

1 QUINN EMANUEL URQUHART &
2 SULLIVAN, LLP
3 ROBERT W. STONE (SBN 163513)
4 (robertstone@quinnemanuel.com)
5 BRIAN C. CANNON (SBN 193071)
6 (briancannon@quinnemanuel.com)
7 555 Twin Dolphin Drive, 5th Floor
8 Redwood Shores, California 94065-2139
9 Telephone: (650) 843-5000
10 Facsimile: (650) 849-7400

11 MICHAEL D. POWELL (SBN 202850)
12 (mikepowell@quinnemanuel.com)
13 50 California Street, 22nd Floor
14 San Francisco, California 94111-4788
15 Telephone: (415) 875-6600
16 Facsimile: (415) 875-6700

17 Attorneys for Plaintiff
18 TOTAL RECALL TECHNOLOGIES

19
20
21
22
23
24
25
26
27
28
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TOTAL RECALL TECHNOLOGIES,

Plaintiff,

vs.

PALMER LUCKEY & FACEBOOK
TECHNOLOGIES, LLC (F/K/A
OCULUS VR, LLC),

Defendants.

CASE NO. 3:15-CV-02281-WHA

**PLAINTIFF TRT'S OPPOSITION TO
DEFENDANTS' MOTION FOR JUDGMENT
AS A MATTER OF LAW**

Judge: The Honorable William Alsup

Courtroom: 12

Pre-Trial Conf.: September 29, 2021, 1:00 PM

Trial Date: October 4, 2021

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. BREACH OF CONTRACT.....	2
A. Luckey Breached His Agreement With TRT.....	2
1. Luckey should not have marketed the Rift HMD design without TRT	2
2. Luckey should not have shared TRT design details on MTBS.....	3
3. Luckey should have sent TRT the Rift prototype	5
B. Luckey's Breaches Caused TRT Harm	6
III. CONSTRUCTIVE FRAUD.....	7
A. Luckey And Seidl Have A Confidential Relationship	7
B. None Of Defendants Cases Address The Specifics Of This Case	10
C. The Jury Has Sufficient Evidence To Find Luckey and Iribe Committed Fraud.....	11
D. TRT Reasonably Relied On Defendants' Fraud	13
E. Defendants' Fraud Caused TRT Harm.....	14
IV. FACEBOOK TECHNOLOGIES SHOULD NOT BE DISMISSED	14
V. UNFAIR COMPETITION LAW	16
VI. CONCLUSION	16

TABLE OF AUTHORITIES**Page****Cases**

<i>Cleveland v. Johnson</i> , 209 Cal. App. 4th 1315 (2012).....	14, 15
<i>Magic Leap, Inc. v. Chi Xu</i> , 202 WL 3268659 (N.D. Cal. June 17, 2020)	13
<i>Mattel, Inc. v. MGA Entm't, Inc.</i> , 616 F.3d 904 (9th Cir. 2010).....	7
<i>Perez v. Van Groningen & Sons, Inc.</i> , 41 Cal. 3d 962 (1986).....	15

Statutes

Calif. Civ. Code, § 2310.....	15
Calif. Civil Code §§ 1709-10	11

1 **I. INTRODUCTION**

2 Defendant Palmer Luckey seeks judgment as a matter of law on Total Recall
3 Technologies’ (“TRT”) breach of contract claim despite overwhelming evidence that Luckey
4 breached his contractual obligations to TRT by failing to deliver one of the two prototypes he
5 promised to TRT—the one prototype that Luckey built during his eighteen month relationship
6 with TRT that even came close to meeting all of TRT’s criteria: the Rift. Defendants further seek
7 judgment as a matter of law on TRT’s constructive fraud and unfair competition claims despite
8 overwhelming evidence that (a) Luckey was not only TRT’s agent but that he and TRT had
9 entered into a confidential relationship sufficient to support its claims; and (b) Luckey fraudulently
10 concealed (i) his work on the Rift, (ii) John Carmack’s interest in the Rift and proposed use
11 thereof; (iii) Luckey’s plans and steps taken to organize Oculus LLC and commercialize the Rift,
12 as well as his and Iribe’s joint efforts to (i) formalize the organizational structure of Oculus after
13 June 30, 2012 (where TRT should have been the business organization being capitalized or a co-
14 founder thereof), (ii) assign the Rift to Oculus (when TRT was the rightful owner of the Rift), (iii)
15 launch a Kickstarter campaign for the Rift Development Kit (which was a derivative of the Rift to
16 which TRT held exclusive rights), and (iv) eventually initiate and close a seed round of financing
17 for Oculus (in which TRT should have been the entity receiving the seed financing or been an
18 equity participant therein).

