

1 John V. Picone III, Bar No. 187226
2 jpicon@hopkinscarley.com
3 Jeffrey M. Ratinoff, Bar No. 197241
4 jratinoff@hopkinscarley.com
5 HOPKINS & CARLEY
A Law Corporation
The Letitia Building
70 South First Street
San Jose, CA 95113-2406

6 ***mailing address:***

7 P.O. Box 1469
8 San Jose, CA 95109-1469
Telephone: (408) 286-9800
Facsimile: (408) 998-4790

9 Attorneys for Plaintiff and Counter-Defendants
10 NEO4J, INC. and NEO4J SWEDEN AB

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 NEO4J, INC., a Delaware corporation, and
14 NEO4J SWEDEN AB, a Swedish
corporation,

15 Plaintiffs,

16 v.

17 PURETHINK LLC, a Delaware limited
liability company, IGOV INC., a Virginia
18 corporation, and JOHN MARK SUHY, an
individual,

19 Defendants.

20 AND RELATED COUNTERCLAIM.

21 NEO4J, INC., a Delaware corporation, and
22 NEO4J SWEDEN AB, a Swedish
corporation,

23 Plaintiffs,

24 v.

25 GRAPH FOUNDATION, INC., an Ohio
corporation, GRAPHGRID, INC., an Ohio
26 corporation, and ATOMRAIN INC., a
Nevada corporation,

27 Defendants.

CASE NO. 5:18-cv-07182-EJD

**NOTICE OF ERRATA FOR EXHIBIT 31
TO THE DECLARATION OF JEFFREY
M. RATINOFF IN SUPPORT OF
PLAINTIFFS' CONSOLIDATED MOTION
FOR SUMMARY JUDGMENT**

Date: March 25, 2021

Time: 9:00 a.m.

Dept.: Courtroom 4, 5th Floor

Judge: Hon. Edward J. Davila

CASE NO. 5:19-CV-06226-EJD

1 Plaintiffs and Counter-Defendants Neo4j, Inc. and Neo4j Sweden AB (“Plaintiffs”)
2 respectfully submit the attached corrected **Exhibit 31** to the Declaration of Jeffrey M. Ratinoff in
3 Support of Plaintiffs’ Consolidated Motion for Summary Judgment (“Ratinoff Declaration”) filed
4 on December 11, 2020. *See* PT Dkt. No. 98-1 at ¶ 33; GFI Dkt. No. 93-1 at ¶ 33. The original
5 Exhibit 31 to the Ratinoff Declaration inadvertently omitted certain pages to the Rule 30(b)(6)
6 Deposition of Graph Foundation, Inc. that were cited in Plaintiffs’ moving papers and Separate
7 Statement of Material Undisputed Facts. The corrected Exhibit 31 to the Ratinoff Declaration
8 includes these pages.

9 Dated: January 19, 2021

10 HOPKINS & CARLEY
11 A Law Corporation

12 By: /s/ Jeffrey M. Ratinoff

13 Jeffrey M. Ratinoff
14 Attorneys for Plaintiff and Counter-
15 Defendants
16 NEO4J, INC. and NEO4J SWEDEN AB

**CORRECTED EXHIBIT 31 TO
DECLARATION OF JEFFREY M.
RATINOFF IN SUPPORT OF
PLAINTIFFS' CONSOLIDATED
MOTION FOR SUMMARY
JUDGMENT**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware) CASE NO.
corporation, and NEO4J) 5:19-CV-06226-EJD
SWEDEN AB, a Swedish)
corporation,)
)
Plaintiffs,)
)
vs.)
)
GRAPH FOUNDATION, INC., an)
Ohio corporation,)
GRAPHGRID, INC., an Ohio)
corporation, and ATOMRAIN)
INC., a Nevada corporation,)
)
Defendants.)

REMOTE VIA ZOOM

30 (b) (6) DEPOSITION OF NEO4J INC

BY BRAD NUSSBAUM

9:17 A.M. PDT
FRIDAY, OCTOBER 16, 2020

By: Denise Myers Byrd, CSR 8340, RPR

1 data structures. I don't have a ton of formal training.

2 Q. So you consider yourself more self taught?

3 A. You know, with a strong engineering background,
4 but, yeah, I mean, I can't take all the credit for just
5 teaching myself. There's a lot of it that, you know,
6 I've learned through the years just developing.

7 Q. Where did you do your engineering studies?

8 A. University of Southern California.

9 Q. But you didn't graduate from USC?

10 A. No.

11 Q. How many years did you attend?

12 A. I can't remember if it was just one or one and
13 a half. I did two years of community college at Santa
14 Monica prior to transferring, so I transferred my junior
15 year, completed that, and then the recession hit the
16 following year and then I think I started working and
17 didn't go back. So, yeah, it would have just been one
18 year at USC and two years prior.

19 Q. You mentioned the recession so that was right
20 around 2008?

21 A. That's right, yeah. I think my first year was
22 '08-'09 or '09-'10 -- no, it was '08-'09 as a junior.
23 Yeah, '08-'09 was my junior year.

24 Q. Where did you start working? You mentioned you
25 did go back to school.

▼

I

1 A. Well, Ben and I founded AtomRain March of '09
2 so that's kind of when I moved into the software world
3 and we started a business together.

4 Am I getting into too many personal things here
5 for GFI? Like relevance? I don't know if I am, but I'm
6 not sure how much you want to personally ask me about my
7 life. If I'm getting too personal, just let me know.

8 Q. That's okay. We just need to know sort of your
9 level of understanding of things. That's all we're
10 doing.

11 A. Okay. Okay.

12 Q. If your counsel thinks we're going too far
13 afield, he'll jump in.

14 A. Okay.

15 Q. You mentioned AtomRain. Is that AtomRain Inc.
16 or AtomRain LLC that you formed?

17 A. Initially it was AtomRain Inc.

18 Q. Are you aware --

19 MR. PERNICK: I do want to keep this with
20 respect to Mr. Nussbaum being the witness for GFI.
21 AtomRain isn't here; AtomRain is not the witness. I
22 understood the inquiries into his technical background,
23 but I thought we were moving on to Topic Number 1 with
24 respect to formation.

25 MR. RATINOFF: All right, that's fair. We'll

1 maybe touch on a few things later when Jeff gets on
2 board.

3 BY MR. RATINOFF:

4 Q. Okay. Let me go ahead and move on to Topic 1
5 on the formation of Graph Foundation.

6 Do you recall when you formed Graph Foundation
7 or when -- let me strike that.

8 When was Graph Foundation founded?

9 A. Yeah, I think I looked this up, and I'm pretty
10 sure we have it everywhere as June 2018. I can pull up
11 the exact incorporation document.

12 Q. I'll do that, actually. Thank you, though. I
13 appreciate that.

14 A. All right. I have some of these in front of me
15 because, honestly, I'm not going to remember this stuff
16 exactly.

17 Q. Well, that's -- I'm going to ask you questions.
18 If you don't remember --

19 A. Yeah, I have effective June 21, 2018.

20 Q. Okay. And so I just put up Tab 2 so we'll mark
21 that as Exhibit 3.

22 (WHEREUPON, Exhibit 3 was marked for
23 identification.)

24 BY MR. RATINOFF:

25 Q. Why don't you take a quick look at that time

1 and let me know if that's what you had in mind as the
2 founding document.

3 A. Seems to be pretty big. It's taking a while.
4 If it says State of Ohio corporate registration,
5 that's --

6 Q. It's actually -- the title of the document
7 should be in your chat as Tab 2. It's the Articles of
8 Incorporation of Graph Foundation Inc.

9 Do you see that?

10 A. Oh, okay. Yeah, okay. So 22nd of June, okay.
11 So I guess my State of Ohio certificate is June 21st and
12 this is signed June 22nd. I'm not exactly sure which
13 one.

14 Q. You recognize the document?

15 A. Yes. Yeah, this is what our lawyer here in
16 Ohio drafted.

17 Q. And then what's -- the signature page -- I
18 think it's the third page -- you see there's two
19 signatures there?

20 A. Yes.

21 Q. The date?

22 A. My signature and Ben's signature, yeah.

23 Q. Okay. All right. Thank you.

24 Leading up to the formation, did you have any
25 discussions with anybody about forming Graph Foundation,

1 Q. I'm just asking yes or no.

2 Did you talk to Mr. Suhy about forming Graph
3 Foundation prior to forming Graph Foundation?

4 A. I mean, I guess it feels vague to me because
5 forming is a very vague word. So he was -- so to answer
6 specifically, we did not consult him about how to
7 structure the foundation as a nonprofit with any of
8 these articles here; that came just from our lawyer. We
9 did not consult him about any of the mission. So when
10 we filed for a nonprofit status with the IRS and we
11 posted a mission and what we were about, we did not
12 consult him about any of those things. So he was not
13 consulted, I guess, in any material way about, like,
14 what you could call the actual formation of the corp.

15 Q. Who -- what led you to form Graph Foundation?
16 Strike that.

17 When did you come up with the idea to form
18 Graph Foundation?

19 A. Must have been, like, early 2018, maybe late
20 2017, but probably early 2018.

21 Q. Whose idea was it to form Graph Foundation?

22 A. Primarily mine, but Ben was also very on board
23 with it.

24 Q. Why did you decide to form Graph Foundation?

25 A. I think we see a strong need for graph

1 technology to be open and available to a broader
2 community. I think that we both, you know, sort of come
3 up through a lot of the open source world where, you
4 know, the Linux Foundations, the Apache Foundations, the
5 Free Software Foundations of the world have sort of
6 shaped and enabled everybody to do really great things.
7 And I think being in the graph space we see, you know,
8 just the potential for greater work to be done by having
9 technology that's developed and opened collaboratively.
10 I think that's what led us to write the mission
11 statement that we did about generally making graph
12 technology available. We see a lot of avenues where
13 that can be applied.

14 Q. Was there a specific graph technology that you
15 had in mind?

16 A. I think generally, you know, there's a lot of
17 years to be played out, so, you know, Ben and I see that
18 there are many different technologies, graph
19 technologies that this may be applicable to. I think we
20 listed several in our mission statement.

21 But, you know, there's certainly areas in data
22 processing and algorithms in -- you know, especially in
23 AI. There's a lot of capabilities that I think we see
24 graph having a big impact, and so we see the foundation
25 as being a place that, you know, may one day be able to

1 provide an overall benefit to humanity through those
2 things.

3 Q. Was Neo4j the primary driver for forming Graph
4 Foundation?

5 A. Neo4j was definitely one driver. We see an
6 open source database, certainly something that can store
7 data as a graph, as being a key part and it's definitely
8 where we put a lot of our time and effort in the early
9 days.

10 Q. And did you discuss with Mr. Suhy about forming
11 Graph Foundation to promote open source Neo4j?

12 MR. PERNICK: Objection; vague as to time.

13 BY MR. RATINOFF:

14 Q. Prior to the formation of Graph Foundation.

15 A. I mean, discuss is a very broad word so could
16 you be more specific?

17 Q. Did you talk to Mr. Suhy within three months of
18 forming Graph Foundation about forming Graph Foundation?

19 A. I mean, there must have been some conversations
20 about it, but I don't really think he was very -- I'm
21 not really sure what he offered, if anything, toward
22 like the overall -- I don't think he offered anything in
23 the discussions. I don't remember him really having
24 much of a drive on the open source side. I remember
25 him -- you know, he's very practical when it comes to

1 business, so I think the foundation has always just
2 been, you know, really for me and Ben to decide on.

3 MR. RATINOFF: I would like to upload a
4 document. This is going to be Tab 4.

5 (WHEREUPON, Exhibit 4 was marked for
6 identification.)

7 BY MR. RATINOFF:

8 Q. Let me know when that's up on your chat.

9 Do you see this document that I put up? It
10 should be an email from John Mark Suhy dated
11 May 5th -- I'm sorry -- May 21, 2018. Do you see that?

12 A. Yeah.

13 Q. "Subject: Quick Notes on fork."

14 A. Yeah, I see it.

15 Q. And looking at the "to" line, there's a Brad
16 Nussbaum, brad@atomrain.com. Do you see that email
17 address?

18 A. Yep. Yep.

19 Q. Is that an email address that you use
20 currently?

21 A. Yes.

22 Q. And were you using that email address back in
23 2018, in May?

24 A. Yes.

25 Q. And the other address, Benjamin Nussbaum,

1 that's your brother Ben?

2 A. Yes.

3 Q. And that's his email address, ben@atomrain.com?

4 A. Yes.

5 Q. Prior to forming Graph Foundation, when you
6 were in the preformation stage, were you using your
7 AtomRain account to communicate about forming Graph
8 Foundation?

9 A. We've -- we've spoken with John Mark with our
10 AtomRain accounts.

11 Q. So the answer is --

12 A. I don't know if it's --

13 Q. Sometimes I'm asking very simple yes-or-no
14 questions, and I appreciate you wanting to elaborate,
15 but I think it will go a lot smoother if you just answer
16 my questions as they're asked. I'm going to ask it one
17 more time.

18 Did you use your AtomRain email address to
19 discuss forming Graph Foundation with John Mark?

20 A. You're saying like prior to us ever having a
21 Graph Foundation email?

22 Q. Yes.

23 A. I mean, prior to having a Graph Foundation
24 email and prior to Graph Foundation existing, John Mark
25 and, you know, Ben and I communicated with our AtomRain

1 emails as the main form, I would say.

2 Q. At this time in May of 2018, were you an
3 employee of AtomRain?

4 A. Yes.

5 Q. And what was your -- what was your position at
6 AtomRain at that time?

7 A. I was the CEO.

8 Q. Do you still hold that position at AtomRain?

9 A. Yes.

10 Q. And was Ben also an employee of AtomRain at
11 that time in May 2018?

12 A. Yes.

13 Q. What was his role at that time?

14 A. He's the CTO.

15 Q. And is he still the CTO?

16 A. Yes.

17 Q. Were you also employed by anyone else at that
18 time besides AtomRain in May of 2018?

19 A. No.

20 Q. Okay. Turning back to this email, which I
21 believe would be Exhibit 4.

22 MR. RATINOFF: Mark this as Exhibit 4. It's
23 got the Bates number IGOV0001570192, and I'll represent
24 this is produced by iGov in the related litigation. It
25 was not produced by your attorney.

1 reference in this email?

2 A. In reference in this email, I don't know.

3 Q. Do you know who GraphGrid is?

4 A. Yes. GraphGrid is a company that I founded
5 along with my brother.

6 Q. And was it founded prior to this email in May
7 of 2018?

8 A. GraphGrid was a product that was in AtomRain
9 that has been known and around for -- well, since 2015.
10 We spun it out of AtomRain. I don't -- that's getting
11 into I don't know if it's GFI specific stuff right now,
12 but, yeah, there's a formation date for GraphGrid
13 that's -- I think we spun it out sometime in 2018.

14 Q. Okay. Moving on down to the next paragraph
15 where Mr. Suhy says:

16 "Just something to think about, I
17 could literally reach out to MariaDB.org
18 and ask them if they can give you a copy
19 of their bylaws."

20 Do you see that?

21 A. Yes.

22 Q. Did Mr. Suhy to your knowledge reach out to
23 MariaDB and obtain the bylaws?

24 A. No.

25 Q. Do you know what MariaDB is?

1 A. No.

2 Q. And Greystone Group did not contribute anything
3 to Graph Foundation?

4 A. No.

5 Q. And Tylor Data Services didn't contribute
6 anything to Graph Foundation?

7 A. They did not contribute.

8 Q. Why were they put on the website?

9 A. I think there were discussions being held at
10 the time, probably at the time this was developed, that
11 maybe were forward-looking. You know, sometimes when
12 sites are developed, there's forward-looking thinking
13 and things are just in motion because a lot of stuff was
14 in motion. So it probably got on here optimistically
15 and then it didn't really pan out and so they were later
16 removed to clean it up.

