on June 8th of 2004
18 in California, correct?

19 A Yes.

20 Q And this deposition transcript says on--

21 MR. GUY: Your Honor, I think it's 2006.

22 THE COURT: You keep saying 2004.

23 MR. HORNICK: Yes, I apologize, Your Honor. 2004 is
24 a key date in this case and that's the date that I've been
25 focusing on almost continually in my daily life for the past

1 several months.

2 BY MR. HORNICK:

3 Q But what I meant was that I deposed you on June 8th of
4 2006, correct?

5 A Yes.

6 Q Okay. And you have before you the transcript of that
7 deposition, correct?

8 A Yes.

9 Q And have you had the opportunity between the time you were
10 deposed and today to read that transcript?

11 A Yeah.

12 Q Okay. And have you created one of those correction pages
13 for this transcript?

14 A Not yet.

15 Q Not yet, okay. Now when I deposed you on June 8th of 2006,
16 you said that during the summer of 2004 you had spent some of
17 the money that your parents had put aside for you for your
18 college education, correct?

19 A Yes.

20 Q All right. And you said you'd spent much of that money,
21 correct?

22 A Yes.

23 Q But you said you weren't sure if you'd spent it all,
24 correct?

25 A Yeah.

1 Q Do you know how much of it you'd spent?

2 A No.

3 Q Could you assign a percentage to how much of it is left?

4 A Oh, it's all left now.

5 Q It's all left now because you've replenished it?

6 A Well, I spent the money once I was relatively confident
7 that we'd get investment and then part of the investment deal
8 was to pay myself back for that loan to the company.

9 Q But in the summer of 2004 you had spent a good part of the
10 money that your parents had put aside for your college,
11 correct?

12 A Yeah.

13 Q And when was it that you were able to replenish?

14 A I think it was a few weeks later.

15 Q A few weeks later?

16 A Although, I'm not sure of the exact dates. But it wasn't
17 that long.

18 Q You first got your first infusion of venture capital in
19 April of 2005, correct?

20 A No. It was September of 2004. I mean, it was a smaller
21 round. It was around - I don't know.

22 Q All right. So from, the money that you--

23 MR. GUY: Your Honor, if he has - allow him to
24 complete the last answer.

25 THE WITNESS: No, no, I was done. Don't worry.

1 THE COURT: One of the problems, I wish you'd speak
2 a bit more distinctly, Mr. Zuckerberg. You have a tendency to
3 mumble and sometimes it's hard to hear exactly what you're
4 saying. So please try and speak a little bit more distinctly.

5 THE WITNESS: Okay. Sorry.

6 BY MR. HORNICK:

7 Q Now, you moved down to your summer - strike that.

8 During the summer of 2004, you were living in what you
9 referred to as a summer sub-let, correct?

10 A Yeah.

11 Q And that was Jennifer Way, correct?

12 A Yes.

13 Q All right. And you moved out of there around September
14 11th or September 12th of 2004, correct?

15 A Yes.

16 Q And you moved out of there because your lease ran out,
17 correct?

18 A Yeah.

19 Q And sometime before you moved out you bought a car,
20 correct?

21 A Yes.

22 Q It's a Ford Explorer, correct?

23 A Yes.

24 Q And you bought that car in California?

25 A Yes.

1 Q And it was registered in California when you bought it?

2 A That's my understanding, yes.

3 Q And you kept it registered in California after you bought
4 it, correct?

5 A I didn't change it.

6 Q And you obtained insurance for that car online yourself,
7 correct?

8 A Yes.

9 THE COURT: I'm sorry; I'm not understanding this.
10 You purchased a car that was already registered and you kept
11 the registration of the previous owner, is that what you're
12 saying?

13 THE WITNESS: That's my understanding. Well, the car
14 was registered. I don't know if it was ever transferred over.

15 THE COURT: So you're testifying you bought a car and
16 you didn't register it in your own name and kept the
17 registration in the name of the previous owner? Is that what
18 you're - I'm just trying to understand your testimony,
19 Mr. Zuckerberg.

20 THE WITNESS: Yeah. That's my understanding.

21 THE COURT: All right. Proceed.

22 BY MR. HORNICK:

23 Q Is it in fact your understanding that you didn't register
24 that car in your own name?

25 A That's what I remember, yeah.

1 Q So when you got that car, you bought it from somebody on
2 Craig's List in California, correct?

3 A Yes.

4 Q All right. So when you got that car you didn't need to
5 fill out any forms to show that it was your car?

6 A I don't know. I don't remember.

7 Q And you don't know if you sent in any forms to the state
8 of California showing that now you owned that car?

9 A I don't remember. I, I, I'm really not sure.

10 Q And you don't remember whether the state of California
11 sent you a registration certificate showing that you own that
12 car?

13 A I, I don't remember.

14 Q All right. And you don't remember if the state of
15 California sent you any license plates to put on that car?

16 A It already had license plates.

17 Q They didn't send you any new license plates?

18 A I don't think so.

19 Q Did they send you any kind of a sticker or anything that
20 you needed to apply to the license plates or the windshield?

21 A At some point I think so, yeah.

22 Q Was that after you bought the car? Shortly after you
23 bought it or was it long after you bought it?

24 A I think it was a little while after.

25 Q All right. So you had that car from about September of

1 2004 until December of 2004, correct?

2 A Yes.

3 Q December of 2004--

4 A Well, we had the car after that too, but yes.

5 Q So December 2004 you leased a new Infiniti, correct?

6 A Yes.

7 Q You leased that car in California?

8 A Yes.

9 Q And it was registered to you in California?

10 A Yes.

11 Q And you obtained insurance for that car through the
12 dealership, correct?

13 A I think it was the same insurance that I got for the Ford.

14 Q All right. Now when you got that Infiniti did you keep
15 the Explorer?

16 A Yeah, I mean other people drove it too.

17 Q Okay.

18 A The one thing that's possible is that it was registered to
19 someone else in the house, and I just didn't fill out the
20 paperwork for that. But I really don't know how that, how this
21 stuff works.

22 Q But you bought the car, right?

23 A I mean, I physically paid a check to someone for the car,
24 yes.

25 Q You used your money to pay for it?

1 A Yes.

2 Q Now after you moved out of the summer sublet you, and some
3 friends went to New York and stayed at your parents' house for
4 about two or three days, correct?

