

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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ZENIMAX MEDIA INC. and ID SOFTWARE LLC,))	
))	CIVIL ACTION
Plaintiffs,))	NO. 3:14-01849-P
))	
v.))	
))	
OCULUS VR, INC. and PALMER LUCKEY,))	
))	
Defendants.))	JURY TRIAL DEMANDED
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ANSWER AND AFFIRMATIVE DEFENSES

“I warned [Luckey] ahead of time that it was a foregone conclusion that some of the media would report the Rift as my work, despite my ve[r]y explicit description otherwise.”

-- id Software Technical Director and ZeniMax employee
John Carmack on Meant To Be Seen (mtbs3d.com),
referring to the Rift developed by Palmer Luckey
(June 7, 2012)

* * *

Defendants Oculus VR, Inc. and Palmer Luckey (collectively, “Defendants”), by their attorneys, submit their Answer and Affirmative Defenses in response to Plaintiffs ZeniMax Media Inc. and id Software LLC’s (collectively, “ZeniMax”) Complaint.

ZeniMax’s Complaint falsely claims ownership in Oculus VR technology in a transparent attempt to take advantage of the Oculus VR sale to Facebook. By deliberately misstating some facts and omitting others, ZeniMax makes the incredible assertion that it, a videogame software publishing company for personal computers and consoles like the Sony PlayStation, invented and developed a virtual reality hardware and software system. The truth is quite different. There is not a line of ZeniMax code or any of its technology in any Oculus VR product. Indeed, ZeniMax had never identified any ‘stolen’ code or technology in any Oculus VR product,

although ZeniMax had the full source code for the Oculus VR software for over a year and a half (having received it directly from Oculus VR well before it was even released publicly), and could have analyzed it online anytime (at developer.oculusvr.com). Until the Facebook deal, and the perceived chance for a quick payout, ZeniMax never raised any claim of infringement against Oculus VR, undoubtedly because ZeniMax never has contributed any intellectual property or technology to Oculus VR.

The Oculus Rift was conceived by a gifted teenage inventor, Palmer Luckey. Luckey pioneered major advancements in virtual reality technology. He then decided to turn those advancements into something other people could use in the form of the Rift -- the world's leading, head-mounted, virtual reality headset. Luckey created many working virtual reality (VR) head-mounted displays (HMDs), incorporated a number of different motion sensors into those HMDs, shared his work publicly, and displayed those HMDs live on numerous occasions - - all before having any interaction or communication with ZeniMax.

Over the years, Luckey created multiple Oculus Rift prototypes he called the "PR1," "PR2," "PR3," etc. Luckey's goal was to produce modular HMD kits that developers could purchase to test with various hardware components and software applications. As his research progressed, Luckey shared his work on MTBS3D, as shown below:



(Rift prototype images of November 21, 2010)

Before ZeniMax made any contact with Luckey, he already had demonstrated those Rift prototypes publicly with various virtual reality-specific software and even Rift-specific

applications with matching software pre-distortion (including videogames, PTSD treatments, and movies). For example, in January 2012 a filmmaker and journalist used one of Luckey's prototypes to screen a showing of an immersive journalism film at the Sundance Film Festival. As the Huffington Post described of the experience, Luckey's prototype let users "move around the area as you like and interact with other people." With just a few scenes, "participants' reactions . . . were quite emotional . . . 'People are coming out crying, freaked out, upset You can trick your mind into really thinking you're there.'"



(Image of Rift prototype and display of software pre-distortion in "*Hunger In Los Angeles*": *Virtual Reality Makes Journalism Immersive, Pixelated*, The Huffington Post (January 30, 2012) available at http://www.huffingtonpost.com/2012/01/30/hunger-in-los-angeles_n_1241468.html)

Only much later, *after* these demonstrations, did Luckey connect with John Carmack, the world-renowned videogame developer (then working for ZeniMax). Carmack requested one of Luckey's Rift prototypes to use at the Electronic Entertainment Expo ("E3") industry convention in 2012.

Carmack was interested in potentially using the Rift prototype, along with several other HMDs that Carmack had already acquired, to conduct demonstrations of his videogame

software. As part of his research, Carmack used a third-party motion sensor that he already had used with other HMDs (he had, in fact, hard-coded his software to work only with that specific sensor). So, when Carmack asked Luckey to send the Rift prototype, Carmack did *not* ask Luckey to include a motion sensor (though Luckey's prior and existing prototypes had been integrated with a wide range of commercially-available high-performance motion sensors). Carmack knew (from the same public posts through which he found Luckey) that Luckey had already developed Rift prototypes with motion sensors. Carmack also did *not* request the virtual reality software Luckey had been using because he intended to convert his pre-existing videogame demonstration software for use with the Rift prototype (and asked Luckey about the technical parameters for doing so). Indeed, as Carmack announced at E3, the next ZeniMax title -- Doom 3 BFG -- would be the "first significant software release" to announce VR support for the Rift.

ZeniMax's claims directly contradict what was being said by its own employees, in real time, during this process. Both before and after his demonstrations at E3, Carmack consistently credited Luckey with having created the Rift, stating:

"I am doing my best to not let anyone mistake the Rift as my work, but I'm sure someone is going to get it confused next week. I am sensitive to the fact that the press has a tendency to over-attribute things to me, because 'genius inventor' is such a convenient story hook" in an e-mail to Luckey before E3;

and

"I warned [Luckey] ahead of time that it was a foregone conclusion that some of the media would report the Rift as my work, despite my ve[r]y explicit description otherwise" in a public post on MTBS3D after E3.

