

# EXHIBIT A

# Lawsuit Overview

PAUL D. CEGLIA

Vs.

MARK ELLIOT ZUCKERBERG &  
FACEBOOK, INC.

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## EXECUTIVE SUMMARY

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### **Case Overview**

On June 30<sup>th</sup>, 2010, Paul Ceglia ("Paul") filed a lawsuit against Mark Zuckerberg ("Zuckerberg") and Facebook, Inc. in Allegany County, NY (the "Lawsuit") to enforce the terms of a contract that Paul and Zuckerberg entered into on April 28<sup>th</sup>, 2003 (the "Contract"). A copy of the court filing is attached as Attachment 1 - June 30<sup>th</sup>, 2010 Filing. Under the terms of the Contract, Paul purchased an 84% interest in the software, programming language and business interests of the service that was to become Facebook.

Paul is Facebook's first investor and co-owner.

### **Objective**

Paul is seeking to engage a law firm to represent him in a.) immediate settlement negotiations and b.) the Lawsuit going forward. Paul will be interviewing multiple top tier law firms. The successful firm will demonstrate 1.) a strong desire to represent Paul, 2.) a commitment to developing a close working relationship with Paul, and 3.) a contingency based fee arrangement that is fair for both parties. All firms interviewed have already demonstrated that they have the experience and competency to represent Paul.

### **Representation History**

Paul originally hired Paul A. Argentieri, Esq. of Hornell, NY to file suit in Allegany County, NY. Mr. Argentieri has and will continue to advise Paul in the case. Paul then engaged Connors & Vilaro, LLP ("C & V") to represent him when the case was first removed to federal court. C & V is a small but distinguished regional firm of approximately 13 lawyers in Buffalo, NY. Paul and C & V have mutually agreed that because of size, complexity and commitment required of this case, a larger firm is necessary to properly represent Paul's interests going forward.

## LAWSUIT DETAILS

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### **Current Status**

The Lawsuit was filed on June 30, 2010 in the Supreme Court of New York, in Allegany County. Shortly thereafter, the case was removed to the Federal Court at the request of the defendants. As of March 1, 2011, the case remains in the US District Court for the Western District of New York where it awaits a decision from Judge Arcara on whether the case will be remanded back to the state court. Paul expects that the Judge will order a hearing on the remand issue and may allow limited discovery to determine domicile of Mark Zuckerberg. Paul does not believe that the choice of venue will have any consequence on the resolution of the case.

### **Fact Summary**

A detailed Proof of Facts is included as Attachment 2 – Proof of Facts. This gives the background on how the parties met and explains the major facts of the Lawsuit. These include:

- 1.) An original copy of the contract exists and has been expertly verified.
- 2.) During oral arguments, defendants' counsel confirmed "Mr. Zuckerberg did indeed have a contract with Mr. Ceglia" and "Our client entered a contract with Ceglia". Please see Attachment 4 – Oral Arguments for the full transcript.
- 3.) There is a witness to the signing of the contract
- 4.) Paul has a copy of the check that Zuckerberg deposited in his account on the day the contract was signed.
- 5.) Paul has copies of emails from Paul referencing and negotiating the terms of the contract.
- 6.) In an email dated July 22, 2004, which was 7 days prior to the corporate formation of The Facebook, Inc., Zuckerberg offers to repay the \$2,000 that Paul had previously paid Zuckerberg.

### **Statute of Limitations**

Zuckerberg's defense team has not committed to a clear defense strategy for the Lawsuit. The statute of limitations defense is often anticipated as a major hurdle for Paul to clear. The statute of limitations for most breach of contract causes of action is six years from the date the contract is breached. The contract had no term as it is non-durational and required Zuckerberg to a.) maintain and act as the site's webmaster, b.) to pay for all domain and hosting expenses from the funds received under the contract, and c.) to maintain control of these services at all times. These are promises of future performance within the contract. The Second Circuit of the Southern District of New York has ruled and made clear that promises of future performance within a contract provide for the opportunity to have a series of breaches, each of which reset the statute clock to run anew.

## Prior Cases

There were two prior cases wherein individuals sued Mark Zuckerberg with similar causes of action. Both cases were settled out of court.

Eduardo Saverin invested \$1,000 on January 7<sup>th</sup>, 2004, in return for 30% of the ownership of Facebook. This investment occurred after Paul's investments. Eduardo's share was diluted without his consent. His lawsuit to resolve the dilution was settled out of court for a reported 5% of Facebook.

The Winklevoss twins sued Zuckerberg for their claims he breached an oral agreement by using their idea and code to develop Facebook. They settled for a reported \$65 million of shares in Facebook. They had no written agreements.

# Attachment 1 – June 30<sup>th</sup>, 2010 Filing

COPY

SUPREME COURT  
STATE OF NEW YORK ALLEGANY COUNTY

ENDORSED

PAUL D. CEGLIA

SUMMONS

ALLEGANY COUNTY CLERK

Plaintiff

FILED

vs

Index # 38798

JUN 30 2010

MARK ELLIOT ZUCKERBERG, Individually  
and Facebook, Inc.

ROBERT L. CHRISTMAN  
CLERK

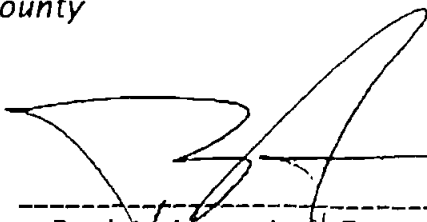
Defendants

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 30 days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial to be held in the County of Allegany  
The basis of the venue is Residence of Plaintiff  
Plaintiff resides in Allegany County

Dated: June 29, 2010



Paul A. Argentieri Esq.  
188 Main Street  
Hornell, NY 14843  
607-324-3232

ROBERT L. CHRISTMAN  
CLERK  
ALLEGANY COUNTY

2010 JUN 30 AM 9:17

ENDORSED



*To the above named Defendants:*

*THE NATURE OF THE ACTION IS: Declaratory Judgment*

*The relief sought is: Monetary Damages and 84% Ownership of  
Facebook, Inc.*

ENDORSED

ALLEGANY COUNTY CLERK

FILED

JUN 30 2010

ROBERT L. CHRISTMAN  
CLERK

SUPREME COURT  
ALLEGANY COUNTY STATE OF NEW YORK

PAUL D. CEGLIA  
Plaintiff

VERIFIED COMPLAINT

VS

Index # 38798

MARK ELLIOT ZUCKERBERG, Individually,  
and Facebook, Inc.  
Defendants

2010 JUN 30 AM 9:17  
ROBERT L. CHRISTMAN  
CLERK  
ALLEGANY COUNTY  
ENDORSED

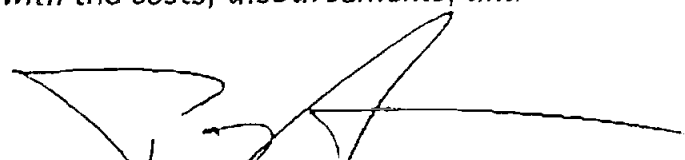
The Plaintiff, as and for his verified complaint against the Defendants, alleges as follows:

1. Plaintiff, Paul D. Ceglia, residing at 2558 Hanover Hill Road, Wellsville, Allegany County, New York, 14895 at all times hereinafter mentioned as either the Purchaser and/or the Buyer.
2. Defendant Mark Elliot Zuckerberg, upon information and belief, resides at 2 Russell Place, Dobbs Ferry, Westchester County, New York 10522, hereinafter referred to as either the Seller and/or Contractor.
3. Upon information and belief, Facebook, Inc. is a domestic corporation having its principal office located in the State of New York having been incorporated in New York on August 6, 2009, hereinafter referred to as Facebook, see exhibit A attached hereto and made a part hereof of this complaint.
4. On April 28, 2003, the Seller and the Purchaser entered into a written contract, including but not limited to, the Purchaser acquiring Fifty Percent (50%) interest in the business of the Seller and Facebook, see exhibit B attached hereto and made a part hereof of this complaint.
5. Upon information and belief, Mark Elliot Zuckerberg is the principal owner of "The Face Book" aka "The Page Book" that are the predecessors in interest to Facebook, Inc.

