



## INTRODUCTION

Defendants submit this fee application in response to the Court's Decision and Order directing them to submit an application reflecting the fees incurred in connection with the portion of Defendants' Eighth Motion to Compel requesting production of the March 30 Capsicum Communication. *See* Doc. No. 584 ("D&O").

Defendants respectfully request that this Fee Application be granted in full and that the Court award \$3,747.68, to be paid within fourteen days of the Court's order granting Defendants' Fee Application.

## STATEMENT OF FACTS

This Fee Application follows this Court's granting in part Defendants' eighth and ninth motions to compel necessitated by Ceglia's refusal to comply with this Court's discovery orders. *See* Doc. Nos. 95, 129, 155, 245, 295, 382, 461.

As the Court is aware, Ceglia produced the April 13 Kasowitz Letter—in which Ceglia's former attorneys at Kasowitz advised their former co-counsel DLA Piper and Lippes Mathias that they "immediately withdrew" upon "establish[ing]" that the Work for Hire Document "is fabricated"—only after this Court rejected Ceglia's attempt to conceal it and after numerous motions to compel by Defendants. *See* Doc. No. 589-18 at 2; Doc. No. 478 at 2.

And it was only after reviewing the April 13 Kasowitz Letter that Defendants discovered the existence of three additional non-privileged communications involving the Kasowitz firm that appeared responsive to the Court's expedited discovery orders and should have been produced months ago. *See* Doc. No. 512 at 1. Defendants therefore discussed, prepared, and filed their Eighth Motion to Compel, seeking those three communications and seeking to overrule Ceglia's improper designation of the April 13 Kasowitz Letter as confidential. *See* Southwell Decl. ¶ 6; Doc. No. 512.

After reviewing the three communications *in camera*, the Court agreed that one of these communications—the March 30, 2011 email to the Kasowitz firm from its digital forensics firm, the Capsicum Group—was required to be produced long ago under this Court’s expedited discovery orders. *See* D&O at 12-13. The Court ordered the March 30 Capsicum Communication produced, and directed Defendants to provide affidavits of costs and attorneys’ fees incurred in connection with the portion of Defendants’ Eighth Motion to Compel requesting production of that communication. D&O at 21. The Court also overruled Ceglia’s improper confidentiality designation of the April 13 Kasowitz Letter as confidential, though attorneys’ fees were not awarded for that part of Defendants’ successful motion. *Id.*

Defendants’ counsel reviewed the Court’s Decision and Order, discussed its effects, considered the content of the affidavits requested by the Court, and reviewed and analyzed bills for the applicable entries. *See* Declaration of Alexander H. Southwell in Support of Defendants’ Fee Application in Connection with Their Eighth Motion to Compel (“Southwell Decl.”) ¶¶ 8-9. Defendants’ counsel then drafted, discussed, revised, finalized, and filed the instant Fee Application and supporting declaration of Alexander H. Southwell. *See* Southwell Decl. Ex. A.

#### **DEFENDANTS’ LAWYERS AND THEIR EFFORTS TO SECURE CEGLIA’S COMPLIANCE**

Defendants’ counsel from the law firm Gibson, Dunn & Crutcher LLP (“Gibson Dunn”) who devoted substantial time providing legal services relevant to the instant Fee Application are Thomas Dupree, Alexander Southwell, Matthew Benjamin, and Amanda Aycock. Biographies for each of these attorneys were previously filed as part of Defendants’ Fee Application filed January 20, 2012 (Doc. No. 285). *See* Doc. No. 285 at 6-9 (briefly outlining the experience of each of the above-referenced attorneys).

Mr. Dupree, a partner in Gibson Dunn's Washington, D.C. office, is an experienced trial and appellate advocate whose 2012 billing rate is \$900. Mr. Dupree's role relevant to this Fee Application was primarily in revising Defendants' memoranda of law. Defendants claim only 0.26 hours of Mr. Dupree's time in this Fee Application. *See* Southwell Decl. Ex. A.

Mr. Southwell, a partner in Gibson Dunn's New York office, is a former federal prosecutor specializing in complex civil litigation whose 2012 billing rate is \$910. Mr. Southwell's role relevant to this Fee Application was primarily in revising Defendants' memoranda of law and reviewing supporting declarations. Defendants claim 0.75 hours of Mr. Southwell's time in this Fee Application. *See* Southwell Decl. Ex. A.

Mr. Benjamin is a seventh-year associate in Gibson Dunn's New York office whose practice focuses on white-collar criminal defense and complex commercial litigation and whose 2012 billing rate is \$720. Mr. Benjamin's role relevant to this Fee Application was primarily in developing strategy, drafting, reviewing, and revising the memoranda in support of Defendants' Eighth Motion to Compel, drafting declarations, and coordinating filings. Defendants claim 4.43 hours of Mr. Benjamin's time in this Fee Application. *See* Southwell Decl. Ex. A.

Ms. Aycock is a third-year associate in Gibson Dunn's New York office whose practice focuses on complex commercial litigation and whose 2012 billing rate is \$560. Ms. Aycock's role relevant to this Fee Application was primarily in drafting portions of Defendants' memoranda and supporting declarations, and coordinating all filings. Defendants claim 1.58 hours of Ms. Aycock's time in this Fee Application. *See* Southwell Decl. Ex. A.