In order to demonstrate the videogame software he had converted for use with the Rift prototype, Carmack offered Luckey the "VR Testbed," a small portion of an existing videogame that Carmack previously had developed to work with HMDs. Before sending the VR Testbed, ZeniMax asked Luckey to sign what it called a Non-Disclosure Agreement (NDA). The NDA

was unnecessary because the VR Testbed consisted of nothing but a binary executable file from a small portion of one videogame that Carmack had adapted to test HMD devices, together with related art assets. Regardless, the parties never finalized the NDA, which omitted key terms defining what *use* Luckey could make of the VR Testbed he received. And, of course, Oculus did not even exist at the time Luckey signed the NDA document. Later, after Luckey and others founded Oculus VR, ZeniMax never requested any NDA, complete or otherwise, with Oculus VR in connection with the VR Testbed or anything else (including other gaming demonstration software that ZeniMax provided to Oculus for conducting promotional demonstrations around the world).

Oculus VR continued to develop the successor to the Rift prototypes, the development kit one (the “DK1”), and the associated software development kit (the “SDK”) that make the Rift work and allow developers to integrate other components with the Rift. For example, Oculus VR developed, from scratch, an ultra-low latency head tracking sensor and accompanying software for the DK1. This sensor was much less costly and had four times less latency than the sensor used by Carmack. Indeed, Oculus VR designed every hardware component of the Rift (i.e., panel, lenses, video interface, head mount, motion sensor, etc.) for the DK1 and developed or licensed its own software for the SDK. Throughout this painstaking development process, Oculus VR used no hardware or software technology from ZeniMax.

In light of this acknowledged work, ZeniMax never claimed ownership rights over the Rift based on any supposed contribution to any technology in the Rift, because ZeniMax knew it had made none. To the contrary, prior to this lawsuit, ZeniMax claimed compensation based on the *publicity* it had generated for the Rift (along with ZeniMax videogames). This made no sense at the time and it makes no sense now. Suppose ZeniMax had helped create publicity for the Sony PlayStation platform with ZeniMax videogame demos that were made to work on prototype PlayStations. ZeniMax would never say it owned a piece of the Sony PlayStation technology and Sony’s business. Likewise, ZeniMax knows Luckey invented the Rift and the technology powering it. ZeniMax knows that Carmack, the senior technical ZeniMax employee

communicating with Luckey, and the *only* ZeniMax employee working on virtual reality gaming technology, has unequivocally and consistently stated that Luckey invented and developed the Rift.

Prior to the Facebook acquisition, ZeniMax appeared to have lost whatever interest it had in VR. It even instructed Carmack to stop developing virtual reality videogames for the Rift or any other VR HMD. Only after the Facebook acquisition announcement did ZeniMax suddenly begin asserting supposed ownership rights over Oculus VR's technology. By that time, Oculus VR had already developed and shipped the DK1 and had written and published its SDK. The DK1 and SDK reflect the culmination of thousands of hours of research by Luckey and thousands more by dozens of employees that joined Oculus VR. There is not a line of ZeniMax code or any of its technology in these or any other Oculus products. ZeniMax never claimed otherwise until the Facebook acquisition, *despite having obtained the full SDK source code from Oculus VR a year and a half prior to this lawsuit.*

More than just making technological innovations, Luckey and Oculus VR have built a brand and a community with hundreds of videogames supporting the Rift. The acquisition price reflects the enormous progress that Oculus VR has made in developing its business, making virtual reality a viable system and creating a virtual reality ecosystem.

ZeniMax had a golden opportunity to make an early investment in Oculus VR and chose to pass. The lawsuit is nothing more than ZeniMax seeking to correct for a massive missed opportunity through the assertion of meritless litigation.

NATURE OF THE ACTION

1. Defendants deny the allegations contained in Paragraph 1.

PRELIMINARY STATEMENT

2. Defendants generally admit the allegations contained in Paragraph 2, except that Defendants deny that VR HMDs are a "recent" development, as they have been commercially available since the 1980's and in development since the 1960s. Defendants further state that the

development of technology for VR HMDs has been the subject of research papers and other public discourse for decades.

3. Defendants admit the allegations contained in Paragraph 3.

4. Defendants admit that, in 2011 and 2012, Carmack conducted research into the development of virtual reality gaming technology for ZeniMax and that Carmack was Technical Director for id Software at that time. Defendants deny that ZeniMax “invested tens of millions of dollars in research and development” of virtual reality and immersive technologies. Defendants deny that any ZeniMax employees other than Carmack conducted any research relating to virtual reality gaming technology. Except as admitted, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 and therefore deny the allegations to the extent that a response is required.

5. Defendants admit that, in April 2012, Carmack initiated correspondence with Luckey through the VR internet forum MTBS3D and that Carmack was interested in potentially using the Rift prototype, along with several other HMDs that Carmack had already acquired, to conduct demonstrations of his videogame software. Defendants further admit that Carmack, among others interested in virtual reality, came to believe that a wide field of view may be helpful in creating an immersive virtual reality experience. Except as admitted, Defendants deny the allegations contained in Paragraph 5.

6. Defendants admit that Carmack requested that Luckey provide a Rift prototype for Carmack to conduct private demonstrations of *DOOM 3: BFG Edition* at E3 in June 2012. At that time, Luckey had developed several prototypes with various head mounts that were compatible with different motions sensors and that had been publicly demonstrated with multiple virtual reality-specific software applications with built-in Rift-specific software distortion correction. Defendants admit that, in response to Carmack’s request, Luckey sent a Rift prototype without a head mount, motion sensor, or software. Defendants further admit that, after receiving the Rift prototype, Carmack hot glued a motion sensor that he had previously purchased from Hillcrest Labs and used with other VR HMDs, placed tape on the outside edges

of the lenses, attached a strap and plugged it in to an external power source (as specified, the “E3 Demo Unit”). Carmack also adapted videogame demonstration software that he had previously developed for use with other VR HMDs to work with the E3 Demo Unit. Except as admitted, Defendants deny the allegations contained in Paragraph 6.

