UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

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

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG, Individually, and FACEBOOK, INC.

Defendants.

DECLARATION OF LARRY F. STEWART IN SUPPORT OF PLAINTIFF'S FORTHCOMING RESPONSE TO DEFENDANTS' MOTION TO DISMISS FOR FRAUD

LARRY F. STEWART submits this declaration as an official forensic report of findings and hereby declare under penalty of perjury and pursuant to 28 U.S.C. 1746 that the following is true and correct:

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1. Introduction and Background Information:

2. I, Larry F. Stewart, make this declaration upon personal knowledge and if called as a witness I could and would competently testify to the following:.

3. I am a retained expert for Paul D. Ceglia in the above captioned case.

4. I am presently Chief Forensic Scientist and President of Stewart Forensic Consultants, LLC, San Luis Obispo, California and Washington, DC.

5. During my 32 years as a forensic scientist, I have been requested to conduct forensic examinations in many well-known cases to include; the

Unabomber, the John Wilkes Booth diary, numerous accused Nazi war criminals, e.g. John Demjanjuk, a.k.a. Ivan the Terrible, the reinvestigation of the Dr. Martin Luther King murder, the reinvestigation of the Kennedy assassination/CIA conspiracy theory, the Quedlinburg Treasure, the 1933 Saint-Gaudens Double Eagle gold coin, the Jon Benet Ramsey murder investigation, the 9/11 terrorist attacks, the DC Sniper investigation and the 2010 Brazilian presidential election scandal.

6. My education includes an Associate of Arts Degree from Florida Technological University, Orlando, Florida in 1976, a Bachelor of Science in Forensic Science Degree from the University of Central Florida, Orlando, Florida in 1979, and a Master of Forensic Sciences Degree from Antioch University, Yellow Springs, Ohio, received in June of 1983.

7. I have received numerous specialised training courses in the forensic sciences from 1976 through the present from such facilities as Crane-Weston Paper Mill, Bureau of Engraving and Printing, McCrone Research Institute, Virginia Polytechnic Institute and State University, Central Intelligence Agency, U.S. Air Force, U.S. Justice Department, Federal Bureau of Investigations, FBI Training Academy (Quantico), U.S. Secret Service, Perkin-Elmer Corporation, and others.

8. My work experience includes Forensic Chemist for the United States Bureau of Alcohol, Tobacco and Firearms; Counterfeit Specialist, Questioned Document Examiner, Senior Document Examiner and National Expert on Matters Concerning Ink for the United States Secret Service; Chief, Questioned Document Branch and Laboratory Director/Chief Forensic Scientist for the United States Secret Service. Subsequent to federal government retirement (after a credited 27 year tenure) I began my

own independent forensic laboratory and consulting service known as Stewart Forensic Consultants, LLC.

9. I have also been an instructor or guest speaker in forensic science for numerous groups and agencies, to include; Bureau of Alcohol, Tobacco and Firearms, U.S. Secret Service, Antioch School of Law, George Washington University, Federal Law Enforcement Training Center, Rochester Institute of Technology, UCLA, Catholic University, U.S. Department of State, International Law Enforcement Academy, Naval Criminal Investigative Service, U.S. Air Force, Cuesta College and California Polytechnic Institute.

10. I have testified as an expert forensic scientist witness in state, federal and military courts of law, as well as testified or been deposed in foreign court systems to include: Austria, Australia, Canada, Germany, Sri Lanka and Thailand. I have testified in an International Tribunal held in Vienna, Austria. I have also testified as a forensic scientist at The Hague in the Netherlands and three times before the U.S. Congress.

11. I served the U.S. Government as a forensic scientist for over 26 years and have been in private practice for over 6 years.

12. I have achieved many awards and honors in the field of forensic science. They include: Participated as a "referee" in the 1980 Crime Laboratory Proficiency Training Program Forensic Sciences Foundation, Colorado Springs, Colorado; Testified in May of 1989 and 1990 before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives (These matters concerned the investigation of fraud in science); Certified by the U.S. Secret Service as an accredited Examiner of Questioned Documents, February 1, 1991; Recipient of the Health and Human Services Inspector General's Integrity Award,

1991; Appointed Chairman of A.S.T.M. task groups (1991) concerned with developing standards for performing "Writing Ink Comparisons" and "Writing Ink Identifications;" United States Delegate at the 14th European Meeting on Currency Counterfeiting, The Hague, The Netherlands, October 9-11, 1991 and the First International Conference on Fraudulent Documents, Ottawa, Canada, April 27- May 1, 1992; United States Delegate at the 6th European Conference for Police and Government Experts, London, United Kingdom, October 2-4, 1996 (Presented a paper on Ink Dating, Relative and Absolute: New Approaches to Old Problems); Testified on July 22, 1999 before the House Judiciary Committee, Subcommittee on Immigration and Claims, U.S. House of Representatives (This matter concerned detection and prevention of counterfeit documents); Classified as an “Inspector” for the American Society of Crime Laboratory Directors; Elected to the Board of Directors for the American Society of Crime Laboratory Directors, September 14, 2000; Elected to the Board of Directors for the Document Security Alliance, December, 2003; Appointed as the forensic consultant for the United Nations, tasked with developing and implementing a successful forensic laboratory in Nigeria, Africa, 2007; Elected to the Board of Directors for The Academy, June, 2007; Certified Forensic Consultant, American College of Forensic Examiners Institute, October, 2007; Appointed as a forensic consultant for the U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs in Yerevan, Armenia, January, 2008 (ongoing assignment); Appointed as a forensic consultant for the U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs in Tbilisi, Georgia, May, 2008; Elected to the Board of Directors for the American Board of Forensic Examiners, February, 2009; Accepted as a member of the Association for

Intelligence Officers and the Business Espionage Controls and Countermeasures Association, 2011.

13. I have over thirty original publications or presentations of original forensic works, to include two published books in the field of forensic science, to include:

13.1. "Detection of Volatile Accelerants in Fire Debris. 1. A Comparative Evaluation... " R. Strobel, R. Tontarski, L.F. Stewart, P. Wineman presented at the American Academy of Forensic Sciences, New Orleans, Louisiana, February 1980, and the Mid-Atlantic Association of Forensic Scientists, combined meeting, Louisville, Kentucky, May 1980;

13.2. "Artificial Aging of Documents," L.F. Stewart. Published in the Journal of Forensic Sciences, Vol. 27, No. 2, April 1982;

13.3. "Ballpoint Ink Age Determination by Volatile Component Comparison," L.F. Stewart, Presented at the American Academy of Forensic Sciences meeting, Orlando, Florida, February 1982, and Mid-Atlantic Association of Forensic Scientists/Northeastern Association of Forensic Scientists joint meeting, Harrisburg, Pennsylvania, April 1982. Published in the Journal of Forensic Sciences, April 1985;

13.4. "The Role of the Secret Service in Counterfeit Deterrence," L.F. Stewart. Presented at the Mid-Atlantic Association of Forensic Scientists meeting, Baltimore, Maryland, April 1983;

13.5. "The Forensic Analysis of Printing Inks," L.F. Stewart. Presented at the American Society of Questioned Document Examiners, Lake Tahoe, Nevada, September 1983;

13.6. "Counterfeit Credit Card Deterrence," L.F. Stewart. Presented at

the American Society of Questioned Document Examiners/Canadian Society of Forensic Scientists annual meeting, Montreal, Quebec, Canada, September 1985;

13.7. "Detection of Counterfeit Currency," L.F. Stewart. Presented at the International Association of Identification conference, Arlington, Virginia, August 1987;

13.8. "Identification of United States Currency Security Fibers by Fourier Transform Infrared Spectroscopy," J.E. Brown and L.F. Stewart. Presented at the Canadian Society of Forensic Scientists annual meeting, Toronto, Ontario, Canada, October, 1988;

13.9. "U.S. Secret Service Ink Identification System," J.W. Hargett, J.E. Brown and L.F. Stewart. Presented at the Canadian Society of Forensic Scientists annual meeting, Toronto, Ontario, Canada, October 1988;

13.10. "Use of Enlargement Ratios of Negatives and/or Printing Plates to Characterize Counterfeit Currency," L.F. Stewart, R.L. Outland and J.E. Brown. Presented at the Canadian Society of Forensic Scientists annual meeting, Toronto, Ontario, Canada, October 1988;

