

**IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA**

<hr/>)	
FACEBOOK, INC.,)	
)	
	Petitioner,)	
)	No. S245203
	v.)	
)	Court of Appeal No.
THE SUPERIOR COURT OF SAN DIEGO)	D072171
COUNTY,)	
)	Superior Court No.
	Respondent.)	SCD268262
)	
)	
LANCE TOUCHSTONE,)	
)	
	Real Party in Interest.)	
<hr/>)	

**APPLICATION AND MOTION TO AUGMENT THE RECORD
(CAL. RULES OF COURT, RULE 8.340(c))**

MEGAN MARCOTTE, Chief Deputy
Office of the Alternate Public Defender
County of San Diego

KATE TESCH, State Bar No. 284107
Deputy Alternate Public Defender
450 B Street, Suite 1200
San Diego, California 92101
Telephone: (619) 446-2900

Attorneys for Real Party in Interest
LANCE TOUCHSTONE

Pursuant to California Rules of Court, rule 8.340(c), Real Party in Interest, by and through his attorneys, hereby requests that the record on appeal be augmented with the attached Exhibit A and that the Court take judicial notice and admit into evidence Exhibit A. Exhibit A is a printout from the California Department of Corrections and Rehabilitation Public Inmate Locator System reflecting that Jeffrey Ryan Renteria, the complaining witness and subject social media user in this litigation, is currently incarcerated in California State Prison and is not eligible for parole until June 2021 (Available at <https://inmatelocator.cdcr.ca.gov/> as of May 12, 2020).

While generally not permitted, there is no prohibition from appellate courts taking judicial notice of matters not raised in the trial court. (See *People v. Preslie* (1977) 70 Cal.App.3d 486,492 [“... informal requests for augmentation made after a reasonable time has expired from receiving the record on appeal, and particularly as late as those contained in briefs, will be denied absent a strong showing of unusual or unavoidable circumstances giving rise to the delay”].) “The preponderance of authority holds that a court entertaining a proceeding in mandate may consider ‘all relevant evidence, including facts not existing until after the petition for writ of mandate was filed...’ [s]uch consideration is particularly apt where, as here, the effect of the additional evidence may be to validate an action that would otherwise have to be set aside.” (*Negro v. Superior Court* (2014) 230 Cal.App.4th 879, 894-95, citations omitted.)

Augmentation of the record at this stage of the proceedings is appropriate so the Court may fully consider the factual circumstances underlying this litigation at oral argument, specifically as it relates to the subject social media user and his practical ability to participate in Superior Court proceedings for the foreseeable future (for example, responding to a subpoena duces tecum or appearing voluntarily for scheduled court

hearings). If the Court wishes to consider a consent-based production from this person or the ability of any party to serve them with a subpoena duces tecum, this record may impact the Court's factual considerations and should be made a part of the Court's record in order to do so.

These facts were not in existence or available in the trial court, at the time the record of appeal was transmitted to the Court, or during the last briefing opportunity in September 2019 (noting that Mr. Renteria was not admitted to the California Department of Corrections and Rehabilitation until October 2019, per Exhibit A). Additionally, given the recent closing of San Diego Superior Court, undersigned counsel is unable to obtain a formal court docket or abstract of judgement reflecting these facts or the criminal charges underlying Mr. Renteria's prison sentence. Thus the attached printout is the best available public record reflecting this factual information for the Court's consideration. This unexpected and unprecedented circumstance constitutes good cause for leave to be granted so that counsel may make the instant motion to augment the record in this case. Per Evidence Code section 452, subd. (h), the Court may take judicial notice of facts not reasonably subject to dispute or capable of accurate determination from indisputable sources, such as data produced by the official governmental webpage of the California Department of Corrections and Rehabilitation. (Cal. Evid. Code §452, subd. (h).)

///

///

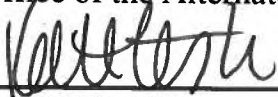
///

To the extent that this record is useful for the Court's factual considerations at oral argument, or in issuing an opinion in this matter, Real Party in Interest respectfully requests that the Court find good cause to accept Exhibit A into evidence so that Court and counsel may have a fruitful discussion during oral argument and meaningfully consider all practical options in resolving this matter.

Dated: May 12, 2020

Respectfully submitted,

MEGAN MARCOTTE, Chief Deputy
Office of the Alternate Public Defender



KATE TESCH
Deputy Alternate Public Defender

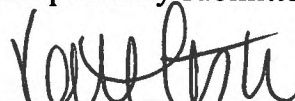
Attorneys for Real Party in Interest
LANCE TOUCHSTONE

CERTIFICATE OF WORD COUNT COMPLIANCE

I, KATE TESCH, hereby certify that, based on the software in the Microsoft Word program used to prepare this document, the word count for this brief is 613 words. I swear under the penalty of perjury that the foregoing is true and correct.

Dated: May 12, 2020

Respectfully submitted,



KATE TESCH
Deputy Alternate Public Defender

Attorney for Real Party in Interest
LANCE TOUCHSTONE

PROOF OF SERVICE

I, undersigned declarant, state that I am a citizen of the United States and a resident of the County of San Diego, State of California. I am over the age of 18 years and not a party to the action herein. My office address is 450 "B" Street, Suite 1200, San Diego, California 92101.