5 A Yes.

6 Q And that was because you hadn't lined up any other new
7 place to live by the time that the summer sublet had run out,
8 correct.

9 A Yes.

10 Q Okay. Now, in September of 2004 did you have any plans to
11 go to New York and stay there for an indefinite period of time?

12 A Sorry, end of September--

13 Q Yes.

14 A Could you repeat that?

15 Q In September of 2004 did you have any plans to go to New
16 York and stay there for an indefinite period of time?

17 A No formal plans.

18 Q Did you have any plans at all?

19 A Not really.

20 Q Okay. And while you were in New York your intent was to,
21 and to be more specific while you were in New York for those
22 few days in September of 2004, your intent was to return to
23 California and stay there, correct?

24 A No, my intent was to go to California and stay there for a
25 short period of time but not stay there indefinitely or

1 anything.

2 Q Well, let's look at Exhibit 7 again, page 205.

3 A Which one, is that this one?

4 Q It's the other one.

5 A Oh, it is, yeah.

6 (Pause)

7 THE COURT: Go ahead.

8 BY MR. HORNICK:

9 Q I'd like to direct your attention to page 204 of Exhibit
10 7. Do you have that before you?

11 A Yeah.

12 Q On line 15 you were asked, "What was your purpose of going
13 to New York in early September of 2004." Do you see that?

14 A Yes.

15 Q And then you gave an answer. You said, "You didn't have a
16 place to stay in California?" Correct?

17 A Yeah.

18 Q And then you gave some additional answer to that question.
19 Then on the next page, top of page 205, you were asked, "Was
20 your intent to stay in New York when you first went there?" Do
21 you see that?

22 A Yeah.

23 Q And then your attorney objected and you answered, "No, the
24 intent was to find a place to stay in California for a little
25 while longer and then, in California, go back to California."

1 Do you see that?

2 A Yes.

3 Q Okay. Then you were asked again, "So prior to going to
4 New York in September, you intended to stay in California?"
5 And - do you see that question?

6 A Yeah.

7 Q All right. Then your attorney objected and then you
8 answered, "I wouldn't say that I went back to California for a
9 little longer, yeah." Do you see that?

10 A Yeah.

11 Q Okay. Then you were asked again, Did you just say, "I
12 intend to stay in California?" Do you see that?

13 A Yeah.

14 Q All right. Then your attorney objected again and you
15 said, "Do you want me to answer this?" And the questioner
16 answered yes. Do you see that?

17 A Yeah.

18 Q And then you said, "That's not what I said. I said I
19 intended to go back to California and stay after that." Do you
20 see that?

21 A Yeah.

22 Q That was your testimony at the time, correct?

23 A Yes.

24 Q Okay. Now when you returned to California from New York
25 around September 12th of 2004, you moved into an unfurnished

1 house on Westbrook Avenue, correct?

2 A Yes.

3 Q That was in Los Altos, California, correct?

4 A Yes.

5 Q That was around September 14th or so of 2004?

6 A Yeah.

7 Q Okay. And you signed the lease for that property,
8 correct?

9 A I don't know if I did.

10 (Pause)

11 BY MR. HORNICK:

12 Q Mr. Zuckerberg, you've been handed what we've marked as
13 Exhibit 9 which was, I'm sorry, Exhibit 26 which was Exhibit 9
14 of your deposition on June 8th of 2006. Can you tell us what
15 this document is?

16 A It looks like the lease.

17 Q The lease for what?

18 A For the place in Los Altos in Westbrook.

19 Q Westbrook Avenue address, this is the lease for that
20 address; is that right?

21 A Yeah.

22 Q And is that your signature that appears on the last page?

23 A Yes.

24 Q Well, FaceBook Inc. paid the rent for the Westbrook Avenue
25 house, correct?

1 A Yeah, that's my understanding.

2 Q And as I asked you before this was an unfurnished house,
3 correct?

4 A Yes.

5 Q And you bought furniture for it, correct?

6 A A very small amount.

7 Q I'm sorry?

8 A A small amount, yeah.

9 Q But you bought furniture for that house?

10 A Like a mattress, yeah, a couch.

11 Q You bought a mattress and a couch?

12 A Yes.

13 Q Yes. But any furniture for this house?

14 A A table to sit and work on. Some chairs.

15 A You testified that you probably bought some appliances for
16 the house too, correct?

17 A Yeah.

18 Q This was all new stuff that you bought for the house,
19 right?

20 A I assume so, yeah.

21 Q You bought it with your money?

22 A We split a lot of the stuff that was just for the house.

23 Q But you used some of your own money to buy furniture for
24 this house, correct?

25 A I assume so, yeah.

1 Q You did or you didn't?

2 A I don't remember.

3 Q Who else would have paid for this furniture if it wasn't
4 you?

5 A Dustin or Sean or Andrew.

6 Q Now, during the deposition I asked you if you bought
7 furniture for the house and you said you did, correct?

8 A I did.

9 MR. HORNICK: We'd like to move this Exhibit 26 into
10 evidence.

11 THE COURT: Any objection?

12 MR. GUY: None, Your Honor.

13 THE COURT: It's admitted.

14 MR. HORNICK: I'll give it--

15 THE COURT: Just put it on the clerk's desk.

16 (Plaintiff's Exhibit No. 26, admitted)

17 BY MR. HORNICK:

18 Q And while you were at the Westbrook Avenue address you
19 opened a gas and electric account in your name, correct?

20 A Yeah, I believe so.

21 Q And you opened a cable account in your name as well,
22 correct?

23 A Yes.

24 Q And in January 2005 you moved to the house on Sherman
25 Avenue in Menlo Park, California, correct?

1 A Yeah.

2 Q Okay. And you moved there only because one of your
3 roommates was having an allergic reaction to something at
4 Westbrook, correct?

5 A That's correct.

6 Q If not for that problem, you would have stayed out the
7 Westbrook lease term, correct?

8 A By that time, yeah, we had decided to stay for the spring
9 term as well.

10 Q And when you moved to the Sherman Avenue address you took
11 your furniture with you, correct?

12 A Yes, yes.

13 (Pause)

14 BY MR. HORNICK:

15 Q I'm handing you what's been marked as Exhibit 34,
16 Mr. Zuckerberg, which is Exhibit 10 to your deposition on June
17 8th. Can you identify this document for us?

