

[redacted], Esq. (CSBN [redacted])
[redacted]
[redacted]
[redacted]
[redacted]

Attorneys for Plaintiff [redacted]

Names have been redacted or changed

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA — WESTERN DIVISION

STEVE JAMES, an individual
Plaintiff,

vs.

ABC COMPUTER CORPORATION,
a [redacted] Corporation,
Defendants

Case No: [redacted]

**DECLARATION OF EXPERT
MARK LAURENCE DONALD
EMERSON PURSUANT TO FRCP
RULE 26(a)(2)**

Complaint Filed: [redacted]
Trial Date: [redacted]

Hearing Date: [redacted]
Hearing Time: [redacted]
Courtroom: [redacted]

I, Mark Laurence Donald Emerson, declare:

1. The following is based on my own personal knowledge and if called to testify, I could, and would, testify competently thereto.
2. My Curriculum Vitae is attached hereto as **Exhibit A**. I hold a bachelors degree in Mathematics from UCLA (*magna cum laude*) and

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2 have been employed as a computer scientist for approximately 25
3 years. My work as the inventor of the patented (but not-yet-released)
4 AngelBase database technology has been highly praised by 13 experts
5 in the field of computer science, including eight individuals who hold
6 Ph.D.s in Computer Science, Physics, or Electrical Engineering, six of
7 whom are current or former Professors of Computer Science at,
8 respectively, UCLA, UC Irvine, USC, Loyola Marymount University,
9 California State University at Fullerton, and National Institute of
10 Informatics (NII), Tokyo, Japan. Two of these individuals are CEOs
11 of high-tech companies, and three hold senior technical staff positions
12 at successful high-tech companies. These 13 experts all agree that the
13 AngelBase technology I have invented fundamentally advances the
14 field of computer science and fundamentally empowers people in the
15 use computers systems. I could not have invented AngelBase without
16 an in-depth knowledge of bits, bytes, files, hard disks, and, in general,
17 the storage of information on computer systems, including the
18 recovery of damaged or lost information. Such knowledge, and the
19 opinions presented herein, are of an *elementary nature* to me, and it
20 will not be necessary herein for me to utilize anything remotely
21 approaching the advanced concepts of AngelBase. I am confident
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2 that, if presented with the same information, the said 13 experts would
3 readily concur with my opinions as expressed herein.
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5 3. I have been informed by the attorney for Plaintiff Steve James
6 (hereinafter “**JAMES**”) that Mr. Gregory Larson (hereinafter
7 “**LARSON**”) has been designated in the above-captioned action
8 (hereinafter the “**ACTION**”) as an expert for Defendant [redacted]
9 (hereinafter “**ABC**”). I have examined LARSON’S Curriculum Vitae
10 (hereinafter **LARSON’S CV**”), as presented its Defendant ABC’s
11 Expert Disclosures.
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13 4. I have examined the Declaration of Gregory Larson in Support of
14 ABC’s Motion for Summary Judgment (hereinafter the “**FIRST**
15 **LARSON DECLARATION**”) filed in the ACTION by ABC.
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17 5. I have examined the Declaration of Steve James in Opposition to
18 Defendant ABC’s Motion for Summary Judgment, or in the
19 Alternative, Summary Adjudication (hereinafter the “**JAMES**
20 **DECLARATION**”).
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22 6. I have been informed by JAMES’S attorney that Mr. Mike Sloan
23 (hereinafter “**SLOAN**”) has been designated as an expert for JAMES.
24 I have examined the Declaration of Mike Sloan in Opposition to
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2 Defendant ABC’s Motion for Summary Judgment, or in the
3 Alternative, Summary Adjudication
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5 (hereinafter the “**SLOAN DECLARATION**”), including the Resume of
6 Mike Sloan attached thereto.

