

EXHIBIT C



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August 5, 2010

VIA FACSIMILE AND E-MAIL

Terrence M. Connors, Esq.
James W. Grable, Esq.
Connors & Vilardo, LLP
1000 Liberty Building
424 Main Street
Buffalo, NY 14202

Re: Ceglia v. Zuckerberg, et al. 1:10-cv-00569-RIA

Dear Messrs. Connors and Grable:

As you know, we represent Defendants in the above-captioned matter. You have told us that you may file a motion to remand this action to the New York Supreme Court based on the purported absence of federal diversity jurisdiction. Specifically, you have told me that your remand motion would argue that defendant Mark Zuckerberg is a domiciliary of New York. This letter will serve to inform you that there is no basis in fact or law for such an argument. A motion to remand on this basis would lack any evidentiary support and violate Rule 11 of the Federal Rules of Civil Procedure.

Second Circuit law is clear. Diversity jurisdiction is based on the citizenship of the state in which the party is domiciled. *Lindos v. Fortuna*, 157 F.3d 945, 948 (2d Cir. 1998). Domicile is "the place where a person has his true fixed home and principal establishment, and to which, whenever he is absent, he has the intention of returning." *Id.* A party's domicile is judged at the time the action is brought and based on the totality of the circumstances. *Universal Licensing Corp. v. Paola del Lungo S.P.A.*, 293 F.3d 579, 581 (2d Cir. 2002); *see also Hodge v. Sun Qu Hong*, No. 05 Civ. 027(A), 2006 WL 2669467 at *2 (W.D.N.Y. Sept. 15, 2006) (Arcara, J.) (describing relevant factors). Moreover, while no single factor is determinative, a party's residence at the time the case is filed is prima facie evidence of his domicile. *Kanouras v. Pinkerton Inc.*, No. 97 Civ. 6098 (MBM), 1998 WL 209617, at *1 (S.D.N.Y. Apr. 29, 1998).

There can be no dispute that Mr. Zuckerberg is a domiciliary of California. We have obtained and are in the possession of a wide range of official government documents and other documentary



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evidence that conclusively establish what I have told you all along: Mr. Zuckerberg resides and makes his home in California. These documents include, among many others, the following:

- Residential Lease-Rental Agreement for California Residence
- California Voter Registration Documents
- State of California Department of Motor Vehicles Validated Registration Card
- State of California Driver's License
- Federal Tax Returns
- California Tax Returns
- IRS Form W-2
- ADP Earnings Statements
- Bank Statements
- Brokerage Account Statements
- Credit Card Statements
- Utility Bills
- Records of California-based Personal Service Professionals
- Publicly available statements

This overwhelming and incontrovertible documentary evidence precludes any notion that Mr. Zuckerberg is a domiciliary of New York. Of course, it is well-documented that Mr. Zuckerberg was born in New York and resided there earlier in his life. The law is clear, however, that his historic birthplace and parental home are not determinative of his domicile in this action. Rather, his domicile at the time this action was filed – indisputably California – is what counts.



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If you find it necessary to review the documentation described above, we can make it available for inspection at your earliest convenience. In the event that you file a motion to remand in the face of this dispositive evidence, we will seek sanctions, including our attorneys' fees and costs, pursuant to Rule 11 and 28 U.S.C § 1927.

This letter is sent without waiver of or prejudice to Defendants' other rights and remedies, each of which is expressly reserved.

Sincerely,



Lisa T. Simpson

cc: Paul A. Argentieri (via facsimile)
Michael B. Powers (via e-mail)

AFTERNOON SESSION

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.

CROSS EXAMINATION RESUMES

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. HORNIC: 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 sublease 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 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

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.

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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