UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG, Individually, and FACEBOOK, INC.

Defendants.

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

RESPONSE TO DEFENDANTS REQUEST FOR ATTORNEYS FEES CONNECTED WITH FILING OF EIGHTH MOTION TO COMPEL

MEMORANDUM

As the court is aware, the Defendants are now in receipt of irrelevant letters from the Kasowitz law firm espousing a belief in fabrication that even the Kasowitz lawyers recoiled from and declined to approach this court to disclose. The reason for Kasowitz's failure to disclose this belief is obvious. The Kasowitz letter was based upon no legal research, no analysis of the underlying contract, no forensic analysis of the electronic files comprising the now discredited street fax digital images, no consideration that those images were not found on any Ceglia computer (but that of his parents) the images were created somewhere else (still unknown) and not on that computer, the images were the size of postage stamps and illegible, and the computer on which they were found had remote hacking tools installed making it accessible to any decent hacker. But, of course, Kasowitz knew none of this information before firing off their ill-conceived, un-investigated letter.

In short, the Kasowitz law firm, in an impulsive and ultimately flawed conclusion, merely sent a letter declining to represent Mr. Ceglia. They never determined a fraud on the court was committed. This is evident because had the Kasowitz determined that they had come across indisputable evidence of fraud, they were duty bound to so inform the court. They did not inform the court. No attorney for Plaintiff, past or present, has come across such fraud evidence and, therefore, not surprisingly, no attorney past or present has approached the court indicating such evidence existed. No lawyer for the defense has approached the undersigned claiming any evidence of fraud outside of their hired experts and their reports. Given that plaintiff has experts opposing each of the defendants' experts on every point of authentication, there is no clear and convincing evidence of fraud here.

Despite Defendants' pursuit of a letter by a non-expert lawyer after no meaningful investigation at all, they pursued other irrelevant and arguably privileged documents in their Eight Motion to Compel. The court has ruled on that motion and 2/3 of what Defendants pursued was deemed properly withheld from them by Plaintiff.

The remaining 1/3 of what Defendants pursued was inextricably linked with the documents the court ultimately found should not be produced. Therefore, Plaintiff was prudent and judicious in not submitting to the Defendants' request for blanket disclosure of what they ultimately sought in their Eight Motion to Compel. Instead, Plaintiff and his counsel expended hours in response to Defense counsel's emails and letter requesting items, 2/3s of which they were ultimately not

permitted to obtain.

In addition, Plaintiff's counsel expended additional hours reviewing, researching and drafting a response to the Eight Motion to Compel, while clearly being justified in his refusal to submit to Defendants' blanket request. There was nothing improper or frivolous in Plaintiff's refusal to disclose the items Defendants' requested. In fact, as the court's order indicates, the majority of what Defendants' sought was not subject to disclosure. Even that communication that the court ordered disclosed, it ordered redactions from the letter consistent with a vindication of Plaintiff's right to not have potentially proprietary information disclosed. Obviously, had Plaintiff simply submitted this document to Defendants' with the same redactions imposed, Defendants' (true to form thus far) would have multiplied the proceedings by filing a motion to compel disclosure of the unredacted version anyhow, putting us right where we are now.

Therefore, Plaintiff was in a no-win situation. He held back three documents with valid objections and the court vindicated his decision on two of the three documents and even highlighted redactions to be made from the one document to be produced. These redactions were partially to the benefit of Defendant Zuckerberg, the very person seeking a non-redacted version of these documents in the Eight Motion to Compel.

Therefore, any consideration of an award of attorneys fee ought to consider that Plaintiff's ability to object to the production of the three communications relies in large part on their relatedness. And, the one communication ordered produced,

itself, was entitled to be heavily redacted. There was no meaningful way for Plaintiff to expect that had he produced the third communication, ultimately ordered to be produced, but done so with the heavy redactions this court authorized, that such production would have prevented another motion to compel. Essentially, Defendants would have expended attorneys fees had Plaintiff produced the document redacted (as eventually he was authorized to do) or not produced it at all (as Plaintiff elected to do).

CONCLUSION

For the foregoing reasons, Mr. Ceglia respectfully requests this court deny Defendants' application for attorneys fees.

Respectfully submitted,

/s/ Paul Argentieri

Paul A. Argentieri
188 Main Street
Hornell, NY 14843
607-324-3232 phone
607-324-6188
paul.argentieri@gmail.com