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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
No. 1:10-cv-00569-RJA

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PAUL D. CEGLIA,

Plaintiff,

vs.

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

Defendants.

-----x

August 13, 2012

10:03 a.m.

Videotaped deposition of JOHN PAUL
OSBORN, held at the offices of Gibson, Dunn
& Crutcher LLP, 200 Park Avenue, New York,
New York, pursuant to notice, before Cary
N. Bigelow, Court Reporter, a Notary Public
of the State of New York.

1

2 A P P E A R A N C E S:

3

4 BOLAND LEGAL, LLC

5 Attorneys for Plaintiff

6 1475 Warren Road

7 Unit 770724

8 Lakewood, Ohio 44107

9 BY: DEAN BOLAND, ESQ.

10 (Via telephone)

11 -AND-

12 PAUL A. ARGENTIERI, ESQ.

13 188 Main Street

14 Hornell, New York 14843

15

16 GIBSON, DUNN & CRUTCHER LLP

17 Attorneys for Defendants

18 200 Park Avenue

19 New York, New York 10166-0193

20 BY: ALEXANDER H. SOUTHWELL, ESQ.

21 AMANDA AYCOCK, ESQ.

22

23

24 ALSO PRESENT:

25 DANIEL McCLUTCHY, Videographer

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THE VIDEOGRAPHER: Good morning. We are now on the record. My name is Daniel McClutchy representing Veritext New York.

Please note that the microphones are sensitive and may pick up whispering and private conversations. Please turn off all cell phones or place them away from the mics as they can interfere with the deposition audio. Recording will continue until all parties agree to go off the record.

The date today is August 13, 2012, and the time is approximately 10:03 a.m.

This deposition is being held at Gibson, Dunn, & Crutcher, located at 200 Park Avenue in New York, New York.

The caption of the case is Paul Ceglia versus Mark Zuckerberg and Facebook Inc. This case is filed in the United States District Court, Western District of New York, civil action number 1:10-cv-00569-RJA, and the name of the witness is John Paul Osborn.

At this time the attorneys present in the room and by phone will identify

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themselves and the parties they represent and our court reporter, Cary Bigelow, representing Veritext, will swear in the witness and we can proceed.

MR. ARGENTIERI: Paul Argentieri for plaintiff, Paul Ceglia.

MR. BOLAND: (Via telephone) Dean Boland for plaintiff, Paul Ceglia.

MS. AYCOCK: Amanda Aycock for defendants Facebook and Mark Zuckerberg.

MR. SOUTHWELL: Alexander Southwell for the defendants.

J O H N P A U L O S B O R N, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MS. AYCOCK:

Q. Mr. Osborn, you've been deposed before; right?

A. Yes.

Q. So having been deposed before, you understand that in the deposition I'll ask questions to which you should provide a full and

1 J.P. Osborn

2 complete answer to; right?

3 A. Yes.

4 Q. Now, on occasion I may ask a question
5 that I don't state very well or for some other
6 reason you don't understand.

7 If you don't understand my question,
8 don't answer it and let me know. It's my job to
9 ask understandable questions, so if you don't
10 understand, I'll try to ask a better question.

11 Make sense?

12 A. Understood.

13 Q. And if you need a break at any time
14 please tell me, we will finish your answer if we
15 are in the middle of it and then we'll see what
16 we can do about taking a break.

17 Sound good?

18 A. Yes.

19 Q. Is there any reason today that you can
20 think of why you will not be able to answer my
21 questions fully and accurately?

22 A. No.

23 Q. Now, the judge presiding over this case
24 has some particular rules I need to tell you
25 about.

1 J.P. Osborn

2 If you need clarification, a
3 definition, an explanation of any words,
4 questions or documents throughout the deposition,
5 you are to ask me as deposing counsel rather than
6 your own counsel.

7 Do you understand?

8 A. Yes.

9 Q. And you and plaintiff's counsel may not
10 engage in private conversation during the
11 deposition or any breaks of the deposition except
12 to determine whether to assert a privilege.

13 Does that make sense?

14 A. Yes.

15 Q. And the other thing I'd like to mention
16 at the outset is that we shouldn't talk over each
17 other for the court reporter Cary's sake, let's
18 try to let each other finish before we start
19 talking.

20 A. Understood.

21 Q. And also for Cary's sake answer
22 questions verbally with a clear yes or no rather
23 than nodding or shaking your head or saying
24 uh-huh.

25 A. Understood.

1 J.P. Osborn

2 Q. Great.

3 Now, I know it's been a long time since
4 you've worked on this case, so as an initial
5 matter I just want to go over your involvement
6 very generally.

7 You were approached at some point about
8 being retained and or ultimately retained by
9 plaintiff, Paul Ceglia; is that right?

10 A. That's right.

11 Q. At some point in January 2011 you were
12 provided with some documents in your office and
13 you conducted a document examination; right?

14 A. Also correct.

15 Q. And the only exams you performed were
16 visual and other nondestructive examinations,
17 like microscopic, UV and infrared examinations;
18 right?

19 A. That's correct.

20 Q. You didn't take any physical samples of
21 the document; right?

22 A. I did not.

23 Q. Or do any other kind of chemical
24 testing?

25 A. There was nothing that I did that would

1 J.P. Osborn

2 be considered in my field destructive to the
3 document or that would have permanently changed
4 the document.

5 Q. In June of 2011 you provided a
6 declaration describing some of the work you had
7 done in your preliminary analysis; right?

8 A. Yes.

9 Q. And then you provided us with some of
10 your images and responses to interrogatories in
11 the late fall of 2011, around November and
12 December; right?

13 A. Also correct.

14 Q. Now, did you perform any additional
15 work or additional exams other than the January
16 2011 inspection?

17 A. No, other than to, on occasion, review
18 the file or review the images that I already had
19 collected.

20 Q. I see.

21 But you didn't actually examine the
22 questioned documents again?

23 A. Correct.

24 Q. And other than what is in your June
25 2011 declaration you haven't offered any other

1 J.P. Osborn

2 opinions or findings to the Court; right?

3 A. That is correct.

4 Q. And now all that you included in your
5 June 2011 declaration were findings related to
6 your indentation analysis?

7 A. No, that's not correct.

8 Q. What other findings did you offer?

9 A. There were two findings that I noted in
10 the declaration and both specific to requests to
11 make examinations by plaintiff's counsel. The
12 first was to determine that the writing,
13 handwriting that appeared on the Work For Hire
14 agreement which was the subject of my
15 examinations or the primary subject of my
16 examinations, contained original writing ink on
17 paper, and then the second was to report
18 conclusions with respect to the indentations, so
19 it was a determination that we were dealing with
20 not copies of writing but original writing and
21 then the indentations.

22 Q. Right.

23 So indentation analysis and the
24 determination that it was ink writing on paper;
25 correct?

1 J.P. Osborn

2 A. Correct.

3 Q. So other than those two opinions have
4 you offered any other opinions or findings to
5 your client?

6 A. No.

7 Q. Did there come a time that you were no
8 longer engaged as an expert in this case?

9 A. Not that I'm aware of.

10 Q. So do you consider yourself to still be
11 actively involved as an expert for plaintiff?

12 MR. ARGENTIERI: Objection.

13 You can answer.

14 A. Yes.

15 Q. Mr. Osborn, when was it that you were
16 first contacted for potential involvement in this
17 case?

18 A. To the best of my recollection it was
19 sometime during December of 2010.

20 Q. And do you remember who contacted you
21 at that time?

22 A. I believe it was Mr. Argentieri.

23 Q. And was it via phone call, an e-mail --

24 A. To my best recollection, by phone call.

25 Q. And you said it was in December.

1 J.P. Osborn

2 Do you have any idea of exactly when
3 that phone call took place?

4 A. I don't.

5 Q. At that time what did you understand
6 about what the case was about?

7 A. I don't recall the specifics of the
8 initial inquiry and the conversation that
9 occurred, so at that point in time I can't say,
10 it wasn't really until I performed examinations
11 in my office when the document was brought to me
12 that I fully understood what it was that I was
13 being asked to examine.

14 Q. Okay.

15 In that initial call in December 2010
16 was there a thought that you would examine
17 documents?

18 A. Yes.

19 And I believe that there were some
20 specific arrangements made for the January
21 appointment when the documents were actually
22 brought to me.

23 Q. In that first call or were there
24 multiple calls?

25 A. I don't recall, I can't answer that

J.P. Osborn

1 accurately.

2
3 Q. Were these calls also informational?

4 A. To the degree -- as far as I can
5 recollect, to the degree that I was aware that
6 there was an issue with respect to the document
7 that plaintiff's counsel, meaning Mr. Argentieri,
8 wanted me to conduct examinations of it, that I
9 would have to examine the original and that there
10 would be issues or there might be issues that
11 would require laboratory equipment that I don't
12 transport so that those examinations would have
13 to take place in my office.

14 Q. I see.

15 And did you have an understanding at
16 that time, in December of 2010, the nature of the
17 documents that you were to examine?

18 A. Yes.

19 Q. Did you understand that there was more
20 than one document?

21 MR. ARGENTIERI: Objection.

22 You can answer.

23 A. I believe that the thrust of our
24 conversation had to do with one document,
25 although I believe I also would have, as a matter

1 J.P. Osborn

2 of course, requested any additional documents
3 wherein no genuine signatures appeared in the
4 event that an issue with respect to determination
5 of genuineness or nongenuineness would be
6 requested.

7 Q. I see.

8 And what was your understanding of what
9 the document you would be examining was?

10 A. An employment contract called a Work
11 For Hire agreement.

12 Q. I see.

13 And did you have any understanding of
14 how that document had been stored?

15 A. No.

16 Q. Did you have any understanding of the
17 circumstances surrounding the execution of that
18 document?

19 A. No.

20 Q. And did you at that time in December of
21 2010, did you mention the types of tests that you
22 might conduct?

23 A. I believe I would have and the reason
24 why I believe that is that the examinations that
25 I determined I would like to make included

1 J.P. Osborn

2 examinations, as I said, involving instruments
3 that I don't transport and therefore I would have
4 advised that electrostatic detection apparatus
5 tests be conducted and that would indicate that
6 there were indentations involved or potential
7 indentations involved.

8 Q. I see.

9 And so you don't have a portable ESDA,
10 you have one that you use at the office?

11 A. Well, any ESDA can be moved from one
12 place to another. It is my protocol never to
13 remove it from my office.

14 Q. I see.

15 Did the possibility of dating documents
16 or aging documents come up?

17 A. Yes. I don't recall whether or not it
18 was brought up during the initial conversations,
19 but there was a discussion when the document was
20 brought to me wherein I had advised that if that
21 might be an issue or something that plaintiff's
22 counsel would like to consider, that I could
23 recommend a forensic ink chemist, which I did,
24 that would be able to perform the kind of
25 analysis that they were interested in or attempt

1 J.P. Osborn

2 to do that.

3 Q. I see.

4 And who was it you recommended?

5 A. Valery Aginsky.

6 Q. So you had these initial calls in
7 December of 2010.

8 Was that when you were actually
9 formally retained or did that happen later?

10 A. No. I was actually formally retained
11 when the document was brought to my office, I
12 consider myself formally retained when I receive
13 my initial fee and that's when I received my
14 initial fee.

15 Q. I see.

16 Was there an agreement that was signed
17 or --

18 A. There was an agreement that was signed;
19 however, the agreement was not actually signed
20 until about six months later in order to
21 formalize the arrangements.

22 The engagement letter which I use to --
23 for a party, in order for a party to engage my
24 services, was provided to Mr. Argentieri, but for
25 some reason, and I don't recall specifically why,

1 J.P. Osborn

2 it wasn't signed that day.

3 Q. I see.

4 And between December and January, when
5 you were first contacted and actually examined
6 the documents, was there back and forth between
7 you and the attorneys about the examination?

8 A. I don't specifically recall. I would
9 assume there was only because we needed to make
10 arrangements for the examination which took place
11 on the 5th of January.

12 Q. And do you have any understanding of
13 why it took a month before you were examining the
14 documents?

15 A. I don't know.

16 MR. ARGENTIERI: Objection as to form.
17 You can answer.

18 Q. Now, you mentioned that you didn't have
19 a retainer agreement until six months later.

20 Who was that -- once it was signed, who
21 was that agreement with?

22 A. Mr. Argentieri.

23 Q. And what was it that you were
24 specifically engaged to do?

25 A. Conduct an examination of documents.

1 J.P. Osborn

2 Q. You had mentioned that there were two
3 specific questions you looked at in your
4 declaration.

5 Was that the extent of your engagement
6 or it was more generalized?

7 A. Well, my engagement as a forensic
8 document examiner in any case can potentially
9 involve a number of different types of
10 examinations.

11 Now, at the point in time when the
12 examinations that I made of the original Work For
13 Hire agreement took place I was anticipating
14 seeing that document again and conducting
15 additional examinations and made recommendations
16 towards that end.

17 Q. You mentioned that you received your
18 retainer in January.

19 Was there an understanding that you
20 would also be receiving further compensation for
21 your services in this matter?

22 A. Only if the initial amount that I
23 require in advance covers the first eight hours
24 of my work and the understanding was that if my
25 work went beyond that eight hours that I would be

1 J.P. Osborn

2 charging additional fees.

3 It did not.

4 Q. I see.

5 Those additional fees, would they have
6 been an hourly rate?

7 A. An hourly rate, yes, at the rate of
8 \$350 for an hour, which is one eighth of \$2,800,
9 which is what I received initially.

10 Q. I see.

11 And who was obligated to pay this
12 hourly rate if you went over the eight hours?

13 A. Assuming that the signer of the
14 engagement letter was the responsible party,
15 which was an assumption I would make, then I
16 would be requesting those fees from
17 Mr. Argentieri, but conventionally I receive my
18 fees in advance, so if I had gone over the eight
19 hours and if there had been fees which went
20 beyond that amount he would have known in advance
21 and I would have advised him as to what
22 additional fees I was expecting.

23 Q. Since you never went past that eight
24 hours, did you ever render any invoices for your
25 services?

1 J.P. Osborn

2 A. No.

3 Q. So there's no outstanding balance?

4 A. That is correct.

5 Q. Mr. Osborn, are you aware that
6 plaintiff has had at least nine law firms
7 represent him in this case?

8 MR. ARGENTIERI: Objection and
9 objection to relevance.

10 A. I was aware that plaintiff had several
11 expert -- several attorneys, I didn't know the
12 specific number.

13 Q. Okay.

14 Well, I just wanted to see if you
15 coordinated with any of these law firms that have
16 since exited in the course of your involvement in
17 the case.

18 So when you were retained by
19 Mr. Argentieri were you also aware Mr. Ceglia was
20 represented at that time by a law firm called
21 Connors & Vilaro?

22 A. I don't recall that law firm's name.

23 Q. Do you remember if you interacted with
24 any attorneys that would be associated with that
25 firm such as Terrence Connors?

1 J.P. Osborn

2 A. I don't recall.

3 Q. Lawrence Vilaro?

4 A. No.

5 Q. Randall White?

6 A. No.

7 Q. James Grable?

8 A. I don't recall.

9 Q. Do you recall ever interacting with any
10 attorneys from the law firm Quinn Emanuel?

11 A. I don't recall.

12 Q. A David Grable?

13 A. I don't recall.

14 Q. Now, in March of 2011 plaintiff got a
15 different firm involved, that firm was called
16 Kasowitz Benson.

17 Do you remember whether any attorneys
18 from Kasowitz Benson reached out to you, it may
19 have been in March of 2011?

20 A. I don't recall.

21 There was a firm that I did interact
22 with, I'm sure if you gave me the name of that
23 firm I would recall it, but without hearing the
24 name thus far, I don't.

25 Q. So do you remember interacting with any

J.P. Osborn

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attorneys named Aaron Marks or Michael Schuster?

A. No.

Q. Now, when you did your declaration in June of 2011 the law firms had changed again and at that time plaintiff was represented by DLA Piper and Lippes Mathias.

Does that ring a bell?

A. Yes.

Q. Which one rings a bell?

A. DLA Piper.

Q. So did you, in the course of preparing that declaration, did you communicate with lawyers at DLA Piper?

A. I believe that that is correct and that the preparation of that declaration was a part of that coordination.

DLA Piper does ring a bell, if you can give me the name of an attorney --

Q. Would it be Jerry Trippitelli?

A. No.

Q. Kip Hall?

A. No.

Q. Carrie Parikh?

A. No.

J.P. Osborn

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Q. John Alcock?

A. No.

Q. Robert Brownlie?

A. No.

Q. Well, maybe was an attorney from Lippes Mathias like Dennis Vacco?

A. No. That law firm does not ring a bell with me either.

Q. Kevin Cross?

A. No.

Q. So are you aware that after you submitted your declaration in June 2011 DLA Piper and Lippes Mathias then withdrew and a lawyer named Jeff Lake stepped in?

A. The name Jeff Lake does ring a bell with me, yes.

Q. Did you have any interactions with him, do you remember?

A. Not that I specifically recall.

Q. He may have reached out to you in July of 2011 to discuss the potential of you observing examinations by defendants' experts.

Does that sound familiar?

MR. ARGENTIERI: Objection as to form.

1 J.P. Osborn

2 A. No.

3 Q. Sorry. Go on.

4 A. The primary contact that I had other
5 than Mr. Boland, Mr. Argentieri, was one of the
6 law firms that was retained or where there was an
7 attempt to retain that firm along the way, and
8 part of what I did with respect to that part of
9 the interaction I had with respect to that law
10 firm and a specific lawyer, and I don't recall,
11 was to basically describe my findings verbally
12 over the phone, and that's why I believe that it
13 would have been sometime prior to the issuance of
14 the certification because I don't think that
15 certification would have been produced unless I
16 had verbally reported those findings first.

17 Q. I see.

18 So you're not talking about DLA Piper
19 there?

20 A. I'm sorry, I may be. The name does
21 sound familiar to me, it may have been an
22 attorney -- in fact, it may have been one of the
23 attorneys that you listed specifically, but I do
24 not recall the name.

25 Q. And are you aware that later in the

1 J.P. Osborn

2 case, it would have been around July of 2011,
3 there's another firm called Edelson McGuire that
4 became involved on the plaintiff's side?

5 A. No.

6 Q. So do any of these names ring a bell:
7 Jay Edelson?

8 A. No.

9 Q. Steve Teppler?

10 A. No.

11 Q. Rafey Balabanian?

12 A. No.

13 Q. Earlier this year, in March of 2012,
14 there was another firm that entered on Ceglia's
15 side of the case, Milberg LLP.

16 A. No, I'm not aware of that firm.

17 Q. Okay.

18 So no one reached out to you this year
19 to discuss your findings in the case?

20 A. The only person that I have spoken with
21 this year with respect to the case has been
22 Mr. Boland.

23 Q. So you also haven't spoken with a
24 lawyer named Peter Skivington?

25 A. No.

1 J.P. Osborn

2 Q. Or Robert Calihan?

3 A. To the best of my recollection, no.

4 Q. And to the best of your recollection
5 are there any other attorneys for plaintiff that
6 you interacted with that you can remember at this
7 time?

8 A. Not that I can recall.

9 I do specifically recall having a
10 conversation with respect to the findings, a
11 verbal conversation, which basically was a verbal
12 report of findings to a specific attorney, but I
13 do not recall the name of that attorney, and it
14 may have been from DLA Piper.

15 Q. And that would have been prior to you
16 submitting a declaration?

17 A. I would -- that would make sense to me
18 because, again, I don't think that I would have
19 produced or been asked to produce a written
20 declaration without having first reported
21 verbally.

22 Q. Have you ever met or spoken with a man
23 named Jason Holmberg?

24 A. No.

25 Q. Have you ever met or spoken with Paul

J.P. Osborn

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Ceglia?

A. Yes.

Q. And when was that?

A. On January 11th when the document I examined was brought to me.

Q. January 11th? I thought it was --

A. I'm sorry, January 5th of 2011.

Q. And have you spoken with any of Ceglia's family like his parents, Carmine or Vera?

A. No.

Q. His brother Brendan?

A. No.

Q. Are you aware that plaintiff has retained other document examiners in this case?

A. Yes.

Q. And who are you -- you are clearly aware that Dr. Aginsky was retained?

A. Yes.

Q. And do you know what Dr. Aginsky was retained to do?

A. Well, I made the recommendation to plaintiff with respect to ink examination, I made the recommendation to Dr. Aginsky, so I would

1 J.P. Osborn

2 assume that it was the examination of inks, and I
3 believe that -- yes, yes.

4 Q. And are you aware of whether he was
5 ever actually able to chemically examine the
6 inks?

7 A. No.

8 Q. You are not aware or he --

9 A. I don't know whether -- I believe that
10 he did, but I don't have any specific information
11 with regard to his having done that, I wasn't
12 present other than to offer that recommendation,
13 I wasn't involved with that process.

14 Q. And when you offer that recommendation,
15 are you aware of whether Mr. Aginsky had already
16 been contacted or retained by plaintiff?

17 A. No.

18 Q. And are you aware of any other experts
19 that plaintiff has retained?

20 A. I believe that a James Blanco was
21 retained and a Larry Stewart was retained.

22 Q. Are you also aware that Eric Speckin
23 was retained by plaintiff?

24 A. Yes. Well, I wasn't aware specifically
25 that he was retained, only that he was being

1 J.P. Osborn

2 considered. Whether or not he was retained I
3 don't know.

4 Q. I see.

5 And are you aware of any defendants'
6 experts on this case?

7 A. Yes.

8 Q. And who are you aware of?

9 A. Peter Tytell, Gus Lesnevich and, I'm
10 sorry, I know him, he is an ink and document
11 expert, but I don't recall the name off the top
12 of my head.