18 A This looks like the lease for the Menlo Park, Sherman
19 Avenue house.

20 Q The lease for the Sherman Avenue House. And did you sign
21 this lease?

22 A It looks like it, yes.

23 Q Let's look at the last page. You signed this lease in
24 both your own name and the name of TheFaceBook, correct?

25 A Yes.

1 Q Is that your handwriting next to your signature there on
2 the line that says tenant?

3 A No.

4 Q No. But it says TheFaceBook/Mark Zuckerberg and then your
5 signature following that, correct?

6 A Yes.

7 Q And the city that you provided there under your name is
8 Los Altos, California, correct?

9 A Well, I mean, I didn't write that but that's what's there,
10 yes.

11 Q But that was - was that Los Altos address or city and
12 state on this document when you signed it?

13 A I don't remember. I assume so.

14 MR. HORNICK: I'd like to move this Exhibit 34 into
15 evidence?

16 THE COURT: Any objection?

17 MR. GUY: None, Your Honor.

18 THE COURT: It's admitted, Exhibit 34.

19 (Plaintiff's Exhibit No. 34, admitted)

20 BY MR. HORNICK:

21 Q Now in the fall of 2005 you moved into an unfurnished
22 apartment on Ramona Street in Palo Alto, correct?

23 A Yes.

24 Q And you still live there today, correct?

25 A Yes.

1 Q And you plan to stay there, correct?

2 A I, I guess. I don't know, I mean, there's a lease on that
3 too so I'm not sure what's going to happen.

4 Q Well, during your deposition I asked you, "Is it your plan
5 to stay at Ramona?" And you said, "I mean at this point I have
6 no issue until I need to move or it makes sense to move, sure."
7 Do you recall that that was your testimony?

8 MR. GUY: Your Honor, I'd ask that he publish the
9 transcript.

10 MR. HORNICK: Be happy to show it to you.

11 THE COURT: Well no. He may ask him if he remembers.
12 If he doesn't remember he can look at the transcript.

13 A I mean, I don't remember that but.

14 BY MR. HORNICK:

15 Q All right. Well let's look at page 102, 102 of that big
16 thick Exhibit 4 that's in front of you.

17 (Pause)

18 A Okay, I see it now.

19 BY MR. HORNICK:

20 Q In line three I asked you, "Is it your plan to stay in
21 Ramona?" Do you see that?

22 A Yes.

23 Q And you answered, "I mean at this point I have no issue
24 until I need to move or it makes sense to move, sure." That
25 was your testimony at the time, correct?

1 A Yes.

2 Q Okay. Now, since you moved to California in June of 2004
3 you spent all or the total of about two or three weeks there,
4 correct?

5 A I'm sorry, could you repeat that?

6 Q Since you moved to California in June of 2004, you've
7 spent all but about two or three weeks there, correct?

8 A It's probably a bit longer than that, but I mean it's,
9 yes, some number of weeks.

10 Q Except for some number of weeks you've been in California,
11 living in California since summer of 2004, correct?

12 A For the most part, yeah.

13 Q And what number of weeks has it been that you have not
14 been in California since June of 2004?

15 A I'm not sure exactly but down to the east coast a lot.

16 Q When you were outside of California during 2004 after you
17 moved there in June, did you intend to return to California?

18 A Sorry, could you repeat that?

19 Q Yes. When you were outside of California in 2004 after
20 moving there in June, did you intend to return to California?

21 A So are you specifically talking about the time that I left
22 in September?

23 Q Any time that you left California during 2004 after you
24 moved there in June, did you intend to return to California?

25 A I mean, I can only recall that one time and, yes, would be

1 the answer for that time.

2 Q Now, in September of 2004, did you have any plans to go to
3 New York and stay there for an extended period of time?

4 A No formal plans at that point, no.

5 Q Did you have any plans?

6 A No.

7 Q Do you live at your parents' house now?

8 A I don't stay there, no.

9 (Pause)

10 BY MR. HORNICK:

11 Q I refer you to the other transcript, the smaller one.

12 This is a transcript of your April 25, 2006 deposition in
13 California, and I'd ask you to look at page 30, line seven.

14 During that deposition you were asked, "How long, if you know,
15 how long has your family lived at the Dobbs Ferry address in
16 New York." Do you see that?

17 A Yes.

18 Q And you answered, "I don't know the exact number of years
19 but I've lived there, like I've lived there my whole life
20 growing up. I don't live there now." That was your answer at
21 that time, correct?

22 A Yeah.

23 Q Do you have any current plans to return to Harvard
24 University?

25 A Not at the moment.

1 Q I'm going to hand you a set of documents that's been
2 marked as Exhibit 10. These are documents that were produced
3 by FaceBook defendants bearing production numbers TFB-56--

4 THE COURT: Hold on. Excuse me just a second.

5 MR. HORNICK: Yes.

6 THE COURT: I have to confer with Noreen. I'm--

7 MR. HORNICK: Certainly.

8 (Pause)

9 THE COURT: Go ahead, Mr. Hornick.

10 MR. HORNICK: Thank you, Your Honor.

11 BY MR. HORNICK:

12 Q This is a set of documents that was produced by
13 TheFaceBook defendants bearing production numbers TFB-56
14 through 83. You testified earlier that you are the CEO of
15 FaceBook Inc., correct?

16 A Yes.

17 Q And you've been the CEO since FaceBook Inc. was
18 incorporated, correct?

19 A That's my understanding.

20 Q Can you tell me what these documents are?

21 MR. GUY: Your Honor, this is a compilation of
22 multiple documents within this exhibit. I would object to
23 treating them collectively like that, and they span a frame of
24 time from 2004 well into 2005.

25 THE COURT: You may answer. Look at the documents,

1 Mr. Zuckerberg, and then you can answer the question.

2 THE WITNESS: Do you want me to look at all of them?

3 THE COURT: Do you want to look at all of them?

4 MR. HORNICK: Your Honor, you can, I'm sorry.

5 BY MR. HORNICK:

6 Q Mr. Zuckerberg, you can go through them one document at a
7 time and you can identify it.

8 THE COURT: All right. You--

9 BY MR. HORNICK:

10 Q Let's start, let's start - I'll help you through it.

11 THE COURT: Excuse me, excuse me. You may look at
12 all of them Mr. Zuckerberg, please.

13 (Pause)

14 THE COURT: All right. Put the question--

15 THE WITNESS: Okay.

16 BY MR. HORNICK:

17 Q You've had an opportunity to go through these documents,
18 Mr. Zuckerberg?

19 A Yeah, I looked at them.

20 Q Can you tell the Court generally what they are?

21 A They're I guess filings about starting the corporation or
22 articles of incorporation, and there's stuff in there about
23 California basically issuing us the right to do business in
24 California.

