

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

**MEMORANDUM OF LAW**  
**REGARDING MOTION FOR**  
**DISCOVERY**

**MEMORANDUM**

“Defendant shall produce all emails in their original, **native** and hard-copy form between Defendant Zuckerberg and Plaintiff and/or other persons associated with StreetFax that were captured from Zuckerberg's Harvard email account.” Doc. No. 83 at 3. Emphasis Added.

Defendants produced a selection of emails to Plaintiff in response to this court's order, Doc. No. 348. Defendants conducted their search of the Harvard email record without being ordered by the court. They did this to use that record as a comparison to the email exchanges Plaintiff produced which they disputed. Their rationale has always been, if Plaintiff's email exchanges do not appear in the Harvard email record as Defendants recovered it, then Plaintiff's emails are fakes.

The sample of emails produced by Facebook was self selected. It was not intended to be complete or all inclusive, but rather to mislead the court about what

emails were available. They did not search the Harvard email server backup tapes or the personal computers used by Zuckerberg during 2003-2004 that were obvious places to look for emails sent and received by Zuckerberg during the relevant time. Defendants production of these emails is a red herring to make the court believe that all of the emails between the parties had been produced.

On April 4, 2012, the court found Plaintiff complied with duties under the Doc. No. 83, and ordered Defendants to provide the Harvard emails forthwith. Doc. No. 348.

Defendants produced 233 emails in native and hard-copy format in response to this court's order in Doc No. 348. The native format of those emails was a file format extension of .msg.

Plaintiff's counsel has reviewed those emails. There are a significant number of relevant emails not produced by Facebook and Zuckerberg.

### **EARLY EMAILS NOT PROVIDED**

The parties signed the Facebook Contract on April 28, 2003. See Complaint, Exhibit 1. The first email produced from Defendant Zuckerberg's Harvard email account, however, dates to June 2, 2003. That leaves more than a month of email exchanges between Plaintiff and Zuckerberg that were not produced.

Plaintiff posted a Craigslist advertisement on or about January or February 2003 to which Zuckerberg responded which initiated their relationship. Declaration of Paul Ceglia at ¶2-4. Plaintiff's phone number was not included in that ad. Id. at ¶ 3. The only means of responding to the advertisement was via email which

Zuckerberg did on or about February or March of 2003. Id. at ¶4-5.

Throughout February, March and April of 2003 time Plaintiff exchanged emails with Mark Zuckerberg. Id. at ¶6. Dozens of emails were exchanged with Mark Zuckerberg in those three months. Id. Those emails exchanged during those months included drafts of what became the eventual Facebook Contract that the parties signed on April 28, 2003 in Boston. Id. at ¶7. The parties both arranged a meeting in Boston for April 28, 2003 to sign an agreement, now known as the Facebook Contract. Id. at ¶8. After the parties met and signed the Facebook Contract in Boston they discussed via email some work related concerns of Mark Zuckerberg. Id. at ¶9. During the week of May 24 through May 31, 2003, countless emails were exchanged as continual issues arose that required Plaintiff's input. Id. at ¶10. In November of 2003 the parties again began to communicate regularly via email. Id. at ¶12. Mark Zuckerberg sent Plaintiff numerous emails between November 2003 and December 31, 2003. That email communication continued into 2004. Id. at ¶¶12-13.

There are no emails during the critical timeframe when the work under the Facebook Contract was supposed to begin and end. The contract sets the start time for Zuckerberg's work at May 24, 2003. He was to conclude his work on May 31, 2003. This start time of May 24, 2003 coincides with the ending of Harvard's spring semester which happened on May 23, 2003.

**CONCLUSIVE EVIDENCE OF DELETED EMAILS THAT WERE NOT PROVIDED**

Even based on the limited sample Defendants produced, Plaintiff was able to identify specific emails that were deleted and other patterns of deletions. Not less than 22 original emails exchanged between the parties were deleted by Zuckerberg or someone on his behalf after November 1, 2003. The proof of the deletions is evident in the Harvard emails Defendants produced. Copies of those 22 deleted emails, also known as threads, were contained in other emails in the Harvard record. See Exhibits C and D.