17 Q. Okay. Thank you.

18 So another thing we talked about before break
19 was you had mentioned that GraphGrid had been spun off
20 from AtomRain and you weren't sure about the date, I
21 believe. Is that correct? Strike that.

22 You believe it was sometime in 2018 that
23 GraphGrid was spun off from AtomRain.

24 A. Yeah, sometime in 2018. Yes, sometime in 2018.

25 ///

1 (WHEREUPON, Exhibit 8 was marked for
2 identification.)

3 BY MR. RATINOFF:

4 Q. Sorry, I'm going to drop another document here.
5 It doesn't have a tab number. This should be GraphGrid
6 Articles of Incorporation.

7 A. I have it.

8 Q. And I'll represent to you I just printed this
9 off of the Ohio Secretary of State's office as the State
10 of Ohio Certificate. Do you see where I'm looking?

11 A. Yeah. It's -- it's from our law firm and it
12 looks right, so I have no reason to believe this isn't
13 our certificate.

14 Q. And the effective date is, you can see there on
15 the first page, April 25, 2018?

16 A. Okay.

17 Q. Does that sound right?

18 A. That sounds -- that sounds very right, yeah.

19 Q. So GraphGrid Inc. was incorporated prior to
20 Graph Foundation being incorporated, correct?

21 A. Yes.

22 MR. RATINOFF: I'm going to drop the next
23 document -- oh, by the way, I would like to mark that
24 Articles of Incorporation as Exhibit 8.

25 ///

1 A. So no.

2 Q. Does Graph Foundation share office space with
3 another entity?

4 MR. PERNICK: Objection; vague.

5 THE WITNESS: Can you be specific about what
6 you mean by share.

7 BY MR. RATINOFF:

8 Q. Does Graph Foundation have an office, a
9 physical office?

10 MR. PERNICK: Objection; vague.

11 BY MR. RATINOFF:

12 Q. Does Graph Foundation have a physical office
13 where it conducts its business?

14 MR. PERNICK: Objection; vague.

15 BY MR. RATINOFF:

16 Q. You can answer the question.

17 A. I'm not sure how to answer the question.

18 Q. Where does Graph Foundation conduct its
19 business?

20 A. Graph Foundation uses 111 South Buckeye Street
21 for receiving mail and other important documents.

22 Otherwise it is a remote-working organization.

23 Q. Is that a P.O. Box, 111 Buckeye Street?

24 A. It is an office location that receives -- that
25 has a box to receive mail.

1 Q. Are there any other businesses located at
2 111 -- I'm sorry -- 111 Buckeye Street?

3 A. There are.

4 Q. And what are those other businesses?

5 A. To Graph Foundation's knowledge, AtomRain and
6 GraphGrid both use 111 Buckeye Street for business
7 activities.

8 Q. And are you aware of one of those entities
9 leasing that office space?

10 A. Yes.

11 Q. Which entity leases the office space?

12 A. To our knowledge, AtomRain Inc.

13 Q. And does Graph Foundation conduct business out
14 of that office space?

15 A. Graph Foundation would receive mail but
16 otherwise has no presence. To operate, Graph Foundation
17 needs a place to receive mail. I think that's about it.

18 Q. You mentioned Graph Foundation is a
19 virtual -- or conducts its business virtually.

20 MR. PERNICK: Objection; misstates testimony.
21 I believe he said remotely.

22 THE WITNESS: Remotely.

23 MR. RATINOFF: Okay, John, you can object, but
24 speaking objections --

25 MR. PERNICK: I was just trying to help things

1 along, Jeff.

2 THE WITNESS: Graph Foundation conducts its
3 business remotely.

4 BY MR. RATINOFF:

5 Q. And you use a computer to conduct business
6 remotely for Graph Foundation?

7 A. Yes.

8 Q. And what computer do you use to conduct
9 business for Graph Foundation remotely?

10 A. A MacBook Pro.

11 Q. And who owns the MacBook Pro?

12 A. Me personally.

13 Q. And do you use that computer to conduct
14 business for AtomRain as well?

15 A. I use my MacBook for a lot of things.

16 Q. Okay, that's not my question.

17 The question is do you use your MacBook Pro to
18 conduct business for AtomRain?

19 A. Yes.

20 Q. And do you use your MacBook Pro to conduct
21 business for GraphGrid?

22 A. Yes.

23 Q. And do you have access to your GraphGrid email
24 account on that laptop?

25 A. Yes.

1 Q. Do you have access to your AtomRain email on
2 that laptop?

3 A. Yes.

4 Q. And do you have access to your Graph Foundation
5 email on that laptop?

6 A. Yes.

7 Q. Thank you.

8 Are you aware of any other computers that are
9 used for Graph Foundation business?

10 A. No.

11 Q. Does Ben have a laptop or computer issued from
12 Graph Foundation?

13 A. No.

14 Q. What computer does Ben use to conduct business
15 for Graph Foundation?

16 A. His MacBook.

17 Q. And does he also use that MacBook to conduct
18 business for AtomRain?

19 A. Yes.

20 Q. And does he also use that MacBook to conduct
21 business for GraphGrid?

22 A. Yes.

23 Q. And did you personally purchase your laptop,
24 your MacBook Pro?

25 A. What do you mean by personally?

1 Q. Did you use your own money to pay for the
2 MacBook Pro, personal funds?

3 A. Which MacBook Pro? The one at the time this
4 started or the one that I have now?

5 Q. Oh, so you've had more than one MacBook Pro?

6 A. We -- you know, I get upgrades. The one that I
7 have now, no, I did not purchase.

8 Q. Who purchased the MacBook Pro you're currently
9 using?

10 A. AtomRain Inc.

11 Q. When did that laptop get purchased?

12 A. Just like a month or so ago.

13 Q. And what happened --

14 A. Oh, no. Yeah, yeah, maybe two months ago. A
15 month or two ago.

16 Q. What computer were you using prior to your
17 current MacBook Pro?

18 A. Another MacBook Pro.

19 Q. What happened to that MacBook Pro, the prior
20 one?

21 A. Nothing. I mean, it was just -- I upgraded.

22 Q. Do you still have that prior MacBook Pro?

23 A. Yeah, it's around.

24 Q. Did you use any other computers since Graph
25 Foundation was formed to conduct Graph Foundation

1 business?

2 A. No.

3 Q. Just the two MacBook Pros you talked about?

4 A. Just the two.

5 Q. And the first one you had, who purchased that
6 for you?

7 A. I don't remember. It was either -- depending
8 on where the business was at the time, it was either me
9 or it was the company. I forget.

10 Q. The company being AtomRain?

11 A. Yeah.

12 Q. And has your brother used any other computers
13 besides the MacBook Pro you mentioned to conduct Graph
14 Foundation business?

15 A. I don't think so. I think he's on the same
16 one.

17 Q. Okay. So going back and looking at this
18 balance sheet that we were just reviewing, at the same
19 spot -- I believe my screen share should still be on.

20 A. Yes.

21 Q. So looking at the donations, you'll see the
22 last page I believe -- sorry.

23 Under Chase checking account, you see last
24 funds transfer from AtomRain and 3/26/2020?

25 A. Okay, yes.

1 accurate.

2 Q. Looking at the blue section, it says JMSuhy
3 initial commit. Do you see that?

4 A. Yes.

5 Q. And do you know -- do you understand who
6 JM Suhy is?

7 A. Yes.

8 Q. And who is JM Suhy?

9 A. To my knowledge, that's John Mark's user on
10 GitHub.

11 Q. And you see there's a date there on August 29,
12 2018?

13 A. August, yeah, 29, yeah.

14 Q. So is it fair to say that Graph Foundation had
15 a GitHub account as of August 29, 2018?

16 A. Well, yeah, I think that's how those commits
17 are tracked. There's a difference between the actual
18 commit that goes to get repo and what shows up in
19 GitHub, but I think that date is when it's actually
20 merged into GitHub.

21 Q. But in order to be merged in the Graph
22 Foundation's GitHub, Graph Foundation would have to have
23 a GitHub account, correct?

24 A. Right. Yeah.

25 Q. All right. And does this at all refresh your

1 | What specifically are you looking for?

2 Q. Well, did he start up the ONgDB fork on
3 GitHub's repository?

4 A. Well, if what we're looking at here, Neo4j-OE
5 or something, that's not the ONgDB fork. This doesn't
6 look like much of anything. I don't even think there's
7 about more than seven files here. I'm pretty sure ONgDB
8 is well over a million.

9 Q. Okay, let's go ahead and move on, then.

10 MR. RATINOFF: All right. I'm going to drop
11 another. It should be Tab 46, and this should be
12 Exhibit 14.

13 (WHEREUPON, Exhibit 14 was marked for
14 identification.)

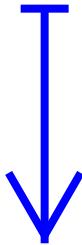
15 BY MR. RATINOFF:

16 Q. We'll mark this Exhibit 14. And the Bates
17 number starting with GFI000287 which was produced by
18 your counsel.

19 Do you have the document in front of you,
20 Exhibit 14?

21 A. Yes.

22 Q. Looking at Exhibit 14, there's an HTML address.
23 You have to hover your cursor over it, but if you -- it
24 says Graph Foundation admin. When you hover over that,
25 it should say admin@graphfoundation.org.



1 A. Uh-huh. Yeah.

2 Q. That's a Graph Foundation email that Graph

3 Foundation owns?

4 A. Correct. Yes.

5 Q. Does Graph Foundation still use that email

6 address?

7 A. Yes.

8 Q. And you searched for documents in this case in

9 that email account?

10 A. Yes.

11 Q. So looking at the date of this email, it says

12 July 16, 2018. Do you see that?

13 A. Yes.

14 Q. Does that help refresh your recollection as to

15 whether Graph Foundation had their own ONgDB up on

16 GitHub at that time?

17 A. Did we?

18 Q. I'm asking you.

19 A. I don't think this gives me anything to

20 refresh. Sorry, what do you mean by get up on GitHub?

21 You mean like does this help establish a date point in

22 time when the ONgDB repository was created?

23 Q. Yes.

24 A. No, this would not do that.

25 Q. All right. Let's go to the bottom, looking at

1 Q. It's fair to say it says forwarded message, so
2 this is forwarded from iGov to Graph Foundation?

3 A. Right.

4 Q. Do you have an understanding of why it was
5 forwarded to Graph Foundation?

6 A. They must have felt we could better answer or
7 give better details than they could.

8 Q. About GraphStack?

9 A. I'm assuming about the state of, like, an
10 open source version of Neo. It looks like they want to
11 get information like -- it looks like they're
12 redirecting them to the root source of, like, how to
13 best get involved with the open source project.

14 Q. Okay. So then looking at the first paragraph
15 of the top email, that's the July 16, 2018, email, it
16 says:

17 "I received your question from
18 iGov. We're consolidating support of
19 the open source Neo4j graph database
20 distributions under a nonprofit
21 organization: Graph Foundation."

22 Do you see that?

23 A. Right. Yes.

24 Q. And then the next paragraph, "I can help you
25 answer your questions." And then I want you to take a

V

1 look at the following paragraph that says:

2 "The naming you'll see for the
3 build on the foundation site is ONgDB.
4 This is a fully AGPL fork of the open
5 source Neo4J GitHub repository with
6 all restrictive marks from Neo4j Inc.
7 removed."

8 Do you see that?

9 A. Yes.

10 Q. So at this point is Graph Foundation saying
11 that there's a fork of Neo4j called ONgDB available as
12 of July 16, 2018?

13 A. I'm not sure what the state was on this site
14 then that we were directing them to. It would seem that
15 there was something there. I don't know what the state
16 was. Maybe we had pre-built -- there was a point in
17 time where we were -- I don't know, I don't know when
18 that was. Yeah, I don't know. There must be something
19 up there for him then. I'm not sure what was up there.

20 Q. What do you mean by this is a fully AGPL fork
21 of the open source Neo4j GitHub repository with all
22 restrictive marks from Neo4j removed?

23 A. I think it was, like, in January or March 2018
24 when the Commons Clause came in to, like, 3.4, something
25 like that. I don't know the exact date. So I think

1 this is when some of the Commons Clause stuff was going
2 on. So I think all -- all that would mean by
3 restrictive marks is that we were conveying the
4 open source code as the pure open source under AGPL.

5 Q. So with an AGPL license without the
6 Commons Clause?

7 A. Right. Yeah. Because I think we -- yeah, we
8 had removed the Commons Clause I think at this point.

9 Q. Is that what you're saying in the next
10 sentence?

11 "We've taken the necessary steps
12 to make sure we keep the repository
13 fully GPL which is the license that
14 Neo4j has released it under, but then
15 added additional sections to the GPL
16 license."

17 Are you referring to the Commons Clause there?

18 A. Yeah, we're referring to Neo4j Inc. adding the
19 Commons Clause in to the GPL license, yeah.

20 Q. It says:

21 "Which in our conversations with
22 FSF (Free Software Foundation) is not
23 legal to do when using the GPL
24 license."

25 Do you see that?

1 A. Yeah. I think our understanding of this, you
2 know --

3 Q. I'm just asking you --

4 A. -- has evolved since then, but, yeah, I see
5 this. I see this, yeah.

6 Q. So as of July 16, 2018, had you had any
7 conversations with the Free Software Foundation
8 regarding Neo4j adding the Commons Clause to AGPL?

9 A. We did not, no, not the Graph Foundation.

10 Q. Did you personally have any conversations with
11 the Free Software Foundation whether it was legal for
12 Neo4j to add the Commons Clause to the AGPL?

13 A. No. I think I saw a conversation about it, but
14 we did not.

15 Q. Saw, what do you mean by saw a conversation?

16 A. I think I saw an email about a conversation.
17 I'm not sure how I saw that.

18 Q. You don't remember who that email was from?

19 A. I remember there was a conversation. I'm not
20 sure what we were telling them, though. I never spoke
21 to the Free Software Foundation direct.

22 Q. Have you ever spoken to the Free Software
23 Foundation about whether Neo4j was able to add the
24 Commons Clause, quote, unquote, legally?

25 A. I have not, no.

T

1 (WHEREUPON, Exhibit 15 was marked for
2 identification.)

3 BY MR. RATINOFF:

4 Q. So we'll mark this document which was produced
5 by iGov. Do you have what's Tab 56 in front of you?

6 A. Yes.

7 Q. Okay. And so we'll call this Exhibit 15 now.
8 It's got the Bates number IGOV0001570185.001 on the
9 first page. So again, this is dated May 22, 2018. I
10 think that was around the same time we looked at that
11 earlier email and you had mentioned that Graph
12 Foundation wasn't in existence yet officially, correct?

13 A. Sorry, that was too much. What are you asking?

14 Q. You see the date May 22, 2018?

15 A. Yes.

16 Q. So you didn't have a Graph Foundation email at
17 this point, right?

18 A. I don't think Graph Foundation was formed so
19 definitely no.

20 Q. And we looked at a prior email where you were
21 discussing forming Graph Foundation, correct, around
22 this time?

23 A. I would say I don't think --

24 MR. PERNICK: Objection, misstates testimony.

25 THE WITNESS: I don't think we were doing that.

1 I don't think that's quite the right way to say that.

2 MR. RATINOFF: Well, let's go back to -- I know
3 your counsel made an objection, and just make sure you
4 let me finish my question, give like a slight pause, let
5 Mr. Pernick have a chance to object if he needs to.

6 MR. PERNICK: Especially since I generally have
7 to press my unmute button so it takes a little bit
8 longer.

9 The objection is misstates testimony.

10 MR. RATINOFF: I'm going to strike the
11 testimony -- there was a lot of talk over -- so I'll
12 start over again. In case he wants to object, just give
13 him a second.

14 JOHN PICONE: Jeff -- Mr. Pernick, if you have
15 your spacebar, if you press it, it will unmute
16 temporarily. I found that's an effective method.

