

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

PAUL D. CEGLIA,

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

Plaintiff,

v.

**MARK ELLIOT ZUCKERBERG and
FACEBOOK, INC.**

Defendants.

**PLAINTIFF'S MEMORANDUM
IN OPPOSITION TO APPLICATION
FOR FEES AND COSTS FOR
PREPARING AND DEFENDING
FEE APPLICATION**

In accordance with this Court's May 9, 2013, Decision and Order (Doc. 660) requiring plaintiff to file his opposition to defendants' affidavits of attorney's fees and costs incurred in preparing and defending their fee application, plaintiff respectfully submits this memorandum in opposition.^{1/}

In his Decision and Order of May 9, 2013, the Magistrate approved attorneys' fees for 7.03 hours of legal work in the amount of \$3,747.68, for the time spent by four of defendants' attorneys to perform substantive legal work on a "portion of the Eighth Motion to Compel pertaining to the March 30 Capsicum Communication." (D&O 660 at 5) In Defendants' Supplemental Fee Application (Doc. 663), they seek fees for 6.75 hours of "legal services relating to the preparation and defense of Defendants' Fee Application" Thus, defendants request additional fees for defending their fee application which closely approximates in both time and value the fees awarded for performing the substantive motion work.

¹ On May 23, 2013, plaintiff filed his Motion for Reconsideration, Correction or Clarification of the May 9, 2013 Decision and Order. Although that motion remains pending, plaintiff is nonetheless filing this opposition within the five (5) day deadline prescribed in the Decision and Order.

In relying on *Healey v. Leavitt*, 485 F.3d 63 (2d Cir. 2007), the Court recognized that the fee calculation should exclude fees for work that is “‘excessive, redundant or otherwise unnecessary.’” (D&O at 8). It is impossible to tell from the narrative attached as Exhibit A to the Declaration of Alexander H. Southwell that the time spent to “reviewing client bills” and to “draft and revise fee schedules” was limited to that portion of the motion on which defendants prevailed and was, therefore, related to the defense of the fee application for that part of the motion. The narrative is unclear in that regard and it is quite likely, given the time reflected in the “Supplemental Billing Narrative” and its near equivalence to the time spent on the legal work on the underlying motion that a significant portion of the time expended to prepare the Supplemental Fee Application was taken up with reviewing and isolating the time spent on the unsuccessful portion of the underlying motion.

The plaintiff and Court are entitled to more specificity in this regard. The touchstone for such awards is “reasonable[ness] in relation to the results obtained” (*Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983)) and plaintiff respectfully submits that, on its face, the Supplemental Fee Application is not reasonable when compared to the fees already awarded for defendants’ partial success on the underlying motion.

Plaintiff respectfully objects to defendants’ Supplemental Fee Application.

Dated: May 28, 2013

Respectfully submitted,

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