

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG and
FACEBOOK, INC.,

Defendants.

x

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Civil Action No. 1:10-cv-00569-RJA
**DECLARATION OF
AMANDA M. AYCOCK**

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x

I, AMANDA M. AYCOCK, hereby declare under penalty of perjury that the following is true and correct:

1. I am an attorney licensed to practice law in the State of New York. I am an associate attorney at the law firm of Gibson, Dunn & Crutcher LLP, counsel of record for Mark Elliot Zuckerberg and Facebook, Inc. in the above-captioned matter. I make this declaration, based on personal knowledge, in support of Defendants' Motion for Production.

2. In this declaration, I provide information concerning certain aspects of the inspection of the Hard Copy Documents (as defined in Defendants' Motion for Production). Unless otherwise noted, the observations made in this declaration are based on my best recollection of my first-hand observations of the various inspections of the Hard-Copy Documents, my review of the video of the inspections, and my review of documents associated with the inspection and sampling of the Hard-Copy Documents.

The July 2011 Hard-Copy Document Inspections

3. On July 14, 2011, in Buffalo, New York, at the offices of Harris Beach PLLC, I observed the inspection by Defendants' experts Peter V. Tytell and Frank J. Romano of the Hard Copy Documents (as defined in Defendants' Motion for Production). Representatives of

Plaintiff who were present were Paul Argentieri and Plaintiff's former counsel Jeffrey Lake and Steven Teppler. None of Plaintiff's current or former experts were present on July 14, 2011. No physical sampling of the Hard-Copy Documents occurred on July 14, 2011.

4. On July 15, 2011, in Buffalo, New York, at the offices of Harris Beach PLLC, I observed the inspection by Defendants' experts Peter V. Tytell and Gus R. Lesnevich of the Hard Copy Documents. Representatives of Plaintiff who were present were Mr. Argentieri, Mr. Lake, and Plaintiff's expert Jim Blanco. Mr. Blanco also conducted an inspection of the Hard-Copy Documents on this day. No physical sampling of the Hard-Copy Documents by either party occurred on July 15, 2011.

5. On July 16, 2011, in Buffalo, New York, at the offices of Harris Beach PLLC, I observed the inspection and sampling by Defendants' expert Gerald LaPorte of the Hard Copy Documents. Representatives of Plaintiff who were present were Mr. Argentieri, Mr. Lake, Mr. Blanco (who departed early in the inspection), and Plaintiff's other document examiner Larry Stewart. Mr. LaPorte took paper, ink, and toner samples from the Hard-Copy Documents on July 16, 2011.

6. On July 19, 2011, in Buffalo, New York, at the offices of Harris Beach PLLC, I observed the inspection and sampling by Defendants' expert Dr. Albert Lyter of the Hard Copy Documents. Representatives of Plaintiff who were present were Mr. Argentieri, Mr. Lake, and Mr. Stewart. Dr. Lyter took paper, ink, and toner samples from the Hard-Copy Documents on July 19, 2011.

7. On July 25, 2011, in Chicago, Illinois, at the offices of Edelson McGuire, LLC, I observed the inspection and sampling by Plaintiff's experts Mr. Stewart and Erich Speckin of the Hard Copy Documents. Representatives of Defendants who were present for Plaintiff's

inspection and sampling were Alex Southwell, Dr. Lyter, and I. Plaintiff's experts took paper, ink, and toner samples from the Hard-Copy Documents on July 25, 2011.

8. I have reviewed the video recording of the July 25, 2011 Hard-Copy Document Inspection.

9. Images and photocopies were taken of the Hard Copy Documents both before and after each of Plaintiff's and Defendants' experts conducted their inspections and sampling in order to provide a record of the sampling that occurred at each Hard-Copy Inspection. Any photocopies were provided to both parties at the time of each inspection. I have reviewed those images, some of which are described below.

- a. A true and accurate photocopy of the Work for Hire Document created on July 19, 2011, showing sampling of that document by Defendants' experts as of that date and prior to Plaintiff's experts' July 25, 2011 inspection, is attached hereto as **Exhibit A**.¹
- b. A true and accurate photograph of both pages of the Work for Hire document taken on August 27, 2011, showing sampling of those pages by both Defendants and Plaintiff's experts as of that date is attached hereto as **Exhibit B**. Note that no sampling by either party occurred between July 25, 2011 and August 27, 2011, so these photographs show each page as it had been sampled by both parties' experts as of July 25, 2011.