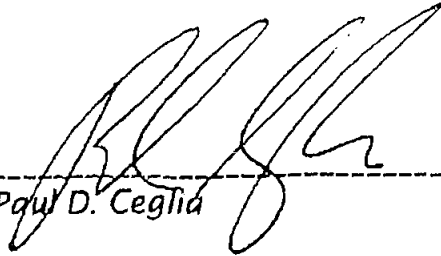
6. *Under Paragraph 3 of the contract, the Seller and Purchaser agreed that for each day after January 1, 2004, the Purchaser would acquire an additional 1% interest in the business, per day, until the website was completed.*
7. *Upon information and belief, the website, thefacebook.com, was completed and operational on February 4<sup>th</sup>, 2004.*
8. *According to the terms of the contract, as of February 4<sup>th</sup> 2004, the Purchaser had acquired an additional 34% interest in the business for a total of eighty four percent (84%).*
9. *Purchaser paid consideration to the Seller for the contract, upon information and belief, by a check in the amount of One Thousand Dollars (\$1,000.00) to Mark Zuckerberg, on or about November 24<sup>th</sup> 2003 among other consideration tendered, see exhibit C attached hereto and made a part hereof of this complaint.*
10. *Upon information and belief, the Seller simply transferred the originating website business from TheFacebook.com into Facebook.com, and ultimately into Facebook, Inc. which is a continuum of the Purchaser's acquisition from the date of the contract until the present time, and also a continuum of the business from pre-incorporation to incorporation of Facebook.*
11. *Since April 28<sup>th</sup>, 2003, the Purchaser has complied with the terms and conditions of the contract and the Seller has failed to similarly comply with the terms of the contract to the detriment of the Purchaser.*
12. *Upon information and belief, Facebook is a closely held corporation of which the Seller is presently the majority stockholder, see exhibit D attached hereto and made a part hereof of this complaint.*

WHEREFORE, the Plaintiff, Paul D. Ceglla, hereby demands by Declaratory Judgement against the Defendants, Mark Elliot Zuckerberg, Individually, and Facebook, Inc. for an enforcement of the terms and conditions of the April 23<sup>rd</sup> 2003 contract wherein Plaintiff would acquire 84% interest of Facebook, Inc. and for a Judgment for an Accounting wherein Plaintiff would obtain a further Judgment against the Defendants in the amount of 84% of any and all monies realized by the Defendants from April 28<sup>th</sup> 2003 to the present time, along with the costs, disbursements, and attorney fees for this action.

June 29, 2010

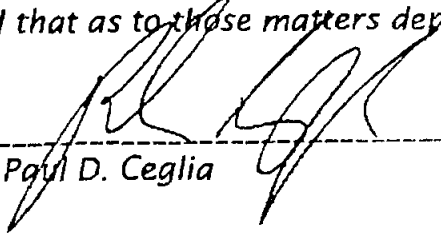


Paul A. Argentieri, Esq.  
Attorney for Plaintiff  
188 Main Street  
Hornell, New York 14843  
607-324-3232

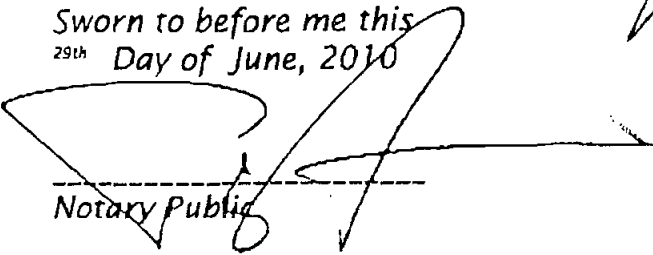
  
-----  
Paul D. Ceglia

STATE OF NEW YORK        }  
COUNTY OF ALLEGANY    } ss.

*Paul D. Ceglia, being duly sworn, says that the deponent is the Plaintiff in the within action; that deponent has read the foregoing Verified Complaint, and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief and that as to those matters deponent believes it to be true.*

  
-----  
Paul D. Ceglia

Sworn to before me this  
29<sup>th</sup> Day of June, 2010

  
-----  
Notary Public

PAUL A. ARGENTIERI, ESQ.  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02AR4672870  
Qualified in Steuben County  
My Commission Expires June 30, 2014

EXHIBIT A

Entity Information

Page 1 of 2

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through June 25, 2010.

Selected Entity Name: FACEBOOK, INC.

Selected Entity Status Information

Current Entity Name: FACEBOOK, INC.

Initial DOS Filing Date: AUGUST 06, 2009

County: NEW YORK

Jurisdiction: DELAWARE

Entity Type: FOREIGN BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

CORPORATION SERVICE COMPANY

80 STATE STREET

ALBANY, NEW YORK, 12207

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

\*Stock Information

# of Shares	Type of Stock	\$ Value per Share
No Information Available		

\*Stock information is applicable to domestic business corporations

Entity Information

Page 2 of 2

**Name History**

Filing Date	Name Type	Entity Name
AUG 06, 2009	Actual	FACEBOOK, INC.

A Fictitious name must be used when the Actual name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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PAUL ARGENTI FBI

EXHIBIT A

# "WORK FOR HIRE" CONTRACT

## SECTION 1- GENERAL PROVISIONS

### 1. Definitions

The following terms have the meaning specified when used herein:

PURCHASER - Paul Caglia

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

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

PRIME CONTRACT - This contract between Purchaser and Seller.

### 2. Entire Agreement

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

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

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

### 3. Payment Terms

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

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

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

The agreed upon project due date for the StreetFax software is May 31, 2003. *pending with dispute is fixed by May 21, 2003*

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

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

### 4. Changes

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

shall be transmitted for written approval to seller.

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

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

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

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

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

### 6. Settlement of Controversies

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

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

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

### 7. Patent Indemnity

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

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

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

8. Assignment of Subcontracting

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

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

9. Proprietary Rights

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

10. Termination

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

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

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

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

11. Liens

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

12. Governing Law

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

13. Recovery of Damages

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

14. Notice of Labor Disputes

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

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

15. Indemnity Requirements for Contractors/Seller

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

16. Publicity

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

17. Seller's Disclosure

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

18. General Notes

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

The signatures below will execute this contract

Buyer - Paul Cepic, StreetFax

Seller - Mark Zuckerberg

MR Zuck 09.28.09

*[Handwritten signature]* 4/28/05

EXHIBIT C

- Gas / Electric
- Telephone
- Food
- Clothing
- Credit Card
- Taxes
- Insurance (Life, Home, Auto)
- Home Improvement (Maintenance, Repairs)
- Medical / Dental
- Dependent Care
- Savings & Investment
- Other

FOR REORDERING 1548

*April 2, 2005*

*Mark Zuckerman*  
*one thousand*

BAL. FOR'D	
THIS PAYMENT	1,000 <sup>00</sup>
BALANCE	
OTHER	
BAL. FOR'D	

...Here's How:  
\* Carry balance forward  
\* Check type of expense  
\* Add details on memo line  
\* Return duplicate to DuSno Check box

Memo *Mark*

10023305572 DE MO 08673811 1548 NOT NEGOTIABLE

EXHIBIT D

Division of Corporations - Online Services

Delaware gov | Text Only

Governor | General Assembly | Courts | Election Officials | State Agencies

2009 AMENDED ANNUAL FRANCHISE TAX REPORT

Department of State: Division of Corporations

Contact Us

2009 Amended Annual Franchise Tax Report

Your Session ID is 20356150490599 for file number 3835815. Once a Session ID is saved, both Session ID and file number are needed to sign on to this session again. The Session ID will be valid for two weeks. When a Session ID is saved, the Annual Report is not considered filed. The Annual Report is filed when completed, submitted and payment received. Penalty and interest will be charged if completed after March 1st.

Required Fields

Please note that your Annual Report has already been filed for the Tax Year 2009. All information provided on the most current annual report on file will be replaced by filing this amended report. You must enter all data again when filing this amended report in its corrected form.

File Number: 3835815

Corporation Name: FACEBOOK, INC.

Federal Employer ID:

Incorporation Date: 07/29/2004

Agent Number: 8030014

Agent Name: CORPORATION SERVICE COMPANY

Street Address: 2711 CENTERVILLE ROAD SUITE 200

City: WILMINGTON

State: DE

Zip Code: 19808

Franchise Tax: \$ 180,000.00  
 \$ 100.00 Penalty: \$ 0.00  
 1.6% Monthly Interest: \$ 3,420.45  
 Annual Filing Fee: \$ 50.00  
 Previous Credit/Balance: \$ 183,470.45 CR  
 Prepaid Quarterly Payments: \$ 0.00  
 Amount Due: \$ 0.00

Begin Date	End Date	Designation/ Block Class	No. of Shares	Par Value/ Share	No. of Shares Issued	Total Gross Assets	Asset Date (MM/DD/YYYY)
11/20/2009		COMMON	1,856,400,000	.000009	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		PREFERRED	113,800,280	.000008	<input type="checkbox"/>		
		Total			<input type="checkbox"/>		
05/26/2009	11/20/2009	COMMON	828,200,000	.000006	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		PREFERRED	113,800,280	.000006	<input type="checkbox"/>		
		Total			<input type="checkbox"/>		
02/14/2008	05/26/2008	COMMON	826,945,408	.000025	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		PREFERRED	11,545,586	.000025	<input type="checkbox"/>		
		Total			<input type="checkbox"/>		