As directed by the D&O, the instant Fee Application includes only legal services rendered in connection with the portion of Defendants' Eighth Motion to Compel requesting production of the March 30 Capsicum Communication. It does not include legal services

rendered in connection with the portion of Defendants' Eighth Motion to Compel requesting production of the April 12 Kasowitz Letter or the April 12 Kasowitz Letter. It also does not include legal services rendered in connection with the portion of Defendants' Eighth Motion to Compel moving to overrule Ceglia's improper confidentiality designation of the April 13 Kasowitz Letter.

In order to calculate the time and fees associated with only the legal services related to the March 30 Capsicum Communication, Defendants divided their Eighth Motion to Compel into two issues: (1) the three unproduced Kasowitz communications, and (2) Ceglia's improper confidentiality designation of the April 13 Kasowitz Letter. Defendants then calculated the total amount of time each attorney expended on the Eighth Motion to Compel, and divided each attorney's time in half, in order to best reflect the amount of time dedicated to each of the two issues. Then, because the March 30 Capsicum Communication was only one of three communications sought, Defendants further divided each attorney's time by three, in order to reflect the amount of time dedicated only to the single March 30 Capsicum Communication. *See* Southwell Decl. ¶ 10.

Defendants also seek reimbursement for fees for the time reasonably spent preparing this Application and accompanying affidavit, including those incurred in connection with any reply memorandum, oral argument, or enforcement of a fee award. Information concerning those additional fees will be fully submitted once briefing and argument (at this Court's discretion) occur.

The time spent on legal services covered by the Court's order granting Defendants' Seventh Motion to Compel that Defendants claim herein, totaling \$3,747.68 and which is fully

detailed in the Southwell Declaration and accompanying narrative descriptions, is presented in the chart below:

<b>Attorney</b>	<b>Total Hours</b>	<b>Claimed Rate</b>	<b>Total Fees</b>
Thomas H. Dupree	0.26	\$675.00	\$174.38
Alexander Southwell	0.75	\$682.50	\$511.50
Matthew Benjamin	4.43	\$540.00	\$2,394.00
Amanda Aycock	1.59	\$420.00	\$667.80
<b>TOTAL</b>	<b>7.03</b>		<b>\$3,747.68</b>

### **ARGUMENT**

In Defendants' first Fee Application (Doc. No. 285), which this Court granted, *see* Doc. No. 292, and in subsequent fee applications, Defendants have not sought full reimbursement for all fees they incurred. Rather, to avoid any dispute as to the reasonableness of the fee request, Defendants have declined to seek reimbursement for several timekeepers and voluntarily discounted their standard hourly rates by 25%—rates which this Court expressly approved in Defendants' first Fee Application. *See* Doc. No. 292 at 26–31. Defendants have applied the same principles in this Fee Application as well: they have instituted an across-the-board 25% cut to their standard hourly rates and have declined to seek reimbursement for several timekeepers, including senior partner Orin Snyder and several associate attorneys, whose excluded total fees related to the March 30 Capsicum Communication exceeded \$1,400.

The already-discounted fees sought in this Application are reasonable. Defendants now seek reimbursement for a little over seven hours of legal services for this work over eleven days, using the same lodestar formula expressly approved by this Court in its grant of Defendants' first Fee Application. *See* Doc. No. 292 at 34. The time and rates Defendants seek in this Application were reasonably expended to advance and defend the portion of the Eighth Motion

to Compel related to the March 30 Capsicum Communication and respond to Ceglia's opposition.

After discovering the existence of the March 30 Capsicum Communication, Defendants researched, drafted, revised, and finalized their Eighth Motion to Compel and prepared the accompanying declarations and exhibits. Then, during the six days following Ceglia's filing of his opposition, Defendants reviewed, analyzed, and discussed Ceglia's opposition, and researched, drafted, revised, and finalized their reply in support of their Eighth Motion to Compel. These tasks were discharged efficiently, with only one associate primarily responsible in each phase of preparing the motion.

The Court should therefore grant Defendants' narrowly tailored and reasonable Fee Application in Connection with their Eighth Motion to Compel in full.

### CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court order Ceglia to pay Defendants' attorneys' fees in the total amount of \$3,747.68 within fourteen days of this Court's Order granting Defendants' Fee Application,<sup>1</sup> or submit documentation demonstrating why such payment is not possible, in accordance with the Court's May 3, 2012 Decision and Order on Defendants' Supplemental Fee Application. *See* Doc. No. 370 at 13-14.

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<sup>1</sup> *See, e.g., Sheehy v. Wehlage*, 02CV592A, 2007 U.S. Dist. LEXIS 11722, at \*27 (W.D.N.Y. Feb. 20, 2007) (requiring plaintiffs to pay defendants' attorneys' fees for discovery abuse within fourteen days); *Ng v. HSBC Mortg. Corp.*, 07-CV-5434 (RRM)(VVP), 2010 U.S. Dist. LEXIS 33486, at \*6 (E.D.N.Y. Apr. 5, 2010) (same); *Citizens State Bank v. Dixie Cnty.*, 1:10-cv-224-SPM-GRJ, 2011 U.S. Dist. LEXIS 113752, at \*9 (N.D. Fla. Oct. 3, 2011) (requiring plaintiff to pay defendant's attorneys' fees for discovery abuse within ten days).

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