

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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PAUL D. CEGLIA,	:	
	:	
Plaintiff,	:	Civil Action No. 1:10-cv-00569-RJA
	:	
v.	:	DECLARATION OF
	:	ALEXANDER H. SOUTHWELL
MARK ELLIOT ZUCKERBERG and	:	
FACEBOOK, INC.,	:	
	:	
Defendants.	:	
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I, ALEXANDER H. SOUTHWELL, hereby declare under penalty of perjury that the following is true and correct:

1. I am an attorney licensed to practice law in the State of New York and admitted to practice before this Court. I am a partner in the New York office of the law firm of Gibson, Dunn & Crutcher LLP (“Gibson Dunn”), counsel of record for Mark Elliot Zuckerberg and Facebook, Inc. (“Facebook”) in the above-captioned matter. I make this Declaration in Support of Defendants’ Fee Application (“the Fee Application”) for payment of fees reasonably expended in connection with Defendants’ Accelerated Motion to Compel (Doc. Nos. 128-130, 132, 149-151), Plaintiff’s Motion to Set a Delayed Briefing Schedule (Doc. Nos. 137-140), the Court’s Order to Show Cause (Doc. Nos. 161-162), this Fee Application and supporting documentation, and ensuring compliance with this Court’s August 18, 2011 Order related to Ceglia’s webmail (“Sanctions Work”). I have personal knowledge of the information set forth herein based upon my direct involvement in the matters at issue and upon my review of the documents referenced below.

2. Attached hereto as Exhibit A are true and correct copies of biographies of the following Gibson Dunn attorneys who rendered services related to the Sanctions Work: Orin

Snyder, Thomas H. Dupree, Jr., Alexander H. Southwell, Matthew J. Benjamin, and Amanda M. Aycock.

3. The 2011 standard billing rates for the attorneys listed in paragraph 2 are as follows: Orin Snyder: \$955, Thomas H. Dupree, Jr.: \$850, Alexander H. Southwell: \$825, Matthew J. Benjamin: \$670, and Amanda M. Aycock: \$450. While Defendants submit these hourly rates are reasonable and in line with the market, to avoid any disputes and mindful of the fact that this Court often reduces fee requests to ensure reasonableness, Defendants are only requesting an award of 75% of these standard hourly rates. This reduced rate will be referred to as the “claimed rate.” The claimed rates for each of the attorneys listed in paragraph 2 are as follows: Orin Snyder: \$716.25, Thomas H. Dupree, Jr.: \$637.50, Alexander H. Southwell: \$618.75, Matthew J. Benjamin: \$502.50, and Amanda M. Aycock: \$337.50. In addition, Defendants are also declining to seek reimbursement for several timekeepers who played supporting, rather than primary, roles. The fees Defendants have actually paid to Gibson Dunn for its legal services related to the Sanctions Work are more than those requested in this Application.

4. On August 18, 2011, this Court granted Defendants’ motion to compel Ceglia to, among other obligations, provide his consent to the acquisition of email account information (Doc. No. 117).

5. On August 29, 2011, Ceglia provided deficient consent forms in violation of this Court’s August 18 Order. In the days following Ceglia’s production of these deficient forms, in order to assess compliance with the Court’s August 18 Order, Defendants’ counsel reviewed these forms, discussed the effect of the forms, considered the appropriate response, and drafted and revised a letter to Ceglia’s then-counsel regarding the deficient forms.

6. The meet-and-confer did not resolve the issue; Ceglia's then-counsel did not respond to the letter nor did Ceglia provide compliant consent forms. Defendants' counsel therefore drafted, discussed, revised, finalized, and filed on September 1, 2011 the Accelerated Motion to Compel Compliance with Paragraph 5 of the August 18, 2011 Order (Doc. Nos. 128, 129, 132) and the supporting declaration of Alexander H. Southwell (Doc. No. 130).

7. On September 2, 2011, Ceglia filed a Motion to Set A Delayed Briefing Schedule on Defendants' Accelerated Motion to Compel (Doc. Nos. 134-135). Defendants' counsel reviewed this motion, discussed the effect of this motion, considered a response to this motion, and discussed this motion with the client.

8. Given the time-sensitive nature of Ceglia's non-compliance, Defendants' counsel drafted, discussed, revised, and finalized an Opposition to this motion and supporting declarations of Alexander H. Southwell and Terrance P. Flynn, which they filed four days later, on September 6, 2011 (despite the fact that the Court had not yet set a briefing schedule on Ceglia's motion) (Doc. Nos. 137-140).

9. On September 9 and 12, 2011, the Court issued text orders setting the schedule for the Motion for a Delayed Briefing Schedule (Doc. Nos. 141, 142). On September 20, this Court issued two additional text orders: the first of these orders denied Plaintiff's Motion for Extension of Time as moot, and the second set a schedule for the Response and Reply to Defendants' Accelerated Motion to Compel (Doc. Nos. 146, 147). Defendants' counsel reviewed, discussed, and conferred with local counsel regarding these text orders.

10. On September 26, 2011, Ceglia filed his Opposition to the Accelerated Motion to Compel (Doc. No. 148). Defendants' counsel reviewed this opposition, discussed the effects of the response, and considered the content of the reply to this response.