End Date of Fiscal Year: 12/31/2009

Date of Inactivity:

From Date:

To Date:

Recalculate Tax

Cancel Recalculation

Principal Place of Business

Street Address* (Do not use P.O. Box)	City *	State * or Province	Zip * or Postal Code	Country *	Phone Number * (Extension)	Email *
		DE		UNITED STATES		

## Attachment 2 – Proof of Facts



# Proof of Facts

1. Throughout the years 2001, 2002 and 2003, Paul Ceglia was developing an online database of street intersection photographs that were eventually either hosted on Streetfax.com or sold.
2. Streetfax was a large online database with photos of the majority of intersections within a specified city. The database was intended to aid insurance adjustors in investigating automobile accidents.
3. Throughout that period, Paul Ceglia would frequently post advertisements on Craigslist, an online forum for qualified contractors, which included, but was not limited to, computer programmers.
4. Specifically, Paul Ceglia advertised for programmers who would be able to develop the search engine feature on the Streetfax website to have two unique aspects: non-specific term searching, and synonymous term linking.
5. Those innovations were state-of-the-art at that time, and to Paul Ceglia's knowledge, were not readily available in any code format at that time.
6. In early 2003, Mark Zuckerberg responded to the Paul Ceglia's advertisement on Craigslist.
7. Prior to the signing of the contracts with Mark Zuckerberg on April 28, 2003, Paul Ceglia and Mark Zuckerberg engaged in multiple telephone and email conversations wherein Paul Ceglia introduced to Mark Zuckerberg the specifications of a database and search engine that could differentiate misspellings, non-specific term searching, and synonymous term linking that Mark Zuckerberg initially refuted could be built or programmed.
8. Paul Ceglia prevailed upon Mark Zuckerberg after several weeks of intensive debate by proposing multiple formulas to Mark Zuckerberg about constructing the non-specific word search engine. Prior to the signing of the contract, Paul Ceglia convinced Mark Zuckerberg that the use of a specific mathematical formula could succeed in searching for non-specific terms.
9. At that moment in time, Mark Zuckerberg accepted the viability of Paul Ceglia's formula, shared his enthusiasm about the coming project and offered to Paul Ceglia joint and equal ownership interest in his business venture and continued development of a suitable website for a project he was intending to initiate to the students of Harvard University and with the working title of either "The Face Book." or "The Page Book". In addition, it was further agreed that Paul Ceglia would also own 50% in the software, programming language and business interests derived from the expansion of that service to a larger audience.
10. Mark Zuckerberg offered, and Paul Ceglia agreed, to pay \$1,000 for 50% ownership stake in the "The Face Book" and to perform elements connected with the computer programming work for the development of the site.

11. In addition, Paul Ceglia offered to hire Mark Zuckerberg and Mark Zuckerberg agreed to perform the programming work for Streetfax in the amount of \$1,000.
12. On April 28, 2003, Mark Zuckerberg and Paul Ceglia met in person at the Radisson Hotel in Boston, Massachusetts.
13. At that meeting, Mark Zuckerberg signed a written agreement to be the software programmer for Streetfax and simultaneously agreed that Paul Ceglia would have a 50% ownership stake in "The Face Book".
14. At that meeting, Paul Ceglia tendered a \$3,000 cashier's check, dated April 25, 2003, from the Community Bank NA, to Mark Zuckerberg and Mark Zuckerberg deposited the cashier's check (for consideration that exceeded the written contractual requirements) into his student checking account at Fleet Bank.
15. At that meeting, the parties also signed another contract entitled, "StreetFax Back-End Technical Specification", that had been previously prepared by Mark Zuckerberg.
16. The Facebook/Streetfax "Work for Hire" contract and the "StreetFax Back-End Technical Specification" contracts were both signed in the lounge of the Radisson Hotel in Boston MA.
17. Paul Ceglia's employee accompanied him on the trip and was an eye witness to the actual signing of both contracts as well as to the handwritten modifications (interlineations) contained therein.
18. Those agreements memorialized their understanding regarding Streetfax and "The Face Book" projects. In pertinent part, that agreement provides the following: The Purchaser/Buyer is Paul Ceglia. The Seller/Contractor is Mark Zuckerberg.
19. "The contract between the Purchaser and Seller as a Purchase agreement and "work made for hire" reflects two separate business ventures, the first being for the work to be performed directly for the Streetfax database and the programming language to be provided by Seller." (Contract page 1, par. 2)
20. "Second, it is for the continued development of the software, program and for the purchase and design of a suitable website for the project Seller has already initiated that is designed to offer the students of Harvard university access to a website similar to a live functioning yearbook with the working title of "The Face Book". (Contract page 1, par. 2)
21. "It is agreed that Purchaser will own a half interest (50%) in the software, programming language and business interests derived from the expansion of that service to a larger audience." (Contract page 1, par. 2)
22. Buyer agrees to pay the seller the Sum of \$1,000 a piece for the work to be performed for Streetfax and \$1,000 for the work to be performed for "The Page Book" (Contract page 1, par. 3)
23. "The agreed upon project due date for the Streetfax software is May 31, 2003." (Contract page 1, par. 3)

24. "The agreed upon completion for the expanded project with working title "The Face Book" shall be January 1, 2004 and an additional 1% interest in the business will be due the buyer for each day the website is delayed from that date." (Contract page 1, par. 3)
25. The agreement gave rise to an obligation for Mr. Zuckerberg to continue to develop and program The Face Book.
26. The agreement gave rise to fiduciary obligations between Mr. Ceglia and Mr. Zuckerberg.
27. The agreement obligated Mr. Zuckerberg to deal fairly and honestly with Mr. Ceglia.
28. The agreement obligated Mr. Zuckerberg to act with the utmost loyalty.
29. After the agreement was signed, Mr. Zuckerberg and Mr. Ceglia never met in person again, parted ways, and began their respective contractual obligations.
30. Lisa Simpson, counsel for Facebook Inc. and Mark Zuckerberg, on July 20<sup>th</sup>, 2010, in Federal District Court in Buffalo, NY, before Judge Richard Arcara, made the following admissions under questioning by Judge Arcara:
  - a. "Mr. Zuckerberg did indeed have a contract with Mr. Ceglia."
  - b. "... agreed to code for Mr. Ceglia with respect to a project called Street Fax".
  - c. "Street Fax, F-A-X, which is actually one of the projects mentioned in the document"
  - d. "... with respect to the contract that we have in front of us, we have some serious questions because there are many inconsistencies and many undefined terms and things that don't make sense if you look at it on its face. Specifically, you'll see that there's a mention in there of Facebook and then there's another mention in there of Pagebook, and those are inconsistent. The consideration in the contract is directed directly to Pagebook. There's no consideration at all in the contract that relates to Facebook."
  - e. "Our client entered a contract with Ceglia."
31. In an email dated September 2<sup>nd</sup> 2003, Mark Zuckerberg writes in part, "... Further, since the plan involves more than one college, the name can't have Harvard in it and remains unresolved. Additionally, both original names facebook.com and pagebook.com are unavailable, so there is no actual domain name either. thefacebook.com and thepagebook.com are both available but are clearly not a premium quality domain as they are much harder to remember."
32. That agreement gave Paul Ceglia a valid enforceable ownership interest in the Facebook.
33. That interest includes, but is not in any way limited to, Facebook's intellectual property rights, advertising rights, current and future business interests.

34. That agreement explicitly gives Paul Ceglia an ownership interest in the software, programming language, and business interests derived from the expansion of Facebook to a larger audience.
35. In addition to the \$3,000 cashier's check tendered on April 28, 2003, Paul Ceglia further tendered to Mark Zuckerberg a check in the amount of \$5,000 on August 4, 2003, that was deposited in Mark Zuckerberg's Fleet Bank student checking account.
36. On November 16, 2003, Paul Ceglia received an email from Mark Zuckerberg requesting \$1,000, in additional funds, for the continued development of The Face Book website as Mark Zuckerberg disclosed that there were two Harvard students (Winklevoss twins) preparing a website to compete with The Face Book.
37. Paul Ceglia complied with the request for additional funds for The Face Book and mailed \$1,000 by Fed Ex dated November 27, 2003. The receipt of these additional funds for The Face Book are acknowledged by Mark Zuckerberg in his follow-up email on Jan. 1<sup>st</sup>, 2004, and were deposited in his Fleet Bank student checking account.
38. Mark Zuckerberg, under oath, at his June 22, 2006 hearing in the ConnectU lawsuit admitted that he commingled his funds from Streetfax and The Face Book into his student checking account at Fleet Bank.
39. The contract provided that Paul Ceglia was entitled to an additional 1% ownership interest in the above mentioned property for each day after January 1, 2004, that the website was not online.
40. On January 1, 2004, Mark Zuckerberg authored an email to Paul Ceglia acknowledging the receipt of the \$1,000, requests additional funding for The Face Book site, and for Paul Ceglia to waive the penalty clause in their contract.
41. In an email authored on January 5, 2004 from Paul Ceglia to Mark Zuckerberg, Paul Ceglia asks Mark Zuckerberg about the status of The Face Book site, and how he had spent the additional \$1,000.
42. In that same email, Paul Ceglia threatens to call Harvard and/or Mark Zuckerberg's parents.
43. At that time and unbeknownst to Paul Ceglia, Mark Zuckerberg is on probation following his violations of the Harvard privacy regulations when he created a website entitled Facemash by hacking into the Harvard University's server and/or students information without authority.
44. Facemash was a website created to allow Harvard students to vote on the appearance of other students in a derogatory and sarcastic manner.
45. On January 6, 2004, Mark Zuckerberg authored an email to Paul Ceglia demanding that any action by Paul Ceglia to call Harvard or his parents "would be seriously violating our trust by doing so, ..." confirms that there existed a "fiduciary relationship" with Paul Ceglia in their contractual and business relationship.

