

EXHIBIT 9

| Page 1 | Page 2 |
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| <p>1 SUPERIOR COURT OF THE STATE OF CALIFORNIA</p> <p>2 COUNTY OF SAN MATEO</p> <p>3 - - - - - x</p> <p>4 SIX4THREE,</p> <p>5 Plaintiff,</p> <p>6 V. Case No. CIV 533328</p> <p>7 FACEBOOK, INC, a Delaware</p> <p>8 corporation, and Does 1 - 50,</p> <p>9 inclusive,</p> <p>10 Defendants.</p> <p>11 - - - - - x</p> <p>12 VIDEOTAPED DEPOSITION OF</p> <p>13 THOMAS SCARAMELLINO</p> <p>14</p> <p>15 April 21, 2017</p> <p>16 9:10 a.m.</p> <p>17</p> <p>18 Conn Kavanaugh Rosenthal Peisch & Ford, LLP</p> <p>19 Ten Post Office Square</p> <p>20 Boston, Massachusetts</p> <p>21</p> <p>22</p> <p>23 Reported By:</p> <p>24 Rosemary F. Grogan,</p> <p>25 RPR, CSR No. 112993</p> <p>Job No. 10031574</p> | <p>1 APPEARANCES</p> <p>2 On Behalf of the Plaintiff:</p> <p>3 By: David S. Godkin, Esquire</p> <p>4 BIRNBAUM & GODKIN, LLP</p> <p>5 280 Summer Street</p> <p>6 Boston, MA 02210</p> <p>7 617-307-6100</p> <p>8 dgodkin@birnbaumgodkin.com</p> <p>9</p> <p>10 On Behalf of the Defendants:</p> <p>11 By: Sonal N. Mehta, Esquire</p> <p>12 DURIE TANGRI, LLP</p> <p>13 217 Leidesdorff Street</p> <p>14 San Francisco, CA 94111</p> <p>15 415-362-6666</p> <p>16 smehta@durietangri.com</p> <p>17</p> <p>18 Also present:</p> <p>19 Alex Daunais, Videographer</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
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| <p>1 INDEX OF EXAMINATION</p> <p>2 WITNESS: THOMAS SCARAMELLINO</p> <p>3 EXAMINATION PAGE NO.</p> <p>4 By Ms. Mehta 6</p> <p>5</p> <p>6 INDEX TO EXHIBITS</p> <p>7 NUMBER DESCRIPTION PAGE NO.</p> <p>8 Exhibit 55 Notice of Subpoenas and 10</p> <p>9 Attachments</p> <p>10 Exhibit 56 Certificate of Formation of 70</p> <p>11 Limited Liability Company</p> <p>12 Bates Six4Three 000015377 - 15424</p> <p>13 Exhibit 57 E-mail 4/18/13 96</p> <p>14 Bates Six4Three 00000000549</p> <p>15 Exhibit 58 E-mail String 6/18/13 122</p> <p>16 Bates Six4Three 000000864 - 867</p> <p>17 Exhibit 59 E-mail 6/18/13 and Attachment 138</p> <p>18 Bates Six4Three 000001090 - 110</p> <p>19 Exhibit 60 Website Terms of Use - Essess 155</p> <p>20 Exhibit 61 BroBible Document 161</p> <p>21 Exhibit 62 E-mail 7/17/14 165</p> <p>22 Bates Six4Three 00000368</p> <p>23 Exhibit 63 Pikinis Testers Feedback 171</p> <p>24 Six4Three 0000001598 - 617</p> <p>25</p> | <p>1 INDEX TO EXHIBITS</p> <p>2 NUMBER DESCRIPTION PAGE NO.</p> <p>3 Exhibit 64 E-mail 7/19/13 180</p> <p>4 Six4Three 00000635</p> <p>5 Exhibit 65 Facebook Platform Policies 186</p> <p>6 Exhibit 66 Facebook Statement of Rights 187</p> <p>7 and Responsibilities, etc.</p> <p>8 Exhibit 67 Facebook Statement of Rights 187</p> <p>9 and Responsibilities, etc.</p> <p>10 Exhibit 68 E-mail String 7/18/14 206</p> <p>11 Bates Six4Three 000000892 - 97</p> <p>12 Exhibit 69 E-mail 5/19/14 227</p> <p>13 Bates Six4Three 00000641</p> <p>14 Exhibit 70 Facebook Platform Changelog 235</p> <p>15 Exhibit 71 E-mail 7/28/14 239</p> <p>16 Bates Six4Three 00000004</p> <p>17 Exhibit 72 E-mail String 10/16/14 241</p> <p>18 Bates TS_000001</p> <p>19 Exhibit 73 Plaintiff Six4Three LLC's Second 253</p> <p>20 Supplemental Response to Defendant</p> <p>21 Facebook, Inc.'s Form Interrogatories</p> <p>22 Exhibit 74 Plaintiff Six4Three LLC's Response 264</p> <p>23 to Defendant Facebook, Inc.'s</p> <p>24 Specially Prepared Interrogatories</p> <p>25 (Set Three)</p> |

