Ceglia v. Zuckerberg et al
Doc. 513 Att. 2

EXHIBIT B

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August 22, 2012

VIA ELECTRONIC MAIL

Dean Boland
Owner/Member
Boland Legal, LLC
1475 Warren Road
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Lakewood, Ohio 44107

Re: Ceglia v. Zuckerberg and Facebook, Inc., No. 1:10-cv-569-RJA-LGF

Mr. Boland:

On August 15, 2012, the Court granted Defendants' Seventh Motion to Compel and ordered your client Paul Ceglia to produce the so-called Kasowitz Letter, a letter from Ceglia's former counsel at Kasowitz, Benson, Torres & Friedman LLP ("Kasowitz") to former co-counsel DLA Piper LLP ("DLA Piper"), and Lippes Mathias Wexler Friedman LLP ("Lippes Mathias"), in which "Kasowitz advises DLA Piper and Lippes Mathias it is withdrawing from the case based on a determination that the purported contract at issue is a fraud." Decision and Order (Doc. No. 478) at 2. As you know, the Court had already ordered Ceglia to produce that document six weeks earlier when it granted Defendants' Sixth Motion to Compel, *see* Doc. No. 457, but Ceglia refused to do so. Defendants learned of the existence of the Kasowitz Letter only after the Court granted their Fifth Motion to Compel, which sought a series of emails that Ceglia unsuccessfully attempted to conceal by asserting baseless privilege claims. Doc. Nos. 294, 317.

In response to the Court's Decision and Order, on August 17, Ceglia produced an electronic file that you described as "**a letter from the Kasowitz law firm** dated April 13, 2011" (emphasis in original). As expected, that April 13, 2011 letter ("the April 13 Letter")

Indeed, the April 13 Letter indicates

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Notwithstanding the inculpatory significance of the April 13 Letter that Ceglia has now belatedly produced, he remains non-compliant with the Court's expedited discovery orders for at least two reasons.

First, Ceglia's failure to produce any of the April 13 Letter's attachments constitutes a further violation of the Court's expedited discovery orders. As you know, those attachments are themselves responsive to the Court's expedited discovery orders. *See* Doc. No. 117 ¶ 2. Moreover, Defendants explicitly sought the entire Kasowitz Letter, including its attachments, in their Sixth Motion to Compel. *See* Doc. No. 382 at 11. The Court not only granted this Sixth Motion to Compel in its entirety (*see* Doc. No. 457 at 11), it also ordered Ceglia to file, as an exhibit to his opposition to Defendants' Seventh Motion to Compel, "a copy of Privilege Log Item 379 and all attachments . . . including [the Kasowitz letter] . . . <u>and all attachment[s] to such letter, i.e., the 'certain documents that are referenced in the letter</u>.'" Doc. No. 464 (emphasis added). Finally, it is established practice that a full document, including all attachments, should be produced where the document or any of the attachments are responsive. *See Abu Dhabi Commercial Bank v. Morgan Stanley & Co. Inc.*, 2011 WL 3738979 at *4-5 (S.D.N.Y. Aug 18, 2011) (noting, in ordering that certain email attachments be produced, that review of the case law indicates that "there is an implication that attachments must be produced with emails," and that "prevailing practice . . . is for parties to produce any non-privileged attachment to an email if the email is determined to be relevant, and to produce the email if any of the attachments are determined to be relevant"); *see also PSEG Power N.Y., Inc. v. Alberici Constructors, Inc.*, 2007 WL 2687670, at *12 (N.D.N.Y. Sept. 7, 2007) ("Without question, attachments should have been produced with their corresponding emails as such are kept in the usual course of business."); *CP Solutions PTE, Ltd. v. General Electric Co.*, 2006 WL 1272615, at *4 (D.Conn., Feb. 6, 2006) ("Defendants chose to provide the documents in the manner in which they were kept in the ordinary course of business. Attachments should have been produced with their corresponding emails"); *U & I Corp. v. Advanced Med. Design, Inc.*, 251 F.R.D. 667, 675 n. 14 (M.D.Fla.2008) ("The dubious practice of producing e-mails without attachments in federal discovery has not gone unnoticed by other courts."). Thus, Ceglia remains non-compliant with the Court's August 15 Decision and Order (Doc. No. 478), as well as the Court's July 11 Text Order (Doc. No. 464).

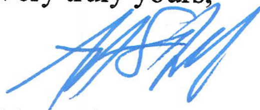
Second, the April 13 Letter reveals REDACTED REDACTED that are responsive to the Court's expedited discovery orders; like the April 13 Letter, those communications should have been produced to Defendants months ago, and they now must be produced immediately. REDACTED

REDACTED All three of these communications are responsive to the Court's expedited discovery orders and must be produced to Defendants immediately.

Finally, your designation of the April 13 Letter as confidential pursuant to the parties' Joint Stipulated Protective Order is improper. The Court has on several prior occasions overruled Ceglia's abusive and improper designations. *See, e.g.*, Doc. Nos. 107, 117, 208. Ceglia's latest attempt to hide behind the Protective Order is similarly inappropriate. The parties' intent, reflected in the plain text of the Protective Order, was to ensure the confidentiality of *legitimate* information or materials. The Protective Order was obviously not intended to shield from disclosure documentary evidence of your client's fraud, however devastating that evidence might be. We hereby object to Ceglia's designation of the April 13 Letter as confidential, pursuant to paragraph 5 of the Protective Order, and request that you withdraw that improper designation.

This letter represents Defendants' final attempt to meet-and-confer about the discovery disputes described herein, pursuant to Local Rule 7(d)(4). Defendants reserve all rights, including the right to move the Court to compel these and other material and to seek fees, costs, and appropriate sanctions.

Very truly yours,



Alexander H. Southwell

AHS/kc

cc: Paul Argentieri, Esq.