13 Q. Would that be Gerry LaPorte?

14 A. Gerry LaPorte, yes.

15 Q. Now, do you know Mr. Speckin?

16 A. I have met him.

17 Q. Have you been involved in cases with
18 him?

19 A. I don't believe directly, no, no.

20 Q. And what was the context in which you
21 met him?

22 A. A number of years ago at one of the
23 meetings of the professional organizations to
24 which I belong, he was present and I met him at
25 that time. I don't recall the name of the

1 J.P. Osborn

2 organization or the specific meeting, but it was
3 several years ago.

4 Q. So you haven't had any recent
5 involvement with Mr. Speckin?

6 A. I may have seen reports that he had
7 written, but I have no -- I can't recall for you
8 any specific case or instance and I don't believe
9 that he worked on the same side of the case I was
10 working on nor the opposing side in a case that I
11 was working on to the best of my recollection.

12 Q. What about Mr. Stewart? Do you know
13 him?

14 A. Again, Larry Stewart I have heard of
15 before, I may have met him a number of years ago,
16 but certainly not recently and I haven't seen any
17 of his work product to the extent that I can
18 remember.

19 Q. So you don't know whether or you
20 haven't been involved in any cases with him?

21 A. I would say to you, again, to the best
22 of my recollection, no, I haven't been involved
23 in any cases that he's been involved in.

24 Q. And what about Mr. Blanco? Are you
25 familiar with him?

1 J.P. Osborn

2 A. I've heard of him before and I've
3 actually visited his Web site, but I don't
4 believe that I have been in any cases where he
5 was on the other side or working on the same side
6 of a case with me.

7 Q. Have you otherwise interacted with him
8 professionally?

9 A. I would say probably about a year and a
10 half ago I sent him an e-mail inquiring with
11 respect to a Web site that he had established and
12 a -- I think it was a trademark that he had
13 registered called Osbornian wherein I had
14 inquired as to what his intents were with respect
15 to my family name, but I did not receive a
16 response.

17 MR. ARGENTIERI: Osbornian?

18 THE WITNESS: Osbornian.

19 A. Is it okay if I explain what that is?

20 Q. Yes. Please do.

21 A. A number of years ago a paper was
22 published by Pennsylvania Law Review which
23 involved an examination of document examination
24 and its reliability, one of the authors was
25 Michael Saks and there were two others, I

1 J.P. Osborn

2 believe. In that article I believe the term
3 "Osbornian" was coined to refer to the
4 conservative document examination community which
5 was primarily based with the American Society of
6 Questioned Document Examiners.

7 Since that time it's been kind of used
8 to describe that sort of document examiner and
9 the use of it even got to be humorous in that at
10 one meeting several years ago there was a button
11 that was produced with a picture of my
12 great-grandfather and the words "I am an
13 Osbornian" on the button, so --

14 (Telephone disconnection.)

15 MS. AYCOCK: Let's pause for a moment.
16 It seems we have lost Mr. Boland.

17 THE VIDEOGRAPHER: Going off the
18 record. The time is 10:32.

19 (Discussion off the record.)

20 (Telephone reconnection.)

21 THE VIDEOGRAPHER: We are back on the
22 record. The time is 10:34.

23 BY MS. AYCOCK:

24 Q. You mentioned there was a button with
25 your great-grandfather.

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J.P. Osborn

Was that Albert S. Osborn?

A. Yes, that's correct. And the term informally, again, was reference to conservative document examination founded on the teachings of Albert S. Osborn.

The term "Osbornian" had never been in any way protected, so I was rather surprised when I found out that it had been registered as a trademark or service mark, I don't recall specifically what, and that a Web site had been established osbornian.org or osbornian.com, which was under construction at the time that I looked at it, so I e-mailed Mr. Blanco asking him what his intentions were out of curiosity more than anything else, but never received a response.

Q. I see.

Do you know whether or not that Web site ever went live?

A. Well, as far as I'm aware and the last time I checked, I don't remember how long it was, it was still under construction, so there was nothing, there was no major content on it. I don't know whether it's gone live in the sense that it has a significant amount of content.

1 J.P. Osborn

2 Q. I see.

3 Would you consider Mr. Blanco an
4 Osbornian document examiner?

5 A. I don't know him well enough to make
6 that judgment, he is not part of the
7 organizations that I belong to, but there are
8 those that are good document examiners that don't
9 necessarily belong to the organizations that I
10 belong to, so I really don't know that much about
11 him to be able to make comment.

12 Q. Well, you said he's not a member of the
13 organizations you belong to.

14 You belong to the American Academy of
15 Forensic Sciences; right?

16 A. Yes.

17 Q. So are you aware of Mr. Blanco's
18 involvement with that organization?

19 A. I am not. And he may be a member of
20 the AAFS. I was more thinking of the
21 certification board and the society that focused
22 specifically on document examination. The
23 American Board of Forensic Document Examiners and
24 the American Society of Questioned Document
25 Examiners.

1 J.P. Osborn

2 The AAFS is a much broader organization
3 involving a number of different forensic
4 disciplines and I don't believe that their
5 membership requirements are quite as stringent as
6 those other organizations, but I am a member of
7 that organization and both Larry Stewart and
8 James Blanco may be as well, I don't know.

9 Q. I see.

10 Now, are you aware that Mr. Stewart was
11 tasked with oversight of the forensic document
12 examinations by plaintiff's experts?

13 A. No.

14 Q. So you didn't do any coordinating with
15 him when you were conducting your exam?

16 A. No.

17 Q. Did Mr. Stewart ever speak with you
18 about the examinations that you performed?

19 A. No.

20 Q. And have you read any of the expert
21 reports in this case, either plaintiff's or
22 defendants'?

23 A. No.

24 Q. Since it's been a while since you've
25 had formal involvement in the case I just want to

1 J.P. Osborn

2 see your understanding of where the case stands.

3 Have you kept up with the case at all
4 on the news or on the Internet?

5 A. Occasionally I would see news reports,
6 but I have not made any concerted effort to keep
7 up with it. It's certainly a case that has
8 appeared in the newspaper several times and in
9 reading newspapers, if I saw an article, I would
10 certainly read it.

11 Q. I see.

12 Well, do you understand that Mr. Ceglia
13 filed the lawsuit in 2010 claiming an 84 percent
14 ownership interest in Facebook based on this
15 purported contract with Mark Zuckerberg?

16 A. I was aware that the contract was a
17 central issue and I was aware that Mr. Ceglia was
18 the plaintiff in the case, but the specific
19 numbers and what he was seeking I don't know.

20 Q. Were you aware that the purported date
21 of that purported contract was April 28, 2003?

22 A. The date that appears on it, yes.

23 Q. Now, that document is a two-page
24 document with purported handwriting with
25 interlineation and initials on page 1 and

1 J.P. Osborn

2 signatures and dates on page 2.

3 We call that the Work For Hire
4 document.

5 Do you understand that?

6 A. Yes.

7 Q. And are you aware that it's defendants'
8 position that Paul Ceglia's purported contract,
9 this Work For Hire document, is a recently
10 created forgery that was fabricated for the
11 purposes of bringing this lawsuit?

12 A. That's my understanding based on the
13 news reports that I've read.

14 Q. And are you aware that Facebook and
15 Mark Zuckerberg have moved to dismiss this case
16 as a fraud on the federal courts?

17 A. I believe that I had read that as well.

18 Q. Were you ever provided with or did you
19 find on the Internet the motion to dismiss that
20 defendants filed?

21 A. I don't believe that I saw the motion,
22 no.

23 Q. I would just like to understand your
24 role better in the case.

25 Now in June of 2011, as you mentioned

1 J.P. Osborn

2 previously, you submitted the sworn declaration
3 in this case; right?

4 A. Yes.

5 Q. And do you recall that this June 2011
6 declaration was in support of plaintiff's
7 cross-motion for expedited discovery?

8 A. Yes. That was the title that was given
9 to me as the appropriate title for the
10 certification.

11 Q. And do you understand that at that time
12 defendants had moved the Court for an order
13 allowing them to examine Ceglia's physical Work
14 For Hire document?

15 A. No, I wasn't specifically aware of that.

16 Q. Are you aware that in the course of
17 this motion Mark Zuckerberg submitted a sworn
18 declaration saying that he had never signed the
19 Work For Hire document?

20 A. No.

21 Q. And are you aware that the Court did
22 ultimately grant the defendants' motion and
23 permitted defendants to, among other things,
24 examine Ceglia's physical purported Work For Hire
25 document?

1 J.P. Osborn

2 A. I was aware that the document was
3 examined by several of defendants' experts and I
4 think it was reasonable to assume that that
5 examination occurred as a result of a court
6 order.

7 Q. Are you aware that this examination by
8 defendants' experts took place starting on July
9 14, 2011?

10 A. No. I don't know when specifically the
11 examinations took place.

12 Q. And were you ever contacted to
13 participate in those examinations in July of 2011?

14 A. No.

15 Q. So let's go back to that June 2011
16 declaration.

17 In that declaration do you recall
18 explaining that a forensic ink chemist could
19 conduct further analysis in order -- in an
20 attempt to determine the age of the ink entries
21 on the Work For Hire document?

22 A. Yes.

23 Q. And as you noted in the declaration,
24 that kind of testing involves taking of physical
25 samples of the document; right?

1 J.P. Osborn

2 A. That's my understanding, yes.

3 Q. Now, you personally don't perform these
4 kind of tests since you are not a chemist, but
5 you generally know about these kind of tests and
6 that they can be performed?

7 A. Yes, I'm generally aware of the tests
8 and in fact I have on at least one other occasion
9 actually taken the extractions of ink, but I've
10 never actually performed the chemical analysis,
11 I'm not trained to do that.

12 Q. Right.
13 That would require a chemist; correct?

14 A. Correct.

15 Q. Now, as I mentioned before, defendants'
16 motion for expedited discovery of the Work For
17 Hire was granted. Are you aware that as part of
18 that, the court order, that the parties be
19 permitted to conduct physical sampling of the
20 document for the purposes of conducting this kind
21 of chemical analysis?

22 A. Not specifically, no, I was not aware
23 of that.

24 Q. Were you aware that in July and August
25 of 2011 both parties' experts did in fact take

1 J.P. Osborn

2 physical samples of the ink, paper and toner of
3 the Work For Hire document?

4 A. No, I was not aware that it occurred at
5 that time.

6 Q. Now, are you aware that among other
7 tests defendants' ink chemist Mr. LaPorte
8 conducted a chemical analysis of the ink on the
9 Work For Hire document?

10 A. No.

11 Q. And are you aware that despite the
12 apparent damage to dye components in the ink,
13 Mr. LaPorte was able to run tests on his GCMS?

14 MR. ARGENTIERI: Objection as to form.
15 You can answer.

16 A. No.

17 Q. And are you aware that he conducted
18 tests on the volatile components of the ink?

19 A. No.

20 Q. And you may be aware from news
21 accounts, but are you aware that based on his
22 analysis Mr. LaPorte determined that it was
23 highly probably that the interlineation on page 1
24 was created within two years of the date of
25 testing?

1 J.P. Osborn

2 MR. ARGENTIERI: Objection as to form.

3 You can answer.

4 A. No.

5 Q. Mr. Osborn, I would just like to talk
6 very briefly about your background and
7 credentials.

8 I'm showing you a copy of your June
9 17th, 2011 declaration and I would like to have
10 this marked as Defendants' 48.

11 (Defendants' Exhibit 48, declaration of
12 John Paul Osborn in support of plaintiff's
13 opposition to defendants' motion for
14 expedited discovery and in support of
15 plaintiff's cross-motion for mutual
16 expedited discovery, marked for
17 identification, as of this date.)

18 Q. Mr. Osborn, if you could just give that
19 to the court reporter briefly so he can mark it.

20 A. Oh, I'm sorry.

21 Thanks.

22 Q. Do you recognize this as your June 17th
23 declaration?

24 A. Yes.

25 Q. And if you turn to Exhibit A on page 5

1 J.P. Osborn

2 of 19 do you recognize this as your professional
3 CV?

4 A. Yes. It's in two parts. The first
5 part is a narrative, one page, that is marked
6 within this exhibit as Exhibit A, and then the
7 second part -- I'm sorry, it is collectively
8 marked as Exhibit A.

9 The first page is a single page
10 narrative of qualifications and that is followed
11 by a multipage more detailed resume of
12 qualifications.

13 Q. I know this was filed in June of last
14 year.

15 Have there been any updates to your CV
16 since then?

17 A. Yes.

18 Q. And what are those updates?

19 A. I believe I have a copy with me, but
20 they basically were just more recent workshops
21 and other professional educational activities
22 that took place in 2011.

23 Q. I see.

24 Do you have that copy with you now?

25 A. I do.

1 J.P. Osborn

2 Q. Can you provide that to defendants,
3 please.

4 Do you have more than one copy,
5 Mr. Osborn --

6 A. I may.

7 Q. -- or just a copy that we can mark as
8 an exhibit?

9 A. I have two copies with me.

10 Q. Great.

11 A. I just want to note that this includes
12 one page, one additional page which is a
13 description of the practice that I run, and that
14 last page that you're looking at right now, which
15 is a description of the different national
16 professional organizations, which is not included
17 in this, these items within Exhibit 48.

18 Q. I see. Thank you.

19 MS. AYCOCK: Can we mark this as
20 Defendants' 49, please.

21 (Defendants' Exhibit 49, document
22 entitled "Qualifications of John Paul
23 Osborn," marked for identification, as of
24 this date.)

25 Q. Now, let's see, you received your

1 J.P. Osborn

2 bachelor's degree in 1982; right?

3 A. Correct.

4 Q. Then you trained with your father, the
5 late Mr. Paul Osborn?

6 A. That's correct.

7 Q. And that was from 1982 to 1984?

8 A. Correct.

9 Well, I should say that the initial
10 required 24 months of training occurred during
11 that time period which enabled me to become
12 eligible for certification and ASQDE membership,
13 but my training continued on from there for many
14 more years.

15 Q. And your great-grandfather you
16 mentioned before, Albert S. Osborn, he's somewhat
17 of an icon in document examination; right?

18 A. Yes.

19 Q. And he wrote many of the leading texts
20 in the field like "Questioned Documents"?

21 A. Yes. I mean, those texts were produced
22 back in the early part of the 1900s and obviously
23 there are much more recent texts that are much
24 more comprehensive with respect to issues that
25 document examiners deal with today, but in

1 J.P. Osborn

2 particular the book "Questioned Documents" was
3 and continues to be highly regarded.

4 Q. We may come back to your resume and
5 will review it on a break.

6 Mr. Osborn, I'd like to ask you a few
7 questions about taking scans, photographs and
8 other images during the course of the document
9 examination.

10 As a general matter, you do take scans
11 and photographs during a questioned document
12 examination; right?

13 A. Yes.

14 Q. And like many document examiners, you
15 do this as kind of the standard operating
16 procedure; right?

17 A. Yes.

18 Q. And the purposes of these scans, images
19 and photographs, they can be used to record your
20 observations of various characteristics of the
21 document; right?

22 A. They can be, yes.

23 Q. For instance, they could -- photographs
24 could document a close-up of a handwritten line?

25 A. Correct.

1 J.P. Osborn

2 Q. A scanned document of placement and
3 appearance of ink and text on a page?

4 A. Correct.

5 Q. And the images taken with filters could
6 show the way that ink reacts to infrared
7 luminescence; for example?

8 A. Also true.

9 Q. So the purposes of these scans or
10 document images is to record as best as possible
11 and understanding that there are limitations with
12 those mediums, a true and accurate representation
13 of characteristics that you observed firsthand;
14 right?

15 A. Among other reasons, yes.

16 Q. And what are the other reasons for
17 taking those photographs?

18 A. A second, second to all of those other
19 things I would say would be a primary purpose is
20 to maintain a relatively accurate file with
21 respect to material that's examined, in other
22 words, a record of what was examined, and lastly,
23 potentially to be used for the creation of
24 illustrations for reports and/or testimony.

25 Q. And so as you mentioned it's creating a

1 J.P. Osborn

2 record so another purpose of these scans,
3 photographs and images would be to create an
4 accurate record of the condition of the document
5 as you received it for examination?

6 A. To the extent possible with the media
7 used, yes.

8 Q. And so, as best as possible and
9 understanding the limitations of each medium,
10 these scans and photographs and images are
11 intended to capture a true and accurate
12 representation of the document that you observed
13 firsthand?

14 A. Correct.

15 Q. Now, you took scans and photographs and
16 other images in this case particularly; right?

17 A. Yes, I did.

18 Q. And in November of 2011 you provided us
19 with a CV of these scans and photographs; right?

20 A. Correct.

21 Q. And you took all of these images during
22 your January 5th, 2011 examination?

23 A. Correct.

24 Q. Now, Mr. Osborn, I believe this is the
25 original of the CD you provided us; is that right?

1 J.P. Osborn

2 A. It does appear to be, yes, I believe
3 that's my writing on the disc itself.

4 Q. I'm going to represent to you that this
5 is an exact copy of that CD and we will go on and
6 have this marked as Defendants' 50.

7 (Defendants' Exhibit 50, CD labeled
8 "10-cv-00569-RJA-LGF Facebook/Ceglia Osborn
9 Materials," marked for identification, as of
10 this date.)

11 MR. ARGENTIERI: Are you going to want
12 the videographer to capture the screen?

13 MS. AYCOCK: I mean, the images will
14 all be on the record as the exhibit.

15 MR. ARGENTIERI: I know, but if he's
16 going to turn around and --

17 Q. Thank you for providing this CD.

18 Now I just want to walk through the
19 photos and scans that you provided so that we can
20 understand what we are looking at a little bit
21 better.

22 (Information from the CD marked as
23 Defendants' Exhibit 50 was projected on the
24 large video screen at this time.)

25 Q. Based on your interrogatory responses

1 J.P. Osborn

2 it's my understanding that you captured images
3 with three different types of equipment.

4 You used a Brother MFC-6490CW scanner?

5 A. Yes.

6 Q. A Canon Image Runner C10221 scanner?

7 A. Yes.

8 Q. And your Olympus C5050Z digital camera?

9 A. Correct.

10 Q. Now, on page 2 -- let's mark as Exhibit
11 51 your interrogatory responses.

12 (Defendants' Exhibit 51, document
13 entitled "Answers to Interrogatory
14 Responses" dated December 6, 2011, marked
15 for identification, as of this date.)

16 Q. Do you recognize this as your responses
17 to defendants' interrogatories?

18 A. Yes.

19 Q. And that is your signature on the last
20 page?

21 A. Yes, it is.

22 Q. Now, if you look at these interrogatory
23 responses on page 2, your response 3-B, in that
24 response you indicate that you used the Brother
25 scanner to take three TIFF images; right?

1 J.P. Osborn

2 A. Correct, yes.

3 Q. And those three TIFF images are
4 untitled 1 through 3?

5 A. Yes.

6 Q. And does this look like the images you
7 captured?

8 A. Yes.

9 Q. And did you take these scans using your
10 standard settings on your Brother scanner?

11 MR. ARGENTIERI: Objection as to form.

12 Q. You can answer.

13 A. Okay.

14 No. I believe that I increased the
15 resolution to 600 DPI. I believe the standard
16 setting is 200 DPI.

17 Q. I see.

18 So you took these scans at a higher
19 resolution?

20 A. Yes.

21 Q. You didn't change anything about the
22 contrast or color settings, did you?

23 A. No.

24 Q. Now, these scans were taken in
25 accordance with your standard operating

1 J.P. Osborn

2 procedures; right? You usually take scans of a
3 document?

4 A. Yes.

5 Q. Why did you take these specific scans
6 using your Brother scanner?

7 A. Because the Brother scanner has an
8 11-by-17-inch or larger plate or scan bed which
9 allows you to take a larger image and I wanted to
10 be able to capture the entire document, any
11 portion of the document that, for instance, might
12 be cut off on a scanner like the Canon, which
13 scans at 8-1/2-by-11 or specifically with 8-1/2.

14 Q. I see.

15 So that's why you took scans with both
16 your Canon and your Brother scanner?

17 A. Yes.

18 Q. And did these scans taken with your
19 Brother scanner, are they true and accurate
20 representations of what you observed of the
21 document?

22 A. Yes.

23 Q. And in that same interrogatory response
24 3-B you indicate that you captured some JPEG- and
25 PDF-scanned images with your Canon Image Runner

1 J.P. Osborn

2 scanner; right?

3 A. Correct.

4 Q. And did you take these scans using the
5 standard settings of the scanner or did you
6 increase the DPI also?

7 MR. ARGENTIERI: Objection.

8 You may answer.

9 A. I don't recall. If you can widen the
10 screen and let me see the size of the files, I
11 can probably tell you.

12 There you go, just pull it out.

13 If you can just widen that one panel.

14 Q. There you go.

15 A. Yes, I did increase the resolution.
16 The standard resolution is 300, I increased it to
17 600.

18 Q. But you didn't change any contrast or
19 coloration settings?

20 A. No.

21 Q. Now, these are the PDF and JPEG scans
22 you were referring to, right, that you took with
23 your Canon?

24 A. Yes, they are.

25 Q. And the PDF is labeled 0731_0001.pdf;

1 J.P. Osborn

2 correct?

3 A. Correct.

4 Q. And the JPEGs are labeled 0732_0001
5 through 5?

6 A. Also correct.

7 Q. Now, what about these PDFs and JPEGs
8 immediately underneath those?

9 A. I use a backup program on the computer
10 that I have in the office and, for some reason,
11 and I don't know why, the backup creates these
12 oddly numbered files, so they are a product of
13 this backup software; I don't know why it does
14 that, but I have seen that on more than one
15 occasion within folders designated for other
16 cases as well.

17 Q. I see.

18 But these appear to be different --
19 they don't appear to be the questioned documents,
20 they appear to be different documents?

21 A. Yes. But they are also included or
22 images were taken of those other documents as
23 well. For each one of those backup image files I
24 suspect you will be able to find a matching file
25 somewhere among the other -- among the other

1 J.P. Osborn

2 images within the folder.

3 Q. I see.

4 So are these documents, are these hard-
5 copy documents you were provided and then took
6 scans of or are these something you were e-mailed?