We can identify patterns of deletions as well. Of the 149 emails produced that were dated between June 2, 2003 and November 1, 2003, 92 of them were sent by Mark Zuckerberg to either Plaintiff or another recipient. The Harvard emails contain 84 emails after November 1, 2003, but none of those 84 were sent by Mark Zuckerberg. This is clear proof that the sent items emails between Mark Zuckerberg and people associated with the Plaintiff dating to after November 2003 were deleted. With the limited discovery Plaintiff has had thus far, it is still undetermined whether these emails were deleted during the pendency of this litigation.

Plaintiff produced copies of 16 of the 19 emails that Mark Zuckerberg sent him between July 16, 2003 and November 1, 2003. Doc. No. 224. Plaintiff also received 13 emails from Mark Zuckerberg that were sent by Mark Zuckerberg after November 1, 2003. The deletion from Mark Zuckerberg's Harvard email account of all sent items emails after November 1, 2003 precludes the Defense from asserting that Plaintiff's emails are forgeries because they are not contained in Defendants'

produced Harvard email record.

### **IDENTIFICATION OF THE 22 MISSING EMAILS**

A native format msg email file produced by Defendants and required by the court's orders contains the following:

1. From, To, Date, CC and Subject information; and
2. The text of the body of the email itself; and
3. email header information. See Exhibit E at 1.

The contents of the msg file produced by Defendants for the typical email produced is shown on Exhibit E at 1. The email header information that comes along with the native file format of the msg file is shown at the bottom of Exhibit E at 1.

However, among the produced msg emails, were 22 examples of emails containing not only a message between relevant parties, but below that message, the "parent" or previous message between those parties. An example of such an email is on the top of Exhibit E at 2.

The email at the top of page 2 of Exhibit E was exchanged between the parties on June 2, 2003 at **11:28 pm**. The email header information for that email is at the bottom of page 2 of Exhibit E.

In that email at the top of page 2 of Exhibit E, the body of that email has a series ">" symbols within it below the main email message. The email information next to that series of ">" symbols contains another email exchanged between Zuckerberg and Plaintiff on June 2, 2003 at **1:08:55 am**. However, this 1:08:55 am

email **was not produced** to Plaintiff in any

The email header information at the bottom of page 2 of Exhibit E is only that for the email sent on June 2, 2003 at 11:28 PM. It does not (and would not) contain any email header information, as required in a native format production, of the parent email sent by Mark Zuckerberg at 1:08:55 am. (i.e the one shown next to the ">" symbols. Defendants' production also necessarily omits any attachments that may have been sent along with the email that was sent on Jun 2, 2003 at 1:08:55. As is noted above, attachments to emails between the parties are crucial pieces of evidence.

This failure of production regarding these parent emails occurs within 22 of the emails that Defendants did produce. See Exhibits C and D. This is objective, scientific and indisputable proof that Zuckerberg or someone at his request, deleted emails from his Harvard email account. Moreover, these intentionally deleted emails are emails that are relevant to this case.

### **DEFENDANTS' RESPONSE TO THE MISSING EMAILS THEY FAILED TO PRODUCE**

Plaintiff's counsel attempted to resolve this matter by pointing out the missing emails that Defendants' failed to produce in compliance with this court's order. Exhibit A.

Defense Counsel Alex Southwell's response to this attempt is attached as Exhibit B. In that response, Southwell admits Defendants have produced all the emails they are capable of producing based upon their experts' efforts thus far.

## **CONCLUSION**

For the time being, Plaintiff accepts Defendants' response that they have produced all emails they could recover from their analysis of the Harvard email system. A review of their production proves, without any doubt, that Defendant Zuckerberg deleted emails from his account that are relevant to this case. A review of the Stroz report demonstrates that Stroz failed to examine the Harvard email server backup tapes. Stroz also failed to review computers Zuckerberg used during the 2003-2004 time frame to determine if those computers contained these emails Defendants were ordered to produce, but did not produce.