13.11. "Current Status of Ink Age Determination," L.F. Stewart and S.L Guertin. Presented at the Ninth INTERPOL Forensic Science Symposium, INTERPOL Headquarters, Lyon, France, December 12, 1989. Published in INTERPOL International Criminal Police Review, March-April, 1991;

13.12. "A.S.T.M. Standard for Writing Ink Comparisons," L.F. Stewart and J.L. Becker. Presented at the Mid-Atlantic Association of Forensic Scientists 1991 meeting, Bethesda, Maryland, May 31, 1991;

13.13. "Standard Guide For Test Methods For Forensic Writing Ink

Comparisons," L.F. Stewart (Task Group Chairman). Published in the American Society For Testing and Materials (ASTM), Standard Designation number E-1422-91, November 1991;

13.14. "Counterfeit Documents Produced by Color Copier Systems," L.F. Stewart, Presented at INTERPOL Headquarters, Lyon, France, December 11-19, 1991;

13.15. "Sentence Insertions Detected Through Ink, ESDA and Line Width Analysis," S.L. Fortunato and L.F. Stewart. Published in the Journal of Forensic Sciences, November 1992;

13.16. "Status of U.S.S.S. Ink Dating Program," J.W. Hargett and L.F. Stewart. Presented at the Humboldt University, Berlin, Germany, April 2, 1993. Published in Kriminalistik und Forensische Wissenschaften, No. 82, 1994;

13.17. "U.S.S.S. International Ink Library and Bulletin Board System," L.F. Stewart. Presented at the Mid-Atlantic Association of Forensic Scientists meeting, Baltimore, Maryland, May 20, 1993;

13.18. "Standard Guide For Test Methods For Forensic Writing Ink Identifications," L.F. Stewart (Task Group Chairman). Published in the American Society For Testing and Materials (ASTM), Standard Designation number E-1422-95, 1995;

13.19. "The Government Response to Ink Age Determination," L.F. Stewart, J.L. Becker. Presented at the American Academy of Forensic Sciences meeting, Seattle, Washington, February 17, 1995. Published in the International Criminal Police Review - INTERPOL, Spring, 1996;

13.20. “Distinguishing Between Relative Ink Age Determination and the

Accelerated Aging Technique," L.F. Stewart and S.L. Fortunato. Published in the International Journal of Forensic Document Examiners, January/March, 1996;

13.21. "Forensic Examination of Financial Crimes Documents," L.F. Stewart and J.W. Hargett. Presented at the 6th European Conference for Police and Government Document Experts, London, United Kingdom, October 2-4, 1996 and the GFS Conference, Luzerne, Switzerland, September 9-12, 1997;

13.22. "Unusual Document Examination Approaches and Their Relationship to the Daubert Challenge," L.F. Stewart. Presented at the American Board of Forensic Document Examiners meeting, Las Vegas, NV, June 23, 2002 and the American Society of Questioned Document Examiners meeting, San Diego, CA, August 14, 2002;

13.23. "Forensic Science – Fake Fingerprints?," L.F. Stewart, Published in the Forensic Expert Witness Association, Fall, 2007;

13.24. "Leveling The Playing Field," L.F. Stewart. Presented at the California Association of Licensed Investigators, Central Coast meeting, Pismo Beach, California, December 4, 2008;

13.25. "Crime Scene Investigation," L.F. Stewart, on-line course developed for and published by the American College of Forensic Examiners Institute, January 2009;

13.26. "Identity Theft," L.F. Stewart, A-Z Literary Book Publisher, 2009;

13.27. "Document Examination," L.F. Stewart, A-Z Literary Book Publisher, 2009;

13.28. “Forensic Science – Fake Fingerprints?,” L.F. Stewart, Published in the HG Experts Legal Experts Directory on-line publication, Spring, 2010;

13.29. “Forensic Science - The Good and the Bad,” L.F. Stewart, Published in the HG Experts Legal Experts Directory on-line publication, Spring, 2010;

13.30. “Forensic Science - Erroneous Handwriting Opinions,” L.F. Stewart, Published in the HG Experts Legal Experts Directory on-line publication, Spring, 2010;

13.31. “Forensic Handwriting Examination - Selecting Your Expert,” L.F. Stewart, Published in the HG Experts Legal Experts Directory on-line publication, Winter, 2011;

14. I have numerous professional affiliations, to include:

American Academy of Forensic Sciences - Fellow;

Canadian Society of Forensic Scientists (past member);

American Society of Crime Laboratory Directors;

Document Security Alliance (past member);

Mid-Atlantic Association of Forensic Scientists (past member);

California Association of Licensed Investigators;

Forensic Expert Witness Association;

American College of Forensic Examiners Institute;

American Chemical Society;

Association For Intelligence Officers;

Business Espionage Controls & Countermeasures Association

15. I have held the following professional affiliation offices:

Mid Atlantic Association of Forensic Scientists

Secretary/Treasurer

November 1981 to October 1984;

American Society of Crime Laboratory Directors

Board of Directors

September 14, 2000 to September 2003;

Document Security Alliance

Board of Directors

December 2003 to November 2004;

American Board of Forensic Examiners

Board of Directors

February 2009 to December 2009;

The Academy

Board of Directors

June 2007 to present

16. My current curriculum vitae and a listing of previous testimonies are attached. (See Exhibit 1)

17. My role in this matter was to assist in developing an appropriate forensic examination scheme and to oversee the forensic examinations on the part of Plaintiff's to ensure that all examinations were conducted appropriately and followed accepted protocols.

18. Furthermore, I conducted my own, independent, forensic document examinations on the questioned documents at issue in this matter.

19. This will serve as a forensic laboratory report in this matter outlining my observations and findings regarding evidence presented to date for my evaluation.

Exhibits:

Q1 – One, two-page original document bearing the title, ""WORK FOR HIRE" CONTRACT." Page 1 of the document bears a handwritten interlineation, indicating, "Providing web Design is Funded By May 24, 2003" along with two sets of witnessing initials. Page 2 of the document contains two signatures and handwritten dates as follows: "Paul Ceglia 4/28/03" and "Mark Zuckerberg 04.28.03"

Q2 – One, six-page document bearing a FAX header and the title, " StreetFax Back-End Technical Specification." Page 6 of the document contains two signatures and handwritten dates as follows: "Paul Ceglia 4/28/03" and "Mark Zuckerberg 04.28.03."

Additional Items: Numerous known writings of Mr. Mark Elliot Zuckerberg, and a two-page, non-original StreetFax document presented by Plaintiffs as

the *"Smoking Gun."*

20. Synopsis of Results:

21. After a thorough and exhaustive forensic testing of the Facebook Contract (Work For Hire) (Exhibit Q1), there is no indication to suggest the Contract is anything other than genuine. In addition, there is no evidence to support that the Facebook Contract is altered.

22. Evidence supports that page 1 of the Facebook Contract was originally executed together with page 2 of the Facebook Contract.

23. The StreetFax page 1 was not the original page 1 of the Facebook Contract.

24. The Basis for My Results:

25. The July 2011 Examinations of the Facebook Contract by Plaintiff's and Defendants' Experts:

26. I was present at the law offices of Harris Beach in Buffalo, NY starting July 16, 2011 through July 19, 2011 observing the work of Facebook's document experts.

27. I was not allowed to examine the questioned documents during that time.

28. I did, however, observe Facebook's experts repeatedly exposing the "Work For Hire" Facebook Contract to high intensity and ultraviolet (UV) irradiation or lights.

29. At one point during the testing I commented directly to Plaintiff's counsel that the Defendants' experts were unnecessarily repeating tests and over-exposing the documents to intense lights and that their actions could

cause damage.

30. It is widely known that optical brighteners in paper can fade through exposure to UV light causing paper to yellow (Exhibit 2).

31. Furthermore, certain types of wood and paper compositions "yellow" when exposed to ultraviolet light (Exhibit 3).

32. The first paragraph of the first page of the 1910 edition of Questioned Documents – A Study of Questioned Documents With an Outline of Methods By Which the Facts May Be Discovered and Shown, by Albert Sherman Osborn, warns, "From the moment that the genuineness of a document is questioned it should be handled and cared for in such a manor as not to impair in the slightest degree its value as evidence"

33. On page 8 of the same treatise, Osborn wrote, "A questioned document should not be exposed to moisture of any kind; should not be exposed long to strong sunlight …"

34. As evidenced by Osborn, even early on in the history of document examination, forensic questioned document experts knew of the potential damage to a document from humidity and ultraviolet irradiation.