7 A. I don't recall.

8 I believe that there was three
9 documents provided to me on January 5th of 2011,
10 one was a copy of a document with a Mark
11 Zuckerberg signature on it or what was submitted
12 to me as bearing a Mark Zuckerberg signature that
13 was either provided to me on January 5th of 2011
14 or I received an e-mail later on, but it was
15 received in the form of a reproduction not an
16 original.

17 The other one was another document, and
18 I don't recall the name of the document, but
19 again, it should be in image form somewhere in
20 that folder.

21 Q. Are you referring to the specifications
22 document?

23 A. If you could put it up on the screen it
24 would be helpful in terms of recollecting.

25 Q. This looks like it's a page from the

1 J.P. Osborn

2 specifications document.

3 A. Yeah, I believe that that was the other
4 of the documents that was provided to me and I
5 believe that this was provided on the 5th of
6 January 2011 and was provided in its original
7 form and, I'm sorry, this -- the check that
8 you're showing right now is another document with
9 a copy of a signature, a signature purportedly of
10 Mark Zuckerberg.

11 Q. I see.

12 And you were provided with this
13 document in hard copy form and then scanned it?

14 A. Yes, I believe I did.

15 Q. And so these four images which are
16 labeled 999999997-05-0232361 and the three
17 following PDFs and JPEGs, these are -- you are
18 not sure whether you were provided with a hard
19 copy and scanned them or whether they were
20 provided to you electronically?

21 A. Well, once again, with respect to those
22 particular file numbers, they are not numbers
23 that my scanning devices created nor that I
24 created, they were created by a backup program
25 that for some reason replicates files and dumps

1 J.P. Osborn

2 them into the same folders in which those files
3 appear, why I don't know, but to the best of my
4 recollection, at a minimum, on the 5th of January
5 2011 I was provided with the original of the --
6 and again, you'll have to remind me the name of
7 the document --

8 Q. The specifications document?

9 A. The specifications document --

10 Q. That's a six-page document; right?

11 A. Right.

12 -- as well as the Work For Hire
13 document and the reproduction of the check and
14 the government form that you also had on the
15 screen were provided to me in the form of
16 reproductions.

17 Q. I see.

18 Now, these scans that you took with
19 your Canon Image Runner scanner, they were taken
20 in accordance with your standard operating
21 procedure you usually take scans with that
22 scanner; right?

23 A. With respect to making, attempting to
24 make accurate reproductions using those devices
25 and media, yes.

1 J.P. Osborn

2 Q. And why did you take these specific
3 scans using your Canon scanner?

4 You mentioned you liked your Brother
5 scanner because it's larger.

6 Is there some reason you took them also
7 with your Canon scanner?

8 A. The Canon device creates images at
9 resolution, according to the device itself, at
10 600 DPI, which tend to be smaller in terms of
11 file size than the Brother, and also I produce
12 those JPEGs, the file type, which is a compressed
13 file format.

14 The TIFF files are considered to be, at
15 least to my knowledge, better quality, less
16 compressed images, and because of the apparent
17 importance of this particular document and my
18 desire to create -- go one step further in
19 creating better quality images, I took the TIFFs.

20 The Canon device will not do color
21 TIFFs, only color JPEGs.

22 Q. I see.

23 And these scans you took with your
24 Canon scanner are true and accurate
25 representations of what you observed firsthand?

1 J.P. Osborn

2 A. Yes.

3 Q. Next in your interrogatory response
4 number 3 you indicate that you took a series of
5 photographs of portions of the documents with
6 your Olympus camera; right?

7 A. Correct.

8 Q. Okay.

9 And these would be those photographs
10 you took, those are file names P1050026 to
11 P1050058; correct?

12 A. Yes.

13 Q. It looks like some of these
14 photographs -- for instance, 34 and 35 -- were
15 taken using transmitted light; right?

16 A. Yes.

17 Q. And some of the photographs -- let's
18 see, 257 and 58 were taken using side lighting;
19 correct?

20 A. Correct, oblique lighting, correct.

21 Q. And you take others with what appears
22 to be normal lighting or ambient room lighting,
23 for example, with 40 and 41?

24 A. Yes.

25 Q. Why did you take these particular

1 J.P. Osborn

2 photographs with transmitted light, oblique
3 lighting and ambient room lighting with your
4 Olympus camera?

5 A. Ambient room lighting utilizing the
6 Olympus camera allows me to capture photographic
7 quality digital images at a macro setting,
8 close-up images, which to some degree affords a
9 better reproduction to examine features, for
10 instance, of writing at a later point in time
11 when I don't have that original any longer, so,
12 for instance, if I were going to eventually be
13 asked to look at the genuineness or
14 nongenuineness of the Zuckerberg signature, I
15 could utilize these images. I may have to see
16 the original once again, but it provides me with
17 a more accurate reproduction than I would say
18 even the scans do.

19 The side light images were taken to
20 attempt to capture, to the extent possible, any
21 indentations in the surface of the paper which is
22 a more rudimentary method accomplishing basically
23 the same purpose as the ESDA tests.

24 The transmitted light photographs were
25 taken to capture things like the quality of the

1 J.P. Osborn

2 paper, which might be more evident utilizing
3 transmitted light as opposed to ambient light.

4 Q. And these photographs were taken in
5 accordance with your standard operating
6 procedures?

7 A. As they would apply in a situation like
8 this where there were limitations to what I was
9 examining initially but wherein I at that point
10 in time anticipated doing other examinations, I
11 wanted to have images, for instance, macro images
12 of the signature which would allow me, if I was
13 asked to later on, to look at the genuineness or
14 nongenuineness of the signature, perhaps not
15 needing at least initially the original document
16 back again.

17 Q. I see.

18 And so these photographs were true and
19 accurate representations of what you observed?

20 A. Yes.

21 Q. And you produced all of your
22 photographs and images of the documents, the
23 specifications and the Work For Hire document, in
24 response to the subpoena in November; right?

25 A. Yes.

1 J.P. Osborn

2 Q. Why don't take a break for just a quick
3 second.

4 A. Yes.

5 THE VIDEOGRAPHER: Going off the
6 record. The time is 11:09. This ends tape
7 number 1.

8 (Recess taken.)

9 THE VIDEOGRAPHER: We are back on the
10 record. The time is 11:20. This is tape
11 number 2.

12 BY MS. AYCOCK:

13 Q. Now, Mr. Osborn, having reviewed your
14 images which you've confirmed accurately
15 represent what you saw in January of 2011, I
16 would like to talk about the appearance and other
17 aspects of the document when you examined it.

18 Now, as you mentioned previously,
19 January 5th, 2011 is the only time that you saw
20 or examined the physical Work For Hire document;
21 right?

22 A. Correct.

23 Q. And when you first received the Work
24 For Hire document was it stapled?

25 A. I don't recall. My best recollection

1 J.P. Osborn

2 was that it was unstapled only because I don't
3 recall asking for permission to remove the staple
4 and that's something that I would do.

5 It may have been, but in order to run
6 an ESDA test I would have had to have unstapled
7 it if it had been. I don't specifically recall
8 whether it was or wasn't; to the best of my
9 recollection, it was not.

10 Q. And based on your images it appears
11 that when you examined the specifications
12 document it was stapled.

13 Do you remember?

14 A. I believe so, yes.

15 Q. And do you remember whether you
16 unstapled that document at any point or did you
17 just take images with the document stapled?

18 A. I believe that I just simply took
19 images with the document stapled. There would
20 have been no need to remove the staple and the
21 primary need to remove the staple had I done that
22 with the Work For Hire would have been to conduct
23 ESDAs.

24 Q. Now, on January 5th, 2011 you observed
25 the ink writing on the Work For Hire document to

1 J.P. Osborn

2 be black ink; right?

3 A. Yes, black ballpoint pen ink, right.

4 Q. And you observed the paper of the Work
5 For Hire document to be white paper?

6 A. Correct.

7 Q. And you didn't notice any fading or
8 brownish ink on the Work For Hire document; right?

9 MR. ARGENTIERI: Objection as to form.
10 You can answer.

11 A. Nothing that was very obvious, no.

12 Q. And as you mentioned, you also examined
13 the specifications document, the ink on that
14 document was black; right?

15 A. To the best of my recollection and
16 based on reviewing the images, yes.

17 Q. And the paper was white paper?

18 A. Yes.

19 Q. Did you notice any damage to the Work
20 For Hire document that would have been visible
21 with the naked eye?

22 A. Nothing that was obvious. Certainly it
23 appeared to have been handled, certainly there
24 were staple holes in it, certainly it wasn't a
25 brand-new sheet of paper, but nothing that was

1 J.P. Osborn

2 immediately obvious or something that I would
3 have -- that would have caught my attention.

4 Q. And I understand that as part of your
5 examination you illuminated the Work For Hire
6 document with a UV lamp; right?

7 A. That's correct.

8 Q. Now, during this UV examination did you
9 observe the back of the document to fluoresce any
10 differently than the front of the document?

11 A. No.

12 I do not believe that I conducted VSC
13 examinations, examinations utilizing ultraviolet
14 light on the reverse of the document because the
15 purpose of these preliminary examinations
16 utilizing ultraviolet light was to see if I could
17 make any differentiation in the writing ink
18 between the first page and the second page.

19 Had there been some kind of unusual
20 appearance with respect to the paper I certainly
21 would have noted it, but I did not examine it
22 using VSC on the reverse of either of the two
23 pages.

24 Q. I see.

25 But you didn't notice -- you said if

1 J.P. Osborn

2 you had observed anything unusual about the
3 fluorescence of the document you would have noted
4 it; right?

5 A. Yes.

6 Q. So you didn't observe the front of the
7 pages fluoresce very dully, did you?

8 MR. ARGENTIERI: Objection to the form.
9 You can answer.

10 A. Well, I don't know if we can
11 necessarily define what you mean by fluoresced
12 dully. It reacted in a fashion that I would
13 anticipate with respect to white bond paper and
14 there was nothing unusual in terms of extreme
15 brightness or extreme dullness.

16 Again, however, the focus of these
17 examinations that I performed was on the writing
18 ink, not the paper.

19 Q. I see.

20 But you -- I mean, you didn't observe
21 any uneven fluorescence throughout the front of
22 the page --

23 MR. ARGENTIERI: Objection as to form.

24 Q. -- that would be something you would
25 have noted; right?

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J.P. Osborn

MR. ARGENTIERI: Objection as to form.
You can answer.

A. Not necessarily because, once again, the focus of my examination was on the area where the signature appeared so, for instance, with respect to the face of either of the pages of the document I did not examine under UV or any filtration or any kind of specialized lighting utilizing a VSC the entire front page, I was focused on the writing ink, so it was in those two areas.

Within those two areas, no, I did not see anything.

Q. Let's talk a little bit more about your examination.

My understanding is that you only did these nondestructive examinations of the Work For Hire document as you mentioned; right?

A. Yes.

Q. And you conducted these examinations with nondestructive equipment like hand-held lamps, a microscope, a VSC unit?

A. Yes.

Q. You mentioned in your interrogatory

1 J.P. Osborn

2 that you utilized a CamCom C-IT250 video spectral
3 device?

4 A. Yes.

5 Q. Is that like a Foster + Freeman VSC
6 unit?

7 A. Yes. And I probably misspoke when I
8 referred to my device as a VSC.

9 Document examiners refer to VSC the way
10 many people refer to tissue as Kleenex, it's
11 kind of become a generic term, so the device that
12 you just recited is the device that I used to
13 examine spectrally documents and writing ink.

14 Q. So basically it would do -- I'm
15 familiar with the Foster + Freeman version.

16 Is it just the same thing but a
17 different brand?

18 A. Correct.

19 Q. And you conducted an ESDA exam; right?

20 A. That's correct.

21 Q. Do you have those ESDA lifts with you
22 today?

23 A. Yes, I do.

24 Q. Great.

25 So at the next break, can we take

1 J.P. Osborn

2 those, make a high-resolution scan of them?

3 A. Yes.

4 Q. And do you also have your case notes
5 here with you?

6 A. I only have one page of handwritten
7 notes with one line of writing, but you're
8 welcome to take it.

9 Q. Great. We will take those when we take
10 the ESDA lifts.

11 Now, is there any other equipment you
12 used to examine the questioned documents, like a
13 microscope hand-held magnifier?

14 A. Yes. I believe that I conducted
15 examinations utilizing a macroscope, at least
16 that's how it's referred among most of my
17 colleagues, and it is a Pentax magnification
18 device that is sort of a magnifier-microscope
19 hybrid, it is a monocular device and it simply
20 allows you to look at a magnified image of what
21 you are examining.

22 I do not believe I used the microscope
23 in my office, which is a stereoscopic microscope,
24 to examine this document; I may have, I didn't
25 make any reference to it, nor did I make any

1 J.P. Osborn

2 notes about those examinations, it might have
3 been something that I used, but I don't recall
4 using it.

5 I do recall using a Pentax macroscope,
6 though, and hand-held magnifiers, hand-held lamps
7 for viewing things with oblique lighting, side
8 lighting, a small light table to look at things
9 with transmitted light prior to taking the images.

10 Q. Now, when you were conducting an
11 examination with the macroscope, what aspect of
12 the document were you focusing on?

13 A. The signature.

14 Q. And is that also true with respect to
15 your use of the CamCom video spectral device?

16 A. I shouldn't say just the signature, the
17 signature and the interlineation that appears on
18 the first page, and the answer to your question
19 is yes.

20 Q. So other than the ESDA and the side
21 lighting were your other examinations geared
22 towards looking at the ink signatures?

23 A. Yes.

24 Q. And after all of your examinations with
25 UV, infrared, the video spectral device,

1 J.P. Osborn

2 microscopes, hand-held lenses, did you notice any
3 change in the paper or the ink of the Work For
4 Hire document?

5 A. No.

6 Q. And would you expect there to be any
7 significant change based on the examinations you
8 conducted on the document?

9 MR. ARGENTIERI: Objection as to form.

10 A. No.

11 THE WITNESS: I'm sorry.

12 Q. You can answer.

13 A. My answer is no.

14 Q. Mr. Osborn, are you aware that there is
15 an issue regarding the condition in which the
16 document was presented to defendants' experts in
17 July of 2011?

18 A. Yes.

19 Q. What's your understanding of what that
20 issue is?

21 A. That there is an assertion, I believe,
22 by both plaintiff and defense that something was
23 done to the document which caused a change in the
24 appearance of the face of the pages,
25 specifically, I don't know what it was, but I am

1 J.P. Osborn

2 aware that that assertion is being made.

3 Q. Let's take a step back for a moment.

4 Have you ever heard of someone doing
5 something to a document in an attempt to
6 artificially age the document or its ink?

7 A. Yes.

8 Q. What sort of things do people try to
9 do?

10 A. Well, rudimentary methods of trying to
11 age a document would include simply putting it
12 out on a windowsill and exposing it to bright
13 sunlight for a significant period of time, any
14 kind of bright light or heat might cause a
15 document to artificially age, but the end result
16 would be something that in most instances would
17 be relatively obvious even to the naked eye.

18 As an example, you might have a
19 document that has been exposed in that way and
20 perhaps the reverse of the document wasn't
21 exposed in the same way and you would have a
22 stark difference between the face and the
23 reverse.

24 Q. Right.

25 And it take -- it would take a while

1 J.P. Osborn

2 for such sunlight to cause effects on the front
3 of the document; right?

4 MR. ARGENTIERI: Objection to form.

5 A. I couldn't tell you specifically how
6 long. I mean, I would anticipate that it would
7 -- I mean, you could probably fade to some
8 degree, some noticeable degree a document sitting
9 on a windowsill in bright sunlight over the
10 course of an entire day, but specifically how
11 long, you know, the average person who is trying
12 to do that might do that, I don't know.

13 Q. And is there any literature or popular
14 news accounts about this on the Internet or
15 otherwise that you are aware of?

16 A. Not news accounts. I mean, I'm sure
17 there are news accounts on the Internet, I'm sure
18 that there are other stories on the Internet
19 about this sort of thing. I can't point you to
20 any specific reference, but it's certainly
21 something that is written about in the text that
22 is part of this field.

23 Q. And has this topic ever come up during
24 your involvement with this case?

25 MR. ARGENTIERI: Objection as to form.

1 J.P. Osborn

2 A. I'm sorry, I misunderstood the question.

3 Q. Has this topic, artificially aging
4 documents, has that come up in the course of your
5 involvement in this case?

6 A. Only to the extent that I was aware
7 that there were assertions being made with
8 respect to the document about artificial aging.

9 Q. You haven't discussed artificial aging
10 with anyone?

11 A. No.

12 Q. Now, are you aware that it's
13 defendants' position that when plaintiff produced
14 the Work For Hire document to defendants on the
15 morning of July 14, 2011 after the Court had
16 ordered it be produced, the ink on the document
17 was very faded almost to a light tan or brown?

18 MR. ARGENTIERI: Objection as to form.
19 You can answer.

20 A. Yes, I had understood that that was an
21 assertion being made.

22 Q. And that the paper on the front of the
23 document that morning was also discolored and
24 off-white?

25 A. Yes.

1 J.P. Osborn

2 MR. ARGENTIERI: Objection as to form.

3 Q. Are you aware that defendants' experts,
4 Mr. Tytell and also a Professor Frank Romano, who
5 were there on the morning of July 14th when the
6 Work For Hire was produced, have submitted sworn
7 statements describing this condition of the Work
8 For Hire document as having faded, tannish or
9 brownish ink and discolored paper at the time it
10 was presented?

11 MR. ARGENTIERI: Objection as to form.

12 You can answer.

13 A. No.

14 Q. So you haven't reviewed these
15 declarations?

16 A. No.

17 Q. And are you aware that none of
18 plaintiff's experts were present at the document
19 examination on July 14, 2011?

20 A. No.

21 Q. No, you're not aware of that?

22 A. I'm not aware of whether they were or
23 were not present.

24 Q. And are you aware that it's defendants'
25 position that this faded and discolored condition

1 J.P. Osborn

2 of the document and its ink was due to an attempt
3 by Paul Ceglia or someone working in concert with
4 him to artificially age or otherwise thwart
5 defendants' attempts to date the ink?

6 MR. ARGENTIERI: Objection as to form.
7 You can answer.

8 Q. You can answer.

9 A. That's my understanding as to what
10 plaintiff -- what defendants' assertion is, yes.

11 MR. ARGENTIERI: You just got to kind
12 of give me a pause.

13 THE WITNESS: Okay. Sorry. I'm moving
14 along with my answers too quickly.

15 Q. And are you aware that after
16 defendants' attorneys revealed in open court that
17 the document produced to them was produced in
18 this condition with faded ink and discolored
19 paper that plaintiff for the first time accused
20 defendants' experts Mr. Tytell and Mr. Lesnevich
21 of having caused the damage through their use of
22 VSC, UV lamps, other light sources and ESDA
23 during the course of their document examination?

24 MR. ARGENTIERI: Objection as to form.
25 You can answer.

1 J.P. Osborn

2 A. No.

3 Q. So you're not aware that that is
4 plaintiff's accusation that the document
5 examiners damaged the document?

6 MR. ARGENTIERI: Objection as to form.
7 Go ahead.

8 A. Yes, I am aware of that.

9 Q. And are you aware that defendants'
10 experts believed that this visible damage to the
11 document, the discoloration of the ink and the
12 paper, were caused by some sort of exposure or
13 photo degradation of the Work For Hire document
14 such as sunlight?

15 MR. ARGENTIERI: Objection.

16 A. Not specifically what the cause was,
17 but just aware that the assertion was being made.

18 Q. Now, along with our interrogatories to
19 you we included as exhibits two printed scans of
20 the Work For Hire document.

21 Do you recall that?

22 A. Yes.

23 Q. And I'll represent to you that one of
24 those printouts was the scan of the Work For Hire
25 document that you had provided to us and the other

1 J.P. Osborn

2 was a printout of a scan of the Work For Hire
3 document that Mr. Tytell had captured on the
4 morning of July 14, 2011.

5 Now, as you stated previously, you take
6 scans and photographs as part of your standard
7 practice in order to capture various
8 characteristics of the document and create a
9 record of the condition of the document at the
10 time you received it; right?

11 A. Correct.

12 Q. So understanding the limitations of
13 each medium, you generally consider the native
14 scans or photographs of a document to be a
15 reliable source of information about the
16 document; right?

17 A. Keeping in mind the limitations, yes.

18 Q. And -- but printing these scans or
19 photographs it introduces a new limitation to the
20 image, for instance, the printer may not print in
21 as many DPIs as the image was recorded in or
22 there may be a difference in color range; is that
23 right?

24 A. Yes.

25 Q. So if you can turn to your

1 J.P. Osborn

2 interrogatory responses on page 2 to your
3 response to interrogatory number 4 and then on
4 page 3 to your response to interrogatory number
5 6, can you review those responses?

6 A. Yes, I have.

7 Q. You have reviewed them?

8 Now, in both of those responses you
9 indicate that the printout we provided is a copy
10 that you would not consider to be an accurate
11 means to assess the overall condition of the
12 document; right?

13 A. Correct.

14 Q. But viewing the native format scans or
15 photographs of the document would be a more
16 accurate means to assess the condition of the
17 document; right?

18 MR. ARGENTIERI: Objection as to form.

19 You can answer.

20 A. It would, but my response, if I had
21 viewed electronic images, would have been the
22 same because with respect to the condition of a
23 document with respect to fading of either ink or
24 some kind of discoloration of the paper, I would
25 not be inclined to offer a conclusion or an

1 J.P. Osborn

2 opinion until I had seen the original again.

3 Q. Now, if you're not making a conclusion
4 or a specific finding you're just saying this is
5 what I observed or this is not what I observed,
6 is that something you'd be more comfortable doing
7 with a native format?