46. Unbeknownst to Paul Ceglia, on January 7, 2004, Mark Zuckerberg accepts \$1,000 from Eduardo Saverin for 30% of The Face Book.
47. On January 13, 2004, Paul Ceglia authored an email to Mark Zuckerberg agreeing with him to utilize the database from Streetfax in order to facilitate the construction of The Face Book site. "Mark, I got to thinking, seems like a fantastic idea to use the database we built already, there is really no way you could rebuild something that could work as well."
48. To illustrate the defect in MySpace and Paul Ceglia's contribution with the superior search engine for The Face Book, Paul Ceglia asks Mark Zuckerberg to attempt to spell twenty names of students he attended high school with on MySpace in order to see for himself the disadvantage of the specific spelling requirements of MySpace that The Face Book would eliminate.
49. With permission, Mark Zuckerberg utilized the database created for StreetFax, which was and is the intellectual property of Paul Ceglia.
50. Mark Zuckerberg in his email to Paul Ceglia on January 16, 2004, states, "I'll check into it and see how easily we could modify the script, I think you are right though and that it could manage people just as well as it manages street intersections."
51. On January 14, 2004, Mark Zuckerberg purchases the domain name "TheFaceBook.com" from monies received from Paul Ceglia.
52. On February 2, 2004, Mark Zuckerberg authored an email to Paul Ceglia complaining about the penalty clause in the contact stating that, as it was presently constituted at that time, Paul Ceglia would own over 80% of the company (Facebook). Mark Zuckerberg gives Paul Ceglia an ultimatum that he would not launch the site until and unless, "you drop the penalty completely and that we officially return to 50/50 ownership."
53. On February 3, 2004, Paul Ceglia authored an email to Mark Zuckerberg agreeing to remove the penalty clause and share 50/50 ownership in The Face Book.
54. On February 4, 2004, Mark Zuckerberg authored an email to Paul Ceglia confirming the launch of their website "thefacebook.com." and states, "I'll let you know how it goes."
55. Prior to the launch of the Face Book site, Paul Ceglia was the progenitor of the business expansion model for the software of The Face Book as a free site versus Mark Zuckerberg's idea of charging \$29.95 per month for Harvard students.
56. In addition, Paul Ceglia promoted that The Face Book site go city to city rather than being limited to Harvard and/or the other Ivy League schools.
57. Mark Zuckerberg refused to give Paul Ceglia access to the website stating that he would have to have a harvard.edu address to get beyond the home page.
58. In his last email authored by Mark Zuckerberg to Paul Ceglia on July 22, 2004, Mark Zuckerberg attempts to induce Paul Ceglia to accept a refund in the amount of \$2,000 that Paul Ceglia had previously invested in Facebook by lying when he states, "Another summer is here and I still don't have any time to build our site ..."

59. Mark Zuckerberg intentionally lied to Paul Ceglia about his actions and the success of TheFaceBook.com.
60. Mark Zuckerberg's email of July 22, 2004 was an outright fraud, as he, among other things, attempted to use his Harvard email address, rather than his Facebook email, to mislead and conceal the truth that Facebook was exploding within its confined circles.
61. Also at that time, and unbeknownst to Paul Ceglia, Mark Zuckerberg was in the process of incorporating in the State of Delaware when he intentionally made false representations to conceal his intent to defraud Paul Ceglia out of his 50% ownership in Facebook.
62. On July 29<sup>th</sup> 2004, Mark Zuckerberg Breaches the contract with Paul Ceglia by denying him his ownership interest in Facebook Inc.
63. For several months, Mr. Zuckerberg failed to deliver to Mr. Ceglia his rightful ownership share.
64. Under testimony given on June 22<sup>nd</sup> 2006, Mark Zuckerberg admits to having backdated at least one document.
65. On July 29, 2004, Mr. Zuckerberg, Mr. Moskowitz, and Mr. Saverin formed The Facebook, Inc. in the State of Delaware.
66. On January 7, 2005, Mr. Zuckerberg, signs the First Amended and Restated Certificate of Incorporation of the The Facebook Inc. in the State of Delaware.
67. On March 31, 2005, Mr. Zuckerberg, signs the Second Amended and Restated Certificate of Incorporation of The Facebook Inc. in the State of Delaware.
68. At some time after the formation of Facebook, Inc., Mr. Zuckerberg assigned his rights and alleged property in Facebook to The Facebook, Inc.
69. Upon information and belief, that assignment included property that rightfully belonged to Mr. Ceglia.
70. Mr. Zuckerberg made that assignment without notifying Mr. Ceglia.
71. Mr. Zuckerberg knew that the property he was purporting to assign to The Facebook, Inc. rightfully belonged to Mr. Ceglia, as evidenced by the email sent one week before on July 22, 2004, wherein Mr. Zuckerberg offers to repay Mr. Ceglia for his Facebook interest.
72. Mr. Zuckerberg knew he was violating his contract with Mr. Ceglia when he assigned those rights to The Facebook, Inc.
73. Mr. Zuckerberg knew he was violating his fiduciary duties to Paul Ceglia.
74. Since the time of that incorporation, Facebook, Inc. has remained a privately held company, making its ownership interest largely unknown.

75. However, upon information and belief, Mr. Zuckerberg breached his agreement with Mr. Ceglia by continuing to give ownership interests to new investors.
76. Since Mr. Zuckerberg's assignment to Facebook, Inc., it has become one of the world's most successful business ventures.
77. Currently, Facebook has more than 500 million users.
78. Moreover, Facebook and the proprietary rights connected to Facebook are valued at billions of dollars.

## Attachment 3 - Oral Arguments 7-20-10



1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NEW YORK

3 -----  
4 PAUL D. CEGLIA,

5 Plaintiff,

6 - vs -

Docket Number  
7 10-CV-569

8 MARK ELLIOT ZUCKERBERG,  
9 Individually, and FACEBOOK, INC.

10 Defendants.  
11 -----

12 TRANSCRIPT OF ORAL ARGUMENT  
13 BEFORE THE HONORABLE RICHARD J. ARCARA  
14 UNITED STATES DISTRICT JUDGE

15 APPEARANCES:

16 For the Plaintiff:

PAUL A. ARGENTIERI, ESQ.,  
17 TERRENCE M. CONNORS, ESQ.,  
and JAMES W. GRABLE, JR., ESQ.

18  
19 For the Defendants:

LISA T. SIMPSON, ESQ.  
20 MICHAEL B. POWERS, ESQ.  
and SEAN C. MCPHEE, ESQ.

21 Court Reporter:

YVONNE M. GARRISON, RPR  
22 Official Court Reporter  
U.S.D.C., W.D.N.Y.  
23 68 Court Street  
Buffalo, New York 14202  
24 716-847-2477

25 Taken on July 20, 2010 at 11:09 a.m.

1 THE CLERK: Civil Action 2010-569A, Ceglia versus  
2 Zuckerberg and other parties, oral argument on defendant's  
3 motion to vacate and dissolve temporary restraining order.

4 Counsel, please state your name and the party you  
5 represent for the record.

6 MR. CONNORS: Good morning. Terrence M. Connors,  
7 James W. Grable, and Paul Argentieri. We're representing Paul  
8 Ceglia.

9 MR. POWERS: Good morning, Your Honor. I'm Mike  
10 Powers from Phillips Lytle; Sean McPhee from Phillips Lytle;  
11 and Lisa Simpson from Orrick, Herrington for Facebook.