17 MR. PERNICK: I wasn't able to get that to work
18 in our test run, but it is working now.

19 JOHN PICONE: As long as your cursor is on the
20 Zoom application it will work.

21 MR. PERNICK: Thank you.

22 MR. RATINOFF: Technology is great.

23 BY MR. RATINOFF:

24 Q. Let's look again -- I think we looked at this
25 email address before, brad@atomrain.com. That's your

▼

1 email address, right?

2 A. Yes.

3 Q. You have no reason to believe you didn't
4 receive this email?

5 A. No. I received it, yeah.

6 Q. And looking over this email, is this the email
7 you referenced from -- maybe seen from John Mark
8 earlier?

9 A. It sounds about right. This seems like an
10 email that came from Free Software Foundation discussing
11 this topic, yes. I forget what they said, but yes.

12 Q. Do you see anywhere in here where Free Software
13 Foundation's giving legal advice to Mr. Suhy?

14 A. I think my view on that was that they -- I
15 think they didn't -- I don't think they could give us
16 legal advice or I don't think they said it was legal
17 advice. I think it was, like, an opinion. So I
18 don't -- you know, giving legal advice is not something
19 that they would do so I don't think that makes sense,
20 but I don't see what they're saying here. I would have
21 to read it.

22 Q. Okay. Well, why don't you go ahead and do
23 that.

24 A. I think they're giving us advice on the further
25 restrictions clause in Section 7, and I think they're

1 that I ever saw. I think there was only ever one.

2 MR. PERNICK: Jeff, we've been going for about
3 an hour and a half. Can we take a brief five-minute
4 break.

5 MR. RATINOFF: Sure. Let me show one more
6 document.

7 MR. PERNICK: Okay, no problem. Nothing dire.

8 MR. RATINOFF: Thank you for the reminder,
9 though.

10 (WHEREUPON, Exhibit 16 was marked for
11 identification.)

12 BY MR. RATINOFF:

13 Q. Do you have that in front of you? So this
14 would be the document produced by iGov, Bates number
15 IGOV0001570125.001, and this is Exhibit 16.

16 And do you recognize this email?

17 A. Yes.

18 Q. So you've seen this email before?

19 A. I'm sorry. I thought you meant do I know
20 what's in front of me. You're asking if I -- I'm sorry.
21 What are you asking me?

22 Q. I'm asking whether you've seen this email
23 before.

24 A. This looks like a conversation happening with
25 the Free Software Foundation by John Mark.

1 Q. And this is the same Donald Robertson that we
2 saw to your knowledge in the last email that we were
3 looking at?

4 A. Yeah, it looks like it.

5 Q. And then -- but you don't know -- you don't
6 know whether you've seen this email or not, before or
7 not?

8 A. This may have been, like, one of the other
9 emails I mentioned; like, it was probably forwarded to
10 me at one point, but I don't know. I'd have to go find
11 it.

12 Q. Okay. Maybe we'll have you do that after the
13 deposition. But for the time being, we have this email
14 from the Free Software Foundation to John Mark which you
15 see here.

16 Looking at first where it says "snip" under
17 June 20th, do you see that?

18 A. Yes, uh-huh.

19 Q. "1) As the copyright holder,
20 is Neo4j Inc. allowed to add the
21 specific additional terms mentioned
22 above to the license.txt file
23 (containing the AGPL license terms)
24 and enforce these new additions?"

25 Do you see is that?

1 Q. Yeah.

2 A. I mean, I guess because our goal is to make
3 ONGDB available publicly, so 3.5 was the next version.

4 Q. And that's because Neo4j released its
5 Version 3.5?

6 A. Are you asking a question about our versioning?

7 Q. Well, is there a significant difference between
8 version -- I'm sorry -- Neo4j 3.4 and 3.5?

9 A. I mean, there are definitely differences.

10 MR. RATINOFF: Okay. I'm going to put Tab 13
11 back up. So this will be Exhibit 18.

12 (WHEREUPON, Exhibit 18 was marked for
13 identification.)

14 BY MR. RATINOFF:

15 Q. Do you have Tab 13 up on your screen?

16 A. Yes, I have it up.

17 Q. And this again was produced with the Bates
18 number N4J_018661. It was printed out from the
19 internet, from Twitter's website, on 5/20/2020.

20 This is, again, I believe Graph Foundation's
21 Twitter account, correct?

22 A. Yes, this is our Twitter account.

23 Q. Do you have any reason to believe these tweets
24 that are included in this document are accurate as far
25 as being from Graph Foundation's account?

H

1 A. They look accurate to me.

2 Q. Do you see the first tweet right here at the
3 top? It says:

4 "It's official: #Neo4j

5 Enterprise is closed source. As of

6 November 2, 2018, Neo4j Inc. has

7 moved all enterprise modules of the

8 3.5 release to a private repository."

9 A. Yep.

10 Q. Do you see that?

11 A. I see that.

12 Q. What did that mean?

13 A. I think exactly what it says.

14 Q. Why did Graph Foundation tweet that?

15 A. I think it's a factual statement. Enterprise
16 is closed source. I think that's true. There were
17 commits that I know that I reversed as of November 2nd,
18 2018, that removed all the enterprise code and all the
19 enterprise modules, yeah, to the private repository, so
20 that's true. And, yeah, they even announced I think
21 that they were open core.

22 Q. Was there a prior release Version 3.5 that had
23 enterprise modules that were not part of the enterprise
24 repository?

25 A. Was there a prior release. Like -- well, so

1 A. Yeah. Yeah.

2 MR. RATINOFF: I'm going to put up another
3 document. This is -- Tab 25 will be Exhibit 19.

4 (WHEREUPON, Exhibit 19 was marked for
5 identification.)

6 BY MR. RATINOFF:

7 Q. Let me know if you have that up.

8 A. Yep, I've got it.

9 Q. So looking at this email, it shows ben@atomrain
10 and brad@atomrain.com. Do you see those two email
11 addresses?

12 A. Yes.

13 Q. Those are the email addresses we discussed
14 earlier that belong to you and your brother, correct?

15 A. Yes.

16 Q. This is johnmarksuhy@purethink.com. I don't
17 know if we've seen that address before. Do you
18 recognize it?

19 A. Yeah. Yeah.

20 Q. So this is a document that was produced by
21 Mr. Suhy's counsel. And do you have any reason to
22 believe this isn't an accurate email that you received?

23 A. No, no reason.

24 Q. Do you see the subject there, graphstack.io -
25 avoid trademark issues?

1 good way, and I don't think Neo was too receptive of
2 being in a position of wanting to help find a solution,
3 kind of filed a lawsuit against us, so I don't think
4 there was really much opportunity to discuss it.

5 MR. RATINOFF: Okay. So let me move on to
6 another exhibit.

7 (WHEREUPON, Exhibit 21 was marked for
8 identification.)

9 BY MR. RATINOFF:

10 Q. This will be Exhibit 21, I believe. This was
11 produced as Bates number N4J-GFI_000092. This is a
12 printout from Graph Foundation's website as of
13 September 24, 2019.

14 Do you have any reason to believe this isn't a
15 correct printout of what was on Graph Foundation's
16 website as of that date?

17 A. No reason, no.

18 Q. And looking at Licensing, do you see that
19 heading right there?

20 A. Yes.

21 Q. And it says:

22 "ONgDB distributions are
23 licensed under AGPLv3 as a free and
24 open drop-in replacements of Neo4j
25 Enterprise commercial licensed

distributions with the same version number."

Do you see that?

A. Yes.

Q. What did Graph Foundation mean by drop-in replacement?

A. I think we provided an explanation of this.

Drop-in, I think as everybody understands it in development, you know, essentially functions equivalently from one version to another. So if you took a Neo4j Enterprise version, let's say 3.5.4, the database format that it creates would work with ONgDB 3.5.4, so you can essentially write your data, and with Neo4j Enterprise, you can use that same data with ONgDB.

Q. And just to clarify, that's Graph Foundation's understanding of drop-in replacement?

A. Yeah. Yeah, that's on our site, so.

Q. And as of ONgDB Version 3.5.4, it's Graph Foundation's belief at that time it was a hundred percent identical to Neo4j Enterprise 3.5.4?

A. No, it was not one -- I mean, it couldn't be 100 percent identical because Neo4j was close source as of 3.5.0-RC1, and so any time after that there have to be some differences. And so drop-in does not mean identical; it refers more to compatibility.

1 Q. Okay. You mentioned release I guess -- let me
2 start over.

3 You mentioned Neo4j 3.5.0-RC1. Is that a
4 pre-release version of Neo4j 3.5?

5 A. Yes, it's a release candidate.

6 Q. And that was available on Neo4j's GitHub?

7 A. Yes.

8 Q. And was Neo4j 3.5.0-RC1, was that released
9 under the AGPL plus Commons Clause by Neo4j?

10 A. Yes.

11 Q. Is that -- is 3.5.0-RC1, is that the code base
12 that ONgDB 3.5.4 is based on?

13 A. What do you mean by based on?

14 Q. Well, you mentioned that it couldn't be
15 identical because the last version that was available
16 before one closed was 3.5.0-RC1.

17 A. Right.

18 Q. So ONgDB 3.5.4 isn't 100 percent identical to
19 Neo4j 3.5.4, correct?

20 A. Correct, they're not 100 percent identical.

21 Q. So if they're not 100 percent identical, what
22 is -- what is the same between ONgDB 3.5.4 and Neo4j
23 3.5.4?

24 A. It's a great question. Neo4j source is closed
25 so we don't know.

1 Q. So as of ONgDB 3.5.4, Graph Foundation had no
2 way of knowing whether that was identical to Neo4j's
3 3.5.4, correct?

4 A. Yeah, there's no way to know that they're
5 100 percent identical, correct.

6 Q. How is Graph Foundation able to represent that
7 3.5.4 was a drop-in replacement, ONgDB, that is, for
8 Neo4j 3.5.4?

9 A. I think I described it earlier. Drop-in
10 replacement refers more to compatibility of features, so
11 we were able to take a Neo4j 3.5.4 version, create a
12 database and just show that it worked with ONgDB at that
13 same version. So I think that's exactly what we
14 described, and I think that's exactly what we did.
15 That's the only thing that we can really do absent
16 having the source code is just show that they are
17 compatible, they can both read the same database format
18 which is one of the most essential things to make it
19 drop-in.

20 Q. Did the Graph Foundation do one for one -- let
21 me strike that.

22 So with ONgDB -- do you mind if I leave out the
23 dots -- it's a mouthful -- and just say 3-5-4 is easier?

24 A. That's fine.

25 Q. So ONgDB 3.5.4, does that -- did that contain

1 additional or different source code from Neo4j 3.5.4?

2 A. We have no way of knowing, but we assume that
3 they were different. Neo4j could have used our code
4 because it's open, but we could not have used their code
5 because it's closed. So they could have used our code
6 to make their release. We assume that they didn't, but
7 we can't see their code.

8 Q. So ONgDB 3.5.4 contains source code that's not
9 authored by Neo4j, correct?

10 A. Yes, that's correct.

11 Q. Do you understand what the term glue code is?

12 A. Yes.

13 Q. What's your understanding of glue code?

14 A. That it's mostly code that's used to maintain
15 compatibility between interfaces.

16 Q. So ONgDB 3.5.4 contains glue code. Is that a
17 fair statement?

18 A. It certainly contains some code that's needed
19 to maintain compatibility with core, which we bring in,
20 which is part of common, so it does contain some of that
21 for shifting interfaces as well as fixes and
22 enhancements.

23 Q. So how did -- how did you, meaning Graph
24 Foundation, create 3.5.4 if Neo4j was no longer
25 releasing its code at that time?

1 A. We merged in all of the core commits for 3.5.4,
2 so that's everything for community, and then, based on
3 whatever feedback was given from the community,
4 developed any of the fixes that we could for releasing
5 the enterprise code.

6 Q. Okay. So the fixes that you put into 3.5.4,
7 they were authored by non-Neo4j coders; is that correct?

8 A. Yes.

9 Q. And so -- and Graph Foundation would have no
10 way for certain to know whether it actually included
11 every fix that Neo4j put in its Neo4j 3.5.4, correct?

12 A. I'm sorry. Could you repeat.

13 Q. Sure. So Graph Foundation would have no way to
14 know for certain whether -- strike that.

15 Graph Foundation -- you mentioned fixes for the
16 community, and in reference to that, you did not include
17 patches that came from Neo4j per se, correct?

18 A. We did not include patches that came -- are you
19 asking if we have code? What do you mean by we did not
20 include patches that came from Neo4j?

21 Q. You mentioned there were fixes that were put in
22 place through ONgDB repository, correct?

23 A. Yes.

24 Q. And where did those fixes come from?

25 A. Oh, from community contributors.

1 Q. And Graph Foundation would have no way of
2 knowing whether there were patches included in Neo4j's
3 close portion of enterprise 3.5.4, correct?

4 A. Right. We wouldn't know what code changes
5 they're making to their source because it's private.

6 Q. So the only way you would understand what the
7 potential fixes there were would be looking at Neo4j's
8 changelog for each version?

9 A. We could use what was reported on GitHub, so
10 some people report issues on GitHub still. We can use
11 what our community users report to us, and we can
12 include fixes that are in core.

13 Q. So you mention there was enterprise features
14 that were taken to be closed after 3.5. Which features
15 were those?

16 A. I'm sorry. What did you say I mentioned?

17 Q. You said that when Neo4j took its enterprise
18 portion of the software to close core or private, I
19 guess was maybe the word you used, which features were
20 taken private?

21 A. Everything in the enterprise directory.

22 Q. Were there key features in the enterprise
23 software that were taken private in your mind?

24 A. Yes.

25 Q. What were those key features?

1 A. Causal clustering, backups, restore,
2 monitoring, security, advanced Cypher. You know, that's
3 about -- I think that's the list.

4 Q. So ONgDB 3.5.4 had those features in it,
5 correct?

6 A. Yes.

7 Q. And -- but those weren't necessarily the same
8 exact code for those features in Neo4j 3.5.4, correct?

9 A. That's right, they wouldn't have been a hundred
10 percent identical.

11 Q. Where did the code for those features in ONgDB
12 3.5.4 come from?

13 A. They started out open source and then changes
14 in enhancements would have been made thereafter by
15 commits to Graph Foundation.

16 Q. Okay. But the base code of those features came
17 from Neo4j 3.5.0-RC1?

18 A. That would have been I suspect the start of it.

19 MR. RATINOFF: I'm sorry. Can you read that
20 answer back, please.

21 (Record Read.)

22 BY MR. RATINOFF:

23 Q. What do you mean by the start of it?

24 A. I mean that that's -- that that was like the
25 state of the code as of 3.5.0-RC1 was the last time that

I

1 Neo made any public contribution, so thereafter
2 everything would have been from the open source
3 community.

4 Q. For those particular enterprise features that
5 you mentioned?

6 A. Yes.

7 Q. Give me one second. You mentioned
8 contributions from the community. So Graph Foundation
9 relied on open source contributors to fix issues with
10 various versions of ONgDB?

11 A. Yes.

12 Q. And were those -- when you say open source
13 community, does that include Neo4j contributors?

14 A. Yes.

15 Q. And that would also include Graph Foundation
16 contributors?

17 A. Yes.

18 Q. So you would have to go to Neo4j's GitHub
19 repository to find the open source contributions to
20 Neo4j's software?

21 A. You can see it on our repo too.

22 Q. You would be able to see Neo4j contributors'
23 open source contribution on Graph Foundation's GitHub?

24 A. Yeah, because it's a fork.

25 Q. What do you mean by that?

1 and the release repository links to the distributions on
2 the CDN.

3 Q. Does the testing include a function that
4 includes function testing?

5 A. Yes.

6 Q. It includes performance testing?

7 A. Yes.

8 Q. And what other type of testing is done before
9 it's released, a particular version?

10 A. Integration testing, stress testing, integrity
11 of the packaging.

12 Q. That's all done by Graph Foundation?

13 A. Yes.

14 Q. And do you have any idea of what type of
15 testing Neo4j uses on its coded versions of Neo4j
16 software?

17 A. Only the stuff that was public is what we would
18 know about. We wouldn't know anything about their
19 private testing.

