

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 Eighth Motion to Compel (“the Fee Application”) for payment of fees reasonably expended in connection with the portion of Defendants’ Eighth Motion to Compel (Doc. No. 512) and Defendants’ Reply Memorandum of Law in Support of Their Eighth Motion to Compel (Doc. No. 544) requesting the production of the March 30 Capsicum Communication (the “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. The biographies of myself, 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. I,

Messrs. Dupree and Benjamin, 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: Alexander Southwell: \$910.00, Thomas Dupree: \$900.00, Matthew Benjamin: \$720.00, 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: Alexander Southwell: \$682.50, Thomas Dupree: \$675.00, Matthew Benjamin: \$540.00, and Amanda Aycock: \$420.00. In addition, Defendants are also declining to seek reimbursement for several timekeepers, including partners Orin Snyder and several associate attorneys. 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 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 April 13, 2011 Kasowitz Letter to Defendants. Doc. No. 478.

5. On August 17, 2012, Ceglia produced the April 13 Kasowitz Letter—a letter to Ceglia’s current lawyers at Lippes Mathias Wexler Friedman LLP and DLA Piper from an attorney at Kasowitz, discussing Kasowitz’s withdrawal because Ceglia’s purported contract was a “fabrication” (Doc. No. 589-18). Defendants’ counsel reviewed the April 13 Kasowitz Letter, conferred regarding the contents and significance of the letter, considered case strategy related to

the letter, and discussed the existence of additional communications, including the March 30 Capsicum Communication, which were revealed to Defendants for the first time in the letter. Defendants have not included any portion of the time devoted these strategic discussions in the requested fees in this Fee Application.

6. Defendants' counsel then drafted, discussed, revised, and finalized their Eighth Motion to Compel and the supporting declaration of Alexander H. Southwell, which they filed on September 5, 2012. Doc. Nos. 511-514. This motion sought relief regarding two issues: (1) three additional non-privileged communications involving the Kasowitz firm that appeared responsive to the Court's expedited discovery orders, and (2) Ceglia's improper confidentiality designation of the April 13 Kasowitz Letter. One of the communications sought was the March 30 Capsicum Communication.

7. On September 14, 2012, Ceglia filed his opposition to Defendants' Eighth Motion to Compel. Doc. No. 540. Defendants' counsel then reviewed, discussed, and analyzed Ceglia's opposition and drafted, discussed, revised, finalized, and filed Defendants' reply in support of their Eighth Motion to Compel and the supporting declaration of Alexander H. Southwell on September 20, 2012. Doc. No. 544.

8. On November 7, 2012, this Court granted in part Defendants' Eighth Motion to Compel, requiring Ceglia to rescind his confidentiality designation of the April 13 Kasowitz Letter and ordering him to produce one of the three communications requested by Defendants—the March 30 Capsicum Communication. Doc. No. 584. 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 March 30 Capsicum Communication. *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.

9. Defendants' counsel then drafted, discussed, finalized, and filed the instant fee application and supporting declaration of Alexander H. Southwell.

10. In order to calculate the time and fees associated with only the legal services related to the March 30 Capsicum Communication (the Compel Work), 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.

11. Attached hereto as Exhibit A 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.

12. The total amount requested as attorneys' fees for Gibson Dunn's legal services related to Compel Work is \$3,747.68, for 7.03 hours of services rendered. This request includes fees incurred while preparing Defendants' Eighth Motion to Compel (Doc. No. 512), reviewing Ceglia's opposition to Defendants' Eighth Motion to Compel (Doc. No. 540), and preparing Defendants' Reply in Support of its Eighth Motion to Compel (Doc. No. 544), in accordance with the calculations outlined above.

13. 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	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
TOTAL	7.03		\$3,747.68

14. 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 March 30 Capsicum Communication. Examples of such excluded fees are substantial and include: strategic discussions related to the contents of the April 13 Kasowitz Letter and the resulting Eighth Motion to Compel, subsequent correspondence with Ceglia's counsel regarding deficiencies in Ceglia's production of the Kasowitz communications, 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 several billers, including senior partner Orin Snyder, who contributed by

providing strategic guidance and reviewing and revising the briefs, and several associate attorneys, who contributed by conducting research and drafting portions of the papers. 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.

15. The total amount requested also does not include costs, rather than fees, incurred with respect to the Compel Work.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 19th day of November, 2012 at New York, New York.



Alexander H. Southwell