

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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PAUL D. CEGLIA,	:	X
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 1:10-cv-00569-
	:	RJA
MARK ELLIOT ZUCKERBERG and	:	
FACEBOOK, INC.,	:	
	:	
Defendants.	:	
	:	X
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**DEFENDANTS’ REPLY MEMORANDUM OF LAW  
IN SUPPORT OF THEIR SIXTH MOTION TO COMPEL**

The Court should grant Defendants’ Sixth Motion to Compel because Ceglia fails to present any remotely legitimate basis for opposing it. Defendants request an order compelling Ceglia to produce an April 13, 2011 letter from Ceglia’s then-lawyers at Kasowitz, Benson, Torres & Friedman LLP to their co-counsel at DLA Piper LLP and Lippes Mathias Wexler Friedman LLP (the Kasowitz Letter). The Kasowitz Letter, which Ceglia has been concealing for months, confirms that Ceglia is committing a fraud on the Court. It is an attachment to an email contained in Item 379, a compilation of emails that this Court ordered Ceglia to produce after it rejected his baseless assertion of attorney-client privilege. Doc. No. 357. Although Ceglia produced Item 379, he omitted the Kasowitz Letter from his production. It is clear that the letter should be produced—indeed, Ceglia’s opposition papers do not even appear to object to producing it. Instead, Ceglia claims that he already produced the Kasowitz Letter to Defendants, but their experts were not able to find it. Ceglia is mistaken, but the larger point is that given his claim that he has already produced the document, he can have no legitimate

objection to an order directing its production. Accordingly, Defendants' Motion should be granted.

Defendants explained in their Memorandum of Law that this Court's orders require Ceglia to produce the Kasowitz Letter on at least two independent grounds: (1) it is an attachment to an email that the Court ordered Ceglia to produce, and (2) the letter itself is responsive to the Court's discovery orders because the letter contains emails that are responsive to those orders. Doc. No. 382 at 4-8. Defendants also explained that the Kasowitz Letter is not privileged for at least three independent reasons: (1) the Court has already ruled that the communications in Item 379 are not privileged, (2) Ceglia did not disclose the Kasowitz Letter on any privilege log, and (3) any conceivable claim of privilege has been waived because the information that is the subject matter of the letter has been disclosed to Jason Holmberg, a non-attorney. *Id.* at 8-11.

Ceglia does not respond to any of these conclusive arguments. Although he weakly states in his Response that this Court has not ordered the Kasowitz Letter to be produced, Doc. No. 432 at 1, Ceglia does not even address—much less rebut—Defendants' explanation of the multiple independent reasons that this Court's existing orders require production of the letter. Ceglia also asserts that the Kasowitz Letter is “protected from disclosure by the attorney client privilege” because it is a “communication . . . between lawyers” and contains “analysis and discussion of evidence in the case.” *Id.* at 2-4. But Ceglia fails even to address, much less overcome, Defendants' explanation of the multiple independent reasons that the letter is not privileged even though it is a communication between lawyers analyzing the evidence in this case. Because Defendants have established that Ceglia should be required to produce the

Kasowitz Letter, and because Ceglia has done nothing to rebut that showing, the Court should grant Defendants' Motion.

Rather than respond to the points presented in Defendants' Memorandum, Ceglia suggests that he has already produced the Kasowitz Letter, and that Defendants simply have been unable to find it in his production. He states that "Item 379 was produced to Defendants including all attached files," and that Defendants' digital forensic experts at Stroz Friedberg "had full access to" the letter because they had access to Ceglia's email accounts. Doc. No. 432 at 1 (emphasis altered). Ceglia asserts that Defendants have not been able to locate the Kasowitz Letter, however, due to the purported "incompetence" and "ineptitude" of their experts, who Ceglia says were "unable to find [the letter] despite it being within an account to which they had full access." *Id.* at 2, 4.

These assertions are false. *See* Declaration of Alexander H. Southwell dated June 15, 2012, ¶¶ 6-7. But the key point for present purposes is that Ceglia can have no legitimate objection to an order directing him to produce a letter he claims he has already made available to Defendants. Nor can he have any legitimate privilege objection with respect to a letter he claims he has already made available to Defendants. Given Ceglia's failure to respond to the many reasons why the Kasowitz Letter falls within the scope of this Court's prior discovery orders and is not privileged, and in light of his claim that he has already made the Kasowitz Letter available to Defendants, this Court should grant Defendants' Motion to Compel.

**CONCLUSION**

For the foregoing reasons, this Court should enter an order requiring Ceglia to produce the Kasowitz Letter to Defendants, along with all attachments and/or embedded images. This Court should also award Defendants their attorneys' fees and costs, and all other relief to which they may be entitled.

Dated: New York, New York  
June 15, 2012

Thomas H. Dupree, Jr.  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 955-8500

Terrance P. Flynn  
HARRIS BEACH PLLC  
726 Exchange Street  
Suite 1000  
Buffalo, NY 14210  
(716) 200-5120

Respectfully submitted,

/s/ Orin Snyder  
Orin Snyder  
Alexander H. Southwell  
Matthew J. Benjamin  
Amanda M. Aycok  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue, 47th Floor  
New York, NY 10166-0193  
(212) 351-4000

*Attorneys for Defendants Mark Zuckerberg and Facebook, Inc.*