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| <p style="text-align: right;">Page 197</p> <p>1 like it was right around the same time.</p> <p>2 And so sitting here today, it is not</p> <p>3 clear to me which of these two versions was operative at</p> <p>4 the time that we made our decision.</p> <p>5 Q. I see. But it would have been either</p> <p>6 Exhibit 66 or Exhibit 67?</p> <p>7 A. Correct. It's one of the two.</p> <p>8 Q. Okay. And the provisions that we talked about</p> <p>9 relating to the special provisions applicable --</p> <p>10 applicable to developers/operators of applications and</p> <p>11 Web sites, in paragraph No. 2, in terms of access and</p> <p>12 use of data, that exists in both versions, right?</p> <p>13 MR. GODKIN: Objection.</p> <p>14 A. Can you show me which --</p> <p>15 Q. Yes.</p> <p>16 A. -- which one you're talking about again?</p> <p>17 Q. Exhibit 66, page 3 of 7.</p> <p>18 A. All right.</p> <p>19 Q. And then Exhibit 67. That's on page 3 of 7 as</p> <p>20 well.</p> <p>21 A. You're asking about the special provisions</p> <p>22 section?</p> <p>23 Q. That's right.</p> <p>24 A. I believe these are identical.</p> <p>25 Q. And then if you can look at Exhibit -- the --</p> | <p style="text-align: right;">Page 198</p> <p>1 the point number 19 about we can create applications</p> <p>2 that offer similar features and services to, or</p> <p>3 otherwise compete with, your application, that is in</p> <p>4 both Exhibit 66 and 67, right?</p> <p>5 MR. GODKIN: Objection.</p> <p>6 A. Yes, if that's the question.</p> <p>7 Q. So whichever version of the SRRs you signed on</p> <p>8 to that paragraph 19 provision was included?</p> <p>9 MR. GODKIN: Objection.</p> <p>10 A. Yes.</p> <p>11 Q. And the limitation of liability clause that we</p> <p>12 discussed earlier, that limitation of liability</p> <p>13 paragraph also exists in both 66 and 67, correct?</p> <p>14 A. I know it exists. I can't tell you, sitting</p> <p>15 here today, if the language is identical.</p> <p>16 Q. But you understood when you signed on to the</p> <p>17 SRRs, that there was a limitation of liability as part</p> <p>18 of the contract that Six4Three was entering with</p> <p>19 Facebook?</p> <p>20 MR. GODKIN: Objection.</p> <p>21 BY MS. MEHTA:</p> <p>22 Q. Right?</p> <p>23 MR. GODKIN: Objection.</p> <p>24 (Witness reviewing)</p> <p>25 A. Yes.</p> |
| <p style="text-align: right;">Page 199</p> <p>1 Q. Was the ability to access Facebook's data</p> <p>2 important to Six4Three?</p> <p>3 A. The ability to access Facebook data was</p> <p>4 critical to Six4Three.</p> <p>5 Q. And you knew that going into the Six4Three</p> <p>6 endeavor, right?</p> <p>7 A. I'm not sure what you mean.</p> <p>8 Q. I mean, it didn't come as a surprise to you at</p> <p>9 some point that you needed to have Facebook data. You</p> <p>10 knew that all along, right?</p> <p>11 MR. GODKIN: Objection.</p> <p>12 A. Ted decided to build an application based upon</p> <p>13 Facebook's promise and representations around data.</p> <p>14 Once that decision was made, that application could not</p> <p>15 function without access to that data. So based upon</p> <p>16 that line of reasoning, yes, it was critical to</p> <p>17 Six4Three that it have access to that data.</p> <p>18 Q. What specific steps did you as the investor</p> <p>19 and adviser to Six4Three take to ensure that you would</p> <p>20 have ongoing access to Facebook data for the Six4Three</p> <p>21 enterprise?</p> <p>22 MR. GODKIN: Objection.</p> <p>23 A. Well, I was aware of Facebook platform and</p> <p>24 Graph API prior to and independent of Ted's decision to</p> <p>25 found Six4Three. And so I have had a number of</p> | <p style="text-align: right;">Page 200</p> <p>1 interactions with other companies, prior to the concept</p> <p>2 of Six4Three, regarding Facebook's representations</p> <p>3 around the Facebook platform.