¹ Note that some of the paper sampling at the bottom edge of the photocopy of page 1 of the Work for Hire Document was cut off by the photocopy machine. These samples were the square samples taken by Dr. Lyter (he was the only expert to take square paper samples), and can be seen in later images of the document.

- c. A true and accurate photocopy of the Specifications Document created on July 19, 2011, showing sampling of that document by Defendants' experts as of that date and prior to Plaintiff's experts' July 25, 2011 inspection, is attached hereto as **Exhibit C**.
- d. A true and accurate photocopy of pages 1 and 2 of the Specifications Document created on July 25, 2011 after Plaintiff's experts' sampling, showing sampling of those pages by both Defendants and Plaintiff's experts as of that date, is attached hereto as **Exhibit D**.

10. I have also reviewed images of the Hard-Copy Documents produced by Mr. Stewart, which he has indicated are a "location map" of the samples he took on July 25, 2011. A true and accurate copy of these images is attached hereto as **Exhibit E**.

11. Prior to the July 25 inspection, on July 16, 2011, the parties had reached an agreement as to how many initial samples each party's experts could extract of paper, ink, and toner from the Work for Hire and Specifications Documents. *See* August 4, 2011 Southwell Decl. (Doc. No. 97) ¶¶ 33-34. At the time the Hard-Copy Inspections (as defined in Defendants' Motion for Production) took place in July 2011, the parties were most concerned with ink sampling, given that the amount of ink available for sampling was more limited than the amount of paper or toner. Due to this concern, on July 16, 2011, at the Hard-Copy Inspection in Buffalo, New York, Defendants' expert Mr. LaPorte created a "mock-up" of the ink sampling Defendants' experts proposed to take. He did so by using a tiny hole-punch to take samples from the "ink" on a color copy of the Work for Hire Document, which was shown to Plaintiff's representatives for their assent, which they provided. I brought that mock-up to the inspection in Chicago, Illinois on July 25, 2011.

12. On July 25, 2011, Mr. Southwell and I discussed proposed sampling with Mr. Stewart and Mr. Speckin. From those conversations, I understood that Mr. Stewart would take toner and paper samples only, and Mr. Speckin would take ink and paper samples.

13. Before Mr. Speckin began sampling the ink, I requested that he use a red pen to mark the ink samples that he proposed to take on the mock-up that had been created by Mr. LaPorte. Mr. Speckin did so.² A true and accurate copy of that mock-up document, showing Defendants' proposed sampling as black holes or dots, and Plaintiff's proposed sampling in red pen, is attached hereto as **Exhibit F**.

14. In person and on the video recording, I observed Mr. Stewart and Mr. Speckin take samples of the Work for Hire and Specifications Documents. I observed Mr. Stewart take paper and toner samples only, and Mr. Speckin take paper and ink samples only. I observed Mr. Speckin take all of the ink samples that were allotted to Plaintiff under the parties' agreement. I observed Mr. Stewart take no ink samples.

15. A true and accurate copy of excerpts of the transcript of Speckin's deposition, which took place on September 24, 2012, is attached hereto as **Exhibit G**. Mr. Speckin's deposition testimony confirmed my observations in the preceding paragraph. *See Speckin Depo. Tr. at 51:4-6, 73:2-11.*

16. Details about Mr. Stewart's sampling are below.

17. On the video of the inspection, Mr. Speckin can be seen taking ink and paper samples from the Hard-Copy Documents, starting at approximately 11:21 a.m.

² Mr. Speckin did not mark his proposed sampling of the initials on page one of the Work for Hire Document, but he did take four samples from each set of initials, in accordance with the parties' agreement, and as his notes from the inspection indicate. *See ¶ 30, infra.*

Sampling of Page 1 of the Work for Hire Document

18. At the July 25, 2011 inspection Mr. Stewart first took paper and toner samples from the Work for Hire Document, and then took samples from the Specifications Document. Prior to his sampling, beginning at approximately 9:33 a.m., Stewart captured images of the Work for Hire Documents using a flat-bed scanner. He began sampling at approximately 11:10 a.m. CST. In the first minute of his sampling, Mr. Stewart took 1 paper sample from each tab mark on page 1 of the Work for Hire Document, and placed those 2 samples in his first vial, **Vial 1**. At approximately 11:11:50 a.m., Mr. Stewart removed two “TLC Worksheet Forms” from a manila folder, placing one on top of the other. He dated the form on top July 25, 2011, and recorded the contents of Vial 1 in the first row of the form (the “Inventory Worksheet”). This Inventory Worksheet is Exhibit H to the Southwell Declaration filed in support of Defendants’ Motion for Production. Mr. Stewart’s “location map,” Exhibit E, is consistent with my observation, indicating that samples from the tab areas on page 1 were placed in Vial 1.

