

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG and
FACEBOOK, INC.

Defendants.

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

**DECLARATION OF PAUL A. ARGENTIERI
IN SUPPORT OF PLAINTIFF'S MOTION
FOR RECONSIDERATION, CORRECTION
OR CLARIFICATION OF THE
MAGISTRATE'S DECISION AND
ORDER (DOC. 660) (FED. R. CIV. P.
60(a) OR 60(b)(6))**

Paul A. Argentieri, pursuant to 28 U.S.C. § 1746, declares under the pains and penalties of perjury as follows:

1. I am one of the attorneys for Plaintiff in this action. I have personal knowledge of the facts stated herein and if called upon to testify as to them, I would competently do so.

2. This Declaration is submitted in support of Plaintiff's Motion for Reconsideration, Correction or Clarification of the Magistrate's Decision and Order entered on May 9, 2013 (Doc. No. 660).

3. On May 9, 2013, the Magistrate Judge entered a Decision and Order in this case (Doc. 660) ("D&O #1").

4. D&O #1, in its decretal section, grants in part and denies in part the defendants' fee application "in accordance with the January 10, 2012 Decision and Order (Doc. No. 283)" and states "Defendants are awarded in connection with their Accelerated Motion to Compel \$3,747.68 in attorney's fees." The decretal section of D&O #1 is annexed hereto as Exhibit A.

5. On February 14, 2012, the Magistrate Judge entered a Decision and Order (Doc. -292) ("D&O #2") which, in its decretal section, grants in part and denies in part the defendants'

fee application “in accordance with the January 10, 2012 Decision and Order (Doc. No. 283)” and states “Defendants are awarded in connection with their Accelerated Motion to Compel \$75,776.70 in attorney’s fees.” The decretal section of D&O #2 is annexed hereto as Exhibit B.

6. The decretal sections of D&O #1 and D&O #2 are identical in terms of the Motion and Order to which they relate but they differ in the amount of attorney’s fees ordered. D&O #1 facially conflicts, therefore, with D&O #2 and Plaintiff respectfully requests that the Court either reconsider, correct or clarify D&O #1 so that the record is clear and accurate concerning the basis and terms of D&O #1.

7. This motion by Plaintiff is timely made and is not being made for purposes of delay, but in good faith.

I declare, under the pains and penalties of perjury of the laws of the United States, that the foregoing is true and correct.

Executed on May 23, 2013

s/ Paul A. Argentieri
Paul A. Argentieri

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG, and
FACEBOOK, INC.,

Defendants.

**DECISION
and
ORDER**

10-CV-00569A(F)

APPEARANCES:

BOLAND LEGAL, LLC
Attorneys for Plaintiff
DEAN M. BOLAND, of Counsel
18123 Sloane Avenue
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GIBSON, DUNN & CRUTCHER, LLP
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ALEXANDER H. SOUTHWELL, of Counsel
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and
THOMAS H. DUPREE, JR., of Counsel
1050 Connecticut Avenue, N.W.
Washington, District of Columbia 20036

ORRICK, HERRINGTON & SUTCLIFFE LLP
Attorneys for Defendants
LISA T. SIMPSON, of Counsel
51 West 52nd Street
New York, New York 10019

465 U.S. 886, 892 n. 5 (1984).

Nor does the court find any basis requiring a percentage-based reduction in the number of hours claimed by each attorney to “trim the fat” from the fee request.

McDonald, 450 F.3d at 96; *Walker*, 909 F.Supp. at 881. Accordingly, the court makes no reduction to the number of hours for which Defendants seek attorney’s fees.

Defendants’ Fee Application, seeking \$ 3,747.68 in fees for work on Defendants’ Eighth Motion to Compel is GRANTED.

2. Fees for Fee Application Preparation

Defendants seek an award of attorney’s fees for the time spend preparing the Fee Application. Fee Application at 19-20. Plaintiff has not responded in opposition to this request.

A party awarded attorney’s fees is also entitled to compensation “for time reasonably spent in preparing and defending” the fee application. *Weyant v. Okst*, 198 F.3d 311, 316 (2d Cir.1999). That *Weyant* involved an award of attorney’s fees pursuant to the civil rights fee-shifting statute, 42 U.S.C. § 1988, does not dissuade a similar award in connection with attorney’s fees awarded as a sanction. Accordingly, Defendants are entitled to recover attorney’s fees and costs incurred in connection with the preparation and defense of their attorney’s fee award.

CONCLUSION

Based on the foregoing, in accordance with the January 10, 2012 Decision and Order (Doc. No. 283), Defendants Fee Application is GRANTED in part and DENIED in

part; Defendants are awarded in connection with their Accelerated Motion to Compel \$ 3,747.68 in attorney's fees. Defendants are further ORDERED to file **within ten (10) days**, affidavits of attorney's fees and costs incurred preparing and defending the Fee Application; Plaintiff's opposition shall be filed **within five (5) days** thereafter.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

DATED: May 9, 2013
Buffalo, New York

EXHIBIT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG, and
FACEBOOK, INC.,

Defendants.

**DECISION
and
ORDER**

10-CV-00569A(F)

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Attorneys for Defendants
LISA T. SIMPSON, of Counsel
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New York, New York 10019

CONCLUSION

Based on the foregoing, in accordance with the January 10, 2012 Decision and Order (Doc. No. 283), Defendants Fee Application is GRANTED in part and DENIED in part; Defendants are awarded in connection with their Accelerated Motion to Compel \$ 75, 776.70 in attorney's fees. Defendants are further ORDERED to file **within ten (10) days**, affidavits of attorney's fees and costs incurred preparing and defending the Fee Application.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

DATED: February 14, 2012
Buffalo, New York