12 THE COURT: Is everyone admitted?

13 MS. SIMPSON: Yes, Your Honor.

14 THE COURT: Ms. Simpson, you're up.

15 MS. SIMPSON: Yes, Your Honor.

16 THE COURT: Okay. Let's go.

17 MS. SIMPSON: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MS. SIMPSON: I think the issues here today are quite  
20 simple. There really are two. The first is whether this TRO  
21 is expired, and we think that it is; the second issue is if  
22 this TRO is not expired, whether it comports with the Federal  
23 Rules, and the answer to that is that it does not.

24 As Your Honor's probably aware from reading the  
25 papers, this TRO was obtained on July -- or June 30th in the

1 State Court of Allegany County. It was obtained ex parte.  
2 Defendant's were not provided any notice of the hearing.

3 The order itself was part of an order to show cause  
4 by which the plaintiffs sought permanent injunctive relief and  
5 accounting. It was not in anticipation of what we could tell  
6 was a preliminary injunction. But what was part of this  
7 document that the Court signed was a one-paragraph temporary  
8 restraining order that was incredibly broad. What it did was it  
9 actually says that it restrains Facebook from transferring,  
10 selling or assigning any of its assets. This is a very --

11 THE COURT: I think they agree with that.

12 MS. SIMPSON: How did he agree with that?

13 THE COURT: No, I think the plaintiff agrees with  
14 that.

15 MS. SIMPSON: They agree that it's too broad.

16 THE COURT: I think that's the impression that I got  
17 from reading the papers, that they agreed to have it modified.

18 MS. SIMPSON: Yes, Your Honor. But the question  
19 isn't whether to modify it, the question is whether the TRO, as  
20 issued, is defective.

21 THE COURT: Okay.

22 MS. SIMPSON: And, indeed, it is.

23 And I'd like to start first with the fact that we  
24 really don't think it's in place anymore. If you look at the  
25 state court order, it is very clear on its face that the TRO

1 was intended to be in place until July 9. It doesn't say until  
2 hearing from the parties. It doesn't say until the parties  
3 appear to discuss this issue. It doesn't say, you know, at the  
4 resolution of the issues on this motion. What it says is until  
5 July 9. It's a straightforward date.

6 THE COURT: Once it came over here in federal court  
7 then what happened?

8 MS. SIMPSON: Well, once it came over here in federal  
9 court the rule is very clear. Once you get to federal court,  
10 under removal, where there's a TRO in place, it is true that  
11 the TRO carries over to the federal court, but only to the  
12 extent that it would have been in place in the state court.

13 THE COURT: You don't think it goes over 14  
14 additional days from the time it's removed here?

15 MS. SIMPSON: No, the test that's set out, both in  
16 Ultracashmere and Carrabus both cited in our -- or Carrabus  
17 both cited in our brief, and the Granny Goose case by the  
18 Supreme Court, say that what happens is you look at the shorter  
19 of the duration of what was supposed to happen in the state  
20 court or what's going to happen in the federal court. And so  
21 what we're looking at --

22 THE COURT: Doesn't Granny Goose say it stays in  
23 affect?

24 MS. SIMPSON: Well, any -- under 1450, 28 Section  
25 1450, an order that was put into place in the state court --

1 THE COURT: Okay.

2 MS. SIMPSON: -- upon removal carries over to the  
3 federal court.

4 Our position is that that same very day was also the  
5 day that the TRO expired.

6 THE COURT: Doesn't the time run from the date of the  
7 removal?

8 MS. SIMPSON: The time under the Federal Rules, yes.

9 THE COURT: So 14 days from the date it was removed.

10 MS. SIMPSON: Under the Federal Rules, it would be  
11 14 days from the date of removal. But our position is that the  
12 state court order, itself, on its face --

13 THE COURT: No matter, even if I don't agree with  
14 you --

15 MS. SIMPSON: Yes.

16 THE COURT: -- it expired on Friday?

17 MS. SIMPSON: Yes, Your Honor.

18 THE COURT: This Friday. Assuming it's 14 days.

19 MS. SIMPSON: Yes.

20 THE COURT: You're taking the position it doesn't  
21 extend it until Friday. It's whatever the time was, July --

22 MS. SIMPSON: July 9th.

23 THE COURT: July 9th.

24 MS. SIMPSON: Yes.

25 THE COURT: Well, continue your argument.

1 MS. SIMPSON: Okay. So either the TRO expired on  
2 July 9th, which is our position, in which case we're here, you  
3 know, just making sure that that is indeed the case, or, as  
4 Your Honor points out, it does expire on Friday.

5 But since we're here arguing about this TRO I don't  
6 think that we should wait until Friday for a resolution of this  
7 issue because of the mass defects that are in place with this  
8 TRO. It is not following the Federal Rules at all.

9 And, once again, when we look -- when we bring a TRO  
10 over from the state court and consider it in federal court the  
11 Federal Rules apply and that is very clearly set forth in the  
12 Granny Goose case.

13 So we look at the Federal Rules of Procedure. We  
14 look at Rule 65. And when we look at Rule 65 we see that this  
15 TRO has numerous procedural defects before we even get to the  
16 standard for a TRO. The order does not describe plaintiff's  
17 injury, it does not state why the harm was irreparable, it does  
18 not state why the TRO issued without notice. Those are all  
19 requirements set forth in 65(b).

20 It does not state the reasons why it issued. It does  
21 not state its terms specifically. And it does not describe in  
22 reasonable detail the acts to be restrained by Facebook. And  
23 those are all requirements set forth by 65(d). Not one of  
24 those procedural requirements are met here.

25 And with all of those procedural deficiencies, the

1 TRO fails before we get any further. And that's the case in  
2 the Rabbi decision which is cited in our papers.

3 If we move on past that, and again, we shouldn't even  
4 be getting to these questions because the TRO is so  
5 procedurally deficient on its face, but if we move to the  
6 issues that -- that generally govern whether a TRO should  
7 issue, the standard is pretty clear. A TRO can issue if there  
8 is irreparable and immediate injury and if there was likelihood  
9 of success on the merits or, alternatively, if there are  
10 serious questions as to the success on the merits and the  
11 equity weigh in favor of an injunction.

12 THE COURT: I'm just -- you mentioned about notice.

13 MS. SIMPSON: Yes.

14 THE COURT: And issuing a TRO without written or oral  
15 notice to adverse party or its attorney only if: Specific facts  
16 in an affidavit or a verified complaint clearly show that  
17 immediate and irreparable injury, loss, or damage will result  
18 to the movant before the adverse party can be heard in  
19 opposition; and the movant's attorney certifies in writing any  
20 efforts made to give notice and the reasons why it should not  
21 be required.

22 You're saying those requirements weren't done?

23 MS. SIMPSON: Those requirements were not met, Your  
24 Honor.

25 THE COURT: So your position is that notice had to be

1 given?

2 MS. SIMPSON: Well, it either had to be given, or if  
3 you look at 65(b)(2), where it says you have to state why --

4 THE COURT: And that wasn't done here?

5 MS. SIMPSON: Notice did not, no.

6 THE COURT: Okay. All right.

7 MR. CONNORS: Your Honor, may I interpret for a  
8 moment?

9 THE COURT: I would appreciate hearing just one side  
10 at a time, Mr. Connors.

11 Go ahead.

12 MS. SIMPSON: So, moving on to the standards for a  
13 TRO, and as I mentioned, those are immediate irreparable harm,  
14 likelihood of success on the merits, we don't get much past the  
15 immediacy requirement here. There is no reason why this  
16 individual, Mr. Ceglia, waited for over six years to assert his  
17 rights. The requirements under a TRO are that these rights be  
18 asserted immediately and there has to be some urgency and some  
19 need for a TRO to protect the parties.

20 There's no plausible reason why there's an urgency  
21 here. And Mr. Ceglia didn't even attempt to explain the delay  
22 that has taken -- you know, that has taken him six years to  
23 bring this to our attention.

24 That missing element of the TRO pictured here is  
25 critical and crucial and it actually -- we don't even need to



1 go past that. Without that kind of immediacy or urgency there  
2 really is no basis for a TRO here.

3 And that is set forth in the Kalipharma case and the  
4 arm -- Amhad case, both cited in our brief, where in the  
5 Kalipharma case it was only seven months and the Court said  
6 seven months, that's way too long to wait for a TRO. We have  
7 over six years here, which is much longer than seven months.

8 THE COURT: When does the time start to run?

9 MS. SIMPSON: The time?

10 THE COURT: The seven years or the six years?

11 MS. SIMPSON: Oh, it begins to run in February of  
12 '04, according to plaintiff. Plaintiff asserted in their  
13 papers that the contract was entered into in April of '03.

14 THE COURT: When did the breach occur?

15 MS. SIMPSON: The breach occurred, according to  
16 plaintiff, in February, '04 when the Facebook site was complete  
17 and the ownership interest was not transferred.