7 7. I have examined the Declaration of Gregory Larson in Support of
8 ABC’s Reply to Plaintiff’s Opposition to ABC’s Motion for Summary
9 Judgment (hereinafter the “**SECOND LARSON DECLARATION**”)
10 filed in the ACTION by ABC.
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12 8. In my expert opinion, the FIRST LARSON DECLARATION and the
13 SECOND LARSON DECLARATION present a grossly inadequate
14 discussion of the real issue in the ACTION, to wit: *Has JAMES*
15 *permanently lost his music data?* LARSON bases his two
16 declarations on his so-called “forensic credentials” and those of his
17 company, PPXQ Solutions, and also on the existence or recoverability
18 of “files” on JAMES’S hard drives. LARSON then takes a leap of
19 faith to declare that “the data on said drives is recoverable.”
20 (SECOND LARSON DECLARATION ¶ 27.) And yet, LARSON has
21 failed to recover even one single song—let alone the 402 songs
22 JAMES claims he has lost.
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3 9. If the songs are recoverable, as LARSON claims, and if LARSON is
4 so “well qualified” as a “forensic expert,” *they why did he fail to use*
5 *his enormous “forensic skills” do the one thing that could lay this*
6 *ACTION to rest, to wit: actually recovering some or all of the songs?*
7 If ABC is willing to pay LARSON to write opinions about the
8 “recoverability” of files, then why didn’t ABC instead pay him to
9 recover the songs themselves and be done with the matter? There is
10 only one reasonable answer to these questions—and that is that the
11 songs are *not* recoverable.

13 10. As any attorney or judge knows, the existence of voluminous boxes
14 full of papers does not prove that a particular item of evidence exists
15 within those boxes. Likewise, the fact that “files” exist on a hard
16 drive does not mean those files comprise JAMES’S lost songs. A
17 single song, when stored on a hard disk as audio data, consists of
18 numerous files that must all be consistent with one another. The loss
19 of one file—or the corruption of a few bits in one file—can result in a
20 total loss of the song. When a file is “recovered” in a clean room,
21 there are considerable risks that some of the bits in the file may be
22 corrupted. Thus, LARSON’S assertion that some “files” are

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2 recoverable does necessarily mean that any of HALLS lost songs are
3 recoverable.
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5 11. What is far more likely is that an assortment of files can be recovered,
6 some of which may contain some corrupted bits. *But that is only the*
7 *first step in the recovery process.* The next step, which was totally
8 ignored by LARSON, is that the groups of recovered files comprising
9 each song must be shown to be accessible as songs by the audio
10 software for which they are intended. This means that, for each song,
11 all of its files must exist without intolerable bit corruption.
12

13 12. By analogy, if an attorney accidentally loses a WordPerfect document
14 file entitled “motion.wpd,” it is not enough merely to “recover” that
15 file in a clean room—the file must *actually work* when opened by
16 WordPerfect. If WordPerfect reports “file error” when attempting to
17 open the “recovered” file, then the recovery has failed. (Songs are
18 more complex than WordPerfect documents in that a song resides in a
19 group of files, whereas a WordPerfect document resides in a single
20 file.)
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23 13. LARSON has presented no opinion whatsoever that any of the files he
24 claims are “recoverable” are accessible by the appropriate audio
25 software. Indeed, he has failed produce *any* actual songs from the
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2 hard drives and demonstrate they are accessible by the applicable
3 audio software.
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5 14. Furthermore, LARSON has failed to address the question of whether
6 any songs, if recoverable, are among the 402 songs JAMES claims he
7 has lost. Indeed JAMES DECLARATION ¶ 3 states that the 402
8 songs were lost in a “catastrophe” on Feb. 26, 2006. JAMES
9 DECLARATION ¶ 47 states that as a result of the catastrophe on Feb.
10 26, 2006, “XDRIVE FOUR and XDRIVE SEVEN were operable, but
11 they were empty—all the music files they had previously contained
12 had been deleted!” JAMES DECLARATION ¶ 51 then states that in
13 March 2006, he copied “the DVD-BACKED-UP 62 SONGS from
14 their DVDS onto XDRIVE FOUR and XDRIVE SEVEN.” This act
15 of copying onto a hard drive that the operating system had reported
16 was “empty” (i.e. that contained no files) would likely have
17 overwritten portions of whatever previously recoverable files had
18 been on the hard drive.
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22 15. LARSON ignores the loss of song data that this copying would have
23 caused, and LARSON likewise ignores the fact that the “recovery” of
24 any songs from XDRIVE FOUR and XDRIVE SEVEN would almost
25 certainly yield the songs that had been written from to them after the
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2 catastrophe on Feb. 26, 2006, and that are not among the 402 songs
3 JAMES claims he lost. Indeed, JAMES DECLARATION ¶ 67 stated,
4 “Within a few hours of when LARSON left NORTH 40 with the said
5 three hard drives, I went into NORTH 40 and sat down with SLOAN,
6 who showed me the files on XDRIVE FOUR and XDRIVE SEVEN
7 that LARSON had examined, and had found to be “active files.” I
8 immediately told SLOAN that those were the DVD-BACKED-UP 62
9 SONGS, which are not among the LOST 402 SONGS. This, of
10 course, was no surprise, since, as stated above, I had transferred the
11 DVD-BACKED-UP 62 SONGS to XDRIVE FOUR and XDRIVE
12 SEVEN in March 2006, after the CATASTROPHE.” Therefore,
13 LARSON’S conclusions as to data being “recoverable” from
14 XDRIVE FOUR and XDRIVE SEVEN are irrelevant.