35. In the 1966 Second Impression with Supplement of "Suspect Documents – Their Scientific Examination," by Wilson R. Harrison, the author writes on page 459, para 1, "It follows from this that the exposure to strong sunlight of important documents should be restricted to the absolute minimum, especially if the documents bear coloured ink or typescript." (See Exhibit 2)

36. Defendants' experts chose not to heed the warnings and repeated their tests unnecessarily. Now, the inks and paper that form the 2-page Facebook

Contract are noticeably damaged.

37. My Examination of the Documents:

38. On July 25, 2011, I was first allowed to examine the Facebook Contract.

39. On that date, I captured multiple images of the Facebook Contract and ***immediately*** noticed an unusual yellowing on one side only of both pages.

40. The yellow discoloration/damage evident in the Facebook Contract is, in my opinion, the result of repeated exposure of the document to high intensity and/or UV lights.

41. Upon review of the videotapes made of the examinations by both Defendants' and Plaintiff's experts, it is evident that the Facebook Contract yellowed dramatically between the time when the document was provided to the Defendants' experts and when it was made available to the Plaintiff's experts.

42. In the Buffalo examination video the Facebook Contract can be clearly seen as visibly white when compared to the much more yellowed six-page Technical Specifications (See video at times 1:14-1:17). Here is a link to the referenced video:

http://www.youtube.com/watch?v=qbc0t6cWEmA&feature=fvwrel

43. Those images were captured when the documents were first being presented to the Defendants for testing.

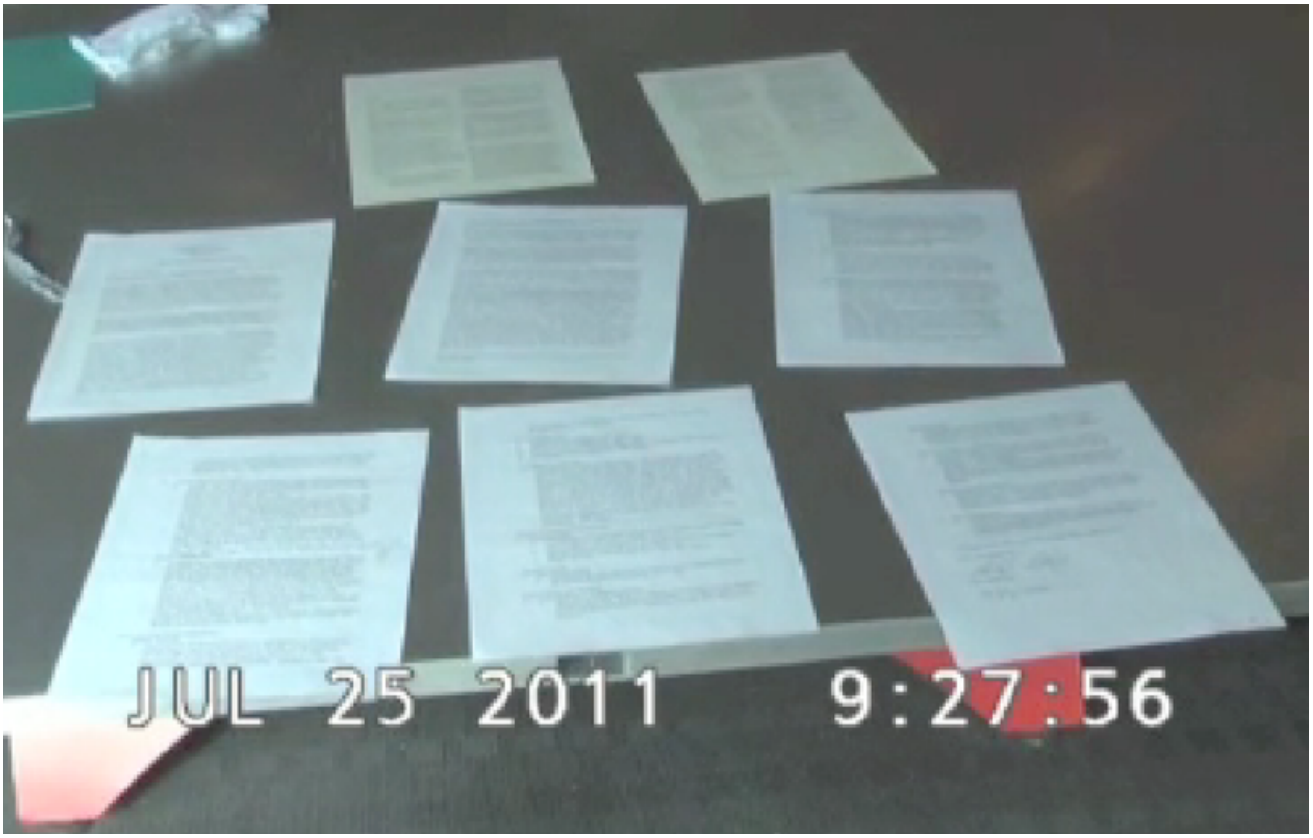
44. Following is a still image captured from the video: (Note how the 2-page Q1 Facebook Contract (shown at top of image) is visibly much whiter in appearance than the Q2 Technical Specifications document (shown at bottom of image).)

45. At the end of the Buffalo testing the documents were placed in envelopes, sealed and then signed by both counsel across the seals.

46. The Chicago examination was subsequently conducted 6 days later (July 25, 2011).

47. A still image taken from that video clearly shows that the Facebook Contract has dramatically yellowed, to the point that it now appears even more yellowed than the Technical Specifications document.

48. In the following still image from the July 25, 2011 examination, note how the 2-page Facebook Contract (shown at top of image) is now visibly much more yellow in appearance than the Technical Specifications document (shown at bottom of image):



49. It is clear from the videos that the Facebook Contract dramatically yellowed sometime between the beginning of the examination by Facebook's experts on the morning of July 14, 2011 and the subsequent July 25, 2011 examinations.

50. I am aware from documents filed in this case that the legal videographer present at the July 2011 examinations also noted that the documents were presented to Defendants' experts as "white" documents.

51. Based on the videotape of the Chicago examination, the Facebook Contract was presented while still in its sealed and signed condition (See Video at time 0:13).

52. This sealed and signed envelope bears the date of "7/19/11," the date of

the conclusion of the forensic testing in Buffalo.

53. This leads to the logical conclusion that the discoloration and deterioration of the Facebook Contract occurred as a result of the work conducted in Buffalo by the Defendants' experts.

54. My first physical examination of the Facebook Contract occurred in Chicago on July 25, 2011.

55. Upon my physical examination of the Facebook Contract, I observed that the two pages are both 8 ½" X 11", non-watermarked, "bond-type" paper.

56. I found that the two pages were consistent in coloration and surface texture.

57. Both pages of the Facebook Contract were highly yellowed on the obverse or face side, only.

58. This was quite noticeable and unusual. The reason it was unusual is because typically single pages that are naturally aged exhibit consistent coloring throughout both sides of the document.

59. Although quite yellow on the face side, both pages of the Facebook Contract were white on the reverse or back side.

60. Another reason this observation is unusual is because the Facebook Contract is a previously stapled two-page document. It would be expected that if natural exposure caused yellowing of the Contract, then the page surfaces that were exposed would gain the most damage.

61. In this case, with just the front side of each page exhibiting the yellowing, it doesn't follow that the stapled Contract would exhibit

yellowing on the face side of the top document and then the other exposure is found on the face side of the second (covered) document.

62. There are several methods by which pieces of paper of this type can become discoloured or damaged.

63. They include age, heat, humidity, contact with chemicals, or exposure to intense or UV lights. In 1982, I noted in an article entitled "Artificial Aging of Documents" many of the known causes. (See Exhibit 4)

64. Except for intense or UV light exposure, each of the remaining methods that can cause discoloration necessarily would have yellowed both sides of the pieces of paper comprising the Facebook Contract.

65. The fact that the yellowing on the two pages of the Facebook Contract is only found on one (the face) side is notable and is consistent with overexposure of the documents while lying on their backs during testing by Facebook's experts.

66. I observed Facebook's experts repeating the same tests on the Facebook Contract numerous times and performing far more testing than would typically be needed to make proper scientific determinations about the authenticity of the document.

67. A typical evaluation of documents in my field can involve the use of a machine called a video spectral comparator (VSC).