20 Q. For example, Neo4j 3.5.4, you wouldn't have any
21 idea what testing is done before Neo4j released that
22 software?

23 A. We know of all the tests that are committed
24 that are open source so there's quite a few. The
25 open source code base contains tests.

1 Q. But you wouldn't have any insight into the
2 testing that's done on the closed source components of
3 Neo4j 3.5.4?

4 A. Correct. If it's closed source, we don't
5 know -- we don't have the code and we don't know their
6 methods.

7 MR. RATINOFF: Okay. Let me see. I want to
8 put this exhibit up. Hopefully I will guess the right
9 number.

10 (WHEREUPON, Exhibit 22 was marked for
11 identification.)

12 BY MR. RATINOFF:

13 Q. So we'll mark Tab 21 as Exhibit 22. This is --
14 first page bearing Bates number N4J_018667, and this is
15 a printout from Graph Foundation's Twitter account dated
16 7/19/2020.

17 Do you have this document in front of you? Do
18 you recognize this document?

19 A. Yep.

20 Q. What is it?

21 A. It's a tweet from our account.

22 Q. "Our" being Graph Foundation?

23 A. Yeah, Graph Foundation account.

24 Q. It says:

25 "Please report all #Neo4j

Enterprise 3.5 issues to the ONgDB GitHub."

Do you see that?

A. Yep.

Q. And continues after the web address:

"...so we can more effectively track bugs related to open source enterprise code versus open core community."

A. Right.

Q. Why did Graph Foundation tweet this?

A. Yeah, so a lot of -- a lot of users tend
- you know, in the past have reported issues to
j's repo that affected enterprise and community code
use it was open source, they were both open source,
as soon as Neo4j took enterprise away, there's no
er an open source project there so they kind of left
le and users didn't really know where to be
rected to to report enterprise issues on
source. So this was to try to redirect them, to
rm them where open source development was being
tained and where they can track bugs.

Q. So you're asking Neo4j users to go to ONGDB's GitHub repository to report bugs?

A. That are related to enterprise, yeah.

1 Q. Neo4j Enterprise, correct?

2 A. The -- yeah, as we understand it, the
3 enterprise -- open source enterprise, yeah.

4 Q. You don't think that's confusing the customers
5 out there to redirect Neo4j bugs to -- I'm sorry -- to
6 Graph Foundation's GitHub repository?

7 MR. PERNICK: Objection; vague. Can you
8 restate that.

9 MR. RATINOFF: Sure.

10 BY MR. RATINOFF:

11 Q. So did you think that your tweet would confuse
12 anyone as to where to report bugs to Neo4j software?

13 MR. PERNICK: Objection; vague; calls for
14 speculation.

15 THE WITNESS: Yeah, I can't speak to other
16 people's -- how they would interpret this. I can see
17 what my intent with it was which is what I think I said.

18 BY MR. RATINOFF:

19 Q. I'm asking you I guess what -- I appreciate
20 your prior testimony, but what I'm asking you is did it
21 occur to you when tweeting this that it may confuse
22 Neo4j users to report their bugs to Graph Foundation's
23 GitHub repository rather than Neo4j's repository?

24 MR. PERNICK: Objection; vague.

25 THE WITNESS: I felt that it was fairly clear

1 that enterprise no longer existed, open source, and that
2 was the sole reason that anybody would report an
3 enterprise issue on Neo4j's GitHub. If enterprise is no
4 longer open source, there's no reason to report anything
5 on their GitHub, so I feel like it's very clear to
6 redirect open source enterprise users to the right
7 place.

8 BY MR. RATINOFF:

9 Q. The right place being Graph Foundation's
10 GitHub?

11 A. Yeah, where open source enterprise was being
12 worked on.

13 Q. Okay. So you're basically soliciting users of
14 Neo4j Enterprise, which is closed, to report their
15 issues to Graph Foundation's GitHub repository, correct?

16 MR. PERNICK: Objection; vague.

17 BY MR. RATINOFF:

18 Q. Strike that question. Let me ask another
19 question.

20 I noticed you use Neo4j hashtag there. Do you
21 see that?

22 A. Yeah.

23 Q. Why would you use a Neo4j hashtag there?

24 A. It's a topic relevant to Neo4j users.

25 Q. Okay. So you use the hashtag to raise the

1 prominence of this tweet to Neo4j users; is that
2 correct?

3 MR. PERNICK: Objection; vague.

4 THE WITNESS: I think that's restating it. I
5 think I -- I think it's relevant to people in the Neo4j
6 community. I mean, Neo4j users, you know, Neo4j
7 community at large.

8 BY MR. RATINOFF:

9 Q. But wouldn't Neo4j Enterprise users not be in
10 the community since it's closed source?

11 A. Well, they would still be in the community;
12 they need redirected. A lot of people were just finding
13 out about all of the open core changes and people needed
14 a place to be redirected to, so I think they needed to
15 be informed about their option. Seems pretty clear to
16 me.

17 Q. Okay. But you're not giving them an options
18 tweet. You're redirecting users of close source to
19 report their issues to Graph Foundation's GitHub,
20 correct?

21 MR. PERNICK: Objection; vague.

22 THE WITNESS: I think I stated what we're
23 doing.

24 BY MR. RATINOFF:

25 Q. Okay.

1 A. Did you want me to restate what we're doing?

2 Q. Sure, if it answers the question.

3 A. Maybe you have to re-ask your question, then.

4 MR. RATINOFF: Can you please read my question
5 back.

6 (Record Read.)

7 MR. PERNICK: Objection; vague.

8 THE WITNESS: Can you just ask that as a
9 question.

10 BY MR. RATINOFF:

11 Q. I'll strike the question. I didn't quite hear
12 all of it, but it didn't sound like -- there was some
13 extra word in there.

14 So let me ask you this: Do you understand what
15 hashtags are?

16 A. I understand that a hashtag is used to make or
17 create a topic so that people that want to go read about
18 a topic or, you know, look at things that are related to
19 a certain topic, yeah, it's a way to tag things.

20 Q. So by tagging Neo4j, if someone's searching
21 Twitter for #Neo4j, it would be more likely this tweet
22 would come up, correct?

23 A. Yes, if they're interested in -- if they're a
24 Neo4j user or if they're looking at, you know, things
25 relating to Neo4j that are happening, this would be

1 something that's happening around Neo4j.

2 Q. And I notice there's no hashtag next to ONGDB.

3 Why is that?

4 A. I'm not sure.

5 Q. So you use the #Neo4j to make it more likely
6 for a person interested in Neo4j Enterprise to have seen
7 this tweet, correct?

8 MR. PERNICK: Objection; vague.

9 THE WITNESS: I think like what I said, we use
10 the hashtag so that Neo4j users can be informed.

11 BY MR. RATINOFF:

12 Q. So my question is it's more likely that a Neo4j
13 user will find this tweet because he used the hashtag
14 Neo4j, correct?

15 MR. PERNICK: Same objection; vague.

16 THE WITNESS: I mean, that assumes -- yeah,
17 that assumes that Neo4j users are looking at that
18 hashtag, but anybody that is looking at the Neo4j
19 hashtag can become informed and that includes Neo4j
20 users.

21 BY MR. RATINOFF:

22 Q. So it's more likely that a Neo4j user would
23 find this tweet by using the Neo4j hashtag versus using
24 just the word Neo4j, correct?

25 MR. PERNICK: Objection; vague; calls for

1 speculation.

2 THE WITNESS: I mean, we can't -- I mean, we
3 can't really speculate about how people find us. I
4 mean, what we can do is try to give information to as
5 many places as possible.

6 BY MR. RATINOFF:

7 Q. I understand that, but what I'm saying is is
8 you've already explained your understanding of what a
9 hashtag is. What I'm asking you is by using a hashtag
10 with Neo4j, it's raising the prominence of this tweet to
11 people looking for Neo4j versus had you simply
12 referenced Neo4j without the hashtag, correct?

13 A. It places that tweet in a topic so it is
14 possible that more people would see it as a result.

15 Q. So you used the hashtag Neo4j to make it more
16 likely that this tweet would be seen by Neo4j users,
17 correct?

18 A. Yes because our objective is to inform. We
19 want Neo4j users to be informed about their options.

20 Q. But you're not giving an option here. You're
21 just asking to report bugs in Neo4j Enterprise to Graph
22 Foundation, correct?

23 MR. PERNICK: Objection; vague. The document
24 speaks for itself.

25 THE WITNESS: So the option that they knew of

1 today was one. Prior to this, they only had one option
2 which was the Neo4j repo, so in our mind we were giving
3 them a second option which is to inform them that
4 there's another place that they can report open source
5 enterprise issues, and I think that's exactly what we
6 said, effectively track bugs related to open source
7 enterprise, and that would no longer apply to Neo4j's
8 code base because it was no longer open source
9 enterprise. So I think that's clear.

10 MR. RATINOFF: Let me put up Tab 23. And this
11 was attached as Exhibit K to the first set of RFAs,
12 John, so I just wanted to let you know. So I'm only
13 going to ask a couple questions about this since it's
14 already been subject to RFAs and been authenticated.

15 (WHEREUPON, Exhibit 23 was marked for
16 identification.)

17 BY MR. RATINOFF:

18 Q. So this starts with the Bates number
19 N4J-GFI_000078, and this is a printout from the Graph
20 Foundation website dated September 24, 2019.

21 Do you recognize this document?

22 A. Yes.

23 Q. Okay. What is it?

24 A. It's a blog post.

25 Q. Did you author this blog post?

1 A. Yes.

2 Q. Why did you put this post up on Graph
3 Foundation's website?

4 A. Because it's relevant to Graph Foundation.

5 Q. Other than being relevant, was there a specific
6 reason why you drafted this post?

7 A. Well, I mean, I think the post speaks for
8 itself. It's informative, I think it's an informative
9 post so to inform people.

10 Q. Okay. I'm asking the reason why you did it,
11 not what it does to people. So I'll ask it a different
12 way.

13 Why did you author this post and put it up on
14 Graph Foundation's website at this time, which is
15 January 31, 2019?

16 A. To inform people of the changes that happened
17 and to let them know what was happening in the community
18 in response to it.

19 Q. And when you came up with the name ONgDB, it
20 stood for not just Open Native Graph Database, but in
21 your mind did it also stand for open Neo4j graph
22 database?

23 A. It stood for Open Native Graph DB, and then I
24 think there was an early version of this blog that
25 included some developer humor as a throwback to GNU and

1 the Free Software Foundation and its recursive name that
2 I think was cited as part of the original claim that I
3 guess was offensive to Neo, and so we decided, like,
4 that joke might have been in bad taste so we removed it.

5 Q. Okay. So in other words, it was just a joke
6 that you -- and you can look at the specific page. It's
7 4 out of 8 and it's in the second paragraph at the end.

8 A. Yeah.

9 Q. It says:

10 "As a throwback to those early
11 days and our beginnings on GNU
12 (remember GNU's not Unix), we decided
13 on the name ONgDB."

14 That's -- do you see where I'm at?

15 A. Yes, I see where you're at.

16 Q. The last part of that says "but also ONgDB's
17 Neo4j Graph DB"?

18 A. Correct.

19 Q. So that was just a joke?

20 A. Yes. We apparently should have resisted the
21 double meaning because it was a bad joke in bad taste.

22 The thing that we cared about was -- it stands
23 for Open Native Graph DB. That's what we always cared
24 about. We felt like it needed to be open and it needed
25 to be native and it was a graph.

1 them what would be okay in terms of doing a fork?

2 A. Unfortunately, because they caused the
3 confusion, they didn't have great answers. They were
4 sort of the source of it all.

5 Q. That wasn't my question.

6 My question was did you ever think to go to
7 Neo4j to ask how you can refer to Neo4j as a project?

8 A. No. No. Because I think that they had moved
9 to a place -- I don't know. Everything -- I don't think
10 there was really much to be -- to be done in terms of,
11 like, how do we talk about the project, Neo4j Community
12 versus Enterprise. I don't know. We didn't think -- we
13 didn't think about it.

14 Q. And you never went to their website to see if
15 there was any guidance on how to refer to Neo4j as a
16 fork?

17 A. No. I don't see why that -- I don't see why
18 they would really have an answer on it.

19 Q. Well, but you remember those trademark
20 guidelines you saw, right, that you looked at?

21 A. Yeah.

22 Q. So at least as of when the complaint was filed,
23 Neo4j provided guidance to people that fork Neo4j
24 software, correct?

25 MR. PERNICK: Objection; misstates the

I

1 document. The document speaks for itself.

2 THE WITNESS: I think we said what we said
3 because it made sense of how to describe the project.

4 BY MR. RATINOFF:

5 Q. But that's not the question.

6 So my question is, there is guidance that
7 you're now aware of on Neo4j's website explaining how to
8 refer to Neo4j as a fork, correct?

9 A. So -- sorry. Are you saying, like, as of today
10 there is guidance?

11 Q. Yes.

12 A. Yeah, as of today there is guidance on Neo4j's
13 website that does talk about, like, how to talk about a
14 fork of Neo4j, which is interesting that they put that
15 up there, I guess.

16 Q. Okay. And you also testified earlier that you
17 read those trademark guidelines around sometime after
18 the complaint was filed, right?

19 A. When the case was filed, yeah.

20 Q. And then you said you testified I believe you
21 went to Neo4j's website and actually found the
22 guidelines, right?

23 A. Yes, uh-huh.

24 Q. And you read the guidelines at that time?

25 A. Yes.

1 Q. Did Graph Foundation change the way it was
2 referring to Neo4j based on those guidelines?

3 MR. PERNICK: Objection; asked and answered.

4 THE WITNESS: I don't think the guidelines
5 actually give us a way to talk about the open source
6 Neo4j graph database, do they? I think it just says you
7 can't do that. I don't think it -- I don't know. Do
8 they actually give you a way to do that?

9 MR. RATINOFF: You reviewed them so you can
10 tell me. I can bring the exhibit back up. We'll move
11 on. If I have time I'll come back to that.

12 Let's go ahead and put this one up here. This
13 should be Tab 31.

14 (WHEREUPON, Exhibit 24 was marked for
15 identification.)

16 BY MR. RATINOFF:

17 Q. Let me know when you've got that. Do you have
18 Tab 31 in front of you?

19 A. Yes.

20 Q. So this was printed out on June 10, 2020, from
21 Graph Foundation's GitHub. You can see that down at the
22 footer there. And right next to that is Bates number
23 N4J_018645. Do you see that?

24 A. Yes.

25 Q. Do you have any reason to believe this isn't an

1 accurate printout from Graph Foundation's GitHub
2 repository?

3 A. No reason. It looks right.

4 Q. All right. Let's mark this as Exhibit 24.

5 And then looking at the second text box here,
6 it says "Brad Nussbaum commented February 13th."

7 Is that you?

8 A. Yes.

9 Q. So -- and that's your user name on GitHub?

10 A. Yes.

11 Q. Okay. Moving down, it says -- you have an
12 entry here on April 13, 2020. Do you see that?

13 A. Yes.

14 Q. It says:

15 "The Graph Foundation can only
16 change the license of source code
17 where it holds the copyright."

18 A. Yes.

19 Q. So you understand that only a licensor can
20 change the source code -- I'm sorry -- change the
21 license for its source code, correct?

22 A. I understand that the Graph Foundation can only
23 change the license of the source code that it holds the
24 copyright to.

25 MR. RATINOFF: Okay, I'm just trying to skip a

1 A. Yes, I see that.

2 Q. So what Graph Foundation means by that is it's
3 made fixes that it's aware of in the open -- strike
4 that.

5 Previously you testified that the fixes would
6 come from the community. Is that also true with
7 Version 3.5.14?

8 A. Yes.

9 Q. And was ONgDB 3.5.14 a drop-in replacement for
10 Neo4j 3.5.14?

11 A. I don't know -- I don't know. It might -- it
12 might still be. I'd have to go back and look at the
13 list. Some of these we stopped noting -- if it was, we
14 noted it as such or the language on the site was as
15 such.

