

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG and
FACEBOOK, INC.,

Defendants.

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X

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

**DEFENDANTS' REPLY IN SUPPORT OF
THEIR ACCELERATED MOTION TO COMPEL COMPLIANCE
WITH PARAGRAPH 5 OF THE AUGUST 18 ORDER**

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September 27, 2011

REPLY

Ceglia asks this Court to dismiss Defendants' motion to compel as moot. But it is not moot: Ceglia still has not complied with Paragraph 5 of this Court's August 18 order directing him to provide — by August 29 — his consent to Stroz Friedberg searching his webmail accounts.

Ceglia has now been in clear and brazen violation of this Court's order for nearly one month. During that time, he and his attorneys have delayed, stonewalled and simply refused to comply with this Court's directive. Indeed, even though Ceglia made three separate motions to stay the order — all of which were denied — and even though Judge Arcara specifically warned him that this Court's order remained in "full force" while he unsuccessfully pursued a stay (Doc. No. 119), Ceglia still has not submitted the consent forms.

Ceglia's brief claims that the signed forms are purportedly "en route to Ceglia's attorneys" from Ireland, where Ceglia now resides. Opposition at 1. This is not sufficient. Ceglia's consent was due one month ago. He has no right to grant himself a further extension while his forms find their way to the United States. The forms could have been emailed in PDF format, or Ceglia could simply have sent them via express courier. *See* Declaration of Amanda Aycock (identifying locations near Ceglia's residence in Ireland that provide scanning and expedited delivery services). Ceglia's "the forms are in the mail" excuse continues his pattern of contemptuous defiance of this Court's orders. This Court should direct Ceglia to provide the completed forms immediately. Time is of the essence given that Ceglia has already destroyed critical electronic evidence — including six removable USB storage devices containing highly relevant electronic files — during the pendency of this lawsuit.

Defendants' motion to compel is not moot for an additional reason: Defendants have asked to be awarded their reasonable fees and costs as authorized by Federal Rule of Civil

Procedure 37(a)(5). That rule expressly provides that such awards “must” be made when a motion to compel is granted, unless the moving party failed to make good faith efforts to resolve the dispute before filing the motion, or the opposing party’s nondisclosure was “substantially justified.” Here, Defendants have made extensive and repeated good faith efforts to persuade Ceglia to comply, *see* Southwell Decl., Ex. C to Defendants’ Motion to Compel, and there is absolutely no justification for Ceglia’s outright defiance of this Court’s order. Indeed, Ceglia provides no explanation for his refusal to comply; he offers no excuse for why he still has not submitted the forms he was specifically ordered to produce one month ago; and there is no justification — let alone the “substantial justification” required under Rule 37 — for his obstructionist, bad faith, contemptuous misconduct.¹

¹ This motion to compel addresses only one deficiency in Ceglia’s August 29 production. Defendants are completing their review of Ceglia’s production and anticipate filing a motion to compel in the near future that addresses Ceglia’s additional discovery violations.

CONCLUSION

This Court should order Ceglia to immediately comply with Paragraph 5 of the Court's August 18 Order, and award Defendants their reasonable costs and fees.

Dated: New York, New York
September 27, 2011

Respectfully submitted,

/s/ Orin Snyder

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