UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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PAUL D. CEGLIA,

                Plaintiff,

        v.

MARK ELLIOT ZUCKERBERG and
FACEBOOK, INC.,

                Defendants.

- x

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

DECLARATION OF GERALD R. McMENAMIN IN SUPPORT OF DEFENDANTS' MOTION FOR EXPEDITED DISCOVERY

I, Gerald R. McMenamin, declare as follows:

1. I respectfully submit this declaration in support of Defendants' Motion for Expedited Discovery:

2. I am Professor Emeritus of Linguistics and former Chair of the Department of Linguistics at California State University, Fresno. My academic and professional areas of specialization are the analysis of variation and style in spoken and written language. Attached to this Declaration as **Exhibit A** is my *Curriculum Vitae*. On past occasions, the last five years of which are set forth in my *Curriculum Vitae*, I have qualified as an expert witness in forensic linguistics and have testified in courts in the State of California and in other States and countries, as well as in Federal Courts, to render conclusions and opinions on stylistics and questioned authorship.

3. I was retained in this matter by GIBSON DUNN and was asked to determine, to the extent possible, the authorship of a series of QUESTIONED writings excerpted into an Amended Complaint in this matter, by performing a stylistic analysis of those QUESTIONED writings vis-à-vis KNOWN reference writings of Mr. Mark Zuckerberg.

KNOWN writings used for comparison were various email writings of Mr. Zuckerberg exchanged with the Plaintiff and related parties during the time period as specified in the Amended Complaint, which totaled 35 emails. My task was to analyze the internal structure of all writings, with the objective of either excluding or identifying Mr. Zuckerberg as the writer of the QUESTIONED excerpts.

4. **Opinion:** It is probable that Mr. Zuckerberg is not the author of the QUESTIONED writings.

5. **Forensic Stylistic Analysis**: This is a case in which I have used stylistic analysis, or "stylistics", to reach a conclusion related to the authorship of questioned writings. Stylistics is the scientific study of patterns of variation in written language. The object of study is the language of a single individual, resulting in a description of his/her respective identifying linguistic characteristics. Literary stylistics studies works of literature whose authorship is in doubt. Stylistics is *forensic* when its purpose is to resolve a disputed question related to written language, such as that of the authorship question of this case. In cases of disputed authorship, the linguist analyzes and describes the style of documents known to be written by one or more given suspect authors and compares and contrasts their internal linguistic patterns to those of the questioned writing. The result of this analysis may be exclusion or inclusion of writings within a common canon of writings; or exclusion or identification of a suspect author; or inconclusive with respect to data that support neither of the latter outcomes.

6. This approach to author identification is based on two principles generally accepted, and well-documented in peer-reviewed contexts: author-specific linguistic patterns are present in unique combination in the style of every writer, and these

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underlying patterns can be empirically described and often measured by careful linguistic analysis, making author identification possible.

7. A language is at one and the same time *owned* by its whole group of speakers but uniquely *used* by individuals from that group. Why one writer chooses linguistic form A and another chooses form B has two possible causes: differences in what they individually know of the language, and differences in how each one uses the core of linguistic knowledge they have in common as speakers and writers of English. Individual differences in writing style are also very often due to an individual's choice of available alternatives within a large, shared common-pool of linguistic forms. At any given moment, a writer picks and chooses just those elements of language that will best communicate what he/she wants to say. The writer's "choice" of available alternate forms is often determined by external conditions and then becomes the unconscious result of habitually using one form instead of another. Individuality in writing style results from a given writer's own unique set of habitual linguistic choices. Identification and analysis of a writer's choices, i.e., of his or her style markers, constitute stylistic analysis, which is well established as a generally accepted and peer-reviewed method of author identification in both literary and forensic contexts.

8. **Method**: QUESTIONED and KNOWN writings analyzed are the following:

Questioned Excerpts
11 Excerpts from Amended Complaint, attributed to Mr. Zuckerberg
Known-Zuckerberg Writings
35 Emails of Mr. Zuckerberg, as described above

9. I analyzed the language of the QUESTIONED writings and that of the KNOWN-Zuckerberg writings to determine if the QUESTIONED writings are or are not

consistent with Mr. Zuckerberg's KNOWN writings.

10. In order to accomplish this assignment, I performed the following tasks:

a. I examined the QUESTIONED writings and the KNOWN-Zuckerberg writings.

b. I identified specific stylistic features of linguistic variation found in the respective QUESTIONED and KNOWN-Zuckerberg writings.

11. **Findings**: Stylistic features present in the QUESTIONED excerpts but absent in the KNOWN-Zuckerberg writings, as well as those present in both sets of writing include the following:

<u>**STYLE-MARKERS IN QUESTIONED AND KNOWN-ZUCKERBERG WRITINGS**</u>

1.	Punctuation:	APOSTROPHES
2.	Punctuation:	SUSPENSION POINTS
3.	Spelling:	*BACKEND*
4.	Spelling:	*INTERNET*
5.	Spelling:	*CANNOT*
6.	Syntax:	RUN-ON SENTENCES
7.	Syntax:	SINGLE-WORD SENTENCE OPENERS
8.	Syntax:	SENTENCE-INITIAL "SORRY" [similarity]
9.	Syntax:	DISTANT OR AMBIGUOUS PRONOUN-REFERENT
10.	Syntax:	NO COMMA AFTER IF-CLAUSE
11.	Discourse:	MESSAGE-FINAL "THANKS!" [similarity]

12. **Discussion**: Details of all 11 style markers and their occurrences are presented in **Exhibit B**. There are two similarities (Nos. 8 and 11) and nine differences between the QUESTIONED writings and KNOWN-Zuckerberg writings, the differences demonstrating a compelling aggregate-array of distinct markers in the respective sets of writings.

13. It is important to note that no single marker of these nine differing features is

idiosyncratic to these writers. However, these nine contrasting markers constitute a unique set of markers. It would be improbable to find a single writer who simultaneously demonstrates both the QUESTIONED set and the KNOWN set.

14. **Conclusion**: Based on the contrastingly-distinct style markers which the QUESTIONED excerpts and the KNOWN-Zuckerberg writings demonstrate, as well as the presence of no more than two minimally-significant similarities between the QUESTIONED and KNOWN-Zuckerberg writings, I conclude that the KNOWN writings of Mr. Zuckerberg demonstrate a sufficiently significant set of differences vis-à-vis the QUESTIONED writings to constitute evidence that Mr. Zuckerberg is not the author of the excerpted QUESTIONED references.

15. I reserve the right to consider any additional information or writings which may be provided me, and to amend this declaration, as necessary, based on my consideration of such information or writings.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this _3 1_ day of May, 2011 at _Irvine_, California.

[signature]

Gerald R. McMenamin

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