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18 16. LARSON’S entire examination of DRIVE THIRTEEN was also
19 irrelevant because, according to JAMES, JAMES did not acquire
20 DRIVE THIRTEEN until June 19, 2006 (JAMES DECLARATION ¶
21 52), which was after the Feb. 26, 2006 catastrophe, and it contains
22 songs recorded in Detroit in the Summer of 2006 that are not among
23 the 402 lost songs (*see* JAMES DECLARATION ¶ 64).
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3 17. That leaves DRIVE SIX and DRIVE TWELVE, both of which
4 LARSON examined in his clean room (*see* SLOAN DECLARATION
5 ¶ 19). While LARSON identifies these two hard drives as “A04” and
6 “A05” (*see* LARSON DECLARATION ¶ 19), it is unclear which is
7 DRIVE SIX and DRIVE TWELVE. In any event, LARSON found
8 one of the two was heavily scratched, and he openly admits that
9 “PPXQ Solutions has been unable to recover any data from this
10 drive.” (¶ 19). According to SLOAN DECLARATION ¶ 23, that was
11 DRIVE SIX, which had experienced a “head crash.” And according
12 to JAMES, DRIVE SIX had far more lost songs on it than DRIVE
13 TWELVE (*see* JAMES DECLARATION ¶ 65).

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16 18. As for DRIVE TWELVE, whose heads were reported to click, and
17 which JAMES contends contains only a few of the 402 lost songs,
18 there is a disagreement between SLOAN and LARSON over the
19 extent to which the files on DRIVE TWELVE can be recovered.
20 According to SLOAN, based on the report from his clean room expert
21 ([name redacted]), “50% data recovery might be possible.” (SLOAN
22 DECLARATION ¶ 24.) According to LARSON, the data on DRIVE
23 TWELVE (drive “A04”) is 100% recoverable (*see* LARSON
24 DECLARATION ¶¶ 23-25). However, this disagreement only
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pertains to the relatively small portion of the 402 lost songs that resided on DRIVE TWELVE. Even so, LARSON failed to produce any of the these songs or demonstrate their accessibility on the applicable audio software.

19.LARSON attacks the style of numbering of the hard drives as “convoluted” and “not similar to any I have seen that has been accepted by the computer forensic community.” (SECOND LARSON DECLARATION ¶ 12.) This is irrelevant. The hard drives could just as well have been given names like “Peter” and “Paul.” LARSON mistakenly presumes the numbering system was “SLOAN’S method of labeling” (SECOND LARSON DECLARATION ¶ 12), when a more careful reading of the documents indicates that the labeling originated from JAMES DECLARATION, which was adopted by SLOAN for consistency. The JAMES DECLARATION [which was prepared for the attorney by Mark Emerson prior to his becoming an expert witness] sets forth in considerable detail a complex set of facts concerning his long history of computer usage and audio information storage. JAMES numbers the hard drives *in their chronological sequence of their first appearance his various computers*, and he places an “X” in front of the two external hard drives to distinguish