8 MR. ARGENTIERI: Objection as to form.

9 A. If I am offering an opinion I'm
10 offering an expert opinion, and in order to be
11 comfortable in offering an opinion with regard to
12 something like an alteration to a document, I
13 would be inclined not to offer any opinion until
14 I had once again seen the original, and likely
15 what I would do is take a look at the images that
16 I had originally taken and take a look at the
17 original and note whether or not in fact I felt,
18 based on that image and the newly examined
19 original, that there was some kind of noticeable
20 significant discoloration or fade -- of the paper
21 or fading of the ink.

22 I would not be inclined to offer that
23 kind of opinion based on at least one set of
24 images that I had no control over and really,
25 with respect to the issue of alteration of the

1 J.P. Osborn

2 documents, in viewing the original and the
3 advantages of viewing the original is really not
4 going to be replaced by looking at any image no
5 matter how accurate.

6 If you present me with two images and
7 one is darker than the other, I can say to you
8 that, yes, one image is darker than the other
9 image, but I would not be ready to opine that
10 that is actually what is the case on the document
11 until I actually saw the document.

12 Q. And to be clear, what was the case on
13 the document when you reviewed it was that the
14 ink was black; correct?

15 MR. ARGENTIERI: Objection, asked and
16 answered, objection to form.

17 A. The ink was what I would characterize
18 as black ballpoint pen ink; that it was an
19 intense completely dark black would actually be
20 uncharacteristic of a ballpoint pen black writing
21 instrument.

22 It was, from my view when I examined
23 it, and I think to some degree accurately
24 represented in the images that I took, a standard
25 form of black ballpoint oil-based ink that is not

1 J.P. Osborn

2 quite stark black but certainly would be
3 described by someone as black ballpoint pen ink.

4 Q. Right, what you would expect for black
5 ballpoint pen ink?

6 A. Correct.

7 Q. Now, on January 5, 2011, that's when
8 you examined both the Work For Hire document, the
9 specifications document and the other photocopies
10 of various signatures; right?

11 A. Yes.

12 Q. Now, as far as you were aware at the
13 time that you examined the document, were you
14 aware that Ceglia had -- of whether Ceglia had
15 engaged any other experts other than yourself?

16 A. No.

17 Q. And you had mentioned earlier that you
18 recommended some document examiners to plaintiff.

19 Was the only one you recommended
20 Dr. Aginsky or did you make other recommendations?

21 A. I believe that the only person I
22 specifically recommended was Dr. Aginsky and for
23 the limited purposes of chemical examination.

24 Q. And who provided you with the Work For
25 Hire document on January 5, 2011?

1 J.P. Osborn

2 A. It was brought to my office by both
3 Mr. Ceglia and Mr. Argentieri. I don't know who
4 physically handed me the document, but they
5 brought it to me.

6 Q. And before you received the document
7 had you seen images of it?

8 A. I don't believe so.

9 Q. So do you remember whether you had seen
10 the complaint that was filed in this case that
11 attached an image of the Work For Hire document?

12 A. No, I don't believe that I had read the
13 complaint before seeing it.

14 Q. And how did Mr. Argentieri or
15 Mr. Ceglia, how did they provide you with the
16 document? Was it in an envelope or a folder or
17 something like that, do you recall?

18 A. I don't recall.

19 Q. And do you recall whether the person
20 who handed you the document was wearing gloves?

21 A. It is possible, because it was January,
22 that when they came in they were wearing gloves
23 for the protection of cold, but if you're
24 referring to gloves for the protection of things
25 that are being touched, I don't believe anybody

1 J.P. Osborn

2 was using gloves.

3 Q. And during the course of your
4 examination of documents did Mr. Argentieri or
5 Mr. Ceglia suggest that you wear gloves?

6 A. I don't recall any of that kind of
7 suggestion, no.

8 Q. And did you wear gloves?

9 A. I don't believe I did, no.

10 Q. And after your examination do you
11 remember who you gave the Work For Hire document
12 back to, whether that was Mr. Argentieri or
13 Mr. Ceglia?

14 A. I don't recall; one of the two of them.

15 Q. Do you recall where they put it,
16 whether it was in an envelope or a folder or
17 anything like that?

18 A. No.

19 Q. No, you don't recall?

20 A. No, I do not recall.

21 Q. And do you recall whether at that time
22 whoever was handling the document was wearing
23 gloves?

24 A. Again, I assume you are referring to
25 protective gloves --

1 J.P. Osborn

2 Q. Yes.

3 A. -- and no, I don't recall that anybody
4 was using gloves.

5 Q. And the document was only at your
6 office for the course of the day, right, it
7 didn't stay overnight or anything like that?

8 A. That's correct. I believe they arrived
9 my office at about 8:00 a.m. and left at about
10 1:00 p.m.

11 Q. And during that time where were
12 Mr. Argentieri and Mr. Ceglia?

13 A. I believe that they were in, certainly
14 in my office, they may have been at times in the
15 laboratory with me. Specifically where each of
16 them were, to the best of my recollection, they
17 were nearby.

18 Q. Were they watching your examination or
19 were they doing something else: watching TV,
20 reading --

21 A. I think that they were watching what I
22 was doing, whether, you know, from the other room
23 or -- I don't think either one of them was
24 looking over my shoulder, but I think that they
25 were, you know, within a distance that would

1 J.P. Osborn

2 allow them to see what I was doing.

3 Q. Now, while Mr. Argentieri and Mr. Ceglia
4 were there did you note what kind of indications
5 a fraudulently created document would have?

6 MR. ARGENTIERI: Objection.

7 A. No. I may have described to them why I
8 was doing certain things, why I was running the
9 ESDA tests, why I was examining the documents
10 utilizing the CamCom C-IT250, but I don't believe
11 we had any discussion with regard to the
12 specifics of, you know, why certain evidence
13 might occur or why it might not.

14 Q. And was it at that time that you
15 suggested that the document could be tested, the
16 ink dated, and recommended Dr. Aginsky?

17 A. Yes, I believe that during the course
18 of those examinations that was something that I
19 mentioned.

20 Q. Did anything about testing the document
21 for fingerprints come up while you were examining
22 the document?

23 A. No.

24 The only thing that might have -- and I
25 don't specifically recall it, is that ESDA,

1 J.P. Osborn

2 electrostatic detection apparatus, was originally
3 developed by Foster + Freeman as a means to
4 capture fingerprints on paper, it didn't prove to
5 be successful, and from what I understand, quite
6 by accident, the purpose that it's being marketed
7 for now was discovered, and I may have during the
8 course of the examinations, as I sometimes will,
9 discuss that history of the ESDA with one or
10 both of -- I don't recall specifically, but it's
11 something that I often do when I'm conducting a
12 test in describing why I'm doing what I'm doing.

13 Q. But it is never your understanding that
14 this particular document would be tested for
15 fingerprints?

16 A. No.

17 Q. Now, at this time when you were
18 examining the document, did you learn anything
19 about how either the Work For Hire or the
20 specifications document had been stored?

21 MR. ARGENTIERI: Objection as to form.

22 A. I don't have any recollection with
23 regard to any specifics in that regard, no.

24 Q. And do you remember if you had asked
25 how they had been stored?

1 J.P. Osborn

2 A. No.

3 Q. Did you learn anything about how the
4 document had been located or found?

5 A. No.

6 Q. During the course of this examination
7 did you learn anything about how either the Work
8 For Hire document or the specifications document
9 had been signed, such as when it was signed, the
10 circumstances of its signing?

11 A. I don't recall having any kind of
12 conversation in that regard.

13 Q. And do you recall any information about
14 the signing of the document here today?

15 MR. ARGENTIERI: Objection as to form.

16 A. No.

17 Q. And did you get any other information
18 about the document or the circumstances
19 surrounding the document, the Work For Hire
20 document, when it was provided to you for
21 examination?

22 MR. ARGENTIERI: Objection as to form.

23 Q. You can answer.

24 A. Yes. One of the things that in
25 examining the document I noted was that it

1 J.P. Osborn

2 appeared that there was a varying marginal
3 formatting and made mention of it and it was
4 indicated to me that it was, if you will, a kind
5 of a slapped-together-boilerplate-type document,
6 and I recommended that in order to explain why
7 that malformatting was present, which would raise
8 suspicion for anyone looking at the document,
9 that other Work For Hire contracts should be
10 produced which would -- dated from that time
11 period which would show that same formatting, you
12 know, problem, and I believe that that was the
13 primary discussion with respect to, you know, the
14 preparation of the document and things that I
15 noticed about the document other than noting to
16 them what appears in the certification or what is
17 noted in the certification.

18 Q. So these marginal formatting issues,
19 the discrepancies between the first page and the
20 second page of the Work For Hire document, to you
21 that's something that would arouse suspicion of a
22 questioned document when you are examining it?

23 MR. ARGENTIERI: Objection as to form.

24 A. Yes.

25 Q. Now I'd like to talk for a moment about

1 J.P. Osborn

2 something that your great-grandfather addresses,
3 actually, in his book "Questioned Documents," and
4 it's another aspect of documents that can arouse
5 suspicion.

6 So are you aware that in June of this
7 year, subsequent to Mr. LaPorte's finding that
8 the ink was less than two years old, Mr. Ceglia
9 issued a declaration stating for the first time
10 that the Work For Hire document had been stored
11 in a hope chest on the north wall of an
12 unclimate-controlled spare room often subjected
13 to subzero temperatures in one of his Buffalo,
14 New York, homes?

15 MR. ARGENTIERI: Objection as to form.

16 A. No.

17 Q. No, you are not aware of that
18 declaration?

19 A. That's correct.

20 Q. Now, as you probably know, your
21 great-grandfather wrote about foundling wills;
22 right?

23 A. Yes.

24 Q. Are you familiar with this concept?

25 A. Generally, yes.

1 J.P. Osborn

2 Q. And this concept of foundling wills is
3 that they are inherently improbable documents
4 because they show up after a long delay after
5 apparently being forgotten in some old box
6 despite their apparently great value and have
7 unusual stories surrounding their discovery?

8 That's the concept you are familiar
9 with; right?

10 MR. ARGENTIERI: Objection as to form.

11 You can answer.

12 A. Yes.

13 Q. And in fact those documents are often
14 found accidentally and providentially under
15 peculiar conditions with minutely detailed
16 circumstances; right?

17 MR. ARGENTIERI: Objection.

18 You can answer.

19 A. Yes, that's something that my
20 grandfather did write about or great-grandfather
21 did write about.

22 MR. ARGENTIERI: Great-grandfather?

23 THE WITNESS: Yes.

24 Q. And your great-grandfather also
25 suggested that the stories associated with such

1 J.P. Osborn

2 documents are surprisingly alike in many ways and
3 alone are likely to arouse suspicion that a
4 document is not genuine; right?

5 MR. ARGENTIERI: Objection.

6 A. Yes.

7 Q. You can answer.

8 A. Yes.

9 Q. Now assume the hypothetical of the
10 storage conditions and the late discovery of this
11 document in this case, so it is a document that
12 was found seven years after it was purportedly
13 signed in a hope chest in a freezing unclimate-
14 controlled spare room on the north wall in a
15 folder with other documents dating back to that
16 time, that sounds like a foundling will story;
17 right?

18 MR. ARGENTIERI: Objection.

19 A. It sounds like the type of thing that
20 my great-grandfather was describing, yes.

21 Q. Now, before we talked more specifically
22 about the findings you made during your January
23 5th examination and that you put in your
24 declaration.

25 I'd like to talk a little bit more

1 J.P. Osborn

2 about your involvement in the case generally.

3 Do you recall after January 5th, when
4 you examined the documents, when the next time
5 you were contacted regarding the case was?

6 A. Not specifically, no.

7 Q. Do you remember whether it was a few
8 weeks after or whether it was several months that
9 elapsed before you were contacted again?

10 A. To the best of my recollection it was a
11 few months later and I believe that it was in
12 relation to the preparation of the certification.

13 Q. I see.

14 So there was no contact prior to the
15 suggestion that you prepare that declaration or
16 certification as you're calling it?

17 A. To the -- I don't specifically recall.

18 Q. So you don't recall whether you ever
19 served as a consultant or provided advice as an
20 expert outside of the examination and preparation
21 of the declaration?

22 A. I do recall at one point in time with
23 one of the law firms that Mr. Ceglia was either
24 considering or who was considering taking on his
25 case describing the examinations that I performed

1 J.P. Osborn

2 and my findings verbally, but specifically, no, I
3 don't recall.

4 Q. And do you remember when it was that
5 you were asked to provide your June 16th
6 declaration?

7 A. I guess shortly before, within a few
8 weeks, I believe.

9 Q. So it would have been early June, late
10 May?

11 A. In all likelihood, yes.

12 Specifically, I don't know the date,
13 but sometime around that time period because I
14 would have had to take the time to prepare it.

15 Q. And I think you said you don't, but
16 just to be clear, you don't remember exactly
17 which attorney contacted you?

18 A. No.

19 Q. And you don't remember what firm they
20 came from, whether it was DLA Piper or some other
21 firm?

22 A. As I stated before, DLA Piper sounds
23 very familiar to me, I suspect that that's where
24 the attorney was from, but I'm not absolutely
25 sure. I know that there was at least one other

1 J.P. Osborn

2 attorney that I spoke with directly other than
3 Mr. Boland and Mr. Argentieri.

4 Q. How did the drafting process work?

5 It sounds like you might have given an
6 oral report and did they record this and send you
7 a draft declaration or did you type up the
8 declaration in the first instance?

9 A. If you give me a moment just to review
10 the declaration itself --

11 Q. Okay.

12 A. I don't recall specifically whether or
13 not we went through a drafting process or not.
14 The language that appears in the certification
15 appears to be largely my kind of language, so
16 certainly if there was a drafting process, if I
17 was provided with some kind of draft, then I
18 would have inserted a lot of my language.

19 Certainly the caption itself was
20 something that would have had to have been sent
21 to me or specifically where I was told how the
22 caption should appear, but I don't recall the
23 specifics of the drafting process, only that,
24 again, a lot of this language is my language.

25 Q. And do you recall whether the attorneys

1 J.P. Osborn

2 you were working with asked you to add anything
3 specifically to your declaration?

4 MR. ARGENTIERI: Objection. That
5 presumes --

6 Do you understand the question?

7 A. I understand the question to be was I
8 added to -- was I asked to provide anything more
9 than what I had intended on producing, and no.

10 Q. Were you asked -- specifically in
11 paragraph 11 you talk about the ink chemistry.
12 Was that something you were asked to add in your
13 declaration or was that something you would have
14 put in there yourself?

15 MR. ARGENTIERI: Objection.

16 You can answer.

17 A. The issue of -- no, I believe it was
18 something that I put in.

19 Q. Did the plaintiff's attorneys ask you
20 to take anything out of your declaration that you
21 had put in?

22 A. No, I don't believe so, no.

23 Q. And just to be clear, do you recall
24 whether or not you ever worked with an attorney
25 named Sanford Dumain?

1 J.P. Osborn

2 He would have been with a law firm
3 Milberg LLP.

4 A. It's possible. The first name Sanberg
5 rings a bell, but to be quite honest, there were
6 a number of firms that were mentioned to me over
7 the course of time and I know that I did speak
8 with one attorney in particular, but I do not
9 recall which attorney it was other than, you
10 know, Mr. Boland and Mr. Argentieri, and the
11 discussion did involve, you know, either
12 Mr. Ceglia deciding to take this firm on or vice
13 versa with respect to the case, and I have always
14 thought, because of the recollection of the name,
15 that it was DLA Piper, but it might have been
16 another firm.

17 Q. Okay.

18 In this discussion it was your
19 understanding that the law firm you were speaking
20 with was considering whether to take the case on,
21 and that's why they were talking to you?

22 A. Yes.

23 Q. Did anyone else review your declaration
24 before it was final other than the attorneys you
25 were working with and yourself?

1 J.P. Osborn

2 A. Not that I'm aware of.

3 Q. Did Mr. Ceglia review it, to your
4 knowledge?

5 A. I'm trying to recall because it would
6 have been -- I don't believe so.

7 Q. And do you know whether Mr. Stewart
8 would have reviewed your declaration?

9 MR. ARGENTIERI: Larry Stewart?

10 MS. AYCOCK: Yes.

11 A. At any point in time?

12 I don't know for a fact that
13 Mr. Stewart ever looked at my declaration.

14 Q. And you mentioned you were contacted in
15 late May-early June, somewhere around there.

16 Do you recall when you started writing
17 the declaration and how long it took?

18 A. No, I don't.

19 Q. Now, as we discussed previously in July
20 of 2011 defendants' experts were permitted to
21 examine the physical Work For Hire document under
22 the Court's orders and they were permitted to
23 extract physical samples from the Work For Hire
24 document for the purposes of chemical analysis.

25 Are you familiar with a document called

1 J.P. Osborn

2 the hard-copy document inspection protocol in
3 this case?

4 MR. ARGENTIERI: Objection as to form.

5 A. No.

6 THE WITNESS: Sorry.

7 A. No.

8 Q. So do you recall whether around the end
9 of June -- it would have been June 30th, July
10 1 -- whether plaintiff's attorney Jeff Lake
11 contacted you?

12 A. The name Jeff Lake sounds very familiar
13 to me, yes.

14 Q. Do you recall whether he contacted you
15 for assistance in drafting a court order?

16 A. I don't recall.

17 Q. Did Mr. Lake ever contact you, if you
18 recall, to be present at defendants' experts'
19 examinations in this case?

20 A. Not that I recall.

21 MR. ARGENTIERI: Can I take a short
22 break to hit the bathroom, is that all
23 right? Have you got a natural break coming?

24 MS. AYCOCK: I've got a natural break
25 coming.

1 J.P. Osborn

2 Why don't we go just a few more
3 minutes.

4 MR. ARGENTIERI: Okay.

5 Q. Now, do you recall whether you were
6 ever contacted by any representative of
7 plaintiff -- whether it was Mr. Lake,
8 Mr. Argentieri or someone else -- in July of
9 2011?

10 A. No, I don't recall.

11 Q. And at any time were you asked for your
12 availability to conduct further examinations of
13 the Work For Hire and/or specifications document?

14 A. To the best of my recollection, no.

15 Q. And was there ever an indication that
16 you would be provided with more handwriting
17 samples to conduct a further analysis in that
18 regard?

19 MR. ARGENTIERI: Objection as to form.

20 A. In January of 2011, when the
21 examinations of the original took place, I made
22 recommendations with respect to examining the
23 signature to determine genuineness or
24 nongenuineness and had recommended that specimens
25 of Mark Zuckerberg be provided for purposes of --

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J.P. Osborn

for that purpose beyond what I had been provided at that session.

Q. But there was never any indication that you would actually be provided with such samples?

A. There was no communication that indicated that. I assumed that at some point I would be asked to do it, to make those examinations and would receive those materials, but as is often the case, collection or compelling the production of that material can take time and I didn't think it was that unusual that it wasn't provided to me immediately.

Q. But to be clear, you were never provided with handwriting samples?

A. That's correct, other than what was given to me at that meeting.

MS. AYCOCK: All right, we can break here.

MR. ARGENTIERI: Thank you.

THE VIDEOGRAPHER: Going off the record. The time is 12:06.

(Recess taken.)

THE VIDEOGRAPHER: We are back on the record. The time is 12:19.

1 J.P. Osborn

2 BY MS. AYCOCK:

3 Q. Mr. Osborn, if you can direct your
4 attention back to your June declaration, first of
5 all, as an initial matter, if you can turn to
6 page 2, paragraph 4, and there you indicate that
7 a copy of the agreement is attached hereto as
8 Exhibit B; is that right?

9 A. Yes.

10 Q. Do you recall whether you yourself
11 attached Exhibit B to your report or whether you
12 allowed attorneys to handle the assembly of
13 exhibits?

14 A. No. I believe that the exhibit that
15 was provided as an exhibit that I provided and I
16 believe it's a printout of my PDF of that
17 document.

18 Q. And was it you that added the Exhibit B
19 two pages to the top of that document?

20 A. Yes.

21 Q. Now, as we discussed earlier, your
22 examination consisted of nondestructive
23 techniques and this included your indentation
24 analysis; right?

25 A. Yes.

1 J.P. Osborn

2 Q. Okay. Let's talk about this
3 indentation analysis.

4 You state in paragraph 6 on page 3,
5 there you say "I was aware that should the second
6 page of the agreement bear indentations caused by
7 the interlineations and handwritten initials on
8 the first page of the agreement, then the second
9 page of the agreement was necessarily underneath
10 the first page of the agreement when the
11 interlineations and initials were written."

12 Did I read that correctly?

13 A. Yes, you did.

14 Q. Now, isn't it true that a forger,
15 knowing that indentations are something that
16 questioned document examiners inspect, could
17 forge indentations?

18 A. Forgive me for this, but, first of all,
19 forgery is a legal determination, I don't make
20 determinations of forgery.

21 If the question is is it possible for
22 someone to be aware of indentations, their
23 importance in connection with a document and to
24 create a document bearing indentations where
25 indentations didn't actually occur when the

1 J.P. Osborn

2 document was executed, the answer to your
3 question is yes.

4 Q. So, for example, someone could use a
5 copy of the first page, place it over the second
6 page and trace the handwriting, which would leave
7 indentations on the second page; right?

8 MR. ARGENTIERI: Objection as to form.
9 You can answer.

10 A. That would be possible to do, yes.

11 Q. And it would also be possible to use an
12 empty ballpoint pen to trace the handwriting on
13 the first page thereby leaving indentations on
14 the second page; right?

15 MR. ARGENTIERI: Objection as to form.

16 Q. You can answer.

17 A. That would be possible to do.

18 Q. So it doesn't necessarily mean that the
19 second page was underneath the first page when
20 the interlineation was written, right, it could
21 be -- it's suggestive of that?