7. Defendants admit that Carmack gave demonstrations of *DOOM 3: BFG Edition* at E3 2012 using the E3 Demo Unit, that some demonstrations were scheduled by appointment, that the demonstrations were intended to promote the re-release of *DOOM 3: BFG Edition*, and that the demonstrations successfully garnered press for both the re-release of *DOOM 3: BFG Edition* and the Rift. Except as admitted, Defendants deny the allegations contained in Paragraph 7.

8. Defendants admit that Carmack’s demonstrations of *DOOM 3: BFG Edition* using the E3 Demo Unit generated publicity for the re-release of *DOOM 3: BFG Edition* and the Rift. Defendants further admit that, in June, 2012, Luckey formed Oculus LLC. Except as admitted, Defendants deny the allegations contained in Paragraph 8.

9. Defendants deny the allegations contained in Paragraph 9.

10. Defendants deny the allegations contained in Paragraph 10.

11. Defendants admit ZeniMax did not enter into any agreement to invest in Oculus VR. Except as admitted, Defendants deny the allegations contained in Paragraph 11.

12. Defendants admit that on March 25, 2014, Facebook, Inc. announced that it would acquire Oculus VR for approximately \$2 billion in cash and stock. Except as admitted, Defendants deny the allegations contained in Paragraph 12.

13. Defendants deny that ZeniMax is entitled to any of the relief it seeks.

PARTIES

14. On information and belief, Defendants admit the allegations contained in Paragraph 14.

15. On information and belief, Defendants admit the allegations contained in Paragraph 15.

16. Defendants admit the allegations contained in Paragraph 16.

17. Defendants admit that Luckey is one of the founders of Oculus VR and that Luckey resides in California. Except as admitted, Defendants deny the allegations contained in Paragraph 17.

JURISDICTION AND VENUE

18. Paragraph 18 states a legal conclusion to which no answer is required. To the extent an answer is required, Defendants deny the allegations contained in Paragraph 18.

19. Paragraph 19 states a legal conclusion to which no answer is required. To the extent an answer is required, Defendants deny the allegations contained in Paragraph 19.

FACTS

20. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 and therefore deny the allegations to the extent that a response is required.

21. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 and therefore deny the allegations to the extent that a response is required.

22. Defendants admit that Carmack was id Software's Technical Director and that Carmack signed an employment agreement with ZeniMax. Except as admitted, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 and therefore deny the allegations to the extent that a response is required.

23. Defendants admit that Carmack signed an employment agreement with ZeniMax and state that the agreement speaks for itself. Except as admitted, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 and therefore deny the allegations to the extent that a response is required.

24. Defendants admit that Carmack was interviewed on video at the E3 2012 convention and state that the video speaks for itself. Except as admitted, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 and therefore deny the allegations to the extent that a response is required.

25. Defendants admit that, in late 2011, Carmack began testing videogame software with various HMDs. Defendants further admit that “latency” is a broad term that can refer to the delay between a user’s movement and the corresponding change in the displayed image on a VR HMD. Except as admitted, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 and therefore deny the allegations to the extent that a response is required.

26. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 and therefore deny the allegations to the extent that a response is required.

27. On information and belief, Defendants admit that ZeniMax planned to demonstrate *DOOM 3: BFG Edition* using one or more third party VR HMDs at the E3 in June 2012, that ZeniMax intended to conduct the demonstrations to generate publicity for the *DOOM 3: BFG Edition* videogame, and that id Software posted a photograph via Twitter on March 7, 2012. Except as admitted, Defendants deny the allegations contained in Paragraph 27.

28. Defendants admit that, by April 2012, Carmack learned that Luckey had developed multiple prototype VR HMDs, that Carmack requested that Luckey send him a prototype device. Defendants admit that, in response to Carmack’s request, Luckey sent a Rift prototype without a head mount, motion sensor, or software. Except as admitted, Defendants deny the allegations contained in Paragraph 28.

29. Defendants admit that, in response to Carmack’s request, Luckey sent a Rift prototype without a head mount (as he was temporarily out of mounting straps), a motion sensor (as the device was compatible with multiple motion sensors) or virtual reality software (as Carmack had already adapted his gaming demo software for use with VR HMDs). By that time, however, Luckey certainly had developed multiple Rift prototypes with various head mounts that had been used with various motion sensors. Defendants further admit that, after receiving the Rift prototype, Carmack hot glued a motion sensor that he had previously purchased from Hillcrest Labs and used with other VR HMDs, placed tape on the outside edges of the lenses,

attached a strap and plugged it in to an external power source to assemble the E3 Demo Unit. Carmack also adapted videogame demonstration software that he had previously developed for use with other VR HMDs to work with the E3 Demo Unit. Except as admitted, Defendants deny the allegations contained in Paragraph 29.

30. Defendants admit that Carmack hot glued a motion sensor that he had previously purchased from Hillcrest Labs and used with other VR HMDs, placed tape on the outside edges of the lenses, attached a strap and plugged it in to an external power source to conduct demonstrations at E3 2012, that Carmack was interviewed on video at E3 2012 and that the video speaks for itself, and that Carmack openly published a white paper in 2013 with ZeniMax's explicit permission describing in detail his latency-related research. Except as admitted, Defendants deny the allegations contained in Paragraph 30.

31. Defendants deny the allegations contained in Paragraph 31.

32. On information and belief, Defendants admit that ZeniMax anticipated that Carmack's demonstrations of *DOOM 3: BFG Edition* using the E3 Demo Unit would generate attention for ZeniMax. Defendants further admit that Luckey, in his individual capacity and before Oculus VR was formed as a company, signed a document that ZeniMax refers to as the "Non-Disclosure Agreement," but Defendants deny that the NDA is a valid and enforceable agreement, as it failed to define the essential term "Proper Purpose." Except as admitted, Defendants deny the allegations contained in Paragraph 32.