18 THE COURT: Do me one favor. Explain to me this  
19 contract.

20 MS. SIMPSON: Your Honor, I would love to explain to  
21 you the contract. We have some serious questions --

22 THE COURT: Tell me about the facts as you  
23 understand -- or maybe I should ask the plaintiff. Maybe that  
24 would be better.

25 But, as you understand it, because I'm trying to get

1 a grasp for what happened back in 2004.

2 MS. SIMPSON: Yes, Your Honor.

3 THE COURT: As you understand them.

4 MS. SIMPSON: We have serious questions about the  
5 authenticity of this contract, Your Honor.

6 THE COURT: Okay. Well, that's not right now. But  
7 just so -- background, so I can get a better feel what happened  
8 here.

9 MS. SIMPSON: Well, Your Honor, as far as I know --

10 THE COURT: Give me a little history of this.

11 MS. SIMPSON: Mr. Zuckerberg did indeed have a  
12 contract with Mr. Ceglia. That --

13 THE COURT: Give me the background of how this all  
14 started.

15 MS. SIMPSON: I actually don't know the entire  
16 background.

17 THE COURT: Okay.

18 MS. SIMPSON: What the contract asserts is that there  
19 was a relationship about Facebook and there is not one. So I  
20 can't give you --

21 THE COURT: There is not one?

22 MS. SIMPSON: There is not one, no.

23 THE COURT: Well, your client was how old at the  
24 time? I'm trying to figure out what happened.

25 MS. SIMPSON: He was 18.

Proceedings

1 THE COURT: Eighteen?

2 MS. SIMPSON: Eighteen.

3 THE COURT: And he's a student somewhere?

4 MS. SIMPSON: He's a student at Harvard.

5 THE COURT: Harvard.

6 MS. SIMPSON: He's a freshman at Harvard.

7 THE COURT: Tell me what's going on so I can get an  
8 idea.

9 MS. SIMPSON: He's a freshman at Harvard. He's a  
10 computer coder.

11 THE COURT: Okay.

12 MS. SIMPSON: And, from our understanding, he was  
13 contacted by Ceglia or he contacted Ceglia and was -- agreed to  
14 do work --

15 THE COURT: How did that come about?

16 MS. SIMPSON: -- on a project for Ceglia.  
17 I actually don't know the details of that.

18 THE COURT: All right. So I just took a three-days  
19 course on computers and I still don't know a lot about them,  
20 okay. So I'm trying to understand exactly how this all came  
21 about.

22 But he's a student at Harvard. And he's doing what?

23 MS. SIMPSON: He is looking for money.

24 THE COURT: All right. Okay.

25 MS. SIMPSON: And one of his skills was being able to

1 code. So he agreed to code for Mr. Ceglia with respect to a  
2 project called Street Fax.

3 THE COURT: Called what?

4 MS. SIMPSON: Street Fax.

5 THE COURT: Street back?

6 MS. SIMPSON: Street Fax, F-A-X, which is actually  
7 one of the projects mentioned in the document submitted by  
8 plaintiff.

9 THE COURT: Okay.

10 MS. SIMPSON: You'll see the document --

11 THE COURT: That's the one that's real hard to read?

12 MS. SIMPSON: Yes, the one that's very hard to read.

13 It has two parts and part is in relation to Street  
14 Fax and the other part is directly relating to Facebook.

15 THE COURT: Okay.

16 MS. SIMPSON: Mr. Ceglia and Mr. Zuckerberg did work  
17 together on the Street Fax project for a period of time.

18 Whether it was pursuant to this particular contract, we don't  
19 believe so. The -- the exact termination of that relationship  
20 was roughly around the end of 2003, as far as we understand.

21 And with respect to the contract that we have in  
22 front of us, we have some serious questions because there are  
23 many inconsistencies and many undefined terms and things that  
24 don't make sense if you look at it on its face.

25 Specifically, you'll see that there's a mention in

1 there of Facebook and then there's another mention in there of  
2 Pagebook, and those are inconsistent. The consideration in the  
3 contract is directed directly to Pagebook. There's no  
4 consideration at all in the contract that relates to Facebook.

5 THE COURT: Just one second. It's really hard to  
6 read this contract.

7 MS. SIMPSON: Precisely, Your Honor.

8 THE COURT: Are you saying -- again, I'm trying to  
9 get background. I can't figure out -- your client signed this?

10 MS. SIMPSON: Our client entered a contract with  
11 Ceglia. Whether he signed this piece of paper we are unsure at  
12 this moment.

13 THE COURT: Well, it does appear to have his  
14 signature on it.

15 MS. SIMPSON: It does appear to have a signature on  
16 it.

17 THE COURT: And the plaintiff's signature.

18 MS. SIMPSON: It does appear to have two signatures  
19 on it. We do have questions about that.

20 THE COURT: All right.

21 MS. SIMPSON: We'd like to see the original.

22 THE COURT: Okay. Do you have a clean copy of this?

23 MS. SIMPSON: I have the same copy.

24 THE COURT: Mr. Terrence (sic), do you have a copy of  
25 this?

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1 MR. CONNORS: I do, Your Honor.

2 THE COURT: Can I see it? I'm trying to read this  
3 and I just couldn't read it.

4 MR. CONNORS: We have the same. This one is a little  
5 better, Your Honor.

6 THE COURT: Do you mind if I take ten minutes? Do  
7 you have a copy of this?

8 MS. SIMPSON: I presume it's similar to yours.

9 (A recess was taken at 11:25 a.m.)

10 (Proceedings continued at 11:38 a.m.)

11 THE COURT: Before I hear from you, Mr. Connors,  
12 would you please explain to me this contract?

13 MR. CONNORS: Sure.

14 THE COURT: Because I read it quickly, and I'm not  
15 sure I understand it. And I'm sure it's just because of my  
16 deficiencies, but I'm having trouble understanding it.

17 MR. CONNORS: Your Honor, I think I can provide some  
18 insight into that.

19 I would note though, as you're well aware, we became  
20 involved on Friday, this past Friday, and filed a notice of  
21 appearance on that day. So we're catching up as well, but I  
22 can give you some background information.

23 THE COURT: Yeah, just generally so I can --

24 MR. CONNORS: In the spring of 2003, Paul Ceglia was  
25 about 28 or 29 years at that time. He was a -- a web designer.

1 He was involved in collecting and perfecting databases, which  
2 he thought would be the future of the internet. It's back in  
3 2003 now, so there's still a lot to come.

4 He had this business called Street Fax, F-A-X, and  
5 basically what he would do is he would seek to develop a  
6 database that would consist of millions of photographs of  
7 streets throughout the United States.

8 He would contract with insurance companies so that  
9 they'd have that accessible through a click of their mouse.  
10 They could get into his database and get a photo. If there's  
11 an auto accident at Main and Court they would be able to get  
12 there and take a look at that, saving themselves a lot of money  
13 and not having to send the adjusters out and all of those  
14 investigators.

15 THE COURT: Is this like Google Earth?

16 MR. CONNORS: A little bit like that, although  
17 specifically with respect to streets, Street Fax.

18 THE COURT: Okay.

19 MR. CONNORS: And what he needed in the spring of  
20 2003 was a website engineer. He needed someone to help him  
21 develop the database itself. So he advertised. He put out the  
22 advertisements on Craigslist. And, lo and behold, he got a  
23 number of bids. One of them was from a freshman at Harvard by  
24 the name of Mark Elliot Zuckerberg. He was, in addition to  
25 being an enrolled student there, was the -- at least claimed to

1 be the captain of their computer team and had the access to the  
2 background of Harvard for these types of computer projects.

3 He bid a rather low amount of money. Said I'll do it  
4 for a \$1,000. I'll help you develop this database, he said,  
5 but I've got a project of my own. I'm developing an online  
6 yearbook for Harvard kids now. I'm thinking about expanding  
7 it.

8 And our guy basically said, yeah, yeah, whatever you  
9 want, I'll give you a \$1,000 for that, but I want my database.  
10 I want you to work on my database. So the function of this  
11 contract was primarily to deal with the work for hire that was  
12 required by Mark Zuckerberg to perform for Mr. Ceglia.

13 But it also provided for an investment in the project  
14 that at that time was a fledgling project, you know, with the  
15 dot com bust occurring earlier, probably little chance of  
16 success. Who would know it would turn into what it turned into  
17 today.

18 And so the contract language was added that's pretty  
19 clear, Your Honor. It says that it's for the continued  
20 development of the software program.

21 THE COURT: Where are you reading?

22 MR. CONNORS: If you go to --

23 THE COURT: Paragraph --

24 MR. CONNORS: Two, entire agreement.

25 THE COURT: Okay.



1           MR. CONNORS: First sentence is: It reflects two  
2 separate business ventures.

3           That's clearly true. The first is what I want you to  
4 do for me, Mr. Zuckerberg, Street Fax database and programming  
5 language, that's what I expect from you and your Harvard  
6 computer team.