25 Q These are FaceBook Inc. corporate documents, correct?

1 A Yeah.

2 Q All right. Let's look - first I'll ask you, when did
3 TheFaceBook Inc. incorporate?

4 A I'm not sure exactly. It was sometime during the summer
5 of 2004.

6 Q Let's look at page numbers TFB-58 through 61, and based
7 upon looking at those documents, does it either refresh your
8 recollection as to when FaceBook Inc. was incorporated or can
9 you tell the Court based upon looking at these documents when
10 FaceBook Inc. was incorporated?

11 A Yeah. It looks like it was the 29th of July.

12 Q Of what year?

13 A 2004.

14 Q So TheFaceBook Inc. was incorporated on July 29th of 2004,
15 correct?

16 A Sure.

17 Q And your attorneys, your California attorneys incorporated
18 TheFaceBook Inc. at your request, correct?

19 A Yes.

20 Q TheFaceBook Inc. is now FaceBook Inc. correct?

21 A Yes.

22 Q In the summer of 2004 before TheFaceBook.com was
23 incorporated - strike that question.

24 In the summer of 2004 before TheFaceBook Inc. was
25 incorporated, TheFaceBook.com website was located and run from

1 the La Jennifer way address where you were living, correct?

2 A Sorry, it was--

3 Q In the summer of 2004 before TheFaceBook Inc. was
4 incorporated the FaceBook.com website was located and run from
5 the Jennifer way address where you were living, correct?

6 A I mean, the people who are running the website were in La
7 Jennifer Way, yeah, but I mean the servers weren't if that's
8 what you're asking.

9 Q The servers were somewhere else in California?

10 A Well, at that point they may have been with Savvy, which
11 was in New York but, yeah, they were at one of the co-location
12 facilities.

13 THE COURT: I'm sorry, that last - I didn't hear any
14 of the last five words you spoke because you mumbled again.

15 THE WITNESS: They were in--

16 THE COURT: Could you repeat the last part of your
17 answer, please?

18 THE WITNESS: Sure. They were in one of the
19 co-location facilities.

20 BY MR. HORNICK:

21 Q And the co-location facilities one of them was Equinex
22 which is in California, correct?

23 A Yes.

24 Q And the other one was, the other co-location facility was
25 Savvy, correct?

1 A Yes, but we--

2 Q Where were those servers?

3 A We didn't move into Equinex until later in the summer
4 though.

5 Q Summer of 2004, correct?

6 A Yeah.

7 Q And just tell the Court what a co-location facility is?

8 A When you're running a website with a bunch of servers you
9 need a place to put the servers and so there are these
10 facilities which specialize in storage and they provide all the
11 things that you need for the server. So, I mean, they have
12 good air conditionings so that they don't overheat and melt.
13 They have good power, generally redundant power, so if there's
14 a power outage then the servers don't go down. They're usually
15 resistant somewhat to natural disasters, so I mean depending on
16 the area they can be built to be resistant to earthquakes or
17 floods or whatever makes sense. And they generally have good
18 Internet connections so that your servers can have fast
19 responses to people making requests to them.

20 Q So sometime in the summer of 2004 the servers for
21 TheFaceBook.com website were in your co-location facility in
22 California, correct?

23 A At some point during the summer?

24 Q Yes.

25 A Yes.

1 Q Yes, okay. And you were running TheFaceBook.com website
2 from your Jennifer Way address, correct?

3 A Yeah, and I was programming and administrating it from
4 that address I think is like a--

5 Q All right.

6 A --pretty accurate way to describe it.

7 Q All right, after TheFaceBook Inc. was incorporated, it was
8 located at Jennifer way where you were living, correct?

9 A Yeah, I think so.

10 Q Okay. Now while you were living at the Westbrook Avenue
11 address TheFaceBook Inc. and TheFaceBook.com website were being
12 run from the Westbrook Avenue address, correct?

13 A That's my understanding, yeah.

14 Q Let's look at page, in this document you have before you
15 TFB, it's Exhibit 10, TFB-59. Can you tell the Court what this
16 document is?

17 A It's a certificate of incorporation for the company.

18 Q The company being TheFaceBook Inc., correct?

19 A Yes.

20 Q Did you sign the certificate of incorporation?

21 A Yeah, that's - TFB-000061.

22 Q And what date did you sign FaceBook Inc.'s certificate of
23 incorporation?

24 A It says July 26th.

25 Q Did you sign it on that date?

1 A I don't remember.

2 Q Did you sign it on or about that date?

3 A Yeah.

4 Q All right. And your attorney prepared this document for
5 you to sign, correct?

6 A Yeah, I think so.

7 Q Okay. And on the prior page, which is TFB-60 - do you
8 have that before you?

9 A Yes.

10 Q Your attorney typed in the address 819 La Jennifer Way
11 Palo Alto, California, correct?

12 A Yes, that's what's there.

13 Q And you read this - I'm sorry?

14 A That's what's there, yes.

15 Q Your attorney's typed that into this document, correct?

16 A I don't know who checked--

17 MR. GUY: Objection, lacks foundation.

18 THE COURT: He may answer if he knows.

19 A I don't know who typed that in.

20 BY MR. HORNICK:

21 Q Well, your attorneys prepared this document, correct?

22 MR. GUY: Same objection, Your Honor.

23 THE COURT: He may answer if he knows.

24 A My guess would be that they put the content in the
25 document. I don't know if they put the address on the end of

1 the document.

2 BY MR. HORNICK:

3 Q Who put this address on here if it wasn't your attorneys?

4 A I have no idea.

5 Q All right.

6 A Maybe like a paralegal or something.

7 Q Did you object to the Jennifer Way California address
8 appearing on this document when you signed it?

9 A I don't know. I signed it.

10 Q I'm taking you back now to July of 2004. When you signed
11 this document, did you object to that address being on the
12 document?

13 A So, I mean the reason why I'm saying I don't know is I
14 don't know if I like object in the sense of asking like why
15 this address and not another one? But I mean I signed it so I
16 guess I accepted that address.