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2 them from the internal drives. This system of numbering is
3 reasonable and adequate, and while it would have been desirable to
4 indicate the serial numbers of the drives, the JAMES
5 DECLARATION claims that many of the hard drives were taken
6 away by ABC, and those serial numbers would presumably have been
7 unavailable to him.
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10 20. LARSON'S attacks on SLOAN'S credentials are, in my opinion,
11 without merit. Industry-wide, the vast majority of data recovery is
12 done without a clean room on tools that computer technicians, with
13 credentials similar to those of SLOAN, are well qualified to perform.
14 SLOAN correctly states [the SLOAN DECLARATION was also
15 prepared for the attorney by Mark Emerson prior to his becoming an
16 expert witness] in general terms when clean room facilities are needed
17 (SLOAN DECLARATION ¶ 9), he specifically identifies that data
18 recovery on DRIVE SIX and DRIVE TWELVE requires a clean room
19 (¶ 11), and he states that he does not have such facilities and hence did
20 not attempt data recovery on DRIVE SIX or DRIVE TWELVE (¶ 16).
21 Instead, he sent those two drives to another facility and reported the
22 results. In my opinion, SLOAN'S handling of the matter appears to
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2 have been responsible and appropriate, and I agree with his
3 conclusions.
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5 21. Given the tenor of LARSON'S attack on SLOAN'S credentials, I find
6 LARSON'S CV unimpressive. LARSON hold a degree in accounting
7 from a little-known college (that is evidently not a university). I
8 would be more impressed if he held a degree in physics or engineering
9 from a well known university. His long career with the Postal Service
10 is equally unimpressive. I would be more impressed if he had instead
11 worked at a high technology company. Also, his curriculum vitae
12 lists no technical papers that he has authored.
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14 22. More importantly, LARSON'S CV expressly states on page 1 that he
15 "Performed data recovery, including both file and email recovery, on
16 electronic media to be analyzed during the course of a computer
17 forensic examination." And yet, he failed to recover any songs from
18 the five hard drives he examined.
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20 23. In my expert opinion, based on the above-cited documents that I have
21 examined and assuming the facts presented therein are true, my
22 conclusions are as follows:
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24 (a) there may be a possibility of recovering a few of
25 the 402 lost songs from DRIVE TWELVE;
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2 (b) none of the 402 lost songs ever resided on DRIVE
3 THIRTEEN and any data recovered therefrom is
4 irrelevant;
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6 (c) there has been no credible showing by LARSON
7 that any songs can be recovered from XDRIVE
8 FOUR or XDRIVE SEVEN; and
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10 (d) the songs that resided on DRIVE SIX have been
11 permanently destroyed by physical damage to the
12 drive.
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14 I declare under Penalty of perjury under the laws of the United States of
15 America and the State of California that the foregoing is true and correct. This
16 declaration is executed on _____ at Culver City, California.
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22 Mark Laurence Donald Emerson
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Exhibit A
Curriculum Vitae of Mark Laurence Donald Emerson

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Exhibit B
Curriculum Vitae of Gregory Larson

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Exhibit C
FIRST LARSON DECLARATION

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Exhibit D
JAMES DECLARATION

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Exhibit E
SLOAN DECLARATION

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Exhibit F
SECOND LARSON DECLARATION

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3 **Proof of Service**

4 I, the undersigned, declare:

5 I am a citizen of the United States of America, am over the age of eighteen (18)
6 years, and am not a party to the within action. My address is [redacted].

7 On _____, I caused to be served the following document(s):
8 **DECLARATION OF EXPERT MARK LAURENCE DONALD**
9 **EMERSON PURSUANT TO FRCP RULE 26(a)(2)**, on the parties involved,
10 enclosed in one or more envelopes addressed as follows:

11 [redacted]
12 [redacted]
13 [redacted]
14 [redacted]

15 ___XX___ BY MAIL: I caused each envelope, with postage fully prepaid, to be
16 placed in the United States mail at Los Angeles, California.

17 I declare under penalty of perjury under the laws of the United States of
18 America and the State of California that the foregoing is true and correct.

19 Executed on _____, at Los Angeles, California,
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