Therefore, Plaintiff asks for an order from this court authorizing a subpoena to be issued to Harvard University for all backup tapes of the Harvard email server from 2003-2004 containing or potentially containing the email account of Defendant Zuckerberg. Also, Plaintiff requests an order authorizing Plaintiff's computer forensics expert to acquire all native format email messages from Defendant Zuckerberg's computers used during 2003-2004 forensic copies of which are currently in the possession of Parmet and Associates.

Respectfully submitted,

/s/Dean Boland

---

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

---

Dean Boland  
1475 Warren Road  
Unit 770724  
Lakewood, Ohio 44107  
216-236-8080 phone  
866-455-1267 fax  
dean@bolandlegal.com



# Discovery

Dean Boland <dean@bolandlegal.com>

Tue, May 22, 2012 at 4:49 PM

To: Alexander Southwell <asouthwell@gibsondunn.com>, Oren Snyder <osnyder@gibsondunn.com>, Paul Argentieri <paul.argentieri@gmail.com>

Alex:

The Harvard email production that Defendants' provided appears deficient in two respects:

1. The earliest dated email provided is from June 2, 2003.

As you know, our clients signed an agreement on April 28, 2003. Your client found my client's posting via craigslist before that date. Our clients undoubtedly corresponded via email before and after April 28, 2003 leading up to June 2, 2003. It is not believable that your client and mine did not correspond via email before June 2, 2003. Also, there are no emails from your client to my client after November 2003. As you know, there is significant work that Zuckerberg did for my client well into 2004.

2. Several emails have within their body threads of previous emails and those previous emails are not provided themselves in native msg format.

For example, but by no means the only example, Defendants provided two msg files, emails, dated November 19, 2003. Both are supposedly sent from my client to Zuckerberg. One was supposedly sent at 1:49 AM and the other at 11:53 am.

In the 1:49 AM email, the body contains a prior email sent by Zuckerberg to Ceglia at 1:44 am with content. That 1:44 am email was not provided in the Defendants' production as required by the court's order Doc. No 83.

In the 11:53 AM email, the body contains a prior email sent by Zuckerberg to Ceglia at 3:23 am. That 3:23 am email was not provided in the Defendants' production as required by the court's order Doc. No 83.

These are only two examples of many such concealed or deleted emails by Zuckerberg. Please remedy this apparently deficient production by noon on Thursday, May 24, 2012. This is our attempt to meet and confer on this matter. The Thursday deadline is necessary because of our June 3, 2012 deadline to submit expert reports.

Dean Boland.

--

Dean Boland  
Owner/Member  
Boland Legal, LLC  
1475 Warren Road  
Unit 770724  
Lakewood, Ohio 44107  
[216.236.8080](tel:216.236.8080) ph  
[866.455.1267](tel:866.455.1267) fax  
[dean@bolandlegal.com](mailto:dean@bolandlegal.com)

Please note, I typically only review my emails once daily. If there is something urgent in any email, please do not hesitate to contact my office at [216-236-8080](tel:216-236-8080).

EXHIBIT A

**Southwell, Alexander** <ASouthwell@gibsondunn.com>

Thu, May 24, 2012 at 2:42 PM

To: Dean Boland <dean@bolandlegal.com>

Cc: "Snyder, Orin" <OSnyder@gibsondunn.com>, Paul Argentieri <paul.argentieri@gmail.com>, "Sanford Dumain (SDumain@milberg.com)" <SDumain@milberg.com>, "jyoung@milberg.com" <jyoung@milberg.com>, "Peter Skivington (peter@jasklaw.com) (peter@jasklaw.com)" <peter@jasklaw.com>, "Robert Calihan (rcalihan@calihanlaw.com)" <rcalihan@calihanlaw.com>

Mr. Boland:

We have reviewed your May 22<sup>nd</sup> email regarding Defendants' production of emails from Mr. Zuckerberg's Harvard email account. Your stated objections are baseless. Defendants' production fully satisfies the Court's July 1, 2011 Order (Doc. No. 83).