16 Q. But there's no -- there's no way to know
17 whether the important improvements and fixes in 3.5.14
18 were made in Neo4j's 3.5.14, assuming there is a 3.5.14?

19 A. Sorry. No way to know what?

20 MR. PERNICK: Can you restate that, Jeff.

21 MR. RATINOFF: Thank you. That was my --
22 strike that.

23 BY MR. RATINOFF:

24 Q. What's the -- what's the last version of ONgDB
25 that Graph Foundation believes is a drop-in replacement

1 for a closed version of Neo4j?

2 A. I mean, I think we changed it pretty early on
3 in the 3.5 cycle because after some period of time it
4 gets harder and harder to verify that just because the
5 source code can drift more and more. So I have to go
6 back and look at what exact date we took that language
7 off of the site, but it's no longer on our current site
8 to describe ONgDB that way. We changed it to be an
9 open source alternative, so yeah.

10 Q. You can't pinpoint which version that occurred?

11 A. I mean, it must have been some time
12 between -- I don't know. I don't know when it was, when
13 that changed. I could try to find out, but I don't
14 know. I'm sure it was between 3.5.4 and 3.5.11. I
15 think that those are -- yeah, 3.5.4 might have been the
16 last time that we referred to it that way.

17 Q. But you're not sure?

18 A. Actually, it's probably pretty close because
19 3.5.4 was October 2019. Yeah, I don't think we were
20 referring to it all the way then, so by 3.5.11 we
21 weren't. I think 3.5.4 was the last release I see on
22 here that probably had it.

23 Q. So looking at the bottom of Tab 39, you see
24 there's a list of different versions of ONgDB.

25 A. Yes.

1 Q. So as of versions listed here starting
2 after -- I'm sorry, which version was it where you
3 believe -- 3.5.11?

4 A. It would have been after 3.5.4, I think.

5 Q. 3.5.4. So after 3.5.4, all these subsequent
6 versions that Graph Foundation no longer referred to
7 ONgDB as a drop-in replacement for the equivalent
8 version of Neo4j?

9 A. So the statement about it being drop-in
10 replacement was on the main page describing it and we
11 would have taken that language down at a point in time,
12 and that point in time is probably when we felt like
13 it -- we no longer could, you know, maybe reliably
14 guarantee that it was a drop-in replacement. So the
15 language did get dropped, and I think it's somewhere
16 around the time where we either felt it could no longer
17 be reliably described that way, yeah.

18 Q. And that was sometime between 3.5.4 and 3.5.11?

19 A. Well, yeah, yeah.

20 Q. Yes, it was sometime between --

21 A. Yeah. Yes, sometime between that period, I
22 believe.

23 Q. Why couldn't Graph Foundation continue to refer
24 to ONgDB as a drop-in replacement for Neo4j?

25 A. I think for the same reasons we said that it

1 could be and that, you know, we think it can be a
2 drop-in replacement as long as the compatibility is
3 there and other systems can integrate with it on its
4 interfaces effectively. I think at some point we become
5 less and less sure as time moves on and we don't see the
6 source code from Neo and there's possible drift, so
7 we -- early on we were able to do, you know, some degree
8 of testing, although we dropped it into existing 3.5.4
9 releases.

10 I don't think we -- we had a desire to do that
11 testing for every single release, and so I think for us,
12 later on, it just -- it felt like a harder thing to try
13 to guarantee, and what we wanted to focus on was telling
14 folks that this is going to be divergent and it's going
15 to be forking and not always have to guarantee that it's
16 going to be a drop-in replacement.

17 I mean, just to fast forward, like 4.0, we've
18 seen -- you know, there's so many changes that have
19 happened to core in 4.0 that the odds of ONgDB's 4.0
20 being a drop-in are just very small. So I think early
21 on, in the early days, we used it because we could
22 demonstrate it and it was true, and as things move on we
23 dropped it because it's just too hard to demonstrate.

24 Q. Well, I don't want you to guess when that was.
25 If you want, on a break, if it's okay with your counsel,

1 you're welcome to confirm what version that was at.

2 MR. RATINOFF: But that being said, I'm going
3 to go ahead and drop in this next exhibit. I believe
4 it's going to be Exhibit 26. You should see Tab 41.

5 (WHEREUPON, Exhibit 26 was marked for
6 identification.)

7 BY MR. RATINOFF:

8 Q. Do you see that? It should have a Bates number
9 at the bottom, N4J_018732. It's a printout dated
10 6/10/2020 from the Graph Foundation's website.

11 Do you see that?

12 A. Yes.

13 Q. And this is the page for ONgDB 3.6.0-RC1,
14 correct?

15 A. Yeah. This is the landing page for ONgDB,
16 yeah.

17 Q. And so there is no Neo4j 3.6, correct?

18 A. To our knowledge, correct. Neo4j's never
19 released a 3.6 version.

20 Q. So at this point, ONgDB 3.6.0, this is in your
21 mind a divergent fork of Neo4j?

22 A. Most definitely.

23 Q. And it wouldn't be accurate to describe it as a
24 drop-in replacement at this point?

25 A. 3.6 is definitely not a drop-in replacement.

1 Q. And you wouldn't describe 4.0 as a drop-in
2 replacement either?

3 A. I mean, because Neo4j has released a 4.0, it's
4 possible that it can be, but it's very unlikely. I
5 don't know that we want to take the effort to prove it
6 so that we can say it is such.

7 Q. Okay. Do you know offhand which entities are
8 using ONgDB currently?

9 MR. PERNICK: I'm going to object; vague.

10 Are you asking him whether he knows every
11 entity or what entities he knows?

12 MR. RATINOFF: What entity.

13 MR. PERNICK: So --

14 BY MR. RATINOFF:

15 Q. Let me ask the question: Which entities are
16 you aware of that are currently using ONgDB?

17 A. I think we know that there are -- that the IRS
18 is using it. I think what we sent in some emails, I
19 think Tufin is using it. There's handfuls of
20 individuals. I think, like, our one donor, Liquan I
21 think is his name, I think he's using it. He donated.
22 I think I had a small conversation with him about it.
23 There's various people in the Slack channel that we have
24 that are using it.

25 Q. Okay. Actually, before we -- I'm going to show

1 and accurate printout from AtomRain's website?

2 MR. PERNICK: So Mr. Nussbaum is not here to
3 testify on behalf of AtomRain.

4 MR. RATINOFF: I understand. I'm asking him
5 whether -- he's got his own personal knowledge since he
6 works for AtomRain, so to the extent he knows
7 personally, I think that's fairly imputed on Graph
8 Foundation. I'm not going to be asking questions from
9 AtomRain's perspective.

10 MR. PERNICK: Okay.

11 THE WITNESS: Yes, this appears to be a
12 printout of AtomRain's site.

13 BY MR. RATINOFF:

14 Q. And AtomRain, is that a company that utilizes
15 ONgDB?

16 A. To the best of my knowledge, does work --
17 consulting work that involves Neo4j and ONgDB.

18 Q. So I'm just going to run through these various
19 entities here. I'll start with Sony pictures. Do you
20 know if Sony pictures is using ONgDB?

21 A. No. And I doubt any of these -- most of these
22 companies are probably not. A few of them might be.

23 Q. Okay. So which ones do you understand are
24 using ONgDB?

25 A. I think Tufin and the IRS, yeah.

1 Q. The Department of Defense?

2 A. I don't think so, no.

3 Q. No entities fall within the Department of
4 Defense?

5 A. I'm sorry. No what?

6 Q. No entities or agencies fall within the
7 Department of Defense?

8 A. No.

9 Q. US Air Force using ONGDB to your knowledge?

10 A. Not that I know of.

11 Q. UBS, are they using ONGDB?

12 A. No.

13 Q. WiserCare, are they using ONGDB?

14 A. Again, none of these except for Tufin and IRS
15 are the ones that I know are. Oh, yeah, and Cyber GRX
16 is on this list.

17 Q. Cyber GRX?

18 A. Yeah.

19 Q. Where is that? Okay, I see. They've got the
20 little logo in the middle there.

21 I think you had mentioned some other entities
22 that aren't on here. Do you know who Next Century is?

23 A. Next Century?

24 Q. Yeah.

25 A. Like, do I personally know who they are as a

1 company, or are you asking if I know that they're using
2 ONgDB?

3 Q. Do you know -- well, I guess one follows the
4 other. Do you know who at Next Century is, as a
5 company?

6 A. The name sounds familiar. I think there was an
7 email or something from them. Are they a gov company or
8 something?

9 Q. I don't know. I'm just asking if you know who
10 they are.

11 Do you know if they're a user of ONgDB?

12 A. I don't, no.

13 Q. AdForm, do you know who AdForm is?

14 A. I think I had one email with them, yes. I
15 mean, I know they are a company.

16 Q. Are they using ONgDB?

17 A. I don't know.

18 Q. How about Soft Strategy, do you know who
19 Soft Strategy is?

20 A. Soft Strategy, the name sounds familiar. I
21 don't know them deeply or anything.

22 Q. Okay. I've lost my chat apparently so I'm just
23 going to throw this up again. And this was previously
24 marked as Exhibit -- unfortunately, I don't have the
25 exhibit number. Tab 10 was previously marked as

1 Exhibit 9. I just re-dropped it here for your
2 convenience. And I'll direct your attention to page 17
3 out of 180. Are you there?

4 A. Yes.

5 Q. It states toward the bottom of the page:

6 "GFI has identified the
7 following entities or individuals
8 that may have downloaded ONgDB."

9 Do you see that?

10 A. Yes.

11 Q. So there's -- Next Century is listed there,
12 Soft Strategy, AdForm. Do you see those three names?

13 A. Yes.

14 Q. Does that refresh your recollection as to
15 whether they're using ONgDB?

16 A. So these are individuals that we -- that we've
17 shared emails with, so I mean, I think our assumption is
18 that they're using ONgDB still, but GFI doesn't track
19 that usage. So at some point in time they've contacted
20 us or made it seem like they would use it.

21 Q. Then you already mentioned Tufin, I believe you
22 testified, is using ONgDB and so is the US Department of
23 Treasury, correct?

24 A. Yeah. Yes.

25 Q. Is there any other government agencies that

1 you're aware of that are using ONgDB?

2 A. No.

3 MR. RATINOFF: Okay. Let me go ahead and jump
4 ahead here. I'm going to go ahead and drop in another
5 exhibit.

6 (WHEREUPON, Exhibit 28 was marked for
7 identification.)

8 BY MR. RATINOFF:

9 Q. Do you see this email?

10 A. Yes.

11 Q. It looks like it's an email to you.

12 A. Yes.

13 Q. It says "Hello Brad." I'm going to skip to the
14 second sentence. It says:

15 "I am currently leading the
16 Graph Database team responsible for
17 deploying an ONgDB-based solution
18 into production."

19 Do you see that?

20 A. Yes.

21 Q. Does that refresh your recollection as to
22 whether Next Century is using ONgDB?

23 A. I mean, I guess that's what he said so I assume
24 that's correct. I assume they are.

25 Q. Have you had any further correspondence with

1 Q. So you never had, like, a video conference or
2 telephone call after COVID hit?

3 A. No.

4 MR. PERNICK: Can you restate -- were you
5 asking just with respect to him or with anyone ever?

6 MR. RATINOFF: Well, with AdForm. I'll ask the
7 question to be clearer.

8 BY MR. RATINOFF:

9 Q. After this email, you never had any telephone
10 calls or Zoom conferences with AdForm?

11 A. No. I don't remember -- this one I just
12 remember kind of dying somewhere around that time, but
13 there might have been, like, one or two more exchanges,
14 but I think it just kind of died at some point.

15 MR. RATINOFF: Okay, I'm just going to drop
16 this next one in. It's Tab 103. Mark this as
17 Exhibit 30.

18 (WHEREUPON, Exhibit 30 was marked for
19 identification.)

20 BY MR. RATINOFF:

21 Q. Do you recognize this as Exhibit 30? Sir? Are
22 you still reading the document? Sorry.

23 A. Yes. Yep, I've got it.

24 Q. Actually, if you hover your cursor over your
25 name at the top there, it should be a hyperlink. If you

1 hover over there, it should say -- I'll just do a screen
2 share so we'll be on the literal same page.

3 A. Yeah.

4 Q. So you should be seeing the same email now.

5 A. Yes.

6 Q. And if I hover over your name there, it says
7 mailto:brad@graphgrid.com.

8 A. Yes.

9 Q. Do you see that?

10 A. Yes.

11 Q. Below your email address is
12 brad@graphfoundation.org. Do you see that?

13 A. Yes.

14 Q. Do you use your GraphGrid email sometimes to
15 communicate about Graph Foundation business?

16 A. No.

17 Q. So why is there a graphfoundation.org address
18 on that prior email and you've got your response from
19 brad@graphgrid?

20 A. Because I think we answered all the questions
21 they had that were about open source and they wanted
22 help with a five-day boot camp, I think. They wanted
23 some kind of services and the foundation doesn't offer
24 any services.

25 Q. So that would be GraphGrid that offers that

1 services?

2 A. Yeah, GraphGrid does offer services like that
3 so it was a redirect.

4 Q. You didn't forward this email to your GraphGrid
5 account, though, right?

6 A. I believe it was, yeah.

7 Q. Oh, okay. Does it say forward?

8 A. It was included or sent in there. I don't -- I
9 don't know.

10 Q. Did this training ever happen, this boot camp?

11 A. No. No, it didn't.

12 MR. RATINOFF: Okay. Let me go ahead and mark
13 the next exhibit. This is Tab 48 which I'll mark as
14 Exhibit 31. So my screen share should stop. You should
15 be able to download this new document.

16 (WHEREUPON, Exhibit 31 was marked for

17 identification.)

18 BY MR. RATINOFF:

19 Q. Can you see this document? It should be an
20 email that's from Benjamin Nussbaum to John Mark Suhy
21 and cc'd to Bradley Nussbaum. Do you see that?

22 A. Yes.

23 Q. And again, these are your AtomRain email
24 addresses. Is there any reason to believe you didn't
25 receive this email in your AtomRain email account?

1 Q. Did AtomRain -- did you at AtomRain ever hand
2 off potential users to Graph Foundation?

3 MR. PERNICK: Objection; vague.

4 THE WITNESS: What do you mean by hand off
5 potential users?

6 BY MR. RATINOFF:

7 Q. Well, I'll use the words -- I'm using the words
8 in the email that was sent to you which you said you
9 received.

10 So what did you understand "To continue the
11 conversation, do you want to hand off to someone at the
12 foundation," what did you understand that to mean?

13 MR. PERNICK: Objection; vague; calls for
14 speculation.

15 THE WITNESS: I think at times we tried to
16 figure out whether or not -- because, obviously, all of
17 us are wearing a lot of hats, so I think if a
18 conversation was better to be handled by somebody from
19 the foundation, I think that's -- that's all that was
20 intended was to say should somebody from the foundation
21 be contacting them about discussing the open source
22 project.

23 MR. RATINOFF: Okay. I'm going to drop another
24 document in here. This is Tab 50, and I'm going to mark
25 this as Exhibit 32.



1 (WHEREUPON, Exhibit 32 was marked for
2 identification.)

3 BY MR. RATINOFF:

4 Q. Do you have this open? This is an email that
5 was produced by your attorney. It's dated February 19,
6 2019, and the beginning Bates number GFI000071.

7 Do you recognize this email?

8 A. Yes.

9 Q. I'm hovering over your email address. It looks
10 to be from your Graph Foundation email account; is that
11 correct?

12 A. Yes.

13 Q. You can scroll down. This is a pretty lengthy
14 email chain so kind of takes off from where the other
15 one ended. So I'm going to have you scroll down to your
16 email that you sent on February 19, 2019, at 9:07.