68. One such model is known as the Foster Freeman VSC4.

69. Below is a reference image of a Foster Freeman VSC4:

Foster Freeman Video Spectral Comparator Model VSC-4

70. The Foster Freeman VSC4 is one of the pieces of equipment utilized by the Defendants' experts in Buffalo.

71. A video spectral comparator, e.g. the Foster Freeman VSC4, can aid an examiner in determining the characteristics of a document by utilizing

intense illumination sources, e.g. ultraviolet (UV) along with filters.

72. The VSC allows the user to shine UV light onto a document after which any reaction can be viewed utilizing a capture camera and filters.

73. Typically these examinations are done as quickly as possible to limit over exposure of the document to these intense lights. (See Exhibit 2)

74. The amount of exposure time with which damage can occur varies and can be based on ink and paper compositions.

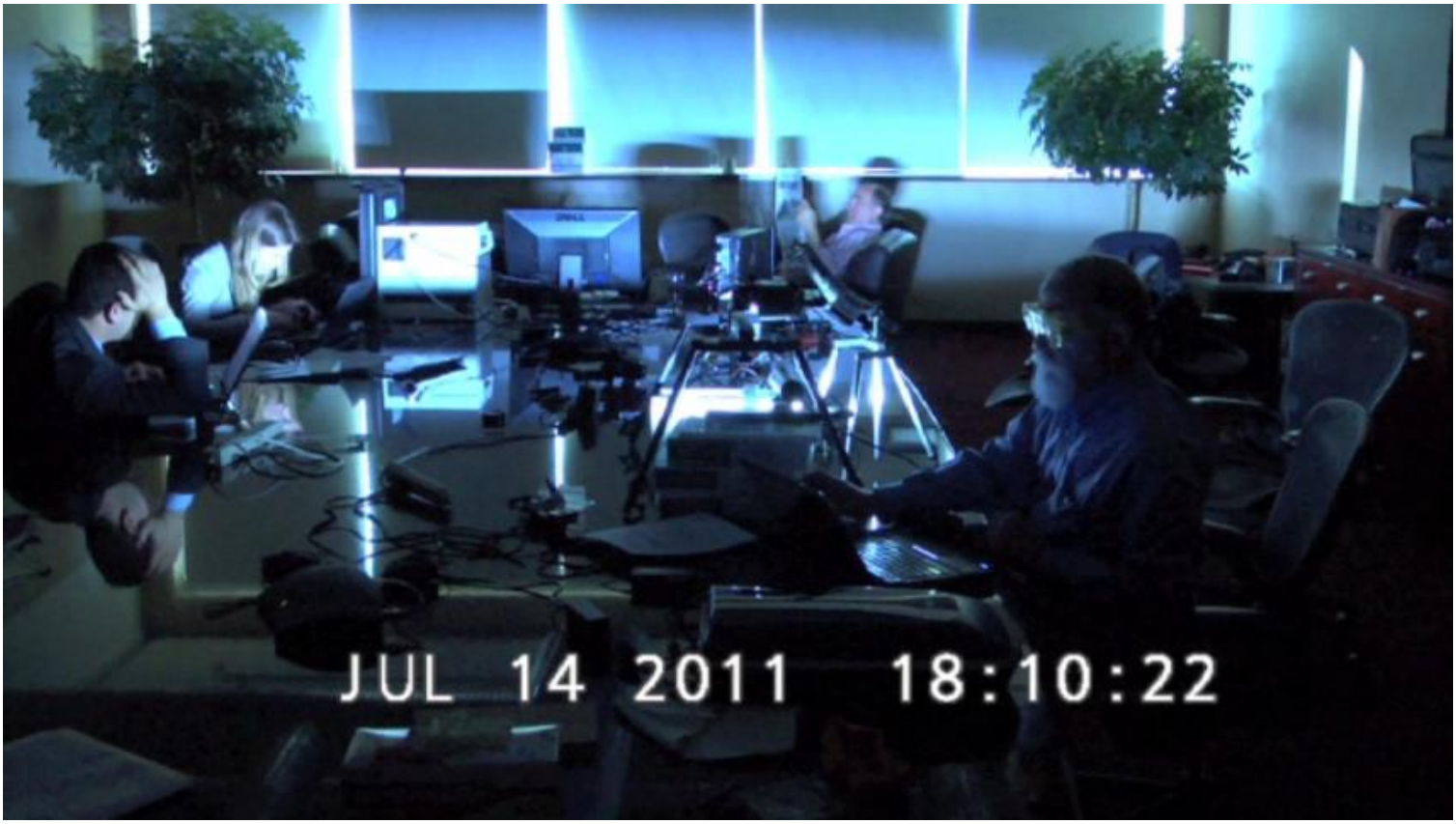
75. Without the knowledge of the composition of the ink or paper, a prudent forensic examiner would carefully consider the possibility of damage prior to repeating tests or long exposures to ultraviolet or intense light sources.

76. Anyone who has seen a newspaper that has laid out in the sun for a day or two has seen the effects of UV overexposure in ink and paper.

77. The videotape clearly shows that Facebook's experts exposed the Facebook Contract repeatedly for long periods of time to intense and UV lights.

78. There are images in the video where the lighting was so intense the lawyers and other experts would shield their eyes, or in the case of Tytell wear protective goggles.

79. Below is one such image taken during the Defendants' expert examination on July 14, 2011:



80. In that still image, Tytell is on the right, wearing protective goggles as he conducts an examination using various types of lights. The lawyer on the opposite side of the table appears to be shielding his eyes while looking away from the source.

81. The Foster Freeman VSC4 instrument contains an ultraviolet light that is above the document as the document is being viewed inside its closed chamber.

82. This would explain why the two pages of the Facebook Contract are yellowed on their face sides only.

83. The damage to the Facebook Contract does not appear to be due to heat

exposure, from an oven-like source, since logically if surrounding heat was the cause one would expect consistent damage on both sides of the pages and not just on the face of each page.

84. There is some heat exposure, from one side of the page only, expected from the use of equipment, e.g. the VSC or else alternate light sources. The Defendants' experts used these extensively. Their overuse and the potential damage to ink and paper documents e.g. the Facebook Contract should be considered as a possible contributor to or cause of the damage.

85. One of the tests I conducted was a physical examination of the folds in the pages and the staple holes found on the pages of the Facebook Contract.

86. After those examinations, I found no basis to support a conclusion that page 1 of the Facebook Contract had been substituted for a now missing page.

87. Another test I conducted on the documents was an analysis of the printing method(s) used to produce the printing found on the two pages of the Facebook Contract.

88. Physical analysis resulted in a determination that both pages 1 and 2 of the Facebook Contract were printed with an office machine that utilized toner, e.g. a laserjet printer.

89. Following, I conducted a chemical analysis of the toner found on both pages of the Facebook Contract.

90. I followed accepted methodologies and protocols for the toner analysis. The U.S. Secret Service utilized these same methodologies during my tenure as Laboratory Director and Chief Forensic Scientist.

91. In the article, "A Sketch of Analytical Methods for Document Dating

Part 1. The Static Approach: Determining Age Independent Analytical Profiles, by Antonio A. Cantu (See Exhibit 5), the author describes in Section IID Photocopier Toner,

> "The type of photocopier and toner used to produce a photocopied document can sometimes be determined and dated. This, as mentioned, depends on the existence of a data base of standard samples, their profiles, and their dates of introduction." (See Exhibit 6).

92. Test results indicate that the toner found on page 1 matches that found on page 2.

93. Exhaustive chemical and physical testing failed to detect any differences between the toner samples. The testing methods included microscopy and thin layer chromatography.

94. Laporte reported a "difference" between the toner from the two pages of the Facebook Contract (Document 326, page 13 of 67, paras 5 and 6).

95. Based on his image that he provided, it appears the Laporte may have "overloaded" his TLC plate in some instances and then repeated his transfers of extracted toner onto the same application point multiple times. This is an error common to novice examiners.

96. Examination of his actual data, images and plates would allow me to confirm whether this was the mistake he made.

97. For my examination, the laserjet printer toner was compared against my library of standards and was found to be a black toner consistent with toner from a Hewlett Packard (HP) 1100/3200 series printer. (See Exhibit 6)

98. The toner was not found to be consistent with any other toner from my

library of standards.

99. My library of standard toners was created by obtaining samples from the manufacturer or distributors, compiling them, analysing them based on their compositions and then utilizing them for comparison against unknown samples.

100. To my knowledge, none of Facebook's experts have a library of standards for toner and, hence, have no basis to dispute my conclusion in this regard.