Your email describes two purported deficiencies.

First, you note that the earliest email in the production is dated June 2, 2003. Because the parties "signed an agreement" in late April 2003, you assert that it is "not believable that your client and mine did not correspond via email before June 2, 2003." You also assert that Defendants' production should contain emails from Mr. Zuckerberg to your client "after November 2003," merely because "there is significant work that Zuckerberg did for my client well into 2004."

These objections cannot have been made in good faith. To begin, you advance no factual basis whatsoever for either purported deficiency. You do not allege the existence of any specific email (1) dated before June 2, 2003, or (2) sent by Mr. Zuckerberg to your client after November 2003, that was not included in Defendants' production. Furthermore, your client's own email production does not include any emails before June 2, 2003. Finally, Defendants' production contains numerous emails "after November 2003" between Mr. Zuckerberg, your client, and/or other persons associated with StreetFax; your observation that "there is significant work that Zuckerberg did for my client well into 2004" is therefore irrelevant. In short, your first objection is wholly speculative and factually baseless.

Second, you allege—again, without factual basis—that Mr. Zuckerberg personally "concealed or deleted" emails that he sent to your client. This allegation is bizarre, given your acknowledgment that Defendants' production contains the very emails that you assert Mr. Zuckerberg personally "concealed or deleted." In any event, Defendants have produced all emails "between Defendant Zuckerberg and Plaintiff and/or other persons associated with StreetFax that were captured from

Zuckerberg's Harvard email account," in full compliance with the Court's July 1, 2011 Order. You have not identified any specific email captured from Mr. Zuckerberg's Harvard email account that Defendants failed to produce. EXHIBIT B

Given that your objections to Defendants' productions are baseless, we expect that this matter has been resolved. Defendants do not consent to any extension of the due date for Plaintiff to file expert reports. Defendants reserve all rights, including but not limited to the right to pursue sanctions for discovery abuse and vexatious litigation

Alex

**From:** Dean Boland [mailto:[dean@bolandlegal.com](mailto:dean@bolandlegal.com)]  
**Sent:** Wednesday, May 23, 2012 11:14 PM  
**To:** Southwell, Alexander  
**Cc:** Snyder, Orin; Paul Argentieri  
**Subject:** Re: Discovery

[Quoted text hidden]

---

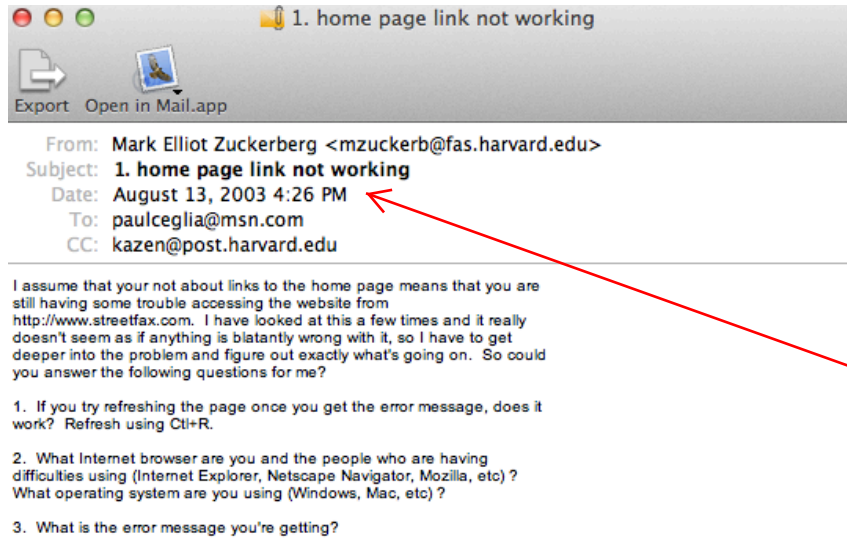
This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