</p> <p>4 MS. MEHTA: Move to strike. Nonresponsive.</p> <p>5 BY MS. MEHTA:</p> <p>6 Q. That wasn't the question. The question was:</p> <p>7 What specific steps did you take as the investor and</p> <p>8 adviser of Six4Three to ensure that Six4Three would have</p> <p>9 ongoing perpetual access to Facebook data?</p> <p>10 A. Like I said, I was very familiar with Facebook</p> <p>11 Platform Graph API and its data. And for the entire</p> <p>12 time that I had become familiar with this massive new</p> <p>13 software application economy, the feedback had been that</p> <p>14 this data is available, it's reliable, it continues to</p> <p>15 be open, Facebook continues to support developers around</p> <p>16 accessing this data.</p> <p>17 And through all of my various</p> <p>18 conversations, even prior to Six4Three, that generated a</p> <p>19 significant comfort level among me and countless other</p> <p>20 investors and startups. Based on that, I then took a</p> <p>21 number of specific steps. First and foremost, we</p> <p>22 reviewed this agreement. Second, we, through our</p> <p>23 discussions with a wide range of other companies, became</p> <p>24 comfortable with the implications of building businesses</p> <p>25 on top of Facebook platform, largely by reviewing</p> |

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| <p style="text-align: right;">Page 201</p> <p>1 Facebook's own representations regarding that platform.</p> <p>2 Q. Other than reviewing the agreement, which I</p> <p>3 think you're referring to the SRRs, and talking to a</p> <p>4 wide range of companies, can you identify any other</p> <p>5 specific steps that you took?</p> <p>6 MR. GODKIN: Objection.</p> <p>7 A. Give me the other thans again. Other than</p> <p>8 what?</p> <p>9 Q. Reviewing the agreement and talking to what</p> <p>10 you described as a wide range of other companies.</p> <p>11 A. Reviewing the representations of Facebook;</p> <p>12 information on Facebook's Web site; representations of</p> <p>13 Facebook's executive in public settings.</p> <p>14 Q. Anything else?</p> <p>15 A. I can't think of anything at the moment.</p> <p>16 Q. You never reached out to Facebook to ask them</p> <p>17 or confirm that you would have perpetual access to</p> <p>18 Facebook data, did you?</p> <p>19 MR. GODKIN: Objection.</p> <p>20 A. There was no e-mail address for Facebook to</p> <p>21 ask such a question.</p> <p>22 Q. So you didn't know how to get in touch with</p> <p>23 them? That's your -- that's your position?</p> <p>24 MR. GODKIN: Objection.</p> <p>25 A. Didn't know how to get in touch with them?</p> | <p style="text-align: right;">Page 202</p> <p>1 Q. Is that what you're saying?</p> <p>2 A. No.</p> <p>3 Q. Let me ask the question again --</p> <p>4 A. I m say ng --</p> <p>5 Q. -- did you ever reach out to Facebook to</p> <p>6 confirm that Six4Three would have perpetual access to</p> <p>7 Facebook's proprietary data?</p> <p>8 MR. GODKIN: Object on.</p> <p>9 A. Facebook aunched th s p atform n 2007. Over</p> <p>10 10 m on app cat ons have been bu t on th s</p> <p>11 p atform. The dea of hav ng to reach out spec f ca y</p> <p>12 to conf rm w th Facebook that such data wou d be</p> <p>13 access be for a market va ued at over \$220 b on does</p> <p>14 not seem ke t wou d be requ red at that po nt.</p> <p>15 Q. So the answer is that you never reached out to</p> <p>16 Facebook to confirm that you would have perpetual access</p> <p>17 to Facebook's proprietary data, right?</p> <p>18 MR. GODKIN: Object on.</p> <p>19 A. Dur ng what t me?</p> <p>20 Q. During any time prior to April of 2015.</p> <p>21 A. State the quest on aga n.</p> <p>22 Q. I'll ask the question differently. Prior to</p> <p>23 April of 2015, you never reached out to Facebook to</p> <p>24 confirm that Six4Three would have perpetual access to</p> <p>25 Facebook's proprietary data --</p> |