33. Defendants admit that Luckey, in his individual capacity and before Oculus VR was formed as a company, signed a document that ZeniMax refers to as the "Non-Disclosure Agreement," but Defendants deny that the NDA is a valid and enforceable agreement, as it failed to define the essential term "Proper Purpose." Except as admitted, Defendants deny the allegations contained in Paragraph 33.

34. Defendants admit that Luckey, in his individual capacity and before Oculus VR was formed as a company, signed a document that ZeniMax refers to as the "Non-Disclosure Agreement," but Defendants deny that the NDA is a valid and enforceable agreement, as it failed

to define the essential term “Proper Purpose.” Except as admitted, Defendants deny the allegations contained in Paragraph 34.

35. Defendants admit that Luckey, in his individual capacity and before Oculus VR was formed as a company, signed a document that ZeniMax refers to as the “Non-Disclosure Agreement,” but Defendants deny that the NDA is a valid and enforceable agreement, as it failed to define the essential term “Proper Purpose.” Except as admitted, Defendants deny the allegations contained in Paragraph 35.

36. Defendants admit that Luckey, in his individual capacity and before Oculus VR was formed as a company, signed a document that ZeniMax refers to as the “Non-Disclosure Agreement,” but Defendants deny that the NDA is a valid and enforceable agreement, as it failed to define the essential term “Proper Purpose.” Except as admitted, Defendants deny the allegations contained in Paragraph 36.

37. Defendants admit that Carmack sent Luckey an email on May 25, 2012 and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 37.

38. Defendants admit that, shortly prior to the E3 Convention, Carmack demonstrated *DOOM 3: BFG Edition* using the E3 Demo Unit to an online news publisher, *The Verge*, that the demonstration took place in Carmack’s id Software office in Texas, that *The Verge* published an online video about *DOOM 3: BFG Edition*, which included a demonstration of the videogame on the E3 Demo Unit, and that the video speaks for itself. Except as admitted, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 and therefore deny the allegations to the extent that a response is required.

39. Defendants admit that, on May 30, 2012, *The Verge* published an article and video about *DOOM 3: BFG Edition*, which included a demonstration of the videogame on the E3 Demo Unit, and that the article and video speak for themselves. Except as admitted, Defendants deny the allegations contained in Paragraph 39.

40. Defendants admit that at the E3 Convention held in Los Angeles from June 5-7, 2012, Carmack promoted *DOOM 3: BFG Edition* using the E3 Demo Unit (among other devices), that ZeniMax scheduled appointments to view *DOOM 3: BFG Edition* the first day of E3, and that demonstrations of *DOOM 3: BFG Edition* using the E3 Demo Unit garnered publicity for ZeniMax, its *DOOM 3: BFG Edition* videogame, and the Rift. Except as admitted, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40 and therefore deny the allegations to the extent that a response is required.

41. Defendants admit that Carmack extended the demonstrations of *DOOM 3: BFG Edition* using the E3 Demo Unit for a second day and that he remarked that “every one of the journalists left enthusiastic about it, with several bordering on awestruck.” Except as admitted, Defendants deny the allegations contained in Paragraph 41. Defendants further state that although the Rift was nominated for “Best Hardware/Peripheral,” it did not win the award at E3 2012.

42. Defendants admit that, in June 2012, Luckey formed Oculus LLC. Except as admitted, Defendants deny the allegations contained in Paragraph 42.

43. Defendants admit that Carmack set up a file transfer protocol (“FTP”) arrangement to send to Luckey a binary executable file for a videogame demonstration program - - based on a small portion of an existing videogame -- that Carmack had configured to run on various virtual reality devices together with related art assets and sometimes referred to as the “VR Testbed.” Except as admitted, Defendants deny the allegations contained in Paragraph 43.

44. Defendants deny the allegations contained in Paragraph 44.

45. Defendants admit that, with ZeniMax’s permission, they used the VR Testbed and *DOOM 3: BFG Edition* demo to demonstrate prototypes of the Rift. Except as admitted, Defendants deny the allegations contained in Paragraph 45.

46. Defendants admit that Carmack sent Luckey a sensor from Hillcrest and that Hillcrest sent Luckey the firmware it had initially developed for the sensor at Carmack’s request,

neither of which was proprietary to ZeniMax. Defendants further admit that Carmack told Luckey where to mount the Hillcrest sensor in order to run the VR Testbed. Except as admitted, Defendants deny the allegations contained in Paragraph 46.

47. Defendants deny the allegations contained in Paragraph 47.

48. Defendants admit that, in April 2012, Luckey announced his intention to offer the Rift via a Kickstarter campaign and that Defendants planned to create a video demonstrating the intended capabilities of the Rift. Except as admitted, Defendants deny the allegations contained in Paragraph 48.

49. Defendants admit that Luckey sent an email to Carmack on June 20, 2012 and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 49.

50. Defendants admit that, on June 20, 2012, Carmack and Todd Hollenshead responded to Luckey's June 20 email and state that the emails speak for themselves. Except as admitted, Defendants deny the allegations contained in Paragraph 50.

51. Defendants admit that, on June 23, 2012, Luckey responded to Carmack and Hollenshead's June 20 emails and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 51.

52. Defendants admit that Luckey emailed Carmack on July 8, 2012 and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 52.

53. Defendants admit that Hollenshead emailed Luckey on July 13, 2012 and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 53.

54. Defendants admit that Carmack emailed Luckey on July 17, 2012 and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 54.

55. Defendants admit that Luckey sent Carmack an email on July 21, 2012 and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 55.

56. Defendants admit that Luckey sent Carmack an email on July 25, 2012 and state that the email speaks for itself. Defendants further admit that Carmack forwarded Luckey a link to Hillcrest's FTP site to download the firmware that Hillcrest had developed for the Hillcrest sensor, which firmware Hillcrest provided free of charge to customers who purchased Hillcrest sensors. Defendants further admit that they used the firmware provided by Hillcrest to Luckey on Rift prototypes, including for demonstrations of the Rift. Except as admitted, Defendants deny the allegations contained in Paragraph 56.