101. The HP 1100 series printer was first introduced to the public in 2001 and they were discontinued in May of 2005.

102. The HP 3200 series printer was first introduced to the public in 2000 and they were discontinued in March of 2002.

103. Considering that the Facebook Contract bears the date "4/28/03," it is logical to expect that if the document were legitimate it would have been created with a printing system that existed on the date of the document.

104. The HP 1100/3200 series printers were commercially sold between 2000 and 2005.

105. Response to Declarations From Defendants' Experts dated 11/28/11:

106. According to Defendants' Expert Tytell (Document 238, page 7 of 11), on July 14, Facebook's experts were using a video spectral comparator model VSC40. On July 15th the model changed to a VSC400 (Tytell Document 238, page 7 of 11 and Laporte Document 326, pages 6 and 12 of 67).

107. That change to a different instrument was not explained by any of Facebook's experts. Since the two machines have similar capabilities and perform the same function in document examination, the only reasonable explanation for replacing one machine for the other is that there was some malfunction of the original machine.

108. It is unknown, but should be determined, whether the problem with the instrument is linked to Facebook's experts' excessive UV exposure of the document, causing it to yellow.

109. In his report, Tytell states,

> "The problem with relying upon the video clip embedded in the Plaintiff's Memo (at p. 7) to evaluate the appearance of the documents is again made apparent just a few minutes later when page 2 of the Work for Hire document is moved across the table to the right side of the frame. As the page is moved, its appearance darkens and yellows, and when it comes to rest next to the Specification document one can see that this page of the Facebook Contract appears darker and more yellowed than the Specification document next to it." (Document 238, page 10 of 11)

110. Tytell's use of video to bolster his claims is misleading.

111. When Plaintiff's experts used video we made certain that the identified clips involved similar angles from the camera to the page(s).

112. In Tytell's still he has chosen to use an image where one document is close to the camera and at a different angle than the other.

113. His choice of still image is misleading to the viewer, and it naturally caused perceived, but not actual, differences in lighting and

coloration.

114. In Laporte's Exhibit A (Document 240-1.pdf) he includes an image of both pages 1 and 2 of the Facebook Contract.

115. In Laporte's two images, (presumably taken around the same time at the same scanner settings) the two pages of the Facebook Contract have noticeably different yellowing characteristics.

116. Without the opportunity to examine all of the Facebook expert's images, along with their metadata and case notes, it is unknown when Laporte, Lesnevich, Lyter, Romano or Tytell first experienced a yellowed image and faded or damaged inks which resulted from over-exposure to UV light, heat (one-sided) and/or humidity, during their examinations.

117. Plaintiff's experts were required to produce Discovery to Defendants in late October 2011.

118. To date, Plaintiff's have not received Discovery items from the Defendants.

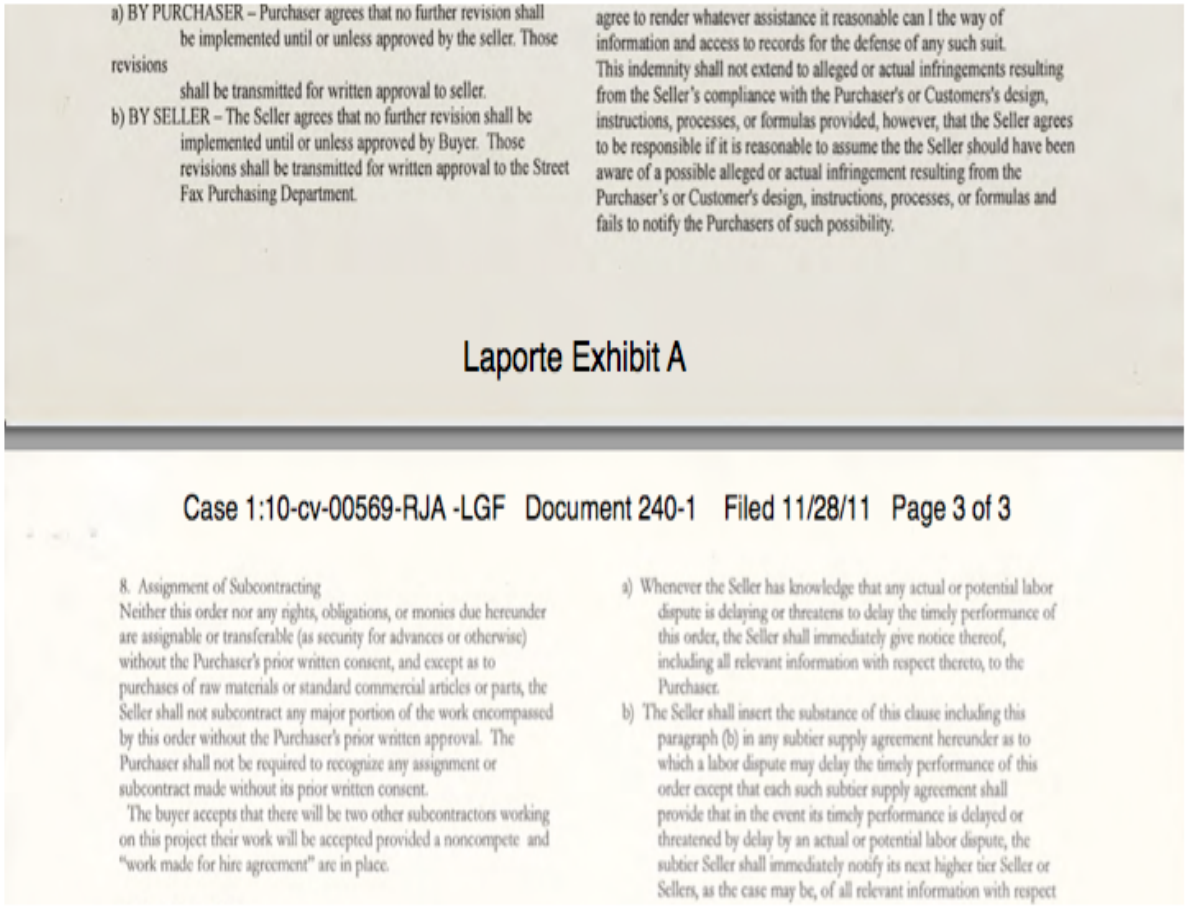
119. Even without the Discovery items, Plaintiff's experts can respond to information discussed in the expert reports of the Defendants.

120. For example, it is possible using Defendants' experts' images to show that pages 1 and 2 were changing as far as their coloration during their examination.

121. Assuming that Defendants' experts' images are not manipulated and they accurately reflect the documents, then it is clear that the damage to pages 1 and 2 of the Facebook Contract occurred during their analysis.

122. Following is a cropped image clearly showing the differences

visible between pages 1 and 2 from the Facebook Contract (Laporte's Exhibit A image):



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.

agree to render whatever assistance it reasonable can I 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 Customers's design, instructions, processes, or formulas provided, however, that the Seller agrees to be responsible if it is reasonable to assume the 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 Purchasers of such possibility.

Laporte Exhibit A

Facebook Contract pg 1

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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.

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

Facebook Contract pg 2

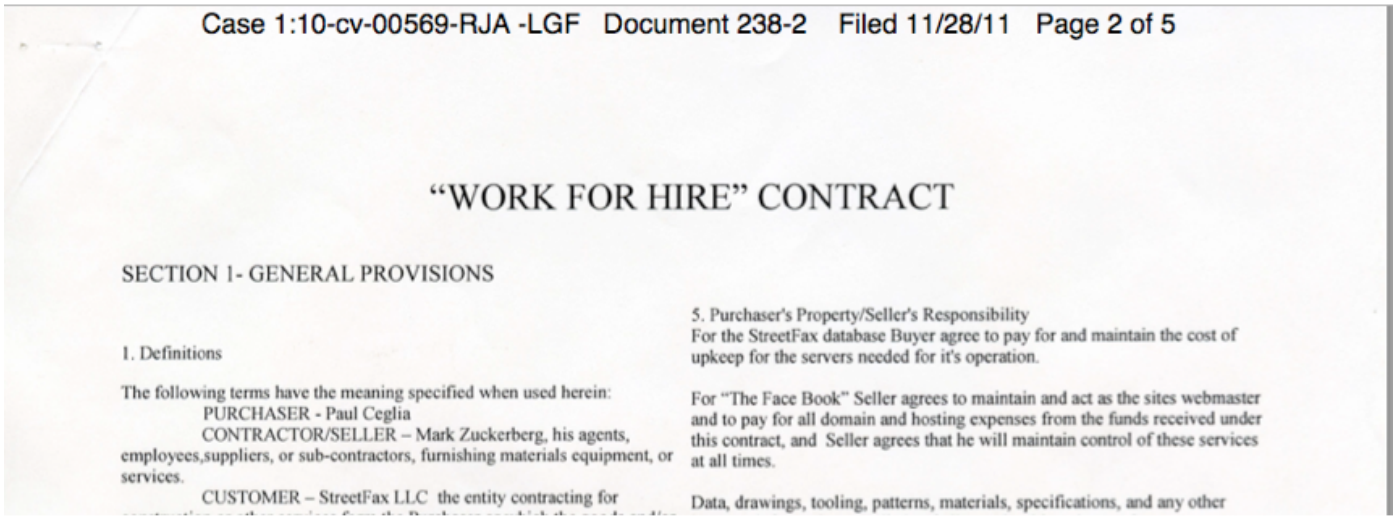
123. In his para 11, Lesnevich stated he *immediately* saw the documents were discolored at 0900a on 7/15/11. He stated that he made "high-resolution" scans of the pages.