17 Do you see that?

18 A. Okay.

19 Q. It says:

20 "Our intent is to move ONgDB
21 forward in a fully open source
22 manner governed by The Graph
23 Foundation (nonprofit)."

24 Do you see that?

25 A. Yes.

1 Q. Has Graph Foundation applied for a copyright
2 for any source code that's in ONgDB?

3 A. Have we applied for a copyright? What do you
4 mean by that?

5 Q. Literally filing a copyright application for
6 source code for ONgDB.

7 A. Oh, no, we have not filed a copyright
8 application. I'm not sure if we would need to file
9 that.

10 Q. Moving up to the next email -- this would be
11 from Shahak Nagiel -- I hope I said his name
12 correctly -- February 19, 2019, at 10:46.

13 Do you see that?

14 A. Yes.

15 Q. He says:

16 "Nice to meet you as well.

17 Could you please elaborate on this
18 sentence: 'And when Neo4j realized
19 that the additional Commons Clause
20 didn't prevent usage of enterprise
21 features, it made the ultimate
22 decision to remove all enterprise
23 modules.'"

24 Do you see that?

25 A. Yes.

1 Q. And what did you understand that to mean?

2 A. I think that's a quote that's taken from my
3 blog post, but I'm not sure. I'm not sure where that's
4 from, actually, but -- actually, I'm not sure where that
5 came from.

6 I think -- I think it means that at some point
7 I believe that Neo4j realized that a developer had just
8 put in the Commons Clause and didn't really understand
9 licensing and they were still hoping to appear
10 open source and deceive the community, because I think
11 open source has gained them a lot, but then at some
12 point they kind of realized that, you know, they
13 couldn't pretend to be under AGPL any more and still
14 secretively, like, try to tack on the Commons and
15 somehow be closed. So this is just a simplified way of
16 saying that they realized it didn't work and so they
17 close-sourced it.

18 Q. You're just speculating why Neo4j went close
19 core, correct?

20 A. Not why they went close core, but I would say
21 speculating -- yeah, yeah, I would say speculating.
22 That was our belief that they realized it must not have
23 worked.

24 Q. So you have no personal knowledge as to why
25 Neo4j added the Commons Clause?

1 A. No.

2 Q. You have no personal knowledge as to why Neo4j
3 went open core with its community and closed on
4 enterprise?

5 A. No, not more than what they said publicly.

6 Yeah, we speculated that it was because of that.

7 Q. So then the last would be the top, the last
8 email in the string says:

9 "The Free Software Foundation,
10 which owns the rights to GPLv3
11 license and its use, reviewed the
12 Commons Clause that had been added
13 and determined that it was not valid.
14 GPLv3 has clauses preventing
15 additional clauses from being added
16 and still licensing under the GPLv3
17 license."

18 Do you see that?

19 A. Yes.

20 Q. The Free Software Foundation didn't actually
21 determine that the Commons Clause was improperly added,
22 correct?

23 A. No, I think they determined that.

24 Q. They didn't give a legal opinion. That was
25 your prior testimony.

1 A. Correct. I don't think I told him that they
2 gave a legal opinion, did I?

3 Q. You're just extrapolating?

4 A. Yeah, correct. I think I'm surmising the
5 response that was given to us.

6 Q. They never expressly stated that the
7 Commons Clause not to be valid, correct?

8 A. They never expressed a legal opinion.

9 Q. Is there an email anywhere where the Free
10 Software Foundation made a determination that the
11 Commons Clause added to the Neo4j AGPL was invalid?

12 MR. PERNICK: Objection; asked and answered.

13 THE WITNESS: Yeah, I think I answered. I
14 think what they responded stands on its own.

15 MR. RATINOFF: Can you please read back the
16 question. I'm entitled to an answer. It's actually a
17 different question because he's using the word valid.
18 I'm just using the language.

19 (Record Read.)

20 MR. PERNICK: Objection; asked and answered and
21 vague.

22 THE WITNESS: Yeah, I mean, this is obviously a
23 way of giving a summary that's maybe more plain
24 language. So the Free Software Foundation did not use
25 those exact words, but the answer they did give us

1 might have something in another one that he forwarded,
2 I'm not sure. It may have been something that I just
3 heard over the phone too. I heard of a discussion that
4 happened.

5 So of my present knowledge, I'm aware of a
6 discussion that happened within the IRS and that they
7 went through a process and they ultimately determined
8 that they could use ONGDB.

9 Q. How did you learn that?

10 A. I think, like I said, it was either through a
11 series of calls and/or there may have been an email
12 forwarded to some account. I personally learned about
13 it in some way.

14 Q. How did you personally learn it? Was it from
15 John Mark?

16 A. I believe he was one of the individuals that
17 was involved in the discussions. I don't know if it was
18 him that actually forwarded things out or I was talking
19 with on calls. I'm not sure. Maybe I learned of it
20 secondhand through Ben, but I became aware of it.

21 MR. RATINOFF: So then I'm going to go ahead
22 and drop down Tab 53, and this will be Exhibit 34.

23 (WHEREUPON, Exhibit 34 was marked for
24 identification.)

25 BY MR. RATINOFF:

1 Q. I'll just represent this was produced by your
2 counsel. And it's cut off the rest of the trailing
3 email here, but if you look at the -- if you look at the
4 date and timestamp in the words there, do you agree it
5 matches up to the prior Exhibit 33? That would be
6 Tab 51 in your chat.

7 A. Yeah, this looks like my response to him. Yes.

8 Q. You have no reason to believe it's not your
9 response to the prior email asking for an additional
10 opinion?

11 A. No.

12 Q. And here you state:

13 "ONgDB is currently in use
14 at US Treasury (IRS). Their legal
15 counsel conducted a thorough
16 evaluation of the licensing
17 situation and arrived at the
18 conclusion that Graph Foundation
19 distributions of ONgDB could be used
20 without needing a Neo4j Inc. license."

21 Do you see that?

22 A. Yes.

23 Q. So you just said at this time you didn't have
24 any personal knowledge of that opinion, correct?

25 A. No. I think I said I did, I heard of it.

1 Q. Right, but you never heard directly from the
2 IRS that -- about their conclusion that Graph Foundation
3 distributions of ONgDB could be used without needing a
4 Neo4j Inc. license, correct?

5 A. I -- no. I mean, I heard the general
6 conclusion that I stated right in here. This is the
7 conclusion that I heard.

8 Q. But you didn't hear that from the IRS?

9 A. Sorry. What are you getting at? I mean, I
10 heard it through individuals that were in the
11 conversations.

12 So what are you trying to say, that that's not
13 good enough or --

14 Q. I'm just asking a question. I don't need to
15 explain what the purpose of my question is.

16 A. Okay.

17 Q. Let me ask you the question again.

18 A. Okay.

19 Q. Did you directly receive a communication from
20 the IRS expressing that the IRS could use ONgDB without
21 needing a license from Neo4j?

22 A. I personally do not recall receiving a direct
23 communication from my Graph Foundation email from the
24 IRS.

25 Q. Okay. I'm not asking about your Graph

1 answer without it being couched in a different way. I
2 mean my question is being misstated. I didn't say
3 direct communication, I didn't say email. I said simply
4 personally communicated with. That can mean email,
5 telephone or whatever.

6 MR. PERNICK: We understand the question. Did
7 he have a communication from an IRS person with this
8 information, whether in an email, a cc of an email,
9 anything. The answer right now is he doesn't recall.

10 MR. RATINOFF: Well, I want to hear his answer.
11 I would like to have the question read back and then
12 I'll get his answer, now that you've completely coached
13 him.

14 (Record Read.)

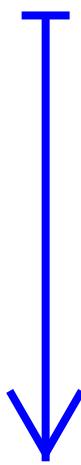
15 THE WITNESS: Based on what I recall, no, I did
16 not directly communicate with them. I believe it came
17 through a forward from or a conversation through some
18 other person that was directly there.

19 MR. RATINOFF: Okay, I'm going to put up the
20 next exhibit. This is Tab 54 which would be Exhibit 35.

21 (WHEREUPON, Exhibit 35 was marked for
22 identification.)

23 BY MR. RATINOFF:

24 Q. Do you see this email? It should end with the
25 email at the top February 19, 2019, 11:57:33 a.m.



Do you see that?

A. It's coming up. Okay.

Q. So let's go ahead and go down to the second email in this chain. It's on February 19, 2019, at 15:04. Do you see that?

A. Okay.

Q. Is it fair to say that this is the direct response to the last email we were discussing, Exhibit 33 -- I'm sorry -- Exhibit 34? Yes?

A. Yes.

Q. And Shahak says:

"Aha, any chance I could get

a copy of that?"

Do you see that?

A. Yes.

Q. Your response is:

"It was an internal review so

there isn't a document that can be

distributed."

Do you see that?

A. Yes.

Q. And then is that statement it was an internal review based on your knowledge gained through someone else other than the IRS?

A. More than likely yes. As per what we just said

1 before, I think yeah.

2 Q. You said there might be an email, and now that
3 you're saying in this email, Exhibit 35, it was an
4 internal review so there isn't a document that can be
5 distributed. So you never received an actual written
6 evaluation from the IRS, either directly or indirectly,
7 about whether they could use ONgDB without any Neo4j
8 license, correct?

9 A. This statement simply means that the decision
10 that the IRS made, they determined -- they did so
11 internally and those conversations are not intended for
12 public distribution or just generally to be re-sent.

13 Q. And you weren't privy to those conversations
14 with the IRS, correct?

15 A. What do you mean by I was privy to them? I
16 think we've established that I did know these
17 conversations were happening and I understood the
18 outcome.

19 Q. Right. My question is you didn't participate
20 personally in the internal IRS discussions regarding
21 evaluating whether ONgDB could be used without a Neo4j
22 license, correct?

23 A. Correct. I did not participate in the
24 discussions.

25 Q. Okay. Thank you.

T

1 MR. RATINOFF: Let me go ahead and drop the
2 next Tab 44.

3 (WHEREUPON, Exhibit 36 was marked for
4 identification.)

5 BY MR. RATINOFF:

6 Q. Do you see Tab 44? We'll mark this as
7 Exhibit 36.

8 A. Before we move on, just for the record, when
9 you say participate, I want to make sure that it's very
10 clear that you meant, like, actively participating in
11 the discussion, not participating in the extent we were
12 just discussing about receiving information that we
13 still need to confirm.

14 Q. Okay, I'm going to strike that. There's no
15 question pending so the record will say what the record
16 says.

17 THE WITNESS: John, can you make a note that to
18 maybe go back and look at that.

19 MR. PERNICK: Brad, if we need to clarify a
20 question, I can address it or we can address it in
21 review.

22 BY MR. RATINOFF:

23 Q. So you should be looking at a printout from
24 community.neo4j.com. Do you see what's in front of you?
25 The first Bates number page would be N4J-GFI_00008.

V

1 Do you see that?

2 A. I'm sorry. Where are we at?

3 Q. It should be Tab 44 in the chat.

4 A. Yes, I have that open.

5 Q. Do you recognize this document?

6 A. Not immediately.

7 Q. Take a second to review it and let me know when
8 you're finished.

9 A. Okay. Yeah, all right.

10 Q. You're done looking at it?

11 A. Yes.

12 Q. Do you recognize Exhibit 36?

13 A. Yes.

14 Q. What is Exhibit 36?

15 A. I think this is a conversation that is taken
16 from the Neo4j online community site.

17 Q. And how did you come to learn of this?

18 A. I think this was shared in the case at some
19 point.

20 MR. RATINOFF: And let me go ahead and mark the
21 next exhibit. It should be Tab 45 coming up on your
22 chat.

23 (WHEREUPON, Exhibit 37 was marked for
24 identification.)

25 BY MR. RATINOFF:

1 Q. And then I'll mark this as Exhibit 37. This
2 was produced by iGov, and it's got the Bates number
3 IGOV0001570054. And I'll direct you to the top cc line.
4 It says Brad Nussbaum and it's brad@atomrain.com.

5 Do you see that email?

6 A. Yes.

7 Q. Do you have any reason to believe you didn't
8 receive this email in your AtomRain account?

9 A. No.

10 Q. And if you go ahead and look down at the web
11 address in the bottom email, do you see that?

12 A. Yes.

13 Q. And so this -- let's go back to Exhibit -- the
14 prior exhibit here, the Neo4j Desktop versus Neo4j
15 Server. Do you see that?

16 Would you agree, other than the last portion of
17 the web address in the prior exhibit, it's the same
18 address, web address?

19 A. It appears to be the same.

20 Q. If you're not comfortable, feel free to click
21 on it.

22 A. Yes, it looks the same.

23 Q. So you said it was produced in the case, but do
24 you believe now that you received this -- reviewed this
25 posting on Neo4j's community site via this email?

1 A. I received this email. This would have come
2 into my account. I see Ben responded to it. I'm not
3 sure if this is one I missed. I probably saw it. I
4 don't know, is this something I responded to?

5 Q. Going back to the Neo4j Desktop versus Neo4j
6 Server, the prior exhibit, do you see where it says "Do
7 the terms of use for 'Neo4j Desktop' apply to the ONgDB
8 server which I downloaded under AGPLv3 license"? Do you
9 see that?

10 A. Yes.

11 Q. What -- what do you understand that to mean?

12 A. I think they're asking whether they can use the
13 Neo4j desktop tool, which is a tool, as I understand it.
14 I think they're trying to figure out if they can use
15 that with ONgDB.

16 Q. Is there an ONgDB server?

17 A. ONgDB is a server application.

18 Q. So there's not -- I'm sorry. Go ahead.

19 A. Just like Neo4j is a server.

20 Q. It's not a stand-alone ONgDB server that
21 someone or anyone can use, you actually have to create
22 your own using the software?

23 A. No, there's a stand-alone server. That's what
24 we distribute. That's the same as the Neo4j server.
25 They're both server technologies.

1 Q. As of November 16, 2018, did Graph Foundation
2 have an ONGDB desktop application?

3 A. No, Graph Foundation does not have a Neo4j -- a
4 desktop application.

5 Q. Has Graph Foundation ever tested to see whether
6 the Neo4j desktop application would work with ONGDB?

7 A. I don't think I have ever tested that, no.

8 Q. When you say I, you mean Graph Foundation?

9 A. Yeah, Graph Foundation has not tested that.
10 No, that's not something we support currently.

11 MR. RATINOFF: Okay. Let me go ahead and put
12 the next exhibit up. It should be Exhibit 38. Tab 58
13 is Exhibit 38.

14 (WHEREUPON, Exhibit 38 was marked for
15 identification.)

16 BY MR. RATINOFF:

17 Q. Let me know when you've had a chance to review
18 Exhibit 38.

19 A. I've got it.

20 Q. Do you recognize this printout?

21 A. Yes.

22 Q. Is this a tweet that was put out by the Graph
23 Foundation on March 17, 2019?

24 A. Yes.

25 Q. Okay. Looking at the tweet here, there's -- it

1 says #ONgDB, then in parens it's #FOSS. What does FOSS
2 stand for?

3 A. Free open source software.

4 Q. Then there's a #Neo4j Enterprise.

5 A. Yes.

6 Q. So are you using that hashtag to refer to the
7 Neo4j's Enterprise Edition?

8 MR. PERNICK: Objection; vague.

9 THE WITNESS: I'm sorry. What? I think we're
10 including hashtags again because there's topics ONgDB
11 free open source software and Neo4j in this tweet.

12 BY MR. RATINOFF:

13 Q. So you're referring to ONgDB Version 3.5.3 in
14 this tweet?

15 A. ONgDB 3.5.3. Yeah, it's a support release.

16 Q. And you're not referring to Neo4j Enterprise
17 3.5.3?

18 A. Correct.

19 Q. Why did you use a hashtag in the middle of
20 ONgDB 3.5.3?

21 MR. PERNICK: I'm sorry. Can you repeat that.

22 THE WITNESS: What do you mean in the middle
23 of --

24 BY MR. RATINOFF:

25 Q. You've got ONgDB -- let me ask the question

1 again.

