

CAUSE NO. \_\_\_\_\_

CHAMPION WINDOW, INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
RALPH ZUCKERBERG and PATRICK M.	§	
CAHILL,	§	
	§	_____ JUDICIAL DISTRICT
Defendants.	§	

**PLAINTIFF’S ORIGINAL PETITION AND APPLICATION FOR WRIT OF ATTACHMENT AND FOR INJUNCTIVE RELIEF**

Plaintiff Champion Window, Inc. (“Plaintiff” or “Champion”) hereby files this its Original Petition and Application for Writ of Attachment and for Injunctive Relief against Ralph Zuckerberg and Patrick M. Cahill (collectively, “Defendants”), and would respectfully show the Court as follows:

**I.**  
**DISCOVERY**

1.1. Champion intends to conduct discovery under a Level Three discovery control plan. TEX. R. CIV. P. 190.3.

**II.**  
**PARTIES**

2.1. Champion is a Delaware corporation authorized to do business in Texas. Its principal place of business is located in Harris County, Texas.

2.2. Defendant Ralph Zuckerberg (“Zuckerberg”) is an individual whose last known address is 9727 Stonebridge Lake Drive, Houston, Texas 77375. Zuckerberg resided at this address at all times relevant to this suit. Currently, however, Zuckerberg is believed to be absent from the State of Texas or a nonresident of the State of Texas. Pursuant to TEX. R. CIV. P. 108,

the citation for Zuckerberg shall be the same as if he was a resident of Texas, and he may be served by any method authorized by TEX. R. CIV. P. 106.

2.3. Defendant Patrick M. Cahill (“Cahill”) is an individual resident of Montgomery County, Texas. He can be served with process at his residence located at 3 Royal South Fern Drive, The Woodlands, Texas 77380 or wherever else he may be found.

### **III. VENUE**

3.1. Venue is proper in Harris County, Texas because all or a substantial part of the events giving rise to Plaintiff’s claims occurred in Harris County, Texas.

3.2. Venue is also proper in Harris County, Texas because Harris County is the county of Zuckerberg’s residence when the causes of action alleged below originally accrued and because the torts occurred in Harris County, Texas.

### **IV. JURISDICTION**

4.1. This Court has jurisdiction over the subject matter of this case because the amount in controversy exceeds this Court’s minimum jurisdictional requirements.

4.2. This Court has jurisdiction over Defendants because they were Texas residents when the causes of action accrued, and their actions which give rise to liability occurred in Texas.

### **V. FACTUAL BACKGROUND**

#### **A. Defendants Formulate and Oversee Improper Hiring and Employment Policies and Practices at Champion**

5.1. Champion is a manufacturer of residential windows and patio doors headquartered in Houston, Texas.

5.2. From 1980 through February 2008, Defendant Zuckerberg served as Champion's president and chief executive officer, during which time Champion paid Zuckerberg many millions of dollars in salary, bonus, and other compensation. Prior to January 2006, Zuckerberg also was a significant stockholder of Champion. In his executive role, Zuckerberg directly oversaw all of Champion's operations, including, but not limited to, manufacturing, sales, marketing, accounting, and most importantly, personnel. In sum, Zuckerberg called the shots at Champion.

5.3. From 2001 to 2008, Defendant Cahill was Champion's chief financial officer and Zuckerberg's right hand man, during which time Champion paid Cahill many millions of dollars in salary, bonus and other compensation. Prior to January 2006, Cahill also was a significant stockholder of Champion. Among other responsibilities, Cahill oversaw human resources and payroll at Champion. All Champion personnel with hiring and firing responsibilities reported directly to Cahill. Cahill, of course, reported directly to Zuckerberg. Suffice to say that no significant decision was ever made by anyone at Champion without Zuckerberg and Cahill's full knowledge and approval.

5.4. In the course of carrying out their responsibilities, Defendants instituted and oversaw hiring policies with negligent disregard for whether job applicants at Champion were legally authorized to work in the United States. Although prospective employees generally provided some form of work authorization documentation, on information and belief, Defendants, and the employees operating under their direction, failed to take reasonably prudent actions to verify the authenticity of the proffered documentation or the legal status of potential or existing employees.

5.5. Defendants also failed to ensure that hiring at Champion was performed by qualified personnel. To the contrary, Defendants entrusted the responsibility of screening and hiring job applicants to Champion employees who had little or no human resource training. As a result of Defendants' negligent disregard for their duties to Champion, by 2006 a vast majority of Champion's production employees were not legally authorized to work in the United States.