57. Defendants admit that Luckey sent Carmack an email on July 26, 2012 and state that the email speaks for itself. Defendants further admit that Carmack did not provide any video footage for the Kickstarter video. Except as admitted, Defendants deny the allegations contained in Paragraph 57.

58. Defendants admit that Carmack emailed Luckey on July 27, 2012 and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 58.

59. Defendants admit that Luckey and Carmack exchanged emails on July 28, 2012 and state that the emails speak for themselves. Except as admitted, Defendants deny the allegations contained in Paragraph 59.

60. Defendants admit that on August 1, 2012, Luckey launched the Oculus Kickstarter campaign, that the funding target was \$250,000, and that the Kickstarter page featured a five-minute video describing the Rift, as designed by Luckey. Except as admitted, Defendants deny the allegations contained in Paragraph 60.

61. Defendants admit that they used publicly available footage of Carmack discussing the Rift and that Oculus announced that certain contributors to the Kickstarter campaign would

receive a copy of *DOOM 3: BFG Edition*. Except as admitted, Defendants deny the allegations contained in Paragraph 61.

62. Defendants admit that the Kickstarter campaign featured a five-minute video describing the intended capabilities of the Rift, as designed by Luckey, and state that the video speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 62.

63. Defendants admit that the Kickstarter project reached \$250,000 in funding only four hours after the project launched and that the project ultimately raised \$2.44 million in funding from nearly 10,000 contributors. Except as admitted, Defendants deny the allegations contained in Paragraph 63.

64. Defendants admit that, during the summer of 2012, with ZeniMax's permission, Defendants used the VR Testbed for demonstrations of various Rift prototypes, that Brendan Iribe Trexler ("Iribe") had a meeting with Luckey in a Long Beach, California hotel room in the summer of 2012 and viewed the VR Testbed, that *Rage* is a videogame developed by ZeniMax, and that Iribe is a co-founding member of Oculus VR. Except as admitted, Defendants deny the allegations contained in Paragraph 64.

65. Defendants admit that, in August 2012, Oculus VR had booth space at QuakeCon and demonstrated various Rift prototypes in addition to the E3 Demo Unit. Except as admitted, Defendants deny the allegations contained in Paragraph 65.

66. Defendants deny the allegations contained in Paragraph 66.

67. Defendants admit that, on August 5, 2012, Luckey appeared on a panel at QuakeCon at ZeniMax's invitation, that the panel was recorded, and state that the video speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 67.

68. Defendants admit that a few days after the successful Kickstarter launch, Oculus VR contacted ZeniMax to discuss a "partnership" for future PR and suggested announcing a partnership for upcoming gaming conventions through which Oculus would be "promoting Doom 3 BFG every time someone sits down to try the Rift for the first time." Defendants further admit that ZeniMax met with Oculus VR, and ZeniMax expressed an interest in working

together in the future with Oculus VR. Except as admitted, Defendants deny the allegations contained in Paragraph 68.

69. Defendants admit that Oculus VR and ZeniMax discussed showing *DOOM 3: BFG Edition* at upcoming conventions, that ZeniMax provided Oculus VR with an executable version of *DOOM 3: BFG Edition* to use for upcoming demonstrations on the Rift, and that ZeniMax requested a schedule of anticipated demonstrations. Except as admitted, Defendants deny the allegations contained in Paragraph 69.

70. Defendants admit that, on August 7, 2012, Iribe sent an email to Hollenshead and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 70.

71. Defendants admit that, on August 10, 2012, ZeniMax reiterated its interest in working together in the future with Oculus VR. Except as admitted, Defendants deny the allegations contained in Paragraph 71.

72. Defendants admit that, on August 16, 2012, Hollenshead sent an email to Nate Mitchell and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 72.

73. Defendants admit that, on August 22, 2012, consistent with the schedule of demonstrations that Oculus VR had previously provided to ZeniMax, Oculus VR confirmed that it had performed multiple private demonstrations of *DOOM 3: BFG Edition* using Rift prototypes (but not the E3 Demo Unit, which remained with ZeniMax and was never given to Defendants) and that such demonstrations generated significant publicity for ZeniMax and its *DOOM 3: BFG Edition* videogame. Except as admitted, Defendants deny the allegations contained in Paragraph 73.

74. Defendants admit that, on August 22, 2012, Hollenshead sent an email to Nate Mitchell and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 74.

75. Defendants admit that, on August 22, 2012, Iribe sent an email to Hollenshead and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 75.

76. Defendants admit that, on September 10, 2012, Oculus VR sent a proposal to ZeniMax and state that the proposal speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 76.

77. Defendants admit that, on September 10, 2012, Oculus VR sent a proposal to ZeniMax and state that the proposal speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 77.

78. Defendants admit that, on September 10, 2012, Oculus VR sent a proposal to ZeniMax and state that the proposal speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 78.

79. Defendants admit that, on September 10, 2012, Oculus VR sent a proposal to ZeniMax and state that the proposal speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 79.

80. Defendants admit that, on September 27, 2012, Oculus VR sent an investor prospectus to ZeniMax and state that the prospectus speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 80.

81. Defendants admit that, on September 27, 2012, Oculus VR sent an investor prospectus to ZeniMax and state that the prospectus speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 81.

82. Defendants admit that, on October 19, 2012, ZeniMax sent a proposal to Oculus and state that the proposal speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 82.

83. Defendants admit the allegations contained in Paragraph 83.

84. Defendants admit that, on November 22, 2012, Jack McCauley emailed Carmack and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 84.

85. Defendants admit that on November 26, 2012, Iribe emailed Carmack and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 85.

86. Defendants admit that, on November 27, 2012, Michael Antonov emailed Iribe, copying Carmack and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 86.