17 Q Why didn't you tell your attorneys to put your New York
18 address on this document before you signed it?

19 A I can't answer exactly what I was thinking at that time,
20 but I mean it might have been that I need to receive mail, like
21 the specific thing at that address and that's where I was at
22 that time.

23 (Pause)

24 BY MR. HORNICK:

25 Q I'll refer you to the thick deposition transcript again

1 which is Exhibit 4.

2 MR. HORNICK: We may need that one that you have
3 before you again so you might want to keep that handy.

4 BY MR. HORNICK:

5 Q We'll put before you Exhibit 4, page 149. During your
6 June 8th deposition, I asked you, "Why didn't you tell them,
7 your attorney, to use your New York address in this document?"
8 Do you see that?

9 A Yeah.

10 Q Okay. And what was your answer.

11 A Because I didn't really think it mattered.

12 Q All right. You testified because "I didn't really think
13 it mattered." You said, "I mean if I'd written it I would have
14 supplied that address because it's more important, but I mean
15 for what they were trying to do it seemed like this was okay I
16 suppose." Do you see that?

17 A Yeah.

18 Q And then you said, "I might have even asked them if it was
19 okay and then said, yes." Do you see that?

20 A Yeah.

21 Q You said, "Like I'm not sure." That was your testimony at
22 the time, correct?

23 A Yes.

24 Q FaceBook Inc. is a Delaware corporation, correct?

25 A Yes.

1 THE COURT: All right, it's 11:00. We're going to
2 take the morning recess. I will be doing some criminal
3 arraignments during the 20 minute recess, but you can leave
4 your things at the desk. You don't have to move them. And
5 we'll reconvene in this case at 11:20.

6 MR. HORNICK: 11:20, thank you, Your Honor.

7 THE COURT: All right. We'll be in recess until the
8 criminal case is read.

9 (Recess)

10 THE CLERK: All rise. Court is back in session.

11 THE COURT: All right, you may be seated. And you
12 may continue with your examination of Mr. Zuckerberg.

13 MR. HORNICK: Thank you, Your Honor. I'd like to
14 move Exhibit 10 into evidence.

15 THE COURT: 10 being, please?

16 MR. HORNICK: 10 was the TheFaceBook Inc. corporate
17 documents.

18 THE COURT: Any objection?

19 MR. GUY: No, Your Honor.

20 THE COURT: All right, they're admitted.

21 (Plaintiff's Exhibit No. 10, admitted)

22 (Pause)

23 BY MR. HORNICK:

24 Q Mr. Zuckerberg, I'm handing you what's been marked as
25 Exhibit 15. Can you tell the Court what this document is?

1 A It's labeled new, new play information sheet.

2 Q Have you ever seen this document before?

3 A I must have. I filled it out.

4 Q That's your handwriting filling it out, correct?

5 A Yes.

6 Q And when did you fill out this document?

7 A I don't know. Does it say on it?

8 Q Well, I'm asking you if you know when you filled out this
9 document?

10 A I don't. I assume it's sometime after the hire date which
11 is listed as September 1, 2004.

12 Q Is that your handwriting identifying the hire date as
13 September 1st of 2004?

14 A Yes.

15 Q And what hire date is this referring to? Hired by whom?


16 A I assume this is TheFaceBook Incorporated.

17 Q When you filled out this document what address did you
18 provide under your name in the personal data section?

19 A The place I was currently living in Los Altos.

20 Q It was the Westbrook Avenue address, correct?

21 A Yes. I mean it must have been at least a few weeks after
22 the hire date that's listed.

23 Q  So you're saying that because you didn't move into
24 Westbrook Avenue until sometime around mid-September of 2004,
25 this document must have been filled out sometime after you

1 moved into Westbrook, correct?

2 A Well, I wasn't really aware of Westbrook before a few days
3 before I moved in.

4 MR. HORNICK: I'd like to move this Exhibit 15 into
5 evidence.

6 THE COURT: Any objection?

7 MR. GUY: None, Your Honor.

8 THE COURT: All right, it's admitted.

9 (Plaintiff's Exhibit No. 15, admitted)

10 (Pause)

11 BY MR. HORNICK:

12 Q We have put before you a document that has been marked as
13 Exhibit 16. It was Exhibit 33 during your June 8, 2006
14 deposition. Do you see this document?

15 A Yep.

16 Q Now this document is mostly white space. That's because
17 all of the, most of the information was what we call redacted
18 out of it by your counsel, correct?

19 A Sure.

20 Q Can you tell us what this document is?

21 A I think we went through this during the deposition and
22 switched it.

23 Q Well, you need to tell the Court today.

24 A Okay.

25 Q What is this document?

1 A It's pretty impossible to identify because it's basically
2 a series of blank documents.

3 Q Well, this document bears your signature on the last page,
4 correct?

5 A Yes.

6 Q And on the first page it says that it's an agreement,
7 correct?

8 A It does say it's an agreement.

9 Q It does say that. And it says it's an agreement made as
10 of July 29 of 2004, correct?

11 A Yes.

12 Q And that date July 29, 2004, that's your handwriting,
13 correct?


14 A Yes.

15 Q And then under that and then it says by in between
16 TheFaceBook Inc., a Delaware Corporation, herein (the company)
17 and Mark Zuckerberg, correct?

18 A Yes.

19 Q And that handwriting that says Mark Zuckerberg that's your
20 handwriting, correct?

21 A Yes.

22 Q All right.  would it be correct to say that even though
23 most of the information has been redacted from this document by
24 your counsel, that this is an agreement between TheFaceBook
25 Inc. and you dated July 29th of 2004?

1 A Yes.

2 Q Now, let's look at the last page of this document. You
3 signed this document for TheFaceBook Inc. as CEO, correct?

4 A Yes.

5 Q And then you also signed it under the agreed to and
6 accepted section, correct?

7 A Yes.

8 Q And is that your handwriting providing the Westbrook
9 Avenue address on this page?

10 A Yes.

11 Q So this document - and you didn't live on Westbrook Avenue
12 on July 29th of 2004, correct?

13 A Yes.

14 Q I'm correct, you did not, you lived--

15 A That's correct.


16 Q --on Jennifer Way on July 29th of 2004, correct?

17 A Yeah, that's where I was--

18 Q Okay.

19 A --at that time.

20 Q So sometime after you moved to Westbrook Avenue you signed
21 this document, you filled in the Westbrook Avenue address and
22 you backdated it to July 29th of 2004, correct?

