

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

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

Plaintiff,

**DECLARATION
OF PAUL ARGENTIERI**

v.

MARK ELLIOT ZUCKERBERG, Individually, and
FACEBOOK, INC.

Defendants.

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. I'm filing this declaration to supplement the declaration I filed on November 26, 2012, Doc. No. 610.
3. As a result of additional research following the criminal complaint filed against Plaintiff on October 25, 2012, Doc. No. 581, I have become aware of additional relevant case law and facts that I feel the court should be aware of.

Additional Case Law

4. In 1996, Congress enacted the False Statements Accountability Act of 1996 to amend the language of 18 USC § 1001 and clarify the judicial function exception.

5. “The legislative history of the judicial function exception indicates that it was enacted by Congress in 1996 and added to § 1001 for the purpose of codify[ing] the judicial function exception which has long been recognized by many Federal courts as necessary to safeguard from the threat of prosecution statements made in the course of adversarial litigation. Allowing the criminal penalties of section 1001 to apply to statements made in the course of adversarial litigation would chill vigorous advocacy, thereby undermining the adversarial process.” US v. Vreeland, 684 F. 3d 653 - Court of Appeals, 6th Circuit 2012
6. “The exception, the Report noted, was made sufficiently broad to cover not merely statements, but also "representations, writings or documents" filed in court, since such filings "are already covered by other statutes," such as those prohibiting perjury and obstruction.” US v. Butler, 351 F. Supp. 2d 121 - Dist. Court, SD New York 2004
7. “We rejected the argument that "a fraudulent statement in a court is ergo a 'fraud upon the Government'.” US v. Masterpol, 940 F. 2d 760 - Court of Appeals, 2nd Circuit 1991
8. The judicial function exception makes it clear that even if the Facebook Contract were forged, and it is not, submission of such contract is NOT a fraud on the court.
9. Congress has made it clear with both 18 USC § 1001 and FRE 1008 that it is not the role of the Court to interfere with adversarial litigation or to weigh

evidence.

**Further Proof of Defendant Zuckerberg's Emails
Deleted from Harvard Server**

10. Defendants argue in the Motion to Dismiss for Fraud, “That Ceglia’s ‘emails’ quoted in the Amended Complaint are all fakes is further confirmed by the fact that all purport to have been sent to and from Zuckerberg’s Harvard email account — yet not a single one exists on the Harvard server.” Doc. No. 319 at 13.
11. Defendants’ arguments that Zuckerberg has produced all his emails from Harvard is false, misleading and a legal non-sequitur. The Court has received only a portion of the emails that were created between the parties in 2003 and 2004.
12. Plaintiff has demonstrated with incontestable evidence that Defendant Zuckerberg deleted Harvard emails. That proof was submitted to the court with Plaintiff’s Motion for Discovery, Doc. No. 319.
13. However, further proof of email deletion by Zuckerberg, or his agents, of a critical email was found in the emails produced by Sidley Austin pursuant to the Court ordered subpoena.
14. On August 18, 2011, Defendants were authorized by this Court’s order, Doc. No. 117 at 4, to subpoena email records from Sidley Austin LLP, the former law firm of Plaintiff’s former attorney James Kole.
15. Defendants received email records from Sidley Austin that were not previously

submitted to this Court, that further document the deletion of emails from the Zuckerberg's Harvard account.

16. On March 1, 2004, a StreetFax employee sent an email to Mr. Kole explaining that Defendant Zuckerberg "threatened to take one of the functions off the site this weekend due to nonpayment, and he indeed did." A copy of this email can be found in Exhibit A.
17. Zuckerberg's email of February 28, 2004, shown in Exhibit A, wherein Zuckerberg threatened to hack into the StreetFax website to illegally destroy the site's functionality and further threatened to "shut down the entire site" (Exhibit A) is the "Rosetta Stone" that illuminates and explains Zuckerberg's true identity in real time as a malicious hacker with a disregard for the legal process.
18. This damning email was found on the Sidley Austin Server, a source that Defendants cite as authentic.
19. The email was NOT found on Defendant Zuckerberg's Harvard account.
20. Defendant Zuckerberg's Harvard account contains NO emails sent by Defendant Zuckerberg after October 31, 2003.
21. A Fortiori, Zuckerberg destroyed evidence when he or his agents deleted his Harvard emails.
22. A Priori, the claimed absence of Harvard emails in Zuckerberg's account by Defendants is NOT proof of fraud.
23. In other words, the trier of fact must determine whether Zuckerberg deleted

emails from his Harvard account and whether the emails attached to the Amended Complaint were the same ones Zuckerberg deleted.

Sidley Austin Email Validate the Terms of Facebook Contract

24. The Sidley Austin server also contained an email sent on Friday March 5, 2004 from Plaintiff to Mr. Kole wherein Plaintiff describes the Facebook Contract as, “a contract that so clearly sta[t]es we owe him nothing”. A copy of this email can be found in Exhibit B.
25. This is a clear piece of evidence from Sidley Austin server that references the terms of the Facebook Contract and not the terms of the unauthenticated Street Fax digital images.
26. Assuming arguendo, that the Street Fax digital images contained the terms between the parties, Plaintiff agreed to pay \$18,000 to Zuckerberg.
27. Thus, the sentence reaffirming the Facebook Contract terms (wherein Zuckerberg had been fully paid) is a prior recorded statement of the Plaintiff from 2004.

**Defendant Zuckerberg’s Recent Memory is in Conflict
with His Prior Sworn Statements**

28. Defendant Zuckerberg declared under the penalty of perjury in this action that, “I conceived of the idea for Facebook in or about December 2003.” Doc. No. 46.
29. Postal Inspector Veatch swore in his criminal complaint against Plaintiff, that as a result of “speaking with Mark Zuckerberg” (Doc. No. 581 at 11) Inspector

Veatch learned that “Zuckerberg had not conceived of the idea of the Facebook website as of April 28, 2003” and that “It was only in or about September and October 2003....that Zuckerberg worked on certain projects that ultimately were precursors for the Facebook website.” Id at 12.

30. Defendant Zuckerberg, under oath, testified when he was being deposed in the case of Facebook v. ConnectU on April 25, 2006 that, “I also never said that I had the idea in 2003. Really, unsure of like when the moment was that it crystallized and I said I’m going to make Facebook.” Zuckerberg Depo. Trans. of 4/25/06 at 75. Exhibit C.
31. Plaintiff has thus far been denied access to Defendants’ prior litigation files and sworn statements, but has been able to sufficiently delineate, so far from his public filings, Zuckerberg’s inability to state truthfully a consistent set of facts about the circumstances surrounding the idea, coding and the creation of Facebook.
32. Defendants were caught attempting to shift their presentation of the facts surrounding the formation of Thefacebook, LLC formed in April, 2004.
33. In this action, it suited Defendants to state, “Zuckerberg transformed “The Face Book” project into a new commercial entity months earlier, in April 2004, when he and others organized Thefacebook LLC.” Doc. No. 321 at 8.
34. In the earlier case of Facebook, Inc. v. Saverin, No. 105CV039867, filed in California Superior Court, Clara County (“Saverin Case”), it suited Defendants to swear in their pleadings that “At no time were the intellectual property

rights in the business ever assigned to the LLC. At no time did those rights ever belong to the LLC.” Saverin Case, Third Amended Complaint ¶ 10.

35. Defendants are entitled to their opinions, but they are not entitled to a new set of facts for each new lawsuit nor to withhold relevant facts yet to be disclosed.

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: December 5, 2012.

/s/ Paul Argentieri

Paul Argentieri