| <p style="text-align: right;">Page 203</p> <p>1 MR. GODKIN: Object on.</p> <p>2 BY MS. MEHTA:</p> <p>3 Q. -- is that right?</p> <p>4 A. That s ncorrect.</p> <p>5 Q. You reached out to Facebook before April of</p> <p>6 2015 to confirm that you would have access to the data?</p> <p>7 MR. GODKIN: Object on.</p> <p>8 A. Frst, I d spute your use of the term</p> <p>9 "perpetua ." If you can phrase your quest on w thout</p> <p>10 that term, I can answer t.</p> <p>11 Q. Okay. Let me ask the question this way:</p> <p>12 You -- did you ever reach out to Facebook before April</p> <p>13 of 2015 to confirm that Six4Three would have ongoing</p> <p>14 access to Facebook's proprietary data?</p> <p>15 A. I d spute your use of the term "ongo ng," but</p> <p>16 the answer s yes, I d d.</p> <p>17 Q. Okay. When did you do that?</p> <p>18 A. I contacted a Facebook p atform emp oyee named</p> <p>19 M chae Huang somet me n 2014, ate 2014, I be eve.</p> <p>20 Q. Okay. So -- and we'll talk about that</p> <p>21 interaction in a minute. Let me ask the question</p> <p>22 differently.</p> <p>23 Prior to October of 2014, did you ever</p> <p>24 contact anyone at Facebook to confirm that Six4Three</p> <p>25 would have ongoing access to Facebook's proprietary data</p> | <p style="text-align: right;">Page 204</p> <p>1 for a period of 2, 5 or 10 years?</p> <p>2 MR. GODKIN: Objection.</p> <p>3 A. I don't know.</p> <p>4 Q. You can't identify any instance in which you</p> <p>5 asked that question of Facebook, right?</p> <p>6 MR. GODKIN: Objection.</p> <p>7 A. Is October of 2015 when I contacted</p> <p>8 Michael Huang?</p> <p>9 Q. Yes.</p> <p>10 A. Okay. Can you show me something that</p> <p>11 demonstrates that?</p> <p>12 Q. We'll get to that. What I want to know is --</p> <p>13 A. Well, you're asking me to answer a question</p> <p>14 that I don't know the answer to.</p> <p>15 Q. I'm going to represent to you that your e-mail</p> <p>16 to Michael Huang was dated October 16th, 2014. So my</p> <p>17 question is: Prior to October of 2014, can you identify</p> <p>18 any instance in which you or anyone associated with</p> <p>19 Six4Three reached out to Facebook to confirm that you</p> <p>20 would have ongoing access to Facebook's proprietary</p> <p>21 data?</p> <p>22 MR. GODKIN: Objection.</p> <p>23 A. What do you mean by "ongoing access"?</p> <p>24 Q. That you wouldn't -- that they wouldn't turn</p> <p>25 off your access to Facebook's proprietary data at some</p> |

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| <p>Page 205</p> <p>1 point in time in the future.</p> <p>2 MR. GODKIN: Objection.</p> <p>3 A. Still don't know how to address the use of the</p> <p>4 term "ongoing access." You're making it sound like even</p> <p>5 if I were to contact a Facebook employee, I wouldn't</p> <p>6 have ever contacted them stating terms like perpetual</p> <p>7 access or ongoing access. It's an issue that you're</p> <p>8 attempting to create here that was never considered.</p> <p>9 Q. No, I'm not. You said that having access to</p> <p>10 Facebook data was critical to Six4Three, right?</p> <p>11 A. Correct, and then you added the term</p> <p>12 perpetual.</p> <p>13 Q. Okay. Let's -- let's break it down by time,</p> <p>14 then. Let's take a window of five years, okay?