

EXHIBIT Q

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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,

-against-

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

Defendants.

-----x

June 29, 2012

10:07 a.m.

VIDEOTAPED DEPOSITION of JERRY GRANT,
Expert Witness on behalf of Plaintiff, taken by
Defendants, held at the offices of Gibson Dunn &
Crutcher, 200 Park Avenue, New York, New York,
before Eileen Mulvenna, CSR/RMR/CRR, Certified
Shorthand Reporter, Registered Merit Reporter,
Certified Realtime Reporter and Notary Public of
the State of New York.

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A L S O P R E S E N T :

MICHAEL F. McGOWAN (Stroz Friedberg)
DANIEL McCLUTCHEY, Videographer
NADER KHORASSANI, Summer Intern

Jerry Grant

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correct?

A. I cannot authenticate the e-mails, no.

Q. So you're not offering that expert opinion, that the four e-mails are real; correct?

A. Correct.

Q. You are not offering an expert opinion that the purported e-mails were actually sent or received; correct?

A. Correct.

Q. You are not offering an expert opinion that the purported e-mails were copied and pasted; correct?

A. I don't understand. I offered an opinion that it was consistent with that in my report.

Q. But you're not offering an opinion that the -- that e-mails were, in fact, copied and pasted into Word files; correct?

A. I'm offering an opinion that text was copied and pasted, okay, an e-mail copied and pasted, was it consistent with the contents of these Word documents. And that's what I'm offering. I'm not sure if I'm answering that

1 Jerry Grant

2 correctly or not.

3 Q. Right.

4 Your opinion is about text being
5 copied and pasted.

6 I guess my question is, you're not
7 offering an opinion that it was actual e-mails
8 that were copied and pasted; correct?

9 A. I -- yes, I do not know what was --
10 I just know that that text exists in those Word
11 documents, yes.

12 Q. Right.

13 So you're not offering an expert
14 opinion that e-mails -- actual e-mails were
15 copied and pasted; correct?

16 A. No, I did not have access to that,
17 no, sir.

18 Q. Am I correct that you're not
19 offering that opinion?

20 A. Correct.

21 Q. You're not offering an expert
22 opinion that the purported e-mails contain
23 accurate time zone stamps; correct?

24 A. I'm sorry, I'm not offering --

25 Q. You're not offering an opinion that

1 Jerry Grant

2 could explain more, but I don't know if you want
3 me to explain --

4 Q. We are going to get to that.

5 A. We'll get to that. I can't -- I
6 don't know how to answer that yes or no without
7 explaining what happened.

8 Q. Okay. So let me see if I understand
9 it. You were first tasked or asked to provide an
10 opinion about whether the documents were
11 consistent with copying and pasting. And that
12 was by Mr. Argentieri.

13 Later in the case, after speaking
14 with Mr. Boland, you provided an opinion about
15 the fact of -- you provided your opinion that you
16 found nothing indicative of fraud.

17 A. Correct.

18 Q. And what are the bases, what are the
19 factual bases for that opinion?

20 A. When I looked at it to indicate
21 fraud, my -- my biggest area that I looked at was
22 impossibilities. That means is there something
23 on these, a forensic artifact, that would
24 indicate an impossibility. And what I mean by
25 that is something that just could not happen

1 Jerry Grant

2 regardless of an explanation.

3 And that's why I concentrated in one
4 way on the versions. If there was a version of a
5 document that was on a floppy disk that wasn't in
6 existence yet, let's say Word 2010, okay -- if a
7 document was created or saved on a floppy disk
8 with that version, and it was supposedly saved
9 between 2003, 2004, but Word wasn't invented
10 until after that fact, then that's an
11 impossibility.

12 So I was looking at any
13 impossibilities with standards, fonts, you know,
14 all of the other known facts at that point.

15 And so that's where I concentrated
16 my efforts on.

17 Q. When you say "standards," what do
18 you mean by that?

19 A. Well, there's like the Rich Text
20 Format, the standard that the file was created
21 in. The version -- each version of Word has
22 their own little set of standards. They have
23 their own file headers, their own contents, their
24 own metadata.

25 And so the Rich Text Format, the doc

1 Jerry Grant

2 A. I've read that in a news article,
3 yes.

4 Q. Does that give you any cause for
5 concern?

6 A. No.

7 Q. And did you read the motion that
8 your declaration was submitted with before it was
9 submitted?

10 A. No.

11 Q. Are you aware that the motion
12 asserted that your analysis confirmed Mr. Ceglia
13 and the authenticity of the purported e-mails?

14 A. I'm not aware. I did not read it.

15 Q. Actually, let's show you that.

16 MR. SOUTHWELL: If I could have this
17 marked as Defendants' Exhibit 11, please.

18 (Defendants' Exhibit 11, No Bates
19 numbers, Declaration of Jerry Grant, marked
20 for identification.)