2 So you see it says ONgDB and there's the parens
3 with Neo4j hashtag and then after the close parens it's
4 3.5.3. Do you see that?

5 A. Uh-huh.

6 Q. Why are you referring to Neo4j Enterprise in
7 the middle of ONgDB 3.5.3?

8 A. To help give people that don't know what ONgDB
9 is an opportunity to learn about it and learn more, to
10 get a quick idea of what it is.

11 Q. So you're using the Neo4j hashtag to draw
12 attention to ONgDB 3.5.3?

13 MR. PERNICK: Objection; vague; misstates
14 testimony.

15 THE WITNESS: I think what I said is that it's
16 a topic that Neo4j users may be interested in to see
17 that there are -- there are releases coming out
18 consistently of ONgDB. That's how users know that
19 software is being maintained.

20 MR. RATINOFF: That wasn't my question. I'll
21 ask it again. Actually, why don't you go ahead and read
22 it back, please.

23 (Record Read.)

24 MR. PERNICK: Objection; misstates testimony.

25 THE WITNESS: I don't think that's a question.

1 BY MR. RATINOFF:

2 Q. Well, actually, it is, and I'll just ask it
3 again.

4 So are you using Neo4j -- the Neo4j hashtag to
5 draw users to ONGDB 3.5.3?

6 A. I think the answer I've given applies. We're
7 using the Neo4j hashtag to inform users about ONGDB,
8 Neo4j users that may be interested in understanding that
9 there's a free open-source version that's being
10 maintained and released. That's something generally
11 that people in the open source community want to know.

12 Q. Could you have referred to Neo4j Enterprise
13 without the hashtag?

14 A. Is it possible to write a tweet without a
15 hashtag, yes.

16 Q. That's not my question.

17 Would it have been sufficient to put this tweet
18 out with using Neo4j Enterprise without the hashtag?

19 MR. PERNICK: Objection; vague.

20 THE WITNESS: The Neo4j hashtag is a hashtag
21 that has been used for many years for people in the
22 Neo4j community and around the project to see important
23 things around the project.

24 BY MR. RATINOFF:

25 Q. You're not directing people to Neo4j, you're

1 directing people to ONGDB with the Neo4j hashtag,
2 correct?

3 A. The Neo4j hashtag is a topic. Neo4j is a topic
4 in this case, so we're directing people that are
5 interested in that topic to ONGDB and the support
6 release.

7 Q. I'm sorry. Go ahead.

8 A. No, that was it.

9 Q. You understand Neo4j is a trademark of Neo4j
10 Inc., correct?

11 A. I think we've established that I understand now
12 that Neo4j is a trademark, yes.

13 Q. I think we established you knew that before the
14 lawsuit, too, so let me ask that again.

15 You understood at this time of this tweet that
16 Neo4j was a trademark owned by Neo4j Inc., correct?

17 A. Yes. Yes, Neo4j is a trademark, yes, of Neo4j
18 Inc.

19 Q. And you knew that at the time you made this
20 tweet on March 17, 2019, correct?

21 A. Yes.

22 Q. And I know you keep changing my question. What
23 do you mean it's a topic of discussion? Neo4j hashtag
24 is a topic of discussion, what do you mean by that?

25 A. Do you see on the left how it says # Explore?

1 On Twitter's site, you use hashtags to explore topics of
2 interest. You hashtag something when you want to be
3 able to find topics of interest. So Neo4j for a long
4 time has been understood by the community as a topic on
5 Twitter. People talk about what they're doing in the
6 community by hashtagging Neo4j in their tweets.

7 Q. In order for someone to search this topic,
8 would they tag just Neo4j in the search Twitter window
9 right here? I'm looking right above where you're
10 referring to.

11 A. There are a lot of ways that people can search
12 Twitter and find information. Tagging is one way that
13 you can help surface information that's relevant to the
14 right people, as I understand it.

15 Q. So would I have to type in #Neo4j to search
16 Twitter to come up with this tweet?

17 A. You could just be looking at all -- a lot of
18 the tweets that are under that hashtag. I don't know
19 all the ways that Twitter surfaces what you do when
20 you -- you know, you put a hashtag in something, but it
21 uses it to help direct people to relevant information.

22 Q. So if I click on the Neo4j hashtag, is it your
23 understanding that would just bring up all the tweets
24 that have Neo4j hashtag in it?

25 A. I think that's roughly how that works. It

1 might be filtered based on preferences and stuff. I
2 don't think it's the exact, like, time list or anything.

3 Q. So if you use Neo4j without the hashtag and
4 someone in another tweet clicked on #Neo4j, it wouldn't
5 necessarily pull up this tweet, right?

6 A. Without doing a hashtag, it would just be a
7 text field.

8 Q. Is there anything in this tweet that
9 differentiates ONgDB from -- I'm sorry, strike that.

10 Is there anything in this tweet that
11 differentiates ONgDB 3.5.3 from Neo4j Enterprise?

12 MR. PERNICK: Object. The document speaks for
13 itself.

14 THE WITNESS: What we've linked here says it's
15 open source. I think it's free open source. I think,
16 you know, it's different and it says ONgDB so it looks
17 to me like it's different. It's talking about ONgDB
18 3.5.3.

19 BY MR. RATINOFF:

20 Q. That's in the link, but in the top here there's
21 nothing that suggests Neo4j Enterprise is a separate
22 product from ONgDB 3.5.3, right?

23 MR. PERNICK: Objection; misstates the
24 document. The document speaks for itself.

25 MR. RATINOFF: He can speak to what the

1 document means to him.

2 THE WITNESS: To me, I read the document and it
3 says ONGDB 3.5.3, so I think it's talking about ONGDB
4 3.5.3, and then in parentheses saying this is free
5 open source Neo4j Enterprise. So if you look at other
6 tweets and if you look at the site, you can get an idea
7 more about what's there. Not every tweet is meant to be
8 self-encompassing in every way. If you look at the
9 Graph Foundation Twitter feed in context, you'll see
10 other tweets about changes that have been happening, so
11 this naturally rolls out in that story.

12 MR. RATINOFF: Let me go ahead and mark -- the
13 next exhibit will be Exhibit 39. It will be Tab 60.

14 (WHEREUPON, Exhibit 39 was marked for
15 identification.)

16 BY MR. RATINOFF:

17 Q. Do you have that? Do you have Tab 60 which
18 is -- I'm going to mark as Exhibit 39 in front of you?

19 A. Okay, I see it.

20 Q. So this is a printout from Twitter, a tweet
21 from the Graph Foundation dated May 10, 2019. Do you
22 have any reason to believe this wasn't sent out at that
23 point?

24 A. No.

25 Q. And again, this looks like a very similar tweet

1 to the one we just looked at in Exhibit 38. It seems to
2 be referencing just a different version of ONgDB.

3 Is that fair?

4 A. Yes.

5 Q. And so again, you're using a Neo4j hashtag in
6 between words -- or ONgDB and 3.5.4, correct?

7 A. Yes.

8 Q. And why are you using a Neo4j hashtag in this
9 tweet?

10 A. I think this -- so this is just a template for
11 how we send out our releases. Again, support releases
12 are something that shows activity on a project, so this
13 is consistently drawing everybody and bringing awareness
14 that the project is being maintained and developed.

15 Q. Is it fair to say, though, you could have drawn
16 attention to ONgDB without #Neo4j?

17 A. I think the three things that we decided we
18 wanted to try to raise awareness in was ONgDB as our
19 main tag, free open source software as a tag that people
20 look at when they're just looking for FOSS, because it's
21 a thing, and then to everybody in the Neo4j community,
22 so those three things are things that we felt, you know,
23 for people on Twitter we wanted to try to raise
24 awareness to the maintenance of the project and that it
25 existed and that it was being developed.

1 Q. So you believe that ONgDB wasn't really readily
2 identifiable at this point as a standalone product?

3 A. I mean, ONgDB has -- you know, like anything,
4 it was -- it's newly created and so you -- you know, you
5 have to let people know that it exists, just like --
6 just like anything so people that are in the community
7 that -- there's a lot of people in the community that
8 didn't -- that may to this day still don't know that
9 they have options and they have choice. You know, it's
10 a sad thing that Neo has never told anybody they have a
11 choice, so we do what we can to try to tell people they
12 have choice and freedom.

13 Q. Although -- strike that.

14 Let me ask this question: So by using a Neo4j
15 hashtag, you were hoping to draw more attention to the
16 ONgDB; is that correct?

17 MR. PERNICK: Objection; vague.

18 THE WITNESS: I think you've asked that before.

19 BY MR. RATINOFF:

20 Q. Different document.

21 A. I think the answer is the same.

22 Q. Okay. Well, let me ask the question again
23 because this is a new document.

24 So it's Exhibit 39. You're using the Neo4j
25 hashtag to draw more attention to ONgDB's new release,

1 correct?

2 A. I think I've given a description of why we use
3 hashtags. We use hashtags so that people that are
4 looking at that hashtag that are interested in Neo4j can
5 also learn about ONGDB and the support releases that
6 we're making so that they can see an actively maintained
7 project.

8 MR. RATINOFF: Can you read my question back
9 because I don't think that was an answer.

10 (Record Read.)

11 MR. PERNICK: I believe he's answered the
12 question, Jeff.

13 MR. RATINOFF: I'll ask a new question.

14 BY MR. RATINOFF:

15 Q. So using -- by using the #Neo4j, Graph
16 Foundation's would make it more likely that this tweet
17 would come up under a search for Neo4j, correct?

18 A. Based on my understanding of Twitter, somebody
19 that is looking for Neo4j directly or has interest in
20 Neo4j through related things would be able to become
21 aware of this tweet by hashtagging it.

22 Q. Thank you.

23 MR. RATINOFF: The next is Exhibit 61. Tab 61.
24 I apologize. And this will be marked as Exhibit 40.
25 ///

1 (WHEREUPON, Exhibit 40 was marked for
2 identification.)

3 BY MR. RATINOFF:

4 Q. Let me know when you've had a chance to review
5 it.

6 A. Okay, I have it.

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. What is it?

10 A. It's a tweet from the Graph Foundation.

11 Q. Do you have any reason to believe this isn't an
12 accurate printout of Graph Foundation tweet from
13 October 9, 2019?

14 A. No.

15 Q. So looking at this tweet, is it fair to say
16 it's different than the last two we looked at?

17 A. Yes.

18 Q. And is it fair to say in the body of the tweet,
19 this one uses the Neo4j hashtag in a different way?

20 A. Yes.

21 Q. And how is it different?

22 A. I mean, hashtags are often used in sentences,
23 so it's used in a different part of a sentence than the
24 previous one.

25 Q. You're not using the Neo4j hashtag format in

1 ONgDB in 3.5.11, correct?

2 A. Correct, we did not use this exact same format
3 as the previous ones.

4 Q. And then below you're saying "What is ONgDB?"
5 Do you see that?

6 A. Yes.

7 Q. "Open Native Graph DB is an open source fork of
8 Neo4j," right?

9 A. Yes.

10 Q. And that's the main difference in the use of
11 the hashtag?

12 A. Yeah. It's a completely different tweet.

13 MR. RATINOFF: Okay. I'm going to mark the
14 next exhibit. This is Tab 62. You should get this in
15 your chat here momentarily. This will be Exhibit 41.

16 (WHEREUPON, Exhibit 41 was marked for
17 identification.)

18 MR. RATINOFF: Let me know when you've had a
19 chance to download it.

20 THE WITNESS: I have it.

21 BY MR. RATINOFF:

22 Q. This is a printout of a tweet dated
23 November 27, 2019, on the Graph Foundation Twitter
24 account. Is that a fair description?

25 A. Yes.

1 Q. Do you have any reason to believe this tweet
2 wasn't sent out by the Graph Foundation on November 27,
3 2019?

4 A. No.

5 Q. And is it fair to say this tweet reverted back
6 to the prior format in Exhibits 38 and 39?

7 A. This appears to be a condensed format that we
8 use.

9 Q. So again, you're using Neo4j hashtag -- I'm
10 sorry -- #Neo4j in the middle of ONgDB 3.5.12?

11 A. In this template, yes.

12 Q. There's no reference to Neo4j -- I'm sorry,
13 strike that.

14 And there's no reference in the top of this
15 tweet stating that ONgDB is a fork in the Neo4j
16 Enterprise, correct?

17 MR. PERNICK: Objection; misstates the
18 document. The document speaks for itself.

19 THE WITNESS: This tweet has what it has.

20 BY MR. RATINOFF:

21 Q. Okay. So it's got the Neo4j hashtag next to
22 the word Enterprise and it's right in the middle of
23 #ONgDB 3.5.12, correct?

24 A. The hashtag is in, yes, in parentheses in
25 between, sure, yes.

1 Q. Again, you're using the hashtag here to allow
2 people to search for Neo4j hashtag to find this tweet,
3 correct?

4 A. I think it's the same as the other -- it's the
5 same answer as the other ones. This is essentially the
6 same document. I don't know what we answered the other
7 ones. This is no different than the other two. These
8 are all the same template.

9 Q. Understood. So you're using in this particular
10 tweet the #Neo4j to bring people's attention to ONgDB
11 3.5.12?

12 A. Yes, we are using -- we are using this tweet to
13 bring awareness to the latest release that -- the
14 support release that came out and including the tags
15 that we have in our condensed version on topics that we
16 want people that are interested to be able to see.

17 MR. RATINOFF: I'm going to mark Exhibit 63
18 [sic]. I'm sorry, it's getting late. I know it's later
19 there for you so thanks for hanging with us.

20 (WHEREUPON, Exhibit 42 was marked for
21 identification.)

22 BY MR. RATINOFF:

23 Q. And I'll mark this as Exhibit 42. This is a
24 printout of a tweet from the Graph Foundation account
25 dated January 18, 2020.

1 Do you have any reason to believe this isn't a
2 correct copy of the tweet that was issued by the Graph
3 Foundation on this date?

4 A. No.

5 MR. RATINOFF: I'm sorry. Denise, did you get
6 that?

7 THE REPORTER: I did.

8 BY MR. RATINOFF:

9 Q. And this is again following the same format as
10 the prior Exhibit 41 that we just discussed, correct?

11 A. Yes.

12 Q. And again, the #Neo4j has been inserted between
13 ONqDB and 3.5.14?

14 A. Yes.

15 Q. And the reason why you're using the hashtag
16 Neo4j is to get those who are interested in Neo4j to
17 find ONqDB?

18 A. I'm sorry. Can you repeat this? What was it?

21 (Record Read.)

22 THE WITNESS: I don't know if that's exactly
23 how I said it, but I mean, that's -- that's roughly
24 right. We want to enable -- we want to make aware -- we
25 want to enable Neo4j users to become aware that there is

I

1 another option that's open source and that is
2 maintained.

3 MR. PERNICK: Jeff, can we take a quick break.

4 MR. RATINOFF: Yeah, let me just do one more
5 document and then I think I want to have a quick
6 discussion off the record. I'm kind of at a stopping
7 point not necessarily for the day, but --

8 MR. PERNICK: Okay.

9 MR. RATINOFF: Then this is Exhibit -- I'm
10 sorry -- Tab 64, which you'll get momentarily, which
11 I'll mark as Exhibit 43. Let me know when you've had a
12 chance to review it.

13 (WHEREUPON, Exhibit 43 was marked for
14 identification.)

15 BY MR. RATINOFF:

16 Q. And this is a tweet from May 19, 2020, from a
17 Graph Foundation Twitter account. Do you have any
18 reason to believe this isn't an accurate and correct
19 printout of this tweet?

20 A. No.

21 Q. And in this particular tweet I note there's a
22 Neo4j hashtag which is in a different format than the
23 last one, correct?

