

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

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

Plaintiff,

**RESPONSE TO DEFENDANTS'
FOURTH MOTION TO COMPEL**

v.

MARK ELLIOT ZUCKERBERG, Individually, and
FACEBOOK, INC.

Defendants.

MEMORANDUM

Defendants' lack of diligence has led them to couch another false claim within a frivolous motion to compel. "[Plaintiff] has failed to identify and produce yet another collection of electronic items, in violation of this Court's July 1, 2011, and August 18, 2011, Orders." Doc. No. 245 at 1. Specifically, Defendants claim that Plaintiff has failed to produce "all electronic copies of purported emails." Defense counsel Southwell did, in fact, contact the undersigned to resolve this matter. He was informed that his experts had, in fact, accessed this information months ago. His response was essentially a demand that Plaintiff's counsel do his work for him and help him figure out where this evidence had gone within his own expert's catalog of evidence.

"The August 18 Order also required Plaintiff to file a supplemental sworn

declaration....” Id. at 2. After doing Defense counsel’s work for them, it is now clear that Defendants’ motion was unnecessary had they merely called their own expert Stroz and had a short phone call.

The 41 floppy disks at issue were given to Paul Argentieri by Paul Ceglia. Declaration of Paul Argentieri at ¶4. Mr. Argentieri provided them to Jerry Grant in March 2011 for analysis. Id. Jerry Grant imaged all 41 of those floppy disks. Id. at ¶5. He analyzed them to determine whether any of them contained what he considered to be relevant evidence. Mr. Grant then returned those floppy disks to Mr. Argentieri. Id. at ¶5. Those disks were then acquired by Richard Scherer, co-counsel for Mr. Ceglia, of the Mathias Lippes law firm. Id. at ¶6 and Exhibit A. Those disks were then acquired in Buffalo by a representative of Project Leadership Associates. (PLA). Id. at ¶7 and Exhibit B. PLA then provided access to all those floppy disks to Stroz Friedberg. Therefore, as indicated previously, Stroz Friedberg accessed all 41 floppy disks long before the August orders and declarations. With all the volume of Electronic Assets already in this case, it is reasonable that Mr. Ceglia, if he was ever told the whereabouts of these particular 41 floppy disks from Paul Argentieri to Jerry Grant to Richard Scherer to PLA and produced to Stroz, neglected to remember that Jerry Grant retained forensic *copies* of them while Stroz Friedberg has had access to the *originals* of these floppy disks.

There is no evidence that Mr. Ceglia intentionally withheld that Mr. Grant had *copies* of this evidence. There is no evidence he was ever told the whereabouts of the original floppy disks or any copies at any point after he gave them to Mr.

Argentieri.

CONCLUSION

For the foregoing reasons, Mr. Ceglia respectfully requests this court deny Defendant's Fourth Motion to Compel.

Respectfully submitted,

/s/Dean Boland

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