87. Defendants deny the allegations contained in Paragraph 87.

88. Defendants admit that, on December 11, 2012, Oculus VR sent a second proposal and revised investor prospectus to ZeniMax and state that the proposal and prospectus speak for themselves. Except as admitted, Defendants deny the allegations contained in Paragraph 88.

89. Defendants admit that, on December 29, 2012, Iribe emailed Carmack and state that the email speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 89.

90. Defendants admit that, in mid-January 2013, Oculus VR demonstrated the Rift at the Consumer Electronics Show (“CES”) industry convention with Rift prototypes (but not the E3 Demo Unit, which remained with ZeniMax and was never given to Defendants), and that Luckey truthfully and rightfully promoted himself as the visionary developer of the Rift, as he had always done without any complaint from ZeniMax. Except as admitted, Defendants deny the allegations contained in Paragraph 90.

91. Defendants admit that, by January 22, 2013, Oculus VR had begun further efforts to obtain financing and had invited ZeniMax to invest in Oculus VR. Defendants admit ZeniMax did not enter into any agreement to invest in Oculus VR. Except as admitted, Defendants deny the allegations contained in Paragraph 91.

92. On information and belief, Defendants admit that ZeniMax instructed Carmack to cease all work related to VR. Except as admitted, Defendants deny the allegations contained in Paragraph 92.

93. Defendants admit that, after the expiration of his employment agreement with ZeniMax, Carmack agreed to work for Oculus VR in part because ZeniMax ceased all work relating to VR and instructed Carmack to do the same. Except as admitted, Defendants deny the allegations contained in Paragraph 93.

94. On information and belief, Defendants admit that Carmack's employment contract with ZeniMax expired in June 2013 and that Carmack subsequently advised ZeniMax that he would not renew his employment at id Software. Except as admitted, Defendants deny the allegations contained in Paragraph 94.

95. Defendants admit the allegations contained in Paragraph 95.

96. Defendants admit that Luckey and Mitchell were interviewed on video at Gamescon 2013 and state that the video speaks for itself. Except as admitted, Defendants deny the allegations contained in Paragraph 96.

97. Defendants admit that, on February 17, 2014, multiple ZeniMax employees resigned from ZeniMax, of which five joined Oculus VR. Except as admitted, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 97 and therefore deny the allegations to the extent that a response is required.

98. Defendants admit that, on February 17, 2014, multiple ZeniMax employees resigned from ZeniMax, of which five joined Oculus VR. Except as admitted, Defendants deny the allegations contained in Paragraph 98.

99. Defendants admit that, on February 20, 2014, ZeniMax sent letters to Carmack and Oculus and state that the letters speaks for themselves. Except as admitted, Defendants deny the allegations contained in Paragraph 99.

100. Defendants admit that Oculus VR has hired several former ZeniMax employees to date. Except as admitted, Defendants lack knowledge or information sufficient to form a belief

as to the truth of the allegations contained in Paragraph 100 and therefore deny the allegations to the extent that a response is required.

101. Defendants admit that, on March 25, 2014, Facebook announced a proposed acquisition of Oculus VR for approximately \$2 billion in cash and stock, that following the Facebook announcement, counsel for ZeniMax sent a letter to Oculus VR demanding compensation for ZeniMax's supposed contribution to the success of Oculus VR, and that Oculus VR's counsel responded, indicating that Oculus VR was investigating the allegations. Except as admitted, Defendants deny the allegations contained in Paragraph 101.

102. Defendants admit that, on May 5, 2014, Oculus VR responded to press inquiries and state that the responses speak for themselves. Except as admitted, Defendants deny the allegations contained in Paragraph 102.

103. Defendants admit that, on April 19, 2014, John Carmack made a post on Twitter.com. Except as admitted, Defendants deny the allegations contained in Paragraph 103.

104. Defendants admit that, on April 19, 2014, John Carmack made a post on Twitter.com. Except as admitted, Defendants deny the allegations contained in Paragraph 103.

COUNTS

COUNT 1 -- Common Law Misappropriation of Trade Secrets (All Defendants)

105. Defendants repeat and incorporate by reference their responses to Paragraphs 1-104.

106. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 106 and therefore deny the allegations to the extent that a response is required.

107. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107 and therefore deny the allegations to the extent that a response is required.

108. Defendants deny the allegations contained in Paragraph 108.

- 109. Defendants deny the allegations contained in Paragraph 109.
- 110. Defendants deny the allegations contained in Paragraph 110.
- 111. Defendants deny the allegations contained in Paragraph 111.
- 112. Defendants deny the allegations contained in Paragraph 112.
- 113. Defendants deny the allegations contained in Paragraph 113.
- 114. Defendants deny the allegations contained in Paragraph 114.
- 115. Defendants deny the allegations contained in Paragraph 115.
- 116. Defendants deny the allegations contained in Paragraph 116.
- 117. Defendants deny the allegations contained in Paragraph 117.

COUNT 2 -- Copyright Infringement
(All Defendants)

118. Defendants repeat and incorporate by reference their responses to Paragraphs 1-117.

119. Defendants admit that a copy of certificate of copyright registration bearing Registration No. PA0001851913 is attached as Exhibit 1 to the Complaint. Except as admitted, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 119 and therefore deny the allegations to the extent that a response is required.

120. Defendants admit that copies of U.S. Copyright Office Application Service Request Nos. 1-1446269781 and 1-446391151 are attached as Exhibits 2 and 3 to the Complaint, respectively. Except as admitted, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 120 and therefore deny the allegations to the extent that a response is required.

121. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 121 and therefore deny the allegations to the extent that a response is required.