23 A  I would assume so.


24 Q Why did you do that?

25 A I don't know.

1 Q When you signed this document did you say to anyone, I
2 don't think I should use this Westbrook Avenue address?

3 A I don't know. I don't know what this document was.

4 Q Well, do you recall signing any document that you
5 backdated to July 29th of 2004?

6 A  I don't remember. I sign a lot of things.

7 Q Well, you filled in the date though, correct?

8 A Yes.

9 Q When you filled in that date you knew it wasn't July 29th
10 of 2004, right, because you were living at Westbrook Avenue,
11 right?

12 A I assume so, yes.

13 Q Okay. So did you say is it right for me, is it okay for
14 me to backdate this document?

15 A  I don't know. I probably did.

16 Q But you don't recall?

17 A I don't even know what this is.

18 Q Well, do you recall ever signing a document in the fall of
19 2004 and saying to whoever was asking you to sign it, I don't
20 know if I should backdate this document or not?

21 A I don't remember specifically.

22 Q Do you ever recall in the fall of 2004 signing a FaceBook
23 document and filling in an address for a place that you didn't
24 live when you signed the document?

25 A I don't really remember specifically, no.

1 MR. HORNICK: I'd like to move this Exhibit 16 into
2 evidence.

3 MR. GUY: No objection.

4 THE COURT: All right, it's admitted.

5 (Plaintiff's Exhibit No. 16, admitted)

6 BY MR. HORNICK:

7 Q Mr. Zuckerberg, we're handing you a set of similar
8 documents which have been marked as Exhibits 19(a) through (k).
9 These are documents which we discussed during your deposition,
10 and I'll just take you through them one at time. You can feel
11 free to look through them all before we get started.

12 (Pause)

13 A I'll just look at them as we go along, okay.

14 BY MR. HORNICK:

15 Q Now, one last question about Exhibit 16 before we move
16 onto these documents. The date that you backdated that
17 document to, July 29th of 2004, that was also the date that
18 TheFaceBook Inc. incorporated, correct?

19 A Yes.

20 Q Now, let's look at first Exhibit 19(a). Can you tell the
21 Court what this document is?

22 A No. It's another agreement.

23 Q Can you be more specific?

24 A No, it's completely redacted.

25 Q All right. It says at the top of the first page

1 TheFaceBook Inc. agreement, correct?

2 A Yes.

3 Q And it says that this agreement is made as of October 7,
4 2004 by in between TheFaceBook Inc. and Mark Zuckerberg,
5 correct?

6 A Yes.

7 Q All right. So am I correct to say that this is a FaceBook
8 Inc. agreement between the company and you?

9 A I assume so, yeah.

10 Q All right. And it's dated actually, made as of October 7th
11 of 2004, correct?

12 A Yes.

13 Q And it bears your signature on the last page, correct?

14 A Yes.

15 Q And looking at the last page you provided the Westbrook
16 Avenue address when you signed this document, correct?

17 A Yes.

18 Q And that's your handwriting with, showing the Westbrook
19 Avenue address?

20 A Yes.

21 Q And whoever prepared this document also provided the
22 Westbrook Avenue address under your name, correct?

23 A Well, there are two places.

24 Q Where it's placed in--

25 MR. GUY: Objection.

1 BY MR. HORNICK:

2 Q --on the lower part of the page.

3 MR. GUY: Your Honor, allow him to finish his answer.

4 A I mean, I was just going to say there are two places.

5 Like one it looks like it was typed 819 La Jennifer Way first

6 and then at the bottom it says Westbrook.

7 BY MR. HORNICK:

8 Q Well, I was referring to the one toward the bottom where
9 it's typed in because we already talked about the one where you
10 wrote, used your own handwriting. So I'm asking about the one
11 toward the bottom of the page where it says Westbrook Avenue
12 and it's typed there. Whoever prepared this document typed
13 that in, correct?

14 A Yeah, I assume so.

15 Q Okay. And do you know who prepared this document?

16 A No.

17 Q No. Let's look at the next one, which is Exhibit 19(b).

18 Can you tell the Court what this document is?

19 A No. I mean, it's another agreement between - I don't even
20 know if this is between TheFaceBook and me because it doesn't
21 even say that.

22 Q So this is a FaceBook Inc. agreement between TheFaceBook
23 Inc. and somebody, correct?

24 A I'd assume so, yeah.

25 Q The other party has been redacted from the agreement; is

1 that right?

2 A It looks like it.

3 Q It's made as of October 7th of 2004, correct?

4 A Yes.

5 Q And it bears your signature on the last page, correct?

6 A Yes.

7 Q Now someone when they prepared this document they typed in
8 the La Jennifer Way address, correct?

9 A Yes.

10 Q You don't know who that was, correct?

11 A That's correct.

12 Q And did you cross out that address?

13 A I don't know.

14 Q Let's look at the next one, which is Exhibit 19(c). Can
15 you tell the Court what this document is?

16 A It looks like it's a FaceBook agreement between
17 TheFaceBook and me.

18 Q Made as of when?

19 A The 31st of October.

20 Q And you signed this agreement, correct?

21 A Yes.

22 Q Looking at page 7406 whoever prepared this document at the
23 top they typed in the Jennifer Way address. Do you see that?

24 A Yes.


25 Q Did you cross that out?

1 A I don't know.

2 Q Okay.

3 A And at the bottom of this page under where it says Mark
4 Zuckerberg and your signature, someone's typed in the Westbrook
5 Avenue address, correct?

6 A Yes.

7 Q  And when you signed this address, I'm sorry, when you
8 signed this document, did you point out to anyone that they
9 shouldn't be using the Westbrook Avenue address?

10 A I don't know. I don't even know what this document is.

11 THE COURT: Excuse me, where is the Westbrook Avenue
12 address?

13 MR. HORNICK: The Westbrook Avenue address - would
14 you like the witness to answer or?

15 THE COURT: No, no, I mean I thought you said it was
16 on the exhibit. Is it not on the exhibit?

17 MR. HORNICK: Oh I'm sorry. I'm - right there, Your
18 Honor.

19 THE COURT: Oh, thank you. That helps.

20 BY MR. HORNICK:

21 Q Let's look next at Exhibit 19(d). Now this document was
22 all that was produced to us. Can you tell us what this
23 document is?