22 MR. ARGENTIERI: Objection to form.

23 A. We suspected -- in this particular
24 case, my answer to your question would be no,
25 only because I would anticipate that if someone

1 J.P. Osborn

2 had attempted to trace or if someone had
3 attempted to create the indentations by using,
4 for instance, an empty ballpoint pen and just
5 going over, that there would be variations in
6 terms of -- resulting indentations that would be
7 noticeable when one overlaid the ESDA test result
8 on top of the interlineation, and I did not
9 notice any significant enough variation that I
10 would opine that that had occurred.

11 I believe that the indentations that
12 occur on the first page were the things that
13 caused the indentations on the second page, that
14 they were not the result of the kind of action
15 that you described.

16 Q. In the next two paragraphs, paragraphs
17 7 and 8, you describe your oblique lighting
18 analysis and your ESDA analysis respectively;
19 right?

20 A. Yes.

21 Q. And for each one of these you conclude
22 that the second page of the Work For Hire had
23 indentations that were caused by the
24 interlineations and handwritten initials on the
25 first page; right?

1 J.P. Osborn

2 A. Yes.

3 Q. And this leads you to conclude in
4 paragraph 10 that the second page of the
5 agreement was underneath the first page of the
6 agreement when the interlineations and
7 handwritten initials were made on the first page
8 of the agreement; right?

9 A. Correct.

10 Q. Okay.

11 But these conclusions are entirely
12 consistent with page 1 being a recently created
13 forgery or just a recently created document with
14 the interlineation being written while page 1 was
15 on top of page 2?

16 MR. ARGENTIERI: Objection as to form.

17 You can answer.

18 A. Regardless of how or when the
19 interlineation on page 1 came to cause
20 indentations on page 2, I believe it was those
21 interlineations which caused those indentations.

22 I have not made any opinion with regard
23 to the genuineness or nongenuineness of the
24 interlineations or the initials themselves, only
25 that those particular, in my opinion, writings

1 J.P. Osborn

2 were what caused indentations on page 2.

3 Q. Right.

4 So page 1 could have been created many
5 years after page 2, hypothetically speaking, and
6 then the interlineation could have been written
7 on page 1 creating the indentations on page 2?

8 MR. ARGENTIERI: Objection.

9 You can answer.

10 Q. You may answer.

11 A. That is possible.

12 Q. And it's also -- your findings are also
13 entirely consistent with both pages 1 and 2
14 having recently been fraudulently created; isn't
15 that true?

16 MR. ARGENTIERI: Objection as to form.

17 Q. You can answer.

18 A. You're going to have to describe to me
19 or define for me what you mean by entirely
20 consistent with.

21 It's not an opinion that I have
22 reached, it is an opinion that could only be
23 reached as a product of looking at other
24 evidence.

25 Is it possible that that could have

1 J.P. Osborn

2 occurred?

3 Yes, it is possible, but the evidence
4 that I have seen up to this point is not
5 sufficient to allow me to reach that conclusion,
6 so it's something that's possible.

7 Q. Right.

8 So hypothetically speaking, these
9 documents, this two-page document could have been
10 created in 2009 and your findings with respect to
11 the indentations would be completely consistent
12 with that?

13 MR. ARGENTIERI: Objection as to form.
14 You can answer.

15 A. Yes, yes.

16 Q. And so these -- just to be clear, these
17 conclusions about the indentations do not say
18 anything about when the document as a whole or
19 when page 1 was created?

20 MR. ARGENTIERI: Objection as to form.

21 Q. Isn't that right?

22 A. That's correct.

23 Q. And they don't say anything about the
24 authenticity of the document or its signatures;
25 is that correct?

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J.P. Osborn

MR. ARGENTIERI: Objection as to form.

A. Also correct.

Q. Now, Mr. Osborn, I just want to understand a little more about what is and what is not included in your declaration.

You do not conclude in your declaration that the Work For Hire document is a genuine or authentic document, do you?

A. No.

Q. And you wouldn't say that your findings conclusively establish the authenticity of the Work For Hire document, would you?

MR. ARGENTIERI: Objection as to form.

A. No.

Q. And you do not conclude that the document was actually signed on April 28, 2003, do you?

A. No.

Q. And other than the date written on the signature lines you did not find any forensic evidence indicating that it was actually signed or was not actually signed on April 29, 2003, did you?

MR. ARGENTIERI: Objection as to form.

1 J.P. Osborn

2 A. No.

3 Q. No, you didn't find any forensic
4 evidence?

5 A. That is correct.

6 Q. And you did not conduct any dating
7 tests on the document, right, as you mentioned
8 before?

9 A. That is correct.

10 Q. So you have no conclusion or opinion as
11 to the actual date that the document was created,
12 do you?

13 A. That is correct.

14 Q. And you do not conclude that the
15 document was actually signed by Mark Zuckerberg
16 or Paul Ceglia; right?

17 A. That is correct.

18 Q. And you don't identify Paul Ceglia as
19 the author of his purported signature and date on
20 page 2, do you?

21 A. No.

22 Q. And you do not identify Mark Zuckerberg
23 as the author of his purported signature and date
24 on page 2, do you?

25 A. No, I do not.

1 J.P. Osborn

2 Q. You mentioned that you were never
3 provided with further handwriting exemplars for
4 the signatures on page 2.

5 Did you conduct any sort of examination
6 with regard to the handwriting on the Work For
7 Hire document?

8 A. I conducted very limited comparison of
9 the signatures that I did have with the
10 questioned signature coming to only the
11 conclusion that in order to make any kind of
12 reasonably accurate assessment I'd have to have
13 more.

14 Q. So were there any other findings or
15 conclusions that you had about the document that
16 were not included in your declaration?

17 A. The only other thing was more or less
18 of an inconclusive in that in examining the
19 writing ink utilizing the VSC I noted that the
20 two inks reacted the same under different
21 ultraviolet lighting and infrared filtering to
22 the extent that I could not differentiate the
23 writings in the interlineation on page 1 and the
24 writings of the signature, but that conclusion or
25 that finding, if you will, is inconclusive

1 J.P. Osborn

2 because I can't make determinations of sameness
3 of ink utilizing those methods, I can only
4 differentiate between two inks that to the naked
5 eye looked alike, and because I couldn't make
6 that differentiation I really couldn't say
7 anything at all.

8 Q. Right.

9 And just to be clear, when you say the
10 two inks, you are referring to the ink on page 1
11 versus the ink on page 2?

12 A. Yes.

13 Q. And when you say you couldn't
14 differentiate those inks, that just means you
15 couldn't differentiate them at that level of
16 analysis; correct?

17 A. That is correct.

18 Q. So something like chemical tests might
19 be able to differentiate those inks?

20 A. Correct.

21 Q. All right. I'm almost done.

22 Why don't we just take one more quick
23 break and I will get your ESDA lifts back to you
24 and we will come back and finish up.

25 A. Okay. Great.

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J.P. Osborn

THE VIDEOGRAPHER: Going off the record. The time is 12:31.

(Recess taken.)

THE VIDEOGRAPHER: We are back on the record. The time is 12:44.

BY MS. AYCOCK:

Q. Mr. Osborn, we're almost finished. I just have a few more questions for you.

You mentioned that you spoke with Mr. Ceglia on the day of July 5, 2011, when you examined the documents; right?

A. Yes.

Q. Was there any other occasion on which you spoke to Mr. Ceglia?

A. It's -- we might have spoken over the phone prior to that date. I don't recall, as a part of the inquiry process, I don't have any specific recollection of that, but I wouldn't view it as unusual, given the fact that, you know, it was his case, but I don't recall specifically.

Q. And do you recall whether or not you spoke with him after that January 5th examination?

A. No, I don't.

1 J.P. Osborn

2 Q. Other than what you have already
3 testified to here today, are there any particular
4 opinions that you are planning to offer based
5 upon your review of any expert reports from
6 defendants or plaintiffs?

7 A. No. I haven't been provided with any
8 reports and from what I understand I'm not going
9 to be, so, no.

10 Q. Are there any particular opinions you
11 are planning to offer that are not described in
12 your June 2011 declaration?

13 A. No.

14 Q. And are there any answers you provided
15 earlier in your deposition that you have since
16 recalled are incorrect or have you recalled
17 anything further that could supplement any of
18 your previous answers?

19 A. The only thing that I noted when we
20 were talking about the use of protective gloves,
21 I don't specifically remember, it is possible
22 that I used gloves in the examination. I don't
23 believe I did, I think it would have been
24 something that I would have remembered because
25 it's unusual, so I'm not absolutely sure that I

1 J.P. Osborn

2 didn't use gloves, but -- and I had been a little
3 bit more firm, perhaps, than I should have been
4 giving that answer.

5 Again, I think I would have recalled it
6 if I had and that was the reason for my response,
7 but I don't specifically recall.

8 Q. And you would have recalled it if you
9 had because wearing gloves is unusual in the
10 course of an ordinary forensic document
11 examination?

12 MR. ARGENTIERI: Objection as to form.

13 A. Yes, it's unusual, at least in my
14 experience.

15 Q. Now, Mr. Osborn, we provided you with a
16 check in advance of this deposition.

17 Just for the record, you received that
18 check; right?

19 A. Yes, I did.

20 Q. That covered your deposition time for
21 today and any travel time; correct?

22 A. That is correct.

23 Q. And if there are any outstanding fees
24 or expenses you'll direct those to our attention?

25 A. I will, but there are none.

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J.P. Osborn

MS. AYCOCK: Great.

I have nothing further at this time.

MR. ARGENTIERI: No questions.

THE VIDEOGRAPHER: Going off the
record. The time is 12:47.

(Time noted: 12:47 p.m.)

JOHN PAUL OSBORN

Subscribed and sworn to before me
this _____ day of _____, 2012.

Notary Public

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C E R T I F I C A T E

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, CARY N. BIGELOW, Court Reporter,
a Notary Public within and for the State of
New York, do hereby certify:

That JOHN PAUL OSBORN, the witness
whose testimony is hereinbefore set forth,
was duly sworn by me and that such
testimony given by the witness was taken
down stenographically by me and then
transcribed.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 15th day of August, 2012.

CARY N. BIGELOW

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----- I N D E X -----

WITNESS	EXAMINATION BY	PAGE
JOHN PAUL OSBORN	MS. AYCOCK	4

----- EXHIBITS -----

Defendants' Exhibit 48, declaration of John Paul Osborn in support of plaintiff's opposition to defendants' motion for expedited discovery and in support of plaintiff's cross-motion for mutual expedited discovery	41
Defendants' Exhibit 49, document entitled "Qualifications of John Paul Osborn"	43
Defendants' Exhibit 50, CD labeled "10-cv-00569-RJA-LGF Facebook/Ceglia Osborn Materials"	48
Defendants' Exhibit 51, document entitled "Answers to Interrogatory Responses" dated December 6, 2011	49

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DATE OF DEPOSITION: AUGUST 13, 2012

6

NAME OF DEPONENT: JOHN PAUL OSBORN

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JOHN PAUL OSBORN

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23

THIS _____ DAY OF _____, 20__.

24

25

(NOTARY PUBLIC)

MY COMMISSION EXPIRES:

&	17th 41:9,22	29 108:23	84 35:13
& 1:19 2:16 3:15 19:21	188 2:13	3	8:00 84:9
0	19 42:2	3 49:23 50:4 51:24 58:4 78:4 102:4	9
0001 53:4	1900s 44:22	300 52:16	999999997-05-02... 55:16
0001.pdf 52:25	1982 44:2,7	30th 98:9	a
00569 1:4 3:21 48:8 117:17	1984 44:7	34 58:14	a.m. 1:15 3:13 84:9
0731 52:25	1:00 84:10	35 58:14	aaafs 33:20 34:2
0732 53:4	1:10 1:4 3:21	350 18:8	aaron 21:2
1	2 36:2 49:10,23 61:11 78:2 101:6 105:15,20 106:2,5,7 106:13 109:20,24 110:4 111:11	4	able 5:20 14:24 27:5 33:11 40:13 51:10 53:24 111:19
1 35:25 40:23 50:4 61:7 98:10 105:12 105:14,19 106:4,7 106:13 107:19 110:23 111:10	2,800 18:8	4 78:3 101:6 117:4	absolutely 93:24 113:25
10 48:8 105:4 117:17	20 118:23	40 58:23	academy 33:14
10001 118:3	200 1:19 2:18 3:15 50:16	41 58:23 117:7	accident 86:6
10166-0193 2:19	2003 35:21 108:17 108:23	43 117:13	accidentally 90:14
10:03 1:15 3:13	2009 107:10	44107 2:8	accomplishing 59:22
10:32 31:18	2010 10:19 11:15 12:16 13:21 15:7	48 41:10,11 43:17 117:7,16	accounts 40:21 72:14,16,17
10:34 31:22	35:13	49 43:20,21 117:13 117:19	accurate 46:12,20 47:4,11 51:19 56:24 57:24 59:17 60:19 78:10,16 80:5 110:12
11 51:8,13 95:11	2011 7:11 8:5,11,16 8:25 9:5 20:14,19 21:5 22:13,22 24:2 26:8 36:25 37:5 38:9,13,15 39:25 41:9 42:22 47:18,22 49:14 54:9,13 55:6 56:5 61:15,19 62:24 70:17 73:15 74:19 77:4 81:7,25 97:20 99:9,20 112:11 113:12 117:21	5	accurately 5:21 12:2 61:14 80:23
11:09 61:6	2012 1:14 3:12 24:13 115:13 116:22 118:5	5 41:25 53:5 81:7,25 112:11	accusation 76:4
11:20 61:10	212-279-9424 118:4	50 48:6,7,23 117:16	accused 75:19
11th 26:5,7	24 44:10	51 49:11,12 117:19	action 3:21 104:14 116:18
1250 118:3	257 58:18	58 58:18	actively 10:11
12:06 100:22	28 35:21 108:17	5th 16:11 26:8 47:22 54:9,13 55:5 56:4 61:19 62:24 91:23 92:3 112:24	activities 42:21
12:19 100:25		6	actual 109:11
12:31 112:3		6 49:14 78:5 102:4 117:21	add 95:2,12
12:44 112:6		600 50:15 52:17 57:10	added 95:8 101:18
12:47 115:6,7		6490cw 49:4	additional 8:14,15 13:2 17:15 18:2,5 18:22 43:12
13 1:14 3:12 118:5		7	addresses 89:2
14 38:9 73:15 74:19 77:4		7 104:17	advance 17:23 18:18,20 114:16
1475 2:6		770724 2:7	
14843 2:14		8	
14th 74:5		8 104:17	
15th 116:22		8-1/2 51:13,13	
16th 93:5			
17 51:8			

advantages 80:3 advice 92:19 advised 14:4,20 18:21 affords 59:8 age 38:20 71:6,11,15 75:4 aging 14:16 73:3,8,9 aginsky 15:5 26:19 26:21,25 27:15 81:20,22 85:16 ago 28:22 29:3,15 30:10,21 31:10 agree 3:11 agreement 9:14 13:11 15:16,18,19 16:19,21 17:13 101:7 102:6,8,9,10 105:5,6,8 ahead 76:7 albert 32:2,6 44:16 alcock 22:2 alexander 2:20 4:12 alike 91:2 111:5 allow 60:12 85:2 107:5 allowed 101:12 allowing 37:13 allows 51:9 59:6 68:20 alteration 79:12,25 amanda 2:21 4:10 ambient 58:22 59:3 59:5 60:3 american 31:5 33:14,23,24 amount 17:22 18:20 32:25 analysis 8:7 9:6,23 14:25 38:19 39:10 39:21 40:8,22 97:24 99:17 101:24 102:3 104:18,18 111:16 answer 5:2,8,14,20 6:21 10:13 11:25	12:22 16:17 40:15 41:3 50:12 52:8 63:10 65:9 66:3 69:18 70:12,13 73:19 74:12 75:7,8 75:25 78:19 87:23 90:11,18 91:7 95:16 103:2,9,16,24 105:17 106:9,10,17 107:14 114:4 answered 80:16 answers 49:13 75:14 113:14,18 117:20 anticipate 65:13 72:6 103:25 anticipated 60:10 anticipating 17:13 anybody 82:25 84:3 apparatus 14:4 86:2 apparent 40:12 57:16 apparently 90:5,6 appear 48:2 53:18 53:19,20 56:3 94:22 appearance 46:3 61:16 64:20 70:24 appeared 9:13 13:3 35:8 63:23 66:6 88:2 appears 35:22 58:21 62:10 69:17 88:16 94:14,15 apply 60:7 appointment 11:21 approached 7:7 appropriate 37:9 approximately 3:13 april 35:21 108:17 108:23 area 66:5 areas 66:12,13 argentieri 2:12 4:6,6 10:12,22 12:7,21 15:24 16:16,22 18:17 19:8,19 22:25	23:5 30:17 40:14 41:2 48:11,15 50:11 52:7 63:9 65:8,23 66:2 70:9 72:4,25 73:18 74:2,11 75:6 75:11,24 76:6,15 78:18 79:8 80:15 82:3,14 83:4,12 84:12 85:3,6 86:21 87:15,22 88:23 89:15 90:10,17,22 91:5,18 94:3 95:4 95:15 96:10 97:9 98:4,21 99:4,8,19 100:20 103:8,15,22 105:16 106:8,16 107:13,20 108:2,14 108:25 114:12 115:4 arouse 88:21 89:4 91:3 arrangements 11:20 15:21 16:10 arrived 84:8 article 31:2 35:9 artificial 73:8,9 artificially 71:6,15 73:3 75:4 asked 11:13 25:19 59:13 60:13 80:15 86:24 93:5 95:2,8 95:10,12 99:11 100:8 asking 32:14 62:3 aspect 69:11 89:4 aspects 61:17 asqde 44:12 assembly 101:12 assert 6:12 assertion 70:21 71:2 73:21 75:10 76:17 assertions 73:7 assess 78:11,16 assessment 110:12	assistance 98:15 associated 19:24 90:25 assume 16:9 27:2 38:4 83:24 91:9 assumed 100:7 assuming 18:13 assumption 18:15 attached 82:11 101:7,11 attempt 14:25 23:7 38:20 59:20 71:5 75:2 attempted 104:2,3 attempting 56:23 attempts 75:5 attention 64:3 101:4 114:24 attorney 21:19 22:6 23:22 25:12,13 93:17,24 94:2 95:24 96:8,9 98:10 attorneys 2:5,17 3:24 16:7 19:11,24 20:10,17 21:2 23:23 25:5 75:16 94:25 95:19 96:24 101:12 audio 3:10 august 1:14 3:12 39:24 116:22 118:5 authentic 108:9 authenticity 107:24 108:12 author 109:19,23 authors 30:24 availability 99:12 avenue 1:19 2:18 3:16 average 72:11 aware 10:9 12:5 19:5,10,19 22:12 23:25 24:16 26:15 26:19 27:4,8,15,18 27:22,24 28:5,8 32:20 33:17 34:10
---	---	--	--

<p>35:16,17,20 36:7,14 37:15,16,21 38:2,7 39:7,17,22,24 40:4 40:6,11,17,20,21 70:14 71:2 72:15 73:6,12 74:3,17,21 74:22,24 75:15 76:3 76:8,9,17 81:12,14 89:6,17 97:2 102:5 102:22 aycock 2:21 4:10,10 4:19 31:15,23 43:19 48:13 61:12 97:10 98:24 100:18 101:2 112:7 115:2 117:4</p>	<p>bearing 54:12 102:24 bed 51:8 believe 10:22 11:19 12:23,25 13:23,24 21:15 23:12 27:3,9 27:20 28:19 29:8 30:4 31:2,2 34:4 36:17,21 42:19 47:24 48:2 50:14,15 54:8 55:3,5,14 62:14,18 64:12 68:14,22 70:21 81:21 82:8,12,25 83:9 84:8,13 85:10 85:17 88:12 92:11 93:8 95:17,22 97:6 101:14,16 104:11 105:20 113:23 believed 76:10 bell 21:8,10,18 22:8 22:16 24:6 96:5 belong 28:24 33:7,9 33:10,13,14 benson 20:16,18 best 10:18,24 25:3,4 29:11,21 46:10 47:8 56:3 61:25 62:8 63:15 84:16 92:10 99:14 better 5:10 36:24 48:21 57:15,19 59:9 beyond 17:25 18:20 100:2 bigelow 1:21 4:3 116:7,25 bit 48:20 66:15 91:25 114:3 black 63:2,3,14 80:14,18,19,20,25 81:2,3,4 blanco 27:20 29:24 32:14 33:3 34:8 blanco's 33:17</p>	<p>blood 116:18 board 33:21,23 boilerplate 88:5 boland 2:4,9 4:8,9 23:5 24:22 31:16 94:3 96:10 bond 65:13 book 45:2 89:3 box 90:5 brand 63:25 67:17 break 5:13,16 45:5 61:2 67:25 98:22,23 98:24 100:18 111:23 breaks 6:11 brendan 26:13 briefly 41:6,19 bright 71:12,14 72:9 brightness 65:15 bringing 36:11 broader 34:2 broadway 118:3 brother 26:13 49:4 49:24 50:10 51:6,7 51:16,19 57:4,11 brought 11:11,22 14:18,20 15:11 26:6 82:2,5 brown 73:17 brownish 63:8 74:9 brownlie 22:4 buffalo 89:13 button 31:10,13,24</p>	<p>calling 92:16 calls 11:24 12:3 15:6 camcom 67:2 69:15 85:10 camera 49:8 58:6 59:4,6 canon 49:6 51:12,16 51:25 52:23 56:19 57:3,7,8,20,24 caption 3:17 94:19 94:22 capture 47:11 48:12 51:10 59:6,20,25 77:7 86:4 captured 49:2 50:7 51:24 77:3 carmine 26:10 carrie 21:24 cary 1:20 4:3 116:7 116:25 cary's 6:17,21 case 3:17,19 5:23 7:4 10:8,17 11:6 17:8 19:7,17 24:2 24:15,19,21 26:16 28:6 29:8,9,10 30:6 34:21,25 35:2,3,7 35:18 36:15,24 37:3 47:16 68:4 72:24 73:5 80:10,12 82:10 91:11 92:2,5,25 96:13,20 98:3,19 100:10 103:24 112:21 118:5 cases 28:17 29:20,23 30:4 53:16 caught 64:3 cause 71:14 72:2 76:16 105:19 caused 70:23 75:21 76:12 102:6 104:13 104:23 105:21 106:2 cd 47:25 48:5,7,17 48:22 117:16</p>
b			
<p>b 4:14 49:23 51:24 101:8,11,18 bachelor's 44:2 back 16:6 31:21 38:15 44:22 45:4 60:16 61:9 64:9 71:3 83:12 91:15 100:24 101:4 111:23,24 112:5 background 41:6 backup 53:9,11,13 53:23 55:24 balabanian 24:11 balance 19:3 ballpoint 63:3 80:18 80:20,25 81:3,5 103:12 104:4 based 31:5 35:14 36:12 40:21 48:25 62:10 63:16 70:7 79:18,23 80:25 113:4 basically 23:11 25:11 42:20 59:22 67:14 bathroom 98:22 bear 102:6</p>			
		c	
		<p>c 2:2 67:2 85:10 116:2,2 c10221 49:6 c5050z 49:8 calihan 25:2 call 10:23,24 11:3 11:15,23 36:3 called 4:14 13:10 19:20 20:15 24:3 30:13 97:25</p>	

