

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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PAUL D. CEGLIA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 1:10-cv-00569-
	:	RJA
MARK ELLIOT ZUCKERBERG and	:	
FACEBOOK, INC.,	:	
	:	
Defendants.	:	
	:	
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**DEFENDANTS’ MEMORANDUM OF LAW
IN RESPONSE TO MOTION TO STRIKE DOC. NO. 415**

On June 19, 2012, Ceglia moved this Court for an order authorizing the striking of the Declaration of James A. Blanco (“Blanco Declaration”) (Doc. No. 415). The motion is premised on Ceglia’s violation of the Protective Order (Doc. No. 86) in this case, specifically, his improper disclosure of material Defendants had designated as Confidential Information in the Blanco Declaration and certain of its exhibits. Defendants notified Ceglia and his expert of this violation of the Protective Order by letter dated June 18, 2012, requesting that Ceglia immediately:

1. Move the Court to remove the Blanco Declaration from the docket, to be replaced with a properly redacted version of the Blanco Declaration;
2. Provide to the Court and Defendants, in writing, information regarding any other dissemination of Confidential Information that was inconsistent with or in violation of the Protective Order, including but not limited to: the names of all individuals or organizations not authorized by the Protective Order that have received copies of any Confidential Information including the Blanco Declaration, either in hard copy or electronically; the dates on which such Confidential Information was disseminated; and the specific identity of the Confidential Information disclosed; and
3. Inform the Court and Defendants, in writing, the steps Ceglia has taken or intends to take to retrieve all improperly disclosed Confidential Information.

In his motion, Ceglia requested an order authorizing the clerk to strike the Blanco Declaration so that Ceglia may replace it with a redacted version. Doc. No. 446 at 2. Ceglia further informed the Court that:

No other copies of these documents were provided to or are in the possession of any other witnesses, expert or otherwise. No other documents designated as confidential have been provided to any other persons by Plaintiff. To the best of Plaintiff's knowledge, the filed documents, Doc. Nos. 415-2 and 415-3, were provided to individuals who were able to access them via the court's ECF system.

Id.

Defendants do not object to Ceglia's request for an order striking Doc. No. 415. However, Defendants are concerned by Ceglia's statements that no other copies of these documents were provided to anyone—this statement is demonstrably false. The report of a different Plaintiff's expert, Larry Stewart, makes clear that he was provided and possessed the Blanco Declaration and accompanying exhibits. Specifically, as part of a purported "peer or technical review," Stewart claimed to have "reviewed Mr. Blanco's declaration along with supporting Exhibits." Doc. No. 416-3 at ¶ 447. Ceglia's own filings therefore contradict Ceglia's representation to this Court yesterday that "No other copies of [the Blanco Declaration] were provided to or are in the possession of any other witnesses, expert or otherwise." Doc. No. 446 at 2.

Moreover, contrary to Ceglia's representation to the Court that "No other documents designated as confidential have been provided to any other persons by Plaintiff," Dean Boland, Ceglia's lawyer, posted the Blanco Declaration on his firm Web site's blog, thus making these confidential materials available worldwide. *See* screen capture of the blog entry, which links to the filed version of the Blanco Declaration, attached as Exhibit A.

Given these misrepresentations to the Court, Defendants respectfully request that as part of the Court's order addressing Ceglia's motion to strike Doc. No. 415, the Court order Ceglia to produce to the Court and Defendants the copies of Exhibit A to the Protective Order executed by Mr. Blanco and Mr. Stewart, and to file with the Court a declaration providing (A) information regarding any other dissemination of Confidential Information that was inconsistent with or in violation of the Protective Order, including but not limited to: the names of all individuals or organizations not authorized by the Protective Order that have received copies of any Confidential Information including the Blanco Declaration, either in hard copy or electronically; the dates on which such Confidential Information was disseminated; and the specific identity of the Confidential Information disclosed; and (B) the steps Ceglia has taken or intends to take to retrieve all improperly disclosed Confidential Information.

Defendants reserve all other rights with respect to Ceglia's violation of the Protective Order.

Dated: New York, New York
June 20, 2012

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Respectfully submitted,

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