24 A No. This one doesn't even look like it has an agreement.

25 Q Well, this document is a - it identified TheFaceBook Inc.,

1 correct?

2 A Yes.

3 Q And you signed your signature under the name TheFaceBook
4 Inc. as CEO, correct?


5 A Yes.

6 Q And that's your handwriting filling in your name and CEO,
7 correct?

8 A Yes.

9 Q And then under that whoever prepared this document has
10 identified the Westbrook Avenue address, correct?

11 A Yes.

12 Q  And when you signed this document did you tell whoever
13 prepared it that they shouldn't use the Westbrook Avenue
14 address?

15 A I don't know.

16 Q Let's look at Exhibit 19(e). Can you tell this Court what
17 this document is?

18 A It looks like a FaceBook agreement between the FaceBook
19 and something.

20 Q The other parties from this agreement have been redacted,
21 correct?

22 A Yes.

23 Q But the document's made as of September 7th of 2004,
24 correct?

25 A What, sir, did you say? October 7th?

1 Q I'm sorry, I might have misspoken. This document was
2 made as of October 7th of 2004, correct?


3 A Yes.

4 Q And you signed this document on the last page, correct?

5 A Yes.

6 Q And whoever prepared this document used the Westbrook
7 Avenue address, correct?

8 A Yes.

9 Q  Did you tell whoever prepared this document that they
10 should not have used that address?

11 A I don't know.

12 Q Let's look at the next document. Can you tell the Court
13 what this document is? This is 19(f).

14 A It looks like another agreement between FaceBook and some
15 unlisted parties.

16 Q The other parties have been redacted from the document,
17 correct?

18 A Sure.

19 Q But it was made as of - it's a FaceBook Inc. agreement
20 made as of October 7th of 2004, correct?

21 A Yes.

22 Q And you signed this document as well, correct?

23 A Yes.

24 Q On the last page. And underneath your signature whoever
25 prepared this document has provided the Westbrook address,

1 correct?

2 A Yes.

3 Q And when you signed this document did you tell whoever
4 prepared it that they shouldn't have used this address?

5 A  don't know.

6 Q Let's look at Exhibit 19(g). Can you tell the Court what
7 this document is?

8 A It's labeled FaceBook agreement between FaceBook and then
9 there is some redacted stuff and then my name.

10 Q So this is an agreement between TheFaceBook Inc. and you
11 and possibly some other people who have been redacted, correct?

12 A Yes.

13 Q Okay. And it was made as of October 31st of 2004, correct?

14 A Yes.

15 Q And you signed this agreement on page TFB-7555, correct?


16 A Yes.

17 Q And you signed it in two places there, correct?

18 A Yes.

19 Q And under both of the places where you signed it whoever
20 prepared this document provided the Westbrook Avenue address,
21 correct?

22 A Yes.

23 Q d when you signed this document did you tell whoever
24 prepared it that they should not have used that address?

25 A I don't know.

1 Q Let's look at Exhibit 19(h). Can you tell the Court what
2 this document is?

3 A It's a FaceBook agreement between the company and some
4 unlisted party.

5 Q It's made as of October 31st of 2004, correct?

6 A Yes.

7 Q And you signed this agreement on page 7565, correct?

8 A Yes.

9 Q Under your signature someone who prepared this document
10 had provided the Jennifer way address. Do you see that?

11 A Yes.

12 Q Were you the one who crossed that address out?

13 A I don't know.

14 Q Well, when you signed this document were you then living
15 at Westbrook Avenue?

16 A I have no idea.

17 Q This document was made effective or made as of October 31st
18 of 2004, correct?

19 A That's what it says.

20 Q Yeah. So as of October 31st of 2004 you were living at
21 Westbrook Avenue, correct?

22 A Yeah, as of that date I was.

23 Q Let's look at the next document, which is Exhibit 19(i).
24 Can you tell the Court what this document is?

25 A It's another FaceBook agreement between FaceBook and some

1 parties made as of October 31, 2004?

2 Q And you signed this document on page 7576, correct?

3 A Yes.

4 Q And whoever prepared this document had filled in the
5 Jennifer Way address, correct?

6 A Yes.

7 Q Did you cross that out?

8 A  I don't know.

9 Q As of October 31st of 2004, you were living at Westbrook
10 Avenue, correct?

11 A Yes.

12 Q Let's look at Exhibit 19(j). Can you tell the Court what
13 this document is?

14 A It appears to be a FaceBook agreement. I don't know what
15 it is.

16 Q Well, it says at the top TheFaceBook Inc., correct?

17 A Yes.

18 Q And it says it's an agreement, correct?

19 A Yes.

20 Q And then it says TheFaceBook Inc., a Delaware corporation
21 (TheFaceBook) or any of its current or future subsidiaries,
22 affiliates, successors and assigns, collectively the company.

23 Do you see that?

24 A Yes.

25 Q So would it be correct to say that this is an agreement

1 between TheFaceBook Inc. and somebody whose been redacted,
2 correct?

3 A I don't know, probably.

4 Q You signed this document on page 7619 as the CEO of
5 TheFaceBook Inc., correct?

6 A Yes.

7 Q And you also signed it as an employee, Mark Zuckerberg, an
8 individual, correct?

9 A Yes.

10 Q And you signed it on October 15th of 2004, correct?

11 A Yes.


12 Q That's your handwriting filling in the date?

13 A Yes.

14 Q And then under that, under both signatures whoever
15 prepared this document used the Westbrook Avenue address,
16 correct?

17 A Yes.

18 Q When you signed this document, did you tell whoever
19 prepared this document that they shouldn't have used that
20 address?

21 A  I don't know.

22 Q Last one is Exhibit 19(k). Can you tell the Court what
23 this document is?

24 A It's another FaceBook agreement.

25 Q It doesn't say on the first page when it was made as of,

1 does it?