---

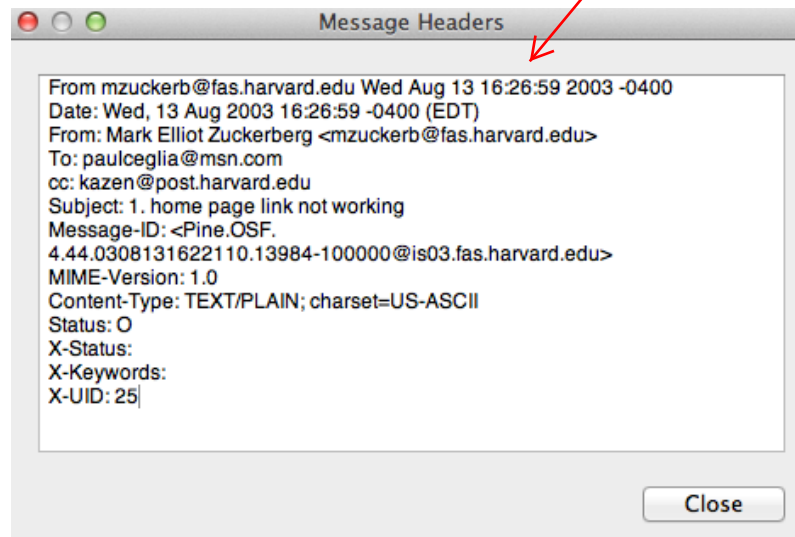
Produced Email Date	Produced Email Time	Email Date within thread of produced email - NOT PRODUCED	Email Time within thread of produced email - NOT PRODUCED
11/15/2003	3:18 PM	11/15/2003	12:48 PM
11/16/2003	9:29 AM	11/15/2003	4:52 AM
11/16/2003	7:31 PM	11/15/2003	4:52 AM
11/17/2003	11:10 PM	11/15/2003	8:05 PM
11/17/2003	9:50 PM	11/15/2003	8:05 PM
11/19/2003	1:49 AM	11/15/2003	1:44 AM
11/19/2003	11:53 AM	11/15/2003	3:23 AM
12/5/2003	2:59 PM	11/15/2003	1:50 PM
12/15/2003	10:15 AM	11/15/2003	6:31 PM
12/17/2003	5:59 PM	11/15/2003	2:11 PM
12/19/2003	10:00 AM	11/15/2003	4:15 AM
12/20/2003	7:38 PM	11/15/2003	8:33 PM
12/28/2003	7:35 PM	11/15/2003	5:20 PM
12/28/2003	2:05 PM	11/15/2003	1:17 PM
12/31/2003	2:52 PM	11/15/2003	2:04 PM

Produced Email Date	Produced Email Time	Email Date within thread of produced email - NOT PRODUCED	Email Time within thread of produced email - NOT PRODUCED
1/18/2004	9:38 PM	1/18/2004	9:14 PM
1/21/2004	5:27 PM	1/21/2004	5:22 PM
1/21/2004	10:48 PM	1/21/2004	7:27 PM
1/26/2004	8:28 PM	1/25/2004	4:23 PM
2/22/2004	9:19 AM	2/21/2004	2:53 PM
2/24/2004	10:45 AM	2/21/2004	2:53 PM
3/11/2004	11:57 AM	3/8/2004	6:45 PM