<p>ceglia 1:5 3:17 4:7,9 7:9 19:19 26:2 35:12,17 48:8 75:3 81:14,14 82:3,15 83:5,13 84:12 85:3 89:8 92:23 96:12 97:3 109:16,18 112:11,15 117:17 118:5</p> <p>ceglia's 24:14 26:10 36:8 37:13,24</p> <p>cell 3:8</p> <p>central 35:17</p> <p>certain 85:8,12</p> <p>certainly 29:16 35:7 35:10 63:22,23,24 64:20 72:20 81:2 84:13 94:16,19</p> <p>certification 23:14 23:15 33:21 37:10 44:12 88:16,17 92:12,16 94:14</p> <p>certify 116:9,16</p> <p>change 50:21 52:18 70:3,7,23 118:7</p> <p>changed 8:3 21:5</p> <p>characteristics 45:20 46:13 77:8</p> <p>characterize 80:17</p> <p>charging 18:2</p> <p>check 55:7 56:13 114:16,18</p> <p>checked 32:21</p> <p>chemical 7:23 39:10 39:21 40:8 81:23 97:24 111:18</p> <p>chemically 27:5</p> <p>chemist 14:23 38:18 39:4,13 40:7</p> <p>chemistry 95:11</p> <p>chest 89:11 91:13</p> <p>circumstances 13:17 87:10,18 90:16</p>	<p>civil 3:21</p> <p>claiming 35:13</p> <p>clarification 6:2</p> <p>clear 6:22 80:12 93:16 95:23 100:14 107:16 111:9</p> <p>clearly 26:18</p> <p>client 10:5</p> <p>close 45:24 59:8</p> <p>coined 31:3</p> <p>cold 82:23</p> <p>colleagues 68:17</p> <p>collected 8:19</p> <p>collection 100:10</p> <p>collectively 42:7</p> <p>color 50:22 57:20,21 77:22</p> <p>coloration 52:19</p> <p>come 10:7 14:16 45:4 72:23 73:4 85:21 111:24</p> <p>comfortable 79:6,11</p> <p>coming 98:23,25 110:10</p> <p>comment 33:11</p> <p>commission 118:25</p> <p>communicate 21:13</p> <p>communication 100:6</p> <p>community 31:4</p> <p>company 118:2</p> <p>comparison 110:8</p> <p>compelling 100:11</p> <p>compensation 17:20</p> <p>complaint 82:10,13</p> <p>complete 5:2</p> <p>completely 80:19 107:11</p> <p>components 40:12 40:18</p> <p>comprehensive 44:24</p> <p>compressed 57:12 57:16</p>	<p>computer 53:9</p> <p>concept 89:24 90:2 90:8</p> <p>concert 75:3</p> <p>concerted 35:6</p> <p>conclude 104:21 105:3 108:7,16 109:14</p> <p>conclusion 78:25 79:3 107:5 109:10 110:11,24</p> <p>conclusions 9:18 105:11 107:17 110:15</p> <p>conclusively 108:12</p> <p>condition 47:4 70:15 74:7,25 75:18 77:9 78:11,16,22</p> <p>conditions 90:15 91:10</p> <p>conduct 12:8 13:22 16:25 38:19 39:19 62:22 99:12,17 109:6 110:5</p> <p>conducted 7:13 14:5 40:8,17 64:12 66:21 67:19 68:14 70:8 110:8</p> <p>conducting 17:14 34:15 39:20 69:10 86:11</p> <p>confirmed 61:14</p> <p>connection 102:23</p> <p>connors 19:21,25</p> <p>conservative 31:4 32:4</p> <p>consider 10:10 14:22 15:12 33:3 77:13 78:10</p> <p>considered 8:2 28:2 57:14</p> <p>considering 92:24 92:24 96:20</p> <p>consisted 101:22</p>	<p>consistent 105:12 106:13,20 107:11</p> <p>construction 32:13 32:22</p> <p>consultant 92:19</p> <p>contact 23:4 92:14 98:17</p> <p>contacted 10:16,20 16:5 27:16 38:12 92:5,9 93:17 97:14 98:11,14 99:6</p> <p>contained 9:16</p> <p>content 32:23,25</p> <p>context 28:20</p> <p>continue 3:10</p> <p>continued 44:13</p> <p>continues 45:3</p> <p>contract 13:10 35:15,16,21 36:8</p> <p>contracts 88:9</p> <p>contrast 50:22 52:18</p> <p>control 79:24</p> <p>controlled 89:12 91:14</p> <p>conventionally 18:17</p> <p>conversation 6:10 11:8 12:24 25:10,11 87:12</p> <p>conversations 3:7 14:18</p> <p>coordinated 19:15</p> <p>coordinating 34:14</p> <p>coordination 21:17</p> <p>copies 9:20 43:9</p> <p>copy 41:8 42:19,24 43:4,7 48:5 54:5,10 55:9,13,19 78:9 98:2 101:7 103:5</p> <p>correct 7:14,19 8:13 8:23 9:3,7,25 10:2 19:4 21:15 32:3 39:13,14 44:3,6,8 45:25 46:4 47:14,20</p>
---	---	--	--

<p>47:23 49:9 50:2 52:3 53:2,3,6 58:7 58:11,19,20,20 61:22 63:6 64:7 67:18,20 77:11 78:13 80:14 81:6 84:8 89:19 100:16 105:9 107:22,25 108:3 109:5,9,13,17 111:16,17,20 114:21,22 correctly 102:12 counsel 6:5,6,9 9:11 12:7 14:22 county 116:5 course 13:2 19:16 21:12 37:16 45:8 72:10 73:4 75:23 83:3 84:6 85:17 86:8 87:6 96:7 114:10 court 1:2,21 3:20 4:3 6:17 9:2 37:12 37:21 38:5 39:18 41:19 73:15 75:16 98:15 116:7 court's 97:22 courts 36:16 covered 114:20 covers 17:23 create 47:3 57:18 77:8 102:24 104:3 created 36:10 40:24 55:23,24,24 85:5 105:12,13 106:4,14 107:10,19 109:11 creates 53:11 57:8 creating 46:25 57:19 106:7 creation 46:23 credentials 41:7 cross 22:10 37:7 41:15 117:11 crutcher 1:19 2:16 3:15</p>	<p>curiosity 32:15 cut 51:12 cv 1:4 3:21 42:3,15 47:19 48:8 117:17</p> <hr/> <p style="text-align: center;">d</p> <hr/> <p>d 1:5 117:2 damage 40:12 63:19 75:21 76:10 damaged 76:5 daniel 2:25 3:3 dark 80:19 darker 80:7,8 date 3:12 35:20,22 40:24 41:17 43:24 48:10 49:15 75:5 93:12 108:20 109:11,19,23 112:17 118:5 dated 49:14 85:16 88:10 117:21 dates 36:2 dating 14:15 91:15 109:6 david 20:12 day 16:2 72:10 84:6 112:11 115:13 116:22 118:23 deal 44:25 dealing 9:19 dean 2:9 4:8 december 8:12 10:19,25 11:15 12:16 13:20 15:7 16:4 49:14 117:21 deciding 96:12 declaration 8:6,25 9:5,10 17:4 21:4,13 21:16 22:13 25:16 25:20 37:2,6,18 38:16,17,23 41:9,11 41:23 89:9,18 91:24 92:15,21 93:6 94:7 94:8,10 95:3,13,20 96:23 97:8,13,17</p>	<p>101:4 108:6,7 110:16 113:12 117:7 declarations 74:15 defendants 1:10 2:17 4:11,13 22:23 28:5 34:22 36:7,20 37:12,22,23 38:3,8 39:15 40:7 41:10,11 41:13 43:2,20,21 48:6,7,23 49:12,17 70:16 73:13,14 74:3 74:24 75:5,10,16,20 76:9 97:20 98:18 113:6 117:7,9,13,16 117:19 defense 70:22 define 65:11 106:19 definition 6:3 degradation 76:13 degree 12:4,5 44:2 59:8 72:8,8 80:23 delay 90:4 dennis 22:7 deponent 118:6 deposed 4:20,23 deposing 6:5 deposition 1:17 3:9 3:14 4:24 6:4,11,11 113:15 114:16,20 118:5 describe 23:11 31:8 104:17 106:18 described 81:3 85:7 104:15 113:11 describing 8:6 74:7 86:12 91:20 92:25 description 43:13 43:15 designated 53:15 desire 57:18 despite 40:11 90:6 destructive 8:2 detailed 42:11 90:15</p>	<p>detection 14:4 86:2 determination 9:19 9:24 13:4 102:19 determinations 102:20 111:2 determine 6:12 9:12 38:20 99:23 determined 13:25 40:22 developed 86:3 device 57:8,9,20 67:3,8,11,12 68:18 68:19 69:15,25 devices 55:23 56:24 difference 71:22 77:22 different 17:9 20:15 34:3 43:15 49:3 53:18,20 67:17 110:20 differentiate 110:22 111:4,14,15,19 differentiation 64:17 111:6 differently 64:10 digital 49:8 59:7 direct 101:3 114:24 directly 28:19 94:2 disc 48:3 disciplines 34:4 discoloration 76:11 78:24 79:20 discolored 73:23 74:9,25 75:18 disconnection 31:14 discovered 86:7 discovery 37:7 39:16 41:14,16 90:7 91:10 117:10,12 discrepancies 88:19 discuss 22:22 24:19 86:9 discussed 73:9 97:19 101:21</p>
--	---	--	---

<p>discussion 14:19 31:19 85:11 88:13 96:11,18 dismiss 36:15,19 distance 84:25 district 1:2,3 3:20 3:20 dla 21:6,11,14,18 22:13 23:18 25:14 93:20,22 96:15 document 7:13,21 8:3,4 11:11 12:6,20 12:24 13:9,14,18 14:19 15:11 17:8,14 26:5,16 28:10 30:23 31:4,6,8 32:5 33:4,8 33:22,23,24 34:11 35:23,24 36:4,9 37:14,19,25 38:2,21 38:25 39:20 40:3,9 43:21 44:17,25 45:8 45:11,14,21,24 46:2 46:10 47:4,12 49:12 51:3,10,11,21 54:10 54:17,18,22 55:2,8 55:13 56:7,8,9,10 56:13 57:17 60:15 60:23 61:17,20,24 62:12,16,17,19,25 63:5,8,13,14,20 64:6,9,10,14 65:3 66:8,19 67:9 68:24 69:12 70:4,8,16,23 71:5,6,11,15,19,20 72:3,8 73:8,14,16 73:23 74:8,18 75:2 75:17,23 76:4,5,11 76:13,20,25 77:3,8 77:9,14,16 78:12,15 78:17,23 79:12 80:10,11,13 81:8,9 81:13,18,25 82:4,6 82:11,16,20 83:11 83:22 84:5 85:5,15 85:20,22 86:14,18</p>	<p>86:20 87:4,8,8,14 87:18,19,20,25 88:5 88:8,14,15,20,22 89:10 91:4,11,11 97:21,24,25 98:2 99:13 101:17,19 102:16,23,24 103:2 105:13 107:9,18,24 108:8,9,13,17 109:7 109:11,15 110:7,15 114:10 117:13,19 documents 6:4 7:12 8:22 11:17,21 12:17 13:2 14:15,16 16:6 16:14,25 44:20 45:2 53:19,20,22 54:4,5 54:9 55:4 58:5 60:22 67:13 68:12 73:4 80:2 83:4 85:9 89:3,4 90:3,13 91:2 91:15 92:4 107:9 112:12 doing 60:10 71:4 79:6 84:19,22 85:2 85:8 86:12,12 dpi 50:15,16 52:6 57:10 dpis 77:21 dr 26:19,21,25 81:20,22 85:16 draft 94:7,17 drafting 94:4,13,16 94:23 98:15 due 75:2 dullness 65:15 dully 65:7,12 duly 4:15 116:12 dumain 95:25 dumps 55:25 dunn 1:18 2:16 3:15 dye 40:12</p>	<p>116:2 117:2 earlier 24:13 81:17 101:21 113:15 early 44:22 93:9 97:15 edelson 24:3,7 educational 42:21 effects 72:2 effort 35:6 eight 17:23,25 18:12 18:18,23 eighth 18:8 either 22:9 34:21 54:13 64:22 66:7 78:23 84:23 86:19 87:7 92:23 96:11 elapsed 92:9 electronic 78:21 electronically 55:20 electrostatic 14:4 86:2 eligible 44:12 elliott 1:8 emanuel 20:10 employment 13:10 empty 103:12 104:4 enabled 44:11 ends 61:6 engage 6:10 15:23 engaged 10:8 16:24 81:15 engagement 15:22 17:5,7 18:14 entered 24:14 entire 51:10 66:10 72:10 entirely 105:11 106:13,19 entitled 43:22 49:13 117:14,20 entries 38:20 envelope 82:16 83:16 equipment 12:11 49:3 66:22 68:11</p>	<p>eric 27:22 errata 118:2 esda 14:9,11 59:23 62:6 67:19,21 68:10 69:20 75:22 85:9,25 86:9 104:7,18 111:23 esdas 62:23 esq 2:9,12,20,21 establish 108:12 established 30:11 32:12 event 13:4 eventually 59:12 evidence 85:12 106:24 107:3 108:22 109:4 evident 60:2 exact 48:5 exactly 11:2 93:16 exam 34:15 67:19 examination 4:18 7:13 16:7,10,25 26:24 27:2 30:23,23 31:4 32:5 33:22 38:5,7 44:17 45:9 45:12 47:5,22 64:5 64:8 66:5,16 69:11 74:19 75:23 81:23 83:4,10 84:18 87:6 87:21 91:23 92:20 101:22 110:5 112:24 113:22 114:11 117:3 examinations 7:16 7:17 9:11,15,16 11:10 12:8,12 13:24 14:2 17:10,12,15 22:23 34:12,18 38:11,13 60:10 64:13,13,15 65:17 66:18,21 68:15 69:2 69:21,24 70:7 85:18 86:8 92:25 98:19 99:12,21 100:9</p>
	<p>e</p>		
	<p>e 2:2,2 10:23 30:10 32:14 54:6,14 116:2</p>		

<p>examine 8:21 11:13 11:16 12:9,17 27:5 37:13,24 59:9 64:21 66:8 67:13 68:12,24 97:21</p> <p>examined 4:16 16:5 26:6 38:3 46:21,22 61:17,20 62:11 63:12 79:18 80:22 81:8,13 92:4 112:12</p> <p>examiner 17:8 31:8 33:4</p> <p>examiners 26:16 31:6 33:8,23,25 44:25 45:14 67:9 76:5 81:18 102:16</p> <p>examining 13:9 16:13 60:9 68:21 85:9,21 86:18 87:25 88:22 99:22 110:18</p> <p>example 46:7 58:23 71:18 103:4</p> <p>exams 7:15 8:15</p> <p>executed 103:2</p> <p>execution 13:17</p> <p>exemplars 110:3</p> <p>exhibit 41:11,25 42:6,6,8 43:8,17,21 48:7,14,23 49:10,12 101:8,11,14,15,18 117:7,13,16,19</p> <p>exhibits 76:19 101:13 117:6</p> <p>exited 19:16</p> <p>expect 70:6 81:4</p> <p>expecting 18:22</p> <p>expedited 37:7 39:16 41:14,16 117:10,12</p> <p>expenses 114:24</p> <p>experience 114:14</p> <p>expert 10:8,11 19:11 28:11 34:20 79:10 92:20 113:5</p>	<p>experts 22:23 27:18 28:6 34:12 38:3,8 39:25 70:16 74:3,18 75:20 76:10 81:15 97:20 98:18</p> <p>expires 118:25</p> <p>explain 30:19 88:6</p> <p>explaining 38:18</p> <p>explanation 6:3</p> <p>exposed 71:19,21</p> <p>exposing 71:12</p> <p>exposure 76:12</p> <p>extent 17:5 29:17 47:6 59:20 73:6 110:22</p> <p>extract 97:23</p> <p>extractions 39:9</p> <p>extreme 65:14,15</p> <p>eye 63:21 71:17 111:5</p> <hr/> <p style="text-align: center;">f</p> <hr/> <p>f 116:2</p> <p>fabricated 36:10</p> <p>face 66:7 70:24 71:22</p> <p>facebook 1:9 3:18 4:11 35:14 36:14 48:8 117:17</p> <p>fact 23:22 39:8,25 79:17 90:13 97:12 112:20</p> <p>fade 72:7 79:20</p> <p>faded 73:17 74:8,25 75:18</p> <p>fading 63:7 78:23 79:21</p> <p>fall 8:11</p> <p>familiar 22:24 23:21 29:25 67:15 89:24 90:8 93:23 97:25 98:12</p> <p>family 26:10 30:15</p> <p>far 12:4 20:24 32:20 81:12</p>	<p>fashion 65:12</p> <p>father 44:4</p> <p>features 59:9</p> <p>federal 36:16</p> <p>fee 15:13,14</p> <p>fees 18:2,5,16,18,19 18:22 114:23</p> <p>felt 79:17</p> <p>field 8:2 44:20 72:22</p> <p>file 8:18 46:20 53:24 55:22 57:11,12,13 58:10</p> <p>filed 3:19 35:13 36:20 42:13 82:10</p> <p>files 52:10 53:12,23 55:25 56:2 57:14</p> <p>filtering 110:21</p> <p>filters 46:5</p> <p>filtration 66:9</p> <p>final 96:24</p> <p>find 36:19 53:24 108:21 109:3</p> <p>finding 79:4 89:7 110:25</p> <p>findings 9:2,5,8,9 10:4 23:11,16 24:19 25:10,12 91:22 93:2 106:12 107:10 108:11 110:14</p> <p>fingerprints 85:21 86:4,15</p> <p>finish 5:14 6:18 111:24</p> <p>finished 112:8</p> <p>firm 19:20,25 20:10 20:15,15,21,23 22:8 23:7,10 24:3,14,16 93:19,21 96:2,12,16 96:19 114:3</p> <p>firm's 19:22</p> <p>firms 19:6,15 21:5 23:6 92:23 96:6</p> <p>first 9:12 10:16 11:23 16:5 17:23 23:16 25:20 42:4,9</p>	<p>61:23 64:18 69:18 75:19 88:19 89:9 94:8 96:4 101:4 102:8,10,18 103:5 103:13,19 104:12 104:25 105:5,7</p> <p>firsthand 46:13 47:13 57:25</p> <p>fluoresce 64:9 65:7</p> <p>fluoresced 65:11</p> <p>fluorescence 65:3 65:21</p> <p>focus 65:16 66:5</p> <p>focused 33:21 66:11</p> <p>focusing 69:12</p> <p>folder 54:2,20 82:16 83:16 91:15</p> <p>folders 53:15 56:2</p> <p>followed 42:10</p> <p>following 55:17</p> <p>follows 4:17</p> <p>forensic 14:23 17:7 33:15,23 34:3,11 38:18 108:21 109:3 114:10</p> <p>forge 102:17</p> <p>forger 102:14</p> <p>forgery 36:10 102:19,20 105:13</p> <p>forgive 102:18</p> <p>forgotten 90:5</p> <p>form 16:16 22:25 40:14 41:2 50:11 54:15,19 55:7,13 56:14,15 63:9 65:8 65:23 66:2 70:9 72:4,25 73:18 74:2 74:11 75:6,24 76:6 78:18 79:8 80:16,25 86:21 87:15,22 88:23 89:15 90:10 98:4 99:19 103:8,15 103:22 105:16 106:16 107:13,20 108:2,14,25 114:12</p>
---	--	--	--