124. I noticed that the versions of those images provided in the Lesnevich report appear substantially more yellowed than the images Tytell provided from his examination on the previous day.

125. This demonstrates, assuming that the images are not manipulated

and were scanned similarly, that there was a degradation that occurred during the examination on 7/14/11.

126. Following is a comparison of the 7/14/11 (Tytell Exhibit B or Doc 238-2) and 7/15/11 (Lesnevich Exhibit A or Doc 239-1) images:



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"WORK FOR HIRE" CONTRACT

SECTION 1- GENERAL PROVISIONS

1. Definitions

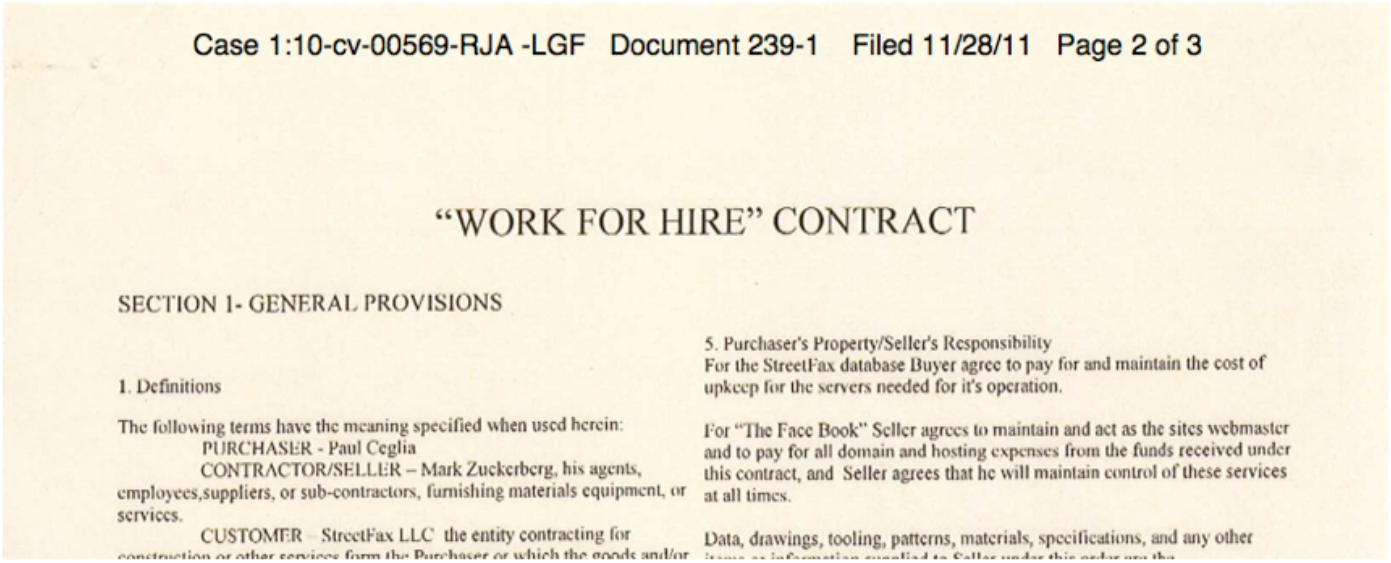
The following terms have the meaning specified when used herein:
PURCHASER - Paul Ceglia
CONTRACTOR/SELLER – Mark Zuckerberg, his agents, employees,suppliers, or sub-contractors, furnishing materials equipment, or services.
CUSTOMER – StreetFax LLC the entity contracting for

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 it's 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

Tytell Exhibit B - reportedly his first scan on 7/14/11



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"WORK FOR HIRE" CONTRACT

SECTION 1- GENERAL PROVISIONS

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Data, drawings, tooling, patterns, materials, specifications, and any other

Lesnevich Exhibit A - reportedly his first scan on 7/15/11

127. The images of the contract taken by Lesnevich and Tytell appear to prove that Facebook's experts caused the "yellowing" on the Facebook Contract.

128. In his para 12 of his Decl, Defendants' expert Gerald Laporte states the following:

> "In the course of Defendants' examination, I and other experts used a Foster & Freeman VSC-400. A Video Spectral Comparator (VSC) is standard digital imaging equipment used in forensic document examinations. A VSC includes visible, ultraviolet and infrared light sources, among others, the use of which is standard practice in the field of document examination. A VSC is common laboratory equipment that has been used for decades by thousands of examiners worldwide. I am not aware of any reports or documented findings that suggest that this type of lab equipment would result in deterioration of inks or paper during the course of an examination. I have examined thousands of documents using standard laboratory equipment such as the VSC and other UV and IR sources. I have never witnessed any damage caused by this equipment, let alone damage similar to the deterioration in the ink and paper that I immediately observed in the Work for Hire document."

129. To give perspective to the statement by Laporte, ***no*** expert for Plaintiffs has argued that the proper use of these laboratory instruments will cause yellowing to a document. What Facebook's experts fail to rebut is

Plaintiff's experts' assertion, backed up by peer reviewed studies and primers on document handling, that their excessive, repeated exposure of the document to UV light, humidity and/or one-sided heat did cause the document paper to yellow and the inks to fade.

130. The problem here is that the Defendants' experts chose to repeatedly expose the documents to intensive lights and humidity over the first two days of analysis. This was done for many hours and repeated many times, unnecessarily. This type of repeated exposure was redundant and appears to be the source of the damage to the contract.

131. Defendants' experts' repeated exposure and redundant testing could have all been avoided had they worked from a planned analysis scheme.

132. Laporte stated that he has "never witnessed damage to a document similar to" what was found with the ink and paper in the Facebook Contract (Document 326, page 10 of 67, para 5).

133. It doesn't surprise me that Laporte hasn't "witnessed" damage like this before. He is the junior examiner here and has much less time performing document examinations than Blanco, Lesnovich, Lyter, Tytell, and myself.

134. Before being hired by me at the Secret Service in 2001, Laporte was a drug analyst at a state agency. His time and experience examining documents did not begin until I hired him.

135. Regrettably, the agency decided to give him a hurried (shortened) training program to become a questioned document examiner. That decision was based on an understaffed situation and in the long run has proven short

sighted.

136. Current standards for the training of a forensic document examiner require a minimum of a 2-year apprenticeship along side a principal trainer (fully qualified document examiner mentor). (See ASTM Standard Guide for Minimum Training Requirements for Forensic Document Examiners E2388-05) (See Exhibit 7)

137. Under my direction at the U.S. Secret Service, Laporte would never have been allowed to expose a document for the hours that the Defendants' experts did and the examinations would not have been repeated over and over by separate examiners.

138. This prohibition was in place at the U.S. Secret Service forensic laboratory, which I directed in order to avoid the type of document damage apparently caused by Facebook's experts in this case.

139. At the U.S. Secret Service, if there was concern about a forensic examination, it may have been repeated once but nothing like what was done by Defendants' experts in this case.

140. Laporte commented on the "degradation due to photochemical reaction" evident in the ink and paper in the Facebook Contract (Document 326, page 10 of 67). On one hand he describes degradation of the ink and paper, but then he chooses to test the ink for components that evaporate over time or with heat or UV light exposure. Here, his lack of experience is evident.