24 A. Correct.

25 Q. And the Neo4j hashtag here is just by itself,

1 COURT REPORTER'S CERTIFICATE
2

3 I, DENISE MYERS BYRD, CA CSR 8340, RPR, the officer
4 before whom the foregoing proceeding was conducted, do hereby
5 certify that the witness whose testimony appears in the
6 foregoing proceeding was duly sworn by me; that the testimony
7 of said witness was taken down by me in stenotype to the best
8 of my ability and thereafter transcribed under my supervision;
9 and that the foregoing pages, inclusive, constitute a true and
10 accurate transcription of the testimony of the witness.

11 Before completion of the deposition, review of the
12 transcript [X] was [] was not requested. If requested, any
13 changes made by the deponent (and provided to the reporter)
14 during the period allowed are appended hereto.

15 I further certify that I am neither counsel for,
16 related to, nor employed by any of the parties to this action,
17 and further, that I am not a relative or employee of any
18 attorney or counsel employed by the parties thereof, nor
19 financially or otherwise interested in the outcome of said
20 action. Signed this 9th day of October 2020.

21

22

23

Denise Myers Byrd

24

CSR 8340, RPR, CLR 102409-02

25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware
corporation; and NEO4J SWEDEN
AB, a Swedish corporation,

Plaintiffs,

vs.

CASE NO.
5:19-cv-06226-EJD

GRAPH FOUNDATION, INC., an
Ohio corporation; GRAPHGRID,
INC., an Ohio corporation;
and ATOMRAIN, INC., a Nevada
corporation,

Defendants.

REMOTE VIDEOTAPED DEPOSITION OF
BRAD NUSSBAUM
as representative of GRAPH FOUNDATION, INC.
pursuant to Federal Rule of Civil Procedure 30 (b) (6)

VOLUME II

DATE: November 9, 2020

TIME: 10:03 a.m.

LOCATION: via videoconference

REPORTED BY: BENJAMIN GERALD
California CSR No. 14203
Washington CSR No. 3468

1 Q. Okay. So similar question: One of the things
2 that you had said you would check into after your last
3 deposition is whether there were any other
4 communications by you with other customers besides
5 Next Century regarding the Free Software Foundation's
6 alleged determination that the Commons Clause was an
7 improper addition to the AGPL.

8 Do you recall that?

9 A. I didn't recall anything about looking for
10 other customers, though I don't believe that there -- I
11 mean, I'm not sure what even you mean by "customers,"
12 but I don't -- I don't think from the Foundation's
13 standpoint there were other organizations that we -- we
14 talked to about this.

15 What I recall from our past conversation was
16 looking into what information we received in dialog from
17 the IRS about the AGPL.

18 Q. Okay. But you didn't go and look to see
19 whether there was any other communications about the IRS
20 opinion?

21 MR. PERNICK: You mean the IRS now, or the Free
22 Software Foundation?

23 MR. RATINOFF: Well, he just mentioned IRS, so
24 I'm --

25 MR. PERNICK: Okay. I just wanted to make

1 sure.

2 THE WITNESS: Yeah. From our last
3 conversation, I -- I did discuss with Ben, because he
4 was the one involved, how the conversations occurred
5 within the IRS.

6 BY MR. RATINOFF:

7 Q. And what did you learn?

8 A. I learned that there was one call that he was
9 on where the IRS lawyers asked him some questions,
10 mostly a conversation with John Mark, and I think he got
11 asked maybe -- or he answered maybe one question, he had
12 said. Yeah.

13 Q. When did that call --

14 A. It was also not --

15 Q. Sorry. Go ahead.

16 A. It was also not a conversation that was under
17 any capacity as the Foundation at that time. He had
18 said that the conversation was because we were --
19 because AtomRain was doing consulting work inside of the
20 IRS.

21 Q. Okay. Do you know when that conversation
22 occurred?

23 A. I don't. It was by phone, and I think Ben said
24 he took it from a tree stand while he was hunting
25 sometime in the fall, so...

1 Q. Good way to scare away the deer.

2 A. I don't know how he does it. He manages to
3 pull it off somehow.

4 Q. Good stuff. Okay.

5 You said IRS counsel; do you recall, or did Ben
6 tell you who from the IRS was on that call?

7 A. No, he didn't mention any names.

8 Q. And you said John -- there was a conversation
9 with John Mark; are you referring to the same telephone
10 call with the IRS?

11 A. Yeah. John Mark was -- I think he had
12 organized the call because he was leading those
13 discussions there.

14 Q. Okay. But -- but Ben was not attending that
15 call on behalf of Graph Foundation, correct?

16 A. No. He was attending it because of the work
17 done through AtomRain.

18 Q. And did Ben tell you when the IRS conveyed on
19 that call?

20 A. They didn't convey anything. They asked
21 questions. There were no conclusions that were stated
22 on that particular call. It was more of a fact-finding
23 call or just information gathering. And then they
24 ultimately, you know, made their -- their decisions and
25 their -- their decisions afterwards.

1 Q. Okay. But you weren't privy to -- strike that.

2 Graph Foundation wasn't privy to those
3 decisions made by the IRS, correct?

4 A. We learned about the decisions, you know,
5 following that call and the eventual use of ONgDB by the
6 IRS. So the Graph Foundation found out about it because
7 of our relationship with AtomRain.

8 Q. Okay. And what did Graph Foundation find out?

9 A. That the IRS decided to move forward with using
10 ONgDB, and they accepted their use was under AGPL.

11 Q. Graph Foundation was never privy to the actual
12 internal deliberations of the IRS, correct?

13 A. What does it mean to be "privy to the internal
14 deliberations"?

15 Q. Did Graph Foundation have any inside
16 information -- sorry. Strike that.

17 Graph Foundation didn't have any insight into
18 the IRS' deliberative process on whether they could use
19 ONgDB under the AGPL, correct?

20 A. Correct. They -- they conducted whatever
21 internal process that they did with their legal counsel
22 and came to their conclusions.

23 Q. Okay. And then going back to the original
24 question on this Exhibit 32, was there any other
25 communications that you were able to locate from Graph

1 apparently, it wasn't. Okay.

2 So this will be Tab 40, and we'll go ahead and
3 mark this as Exhibit 45.

4 (Exhibit 45 was marked for identification.)

5 BY MR. RATINOFF:

6 Q. Let me know when you have a chance to open this
7 and take a look at it.

8 A. Yup. I've got it.

9 Q. Okay. So this is a printout, you can see down
10 at the -- the gutter, from Graph Foundation's website on
11 October 13, 2020.

12 Do you see that?

13 A. Yes.

14 Q. Okay. And do you have any reason to believe
15 this printout is -- is not a true and accurate
16 representation of this page on Graph Foundation's
17 website as of that date?

18 A. No.

19 Q. Okay. ONgDB 3.5.19, is that the last 3.5
20 version that Graph Foundation published?

21 A. I think it might be the latest one on the
22 site --

23 Q. And --

24 A. -- as of today.

25 Q. And was there, to your knowledge, a Neo4j

1 Enterprise 3.5.19, as well?

2 A. Yes.

3 Q. Okay. So I am going to go ahead and share this
4 now. So I want to cover a couple of things on it and
5 make sure this gets captured. You can keep looking -- I
6 think this is going to pull up on your screen over
7 your -- what you're looking at, so I want you to refer
8 to the screen share. All right. You should be able to
9 see -- should -- you should see Exhibit 45 on my screen
10 as I scroll.

11 Do you see that?

12 A. Uh-huh.

13 Q. Okay. So I'm going to go ahead and hover over
14 this docs, HTML link; do you see that?

15 A. Yes.

16 Q. And that leads to

17 github.com/graphfoundation/ongdb/wiki/ongdb-3.5-docs.

18 Do you see that?

19 A. Yes.

20 Q. I'm going to go ahead and click on that. It's
21 going to bring up my browser. I'm going to have to
22 switch over. Give me one second here to switch over.

23 Okay. You should now be looking at the target
24 site, which should be

25 github.com/graphfoundation/ongdb/wiki.

1 Do you see that?

2 A. Yes.

3 Q. All right. I've overcome that technological
4 challenge. Now I'm going to go ahead and click on the
5 number one line here, "ONgDB Docs." I'm going to go
6 ahead and click on that, and we're going to go to what
7 appears to be a web page with the title "Docs." The
8 address is github.com/graphfoundation/ongdb/wiki/docs.

9 Do you see that?

10 A. Yes.

11 Q. Okay. And this is -- sorry. Strike that.

12 | What are we looking at now?

13 A. A wiki page for finding docs for ONGDB.

14 Q. Is this essentially a document repository on
15 Graph Foundation's GitHub repository?

16 A. It's a wiki page with a location to find docs
17 for ONgDB.

18 Q. All right. So I'm going to go ahead and click
19 on this link under -- it says "LTS release."

20 Do you see that?

21 A. Yes.

22 Q. And then underneath it's a hyperlink, which
23 doesn't bring up what it is, but it's ONGDB 3.5.

24 A. Yes.

25 Q. I'm going to go ahead and click on that.

1 And can you tell me what we just went to after
2 clicking that hyperlink?

3 A. The site title is called "Neo4j Operations
4 Manual v3.5."

5 MR. RATINOFF: And that -- for the record,
6 that's -- the web address we just went to is
7 neo4j.com/docs/operations-manual/3.5/, correct?

8 THE WITNESS: Yes.

9 BY MR. RATINOFF:

10 Q. So we're not looking at the
11 Graph-Foundation-generated document, correct?

12 A. Correct.

13 Q. This -- this wasn't an operations manual that
14 Graph Foundation created, correct?

15 A. Correct.

16 Q. And do you recall, at our last deposition, we
17 were talking about the Creative Commons license?

18 A. Vaguely, yes.

19 Q. And what's your understanding of the Creative
20 Commons license?

21 A. I'm not sure I have a very thorough one.

22 Q. Do you recall we had a discussion about
23 commercial restrictions in the Creative Commons license?

24 A. I remember -- I remember you mentioned it, yes.

25 Q. Well, let me just ask you this: What's your

1 that.

2 Let me go ahead and go back to -- we're going
3 to go back to the
4 github.com/graphfoundation/ongdb/wiki/docs. I'm just
5 going to go ahead and go down to where it says "Older
6 Releases."

7 Do you see that?

8 A. Yes.

9 Q. I'm going to go ahead and click on that. And
10 if you see that link I clicked took us to
11 [neo4j.com/docs/operations manual](https://neo4j.com/docs/operations-manual/3.4/) -- I'm sorry. Let me
12 re-read that.

13 neo4j.com/docs/operations-manual/3.4/.

14 Do you see that?

15 A. Yes.

16 Q. And what is at that URL address?

17 A. What is the URL address?

18 Q. What -- what did the URL address take us to?

19 A. The Neo4j operations manual 3.4.

20 Q. And do you see where it says, "This is the
21 operations manual for Neo4j version 3.4, authored by the
22 Neo4j team"?

23 A. Yes, I see that.

24 Q. So this manual was authored by Neo4j, correct?

25 A. As stated by the site.

1 Q. Sorry. Graph Foundation didn't author an
2 operations manual for ONgDB version 3.4, correct?
3

4 A. Based on how we established authoring last
5 time, yes, that's correct.
6

7 Q. And then you'll see there's a link here again
8 to the Creative Commons 4.0.
9

10 A. Do you see that?
11

12 A. Yes.
13

14 Q. And we'll go to that license again. It takes
15 us back to neo4j.com/docs/license/.
16

17 A. Do you see that?
18

19 A. Yes.
20

21 Q. Okay. And can we agree this is the same
22 license we were just looking at?
23

24 A. Yes.
25

26 Q. And then under "non-commercial," it says, "You
27 may not use the material for commercial purposes"?
28

29 A. Yes.
30

31 Q. Okay. Just give me one second here. I'll go
32 ahead and stop sharing.
33

34 MR. RATINOFF: I'm just going to go ahead and
35 drop a new exhibit in. I just wanted to make sure we
36 have an exhibit to mark for the Creative Commons
37 license. So let me know when you see what should be
38 Tab 91.1.
39

1 THE VIDEOGRAPHER: And this would be
2 Exhibit 46?

3 MR. RATINOFF: Correct. So I'd like to mark
4 this as Exhibit 46.

5 (Exhibit 46 was marked for identification.)

6 BY MR. RATINOFF:

7 Q. Let me know when you have that in front of you.

8 Mr. Nussbaum? Are you able to look at --

9 A. I have it.

10 Q. Okay. Thank you. All right.

11 Can you go ahead and look at this and look at
12 the bottom in the gutter there? It's -- this is a web
13 archive capture. You can see the dates 2019-08-2018.

14 Do you see that? I'm sorry. Strike that?

15 It's 2019-08-20; do you see that?

16 A. Yes.

17 Q. I'll represent to you this was printed out from
18 the web archive, and this is a capture that was on
19 August 20, 2019, from -- which I believe is the same
20 page we were looking at, neo4j.com/docs/license.

21 Do you see that?

22 A. Yes.

23 MR. PERNICK: Objection.

24 Okay. I didn't understand that question, but
25 Brad, if you did, that's fine.

1 THE WITNESS: I think he was just saying it's
2 from the Neo4j site as of that date.

3 MR. PERNICK: Okay. Got it.

4 THE WITNESS: Did I understand it wrong?

5 BY MR. RATINOFF:

6 Q. No, I think -- I think you got it.

7 MR. PERNICK: All right. Thank you.

8 BY MR. RATINOFF:

9 Q. Can we agree that this is the same license we
10 were just looking at live on Neo4j's website?

11 MR. PERNICK: I'm going to object to the extent
12 you're asking him to review it word for word, but he can
13 give you his understanding without having a
14 word-for-word comparison.

15 THE WITNESS: I generally see the same
16 structure and content, the same sections.

17 BY MR. RATINOFF:

18 Q. So I'm going to try to narrow down -- you
19 mentioned that you had spoken to counsel about this
20 license, and I'm not asking about those communications,
21 but was it prior to August 2019 that you had
22 conversations with counsel regarding the Creative
23 Commons license?

24 A. Any conversations we had would have gone back
25 to the formation, prior to formation when we reviewed

1 the AGPL Commons and the like. So I guess that would
2 have put conversations at April/May of 2018.

3 Q. So if you had any conversations about the Neo4j
4 Creative Commons license, it would have been around the
5 time of Graph Foundation's formation in June of 2018; is
6 that correct?

7 A. I mean, that may not have been the only time.
8 That's certainly the time that we were talking about,
9 you know, the validity of the licenses that were at
10 play. Again, I don't recall this one getting much
11 focus. I don't think the way that we were using it was
12 deemed to apply to the material as this license states,
13 so I don't think it was applicable.

14 Q. And you had mentioned -- I think we talked
15 about this last time, about the applicability of the
16 Commons Clause.

17 Are you relying on a formal opinion of counsel
18 to support your position that removal of the Commons
19 Clause from Neo4j's AGPL was appropriate?

20 MR. PERNICK: Objection. Jeff, are you asking
21 whether we're asserting an advice-of-counsel defense?

22 MR. RATINOFF: Yeah, I am.

23 MR. PERNICK: So we have not asserted an
24 advice-of-counsel defense.

25 MR. RATINOFF: Okay.

1

CERTIFICATE

2

I, BENJAMIN GERALD, Certified Shorthand Reporter,
Certificate No. 14203, for the State of California do
hereby certify:

5

That prior to being examined, the witness named in
the foregoing deposition was by me duly sworn to testify
to the truth, the whole truth, and nothing but the truth
in the within-entitled cause;

9

That said deposition was taken shorthand at the
time and place herein named;

11

That the deposition is a true record of the
witness's testimony as reported to the best of my
ability by me, and was thereafter transcribed to
typewriting by computer under my direction;

15

That request [X] was [] was not made to read and
correct said deposition.

17

I further certify that I am not interested in
the outcome of said action, nor am I connected with, nor
related to any of the parties in said action, nor to
their respective counsel.

21

Witness my hand this 11th day of October, 2020.

22

23

24

BENJAMIN GERALD, CSR No. 14203

25

STATE OF CALIFORNIA