



## II.

### LEGAL STANDARD

A court may stay discovery for good cause shown. *Spencer Trask Software & Info. Servs. v. RPost Int'l Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002) (citing F.R.C.P. 26(c)). Good cause exists where only a short stay is requested, the discovery is broad and burdensome, and the opposing party will not suffer prejudice. *See id.*

## III.

### ARGUMENT

#### **A. Plaintiff Requests a Short Stay to Have His Objections Heard**

Ceglia must and will file his objections by September 1, 2011 for them to be timely under F.R.C.P. 72(a). As such, Ceglia only requests a stay for the short time necessary for the Court to consider the objections and rule accordingly.

#### **B. Paragraph 5 of the Order Constitutes an Abuse of Discretion and Imposes a Heavy Burden on Ceglia**

##### 1. The Scope of the July 1 Order

Ceglia's email accounts and any information that does not pertain directly to the emails attached to the Amended Complaint are outside the scope of Magistrate Judge Foschio's July 1, 2011 Order (Doc. No. 83) (July 1 Order) and not subject to expedited discovery. Magistrate Judge Foschio ordered expedited discovery in this case after extensive briefing and oral argument. (*See* Docs. Nos. 44-82.) As a result, the July 1 Order required, in part, that Ceglia produce "the original, native electronic files consisting of or containing the purported emails described in the Amended Complaint and all electronic copies of the purported emails." (July 1 Order at 2, ordering para. 2.) At oral argument on August 17, 2011, Magistrate Judge Foschio

asked Defendants' counsel whether inspection of Ceglia's email accounts "was an issue that was addressed with the order." (Transcript of August 17, 2011 Oral Argument (Doc. No. 121) (Transcript) at 60, ll. 18-19.) In response, Defendants' counsel stated, "No, Your Honor." (*Id.* at 60, l. 20.) As Ceglia's counsel pointed out, "This is not anything that was contemplated at the time of the July 1st order . . . This is a new request." (*Id.* at 96, ll. 18-19; 97, ll. 3-4.)

"A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except . . . when authorized by . . . by court order." F.R.C.P. 26(d)(1). Furthermore, a motion to compel discovery, like the one brought by Defendants (Doc. No. 99), necessarily presupposes the existence of a discovery obligation. *See* F.R.C.P. 37(a). However, as discussed above, Ceglia was under no obligation to provide access to his email accounts. Rather, Ceglia was obligated merely to produce "the original, native electronic files consisting of or containing the purported emails described in the Amended Complaint and all electronic copies of the purported emails" if such documents were in his possession custody or control. (*See* July 1 Order at 2, ordering para. 2.)

Given the above, the issue of access to the email accounts was not before Magistrate Judge Foschio on Defendants' Cross-motion to compel. As such, Magistrate Judge Foschio abused his discretion as a matter of law by failing to require Defendants to fully brief a *further* request for expedited discovery pursuant to Rule 26(d)(1) and allow Ceglia to cross-move for a protective order pursuant to Rule 26(c).

## 2. Burden on Ceglia

The August 18 Order requires Ceglia to give Defendants' experts unfettered access to every email he has written since 2003. (*See* Order at 3, ¶ 4.) In today's world, people commonly discuss their most private and important matters by email. As such, allowing Defendants'

experts to search through and read all of Ceglia's emails since 2003 undoubtedly will give them a view of matters far outside the scope of this litigation and far inside Ceglia's private life, a view to which no one is entitled and that is protected from government prying by the most sacred components of the Constitution. It is for these reasons that Rule 26(d) allows a party to seek protection, and it is for these reasons that Ceglia must be given an opportunity to be heard on this issue according to the proper procedures.

**C. Prejudice to Defendants**

At this point, Defendants have obtained a massive amount of discovery, and Ceglia has not yet obtained any. Furthermore, Ceglia already certified under oath that he provided the electronic media “contain[ing] all the electronic communications [he has] had with Defendants regarding the claims set forth in the First Amended Complaint.” (Declaration of Paul D. Ceglia, dated July 15, 2011 (Doc. No. 88) at 2, ¶ 3.) This is all that was required of him by the July 1 Order. (See July 1 Order at 3, ¶ 5.) At some point, discovery must have limitations, and the limit has been reached and exceeded.<sup>1</sup>

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<sup>1</sup> The Court should note that Ceglia has complied fully with all aspects of the August 18 Order. (See Exhibit A to Declaration of Nathan Shaman, dated August 29, 2011.)

**IV.**

**CONCLUSION**

Based on the foregoing arguments, Plaintiff respectfully requests that the Court find good cause to stay the discovery authorized by paragraph 5 of the August 18 Order pending resolution of Plaintiff's forthcoming objections to that Order.

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Respectfully submitted,

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