

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ZENIMAX MEDIA INC. and ID
SOFTWARE LLC,

Plaintiffs,

v.

OCULUS VR, LLC, PALMER LUCKEY,
FACEBOOK, INC., BRENDAN IRIBE and
JOHN CARMACK,

Defendants.

Case No.: 3:14-cv-01849-K

Hon. Ed Kinkeade

**DEFENDANTS' MOTION IN THE ALTERNATIVE FOR A
PARTIAL NEW TRIAL UNDER FEDERAL RULE OF CIVIL PROCEDURE 59(A)**

Should this Court not grant Defendants' contemporarily filed Motion for Judgment as a Matter of Law, Defendants Oculus VR, LLC *et al.* hereby move in the alternative for a partial new trial under Rules 50(b) and 59(a) of the Federal Rules of Civil Procedure on the following separable issues:

(1) A new trial is warranted for Plaintiffs' claim against Defendants Oculus, Luckey, and Iribe for false designation of origin (Count 9) because the verdict is against the great weight of the evidence, the damages award is excessive, and the spoliation testimony and adverse inference instruction tainted the jury;

(2) A new trial is warranted for Plaintiffs' claim against Oculus, Luckey, Iribe, and Carmack for copyright infringement (Count 2) because the verdict is against the great weight of the evidence, the damages award is excessive, the verdict is based on unreliable and prejudicial expert testimony, and the spoliation testimony and adverse inference instruction tainted the jury;

(3) A new trial is warranted for Plaintiffs' claim against Defendant Oculus for breach

of contract (Count 3) because the verdict is against the great weight of the evidence, the damages award is excessive, the verdict is based on unreliable and prejudicial expert testimony, the jury's laches verdicts are irreconcilably inconsistent, and the spoliation testimony and adverse inference instruction tainted the jury;

This motion is made in the alternative to Defendants' motion for judgment as a matter of law. Defendants request a partial new trial only if and to the extent that the Court denies their motion for judgment as a matter of law.

This motion is based on the attached brief, which is being filed under seal; all pleadings and files in this action; all evidence admitted at trial; and on such further argument and evidence that the Court may consider. The undersigned counsel will meet and confer with Plaintiffs' counsel to reach agreement on a redacted version of the attached brief that can be filed on the public docket next week without revealing information that any party has designated as confidential.

Dated: April 7, 2017

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Respectfully submitted,

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CERTIFICATE OF SERVICE

On April 7, 2017, I hereby certify that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). I hereby certify that I have served all counsel who are deemed to have consented to electronic service or by another manner authorized by Federal Rules of Civil Procedure 5(b)(2).

/s/ Russ Falconer
Russ Falconer

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**[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION FOR A
PARTIAL NEW TRIAL UNDER FEDERAL RULE OF CIVIL PROCEDURE 59(A)**

The Court, having considered Defendants' Motion for a New Trial ("Motion") and its supporting Brief and Appendix, and all papers and proceedings thereon, hereby GRANTS the Motion.

IT IS THEREFORE ORDERED AND ADJUDGED that:

1. Defendants Oculus, Luckey, and Iribe are entitled to a new trial on Plaintiffs' claim for false designation of origin (Count 9).
2. Defendant Oculus is entitled to a new trial on Plaintiffs' claim for copyright infringement (Count 2).
3. Defendant Oculus is entitled to a new trial on Plaintiff's claim for breach of contract (Count 3)

SO ORDERED:

SIGNED this ____ day of _____ 2017.

The Hon. Ed Kinkeade
District Judge