</p> <p>15 Prior to October of 2014, did you or</p> <p>16 anyone on behalf of Six4Three ever reach out to Facebook</p> <p>17 to confirm that Six4Three would have access to</p> <p>18 Facebook's proprietary data for five years?</p> <p>19 MR. GODKIN: Objection.</p> <p>20 A. For five years, no.</p> <p>21 Q. For 10 years?</p> <p>22 A. No.</p> <p>23 MR. GODKIN: Objection.</p> <p>24 BY MS. MEHTA:</p> <p>25 Q. For 15 years?</p> | <p>Page 206</p> <p>1 A. No.</p> <p>2 MR. GODKIN: Objection.</p> <p>3 BY MS. MEHTA:</p> <p>4 Q. For 20 years?</p> <p>5 MR. GODKIN: Give me a chance to object.</p> <p>6 Objection.</p> <p>7 BY MS. MEHTA:</p> <p>8 Q. For 20 years?</p> <p>9 A. No.</p> <p>10 Q. Prior to October of 2014, did you or anyone</p> <p>11 else on behalf of Six4Three reach out to Facebook to</p> <p>12 confirm that you would have access to Facebook's</p> <p>13 proprietary data for any period of time?</p> <p>14 MR. GODKIN: Objection.</p> <p>15 A. You're asking if I e-mailed a Facebook</p> <p>16 employee, correct?</p> <p>17 Q. Or otherwise asked Facebook.</p> <p>18 A. No.</p> <p>19 Q. I'm going to hand you Exhibit No. 68.</p> <p>20 (Exhibit 68 marked for identification)</p> <p>21 BY MS. MEHTA:</p> <p>22 Q. For the record, this is a Six4Three 892</p> <p>23 through 897.</p> <p>24 Do you recognize this document?</p> <p>25 A. Give me one second.</p> |
| <p>Page 207</p> <p>1 (Witness reviewing)</p> <p>2 A. Yes, I recognize this and am familiar with it</p> <p>3 now.</p> <p>4 Q. Okay. And earlier in your testimony, you</p> <p>5 referenced a point at which Facebook actually limited</p> <p>6 the number of API calls that you could make to its</p> <p>7 servers. Do you recall that?</p> <p>8 A. Yes. Facebook limited our access to data on</p> <p>9 July -- July 17th, it appears.</p> <p>10 Q. Okay. And if you look at this document, what</p> <p>11 it says is -- I'm looking at page 894. There's an</p> <p>12 e-mail dated July 17, 2014, at 12:35 p.m.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And that's from Mr. Gildea, right?</p> <p>16 A. Yes.</p> <p>17 Q. And it says, "We got API rate limited." Do</p> <p>18 you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And then it quotes from a Facebook document</p> <p>21 that talks about app level rate limiting. Do you see</p> <p>22 that?</p> <p>23 A. Yes.</p> <p>24 Q. And you're familiar with -- as of July of</p> <p>25 2014, you were familiar with the fact that Facebook had</p> | <p>Page 208</p> <p>1 policies in place to limit the API rate for app</p> <p>2 developers, right?</p> <p>3 A. Yes, we were familiar with that as a result of</p> <p>4 our review of Section 2, provision 9, we can limit your</p> <p>5 access to data.</p> <p>6 Q. I understand. I understand that's your</p> <p>7 position, but you also --</p> <p>8 A. I'm just answering the question.</p> <p>9 Q. Well, I don't think you are. Let me -- let me</p> <p>10 be clear. My question is: Did you understand that</p> <p>11 Facebook could limit the API rate, have a rate limit on</p> <p>12 API calls?</p> <p>13 A. Yes, I understood that from the time that I</p> <p>14 reviewed this agreement. (Indicating)</p> <p>15 Q. Okay. And you understood -- and you're</p> <p>16 pointing to the SRRs, right?</p> <p>17 A. Yes.</p> <p>18 Q. Now, you understand that Facebook actually has</p> <p>19 a separate policy with respect to app level rate</p> <p>20 limiting, right?</p> <p>21 A. Correct. Facebook flushes out that policy on</p> <p>22 its app level rate --</p> <p>23 Q. So --</p> <p>24 A. -- limiting page.</p> <p>25 Q. -- so your position is that when Facebook has</p> |