5.6. Zuckerberg resigned from Champion on February 15, 2008 and Cahill shortly thereafter on May 16, 2008. Unfortunately, it was not until August 4, 2008 that Champion's new management team was able to recruit and retain a qualified Manager of Human Resources and finally bring Defendants' wrongful hiring policies and practices to an end.

**B. ICE Investigates Champion for Illegal Hiring and Employment Practices**

5.7. On November 22, 2010, Champion was served with a federal grand jury subpoena by the United States Immigration and Customs Enforcement Agency ("ICE") requiring the production of documents relating to Champion's employment records, including payroll records and Form I-9s. Champion believed it was currently, and had been historically, in substantial compliance with applicable laws relating to its hiring and employment practices. The subsequent investigation conducted by ICE and the Department of Justice, however, revealed that a substantial portion of Champion's employees were not legally authorized to work in the United States.

5.8. In fact, the results of the Government investigation demonstrated that the unauthorized nature of Champion's workforce was a direct result of Defendants' wrongful hiring policies and practices.

5.9. The consequences to Champion of Defendants' legacy workforce has been, and will continue to be, devastating to Champion. First, as a result of ICE's findings, Champion was

forced to remediate a substantial portion of its workforce in an expedited fashion, incurring substantial remediation costs in the process. The predictable results of this forced remediation nearly crippled Champion's operations. Forced to hire dozens of untested and untrained workers, Champion's productivity and ability to produce and deliver quality windows on time to its customers suffered dramatically. As a result, Champion has lost significant market share to its competitors, suffered damage to its reputation in the marketplace and loss of customer goodwill, and incurred other harmful economic consequences. These economic damages will continue and be ongoing for a significant period of time into the future.

5.10. In addition to the operational damage to the business described above, as a direct result of Defendants' wrongful acts and omissions, Champion faces the prospect of potential governmental fines and penalties.

5.11. Champion therefore brings the following causes of action against Defendants to recover the damages that Defendants have caused and will continue to cause and to punish Defendants for their failure to adhere to their duties to Champion.

## **CAUSES OF ACTION**

### **VI. BREACH OF FIDUCIARY DUTY**

6.1. Champion re-alleges and incorporates by reference the foregoing paragraphs of this petition.

6.2. As executive employees, Defendants owed fiduciary duties to Champion, including but not limited to a duty of good faith, a duty of due care, and a duty to act with strict integrity.

6.3. Defendants breached their fiduciary duties to Champion by formulating, overseeing and failing to correct Defendants' hiring and employment policies and practices

which permitted the negligent employment by Champion of a substantial number of persons who were not legally authorized to work in the United States.

6.4. Defendants' breaches caused and will continue to cause Champion significant damage arising from, among other things, business disruption, a loss of customer goodwill and potential fines. Defendants also earned substantial profits and benefits as a result of their improper and wrongful actions during the time that they were Champion employees.

6.5. Champion therefore seeks to recover all actual damages caused by Defendants' wrongful actions and a disgorgement of all profits and benefits they received during their employment at Champion. These damages are within the jurisdictional limits of this Court.

## **VII.** **APPLICATION FOR WRIT OF ATTACHMENT**

7.1. Champion re-alleges and incorporates by reference the foregoing paragraphs of this petition.

7.2. A writ of attachment is available to a plaintiff in a suit if: (a) the defendant is justly indebted to the plaintiff; (b) the attachment is not sought for the purpose of injuring or harassing the defendant; (c) the plaintiff will probably lose his debt unless the writ of attachment is issued; and (d) specific grounds for the writ exist under Section 61.002 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE § 61.001. One of the specific grounds specified in Section 61.002 is that "the defendant is not a resident of this state or is a foreign corporate or is acting as such." *Id.* § 61.002(1). A writ of attachment may be founded on a tort cause of action for an unliquidated amount when the defendant cannot be served with process in the State of Texas. TEX. CIV. PRAC. & REM. CODE § 61.005; *In re Argyll Equities*, 227 S.W.3d 268, 271 n.6 (Tex. App.—San Antonio 2007, no pet.); *In re Cantu*, 961 S.W.2d 482, 493 (Tex. App.—Corpus Christi 1997, orig. proceeding).

