

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG and  
FACEBOOK, INC.,

Defendants.  
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: Civil Action No. 1:10-cv-00569-RJA  
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: **DECLARATION OF**  
: **ALEXANDER H. SOUTHWELL**  
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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 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, based on personal knowledge, in support of Defendants’ Sixth Motion to Compel.

2. This declaration describes Defendants’ good-faith efforts to resolve disputes regarding Plaintiff’s failure to comply with this Court’s Orders dated March 27, 2012 (Doc. No. 317), April 19, 2012 (Doc. No. 357), April 26, 2012 (Doc. No. 361), and April 30, 2012 (Doc. No. 365) before filing Defendants’ Sixth Motion to Compel, in compliance with Western District of New York Local Rule 7(d)(4).

3. On April 30, 2012 and in response to this Court’s April 19, 2012 order (the “April 19 Order”), Plaintiff purportedly produced to Defendants Item 379 on his privilege log (Doc. No. 296-1). Item 379 is an April 19, 2011 email from Paul Argentieri to Plaintiff with the subject “Fwd: Follow-up” and containing emails with Kcross@lippes.com, Amarks@kasowitz.com,

Jerry.Trippitelli@dlapiper.com, and jason.holmberg@papellets.com, with attachments. A true and correct copy of Item 379 as produced is attached hereto as Exhibit A.

4. While reviewing Plaintiff's production of Item 379, Defendants' counsel discovered that Plaintiff had failed to produce Item 379 in its entirety, as required by this Court's April 19 Order. Defendants sent Plaintiff's counsel a letter demanding the production of an April 13, 2011 letter from the law firm Kasowitz, Benson, Torres & Friedman LLP to their co-counsel at the law firms DLA Piper LLP and Lippes Mathias Wexler Friedman LLP (the "Kasowitz Letter"), which was missing from Plaintiff's production of Item 379. A true and correct copy of this May 3, 2012 letter from Alexander H. Southwell to Jennifer L. Young is attached hereto as Exhibit B.

5. Item 379 has been designated as confidential by Plaintiff pursuant to the July 13, 2011 Protective Order entered in this action (Doc. No. 86). Defendants challenged this designation in my May 3, 2012 letter to Plaintiff's counsel (Exhibit B). On May 4, 2012, Plaintiff's counsel responded, agreeing to "revisit" the confidentiality designation of Item 379 after this Court ruled on Plaintiff's April 30, 2012 Objections to Judge Foschio's privilege rulings (Doc. No. 367). A true and correct copy of this May 4, 2012 letter from Young to Southwell is attached hereto as Exhibit C. While the confidential designation of Item No. 379 is overbroad and unfounded, pending resolution of Plaintiff's designation, Defendants have redacted documents and text in this filing covered by that confidential designation.

6. On May 7, 2012, Plaintiff's counsel further responded to my May 3, 2012 letter (Exhibit B), refusing to produce the Kasowitz Letter, claiming that this Court's April 19 Order did not require its production and asserting the attorney-client privilege to prevent its disclosure.

A true and correct copy of this May 7, 2012 letter from Young to Southwell is attached hereto as Exhibit D.

7. On May 9, 2012, in a good-faith effort to resolve the dispute over the missing document, Orin Snyder and I called Plaintiff's counsel, Sanford Dumain, and reiterated our request that Plaintiff produce the missing Kasowitz Letter. Dumain agreed to consider the request.

8. On May 14, 2012, Snyder informed me that Dumain called him to notify him of Plaintiff's continued refusal to produce the Kasowitz Letter.

9. On February 28, 2012, Plaintiff's former counsel, Lake APC, produced a 26-page PDF entitled "Scanned StreetFax Emails attached to Letter from Marks to Vacco 041311." A true and correct copy of this document, which is an attachment to the Kasowitz Letter and contains emails by and among Mark Zuckerberg, Plaintiff, and/or other persons associated with StreetFax with handwritten notations, is attached hereto as Exhibit E. Plaintiff did not designate this PDF as confidential.

10. Plaintiff did not disclose the Kasowitz Letter on any privilege logs produced under this Court's expedited discovery orders. In fact, the first time Plaintiff asserted privilege over the Kasowitz Letter is in the May 7, 2012 letter to Defendants' counsel (Exhibit D), sent in response to Defendants' demands that the Kasowitz Letter be produced.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 23rd day of May, 2012 at New York, New York.

  
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Alexander H. Southwell