141. Laporte's comments regarding document degradation and then his follow-up analysis of the degraded document are deeply troubling to me as it projects his inadequate training and lack of experience. I am troubled

because I first hired him for federal government service and was overall responsible for his initial document examiner training.

142. I am further troubled by his improper analysis scheme, which led to his incorrect observations since he currently advertises that he holds a full-time federal government position, in Washington, DC. There he is the Forensic Policy Program Manager and Acting Associate Director of the Office of Investigative and Forensic Sciences for the Department of Justice.

143. Simultaneously, he works forensic cases, part-time as one of the partners and owners of Riley, Welch, Laporte & Associates Forensic Laboratories in Lansing, Michigan.

144. One would hope, that in a leading forensic research position within the federal government that Laporte would be knowledgeable of and attentive to the possibilities of damage from misuse of forensic equipment.

145. In this case, both Blanco and I provided Defendants' experts with citations discussing the possible side effects of too much UV exposure to a document. A simple web search could gain Laporte many more citations. His claim to be "unaware" of such studies documenting the damage to documents from excessive UV exposure is self-serving, and not credible.

146. Laporte stated that he has "never witnessed any damage caused by this equipment." As noted above the damage to the document was not caused by the equipment, but instead the misuse of the equipment and the potential malfunction of the initial machine, which was replaced during the four-day examination.

147. Based on his demonstrated performance in this case, if I were still in the position of being Laporte's mentor or employer, I would undoubtedly

take action to retrain him or else remove him from active casework.

148. Response to Defendants' Motion to Dismiss and Reports From the Defendants' Experts dated 03/26/12:

149. I received a copy of the Defendants' Motion to Dismiss, filed 03/26/12. In that document there are approximately 320 pages of Defendants' expert reports.

150. Defendants' experts took nearly nine months to prepare their reports in this matter.

151. Since receiving the filed Motion, on or about March 26, 2012, I have worked on addressing the numerous points within their reports.

152. It is my opinion that all of the seemingly salient points made by Defendants' experts in their reports have been refuted by the evidence at hand and the work conducted by Plaintiff's experts in this matter.

153. Use of "Preliminary Findings" in a Forensic Report:

154. Tytell indicates in his first paragraph of his report (Document 330, page 20 of 24) that "This report presents my findings and conclusions to date." He leaves the door open for additional reports.

155. In Laporte's report (Document 326, page 20 of 67, para 4), he wrote, "Mr. Blanco states that his Declaration contains his "preliminary findings," and "reporting one's "preliminary findings" during a judicial proceeding is highly unusual and can often mislead the trier of fact."

156. Tytell presents preliminary findings in his report while Laporte (from the same Facebook's team of experts) indicates it is unusual and misleading to the Court.

157. Defendants' experts can't have it both ways. Even Facebook's own experts disagree on whether preliminary findings can be appropriate.

158. Staple Evidence:

159. Laporte reported, "There is no evidence to refute the possibility that another page, other than page 1 of the Work for Hire document, was originally stapled to page 2 and removed at a later time." (Document 326, page 4 of 67, para 5).

160. Laporte is incorrect for various reasons. The 2 pages of the Facebook Contract show evidence of being stapled together only one time. They don't bear any evidence of either a second staple or else either page being separately stapled to another, now missing document.

161. Furthermore, Laporte's use of the term "possibility" is inappropriate and not consistent with proper forensic practice. The reason is because Laporte uses "possibility" as opposed to discussing the "probability."

162. Forensic Document Examiners would provide very little assistance to the trier of fact if they reported and discussed "possibilities" as opposed to probabilities. Acknowledging possibilities is useless in scientific opinions as anything is "possible," and that is of little help to the Court.

163. Our function here, as in any case, should be to provide logical conclusions based solely on the evidence at hand. Laporte's use of "possibilities" in his formal opinion statements represents an openly biased, unscientific and unreliable comment.

164. In fact, the American Society for Testing and Materials International (ASTM) has created a standard entitled, "Standard

Terminology for Expressing Conclusions of Forensic Document Examiners." In that peer developed and reviewed standard, they clearly warn that experts should not opine concerning mere "possibilities." (See Exhibit 8)

165. The Facebook Contract is a 2-page contract that was previously stapled. Defendants' experts argued that the contract is a "forgery" and the result of a "substituted" page 1. Plaintiff's experts refute their argument.

166. In Defendants' expert Albert Lyter's report (Document 328, page 6 of 13, para 4), he states:

> "In my experience, a single set of staple holes does not mean that a document was stapled only once or even necessarily together. It is quite possible to create a set of staple holes that appear to match on two pieces of paper when in fact stapling the documents more than one time. I have personally created staple holes that appear to align through multiple staplings, and witnessed others do so, for demonstration and training purposes."

167. The evidence here should be presented in a manner where the individual forensic findings build until a conclusion regarding authenticity or fraudulence can be reached. Instead, the Facebook experts appear biased and to be taking "pot shots" at a wall of evidence when that evidence does not support their position.

168. Examples abound. For Lyter to state that it is "***possible*** to create a set of staple holes that ***appear*** to match" is quite telling. Again the misuse of the term "possible."

169. And for Lyter to state that the staple holes "***appear*** to match" is

also very misleading. There is a major difference between staple holes that "appear" to coincide at an arm's length glance versus after examination by an expert using a microscope and proper lighting.

170. For Lyter to have "witnessed" the creation of such matching holes is unclear in that the demonstration and training he indicates he was given may have been provided by someone with exceptional ability, e.g. a C.I.A. or F.B.I. expert.

171. It is illogical to suggest that a layperson could easily uncouple two stapled pages, substitute one of the pages with a new one and then somehow put a new staple through the existing holes on one of the pages while puncturing new holes on the previously unstapled page, all this without detection by a forensic document examiner with a microscope.

172. There is no scientific research, surveys or studies indicating even a trained expert in document examination can successfully complete this feat, much less a non-expert.

173. In fact, when describing the examination of staple holes and matching staples to them to create a fraudulent document, Wilson R. Harrison wrote in his book entitled "Suspect Documents – Their Scientific Examination (page 48),"

> "The odds against these coinciding with the holes … are exceedingly great." (See Exhibit 9)

174. In his book, Harrison describes the ***odds*** of fraudulently creating a document by removing staples from one document, adding or removing pages, then reinserting a new staple through the same holes and doing this in a way that the resultant staple holes coincide as "***exceedingly great***." In so

doing, he correctly uses probabilities as opposed to possibilities.

175. In this case, the 2 pages of the Facebook Contract were stapled together. A common examination that forensic document examiners undertake when opining about the legitimacy of a document is a staple hole comparison.

176. There is only one set of staple holes and corresponding detent markings found on the Facebook Contract. Rather than commenting on this finding that clearly doesn't support Facebook's experts' opinions regarding a page 1 substitution, Tytell chose to leave it out of his report. He took dozens if not hundreds of photographs and scans of the documents, and certainly examined the staple and staple holes, as evidenced in his report (Document 330, pages 12-13 of 24).

177. Rather than discussing the importance of a single set of staple holes and no evidence of a reinserted staple, Tytell instead chose to discuss "curvature" of the staple bar and went so far as to suggest that this "***might well be*** an indication that this staple had been removed and reinserted." That represents a ludicrous and completely unfounded statement. Use of the term "might well be" is tantamount to use of the term, "possibility."

178. Any expert with integrity who has ever examined a stapled document under a microscope will certainly attest to the bending, curving and often misshaped staple bar which can be due to numerous non-criminal reasons.

179. One such example of a perfectly innocent explanation would be that the document was pressed or pushed up against some surface that was harder than the material used for the thin wire staple.

180. Another example would be a faulty stapler.

181. A combination of examining the resultant holes from the previously stapled Facebook Contract along with the detent markings found on the back or reverse side of each page yield the only logical conclusion that the Facebook Contract was only stapled one time.

182. What Caused the Damage to the Ink and Paper of the Facebook Contract?:

183. Many of the Defendants' experts reported that the Facebook Contract (so-called Work For Hire (WFH) contract) now bears the evidence of exposure to extreme environmental conditions.

184. Tytell goes as far as to state that the damage happened while the document was "hung-up with clips or clothespins…" (Document 330, page 2 of 24, para 3). This assertion is without any evidentiary support and is illogical on its face.

185. If a document was hung-up with clips or clothespins and exposed to extreme conditions, then both sides of the document would be affected.

