

EXHIBIT 16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TWITTER, INC.,
Plaintiff,
v.
VOIP-PAL.COM, INC.,
Defendant.

Case No. 5:20-CV-02769-LHK

DECLARATION OF LEWIS E. HUDNELL, III IN SUPPORT OF DEFENDANT VOIP-PAL.COM, INC.’S MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(1), 12(b)(2), AND 12(b)(3)

I, Lewis E. Hudnell, III, declare as follows:

1. I am the founding principal of Hudnell Law Group P.C., counsel for VoIP-Pal and I am admitted to the Bar of this Court. I have personal knowledge of the facts in this declaration, and if called as a witness, I could and would testify competently regarding those facts.

2. Attached as Exhibit 1 to my declaration is a true and correct copy of Order Referring Parties To Settlement Conference in *Twitter I* dated March 9, 2021.

3. Attached as Exhibit 2 to my declaration is a true and correct copy of email correspondence between counsel for Twitter and me dated December 8, 2020 - January 4, 2021.

4. Attached as Exhibit 3 to my declaration is a true and correct copy of email correspondence between counsel for Twitter and me dated January 15-27, 2021.

5. Attached as Exhibit 4 to my declaration is a true and correct copy of email correspondence between counsel for Twitter and me dated April 9-13, 2021.

6. Attached as Exhibit 5 to my declaration is a true and correct copy of email correspondence between counsel for Twitter and me dated April 21-28, 2021.

1 7. Attached as Exhibit 6 to my declaration is a true and correct copy of a letter from
2 counsel for Twitter to me dated April 22, 2021.

3 8. Attached as Exhibit 7 to my declaration is a true and correct copy of a letter from me
4 to counsel for Twitter dated April 23, 2021.

5 9. Attached as Exhibit 8 to my declaration is a true and correct copy of a letter from
6 counsel for Twitter to me dated April 28, 2021.

7 10. Attached as Exhibit 9 to my declaration is a true and correct copy of email
8 correspondence between counsel for Twitter and me dated May 4, 2021.

9 11. Attached as Exhibit 10 to my declaration is a true and correct copy of pages from the
10 government website operated by the State of Nevada regarding VoIP-Pal's incorporation located at
11 <https://esos.nv.gov/EntitySearch/BusinessInformation>, visited on August 10, 2020.
12

13 12. Attached as Exhibit 11 to my declaration is a true and correct copy of pages taken
14 from the Application for Registration of a Foreign For-Profit Corporation filed with the Texas
15 Secretary of State by VoIP-Pal.com, Inc.
16

17 13. Attached as Exhibit 12 to declaration is a true and correct copy of the Order filed in
18 VoIP-Pal.com v. Twitter, Inc. et al., U.S. District Court of Nevada, Case No. 2:18-cv-02338 (Dkt.
19 No. 41).
20

21 14. Attached as Exhibit 13 to my declaration is a true and correct copy of Defendant
22 Twitter, Inc.'s Motion to Transfer Based on Improper Venue [Fed.R.Civ.P. 12(b)(3), 28 U.S.C. §§
23 1400(b) and 1406] filed in *VoIP-Pal.com v. Twitter, Inc.*, U.S. District Court of Nevada, Case No.
24 2:18-cv-02338 (Dkt. No. 27).
25

26 15. On or about December 2, 2020 in a telephone conference with lead counsel for
27 Twitter, Gene W. Lee, I communicated a settlement offer to Twitter whereby VoIP-Pal would grant
28

1 Twitter a covenant not to sue on the '606 patent in exchange for a \$250,000 settlement payment from
2 Twitter. I intended that this settlement offer be kept confidential. I only communicated this offer to
3 Twitter and VoIP-Pal had no expectation that Twitter would disclose this offer to any other party. I
4 did not communicate any contrary expectation to Twitter. Any alleged failure to designate this
5 communication as confidential under the Stipulated Protective Order was inadvertent and
6 unintentional.

8 16. On or about December 8, 2020, I had a telephone conference with Mr. Lee. Twitter
9 declined VoIP-Pal's settlement offer indicating that it was not interested in a piecemeal settlement
10 that did not encompass VoIP-Pal's other patents. I have no recollection of Twitter seeking a
11 covenant not to sue specifically for the '872 patent at that time.

13 17. On or about December 18, 2020, I had teleconference with Mr. Lee. I communicated
14 to Mr. Lee that VoIP-Pal was willing to stipulate to non-infringement so it could take a direct appeal
15 of the order denying VoIP-Pal's Motion to Dismiss. I intended that this communication remain
16 confidential. I only communicated this offer to Twitter and VoIP-Pal had no expectation that Twitter
17 would disclose this offer to any other party. VoIP-Pal did not communicate any contrary expectation
18 to Twitter. Any alleged failure to designate this communication as confidential under the Stipulated
19 Protective Order was inadvertent and unintentional.

21 18. On January 4, 2021, I received an email from Mr. Lee regarding our December 18
22 conversation. Twitter declined to enter into a stipulation to resolve the matter indicating that it was
23 interested in a broader settlement. *See Ex. 2.*

25 19. On or about January 11, 2021, I had a teleconference with Mr. Lee. I communicated
26 to Mr. Lee that VoIP-Pal was willing to settle with Twitter as to the '606 patent family in exchange
27 for a \$1,000,000 settlement payment from Twitter. I intended that this communication remain
28

1 confidential. I only communicated this offer to Twitter. VoIP-Pal had no expectation that Twitter
2 would disclose this offer to any other party. I did not communicate any contrary expectation to Mr.
3 Lee. Any alleged failure to designate this communication as confidential under the Stipulated
4 Protective Order was inadvertent and unintentional.

5
6 20. On or about January 15, 2021 I received an email from Mr. Lee regarding our January
7 11 conversation. Twitter declined VoIP-Pal's settlement offer. Twitter also subsequently declined to
8 make a counteroffer. *See* Ex. 3.

9
10 21. On April 9, 2021, in order to resolve VoIP-Pal's pending Motion to Dismiss, VoIP-Pal
11 inquired whether Twitter would stipulate to a covenant not to sue regarding the '606 patent. *See* Ex.
12 4 at pp. 2-3.

13
14 22. On April 12, 2021, Twitter responded in part that, at a minimum, a covenant not to sue
15 to resolve Twitter's declaratory judgment action against the '606 patent should also include the '872
16 patent. *Id.* at pp. 1-2. This email marked the first time that Twitter claimed that an actual
17 controversy existed as to '872 patent or that VoIP-Pal proposed covenant as to the '606 patent must
18 extend to the '872 patent in order to divest the court of jurisdiction over the '606 patent. Still, Twitter
19 did not request a covenant not to sue as to the '872 patent. *Id.*

20
21 23. On April 13, 2021, recognizing that Twitter was trying to manufacture jurisdiction as
22 to the '872 patent, VoIP-Pal responded that it would discuss issues unrelated to VoIP-Pal's Motion to
23 Dismiss only under FRE 408 and/or at the settlement conference. *Id.* at p.1.

24
25 24. On April 16, 2021, Twitter filed a second declaratory-judgment action against VoIP-
26 Pal.

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