<p>formal 34:25 formalize 15:21 formally 15:9,10,12 format 57:13 78:14 79:7 formatting 88:3,11 88:18 forth 16:6 116:11 foster 67:5,15 86:3 found 32:9 87:4 90:14 91:12 founded 32:5 foundling 89:21 90:2 91:16 four 55:15 frank 74:4 fraud 36:16 fraudulently 85:5 106:14 freeman 67:5,15 86:3 freezing 91:13 front 64:10 65:6,21 66:10 72:2 73:22 full 4:25 fully 5:21 11:12 further 17:20 38:19 57:18 99:12,17 110:3 113:17 115:3 116:16</p>	<p>gerry 28:13,14 gibson 1:18 2:16 3:15 give 21:19 41:18 75:12 94:9 given 37:8 94:5 100:17 112:20 116:13 giving 114:4 gloves 82:20,22,24 83:2,5,8,23,25 84:4 113:20,22 114:2,9 go 3:11 7:5 23:3 38:15 48:5 52:12,14 57:18 76:7 99:2 going 31:17 48:4,11 48:16 59:12 61:5 80:4 100:21 104:5 106:18 112:2 113:8 115:5 good 3:2 5:17 33:8 government 56:14 grable 20:7,12 grandfather 31:12 31:25 44:15 89:2,21 90:20,20,22,24 91:20 grant 37:22 granted 39:17 great 7:2 31:12,25 43:10 44:15 67:24 68:9 89:2,21 90:6 90:20,22,24 91:20 111:25 115:2 guess 93:7 gus 28:9</p>	<p>handle 101:12 handled 63:23 handling 83:22 handwriting 9:13 35:24 99:16 100:15 103:6,12 110:3,6 handwritten 45:24 68:6 102:7 104:24 105:7 happen 15:9 hard 54:4 55:13,18 98:2 head 6:23 28:12 heard 29:14 30:2 71:4 hearing 20:23 heat 71:14 held 1:18 3:14 66:22 68:13 69:6,6 70:2 helpful 54:24 hereinbefore 116:11 hereto 101:7 hereunto 116:21 high 68:2 higher 50:18 highly 40:23 45:3 hire 9:13 13:11 17:13 36:3,9 37:14 37:19,24 38:21 39:17 40:3,9 56:12 60:23 61:20,24 62:22,25 63:5,8,20 64:5 66:19 70:4 73:14 74:6,8 76:13 76:20,24 77:2 81:8 81:25 82:11 83:11 86:19 87:8,19 88:9 88:20 89:10 97:21 97:23 99:13 104:22 108:8,13 110:7 history 86:9 hit 98:22 holes 63:24 holmberg 25:23</p>	<p>homes 89:14 honest 96:5 hope 89:11 91:13 hornell 2:14 hour 18:8 hourly 18:6,7,12 hours 17:23,25 18:12,19,24 huh 6:24 humorous 31:9 hybrid 68:19 hypothetical 91:9 hypothetically 106:5 107:8</p>
<p>g</p>	<p>h</p>	<p>i</p>	<p>icon 44:17 idea 11:2 identification 41:17 43:23 48:9 49:15 identify 3:25 109:18 109:22 illuminated 64:5 illustrations 46:24 image 49:6 51:9,25 53:23 54:19 56:19 68:20 77:20,21 79:18 80:4,8,9 82:11 images 8:10,18 45:8 45:18 46:5,10 47:3 47:10,16,21 48:13 49:2,25 50:3,6 51:25 53:22 54:2 55:15 57:8,16,19 59:7,8,15,19 60:11 60:11,22 61:14 62:10,17,19 63:16 69:9 78:21 79:15,24 80:6,24 82:7 immediately 53:8 64:2 100:13 importance 57:17 102:23</p>
<p>gcms 40:13 geared 69:21 general 45:10 generalized 17:6 generally 7:6 39:5,7 77:13 89:25 92:2 generic 67:11 genuine 13:3 91:4 108:8 genuineness 13:5 59:13 60:13 99:23 105:23</p>	<p>h 2:20 4:14 half 30:10 hall 21:22 hand 66:22 68:13 69:6,6 70:2 116:22 handed 82:4,20</p>		

<p>improbable 90:3 inch 51:8 inclined 78:25 79:13 79:22 include 71:11 included 9:4 13:25 43:16 53:21 76:19 101:23 108:6 110:16 includes 43:11 inconclusive 110:18 110:25 incorrect 113:16 increase 52:6,15 increased 50:14 52:16 indentation 9:6,23 101:23 102:3 indentations 9:18 9:21 14:6,7 59:21 102:6,15,17,22,24 102:25 103:7,13 104:3,6,11,13,23 105:20,21 106:2,7 107:11,17 indicate 14:5 49:24 51:24 58:4 78:9 101:6 indicated 88:4 100:7 indicating 108:22 indication 99:15 100:4 indications 85:4 individually 1:9 informally 32:4 information 27:10 48:22 77:15 87:13 87:17 informational 12:3 infrared 7:17 46:6 69:25 110:21 inherently 90:3 initial 7:4 11:8,15 14:18 15:6,13,14 17:22 44:9 101:5</p>	<p>initially 18:9 60:9 60:15 initials 35:25 102:7 102:11 104:24 105:7,24 ink 9:16,24 14:23 26:24 28:10 38:18 38:20 39:9 40:2,7,8 40:12,18 46:3,6 62:25 63:2,3,8,13 64:17 65:18 66:11 67:13 69:22 70:3 71:6 73:16 74:9 75:2,5,18 76:11 78:23 79:21 80:14 80:17,18,25 81:3,5 85:16 89:8 95:11 110:19 111:3,10,11 inks 27:2,6 110:20 111:4,10,14,19 inquired 30:14 inquiring 30:10 inquiry 11:8 112:18 inserted 94:18 inspect 102:16 inspection 8:16 98:2 instance 29:8 45:23 51:11 58:14 59:10 59:12 60:11 66:6 77:20 94:8 104:4 instances 71:16 instrument 80:21 instruments 14:2 intended 47:11 95:9 intense 80:19 intentions 32:15 intents 30:14 interact 20:21 interacted 19:23 25:6 30:7 interacting 20:9,25 interaction 23:9 interactions 22:18 interest 35:14</p>	<p>interested 14:25 116:19 interfere 3:9 interlineation 35:25 40:23 69:17 103:20 104:8 105:14,19 106:6 110:23 interlineations 102:7,11 104:24 105:6,21,24 internet 35:4 36:19 72:14,17,18 interrogatories 8:10 49:17 76:18 interrogatory 48:25 49:11,13,22 51:23 58:3 66:25 78:2,3,4 117:20 introduces 77:19 invoices 18:24 involve 17:9 96:11 involved 10:11 14:6 14:7 20:15 24:4 27:13 28:17 29:20 29:22,23 30:23 involvement 7:5 10:16 19:16 29:5 33:18 34:25 72:24 73:5 92:2 involves 38:24 involving 14:2 34:3 issuance 23:13 issue 12:6 13:4 14:21 35:17 70:15 70:20 79:25 95:17 issued 89:9 issues 12:10,10 44:24 88:18 it250 67:2 85:10 items 43:17</p>	<p>13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 james 20:7 27:20 34:8 january 7:11 8:15 11:20 16:4,11 17:18 26:5,7,8 47:22 54:9 54:13 55:6 56:4 61:15,19 62:24 81:7 81:25 82:21 91:22 92:3 99:20 112:24 jason 25:23 jay 24:7 jeff 22:15,16 98:10 98:12 jerry 21:20 job 5:8 john 1:17 3:22 22:2 41:12 43:22 115:10</p>
j			
<p>j 4:14 j.p. 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1</p>			

<p>116:10 117:4,8,14 118:6,21 jpeg 51:24 52:21 jpegs 53:4,7 55:17 57:12,21 judge 5:23 judgment 33:6 july 22:21 24:2 38:8 38:13 39:24 70:17 73:15 74:5,19 77:4 97:19 98:9 99:8 112:11 june 8:5,24 9:5 21:5 22:13 36:25 37:5 38:15 41:8,22 42:13 89:6 93:5,9 97:15 98:9,9 101:4 113:12</p>	<p>97:7,12 112:21 knowing 102:15 knowledge 57:15 97:4 known 18:20</p>	<p>leaving 103:13 left 84:9 legal 2:4 102:19 lenses 70:2 lesnevich 28:9 75:20 letter 15:22 18:14 level 111:15 lgf 48:8 117:17 lifts 67:21 68:10 111:23 light 58:15 59:2,19 59:24 60:3,3 64:14 64:16 69:8,9 71:14 73:17 75:22 lighting 58:18,20,22 58:22 59:3,3,5 66:9 69:7,8,21 104:17 110:21 liked 57:4 likelihood 93:11 limitation 77:19 limitations 46:11 47:9 60:8 77:12,17 limited 81:23 110:8 line 45:24 68:7 118:7 lines 108:21 lippes 21:7 22:6,14 listed 23:23 literature 72:13 little 48:20 66:15 91:25 108:5 114:2 live 32:19,24 llc 2:4 llp 1:19 2:16 24:15 96:3 located 3:15 87:4 long 7:3 32:21 72:6 72:11 90:4 97:17 longer 10:8 59:11 look 49:22 50:6 59:13 60:13 68:20 69:8 79:15,16 looked 17:3 32:13 97:13 111:5</p>	<p>looking 43:14 48:20 69:22 80:4 84:24 88:8 106:23 looks 54:25 58:13 lost 31:16 lot 94:18,24 luminescence 46:7</p>
<p>k</p> <p>kasowitz 20:16,18 keep 35:6 keeping 77:17 kept 35:3 kevin 22:10 kind 7:23 14:24 31:7 38:24 39:4,5 39:20 45:15 64:19 66:9 67:11 71:14 75:11 78:24 79:19 79:23 83:6 85:4 87:11 88:4 94:15,17 104:14 110:11 kip 21:22 kleenex 67:10 know 5:8 7:3 16:15 19:11 26:21 27:9 28:3,10,15 29:12,19 32:18,24 33:5,10 34:8 35:19 38:10 39:5 42:13 48:15 53:11,13 56:3 65:10 70:25 72:11,12 82:3 84:22,25 85:12 88:12,13 89:20 93:12,25 96:7,10,11</p>	<p>l</p> <p>l 4:14 labeled 48:7 52:25 53:4 55:16 117:16 laboratory 12:11 84:15 lake 22:15,16 98:10 98:12,17 99:7 lakewood 2:8 lamp 64:6 lamps 66:23 69:6 75:22 language 94:14,15 94:18,24,24 laporte 28:13,14 40:7,13,22 laporte's 89:7 large 48:24 largely 94:15 larger 51:8,9 57:5 larry 27:21 29:14 34:7 97:9 lastly 46:22 late 8:11 44:5 91:10 93:9 97:15 law 19:6,15,20,22 20:10 21:5 22:8 23:6,9 30:22 92:23 96:2,19 lawrence 20:3 lawsuit 35:13 36:11 lawyer 22:14 23:10 24:24 lawyers 21:14 leading 44:19 leads 105:3 learn 86:18 87:3,7 leave 103:6</p>	<p>m</p> <p>macro 59:7 60:11 macroscope 68:15 69:5,11 magnification 68:17 magnified 68:20 magnifier 68:13,18 magnifiers 69:6 mail 10:23 30:10 54:14 mailed 32:14 54:6 main 2:13 maintain 46:20 major 32:23 making 56:23 79:3 malformatting 88:7 man 25:22 march 20:14,19 24:13 marginal 88:2,18 mark 1:8 3:18 4:11 32:10 35:15 36:15 37:17 41:19 43:7,19 49:10 54:10,12 55:10 99:25 109:15 109:22 marked 41:10,16 42:5,8 43:23 48:6,9 48:22 49:14 marketed 86:6 marks 21:2 marriage 116:18 matching 53:24 material 46:21 100:11 materials 48:9 100:9 117:18</p>	

<p>mathias 21:7 22:7 22:14 matter 7:5 12:25 17:21 45:10 80:5 101:5 116:20 mcclutchy 2:25 3:4 mcguire 24:3 mean 44:21 48:13 65:11,20 72:6,7,16 103:18 106:19 meaning 12:7 means 78:11,16 86:3 111:14 media 47:6 56:25 medium 47:9 77:13 mediums 46:12 meeting 29:2 31:10 100:17 meetings 28:23 member 33:12,19 34:6 membership 34:5 44:12 mention 6:15 13:21 88:3 mentioned 16:18 17:2,17 31:24 36:25 39:15 44:16 46:25 57:4 61:18 63:12 66:19,25 81:17 85:19 96:6 97:14 109:7 110:2 112:10 met 25:22,25 28:16 28:21,24 29:15 method 59:22 methods 71:10 111:3 mfc 49:4 michael 21:2 30:25 microphones 3:5 microscope 66:23 68:13,18,22,23 microscopes 70:2 microscopic 7:17</p>	<p>mics 3:8 middle 5:15 milberg 24:15 96:3 mind 77:17 minimum 56:4 minutely 90:15 minutes 99:3 misspoke 67:7 misunderstood 73:2 moment 31:15 71:3 88:25 94:9 monocular 68:19 month 16:13 months 15:20 16:19 44:10 92:8,11 morning 3:2 73:15 73:23 74:5 77:4 motion 36:19,21 37:7,17,22 39:16 41:13,15 117:10,11 moved 14:11 36:15 37:12 moving 75:13 multipage 42:11 multiple 11:24 mutual 41:15 117:12</p>	<p>national 43:15 native 77:13 78:14 79:7 natural 98:23,24 nature 12:16 nearby 84:17 necessarily 33:9 65:11 66:4 102:9 103:18 need 5:13,24 6:2 62:20,21 needed 16:9 needing 60:15 never 14:12 18:23 32:7,16 37:18 39:10 86:13 100:4,14 110:2 new 1:3,19,20,22 2:14,19,19 3:4,16 3:16,20 63:25 77:19 89:14 116:3,5,9 118:3,3 newly 79:18 news 35:4,5 36:13 40:20 72:14,16,17 newspaper 35:8 newspapers 35:9 nine 19:6 nodding 6:23 nondestructive 7:16 66:18,22 101:22 nongenuineness 13:5 59:14 60:14 99:24 105:23 normal 58:22 north 89:11 91:14 notary 1:21 4:15 115:16 116:8 118:25 note 3:5 43:11 79:17 85:4 noted 9:9 38:23 64:21 65:3,25 87:25 88:17 110:19 113:19 115:7</p>	<p>notes 68:4,7 69:2 notice 1:20 63:7,19 64:25 70:2 104:9 noticeable 72:8 79:19 104:7 noticed 88:15 noting 88:15 november 8:11 47:18 60:24 number 3:21 17:9 19:12 28:22 29:15 30:21 34:3 58:4 61:7,11 78:3,4 96:6 numbered 53:12 numbers 35:19 55:22,22</p>
		n	o
		<p>n 1:21 2:2 4:14,14 116:7,25 117:2 naked 63:21 71:17 111:4 name 3:3,22 19:22 20:22,24 21:19 22:16 23:20,24 25:13 28:11,25 30:15 54:18 56:6 96:4,14 98:12 118:5 118:6 named 21:2 22:15 24:24 25:23 95:25 names 24:6 58:10 narrative 42:5,10</p>	<p>o 4:14,14,14 objection 10:12 12:21 16:16 19:8,9 22:25 40:14 41:2 50:11 52:7 63:9 65:8,23 66:2 70:9 72:4,25 73:18 74:2 74:11 75:6,24 76:6 76:15 78:18 79:8 80:15,16 85:6 86:21 87:15,22 88:23 89:15 90:10,17 91:5 91:18 95:4,15 98:4 99:19 103:8,15,22 105:16 106:8,16 107:13,20 108:2,14 108:25 114:12 obligated 18:11 oblique 58:20 59:2 69:7 104:17 observations 45:20 observe 64:9 65:6 65:20 observed 46:13 47:12 51:20 57:25 60:19 62:24 63:4 65:2 79:5,5</p>

<p>observing 22:22 obvious 63:11,22 64:2 71:17 obviously 44:22 occasion 5:4 8:17 39:8 53:15 112:14 occasionally 35:5 occur 85:13 102:25 104:12 occurred 11:9 38:5 40:4 44:10 104:10 107:2 oddly 53:12 offer 9:8 27:12,14 78:25 79:13,22 113:4,11 offered 8:25 10:4 offering 79:9,10,11 office 7:12 11:11 12:13 14:10,13 15:11 53:10 68:23 82:2 84:6,9,14 offices 1:18 oh 41:20 ohio 2:8 oil 80:25 okay 11:14 19:13 24:17 30:19 50:13 58:8 75:13 94:11 96:17 99:4 102:2 105:10 111:25 old 89:8 90:5 olympus 49:8 58:6 59:4,6 once 16:20 55:21 59:16 66:4 79:14 open 75:16 operating 45:15 50:25 56:20 60:5 opine 80:9 104:10 opinion 79:2,9,10,11 79:13,23 105:22,25 106:21,22 109:10 opinions 9:2 10:3,4 113:4,10</p>	<p>opposed 60:3 opposing 29:10 opposition 41:13 117:9 oral 94:6 order 15:20,23 37:12 38:6,19 39:18 62:5 77:7 79:10 88:6 98:15 110:11 ordered 73:16 orders 97:22 ordinary 114:10 organization 29:2 33:18 34:2,7 organizations 28:23 33:7,9,13 34:6 43:16 original 9:16,20 12:9 17:12 47:25 54:16 55:6 56:5 59:11,16 60:15 79:2 79:14,17,19 80:2,3 99:21 originally 79:16 86:2 osborn 1:18 3:23 4:20 5:1 6:1 7:1 8:1 9:1 10:1,15 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 19:5 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1,2,6 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 41:5,12,18 42:1 43:1,5,23 44:1,5,16 45:1,6 46:1 47:1,24 48:1,8 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1,13 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1</p>	<p>70:1,14 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1,3 102:1 103:1 104:1 105:1 106:1 107:1 108:1,4 109:1 110:1 111:1 112:1,8 113:1 114:1 114:15 115:1,10 116:10 117:4,8,15 117:18 118:6,21 osbornian 30:13,17 30:18 31:3,13 32:7 33:4 osbornian.com 32:12 osbornian.org 32:12 outcome 116:19 outset 6:16 outside 92:20 outstanding 19:3 114:23 overall 78:11 overlaid 104:7 overnight 84:7 oversight 34:11 ownership 35:14</p>	<p>88:19,20 101:6 102:4,6,8,9,10 103:5,6,7,13,14,19 103:19 104:12,13 104:22,25 105:4,5,7 105:12,14,15,19,20 106:2,4,5,7,7 107:9 107:19 109:20,24 110:4,23 111:10,11 117:3 118:7 pages 64:23 65:7 66:7 70:24 101:19 106:13 panel 52:13 paper 9:17,24 30:21 40:2 59:21 60:2 63:4,5,17,17,25 64:20 65:13,18 70:3 73:22 74:9 75:19 76:12 78:24 79:20 86:4 paragraph 95:11 101:6 102:4 105:4 paragraphs 104:16 104:16 parents 26:10 parikh 21:24 park 1:19 2:18 3:16 part 21:16 23:8,8 33:6 39:17 42:5,7 44:22 64:4 72:22 77:6 112:18 participate 38:13 particular 5:24 45:2 55:22 57:17 58:25 86:14 96:8 103:23 105:25 113:3,10 particularly 47:16 parties 3:11 4:2 39:18,25 116:17 parts 42:4 party 15:23,23 18:14 paul 1:5,17 2:12 3:17,22 4:6,7,9 7:9</p>
p			
<p>p 2:2,2 4:14 p.m. 84:10 115:7 p1050026 58:10 p1050058 58:11 page 35:23,25 36:2 40:23 41:25 42:5,9 42:9 43:12,12,14 46:3 49:10,20,23 54:25 56:10 64:18 64:18 65:22 66:10 68:6 69:18 78:2,4</p>			

<p>25:25 36:8 41:12 43:22 44:5 75:3 109:16,18 115:10 116:10 117:4,8,14 118:6,21 pause 31:15 75:12 pay 18:11 pdf 51:25 52:21,25 101:16 pdfs 53:7 55:17 peculiar 90:15 pen 63:3 80:18,20 81:3,5 103:12 104:4 pennsylvania 30:22 pentax 68:17 69:5 people 67:10 71:8 percent 35:13 perform 8:14 14:24 39:3 performed 7:15 11:10 34:18 39:6,10 65:17 92:25 period 44:11 71:13 88:11 93:13 permanently 8:3 permission 62:3 permitted 37:23 39:19 97:20,22 person 24:20 72:11 81:21 82:19 personally 39:3 peter 24:24 28:9 phone 3:25 10:23,24 11:3 23:12 112:17 phones 3:8 photo 76:13 photocopies 81:9 photographic 59:6 photographs 45:7 45:11,19,23 46:17 47:3,10,15,19 58:5 58:9,14,17 59:2,24 60:4,18,22 77:6,14 77:19 78:15</p>	<p>photos 48:19 physical 7:20 37:13 37:24 38:24 39:19 40:2 61:20 97:21,23 physically 82:4 pick 3:6 picture 31:11 piper 21:7,11,14,18 22:13 23:18 25:14 93:20,22 96:15 place 3:8 11:3 12:13 14:12 16:10 17:13 38:8,11 42:22 99:21 103:5 placement 46:2 plaintiff 1:6 2:5 4:7 4:9 7:9 10:11 19:6 19:10 20:14 21:6 25:5 26:15,24 27:16 27:19,23 35:18 70:22 73:13 75:10 75:19 81:18 99:7 plaintiff's 6:9 9:11 12:7 14:21 24:4 34:12,21 37:6 41:12 41:15 74:18 76:4 95:19 98:10 117:9 117:11 plaintiffs 113:6 planning 113:4,11 plate 51:8 please 3:5,7 5:14 30:20 43:3,20 point 7:7,11 11:9 17:11 59:10 60:9 62:16 72:19 92:22 97:11 100:7 107:4 popular 72:13 portable 14:9 portion 51:11 portions 58:5 position 36:8 73:13 74:25 possibility 14:15</p>	<p>possible 46:10 47:6 47:8 59:20 82:21 96:4 102:21 103:10 103:11,17 106:11 106:25 107:3,6 113:21 potential 10:16 14:6 22:22 potentially 17:8 46:23 practice 43:13 77:7 preliminary 8:7 64:15 preparation 21:16 88:14 92:12,20 prepare 92:15 93:14 preparing 21:12 present 2:24 3:24 27:12 28:24 74:18 74:23 80:6 88:7 98:18 presented 70:16 74:10 presiding 5:23 presumes 95:5 previous 113:18 previously 37:2 61:18 77:5 97:19 primarily 31:5 primary 9:15 23:4 46:19 62:21 88:13 print 77:20 printed 76:19 printer 77:20 printing 77:18 printout 77:2 78:9 101:16 printouts 76:24 prior 23:13 25:15 69:9 92:14 112:17 private 3:7 6:10 privilege 6:12 probably 30:9 40:23 52:11 67:7 72:7 89:20</p>	<p>problem 88:12 procedure 45:16 56:21 procedures 51:2 60:6 proceed 4:5 process 27:13 94:4 94:13,16,23 112:18 produce 25:19 57:11 produced 23:15 25:19 31:11 44:21 60:21 73:13,16 74:6 75:17,17 88:10 producing 95:9 product 29:17 53:12 106:23 production 100:11 professional 28:23 42:2,21 43:16 professionally 30:8 professor 74:4 program 53:9 55:24 projected 48:23 protected 32:8 protection 82:23,24 protective 83:25 113:20 protocol 14:12 98:2 prove 86:4 provide 4:25 43:2 82:15 93:5 95:8 provided 7:12 8:5,9 15:24 36:18 47:18 47:25 48:19 54:5,9 54:13 55:4,5,6,12 55:18,20 56:5,15 76:25 78:9 81:24 87:20 92:19 94:17 99:16,25 100:2,5,13 100:15 101:15,15 110:3 113:7,14 114:15 providentially 90:14</p>
---	--	--	--