7.3. To secure a writ of attachment, the plaintiff must file an affidavit in support of its application which states the grounds specified above and the amount of the request writ of attachment. TEX. CIV. PRAC. & REM. CODE § 61.022. A prejudgment writ of attachment is one of “strict entitlement,” meaning that its issuance does not depend on the truthfulness of the allegations of the affidavit or the petition but instead on compliance with the statute in making the affidavit. *E.E. Maxwell Co., Inc.*, 638 F.Supp. at 752 (applying Texas law); *21 Turtle Creek Sq. Ltd. v. New York State Teachers' Ret. Sys.*, 425 F.2d 1366, 1369 (5th Cir. 1970) (applying Texas law).

7.4. The attached affidavit of Philip J. Ragona, Champion’s Senior Vice President and General Counsel, provides the necessary support for the proper issuance of a writ of attachment, namely that:

- a. Zuckerberg is indebted to Champion;
- b. attachment is not being sought for the purpose of injuring or harassing Zuckerberg, but rather to safeguard monies that are rightfully owed to Champion;
- c. Champion will probably lose the money that is owed to it by Zuckerberg unless the writ of attachment is issued; and
- d. Zuckerberg is not a resident of Texas but is instead a resident of Massachusetts (CPRC § 61.002(1)).

See Affidavit of Philip J. Ragona at ¶¶ 3-9, attached hereto as **Exhibit A** and incorporated herein by reference; *see also* TEX. CIV. PRAC. & REM. CODE §§ 61.001-61.002; 61.005.

7.5. Champion respectfully requests that the Court issue a writ of attachment in the amount of \$5 million to preserve Champion’s opportunity to collect on any judgment ultimately rendered in its favor. *See Ragona Aff.* at ¶¶ 3-4. These circumstances justify a writ of attachment. *See McQuade v. E.D. Sys.*, 570 S.W.2d 33, 35 (Tex. App.—Dallas 1978, no writ) (holding that writ of attachment was properly issued to insure that sufficient assets were kept in

the state for the satisfaction of any judgment plaintiff might obtain in the pending suit); *E.E. Maxwell Co., Inc. v. Arti Décor, Ltd.*, 638 F.Supp. 749, 752-53 (N.D. Tex. 1986) (granting writ of attachment on plaintiff's belief that defendant was "insolvent or imminently insolvent and will be unable to pay any judgment rendered against it...").

**VIII.**  
**APPLICATION FOR INJUNCTIVE RELIEF**

8.1. Champion re-alleges and incorporates by reference the foregoing paragraphs of this petition.

8.2. Because Champion is unable to determine the amount of assets currently residing in Zuckerberg's financial accounts that will be subject to the writ of attachment, Champion also seeks a temporary restraining order and temporary injunction to prevent Zuckerberg from transferring his assets, except to pay for normal, customary expenses. Champion faces immediate and irreparable injury for which there is no adequate remedy at law because a substantial likelihood exists that if Zuckerberg is not enjoined, he will transfer assets in these accounts beyond Champion's reach and make himself judgment proof. *See Ragona Aff.* at ¶¶ 3, 9.

8.3. During his employment with Champion, Zuckerberg would make frequent business and personal trips to Costa Rica, and he has long standing contacts there. *Id.* at . *Ragona Aff.* at ¶ 9. Upon his departure from Champion in February 2008, Zuckerberg moved to Costa Rica to live there full-time. *Id.* Upon information and belief, Zuckerberg recently married a Costa Rican national and continues to own a home in Costa Rica. *Id.* While Champion believes Zuckerberg is currently residing in the United States, he has the ability and inclination to move back to Costa Rica, and/or transfer assets there, without notice. *Id.*



8.4. Accordingly, Champion requests the Court to promptly enter a temporary restraining order, to be followed by a temporary injunction, enjoining Zuckerberg, his agents, and representatives, and all others acting in concert with any of them, from taking any action to withdraw, remove, or otherwise transfer or liquidate any funds, securities, or any other assets of whatever nature except as necessary to pay normal, customary business and living expenses, without Champion's express, written consent or the written authorization of this Court.

**IX.**  
**PRAYER**

WHEREFORE, Plaintiff Champion Window, Inc. prays that Defendants Ralph Zuckerberg and Patrick M. Cahill be cited to appear and answer, and that on final trial Champion recover:

- (1) actual damages;
- (2) profit disgorgement;
- (3) exemplary damages;
- (4) pre-judgment interest as provided by law;
- (5) post-judgment interest as provided by law;
- (6) costs of suit;
- (7) a writ of attachment and injunctive relief; and
- (8) any other relief to which Champion may show itself to be justly entitled.

Respectfully submitted,

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