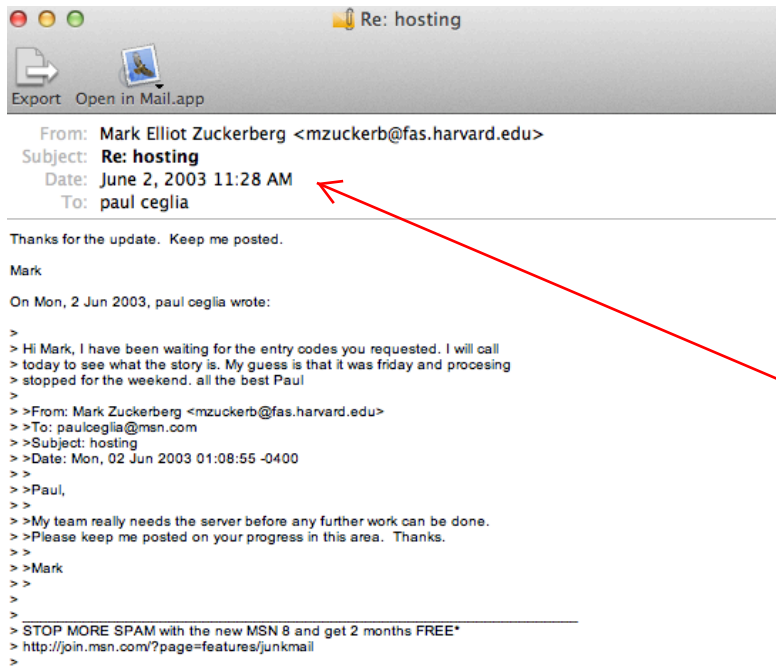
EMAIL BETWEEN THE PARTIES  
SENT AUGUST 13, 2003 AT 4:26 PM



EMAIL HEADER INFORMATION FOR THE ABOVE EMAIL

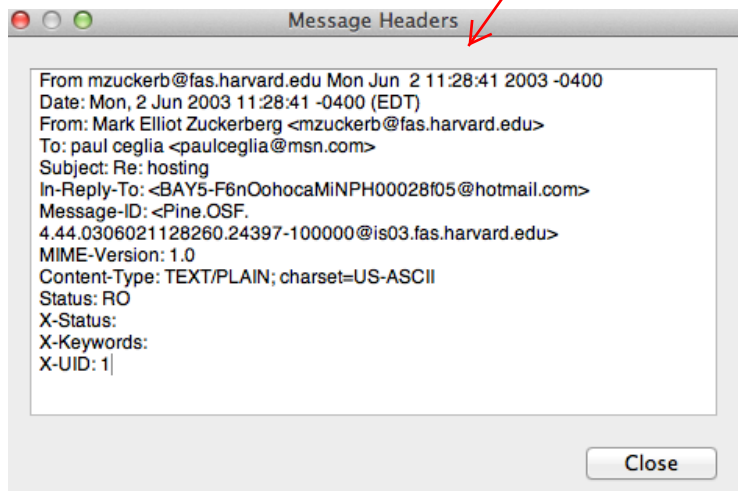


EMAIL BETWEEN THE PARTIES  
SENT JUNE 2, 2003 AT 11:28 AM



EMAIL NOT PRODUCED  
BY DEFENDANTS

EMAIL HEADER INFORMATION FOR  
EMAIL SENT JUNE 2, 2003 AT 11:28 PM.



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

PAUL D. CEGLIA,

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

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

MARK ELLIOT ZUCKERBERG, Individually, and  
FACEBOOK, INC.

Defendants.

---

I hereby certify, under penalty of perjury pursuant to 28 U.S.C. 1746, that on May 30, 2012, I caused the following document to be filed with the Clerk of the District Court for the Western District of New York using its Case Management/ Electronic Case Filing System which would then electronically notify all counsel of record in this case:

1. Notice of Motion for Discovery; and
2. Memorandum of Law in Support of Motion for Discovery; and
3. Exhibits related to the above Memorandum, Exhibits A-E; and
4. Declaration from Paul Ceglia.

DATED: May 30, 2012

/s/Dean Boland

---



---

Dean Boland  
Boland Legal, LLC  
1475 Warren Road  
Unit 770724  
Lakewood, Ohio 44107  
216-236-8080 phone  
866-455-1267 fax  
dean@bolandlegal.com  
ATTORNEY FOR PAUL D. CEGLIA