<p>provides 59:16 providing 48:17 public 1:21 4:16 115:16 116:8 118:25 published 30:22 pull 52:12 purported 35:15,20 35:21,24 36:8 37:24 109:19,23 purportedly 55:9 91:12 purpose 46:19 47:2 59:23 64:15 86:6 100:2 purposes 36:11 39:20 45:18 46:9 81:23 97:24 99:25 pursuant 1:20 put 54:23 83:15 91:23 95:14,18,21 putting 71:11</p>	<p style="text-align: center;">r</p> <p>r 2:2 4:14 116:2 rafey 24:11 raise 88:7 randall 20:5 range 77:22 rate 18:6,7,7,12 reach 107:5 reached 20:18 22:21 24:18 106:22,23 reacted 65:12 110:20 reacts 46:6 read 34:20 35:10 36:13,17 82:12 102:12 reading 35:9 84:20 ready 80:9 really 11:10 33:10 79:24 80:3 111:6 reason 5:6,19 13:23 15:25 53:10 55:25 57:6 114:6 118:7 reasonable 38:4 reasonably 110:12 reasons 46:15,16 recall 11:7,25 14:17 15:25 16:8 19:22 20:2,8,9,11,13,20,23 22:20 23:10,24 25:8 25:9,13 28:11,25 29:7 32:10 37:5 38:17 52:9 54:7,18 61:25 62:3,7 69:3,5 76:21 82:17,18,19 83:6,14,15,19,20,21 84:3 85:25 86:10 87:11,13 92:3,17,18 92:22 93:3 94:12,22 94:25 95:23 96:9 97:5,16 98:8,14,16 98:18,20 99:5,10 101:10 112:17,21 112:23 114:7</p>	<p>recalled 113:16,16 114:5,8 receive 15:12 18:17 30:15 100:9 received 15:13 17:17 18:9 32:16 43:25 47:5 54:14,15 61:23 77:10 82:6 114:17 receiving 17:20 recess 61:8 100:23 112:4 recited 67:12 recognize 41:22 42:2 49:16 recollect 12:5 recollecting 54:24 recollection 10:18 10:24 25:3,4 29:11 29:22 56:4 61:25 62:9 63:15 84:16 86:22 92:10 96:14 99:14 112:19 recommend 14:23 recommendation 26:23,25 27:12,14 recommendations 17:15 81:20 99:22 recommended 15:4 81:18,19,22 85:16 88:6 99:24 reconnection 31:20 record 3:3,11 31:18 31:19,22 45:19 46:10,22 47:2,4 48:14 61:6,10 77:9 94:6 100:22,25 112:3,6 114:17 115:6 recorded 77:21 recording 3:10 refer 31:3 67:9,10 reference 32:4 68:25 72:20</p>	<p>referred 67:8 68:16 referring 52:22 54:21 82:24 83:24 111:10 regard 27:11 79:11 85:11 86:23,23 87:12 99:18 105:22 110:6 regarded 45:3 regarding 70:15 92:5 regardless 105:18 registered 30:13 32:9 related 9:5 116:17 relation 92:12 relatively 46:20 71:17 relevance 19:9 reliability 30:24 reliable 77:15 remember 10:20 19:23 20:17,25 22:19 25:6 29:18 32:21 62:13,15 82:9 83:11 86:24 92:7 93:4,16,19 113:21 remembered 113:24 remind 56:6 remove 14:13 62:3 62:20,21 render 18:24 replaced 80:4 replicates 55:25 report 9:17 25:12 94:6 101:11 reported 23:16 25:20 reporter 1:21 4:3 6:17 41:19 116:7 reporting 118:2 reports 29:6 34:21 35:5 36:13 46:24 113:5,8</p>
<p style="text-align: center;">q</p> <p>qualifications 42:10 42:12 43:22 117:14 quality 57:15,19 59:7,25 question 5:4,7,10 69:18 73:2 95:6,7 102:21 103:3,24 questioned 8:22 31:6 33:24 44:20 45:2,11 53:19 68:12 88:22 89:3 102:16 110:10 questions 4:25 5:9 5:21 6:4,22 17:3 45:7 112:9 115:4 quick 61:2 111:22 quickly 75:14 quinn 20:10 quite 34:5 81:2 86:5 96:5</p>			

<p>represent 4:2 19:7 48:4 61:15 76:23 representation 46:12 47:12 representations 51:20 57:25 60:19 representative 99:6 represented 19:20 21:6 80:24 representing 3:4 4:4 reproduction 54:15 56:13 59:9,17 reproductions 56:16 56:24 requested 13:2,6 requesting 18:16 requests 9:10 require 12:11 17:23 39:13 required 44:10 requirements 34:5 resolution 50:15,19 52:15,16 57:9 68:2 respect 9:18 12:6 13:4 23:8,9 24:21 25:10 26:24 30:11 30:14 44:24 46:21 55:21 56:23 64:20 65:13 66:7 69:14 73:8 78:22,23 79:25 88:13 96:13 99:22 107:10 respectively 104:18 response 30:16 32:16 49:23,24 51:23 58:3 60:24 78:3,4,20 114:6 responses 8:10 48:25 49:11,14,16 49:23 78:2,5,8 117:21 responsible 18:14 result 38:5 71:15 104:7,14</p>	<p>resulting 104:6 resume 42:11 45:4 retain 23:7 retained 7:8,8 15:9 15:10,12 19:18 23:6 26:16,19,22 27:16 27:19,21,21,23,25 28:2 retainer 16:19 17:18 revealed 75:16 reverse 64:14,22 71:20,23 review 8:17,18 30:22 45:5 78:5 94:9 96:23 97:3 113:5 reviewed 61:13 74:14 78:7 80:13 97:8 reviewing 63:16 right 4:21 5:2 7:9,10 7:13,18,21 8:7,12 9:2,22 33:15 37:3 38:25 39:12 43:14 44:2,17 45:12,16,21 46:14 47:16,19,25 49:25 51:2 52:2,22 55:8 56:10,11,22 58:6,15 60:24 61:21 63:2,3,8,14 64:6 65:4,25 66:19 67:19 71:24 72:3 77:10,16 77:23 78:12,17 81:4 81:10 84:6 89:22 90:9,16 91:4,17 98:23 100:18 101:8 101:24 103:7,14,20 104:19,25 105:8 106:3 107:7,21 109:7,16 111:8,21 112:12 114:18 ring 21:8,18 22:8,16 24:6 rings 21:10 96:5</p>	<p>rja 1:4 3:21 48:8 117:17 road 2:6 robert 22:4 25:2 role 36:24 romano 74:4 room 3:25 58:22 59:3,5 84:22 89:12 91:14 rudimentary 59:22 71:10 rules 5:24 run 40:13 43:13 62:5 runner 49:6 51:25 56:19 running 85:8</p> <hr/> <p style="text-align: center;">s</p> <hr/> <p>s 2:2 4:14 32:2,6 44:16 118:7 sake 6:17,21 saks 30:25 sameness 111:2 samples 7:20 38:25 40:2 97:23 99:17 100:5,15 sampling 39:19 sanberg 96:4 sanford 95:25 saw 35:9 36:21 61:15,19 80:11 saying 6:23 37:18 79:4 scan 51:8 68:2 76:24 77:2 scanned 46:2 51:25 55:13,19 scanner 49:4,6,25 50:10 51:6,7,12,16 51:19 52:2,5 56:19 56:22 57:3,5,7,24 scanning 55:23 scans 45:7,10,18 46:9 47:2,10,15,19</p>	<p>48:19 50:9,18,24 51:2,5,13,15,18 52:4,21 54:6 56:18 56:21 57:3,23 59:18 76:19 77:6,14,18 78:14 schuster 21:2 sciences 33:15 screen 48:12,24 52:10 54:23 56:15 second 9:17 42:7 46:18,18 61:3 64:18 88:20 102:5,8 103:5 103:7,14,19 104:13 104:22 105:4 see 5:15 8:20 12:14 13:7,12 14:8,14 15:3,15 16:3 18:4 18:10 19:14 23:17 28:4 32:17 33:2 34:9 35:2,5,11 42:23 43:18,25 50:17 51:14 52:10 53:17 54:3 55:11 56:17 57:22 58:18 59:15 60:17 64:16 64:24 65:19 66:14 85:2 92:13 seeing 17:14 82:13 seeking 35:19 seen 29:6,16 53:14 79:2,14 82:7,9 107:4 send 94:6 sense 5:11 6:13 25:17 32:24 sensitive 3:6 sent 30:10 94:20 series 58:4 served 92:19 service 32:10 services 15:24 17:21 18:25 session 100:3</p>
--	--	---	--

<p>set 79:23 116:11,22 setting 50:16 59:7 settings 50:10,22 52:5,19 seven 91:12 shaking 6:23 sheet 63:25 118:2 short 98:21 shortly 93:7 shoulder 84:24 show 46:6 88:11 90:4 showing 41:8 55:8 side 24:4,15 29:9,10 30:5,5 58:18 59:19 69:7,20 signature 49:19 54:11,12 55:9,9 59:14 60:12,14 66:6 69:13,16,17 99:23 108:21 109:19,23 110:10,24 signatures 13:3 36:2 69:22 81:10 107:24 110:4,9 signed 15:16,18,19 16:2,20 37:18 87:9 87:9 91:13 108:17 108:22,23 109:15 signer 18:13 significant 32:25 70:7 71:13 79:20 104:9 signing 87:10,14 simply 62:18 68:19 71:11 single 42:9 site 30:3,11 32:11,19 sitting 72:8 situation 60:7 six 15:20 16:19 56:10 size 52:10 57:11 skivington 24:24</p>	<p>slapped 88:5 small 69:8 smaller 57:10 society 31:5 33:21 33:24 software 53:13 somewhat 44:16 sorry 23:3,20 26:8 28:10 41:20 42:7 55:7 70:11 73:2 75:13 98:6 sort 31:8 68:18 71:8 72:19 76:12 110:5 sound 5:17 22:24 23:21 sounds 91:16,19 93:22 94:5 98:12 source 77:15 sources 75:22 southwell 2:20 4:12 4:12 spare 89:12 91:14 speak 34:17 96:7 speaking 96:19 106:5 107:8 specialized 66:9 specific 9:10 11:20 17:3 19:12 23:10 25:12 27:10 29:2,8 35:18 51:5 57:2 72:20 79:4 112:19 specifically 15:25 16:8,24 22:20 23:23 25:9 27:24 32:11 33:22 37:15 38:10 39:22 51:13 62:7 70:25 72:5,10 76:16 81:22 84:15 85:25 86:10 91:21 92:6,17 93:2,12 94:12,21 95:3,10 112:22 113:21 114:7 specifications 54:21 55:2 56:8,9 60:23 62:11 63:13 81:9</p>	<p>86:20 87:8 99:13 specifics 11:7 85:12 86:23 94:23 specimens 99:24 speckin 27:22 28:15 29:5 spectral 67:2 69:15 69:25 spectrally 67:13 spoke 94:2 112:10 112:15,24 spoken 24:20,23 25:22,25 26:9 112:16 ss 116:4 standard 45:15 50:10,15,25 52:5,16 56:20 60:5 77:6 80:24 stands 35:2 staple 62:3,20,21 63:24 stapled 61:24 62:12 62:17,19 stark 71:22 81:2 start 6:18 started 97:16 starting 38:8 state 1:22 5:5 102:4 116:3,8 stated 77:5 93:22 statements 74:7 states 1:2 3:19 stating 89:9 stay 84:7 stenographically 116:14 step 57:18 71:3 stepped 22:15 stereoscopic 68:23 steve 24:9 stewart 27:21 29:12 29:14 34:7,10,17 97:7,9,13</p>	<p>storage 91:10 stored 13:14 86:20 86:25 89:10 stories 72:18 90:7 90:25 story 91:16 street 2:13 stringent 34:5 subject 9:14,15 subjected 89:12 submitted 22:13 37:2,17 54:11 74:6 submitting 25:16 subpoena 60:24 subscribed 115:12 118:22 subsequent 89:7 subzero 89:13 successful 86:5 sufficient 107:5 suggest 83:5 suggested 85:15 90:25 suggestion 83:7 92:15 suggestive 103:21 sunlight 71:13 72:2 72:9 76:14 supplement 113:17 support 37:6 41:12 41:14 117:8,11 sure 20:22 55:18 72:16,17 93:25 113:25 surface 59:21 surprised 32:8 surprisingly 91:2 surrounding 13:17 87:19 90:7 suspect 53:24 93:23 suspected 103:23 suspicion 88:8,21 89:5 91:3 swear 4:4</p>
--	--	--	---

<p>sworn 4:15 37:2,17 74:6 115:12 116:12 118:22</p>	<p>terms 54:24 57:10 65:14 104:6</p>	<p>28:25 31:7,18,22 32:13,21 37:11 40:5 44:11 48:24 59:10</p>	<p>turn 3:7 41:25 48:16 77:25 101:5</p>
<p>t</p>	<p>terrence 19:25</p>	<p>60:10 61:6,10,19 71:13 74:9 75:19</p>	<p>tv 84:19</p>
<p>t 116:2,2 table 69:8 take 7:20 12:13 39:25 45:10 49:25 50:9 51:2,5,9 52:4 56:21 57:2 58:21,25 61:2 62:17 67:25 68:8,9,9 71:3,25,25 77:5 79:15,16 93:14 95:20 96:12,20 98:21 100:12 111:22 taken 39:9 46:5 50:24 51:18 53:22 56:19 58:15,18 59:19,25 60:4 61:8 79:16 100:23 112:4 116:13 talk 6:16 41:5 61:16 66:15 88:25 91:25 95:11 102:2 talked 91:21 talking 6:19 23:18 96:21 113:20 tan 73:17 tannish 74:8 tape 61:6,10 tasked 34:11 teachings 32:5 techniques 101:23 telephone 2:10 4:8 31:14,20 tell 5:14,24 52:11 72:5 temperatures 89:13 tend 57:10 tepler 24:9 term 31:2 32:3,7 67:11</p>	<p>test 62:6 86:12 104:7 tested 85:15 86:14 testified 4:16 113:3 testimony 46:24 116:11,13 testing 7:24 38:24 40:25 85:20 tests 13:21 14:5 39:4 39:5,7 40:7,13,18 59:23 85:9 109:7 111:18 text 46:3 72:21 texts 44:19,21,23 thank 43:18 48:17 100:20 thanks 41:21 thing 6:15 67:16 72:19 85:24 91:19 110:17 113:19 things 37:23 46:19 59:25 69:7,8 71:8 82:24 85:8 87:24 88:14 104:12 think 5:20 23:14 25:18 30:12 38:4 80:23 84:21,23,24 93:15 100:12 113:23 114:5 thinking 33:20 thought 11:16 26:7 96:14 three 49:3,25 50:3 54:8 55:16 thrust 12:23 thwart 75:4 tiff 49:25 50:3 57:14 tiffs 57:19,21 time 3:13,24 5:13 7:3 10:7,21 11:5,9 12:16 13:20 17:11 19:20 21:6 25:7</p>	<p>88:10 89:9 91:16 92:4,22 93:13,14 96:7 97:11 99:11 100:12,22,25 112:3 112:6 114:20,21 115:3,6,7 times 35:8 84:14 tissue 67:10 title 37:8,9 today 3:12 5:19 44:25 67:22 87:14 113:3 114:21 told 94:21 toner 40:2 top 28:11 101:19 104:8 105:15 topic 72:23 73:3 touched 82:25 trace 103:6,12 104:2 trademark 30:12 32:10 trained 39:11 44:4 training 44:10,13 transcribed 116:15 transmitted 58:15 59:2,24 60:3 69:9 transport 12:12 14:3 travel 114:21 trippitelli 21:20 true 46:8,12 47:11 51:19 57:24 60:18 69:14 102:14 106:15 try 5:10 6:18 71:8 trying 71:10 72:11 97:5</p>	<p>two 9:9 10:3 17:2 30:25 35:23 40:24 42:4 43:9 64:22 66:12,13 76:19 80:6 83:14 89:8 101:19 104:16 107:9 110:20 111:4,10 type 57:12 88:5 91:19 94:7 types 13:21 17:9 49:3 tytell 28:9 74:4 75:20 77:3</p>
<p>u</p>			
<p>u 4:14 uh 6:24 ultimately 7:8 37:22 ultraviolet 64:13,16 110:21 uncharacteristic 80:20 unclimate 89:12 91:13 underneath 53:8 102:9 103:19 105:5 understand 4:24 5:6 5:7,10 6:7 11:5 12:19 35:12 36:5,23 37:11 48:20 64:4 86:5 95:6,7 108:5 113:8 understandable 5:9 understanding 12:15 13:8,13,16 16:12 17:19,24 35:2 36:12 39:2 46:11 47:9 49:2 66:17 70:19 75:9 77:12 86:13 96:19 understood 5:12 6:20,25 11:12 73:20</p>			

<p>uneven 65:21 unit 2:7 66:23 67:6 united 1:2 3:19 unstapled 62:2,6,16 untitled 50:4 unusual 64:19 65:2 65:14 90:7 100:12 112:20 113:25 114:9,13 updates 42:15,18 use 14:10 15:22 31:9 53:9 69:15 75:21 103:4,11 113:20 114:2 usually 51:2 56:21 utilize 59:15 utilized 67:2 utilizing 59:5 60:2 64:13,16 66:10 68:15 85:10 110:19 111:3 uv 7:17 64:6,8 66:8 69:25 75:22</p>	<p>videographer 2:25 3:2 31:17,21 48:12 61:5,9 100:21,24 112:2,5 115:5 videotaped 1:17 view 80:22 112:20 viewed 78:21 viewing 69:7 78:14 80:2,3 vilardo 19:21 20:3 visible 63:20 76:10 visited 30:3 visual 7:16 volatile 40:18 vs 1:7 118:5 vsc 64:12,22 66:10 66:23 67:5,8,9 75:22 110:19</p>	<p>whereof 116:21 whispering 3:6 white 20:5 63:5,17 65:13 73:24 widen 52:9,13 wills 89:21 90:2 windowsill 71:12 72:9 withdrew 22:14 witness 3:22 4:5,15 30:18 70:11 75:13 90:23 98:6 116:10 116:13,21 117:3 words 6:3 31:12 46:22 work 8:6,15 9:13 13:10 17:12,24,25 29:17 36:3,9 37:13 37:19,24 38:21 39:16 40:3,9 56:12 60:23 61:20,23 62:22,25 63:4,8,19 64:5 66:18 70:3 73:14 74:6,7 76:13 76:20,24 77:2 81:8 81:24 82:11 83:11 86:19 87:7,19 88:9 88:20 89:10 94:4 97:21,23 99:13 104:22 108:8,13 110:6 worked 7:4 29:9 95:24 working 29:10,11 30:5 75:3 95:2 96:25 workshops 42:20 write 90:20,21 writing 9:12,16,20 9:20,24 48:3 59:10 62:25 64:17 65:17 66:11 67:13 68:7 80:20 97:16 110:19 writings 105:25 110:23,24</p>	<p>written 25:19 29:7 72:21 102:11 103:20 105:14 106:6 108:20 wrote 44:19 89:21</p> <p style="text-align: center;">x</p> <p>x 1:5,11 117:2</p> <p style="text-align: center;">y</p> <p>yeah 55:3 year 24:13,18,21 30:9 42:14 89:7 years 28:22 29:3,15 30:21 31:10 40:24 44:14 89:8 91:12 106:5 york 1:3,19,20,22 2:14,19,19 3:4,16 3:16,21 89:14 116:3 116:5,9 118:3,3</p> <p style="text-align: center;">z</p> <p>zuckerberg 1:8 3:18 4:11 35:15 36:15 37:17 54:11,12 55:10 59:14 99:25 109:15,22 118:5</p>
<p style="text-align: center;">v</p> <p>vacco 22:7 valery 15:5 value 90:6 variation 104:9 variations 104:5 various 45:20 77:7 81:10 varying 88:2 vera 26:11 verbal 25:11,11 verbally 6:22 23:11 23:16 25:21 93:2 veritext 3:4 4:4 118:2 versa 96:13 version 67:15 versus 3:18 111:11 vice 96:12 video 48:24 67:2 69:15,25</p>	<p style="text-align: center;">w</p> <p>walk 48:18 wall 89:11 91:14 want 7:5 34:25 43:11 48:11,18 108:4 wanted 12:8 19:14 51:9 60:11 warren 2:6 watching 84:18,19 84:21 way 23:7 32:8 46:6 67:9 71:19,21 116:19 ways 91:2 wear 83:5,8 wearing 82:20,22 83:22 114:9 web 30:3,11 32:11 32:18 weeks 92:8 93:8 welcome 68:8 went 17:25 18:12,19 18:23 32:19 94:13 western 1:3 3:20</p>		