

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

**DECLARATION OF
ALEXANDER H. SOUTHWELL**

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 in Connection with Their Seventh Motion to Compel (“the Fee Application”) for payment of fees reasonably expended in connection with Defendants’ Seventh Motion to Compel (Doc. No. 461) and Defendants’ Reply Memorandum of Law in Support of Their Seventh Motion to Compel (Doc. No. 467) (“Compel 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 is a true and correct copy of the biography of Erik Zimmerman, an associate in the Washington, D.C. office of Gibson Dunn. The biographies of Thomas Dupree, Matthew Benjamin, and Amanda Aycock were attached as Exhibit A to the Declaration of Alexander H. Southwell in Support of Defendants’ Fee Petition (Doc. No. 286-1)

and have been excluded here to avoid redundancy. Messrs. Dupree, Benjamin, and Zimmerman and Ms. Aycock all rendered services related to the Compel Work.

3. The 2012 standard billing rates for the attorneys listed in paragraph 2 are as follows: Thomas Dupree: \$900.00, Matthew Benjamin: \$720.00, Erik Zimmerman: \$595.00, and Amanda Aycock: \$560.00. 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, as we have previously done and as has been previously accepted by this Court. 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: Thomas Dupree: \$675.00, Matthew Benjamin: \$540.00, Erik Zimmerman: \$446.25, and Amanda Aycock: \$420.00. In addition, Defendants are also declining to seek reimbursement for several timekeepers, including partners Orin Snyder and Alexander Southwell. The fees Defendants have actually paid to Gibson Dunn for its legal services related to the Compel Work are more than those requested in this Application.

4. On April 19, 2012, this Court partially granted Defendants’ Fifth Motion to Compel Ceglia to, among other obligations, produce relevant documents governed by this Court’s Expedited Discovery Order (Doc. No. 83) that were improperly withheld as privileged. Among the documents this Court ordered be produced was an email dated April 19, 2011 from Ceglia’s counsel Paul Argentieri to Ceglia with the subject “Fwd: Follow-up” and containing emails with attorneys at the law firms Lippes Mathias Wexler Friedman LLP, Kasowitz, Benson, Torres & Friedman LLP, and DLA Piper LLP (“Item No. 379”).

5. After Ceglia produced Item No. 379, attorneys at Gibson Dunn, under my supervision, reviewed the contents of Item No. 379 and discovered that a critical document was missing from the production: the Kasowitz Letter, which was described as a letter from Kasowitz Benson to their former co-counsel explaining that they were “withdrawing from the case based on a determination that the purported contract at issue is a fraud.” Doc. No. 478 at 2.

6. On May 24, 2012, Defendants filed their Sixth Motion to Compel the production of the Kasowitz Letter (Doc. No. 382), which this Court granted in full on June 28, 2012 (Doc. No. 457). The Court’s order required that Ceglia produce the Kasowitz Letter by July 9, 2012.

7. On July 10, 2012, one day after the court-ordered deadline for the production of the Kasowitz Letter, Ceglia’s counsel emailed me a copy of Item No. 379 and attachments, but again omitted the Kasowitz Letter.

8. Within the next day, Defendants’ counsel drafted, discussed, revised, and finalized Defendants’ Seventh Motion to Compel production of the Kasowitz Letter (Doc. No. 461) and filed it on July 11, 2012.

9. That same day, this Court issued a text order setting the briefing schedule on Defendants’ Seventh Motion to Compel and requiring that Ceglia file the Kasowitz Letter with his opposition to Defendants’ Seventh Motion to Compel on July 20, 2012.

10. On July 20, 2012, Ceglia filed his opposition to Defendants’ Seventh Motion to Compel—but failed to file the Kasowitz Letter as ordered by this Court (Doc. No. 466). Rather, Ceglia submitted the Kasowitz Letter *in camera*.

11. From July 20 to July 24, 2012, Defendants’ counsel reviewed, discussed, and analyzed Ceglia’s opposition and drafted, discussed, revised, finalized, and filed Defendants’ reply in support of its Seventh Motion to Compel (Doc. No. 467).

12. On August 15, 2012, this Court granted Defendants' Seventh Motion to Compel the Kasowitz Letter, ordering that Ceglia produce, within three days of the order, the Kasowitz Letter to Defendants. Doc. No. 478. In addition, the Court directed Defendants to provide, within ten days, affidavits of costs and attorneys' fees incurred as a result of attempts to obtain the Kasowitz Letter. *Id.* 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.

13. 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.

14. 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 Compel Work. On some days, attorneys rendered services that were related to both the Compel Work as well as other work relating to the matter. To the extent that a particular time entry pertained to both Compel Work and other work, the attached compilation reflects only time entries pertaining to the Compel Work. These entries reflect conservative allocations of time, ensuring that the total time claimed for Compel 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.

15. The total amount requested as attorneys' fees for Gibson Dunn's legal services related to Compel Work is \$10,970.63, for 21.75 hours of services rendered. This sum includes all fees incurred while preparing Defendants' Seventh Motion to Compel (Doc. No. 461),

reviewing Ceglia’s opposition to Defendants’ Seventh Motion to Compel (Doc. No. 466), and preparing Defendants’ Reply in Support of its Seventh Motion to Compel (Doc. No. 467).

16. 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
Thomas H. Dupree	1.50	\$675.00	\$1,012.50
Matthew Benjamin	10.25	\$540.00	\$5,535.00
Erik Zimmerman	8.50	\$446.25	\$3,793.13
Amanda Aycock	1.50	\$420.00	\$630.00
TOTAL	21.75		\$10,970.63

17. 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 this Court’s orders compelling production of the Kasowitz Letter. Examples of such excluded fees are substantial and include: preparation and defense of Defendants’ Sixth Motion to Compel (Doc. Nos. 382, 434), subsequent correspondence with Ceglia’s counsel regarding deficiencies in Ceglia’s production of Item No. 379, and attempts to meet-and-confer on the issue of Ceglia’s deficient production. In addition, Defendants have excluded from their Application a request for fees for the legal services of two partners, Orin Snyder and Alexander Southwell, who contributed by providing strategic guidance and reviewing and revising the briefs. We have also excluded, in an effort to be conservative, the invaluable legal services and strategic advice provided by local counsel in responding to this Court’s text orders and assisting with briefing, as well as logistical assistance and advice. In addition, we have excluded the services of in-house counsel, who have spent time guiding strategy and assisting with briefing all

matters relating to the Compel Work. Defendants reserve the right to seek all fees and expenses incurred in connection with this fraudulent action.

18. The total amount requested also does not include costs incurred with respect to the Compel Work.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 27th day of August, 2012 at Long Beach Island, New Jersey.

/s/ Alexander H. Southwell
Alexander H. Southwell