

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG, Individually, and
FACEBOOK, INC.

Defendants.

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

REPLY TO DEFENDANTS'
RESPONSE TO STRIKE DOC.
NO. 415

MEMORANDUM

Neither of the undersigned counsel have provided any documents designated as confidential to anyone. Other than James Blanco, our investigation has not uncovered any evidence that prior counsel has provided any documents designated as confidential to anyone. Prior counsel, Jeff Lake, provided documents designated as confidential to James Blanco. Those designated documents were within two exhibits referenced on the record as Doc. No. 415-2 and 415-3. Both Doc. Nos. 415-2 and 415-3 are multi-page exhibits, Exhibits 16 and 21 respectively. A small number of pages within Exhibit 16 and Exhibit 21 are designated as confidential via the phrase "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" in the lower left hand corner of the page in a small sized font. No other documents designated as confidential were provided by prior counsel Jeff Lake to James Blanco.

Despite several calls to prior counsel Jeff Lake upon undersigned counsel's

entrance into this case, none were returned. Although an associate of Jeff Lake arranged for Plaintiff's file to be transferred to current lead counsel, the contents of that file did not disclose that documents designated as confidential were provided to anyone.

Therefore, current lead counsel and local counsel were wholly unaware that anyone on behalf of Plaintiff were provided documents designated as confidential, including those referenced in Doc. No. 415-2 and 415-3, until twenty four hours before Plaintiff's motion to strike 415 to replace it with redacted versions of those exhibits.

Prior counsel never provided James Blanco a copy of the protective order, Doc. No. 86. That protective order was provided to Blanco by current counsel and his signed acknowledgement of that is attached as Exhibit A.

THE PROTECTIVE ORDER

The order governing the designation of confidential documents contained a listing of criteria for designation. Doc. No. 86. Properly designated documents are those that contain "confidential information that is not publicly available (such as proprietary or confidential business, technical, sales, marketing, financial, commercial, private or sensitive information, or information that is otherwise reasonably designable as confidential)." Doc. No. 86 at ¶3.

The documents in Doc. Nos. 415-2 and 415-3 fall into two categories:

1. Publicly available documents; and
2. Documents without any confidential business, technical, sales, marketing,

financial, commercial, private or sensitive information.

PUBLICLY AVAILABLE DOCUMENTS

1. Documents filed with and therefore publicly available from State or Federal government agencies containing no information covered by the designation criteria.

DOCUMENTS WITHOUT ANY MATERIAL MATCHING THE DESIGNATION CRITERIA

1. Documents redacted by Defendants before their production to prior plaintiff's counsel and then designated as confidential retaining no information covered by the designation criteria.
2. Other documents containing no information covered by the designation criteria.

Because information about these documents being provided to Blanco was withheld by prior counsel, current counsel did not have the opportunity to object to their designation. That objection has now been made and discussions are ongoing.

Regardless of valid objections or improper designations, as the court's order stated, documents designated as confidential are to be treated as such. Therefore, the inclusion of these documents in Blanco's exhibits was an inadvertent disclosure of the above documents which was remedied within 24 hours of its discovery.

Mr. Blanco has confirmed to counsel that he did not send out exhibits 16 or 21 to anyone. Plaintiff's counsel's investigation has not uncovered that Plaintiff's counsel or Plaintiff sent either exhibits 16 or 21 to any person beyond the filing of

those exhibits with the court. Defendants do not indicate that either of these exhibits is known to be in the possession of any other persons. Plaintiff's counsel's investigation regarding this is ongoing. Should it come to Plaintiff's counsel's attention that either exhibit 16 or 21 was disseminated in contravention of the court's order, that matter will be brought to the attention of Defendants along with the steps taken by Plaintiff to retrieve those documents. Plaintiff and Plaintiff's counsel regard strict compliance with the court's orders as a serious matter and have put forward good faith efforts to timely remedy this inadvertent disclosure.

BLANCO'S REPORT PROPER

Defendants object to Blanco's report as somehow violative of the court's order, Doc. No. 86 and in need of redaction. Specifically, Defendants note that documents designated as confidential are referenced on pages 40 and 47 of Blanco's report.

The references to which Defendants refer are as follows:

1. "The documents bearing the known specimen signature samples attributed to Mark Zuckerberg are attached collectively hereto as EXHIBIT 16." Doc. No. 415 at 40.
2. "Copies of the hand printing by Mark Zuckerberg that I used in this analysis are attached hereto as EXHIBIT 21." Id. at 47.

As to Exhibit 16, only a minority of the pages of that exhibit are designated confidential. Blanco's report does not disclose the contents, title, description or any other information about the documents within Exhibit 16. The reference does not even identify which pages of that exhibit to which Blanco is referring as he uses the

word “collectively.” The reference on page 40, therefore, cannot be viewed as disclosing or “discussing with” anyone the contents of any documents designated as confidential.

As to Exhibit 21, each of the pages of that exhibit are designated as confidential. However, the reference in Blanco’s report likewise does not disclose the contents, title, description or any other information about the documents within Exhibit 21. Therefore, this reference in the report cannot be viewed as violating the order as it does not “discuss with” anyone the contents of those documents beyond that reference.

CONCLUSION

This issue was brought to the court’s attention by Plaintiff after he determined that material subject to the order, Doc. No. 86, was inadvertently included in Blanco’s voluminous exhibits. Blanco’s report had been filed and in the possession of Defendants for fourteen days before this issue was known to Plaintiff. Plaintiff dealt with it swiftly by the filing of the Motion to Strike to which Defendants have not objected. As with Defendants accidental and inadvertent disclosure of Plaintiff’s then active email account usernames and passwords, this disclosure was remedied rapidly enabling Defendants to avoid or significantly minimize any claimed prejudice to Defendants (although no prejudice has been claimed by Defendants to this point).

It is Plaintiff’s position, therefore, that his motion to strike should be granted permitting the re-filing of Doc. No. 415 with the proper redactions made only to

Exhibits 16 and 21 as noted above. Blanco's report proper does not disclose or discuss with anyone the contents of those exhibits and as such is not violative of the court's order and does not need to be redacted.

Respectfully submitted,

/s/Dean Boland

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