

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG, Individually, and  
FACEBOOK, INC.

Defendants.

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Civil Action No. : 1:10-cv-00569-RJA

**SECOND SUPPLEMENTAL**  
**DECLARATION**  
**OF**  
**PAUL CEGLIA**

PAUL CEGLIA, submit this second supplemental declaration in compliance with the Court's August 18, 2011 Order (Doc. No. 117) and hereby declare under penalty of perjury and pursuant to 28 U.S.C. 1746 that the following is true and correct:

1. I make this declaration upon personal knowledge.
2. Following the court's order of August 18, 2011, I submitted a 30 page supplemental declaration to Defendants. Exhibit A to response to Defendants' Third Motion To Compel.
3. The creation of this declaration consumed more than 100 hours of attorney time and my own time to prepare.
4. Following receipt of that supplemental declaration, I was informed by counsel that Defendants sent a letter to Plaintiff's counsel listing items Defendants felt were required to be included in the supplemental declaration, but were

omitted. Exhibit B to Response to Defendant's Third Motion to Compel.

5. In response to those correspondence, this second supplemental declaration is being provided to satisfy Defendants requests for information before standard discovery begins.
6. I submit this declaration in response to Defendants' memorandum filed as Doc. No. 155 to the Third Motion to Compel listing items Defendants' believe are wrongfully omitted from my first supplemental declaration.
7. At to the item identified on page five of nine of Doc. No. 155 as "**First**" my response is as follows:
  - a. Sometime in February of 2011 I made a detailed search of my home in Wellsville, including the attic, basement and office where I examined every document to see if it related in any way to this case, and simultaneously collected every digitally storage device I could find.
  - b. I searched my parents home, including their basements and attic and office for any materials that may have been stored there and I had forgotten about.
  - c. I searched my parents place of business for any documents or electronic media stored in that location.
  - d. At each location, these searches consumed hours of my time.
  - e. I was unable to determine the physical size, color, shape or other features of any USB stick merely by the serial number and name provided in Mr. Southwell in Doc. No. 155.

- f. I, therefore, attempted to locate ANY USB drive or device at all to provide to Defendants.
  - g. My parents agreed to travel to the Bahamas on my behalf to search through my storage down there.
  - h. When the claim was made that USB sticks or storage devices were “missing,” I immediately requested my mother to once again search everywhere she could in my office, behind desks, tables etc. to ensure that a usb stick hadn’t been overlooked in my initial search.
  - i. As of the submission of this second supplemental declaration I have provided to Defendants every USB stick or other electronic data storage device in my possession, custody or control.
  - j. As of the submission of this second supplemental declaration I can think of no other locations to search for any other USB stick or storage device that may have ever been in my possession, custody or control.
  - k. As to the ownership, existence or location of the Seagate FreeAgent GoFlex USB Device, internal identifier NA056T98&0, I have no information to provide about that device. I have no knowledge of this device being in my possession, custody or control at any time. I have not been provided any information as to what computer of mine this device may have been attached to at any point in time.
8. At to the item identified on page five of nine of Doc. No. 155 as “**Second**” my response is as follows clarifying my previous declaration regarding the

Adelphia email account:

- a. I have never owned an email account with Adelphia.
  - b. I do recall that my parents had an email account with Adelphia in the past.
  - c. I do recall on one occasion using my parent's Adelphia email account to show my mother how to send an email.
  - d. I was never provided then, nor do I have now, the username or password for any Adelphia account.
  - e. I am aware that my parents no longer have an email account with Adelphia.
  - f. I am not aware of the date when my parents closed their email account with Adelphia.
  - g. I did not then and do not have now the authority to consent to the access of an email account that I never owned nor had the username or password to access.
  - h. I have no objection to Defendants submitting a subpoena in an attempt to identify and obtain records about any Adelphia account Defendants believe is owned or was owned by me.
9. At to the item identified on page six of nine of Doc. No. 155 as "**Third**" my response is as follows:
- a. All images/pictures of the Facebook contract captured by John Osborn are being submitted directly to Defendants by FEDEX per my attorney Dean Boland's discussions with Mr. Osborn over the past weekend.