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| <p style="text-align: right;">Page 249</p> <p>1 Six4Three would be able to use version 1.0 forever?</p> <p>2 A. Zuckerberg stated explicitly that Six -- that</p> <p>3 Six -- that companies like Six4Three would be able to</p> <p>4 continue to use version 1.0 and that they would be able</p> <p>5 to choose which version of the API they want to use. He</p> <p>6 never said forever. There's really no such thing as</p> <p>7 forever. But he certainly stated that that would be</p> <p>8 provided on an equal and fair basis.</p> <p>9 Q. But did you -- did you believe at that point</p> <p>10 he was saying that you would be able to use version 1.0</p> <p>11 for five years or 10 years?</p> <p>12 A. We believed that as long as version 1.0 was</p> <p>13 accessible, as long as Graph API was accessible, the</p> <p>14 friends endpoints were accessible, that they would be</p> <p>15 made accessible on an equal, neutral and fair basis to</p> <p>16 all companies that participated in the market.</p> <p>17 Q. And at the time, did you do anything to</p> <p>18 evaluate how long version 1.0 would be accessible?</p> <p>19 A. State the question again. Did we do</p> <p>20 anything --</p> <p>21 Q. Did you do anything to investigate or</p> <p>22 determine how long version 1.0 would be accessible</p> <p>23 following the April 30th, 2014 announcement?</p> <p>24 A. Well, Zuckerberg explicitly stated that it</p> <p>25 would be remain accessible. He never put a time frame</p> | <p style="text-align: right;">Page 250</p> <p>1 on it.</p> <p>2 Q. But did you do anything to figure out how</p> <p>3 long -- I mean you --</p> <p>4 A. Again, you're asking me to solve a problem we</p> <p>5 don't know exists.</p> <p>6 Q. Let me ask the question this way: Did you</p> <p>7 believe at the time that he said that Graph API</p> <p>8 version 1.0 would remain accessible, that it would</p> <p>9 remain accessible for 50 years?</p> <p>10 A. I don't think Zuckerberg's in a position to</p> <p>11 guarantee that Facebook would exist for 50 years.</p> <p>12 Q. What about 10 years? Did you think he was</p> <p>13 guaranteeing version 1.0 for 10 years?</p> <p>14 A. This emphasis on in perpetuity is -- is not</p> <p>15 germane or relevant. As long as it is accessible, it</p> <p>16 will be accessible to everyone on equal terms. At any</p> <p>17 point in time, it could be made inaccessible. Facebook</p> <p>18 could go out of business, for instance, but that means</p> <p>19 it would be inaccessible for everyone, including for</p> <p>20 Facebook to develop its own competitive applications.</p> <p>21 Q. So your view was that Graph API 1.0 -- I'm</p> <p>22 sorry. Strike that.</p> <p>23 Your interpretation at the time of Mark</p> <p>24 Zuckerberg's F8 speech was that Facebook would make</p> <p>25 Graph version 1.0 available to developers for as long as</p> |
| <p style="text-align: right;">Page 251</p> <p>1 Facebook itself had access to friends photos?</p> <p>2 MR. GODKIN: Objection.</p> <p>3 BY MS. MEHTA:</p> <p>4 Q. That was your interpretation?</p> <p>5 MR. GODKIN: Objection.</p> <p>6 A. That is what Zuckerberg and a host of other</p> <p>7 Facebook executives and employees had represented since</p> <p>8 2007.</p> <p>9 Q. And when you say "represented," you mean in F8</p> <p>10 speeches?</p> <p>11 A. Well, our review -- I didn't watch specific</p> <p>12 speeches, but I read transcripts. I went to the</p> <p>13 Web site. We reviewed representations. I read</p> <p>14 articles. I was involved in the software development</p> <p>15 community. I was aware of many representations from</p> <p>16 2007 all the way through to 2014 and '15.