On May 12, 2020, I personally served the attached **APPLICATION AND MOTION TO AUGMENT THE RECORD** to the following parties via U.S. Postal Service:

San Diego Superior Court, *Respondent*
Hon. Kenneth So, Judge C/O Judicial Services
1100 Union Street, San Diego, CA 92101

Perkins Coie LLP for Facebook, Inc., *Petitioner*
Attn: James Snell and Christian Lee
3150 Porter Drive, Palo Alto, California 94304

Gibson, Dunn & Crutcher LLP for Facebook, Inc., *Petitioner*
Attn: Joshua Lipshutz and Michael Holecek
555 Mission Street, San Francisco, CA 94105
333 South Grand Avenue, Los Angeles, CA 90071

San Diego County District Attorney, *Intervenor*
Attn: Karl Husoe, Deputy District Attorney
330 W. Broadway, Suite 860, San Diego, CA 92101

Court of Appeal, Fourth Appellate District, Division One
750 B Street, Suite 300, San Diego, California 92101

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 12, 2020, in San Diego, California.


Signed: 
Printed: Pascual Benitez
DECLARANT

EXHIBIT A



Inmate Information

The information displayed below is subject to change and may update daily

Inmate Name	RENTERIA, JEFFREY RYAN
CDCR Number	BK5102
Age	34
Admission Date	10/07/2019
Current Location	Sierra Conservation Center
Location Link	Directions
Parole Eligible Date (Month/Year)	06/2021
Parole Eligible Date Information	<p>The Parole Eligible Date displayed above is subject to change.</p> <p>The date shown above is the first date the inmate is (or was) eligible for review for possible release by the Board of Parole Hearings. The inmate is eligible for review and possible release based on his or her conviction for a nonviolent offense. For more information, please visit the Nonviolent Parole Review Process Overview</p>
Additional Information	<p>VICTIM NOTIFICATION: Victims who would like to request notice and an opportunity to provide input concerning this inmate's parole review or release must register with CDCR's Office of Victim and Survivor Rights and Services. For further information, or to inquire about court ordered restitution, please visit CDCR's Office of Victim and Survivor Rights and Services website or call toll-free 1-877-256-6877</p> <p>BOARD OF PAROLE HEARINGS: For more information about the Board of Parole Hearings, please visit the Board's website</p>

Information current as of: 05/12/2020

CDCR Secretary

Ralph Diaz

[Visit his page](#)

Innovation By

EIS

Enterprise Information Services

Copyright © 2020 California Department of Corrections and Rehabilitation

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **FACEBOOK v. S.C. (TOUCHSTONE)**

Case Number: **S245203**

Lower Court Case Number: **D072171**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **Kate.Tesch@sdcounty.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ADDITIONAL DOCUMENTS	Touchstone Application Motion to Augment

Service Recipients:

Person Served	Email Address	Type	Date / Time
John Philipsborn Law Offices of J.T. Philipsborn 83944	JPhilipsbo@aol.com	e-Serve	5/12/2020 1:17:54 PM
Soolean Choy Gibson, Dunn & Crutcher LLP 318750	schoy@gibsondunn.com	e-Serve	5/12/2020 1:17:54 PM
Donald Landis The Law Office of Donald E. Landis, Jr. 149006	don@donlandislaw.com	e-Serve	5/12/2020 1:17:54 PM
Stephen Dunkle Sanger Swysen & Dunkle 227136	sdunkle@sangerswysen.com	e-Serve	5/12/2020 1:17:54 PM
Eric Boorstin Horvitz & Levy LLP 253724	eboorstin@horvitzlevy.com	e-Serve	5/12/2020 1:17:54 PM
James Snell Perkins Coie LLP 173070	JSnell@perkinscoie.com	e-Serve	5/12/2020 1:17:54 PM
Karl Husoe Office of the District Attorney 261097	karl.husoe@sdcca.org	e-Serve	5/12/2020 1:17:54 PM
Michael McMahon Office of the Ventura County Public Defender 71909	michael.mcmahon@ventura.org	e-Serve	5/12/2020 1:17:54 PM
Dorothy Bischoff Office of the Public Defender 142129	dorothy.bischoff@sfgov.org	e-Serve	5/12/2020 1:17:54 PM
Joshua Lipshutz Gibson, Dunn & Crutcher LLP	jslipshutz@gmail.com	e-Serve	5/12/2020 1:17:54 PM

Todd Howeth Todd W. Howeth, Ventura County Public Defender 110714	todd.howeth@ventura.org	e-Serve	5/12/2020 1:17:54 PM
Katherine Tesch Office of the Alternate Public Defender 284107	Kate.Tesch@sdcounty.ca.gov	e-Serve	5/12/2020 1:17:54 PM
Donald Landis The Law Office of Donald E. Landis, Jr. 149006	admin@donlandislaw.com	e-Serve	5/12/2020 1:17:54 PM
Michael Holecek Gibson Dunn & Crutcher, LLP	mholecek@gibsondunn.com	e-Serve	5/12/2020 1:17:54 PM
Christian Lee Perkins Coie LLP 301671	clee@perkinscoie.com	e-Serve	5/12/2020 1:17:54 PM
Raeann Diamond Horvitz & Levy LLP	rdiamond@horvitzlevy.com	e-Serve	5/12/2020 1:17:54 PM
Stanley Chen Horvitz & Levy LLP 302429	schen@horvitzlevy.com	e-Serve	5/12/2020 1:17:54 PM
Thomas Cochrane Gibson Dunn & Crutcher, LLP 318635	tcochrane@gibsondunn.com	e-Serve	5/12/2020 1:17:54 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/12/2020

Date

/s/Kate Tesch

Signature

Tesch, Kate (284107)

Last Name, First Name (PNum)

San Diego County Office of the Alternate Public Defender

Law Firm