

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG and FACEBOOK,
INC.,

Defendants.

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

**DECLARATION OF
GUS R. LESNEVICH**

I, Gus R. Lesnevich, declare as follows:

1. I respectfully submit this declaration in support of Defendants' Omnibus Opposition to Ceglia's Six Motions.

2. My address is as follows:

Gus R. Lesnevich, Inc.
Altoona-Blair County Airport
310 Airport Drive, Suite 4
Martinsburg, PA 16662

3. I have personal knowledge of the matters stated in this Declaration.

4. I am over the age of 18, under no disability, and, if called as a witness, could and would testify competently to the matters contained in this Declaration.

5. Other than the instant engagement, I have no relationship, past or present, to any of the parties to this litigation.

6. This Declaration is not my full report on the results of my examinations. I plan to submit a report of those results to the Court when appropriate.

7. I am a forensic document examiner with over forty years of experience in the field, and my professional background and qualifications were previously described in my Declaration, dated May 31, 2011.

8. One of the organizations that sets the standards for Forensic Document Examiners is ASTM International, originally known as the American Society for Testing and Materials (ASTM), which was formed over a century ago and is one of the largest voluntary development organizations in the world - a trusted source for materials, products, systems and services. ASTM International provides standards for forensic sciences, including Forensic Document Examination. I have followed the ASTM International standards as they relate to this case.

9. I participated in the court-ordered Hard-Copy Document Inspection on Friday, July 15, 2011 in Buffalo, NY. I was presented with two documents for inspection, including the two-page "WORK FOR HIRE" CONTRACT (the "WORK FOR HIRE").

10. When I was first presented with the document at approximately 9:00am, it was clear that the integrity of the document was already severely degraded. The paper had a faded and discolored appearance and the writing pen ink was very faint.

11. After my initial visual inspection, I took computer-generated, high-resolution, scans of the original "WORK FOR HIRE" at 9:43am on July 15, 2011. Those scanned images confirm

what I saw upon my initial inspection. True and correct copies of those scanned imaged of the original "WORK FOR HIRE" obtained in Buffalo, NY on July 15, 2011 are attached hereto as Exhibit A.

12. Based upon my background and experience in the field of Forensic Document Examination, I have been asked to review some of Plaintiff's submissions to the court, including:

- A) Declaration of James A. Blanco in Support of Motion for Sanctions Against Defendants for Spoliation of Evidence
- B) Memorandum in Support of Motions for Sanctions Against Defendants Facebook and Zuckerberg for Spoliation of Evidence
- C) Motion for Sanctions for Spoliation of Facebook Contract by Defendants

13. During my inspection, I processed both pages of the questioned "WORK FOR HIRE" for the presence of indentations using the Electrostatic Detection Apparatus (ESDA). An ESDA is a specialized piece of equipment used in questioned document examination in order to reveal indentations on paper. It is a non-destructive technique as used on writing inks and toner. ESDA testing does not affect the appearance of writing inks or the color of paper.

14. My ESDA testing of the questioned "WORK FOR HIRE" did not affect the appearance of the writing ink on that document or the color of the paper.

15. My indentation examinations of the evidence in this case were done in accordance with ASTM International E 2291-03, *Standard Guide for Indentation Examinations*. A true and correct copy of ASTM International E 2291-03 has been attached hereto as Exhibit B.

16. Plaintiff, in the *Motion for Sanctions for Spoliation of Facebook Contract by Defendants*, states that a review of the video footage revealed that Facebook's experts, at times, handled the "WORK FOR HIRE" without wearing gloves. A full review of the video footage shows that Plaintiff's experts and attorneys also touched the documents being inspected without gloves. For example, Mr. Blanco can be seen touching the documents being inspected on at least eight occasions, including one in which he rubs the document on his bare arm at 21:14:57 on July 15, 2011. Plaintiff's attorney Paul Argentieri can be seen touching the document with his ungloved hands at least once, on July 14, 2011, at 14:27:16.

17. Beginning with line 7 of page 3 of the *Motion for Sanctions for Spoliation of Facebook Contract by Defendants*, Plaintiff states:

"Even after mishandling the Facebook Contract with his hands, the expert picks up the contract, carries it to the end of the conference table and sets it on top of a desktop computer tower that has been running and generating heat all day."

18. Plaintiff's suggestion that placing the document on top of the computer tower for approximately an hour could affect the

document is unfounded. Given the implausibility of Plaintiff's suggestion, I conducted a controlled experiment in my lab to test the temperature on top of the desktop computer tower. I have the identical VSC 400 machine, including the identical computer tower and monitor, that was used by Defendants' experts in Buffalo, NY on July 15, 2011. On November 15, 2011, at 10:00am in my laboratory, I turned on this identical system. I left the system running constantly until 10:00am on Friday, November 25, 2011, a total of 240 consecutive hours. I periodically checked the temperature of the room as well as the temperature of the surface of the top of the computer tower. During the entire course of this controlled test, the temperature of the surface of the top of the computer tower never varied more than 1.3 degrees Fahrenheit from the room temperature. The surface of the top of the computer tower remained cool to the touch throughout.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on November 28, 2011, in Martinsburg, Pennsylvania.



GUS R. LESNEVICH