</p> <p>17 And most of these representations formed</p> <p>18 a part of my general working knowledge in the software</p> <p>19 business that had nothing to do with Six4Three. And so</p> <p>20 at the time that Six4Three decided to even participate</p> <p>21 in this market, I was already generally familiar with</p> <p>22 not only, you know, these representations that had been</p> <p>23 made for a very long period of time, but with many</p> <p>24 companies who had participated in this ecosystem with</p> <p>25 great success, including many of my friends and many of</p> | <p style="text-align: right;">Page 252</p> <p>1 the people that I've known for quite some time.</p> <p>2 Q. Can you identify any specific representation</p> <p>3 made by Facebook between 2007 and 2014 that you were</p> <p>4 aware of and claim to be relying on as of April of</p> <p>5 2015 -- sorry. April of 2014?</p> <p>6 A. Well, so I wasn't -- Six4Three was relying on</p> <p>7 these representations. I wasn't relying on these</p> <p>8 representations. In terms of my decision to make an</p> <p>9 investment in Six4Three and my belief that that</p> <p>10 investment was a wise decision and would generate a</p> <p>11 return and was being made on the premise of Facebook</p> <p>12 being a stable platform, yes, I could certainly identify</p> <p>13 those.</p> <p>14 Q. What specific representations are you saying</p> <p>15 you relied on?</p> <p>16 A. I mean, the most obvious one that comes to</p> <p>17 mind is the Facebook platform announcement; the Facebook</p> <p>18 platform FAQ --</p> <p>19 MR. GODKIN: Slow down.</p> <p>20 A. -- the various developer blog posts associated</p> <p>21 with the 2007 announcement; the 2010 announcement; the</p> <p>22 various news articles regarding Zuckerberg and Taylor's</p> <p>23 speeches at the 2010 announcement by range of</p> <p>24 representations over an extended period of time.</p> <p>25 Q. Do you have any documentary evidence that</p> |

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| <p style="text-align: right;">Page 269</p> <p>1 there's a reference here to -- on line 16 --</p> <p>2 MR. GODKIN: Which page?</p> <p>3 MS. MEHTA: Page 7.</p> <p>4 BY MS. MEHTA:</p> <p>5 Q. Line 16 says, "\$4,081,950 in enterprise value</p> <p>6 at the time Facebook decided to end access to Graph</p> <p>7 API."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. So what date is that referring to?</p> <p>11 A. So the valuation of Six4Three was established</p> <p>12 based on my discussions with Ted. And so the 4,000 --</p> <p>13 the 4,081,950 is simply the number of outstanding units</p> <p>14 multiplied by the price per unit. #2 received a portion</p> <p>15 of its units based on that capital investment, and then</p> <p>16 it received a portion of those units based upon the fact</p> <p>17 that it was, basically, responsible for the ability of</p> <p>18 Six4Three to exist.</p> <p>19 So it's roughly representing a</p> <p>20 \$3.75 million premoney valuation, which for a seed</p> <p>21 company is very low. If you look at the average seed</p> <p>22 valuation today, it's roughly \$6 million. So this</p> <p>23 represents a -- what? You know, 33 percent discount</p> <p>24 relative to the average seed valuation for financing of</p> <p>25 today.</p> | <p style="text-align: right;">Page 270</p> <p>1 Q. And when you say average seed valuation</p> <p>2 finances done today, what specific technology sectors or</p> <p>3 industries are you referring to?</p> <p>4 A. It refers to venture backed software startups.</p> <p>5 Q. Can you be any more specific than that?