122. Defendants deny the allegations contained in Paragraph 122.

- 123. Defendants deny the allegations contained in Paragraph 123.
- 124. Defendants deny the allegations contained in Paragraph 124.
- 125. Defendants deny the allegations contained in Paragraph 125.
- 126. Defendants deny the allegations contained in Paragraph 126.
- 127. Defendants deny the allegations contained in Paragraph 127

COUNT 3 -- Breach of Contract
(All Defendants)

128. Defendants repeat and incorporate by reference their responses to Paragraphs 1-127.

- 129. Defendants deny the allegations contained in Paragraph 129.
- 130. Defendants deny the allegations contained in Paragraph 130.
- 131. Defendants deny the allegations contained in Paragraph 131.
- 132. Defendants deny the allegations contained in Paragraph 132.
- 133. Defendants deny the allegations contained in Paragraph 133.

134. Defendants admit that Luckey, in his individual capacity and before Oculus VR was formed as a company, signed a document that ZeniMax refers to as the “Non-Disclosure Agreement,” but Defendants deny that the NDA is a valid and enforceable agreement, as it failed to define the essential term “Proper Purpose.” Except as admitted, Defendants deny the allegations contained in Paragraph 134.

- 135. Defendants deny the allegations contained in Paragraph 135.
- 136. Defendants deny the allegations contained in Paragraph 136.
- 137. Defendants deny the allegations contained in Paragraph 137.
- 138. Defendants deny the allegations contained in Paragraph 138.

COUNT 4 -- Unfair Competition
(Against Oculus)

139. Defendants repeat and incorporate by reference their responses to Paragraphs 1-138.

140. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 140 and therefore deny the allegations to the extent that a response is required.

141. Defendants deny the allegations contained in Paragraph 141.

142. Defendants deny the allegations contained in Paragraph 142.

143. Defendants deny the allegations contained in Paragraph 143.

144. Defendants deny the allegations contained in Paragraph 144.

145. Defendants deny the allegations contained in Paragraph 145.

146. Defendants deny the allegations contained in Paragraph 146.

147. Defendants deny the allegations contained in Paragraph 147.

148. Defendants deny the allegations contained in Paragraph 148.

149. Defendants deny the allegations contained in Paragraph 149.

COUNT 5 -- Unjust Enrichment
(All Defendants)

150. Defendants repeat and incorporate by reference their responses to Paragraphs 1-149.

151. Defendants deny the allegations contained in Paragraph 151.

152. Defendants deny the allegations contained in Paragraph 152.

153. Defendants deny the allegations contained in Paragraph 153.

154. Defendants deny the allegations contained in Paragraph 154.

155. Defendants deny the allegations contained in Paragraph 155.

156. Defendants deny the allegations contained in Paragraph 156.

157. Defendants deny the allegations contained in Paragraph 157.

158. Defendants deny the allegations contained in Paragraph 158.

COUNT 6 -- Trademark Infringement
(All Defendants)

159. Defendants repeat and incorporate by reference their responses to Paragraphs 1-158.

160. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 160 and therefore deny the allegations to the extent that a response is required.

161. Defendants deny the allegations contained in Paragraph 161.

162. Defendants deny the allegations contained in Paragraph 162.

163. Defendants deny the allegations contained in Paragraph 163.

164. Defendants deny the allegations contained in Paragraph 164.

165. Defendants deny the allegations contained in Paragraph 165.

COUNT 7 -- False Designation
(All Defendants)

166. Defendants repeat and incorporate by reference their responses to Paragraphs 1-94.

167. Defendants deny the allegations contained in Paragraph 167.

168. Defendants deny the allegations contained in Paragraph 168.

169. Defendants deny the allegations contained in Paragraph 169.

170. Defendants deny the allegations contained in Paragraph 170.

PLAINTIFFS' PRAYER FOR RELIEF

Defendants deny that Plaintiffs are entitled to any of the grounds for relief set forth in the Complaint. Defendants further deny that Plaintiffs are entitled to any relief.

DEFENDANTS' AFFIRMATIVE DEFENSES

First Affirmative Defense

ZeniMax's complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

ZeniMax's claims are barred by the doctrines of acquiescence, laches, equitable estoppel, waiver and/or unclean hands. ZeniMax has always known that Luckey invented the Oculus Rift. By its conduct, express statements, and silence, ZeniMax understood that the Oculus Rift and the technology powering it belonged solely to Oculus VR and that Oculus VR had not infringed any

of ZeniMax's intellectual property rights or otherwise misappropriated any proprietary information of ZeniMax. More specifically:

- Shortly before Luckey was about to launch the Oculus Rift Kickstarter campaign, ZeniMax suggested that Luckey delay the campaign because ZeniMax was interested in funding Oculus VR's work. Oculus VR, however, was not looking for ZeniMax to fund its work and declined to delay the Kickstarter campaign. While ZeniMax professed interest in funding future Oculus VR work, it did not raise any claim of infringement against Oculus VR.
- The Kickstarter campaign featured a five-minute video describing the intended capabilities of the Rift, as designed by Luckey. In the video, Luckey used publicly available footage of Carmack discussing the Rift, and the Kickstarter campaign also included an announcement that certain contributors to the campaign would receive a copy of *DOOM 3: BFG*. ZeniMax was aware of the Kickstarter campaign and video at the time it was released but did not assert any claims of ownership to the Rift technology or claim that the Kickstarter campaign or video infringed any intellectual property rights of ZeniMax.
- At various gaming conventions during the summer of 2012, with ZeniMax's explicit permission, Defendants used the VR Testbed and *DOOM 3: BFG* demo for demonstrations of the Oculus Rift (a different prototype than the prototype Carmack used at E3, which remained at ZeniMax). Oculus VR shared with ZeniMax the generous media coverage that accompanied these gaming convention demos. ZeniMax, however, did not provide source code for the VR Testbed or the *DOOM 3: BFG* demo, and never did. Soon thereafter, Oculus VR stopped using the *DOOM 3: BFG* demo in favor of demos from other videogame publishers as well as demos developed internally by Oculus VR.
- In December 2012, Oculus VR sent ZeniMax a preview of its source code for developer tools and related software developed for the Oculus Rift -- before

Oculus VR ever made the code publicly available. Although it now says it somehow owns that code, at the time ZeniMax made no claim that the code or technology was based on Carmack's work. Indeed, despite having the code to review for a year and a half, ZeniMax made no claim to it until after Facebook announced its acquisition of Oculus VR. In the meantime, Oculus VR registered its copyright in the Oculus VR source code with the Copyright Office -- confirming its ownership of the code -- and published the code as its own.