186. In this case, the front sides of the pages of the Facebook Contract are remarkably yellowed while the reverse sides are consistently white. It is unreasonable and illogical to state that the document was hung-up with clips or clothespins and then aged with artificial and extreme conditions.

187. In Tytell's report (Document 330, page 10 of 24, para 1), he indicates that there are "brightly fluorescent tab" areas found on both pages of the Facebook Contract. They are found as described by numerous experts along the top of the two pages and are in stark contrast to the fluorescence readings from the yellowed areas of the front sides of the two contract pages.

188. Tytell's observation here confirms the Facebook Contract was yellowed on one side only (the side that bears the printing). This corresponds to the Facebook Contract being examined, almost exclusively on one side only, using the VSC 40/400 instruments.

189. As noted above, one of the VSC instruments probably malfunctioned during the Defendants' examination causing them to replace it mid-examination.

190. In the VSC, an ultraviolet light is above the document and thusly is shone down onto the document when being viewed. The back or reverse side of the document would not be exposed to the ultraviolet illumination.

191. Facebook's experts concealed from the Court in their expert reports that the VSC equipment comes with small weights used to hold down documents that are inside the machine being examined.

192. Likewise, Facebook's experts did not disclose if and when they used other items as paperweights during their document examination and processing. That action would have had a "shielding" effect over a portion of the document, which would in turn block out some of the Defendants' expert's ultraviolet and intense lights.

193. A thorough examination of all of Facebook's experts' photographs, scanned images, notes, etc. will further confirm when the damage occurred to the Facebook Contract.

194. Tytell (Document 330, page 10 of 24, para 2) wrote

> "Neither Mr. Blanco nor (sic) Mr. Stewart mentions the anomalous brightly fluorescent tabs on the front of both pages or the anomalous dark triangle on the reverse of page 1 in their

respective declarations." He continues, "Their failure to consider (or perhaps failure to notice) these anomalous features is a very serious omission, as these features contradict their conclusions."

195. Tytell is wrong in that I ***did*** consider the markings and came to the realization that Tytell and the other Defendants' experts probably created them from the repeated exposure to intense and ultraviolet light sources. Tytell knows that I *noticed* and *considered* the markings as he saw reference to it in the case file notes, which I turned over in Discovery (late October, 2011).

196. If the small paperweights in the VSC equipment (See 185 above) were used then they would block or mask the UV exposure in that area, thus causing a difference in exposure. This could explain the resultant observation.

197. Tytell (Document 330, page 10 of 24, para 3) sarcastically writes "It is apparent that the cumulative exposure to ultraviolet and all other illumination sources used in the examinations… did nothing to dull the bright fluorescence of these tab areas …"

198. What Tytell fails to consider is that what he is noting as "bright fluorescence" is actually similar fluorescence to what is present on the pages in the "non-yellowed" or non-damaged areas.

199. If areas on the Facebook Contract pages were covered by the VSC weights or some other paperweights during Defendants' experts' excessive testing, then those paperweights would in turn block out areas of the document, causing those areas to not be as damaged.

200. Tytell describes the deteriorated condition of the ink and paper as

being "obvious" and "thoroughly documented" on the morning of the testing, July 14, 2011 (Document 330, page 10 of 24, para 4). This is different from his earlier declaration where he stated,

> "…***later*** in my examinations, I noted that not only was the ink discolored, but also the paper of the face of each page was discolored" (Decl dated 11/28/11, para 23).

201. This presents yet another justification of the need to review case notes, photographs and native format scanned images, along with the associated metadata in order to determine exactly when the yellowing of the Facebook Contract paper and the fading of the inks occurred.

202. Ink Analysis Results are, at Best, Inconclusive:

203. Many of the Defendants' experts reported about the "deteriorated" condition of the inks and paper in the Facebook Contract.

204. Tytell stated that "Given the deteriorated condition of the ink on the Work For Hire document, the possibility must be considered that the element(s) of the ink that might enable optical differentiation were lost along with color and density" (Document 330, page 11 of 24, para 4).

205. Lyter wrote the document had been "intentionally deteriorated from its original color by excessive exposure to chemical or environmental conditions" (Document 328, page 4 of 13, para 3).

206. Lyter continues, "Because of the deterioration of the ink, the TLC results were ***not useable*** and I could not perform Ink Identification, TLC Densitometry or Relative Aging" (Document 328, page 9 of 13, para 1).

207. In direct contradiction to this, Facebook's expert Laporte, the least qualified ink expert of all involved in this case, claims he ***could*** accurately

date the ink on page one. He does this using a test that clearly does not meet the Daubert standard.

208. Furthermore, Laporte ***chose to*** use a technique that Facebook's more experienced ink expert, Lyter, chose ***NOT*** to use.

209. As noted in Court filings, Laporte has testified in the past that his ink dating method is unreliable and has never generated results other than "inconclusive."

210. These are at the core of the reasons I prohibited him from using this test in casework when I supervised him at the U.S. Secret Service.

211. The Defendants' second ink expert, Lyter has decades more experience in ink analysis than Laporte. Lyter chose not to perform the ink identification or age analysis on the contract due to the "deterioration of the ink" (Document 328, page 9 of 13, para 4).

212. Likewise, I chose not to perform any of the "ink age" determination approaches, because the minimum criteria for performing the tests was not met in this case.

213. Here the ink and paper are clearly damaged, the storage conditions of the document could have affected the rate of "aging" and the inks themselves were not identified.

214. By not identifying the ink formulas or recipes, there is no knowledge as to how much, *if any*, 2-phenoxyethanol was present in the writing inks when they were fresh.

215. On the other hand, Laporte not only performed his own version of "ink age" tests (non-peer reviewed and not accepted), he goes as far as to indicate he found "extremely high" levels of the evaporating solvent known

as “PE” (Southwell Pg 9, Section a-iii).

216. The mere presence of the evaporating solvent (PE) in a document theorized to have been irreversibly damaged by “extreme” heat and/or ultraviolet radiation should be treated as highly suspicious.

217. This coupled with the unproven nature of Laporte’s PE test, should cast a huge doubt on the reliability of his finding.

218. How would Laporte know what an “extremely high” level of PE was if he didn’t identify the formula of ink?

219. By not knowing the original recipe of ink, he has no way of knowing if there was any PE in the original formula much less an extremely high level.

220. Laporte does not include in his report the “heated” sample results (Laporte Exhibit L). His concealment of these heated sample results makes the basis of his opinion even more questionable.

221. It should be noted that the PE component Laporte claims to have found, is known to be widely used in skin creams, sunscreen, fragrances and cosmetics, as well as in insect repellants.

222. In fact, Laporte refers to PE as “ a common volatile organic compound (“The Identification of 2-Phenoxyethanol in Ballpoint Inks Using Gas Chromatography/Mass Spectrometry-Relevance to Ink Dating,” Laporte, et al, Technical Note, JFS, January, 2004.) (See Exhibit 10)

223. Laporte indicates (Document 326, page 16 of 67, para 2), that the amount of PE he found in the Facebook Contract was in an “abundance” and “more than double the usual threshold for conducting PE testing.” This clearly shows that the surprisingly high levels of PE most probably came

from some other contamination source or else were from an improperly conducted experiment or conclusion reached by Laporte.

224. Laporte acknowledges in his report the effect that environmental factors may have on the validity of his results (Document 326, page 9 of 67, para 1).

225. Laporte even goes as far as stating, "Typically, prolonged exposure to sunlight or another intense energy source will cause significant deterioration to both inks and paper" (Document 326, page 10 of 67, para 5).

226. That said, why then would Laporte choose to attempt an unproven, unaccepted technique that, if it worked, was based on evaporation of volatile components found within some inks?

227. Laporte's decision to use the technique here was improper and should be considered unacceptable.

228. Affect of Storage Conditions on the Facebook Contract:

229. Laporte conceals describing (or was ignorant of) what the environmental storage conditions of the Facebook Contract were and whether they could have affected the "aging" rate of the ink. It has been widely reported that storage conditions do affect the aging characteristics of ink and paper. (See Exhibit 11)

230. Laporte himself has previously testified that storage conditions are a critical factor in ink dating techniques, including his own unvalidated method. (See Motion to Strike Declaration/Report of Gerald Laporte for Fraud, previously filed in this case)

231. Not only does Laporte fail to describe the storage conditions of the Facebook Contract, there is no evidence that he even inquired as to what