- b. My attorneys now have copies of all images/pictures provided to them from Mr. Osborn as well and can provide those images/pictures to Defendants if that is preferred by Defendants.
- c. We have provided to Defendants the images/pictures provided to us by Mr. Aginsky. Mr. Aginsky has been unable to respond to our subsequent requests for copies of images/pictures he captured of the Facebook contract in “native format” as a result of Plaintiff’s inability to keep up with Mr. Aginsky’s, and other experts’, litigation related expenses.
- d. This matter and Defendants’ approach to the matter have resulted in enormous expense to me to maintain this suit and my presence in court to have this claim heard.
- e. I will consent to a subpoena to Mr. Aginsky to obtain any such images/pictures in native format as sought by Defendants as identified in this item.
- f. I cannot consent to the issuance of “targeted interrogatories” to any experts in this EXPEDITED DISCOVERY phase of the case for two reasons:
  - i. The description of “targeted interrogatories” is not targeted. It does not describe what topics, what questions nor what responses would be satisfactory.
  - ii. Interrogatories were not contemplated as part of the EXPEDITED DISCOVERY agreed to by the parties and is properly the subject of regular discovery.
  - iii. This request appears to be a subtle slide into regular discovery with the

Defendants' advantage of a largely one-sided exchange of information.

10. At to the item identified on page six of nine of Doc. No. 155 as "**Fourth**" my response is as follows:

a. This item is addressed in the response already provided above.

11. At to the item identified on page six of nine of Doc. No. 155 as "**Fifth**" my response is as follows:

a. The August 18, 2011 order does not require the production of files with "metadata."

b. The Electronic Asset Inspection Protocol, Doc. No. 85 does not include the term "metadata."

c. Defendant's Memorandum, Doc. No. 155 does not define metadata.

d. The Sedona Glossary of ESI terms, in use per the Local Rules of the Western District of New York, includes multiple definitions of meta-data.

e. The files already produced by Plaintiff per the August 18, 2011 order are already in their "native format." i.e. they are the unaltered copies of the images/pictures captured of the Facebook contract by the various experts except for Aginsky which has been addressed above.

f. Despite the metadata requirement not being in the court's order, explicitly or implicitly, I have not been provided by Defendants a definition of their terms "complete native format" or "complete native production" or "original embedded metadata" of the produced files as that term is used in the Southwell letter, Exhibit B.

12. At to the item identified on page six of nine of Doc. No. 155 as “**Sixth**” my response is as follows:
  - a. I have reviewed those privilege logs, Doc. No. 156-2 and 156-4, and agree to the disclosure of the following:
    - i. All items identified on 156-4, except those that are listed as REDACTED by the computer forensic expert and also not described by the computer forensic expert, Stroz Friedberg.
    - ii. All items identified on 156-2, except the item described as “Partial Lawsuit Overview” which has been submitted directly to the court per the court’s TEXT ORDER, Doc. No. 167.
13. I have no objection to Stroz Friedberg obtaining all “account access logs, usage logs, and registration records, as well as any preserved copies of the accounts” defined by Defendants as “webmail providers.”
14. I have no objection to Defendants issuing subpoenas to those providers for that information and I will complete any documents necessary authorizing those webmail providers to comply with any such request or subpoena.
15. As noted above, some of the items now being sought by Defendant are plainly outside the wording and intent of the court’s order. However, in the interest of working out these matters before bringing objections to the court, I have consented to the disclosure of everything the Defendants have requested save one document that is being reviewed by the court for a privilege claim.
16. The decision by the Defendants to seek court intervention instead of working

out these matters cordially and professionally is not a choice by them entitling them to sanctions, attorneys fees, etc.

I hereby and hereby declare under penalty of perjury and pursuant to 28 U.S.C. 1746 that the following is true and correct:

DATED: October 24, 2011.

/s/ Paul D. Ceglia

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Paul D. Ceglia.