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14 and FACEBOOK TECHNOLOGIES, LLC

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 TOTAL RECALL TECHNOLOGIES,

19 Plaintiff,

20 vs.

21 PALMER LUCKEY and FACEBOOK
22 TECHNOLOGIES, LLC (F/K/A OCULUS
23 VR, LLC.),

24 Defendants.

Case No. 15-cv-02281 (WHA)

**DEFENDANTS' MOTION FOR
JUDGMENT AS A MATTER OF LAW**

Judge: Hon. William Alsup
Trial Date: October 4, 2021
Complaint Filed: May 20, 2015

NOTICE OF MOTION & MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, before the Honorable William H. Alsup, defendants Palmer Luckey and Facebook Technologies, LLC move for judgment as a matter of law on each of plaintiff's claims under Federal Rule of Civil Procedure 50. Defendants request oral argument.

STATEMENT OF RELIEF SOUGHT

Defendants seek judgment as a matter of law on each of plaintiff's claims.

INTRODUCTION

Total Recall Technologies (“TRT”), a Hawaii partnership, brought this action shortly after Facebook purchased Oculus for more than \$2 billion. Oculus, which is now part of Facebook Technologies LLC (“FBT”), had commercialized a virtual reality headset known as the “Rift.” One of TRT’s two partners, Ron Igra, wanted to “get rich” off the success of Oculus and the Rift. Igra’s plan was to claim that Palmer Luckey, who invented the Rift and co-founded Oculus as a teenager, breached a contract that Luckey had made with TRT’s other partner, Thomas Seidl. In return for \$798 to purchase parts, Luckey agreed to build a prototype head mounted display for Seidl that could show footage captured by a 3D camera.

The Court has held that there are two contracts at issue. First, in an email exchange in April 2011, the parties agreed that “Luckey would use the parts purchased with Seidl’s \$798 to make a good faith effort to build prototypes suitable for Seidl’s stated purpose and that, as Luckey built each prototype, he would take such care as necessary to keep it eligible for an exclusive license.” Construction Order (Dkt. 427) at 10. Second, an August 2011 “Nondisclosure, exclusivity and payments agreement” required Luckey to “keep all details including drawings and part suppliers of the Head Mounted Display confidential,” and to “not aid” any “person or entity” other than Seidl “in the design of a Head Mounted Display.” Ex. 100. This Court has held that these duties are limited to prototypes that Luckey actually “delivered to Seidl” for “his consideration.” Construction Order at 9.

Luckey honored his contractual obligations. He built and sent Seidl the two prototype HMDs that Seidl had asked for—a single-panel prototype known as the MK1, which Seidl rejected, and a multi-panel prototype known as the MK2, which Seidl accepted, kept, and described as “fierce.” It is undisputed that the Rift is different from both the MK1 and the MK2 in both design and purpose. And TRT has never contended Luckey delivered the Rift to TRT. TRT, for its part, paid Luckey nothing for the prototypes he made for Seidl, it never launched a product, and it never even brought its video camera to market. TRT nevertheless filed this suit—seeking a massive portion of the money that Luckey and Oculus made from commercializing the

1 TRT brought three claims: (1) that Luckey breached the August 2011 Agreement; (2) that
2 defendants committed constructive fraud by failing to disclose Luckey's breach of paragraph 9
3 of the August 2011 Agreement; and (3) that defendants violated the UCL by committing
4 constructive fraud. But after six years of litigation, TRT is no longer attempting to prove any of
5 those claims. It acknowledges that, based on the Court's rulings, the August 2011 Agreement
6 cannot support the causes of action alleged in the complaint.

7 Instead, TRT now argues that, by failing to deliver the *Rift*, Luckey breached his duty
8 under the April 2011 Agreement to deliver the *MK1 and MK2* in good faith. And TRT argues
9 that, by "cover[ing] up" Luckey's breach of the April Agreement, the defendants are liable for
10 constructive fraud and unfair competition. TRT's position is that Luckey had a duty to send
11 Seidl every HMD that he ever created—at least until Seidl decided, without any time limitation
12 and without paying Luckey a cent, that he was satisfied with the product. TRT believes that
13 Luckey signed away the rights to his life's work in a two-sentence email and agreed to be TRT's
14 indentured servant for a period that is apparently *indefinite*. Yet TRT contends that Seidl was
15 "vulnerable" to Luckey—an element of its constructive fraud claim—because Luckey had more
16 experience with HMDs, despite Seidl's extensively detailed view that *he* was an innovator in the
17 field.

18 Based on the evidence at trial, no reasonable jury could conclude that TRT has
19 established any of its claims. And it certainly has not established a claim against FBT. The only
20 purported basis for liability against FBT is that its former CEO, non-party Brendan Iribe, either
21 "conspired" to or "aided and abetted" Luckey's alleged constructive fraud. There is not a shred
22 of evidence to support this theory. Iribe knew nothing about the *MK1* or the *MK2*, and he knew
23 nothing about the *Rift* until after the end of any contractual exclusivity period. There is no
24 evidence that Iribe formed a common scheme with Luckey and materially assisted any tort. The
25 Court should grant defendants' motion for judgment as a matter of law.
26
27

BACKGROUND¹**A. Total Recall Technologies**

In spring 2010, Seidl and Igra formed TRT for the purpose of bringing a 3D video camera to market. T. 236. Seidl, then 38 years old (T. 233), was a seasoned entrepreneur and experienced optical engineer. Seidl had been programming computers since he was just ten or eleven. T. 233-34. He began his career as a programmer at a software company where he specialized in optics production. T. 234. In the 1990s, he founded Devitek, an optical engineering lab. T. 257. Later, he founded Econokey, a company focused on developing software that processed ultra-wide images. T. 235. Seidl spent the next decade of his career as a director at Pano Pro, a company with nearly \$1 million in annual sales that produced ultra-wide lenses for use in virtual 3D real estate tours. T. 235-36. During his time at Pano Pro (T. 235), Seidl invented a camera designed to capture 3D footage (T. 237-38). He demonstrated several versions of the camera for Igra (T. 536), who agreed to provide capital for the development of a product based on that camera (T. 550).

To bring a product to market, TRT needed to develop the camera technology and accompanying software, and bundle them together with an HMD that could display footage from the camera. T. 239, 244. Seidl testified that he had his extensive background with HMDs, the technical merits of various features, and how they can be optimized. *See, e.g.*, T. 239-241, 254-55. He set out to construct his own HMD after conducting extensive market research. T. 244-47. There were several HMDs available for commercial purchase. T. 238-39. And Seidl knew that all HMDs seek to optimize five features: light weight, low cost, low latency, 3D, and a wide field of view. T. 436-37. But Seidl was not aware of any existing commercial HMD that he believed optimized these features sufficiently. T. 238-39.

In late 2010, Seidl began searching for someone to help him build an HMD that would optimize the five features better than any existing commercial HMD and otherwise suit the

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