2 A No.

3 Q But on the last page you signed it, right?

4 A Yes.

5 Q You wrote in your name, Mark Zuckerberg, under your
6 signature, correct?


7 A Yes.

8 Q And you filled in the date of October 15th of 2004,
9 correct?

10 A Yes.

11 Q And whoever prepared this document filled in the Westbrook
12 Avenue address under your name, correct?

13 A Yes.

14 Q  And when you signed it, did you tell whoever prepared this
15 document that they shouldn't use that address?

16 A I don't know.

17 MR. HORNICK: I'd like to move Exhibits 19(a) through
18 (k) into evidence.

19 THE COURT: Any objection?

20 MR. HORNICK: No, Your Honor.

21 THE COURT: They're admitted.

22 (Plaintiff's Exhibit 19(a) through (k), admitted)

23 (Pause)

24 BY MR. HORNICK:

25 Q Mr. Zuckerberg, you've been handed what has been marked as

1 Exhibit 18, which was also Exhibit 18 during your June 8, 2006
2 deposition. Can you tell the Court what this document is?

3 A It looks like a W-4 form.

4 Q W-4 form for you?

5 A Yes.

6 Q W-4 form for you for 2003?

7 A Yeah, that's what it says.

8 Q Now, that's your signature that appears on this document,
9 correct?

10 A Yes.

11 Q And the date next to your signature is - can you tell the
12 Court what it is?

13 A September 27th I think.

14 Q What year?

15 A It maybe September 29th of 2004.

16 Q So it's either September 27th or September 29th of 2004,
17 correct?

18 A Yeah.

19 Q And where your name is filled in, Mark E. Zuckerberg,
20 that's your handwriting, correct?

21 A Yes.

22 Q And under that address that you provided is the Westbrook
23 address in Los Altos, California, correct?

24 A Yes.

25 Q That's your handwriting, correct?

1 A Yes.

2 Q Can you tell the Court why you filled out a 2003 W-4 form
3 with that address when you were living at Harvard at that time?

4 A When I was living at Harvard at what time?

5 Q This is a 2003 Employee Withholding Allowance certificate
6 in--

7 THE COURT: Your question's a little ambiguous. You
8 said when you signed it when you were at Harvard. You've got
9 to rephrase it.

10 MR. HORNICK: I'll rephrase the question.

11 BY MR. HORNICK:

12 Q You were at Harvard during the 2002-2003 academic year,
13 correct?

14 A Yeah.

15 Q And you were at Harvard during the 2003-2004 academic
16 year, correct?

17 A 2003, yes.

18 Q Yes. All right, so, but you filled out an employee
19 withholding allowance certificate for the year 2003 providing
20 Westbrook Avenue address. Can you explain that?

21 A  Not really.

22 Q But that is your signature that appears on this document,
23 correct?

24 A Yes.

25 Q Did you intend that this actually be your Employee

1 Withholding Allowance Certificate for the year 2004?

2 A I don't know.

3 Q Well, you couldn't possibly have filled this out until
4 sometime after September 14th of 2004, correct?


5 A I guess not.

6 Q Yeah, it has the Westbrook Avenue address on. You said
7 before--

8 A Yeah, yeah--

9 Q --you didn't know Westbrook Avenue existed until after
10 that date, correct?

11 A That's true.

12 Q  All right. So it's sometime after September 14th of 2004
13 that you filled out this form?

14 A Sure.

15 MR. HORNICK: I'd like to move Exhibit 18 into
16 evidence.

17 THE COURT: Any objection?

18 MR. GUY: None, Your Honor.

19 THE COURT: Admitted.

20 (Plaintiff's Exhibit No. 18, admitted)

21 BY MR. HORNICK:

22 Q Let's go back to Exhibit 10 which you should have before
23 you.

24 (Pause)

25 THE WITNESS: Which one is that?

1 MR. HORNICK: Oh, I have another one. I'm sorry.

2 THE WITNESS: These?

3 MR. HORNICK: The Court can have this other copy.

4 THE COURT: Okay.

5 BY MR. HORNICK:

6 Q And you should have Exhibit 10 before you. And let's turn
7 to pages 71 through 83. Can you tell the Court what this
8 document is?

9 A It's labeled the Second Amended and Restated Certificate
10 of Incorporation of TheFaceBook Inc.

11 MR. GUY: Your Honor, if I may impose an objection
12 here. We're, now well into 2005. There should be some
13 timeframe for bracketing testimony related to citizenship on
14 September 2, 2004.

15 THE COURT: I'll overrule the objection at this point
16 in time. He may explore the matter. That doesn't mean to say
17 that at some point I may put some limits on it but--

18 MR. HORNICK: This is the last document--

19 THE COURT: At this point you can go ahead.

20 MR. HORNICK: Well this, Exhibit 10 is the last full
21 copy of--

22 THE COURT: Okay. Now you're looking at - what's
23 the?

24 MR. HORNICK: We're looking at page 71--

25 THE COURT: Okay.

1 MR. HORNICK: --through 83 and the witness has
2 identified--

3 THE COURT: Right.

4 MR. HORNICK: --the document.

5 BY MR. HORNICK:

6 Q And now we're going to turn to page 83. And I'm asking if
7 you've signed this document?

8 A Yeah, that's my signature.

9 Q And it says this document was executed in Palo Alto,
10 California on March 31, 2005, correct?

11 A That's what it says, yeah.

12 Q Do you know if those words - is that Palo Alto wording, is
13 that your handwriting?

14 A No.

15 Q Okay. Was that on the document when you signed it?

16 A I don't know.

17 Q Let's turn to page 67 of this document. And can you tell
18 the Court what this is?

19 A It's titled the First Amended and Restated Certificate of
20 Incorporation of TheFaceBook Inc.

21 Q And you signed this document on behalf of TheFaceBook
22 Inc., correct, on page 69?

23 A Yes.

24 Q And you signed it, executed in Menlo Park, California on
25 January 7, 2005, correct?

1 A Yes.

2 (Pause)

3 BY MR. HORNICK:

4 Q You changed your residence several times since you moved
5 to California, correct?

6 A You mean where I'm staying?

7 Q I asked you if you changed your residence several times
8 since you moved to California, correct?

9 A To the extent that residence is where I'm staying, then
10 yes.

11 Q Okay. Since you moved to California, or I should say when
12 you moved to California in the summer of 2004, when you needed
13 to give a permanent address to someone you gave your parents'
14 address, correct?

15 A Yeah, my home address in New York.

16 Q I'm sorry?

17 A My home address in New York.

18 Q I'd like to refer you to - if you could pull before you
19 the big thick transcript, yes, which is Exhibit 4 and turn to
20 page 67. Remember, it's the page that's on the lower right
21 hand corner.

22 A It starts with I needed?

23 Q Yes.

24 A Okay.

25 Q Now, I asked you during your deposition, "You used your