</p> <p>6 A. I believe the data I'm referring to comes from</p> <p>7 one of those organizations like PitchBook. I don't</p> <p>8 recall specifically. But I just attended a CEO summit</p> <p>9 with one of my VCs, and we spent lots of time talking</p> <p>10 about this data.</p> <p>11 And one of the numbers that was noted is</p> <p>12 that \$6 million, according to -- whether it's PitchBook</p> <p>13 or one of these other platforms for these seed data --</p> <p>14 MR. GODKIN: Slow down.</p> <p>15 A. -- \$6 million was the -- the average premoney</p> <p>16 valuation for a seed round.</p> <p>17 Q. What do you think the -- strike that.</p> <p>18 Do you know what the average premoney</p> <p>19 valuation for a seed round for an app in 2012 or 2013</p> <p>20 was?</p> <p>21 A. No, but that's something that somebody could</p> <p>22 find out.</p> <p>23 Q. And do you know what the average premoney</p> <p>24 valuation for a seed round for image recognition app was</p> <p>25 in 2012 or 2013?</p> |
| <p style="text-align: right;">Page 271</p> <p>1 A. If I don't know the answer to the first, I</p> <p>2 can't know the answer to the second.</p> <p>3 Q. Do you know what the average premoney</p> <p>4 valuation for a seed round of an image recognition app</p> <p>5 is at any point in time since 2012 to the present?</p> <p>6 A. Off the top of my head, sitting here right</p> <p>7 now, I cannot give you a specific number, although, as</p> <p>8 someone who's been investing in this business, I have</p> <p>9 done research on this and there are comps out there.</p> <p>10 Q. For image recognition software startups?</p> <p>11 A. There's data around recognition software and</p> <p>12 other startups. I don't know if there has been a</p> <p>13 venture, you know, backed report specifically around</p> <p>14 image recognition.</p> <p>15 Q. Can you identify any evidence of what a</p> <p>16 premoney seed valuation for an image recognition startup</p> <p>17 would have been at any point in time from 2012 to 2015?</p> <p>18 A. Yes. They're roughly equivalent to most other</p> <p>19 software businesses; SAS businesses, consumer</p> <p>20 businesses. Roughly speaking, if you're developing a</p> <p>21 subscription product, right, a turnkey subscription</p> <p>22 software service, and you're seeking money from the</p> <p>23 venture capital community, and you're seeking your first</p> <p>24 nonfriends and family financing, your first seed</p> <p>25 financing, then, roughly speaking, your valuation is</p> | <p style="text-align: right;">Page 272</p> <p>1 going to be somewhere in the 3 to \$10 million premoney</p> <p>2 range.</p> <p>3 Q. And can you think of an example of a</p> <p>4 subscription-based service that has a valuation of 3 to</p> <p>5 \$10 million?</p> <p>6 MR. GODKIN: Objection.</p> <p>7 BY MS. MEHTA:</p> <p>8 Q. Anything that comes to mind?</p> <p>9 A. Sorry. You're asking me to identify a company</p> <p>10 that has raised money at a 3 to \$10 million valuation?</p> <p>11 Q. On a subscription-based model.</p> <p>12 A. I mean, just look at any VC Web sites.</p> <p>13 Q. How --</p> <p>14 A. Most -- most all of those companies, if they</p> <p>15 haven't raised a Series A, the money they raised was in</p> <p>16 a valuation within that range.</p> <p>17 Q. Are you -- are you aware of food delivery</p> <p>18 subscription services like BlueApron?</p> <p>19 A. I know of BlueApron. Sure.</p> <p>20 Q. Okay. And would you consider the premoney</p> <p>21 seed valuation for a food delivery, dinner delivery</p> <p>22 service, like BlueApron, to be the same as an image</p> <p>23 recognition subscription-based model?</p> <p>24 A. Valuations in the on-demand delivery space,</p> <p>25 from my standpoint, should be much lower than the image</p> |