11. On September 27, 2011, Defendants' counsel drafted, discussed, conducted targeted research, revised, finalized, and filed the Reply and supporting declaration of Amanda M. Aycock (Doc. Nos. 149-151).

12. On September 28, 2011, in its Decision and Order (Doc. No. 152), the Court granted Defendants' Accelerated Motion to Compel and directed Ceglia "to show cause why Defendants' request for sanctions, pursuant to Fed.R.Civ.P. 37(a)(5), including costs and attorneys' fees, based on Plaintiff's failure to fully and promptly comply with the Order should not be granted." Defendants' counsel reviewed and discussed the Decision and Order.

13. On October 7, 2011, Ceglia responded with a memorandum of law and declarations of his former lawyers Jeffrey Lake and Nathan Shaman accusing their former client of ordering them not to comply with the Court's orders (Doc. No. 153). Defendants' counsel reviewed this response, and drafted a reply to this response, which they filed on October 14, 2011 (Doc. Nos. 161-162).

14. On January 10, 2012, this Court granted Defendants' request for sanctions and directed Defendants to provide affidavits of costs and attorneys' fees incurred (Doc. No. 283). Defendants' counsel reviewed this order, discussed the effects of the order, considered the content of the affidavits requested by the court, and reviewed and analyzed bills for the applicable entries.

15. Defendants' counsel then drafted, discussed, finalized, and filed the instant fee application and supporting declaration of Alexander H. Southwell, as well as conducted targeted research.

16. Attached hereto as Exhibit B is a true and correct copy of the narrative descriptions of legal services rendered by Gibson Dunn attorneys, reflecting time expended by

them in connection with the Sanctions Work. On some days, attorneys rendered services that were related to both the Sanctions Work as well as other work relating to the matter. To the extent that a particular time entry pertained to both Sanctions Work and other work, the attached compilation reflects only time entries pertaining to the Sanctions Work. These entries reflect conservative allocations of time, ensuring that the total time claimed for Sanctions Work is less than the actual time incurred on such work. This allocation is based on the time entries themselves and upon my personal experience with the case.

17. The total amount requested as attorneys' fees for Gibson Dunn's legal services related to Sanctions Work is \$84,196.33, for 176.95 hours of services rendered. This sum includes all fees incurred during the five month period from August 18, 2011 through January 18, 2012 that relate to Sanctions Work.

18. Below is a true and correct chart summarizing the time spent on legal services covered by the Court's sanction award that Defendants claim, as well as their claimed billing rates.

Attorney	Total Hours	Claimed Rate	Total Fees
Orin Snyder	9.75	\$716.25	\$6,983.44
Thomas H. Dupree, Jr.	21.75	\$637.50	\$13,865.63
Alexander H. Southwell	24.50	\$618.75	\$15,159.38
Matthew J. Benjamin	44.65	\$502.50	\$22,436.63
Amanda M. Aycock	76.30	\$337.50	\$25,751.25
TOTAL	176.95		\$84,196.33

19. The total amount requested does not include fees incurred or billed outside of the categories described herein, even where those fees relate to ensuring Ceglia's compliance with the webmail portion of the Court's August 18 Order. Examples of such excluded fees are substantial and include: preparation of Defendants' August 24, 2011 opposition (Doc. No. 123)

to Ceglia's Motion to Stay this Court's August 18 Order (Doc. No. 118); subsequent correspondence with Internet Service Providers (ISPs) regarding, *inter alia*, later deficiencies in Ceglia's consent forms; subsequent correspondence with Ceglia's counsel regarding later deficiencies in his consent forms; subsequent correspondence with Ceglia's counsel required to effectuate the consent forms; the preparation of subpoenas to ISPs to effectuate Ceglia's consent forms; and legal services provided by junior associates and paralegals serving in a support role (the legal services provided by lead junior associate Amanda Aycock are included in Defendants' claim). We have also excluded, in an effort to be conservative, the invaluable legal services and strategic advice provided by local counsel in responding to multiple text orders and assisting with briefing three different motions (Accelerated Motion to Compel, Motion for Delayed Briefing, and the Order to Show Cause), as well as logistical assistance and advice concerning filing the motions. In addition, we have excluded the services of in-house counsel, who have spent numerous hours guiding strategy and assisting with briefing all matters relating to the Sanctions Work. Defendants reserve the right to seek all fees and expenses incurred in connection with this fraudulent action.

20. The total amount requested also does not include costs incurred with respect to the Sanctions Work. Such costs were sizeable and include, but are not limited to: expert fees incurred reviewing and discussing Ceglia's deficient consent forms, legal research costs, long-distance telephone call costs, and duplication, messenger, and courier expenses.

21. Attached hereto as Exhibit C is a true and correct copy of the New York Regional Report in Westlaw CourtExpress, Legal Billing Report, Vol. 13, No. 3, Dec. 2011. The Westlaw CourtExpress Legal Billing Report compiles hourly rates and other fee information, including

the years of experience of attorneys, from fee applications in bankruptcy cases. It organizes this information by region and by law firm.

22. Attached hereto as Exhibit D is a true and correct copy of the 2011 *National Law Journal* Billing Survey. This survey requests responses from the nation's 250 largest law firms regarding hourly billing rates of partners and associates.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 20th day of January, 2012 at New York, New York.



Alexander H. Southwell