21 BY MR. SOUTHWELL:

22 Q. I'm showing you now what's marked as
23 Defendants' Exhibit 11.

24 Do you recognize that?

25 A. Yes, my declaration.

Jerry Grant

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Q. What's the date of the declaration?

3

A. It is November 16, 2011.

4

Q. That's the date you signed it --

5

A. Yes, sir.

6

Q. -- right?

7

8

You'll note on the top it's got a reference to it being filed on November 17,

9

2011 --

10

A. 17 --

11

Q. -- right?

12

A. Yes, sir.

13

14

Q. Now, in this declaration, you were careful to note that you had examined these two floppy disks and you had not identified any evidence of fraud; is that accurate?

15

16

17

A. Right.

18

19

Q. You did not say in this declaration that the purported e-mails were authentic;

20

correct?

21

A. Correct.

22

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25

Q. And what you were -- in the declaration, you reviewed a number of areas that you had focused on with respect to the two floppy disks in those Word files; right?

1 Jerry Grant

2 A. Correct.

3 Q. And your opinion again is that you
4 could not rule out -- rather, that you did not
5 find anything that rendered them impossible;
6 right?

7 A. Correct.

8 (Discussion off the record.)

9 BY MR. SOUTHWELL:

10 Q. Okay. I'm sorry, because I'm seeing
11 how it's coming out. It's not as --

12 A. There's no problem.

13 Q. -- clear as I would like it.

14 The opinion contained in this
15 declaration is that you did not find anything
16 that rendered the Word files impossible; correct?

17 A. Correct.

18 Q. That is the extent of your opinion
19 you're offering?

20 A. Correct.

21 Q. You're offering no other opinion in
22 this declaration; correct?

23 A. I -- I thought I had put in that it
24 was consistent -- let me see. Unless it was in
25 the first one. Let me just double-check here.

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Jerry Grant

(Witness peruses the exhibit.)

A. You are correct, sir.

Q. Now, you did not say that the purported e-mails were authentic in this declaration; correct?

A. Correct.

Q. So if the motion asserted that your analysis confirmed that they were authentic, that would be inaccurate; correct?

A. I did not state that.

Q. Correct, right. So if the motion said that you had stated that the analysis confirms the purported e-mails were authentic, that would be inaccurate?

MR. BOLAND: Objection.

The motion doesn't state what he stated.

THE WITNESS: If that's what it said, then correct.

BY MR. SOUTHWELL:

Q. Now, you next submitted a declaration a few weeks later, on December 8th of 2011; is that right?

A. Let me double-check, sir.

1 Jerry Grant

2 that file. That's a fact that there's a date on
3 that file. So that's not a -- an opinion. All
4 right. And what I mean by that, if that date
5 says it's July 1990, that's a fact that that's
6 the date of the file.

7 I do not know, because it's on a
8 floppy disk, if that date is accurate or not
9 because I have no other source to confirm it to.
10 So, therefore, I cannot relate an opinion based
11 on that because I do not have that answer.

12 So I -- I don't want to state an
13 opinion unless you can rule things out. And
14 that's more or less going into impossibilities.
15 So can metadata change from other many different
16 factors? Yes. So, therefore, I can't state a
17 fact.

18 So there's no impossibility there.

19 Q. So you're saying "simply can't be
20 done" is that you can't state a conclusion
21 without having ruled out other possibilities,
22 without having determined that it's not
23 impossible?

24 A. Correct.

25 Q. So you can't -- you would not be

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Jerry Grant

So your conclusion was that nothing was found to indicate fraud, or something very similar to that, and you meant essentially to say the same thing with respect to each of these paragraphs; right?

A. Impossibilities, yes, sir.

Q. Impossibilities you said, right.

And what were the steps that you took to lead to that conclusion?

A. As far as like for each individual one or --

Q. Generally speaking, you would look at the result of the metadata field?

A. Can I go through a few of these and then I can explain them? So if --

Q. Actually, I'm going to get into the particulars in a moment --

A. I would look at each individual category and try to, you know, get the information that FTK is showing me. So if it's metadata or file dates, then I would look at the file dates, times and everything to get that information.

I would then take into consideration

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Jerry Grant

better to be a little more specific in this section?

A. I think it would have given more information so it would be easier to determine what it was I was referring to, yes, sir.

Q. You know, how is it that the court can rely on this information when you don't have any of the specifics about it?

MR. BOLAND: Objection.

THE WITNESS: Do I answer?

BY MR. SOUTHWELL:

Q. Yes.

A. Because I looked at all of them, I was taking everything into consideration. I did not state any authenticity on any of them. And even in this one, I can't state that it's authentic. I can just state that because it has the proper formatting of HTML that would have come up in a web browser address field, that that doesn't indicate fraud.

Even with the ones here that did not contain HTML, I still can't come to the conclusion that it was fraudulent because it's text inside a word processing document.