19. From approximately 11:12 a.m. to 11:15 a.m., Mr. Stewart removed 16 more paper samples from various locations on page 1 of the Work for Hire Document and placed them in **Vial 2**, for a total of 18 paper samples from page 1. He recorded the contents of Vial 2 on the second row of the Inventory Worksheet. Despite the fact that Mr. Stewart took 16 paper samples from page 1 of the Work for Hire Document, he recorded Vial 2 as containing 14 paper samples. *See* Southwell Decl. Exhibit H, row 2.³ Mr. Stewart’s “location map,” Exhibit E, is consistent

³ Mr. Stewart and Mr. Speckin apparently agreed that, on pages of the Hard-Copy Documents with writing ink, Mr. Speckin would take 4 paper samples and Mr. Stewart would take the 16 samples remaining in Plaintiff’s allotment of 20. *See* Exhibit H, *infra* (Mr. Speckin’s sampling inventory and notes, confirming he took 4 paper samples from each page from which he sampled). In the video of the inspection, starting at approximately 11:15 a.m., Mr. Stewart appeared to second guess the number of samples he took. He hesitated when writing

with my observation, indicating that samples from various locations of the paper of page 1 were placed in Vial 2.

20. At approximately 11:15:48, Mr. Stewart wrote in the third and fourth rows of the Inventory Worksheet, preparing to sample from the toner on page 1 of the Work for Hire Document. From approximately 11:16 to 11:19 a.m., Mr. Stewart took 10 toner samples from the top portion of page 1 of the Work for Hire Document, specifically from the document's title and from the "General Provisions" header. He placed these 10 samples in **Vial 3**. From approximately 11:19 to 11:22 a.m., Mr. Stewart took 10 toner samples from the bottom of page 1 of the Work for Hire Document, specifically from paragraphs 7 and 4. He placed these 10 samples in **Vial 4**. Mr. Stewart's "location map," Exhibit E, is consistent with my observation.

21. At approximately 11:21 a.m., Mr. Stewart handed page 1 of the Work for Hire Document to Mr. Speckin. He had taken no ink samples. At no point during the video of the July 25, 2011 inspection did Mr. Stewart ever return to page 1 of the Work for Hire Document in order to take any additional samples of anything.

Sampling of Page 2 of the Work for Hire Document

22. From approximately 11:22 to 11:23 a.m., Mr. Stewart wrote in rows 5 and 6 of the Inventory Worksheet, preparing to sample from page 2 of the Work for Hire Document. From approximately 11:24 to 11:26 a.m., Mr. Stewart took 16 paper samples from the lower right side of page 2 of the Work for Hire Document in a square formation and placed them in **Vial 5**. From approximately 11:26 to 11:29 a.m., Mr. Stewart took 20 toner samples from the lower right side of page 2 of the Work for Hire Document, specifically from the printed lines

down the contents for Vial 2, pantomimed recounting his samples, picked up his pen and hovered over the second row for a moment, and then puts the pen down without making any correction to his entry of "14."

under each signature. He placed those samples in **Vial 6**. Mr. Stewart's "location map," Exhibit E, is consistent with my observation, indicating that he took 10 toner samples from each signature line and paper samples from one area on the lower right side of page 2.

23. At approximately 11:30 a.m., Mr. Stewart handed page 2 of the Work for Hire Document to Mr. Speckin. He had taken no ink samples and did not take any ink samples on July 25, 2011 at the inspection. At no point during the video of the July 25, 2011 inspection did Mr. Stewart ever return to page 2 of the Work for Hire Document in order to take any additional samples of anything.

Sampling of Page 1 of the Specifications Document

24. At approximately 11:32 a.m., Mr. Stewart wrote in rows 7 and 8 of the Inventory Worksheet, preparing to sample from page 1 of the Specifications Document. From approximately 11:34 to 11:36 a.m., Mr. Stewart took 20 paper samples from the middle of page 1 of the Specifications Document, taking a row of 10 samples from the space between paragraphs 2 and 3 and another row of 10 samples from the space between paragraphs 3 and 4. He placed those 20 paper samples in **Vial 7**. From approximately 11:36 to 11:39 a.m., Mr. Stewart took 20 toner samples from page 1 of the Specifications Document. He placed those 20 toner samples in **Vial 8**. Mr. Stewart's "location map," Exhibit E, is consistent with my observation.