- Oculus VR offered ZeniMax multiple opportunities to invest in the company. Oculus VR provided ZeniMax with multiple versions of its investor prospectus. ZeniMax did not contradict any information contained in the investor prospectuses or ask Oculus to remove any references contained in them. Ultimately, instead of investing in the company, ZeniMax demanded an outsized and non-dilutable stake in Oculus VR in supposed exchange for the publicity Carmack's demonstrations and endorsement had generated. When Oculus VR declined, ZeniMax requested no compensation for any technological contributions, nor did it pursue its own virtual reality technology. Instead, it told Carmack to shut down all of his virtual reality research, and told others inside ZeniMax not to work on VR videogame support. Carmack followed ZeniMax's instruction and, later, with ZeniMax's permission, published much of his virtual reality work to the world in an online white paper.
- After undoubtedly conceiving its belated claim of ownership to Oculus VR's technology as a means to pressure Oculus VR into a quick settlement by threatening the Facebook deal, ZeniMax demanded compensation from Oculus VR through demand letters sent by its attorney. Instead of responding to Oculus VR's response letter or wait for Oculus VR's further response (as Oculus VR had indicated that it was investigating the matter), ZeniMax initiated a public relations attack against Oculus VR that was intended to destroy Oculus VR's credibility

among investors, the gaming community and other important constituents and stakeholders, and to disrupt the impending Facebook acquisition. The PR campaign involved, as its core strategy, the dissemination of knowingly false and misleading statements about Oculus VR (and Luckey and Carmack, among others).

The conduct described above supports Oculus VR's defenses of acquiescence, laches, equitable estoppel, waiver and unclean hands. More specifically, ZeniMax has engaged in misleading conduct based upon which Oculus VR reasonably inferred that ZeniMax was making no claim to Oculus VR's technology or otherwise asserting any intellectual property rights. Further, to the extent ZeniMax believed that it owned Oculus VR's technology or that Oculus was infringing ZeniMax's intellectual property rights, ZeniMax has known of those claims and engaged in conduct inconsistent with those rights and/or inexcusably delayed asserting such rights to the prejudice of Oculus VR, with such prejudice including among other things the significant investment Oculus VR has made in developing its technology and building its brand and associated goodwill. Lastly, ZeniMax's conduct described above has been misleading, unconscientious, unjust, and marked by a want of good faith. Permitting ZeniMax to pursue its claims would cause significant harm to Oculus VR and Luckey.

Third Affirmative Defense

ZeniMax's claims are barred to the extent the allegedly unlawful or infringing use of the works at issue was licensed or otherwise authorized by persons or entities with the right to license or authorize such use.

Fourth Affirmative Defense

Federal law preempts some or all of Plaintiffs' claims asserted under state law.

Fifth Affirmative Defense

ZeniMax's misappropriation-based claims are barred because ZeniMax's purported trade secrets were readily ascertainable by proper means.

Sixth Affirmative Defense

ZeniMax's breach of contract claims are barred because there was no meeting of the minds with respect to the NDA sufficient to form a valid contract.

Seventh Affirmative Defense

ZeniMax's breach of contract claims are barred as a result of the specific language of the NDA.

Eighth Affirmative Defense

ZeniMax's breach of contract claims are barred by failure or lack of consideration.

Ninth Affirmative Defense

ZeniMax's breach of contract claims are barred by ZeniMax's failure of performance.

Tenth Affirmative Defense

ZeniMax's trademark-based claims are barred because Defendants' use of any ZeniMax-owned trademarks was pursuant to ZeniMax's express or implied permission.

Eleventh Affirmative Defense

ZeniMax's trademark-based claims are barred because Defendants' use of any ZeniMax-owned trademarks constitutes fair use of such marks.

Twelfth Affirmative Defense

ZeniMax's trademark-based claims are barred because Defendants' use of any ZeniMax-owned trademarks is not likely to cause confusion, deception or mistake among customers as to the source, association or affiliation of either party's goods and services.

Thirteenth Affirmative Defense

ZeniMax's prayer for statutory damages and attorney's fees under the Copyright Act is barred to the extent the copyrights in issue do not meet the registration requirements of the Copyright Act, including 17 U.S.C. § 412(2).

Fourteenth Affirmative Defense

ZeniMax has suffered no damages.

Fifteenth Affirmative Defense

If ZeniMax suffered any injury or damages as alleged in the Complaint, which is expressly denied, then said damages or injuries resulted from ZeniMax's own acts and/or omissions.

Sixteenth Affirmative Defense

To the extent any damages were suffered by ZeniMax, which is expressly denied, any such damages were the result of the negligence, carelessness, acts, omissions, fault or breaches of contract or obligations of persons other than Defendants, including ZeniMax, over whom Defendants have no control, and, accordingly, such acts bar any recovery against Defendants in whole or in part.

Additional Affirmative Defenses

Defendants specifically reserve the right to assert such other and further affirmative defenses as are revealed in the course of discovery.

DEMAND FOR JURY TRIAL

Defendants hereby demand a jury trial on all issues and claims so triable.

Dated: June 25, 2014

Respectfully submitted,

OCULUS VR, INC. and PALMER LUCKEY,

By Their Attorneys,

/s/ Linda R. Stahl

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CERTIFICATE OF SERVICE

I, Linda R. Stahl , hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 25, 2014.

/s/ Linda R. Stahl

Linda R. Stahl