7           Now, the entire agreement reflects two separate  
8 business ventures. That's paragraph 2. The first is what  
9 you're doing for me. The second is for the continued  
10 development of the software program and for the purchase and  
11 design of a suitable website for the project seller has already  
12 initiated. That's Zuckerberg's project. And he's designing it  
13 to offer the students of Harvard University access to a website  
14 similar to a live, functioning yearbook with the working title  
15 of the Facebook.

16           And then it says it's agreed that the purchaser,  
17 Mr. Ceglia, he's identified in the very first phrase, will own  
18 a half interest, 50 percent in the software programming  
19 language and business interests derived from the expansion of  
20 that service, Facebook, to a larger audience.

21           And so what happens eventually, Your Honor, is Street  
22 Fax goes into business, doesn't do as well. And then years  
23 later Facebook takes off to the point where now it's -- today  
24 on the news they say it celebrated its five hundred millionth  
25 customer.

1           And Mr. Ceglia has this contract that, you know, your  
2 questions were direct; is that his signature?

3           Zuckerberg's been served for 11 days. They've come  
4 up with a number of procedural defenses, but no one ever said  
5 it's not his signature, it's a fake or it's a fake contract.

6           Basically we have a contract here that, obviously  
7 it's going to be subject to some interpretation, I mean that's  
8 what lawsuits are for, but basically it's a fairly clear  
9 work-for-hire arrangement detailing two specific projects, and  
10 that's essentially the background of the projects.

11           THE COURT: Okay. Thank you.

12           Ma'am.

13           MR. CONNORS: Could I interrupt for one moment,  
14 Judge?

15           Only to mention this, Your Honor, and obviously it's  
16 your call in this. But I know that with respect to TRO's and  
17 provisional remedies this Court and all courts are very serious  
18 about how they look at these and what they want to do with them  
19 because of the nature of the relief that's sought.

20           I reached out to Mr. Powers on Friday after we got  
21 into it. I had a very brief conversation with Ms. Simpson a  
22 day or two earlier, but I hadn't -- I hadn't entered an  
23 appearance. But I reached out to Mike and I said, listen, we  
24 ought to step back from this and talk about this before this  
25 goes down a track of litigation that, quite frankly, isn't as

1 important to us as the litigation of the contract. Is there  
2 some way that we could present to the Court some type of  
3 alternative disposition that wouldn't require us to invent the  
4 wheel in the TRO, work and litigate that and get involved in  
5 some type of a preliminary injunction hearing when there's all  
6 sort of other key issues involved, not the least of which is  
7 subject matter jurisdiction. There's issues that revolve  
8 around the contract itself, discovery.

9           And what I think is we ought to step back from it and  
10 try to work out a proposal to give you an agenda as to what  
11 would be the key items and the most important items. I think  
12 getting bogged down in this TRO issue -- there's issues with  
13 the TRO. There's problems. There's no question about that.

14           And since we've gotten and looked at it, we're really  
15 willing to acknowledge that. But we need to get to the meat of  
16 this dispute, which, we think, the meat of that dispute is this  
17 two-page contract. So we think it might work out if we stepped  
18 back a little bit and had some discussion about the procedural  
19 options available to both sides.

20           THE COURT: Ms. Simpson.

21           MS. SIMPSON: Your Honor, we're always happy to have  
22 a discussion. We would never say no to that.

23           I do have some concerns. One is that we have a stay  
24 in place of this TRO. And if, for some reason, we're  
25 abandoning the determination on that TRO today, I would want

1 that stay to remain in place. And I'm a little concerned about  
2 the suggestion of a conversation --

3 THE COURT: The TRO would actually expire even if --  
4 I know you disagree -- but even the worst of situations for  
5 you, I guess, it would be Friday.

6 MS. SIMPSON: Yes. No, I don't disagree that it  
7 expires Friday. I'm -- in the longest counting of the days.  
8 So I would request that it remain stayed until Friday.

9 But I do have some concerns because I would -- I  
10 wouldn't want you not be up front because there is virtually no  
11 restraints that Facebook would agree to, you know, to have in  
12 place in this case. So if that's what --

13 THE COURT: You haven't talked at all, have you,  
14 except on the telephone?

15 Do you want to talk to Mr. Connors for --

16 MS. SIMPSON: I think he's aware of the fact that we  
17 are not looking to put a restraint in place of any kind.

18 THE COURT: And his position, as far as you know,  
19 was?

20 MS. SIMPSON: Perhaps --

21 THE COURT: Plaintiff wants a TRO.

22 MS. SIMPSON: I'm sorry, Your Honor?

23 THE COURT: Plaintiff wants a TRO of some sort.

24 MS. SIMPSON: Right. And we're not willing to put a  
25 TRO in place.

1 THE COURT: Of any kind?

2 MS. SIMPSON: Of any kind.

3 THE COURT: So it wouldn't do much good to talk right  
4 now, or would it?

5 MS. SIMPSON: It wasn't my proposal. I'm happy to  
6 have a conversation. I don't know what the --

7 THE COURT: Well, I'll tell you what. Go over to  
8 Judge Curtin's courtroom and why don't you have a little  
9 conversation. I'm going to be here all day. Talk.

10 And if you get into a -- you start swinging at each  
11 other, let me know, come on back in here and we'll continue.  
12 But certainly if people can talk to each other civilly, maybe  
13 you can make some progress without the Court's intervention.  
14 If you can't, come on back here and I'm here.

15 So, Denise, would you open up Judge Curtin's  
16 courtroom, and just the lawyers will be permitted in there.  
17 Nobody else.

18 MS. SIMPSON: Yeah --

19 THE COURT: Maybe Mr. Connors -- or maybe you'll  
20 agree to some TRO. I don't know. But Judge Curtin always took  
21 that position. It's always good to have lawyers talk before  
22 the Court gets involved. And it's because lawyers are much  
23 better at it than judges are.

24 And so why don't you go in there for five minutes.  
25 If it's useless, fine. If you want to spend the whole day in

1 there, be my guest. I'm here. Okay.

2 MS. SIMPSON: Okay. Your Honor, there are a number  
3 of points I'd like to raise with respect to --

4 THE COURT: I know. We'll just pick up where you  
5 left off.

6 MS. SIMPSON: All right. Thank you.

7 THE COURT: All right. We'll take a recess.

8 (A recess was taken at 11:48 a.m.)

9 (Proceedings continued at 1:07 p.m.)

10 THE COURT: All right. Ms. Simpson.

11 MS. SIMPSON: Yes.

12 THE COURT: Mr. Connors.

13 MR. CONNORS: May I?

14 Your Honor, thank you for the opportunity to speak  
15 about the subject that's brought us in front of you today.

16 I think we've made some progress. And what we would  
17 like to inform you is that both sides agree that there are  
18 other issues that we should be focusing on.

19 There is a priority to other parts of this lawsuit  
20 other than provisional remedies. In that regard, Your Honor,  
21 we recognize and agree that the procedural posture of this case  
22 is that there is a stay of the temporary restraining order  
23 remaining in place right now; that the parties agree that at  
24 the latest the temporary restraining order expires on Friday.  
25 That would make any motion to dissolve or modify the temporary

1 restraining order rendered moot as of Friday. And we're in  
2 agreement with that procedural posture.

3 The only thing the parties would state to the Court  
4 is that for the future, both sides reserve their right to any  
5 provisional remedies that they might be entitled to as a matter  
6 of law or that they would desire to seek in the future.

7 So that, essentially, what will happen is we'll  
8 attend to the business of litigation right now. We'll look at  
9 the case. If something happens that we think is -- warrants a  
10 provisional remedy, we'll apply to you under the correct rule  
11 of Federal Rules of Civil Procedure.

12 In the meantime, we'll look at the other issues, some  
13 of which we addressed here today that deal with the lawsuit,  
14 the contract, the subject matter jurisdiction, personal  
15 jurisdiction, all these issues.

16 THE COURT: Okay. So by operation of law -- well,  
17 the stay will be in effect until Friday. Friday by operation  
18 of law the TRO will dissolve.

19 Is that the right word, dissolve?

20 MR. CONNORS: It is, Your Honor.

21 MS. SIMPSON: Yes, Your Honor.

22 THE COURT: Use that word --

23 MR. CONNORS: It's the statute.

24 THE COURT: Vacated or something. But since the  
25 Supreme Court uses dissolve, I'll use dissolve.

1           So then an answer is due, I guess. Is that the next  
2 step?

3           MS. SIMPSON: That would be the next step, Your  
4 Honor.

5           THE COURT: And that will be 20 days from when, today  
6 or --

7           MS. SIMPSON: It's 20 days from the -- I think the  
8 service. I don't think that changes. The service of the  
9 complaint.