19 By unlawfully usurping the opportunity to commercialize the Rift and its progeny,
20 Defendants have caused TRT significant harm including the lost opportunity to (i) enjoy the
21 momentum of John Carmack’s endorsement of the Rift to attract additional talent to TRT to round
22 out its management team, (ii) launch and complete a successful Kickstarter, (iii) pursue,
23 participate in, and close a seed financing round where TRT would have invested additional capital
24 to secure a higher percentage ownership in the business pursuing the Rift, (iv) pursue and close
25 additional venture capital financing rounds to fund operations and research and development
26 necessary to fuel the growth of the business, (v) the first to market with a consumer head-mounted
27 display (“HMD”) with TRT’s stated criteria, and/or (vi) be introduced to Mark Zuckerberg and
28 ultimately sell the company to Facebook for \$3 billion.

1 **II. BREACH OF CONTRACT**

2 **A. Luckey Breached His Agreement With TRT**

3 Luckey breached his agreement with TRT by disclosing details of the designs he was
 4 building for TRT (such as the Rift) on the Meant to be Seen (“MTBS”) forum, by failing to send
 5 the Rift prototype to TRT, and by working to commercialize the Rift on his own and with Oculus.¹
 6 These unauthorized actions were either (i) in breach of Luckey’s promise in December 2010 to
 7 work with TRT to bring to market a commercial HMD; (ii) in breach of Luckey’s duty to take
 8 such care as necessary to keep his designs for TRT eligible for an exclusive license; or (iii) in
 9 breach of his duty to design and deliver in good faith a single panel prototype with a horizontal
 10 field of view of at least 100 degrees.

11 1. Luckey should not have marketed the Rift HMD design without TRT

12 Luckey and Seidl agreed in December 2010 to work together to bring a commercial HMD
 13 to market. TX-0170; Tr. at 677:17-678:3; 688:16-689:10. Despite Luckey’s promises, he initially
 14

15 ¹ Defendants’ effort to make “not for gaming” a TRT criteria is not supported by the record
 16 evidence. Luckey never asks whether the HMD will be used for gaming. Rather, in response to a
 17 question by Luckey about how important is size relative to weight, Seidl volunteers that because
 18 he will not be using it for gaming the prototype will not need to endure violent quick moves. TX-
 19 0108.0007. Of course, because low-latency head tracking was one of TRT’s criteria (*id.*), the
 20 prototype had to anticipate considerable head movement. Luckey’s trial testimony that Seidl
 21 repeatedly told him the device was not for gaming is simply not corroborated in the extensive
 22 written record. Rather, the contemporaneous evidence shows that other than the December 14,
 23 2010 email (TX-0108), Seidl did not even tell Luckey what the intended use was—for viewing
 24 360-degree 3D camera content—until **AFTER** the contract was executed. TX-0125.0020 (“At
 25 last [on August 15, 2011] some info for you below. We have developed a 360 3D video lens
 26 array.”) Luckey admits that he had that information **AFTER** the contract was signed: “Does this
 27 refresh your recollection that, in fact, he was telling you for the first time on August 15, 2011, that
 28 TRT had developed a 360 3D video lens array? A. Yes.” Tr. at 754:6-9; *see also id.* at 10-18. Of
 course, Luckey specified and bought all of the parts for the HMD months and months earlier in
 April 2011 including the three Vitrolight Hydix panels **BEFORE** he even knew what the intended
 use case was. *See* Stip. Fact No. 12; TX-0202; Tr. at 752:8-753:10. After Seidl first disclosed he
 camera, the MK1 was nearly finalized and was shipped to Seidl just days later—in fact, Luckey
 told Seidl on August 17, 2011: “As far as the edges of the screen, I will see what I can do. I have
 already finalized most of the build for this prototype, so changes are tough” TX-0125.0007.
 Luckey admitted at trial that Seidl had not told him about the camera before August 15, 2011. *See*
 755:11-25. Thus, no evidence suggests that modifications were necessary to adapt the general
 purpose HMD for use with pre-recorded video.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.