Sampling of Page 2 of the Specifications Document

25. At approximately 11:50 a.m., Mr. Stewart wrote in rows 9 and 10 of his Inventory Worksheet, preparing to sample from page 2 of the Specifications Document. From approximately 11:50 to 11:53 a.m., Mr. Stewart took 20 paper samples from the right side of page 2 of the Specifications document in a square formation. He placed those 20 paper samples in **Vial 9**. From approximately 11:53 to 11:55 a.m., Mr. Stewart took 20 toner samples from

page 2 of the Specifications Document. He placed those 20 toner samples in **Vial 10**. Mr. Stewart's "location map," Exhibit E, is consistent with my observation.

26. At approximately 11:56 a.m., Mr. Stewart took out more vials and labeled them.

27. At approximately 11:58 a.m., Mr. Stewart took the blank second "TLC Worksheet Form" from behind the first to continue his inventory of samples. This is the second page of Mr. Stewart's July 25, 2011 Inventory Worksheet, which has not been provided to Defendants.

Sampling of Pages 3 through 6 of the Specifications Document

28. From approximately 11:58 a.m. to 12:14 p.m., Mr. Stewart took paper and toner samples from pages 3 through 6 of the Specifications Document, placed them in **Vials 11 through 18**, and recorded the contents of those vials in rows 1 to 8 of the second page of his Inventory Worksheet. Mr. Stewart took no ink samples of any of these pages. After he had finished taking paper and toner samples from each page, at no point during the July 25, 2011 inspection did Mr. Stewart ever return to pages 3 through 6 of the Specifications Document in order to take any additional samples of anything. Mr. Stewart's "location map," Exhibit E, is consistent with my observation that Mr. Stewart only took paper and toner samples from pages 3 through 6 of the Specifications Document.

Ink Sampling of the Hard-Copy Documents

29. During his deposition, Mr. Speckin confirmed that on July 25, 2011, he took all of the ink samples available, and Mr. Stewart took no ink samples. *See* Speckin Depo. Tr. at 51:4-6, 73:2-11.

30. During his deposition, Mr. Speckin produced a handwritten inventory of his sampling vials, which reflected that he had taken all of the ink samples from both Hard-Copy

Documents that were available under the parties' agreement. Specifically, Mr. Speckin took from the Work for Hire Document:

- 10 ink samples from the interlineation on page 1
- 4 ink samples from the purported "PC" initials on page 1
- 4 ink samples from the purported "MZ" initials on page 1
- 10 ink samples from the purported "Paul Ceglia" signature on page 2
- 10 ink samples from the purported "Mark Zuckerberg" signature on page 2
- 4 paper samples from each of pages 1 and 2

Mr. Speckin took from the Specifications Document:

- 10 ink samples from the interlineation on page 4
- 4 ink samples from the purported "PC" initials on page 4
- 4 ink samples from the purported "MZ" initials on page 4
- 10 ink samples from the purported "Paul Ceglia" signature on page 6
- 10 ink samples from the purported "Mark Zuckerberg" signature on page 6
- 4 paper samples from each of pages 4 and 6

A true and accurate copy of Mr. Speckin's handwritten inventory, authenticated as Speckin Exhibit 2 by Mr. Speckin at his deposition, is attached hereto as **Exhibit H**.

31. At his deposition, Mr. Speckin testified that after he conducted some limited ink testing on ink samples from the Hard-Copy Documents, he did have some ink samples remaining. He testified that he did not send any ink samples to Mr. Stewart. Mr. Speckin testified that any ink samples he had left over were maintained in his Michigan office, but that they may have been destroyed due to the office's policy of only maintaining ink samples for 1 year after they have been taken. Mr. Speckin did not know one way or the other whether the ink samples had been destroyed. *See* Speckin Depo. Tr. at 74:1-77:20.

Other Information in Support of Defendants' Motion

32. At the July 16, 2011 and July 19, 2011 inspections by Defendants' experts, LaPorte and Dr. Lyter took a total of twenty paper samples from each page of the Work for Hire

Document. I confirmed this by reviewing the photocopies and photographs of the as-sampled documents, attached hereto as Exhibits A-D, *supra*.

33. No document Ceglia has produced to date is the second page of the July 25, 2011 Inventory Worksheet that I observed Mr. Stewart complete, which reflects the contents of Vials 11 through 18 containing paper and toner samples from the Specifications Document.

34. No document Ceglia has produced to date reflects any ink sampling conducted by Mr. Stewart.

35. A true and accurate copy of excerpts of the transcript of the deposition of Walter Rantanen, which took place on July 16, 2012, is attached hereto as Exhibit I.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 27th day of September, 2012 at New York, New York.



Amanda M. Aycock