10          THE COURT: Well, that's an issue, too, isn't it?

11          MS. SIMPSON: Well, the service issue was concerning  
12 the TRO with respect to Mr. Zuckerberg.

13          THE COURT: Okay.

14          MS. SIMPSON: It was not properly served, but he was  
15 served with a complaint.

16          THE COURT: Okay. So when will the 20 days start to  
17 run?

18          MS. SIMPSON: Do you have dates? It is 21 days from  
19 service of the summons, I'm sorry. I haven't done the math on  
20 which day that is.

21                 I will say that defendant most likely intends to make  
22 a motion to dismiss and so may request additional time.

23                 The date is July 27th, Your Honor.

24          THE COURT: Today is the 20th.

25          MS. SIMPSON: Yes.



1 THE COURT: And it's your intent to file a motion to  
2 dismiss?

3 MS. SIMPSON: Correct, Your Honor.

4 THE COURT: Okay. So as far as the Court's  
5 concerned, what do you want me to do?

6 MS. SIMPSON: I haven't spoken with plaintiff's  
7 counsel about that next step yet, Your Honor. I don't know if  
8 he would consent to a brief extension in order for us to do  
9 that. Also --

10 THE COURT: Do you want to go back into the chambers?

11 MR. CONNORS: I would consent, Your Honor, to an  
12 appropriate extension. As I say, there's other issues that  
13 might deal with subject matter jurisdiction as well. I think  
14 we probably need to get into some dialogue.

15 If Your Honor could perhaps pick a date to bring us  
16 back or report back to you at some point, I think that might be  
17 the most advisable method.

18 THE COURT: Give me a date.

19 MS. SIMPSON: The other thing I would mention, Your  
20 Honor, is I think that plaintiff may intend to file an amended  
21 complaint, in which case it would make more sense, I think, in  
22 terms of resources to wait on our motion to dismiss until we  
23 see that amended complaint. So again, we'll probably do some  
24 chatting and get back to you.

25 THE COURT: I'm going to take a five-minute break.

1 You put together a schedule that is agreeable with both  
2 parties, and I will go along with it, I think, unless there's  
3 some conflict, okay.

4 MS. SIMPSON: Yes.

5 THE COURT: Work out a date. Give me the schedule  
6 for everything. We'll put it in place and you'll prepare an  
7 order for me confirming those dates, all right.

8 MS. SIMPSON: Okay.

9 THE COURT: Mr. Powers has nothing to do today. He  
10 can draft the order. I will be back in whenever you want me  
11 back.

12 (A recess was taken at 1:11 p.m.)

13 (Proceedings continued at 1:26 p.m.)

14 THE COURT: Okay. All right.

15 MR. CONNORS: Your Honor, we have reached agreement,  
16 and with the help of your law clerk, on or before August 6th,  
17 2010, parties shall provide the Court with a proposed  
18 scheduling order setting forth the dates to answer, move to  
19 dismiss, and/or move to remand.

20 In the interim, parties agree that the stay of the  
21 TRO shall be in effect until July 23rd, at which time the TRO  
22 will expire on its own terms.

23 The parties stipulate that the time to answer shall  
24 be extended until September 8th, 2010, unless otherwise  
25 extended in stipulated scheduling order, and the plaintiff

1 reserves all rights to move for provisional remedies if  
2 appropriate.

3 THE COURT: Do you agree with that, ma'am?

4 MS. SIMPSON: I do.

5 I just have one edit, which I didn't catch in the  
6 first round, and that is the time to answer or otherwise move,  
7 the second time that's mentioned. I think we did that the  
8 first time, but not the second time.

9 THE COURT: Just sit down. Take your time.

10 (Off the record discussion.)

11 MR. CONNORS: Ms. Simpson pointed out that, Your  
12 Honor, with respect to the time to answer, she also wants to be  
13 able to move to file motions against the complaint as well, so  
14 that that stipulation should include the time to answer or move  
15 extended until September 8th, 2010.

16 And I pointed out there's an earlier reference to the  
17 motions as well, but that will be the subject to a scheduling  
18 order proposed to the Court. So we'll have basically a double  
19 review over any of those dates.

20 THE COURT: What about this amended complaint that  
21 you're thinking about? If you file -- do you intend to maybe  
22 file an amended complaint?

23 MR. CONNORS: It's definitely something --

24 THE COURT: What is that going to do to all the  
25 scheduling?

1           MR. CONNORS: Our thought on that when it came up in  
2 discussions is that we probably ought to address the matters  
3 such as subject matter jurisdiction and remand first, get that  
4 buttoned down, and then decide what we're going to do with  
5 respect to any --

6           THE COURT: Do you agree with that, ma'am?

7           MS. SIMPSON: Yes, Your Honor.

8           THE COURT: What I don't want to do is get into a  
9 procedural quagmire. All these amended complaints, motion to  
10 dismiss and which one are we talking about. It just doesn't  
11 get easy to work through that sometimes.

12          MS. SIMPSON: Right.

13          THE COURT: So what I'd like to do is try to keep --  
14 I mean, you are all obviously entitled to file whatever motions  
15 you deem appropriate. But I'd like to keep it in some kind of  
16 order, so I'm not dealing with orders, you know, motions to  
17 dismiss, there's amended complaint filed thereafter and then  
18 we've got to file another motion to dismiss the amended  
19 complaint. And it gets all bogged down in procedure.

20                 And, first of all, it's very expensive to do all  
21 that, it's time-consuming for the Court. In the long run,  
22 strategically, I don't think either side gets an advantage.

23          MS. SIMPSON: Right.

24          THE COURT: So let's go through the time frame one  
25 more time.

1 MS. SIMPSON: Well, Your Honor, if I could speak to  
2 that for a second. That is precisely why I raised the amended  
3 complaint earlier, and I think what we're anticipating doing  
4 with our scheduling order is to take those issues in a logical  
5 order. So we'll deal with the motion to remand first and  
6 plaintiff will decide whether they wish to make that motion.  
7 If they do we'll put a briefing schedule in for that.

8 Then we'll deal with the question of whether an  
9 amended complaint is going to be filed. And if it is, then  
10 we'll put in dates for the amended complaint. And then we'll  
11 put in dates for the motion to dismiss, depending on whether  
12 there's an amended complaint or a complaint, we'll move to  
13 dismiss whichever one the plaintiff has decided to put forth.

14 THE COURT: Go through those dates one more time.

15 MS. SIMPSON: I would just say that the date on the  
16 answer that we've put in this stip was -- we had actually  
17 requested that the answer date just be stipped out until the  
18 date that we put in the scheduling order but folks thought we  
19 should have a concrete date in there. So I don't expect that  
20 date to stick.

21 THE COURT: I think we're better off with concrete  
22 dates.

23 MS. SIMPSON: I don't think that date is going to  
24 stick because as soon as we set out the scheduling order it's  
25 going to move, depending on what the plaintiff is doing.

1 THE COURT: So what do you propose?

2 MR. CONNORS: We can always move it.

3 MS. SIMPSON: I think it's fine for now, is what I  
4 think.

5 THE COURT: Okay. There's going to come a time, just  
6 so you know, there's going to come a time when there's going to  
7 be a scheduling order put in place that I'm going to put in  
8 place and you're going to have to follow that one.

9 MS. SIMPSON: Understood.

10 THE COURT: Right now, because we're at the  
11 preliminary stages, I'll let you do it, because you've got to  
12 make decisions on procedurally how you want to proceed.

13 But there's going to come a time where I'm going to  
14 put an order in and we're going to follow that order.

15 MS. SIMPSON: We hope to give you an order you can  
16 enter on the 6th.

17 THE COURT: That's by August 6th?

18 MS. SIMPSON: Yes.

19 THE COURT: And it will set forth all the dates?

20 MS. SIMPSON: Yes, Your Honor.

21 THE COURT: And I guess we're going to hold to those  
22 dates, unless there's an amended complaint filed, is that --

23 MS. SIMPSON: Well, I'm hoping that the order will  
24 encompass whether an amended complaint will be filed or not.

25 THE COURT: Of course, if I remand it back to the

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1 state court this is all moot.

2 MS. SIMPSON: This is all moot.

3 THE COURT: Okay. All right. Anything else?

4 MR. CONNORS: No, Your Honor.

5 THE COURT: Thank you, very much.

6 MS. SIMPSON: Thank you, very much.

7 (Proceedings concluded at 1:32 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcription of the proceedings stenographically recorded by me in this matter.

S/Yvonne M. Garrison, RPR

YVONNE M. GARRISON, RPR  
Official Reporter  
U.S.D.C., W.D.N.Y.