

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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PAUL D. CEGLIA,

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

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG, Individually, and  
FACEBOOK, INC.

**DECLARATION  
OF DEAN BOLAND REGARDING  
ATTORNEYS FEES DEMAND  
FOLLOWING ORDER ON  
SEVENTH MOTION TO COMPEL**

Defendants.

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DECLARANT, submits this declaration and hereby declares under penalty of perjury and pursuant to 28 U.S.C. 1746 and under the laws of the United States that the following is true and correct:

1. I make this declaration upon personal knowledge.
2. After reviewing the court's Sixth Motion to Compel, I directed Defendants' computer experts, consistent with this court's order in Doc. No. 85, to produce the Kasowitz Letter to Defendants as it was described in this court's order. Doc. No. 457.
3. Plaintiff's counsel was aware that there was more than one email and one letter communicated to Plaintiff from the Kasowitz law firm.
4. Alex Southwell, Defense counsel, contacted me disputing that my direction to Bryan Rose of Stroz Friedberg, was inconsistent with the court's order, despite that direction quoting from this court's order describing the Kasowitz Letter to

be produced.

5. Recognizing that the parties were at odds regarding what letter the court was referring to, I took the proactive step of contacting the court to resolve the matter with a brief phone call which would have taken less than 30 minutes to determine whether the court intended its order to mandate disclosure and production of an April 13, 2011 letter that was **not attached** to Item 379, was **not disclosed** to Jason Holmberg and was **not an item** Plaintiff failed to designate as privileged.
6. If the court had mandated disclosure of that April 13, 2011 letter as the “Kasowitz letter” the letter would have been produced immediately to Defendants with no need for any motion practice.
7. Defendants short-circuited that attempt to resolve the matter in bad faith.
8. In response to the court’s scheduling order connected to the Seventh Motion to Compel, Plaintiff’s counsel was unable to determine which document, the so-called Kasowitz Letter, the court wanted attached to Plaintiff’s response.
9. Plaintiff’s counsel reviewed this court’s order and immediately noted a confusion in the understanding of what was to be produced as identified as the Kasowitz Letter.
10. Plaintiff’s counsel was unable to advise Plaintiff whether the attachment of an April 13, 2011 letter to his response was what the court intended in its scheduling order following the filing of the Seventh Motion to Compel.
11. Plaintiff’s counsel was unable to advise Plaintiff whether attaching an April

- 13, 2011 letter would or would not waive a privilege claim that had not already been deemed waived by the court.
12. Plaintiff's counsel believed then, and continues to believe now that the best and most conservative course of action was to present the letter to the court only, gain the court's confirmation, or not, that the April 13, 2011 letter was, in fact, the so-called Kasowitz Letter and only then, submit it to Defendants.
  13. This advice insured Plaintiff that he would not inadvertently or clumsily waive privilege as to the contents of the April 13, 2011 letter when the court, in the end, may well indicate that the April 13, 2011 letter was not the letter the court intended to be attached to the response to the Seventh Motion to Compel.
  14. Plaintiff's counsel's advice to Plaintiff was his best professional opinion to manage the uncertainty of what the "Kasowitz Letter" is/was as described by the court. This advice was followed by Plaintiff reliant on the analysis noted above and what was also detailed in the Plaintiff's objection to this court's order following the Seventh Motion to Compel.
  15. Despite recent attempts to gain confirmation from Defendants that the submission of the April 13, 2011 letter brings Plaintiff into compliance with this court's order following the Seventh Motion to Compel, no response from Defendants is forthcoming. It is therefore uncertain whether Defendants even agree that the submission of the April 13, 2011 letter is what the court intended be produced in Doc. No. 457.
  16. Given that the April 13, 2011 letter attached to Plaintiff's response to the

Seventh Motion to Compel was not disclosed to Jason Holmberg, that the email to which the April 13, 2011 email was attached was not disclosed to Jason Holmberg and that neither item appeared on any relevant materials log enabling designation as privileged and, finally, that the April 13, 2011 letter was not an attachment to Item 379, it is not possible that Plaintiff's counsel can, even today, provide 100% assurance to Plaintiff that submission of the April 13, 2011 letter puts Plaintiff into compliance with the court's order following the Seventh Motion to Compel.

17. Plaintiff's counsel accepts responsibility for advising Plaintiff consistent with a reasonable, substantially justified, reading and resulting confusion about what the court's order required following the Seventh Motion to Compel.

I hereby declare under penalty of perjury and pursuant to 28 U.S.C. 1746 and under the laws of the United States that the following is true and correct:

DATED: September 6, 2012.

/s/ Dean Boland

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Declarant