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## INTRODUCTION

Defendants respectfully submit this supplemental brief to assist the Court with the upcoming December 13 hearing by providing an overview of the eight pending motions, which span nearly 80 docket entries.

Currently before the Court are two motions filed by Defendants: a motion to compel Ceglia's compliance with the expedited discovery orders (Doc. No. 245), and a motion to strike the fraudulently-procured Gianadda declaration and impose sanctions on Dean Boland for his misconduct in deceiving the videographer (Doc. No. 217). Both of those motions are ripe for decision and should be addressed at the outset of the hearing.

Ceglia, in contrast, has filed a barrage of so-called "prohibition" and sanctions motions, many of which are premature and unripe, and all of which are frivolous. This Court should deny them as meritless and unsubstantiated attempts to preclude Defendants from presenting the Court with the fruits of the expedited discovery that this Court authorized on July 1. Indeed, the discovery ordered by this Court has revealed extensive evidence of fraud by Ceglia and his lawyers, including (among other things) the destruction of critical evidence, the submission of false declarations, the "baking" of the Work for Hire agreement, the corrupt efforts to trick the videographer into signing a misleading declaration, and of course the discovery of the authentic StreetFax contract on Ceglia's own computer. Ceglia's suggestion that he has "proven" the authenticity of his bogus Work for Hire agreement and the fake "emails" in his First Amended Complaint — and that Defendants must be precluded from even making any argument to the contrary — is ludicrous on its face and should be summarily rejected.

Ceglia offers no credible evidence that even remotely supports his fantastical claims that the Work for Hire agreement and fake emails are genuine. But even if he had, the Court should deny his motions as premature and unripe. Specifically, four of his motions — Doc. Nos. 199

(sanctions for alleged email spoliation), 229 (precluding mention of the authentic contract), 224 (precluding arguments that “emails” in First Amended Complaint are fake), and 189 (sanctions for alleged discoloration of Work for Hire agreement by Defendants’ experts) — improperly seek immediate rulings concerning ultimate issues in this case. Ceglia’s motions are a transparent and backdoor attempt to circumvent the expedited discovery process by seeking early rulings based on an incomplete evidentiary record. Under the guise of requests for “prohibition” orders and sanctions, Ceglia is attempting to hijack the discovery process and schedule directed by this Court in its July 1 order. In the event it does not deny all of his motions outright, this Court should decline Ceglia’s request to resolve on an incomplete record, and in the context of Ceglia’s baseless “prohibition” and sanctions motions, the very issues the expedited discovery was intended to address.

This is not the first time Ceglia has attempted to disrupt the expedited discovery process: he has unsuccessfully challenged the July 1 order on numerous prior occasions (Doc. Nos. 116, 120, 126, 134, 164) and has another motion to vacate pending (Doc. No. 202, discussed below). This Court has rejected all of Ceglia’s previous efforts to gut the July 1 order, and should reject this one as well. Pursuant to the schedule ordered by this Court, Defendants intend to present their experts’ findings concerning Ceglia’s litigation fraud and simultaneously move to dismiss once Ceglia is in compliance with the discovery orders.

## **MOTIONS BEFORE THE COURT**

### **Defendants’ Motions**

#### **Defendants’ Fourth Motion to Compel Concerning the Grant Electronic Files (Doc. No. 245)**

Defendants seek an order compelling Ceglia to comply with the Court’s July 1 and August 18, 2011 orders by directing him to identify and produce all electronic files in the

possession of Jerry Grant, a computer forensics expert whom Ceglia had never before identified, and to certify to the production of all such files.

**Defendants' Motion to Strike the Gianadda Declaration and for Sanctions  
(Doc. No. 217)**

Defendants seek an order striking the fraudulently-procured Gianadda declaration (Doc. No. 212 filed by Ceglia on November 11, 2011) and imposing sanctions on Ceglia's counsel Dean Boland for his deceit and subterfuge in tricking the videographer into signing a misleading declaration, and then compounding his misconduct by filing his own declaration containing numerous false statements and attacks on Gianadda's integrity.

**Ceglia's Motions**

**Ceglia's Motion to Vacate Expedited Order Granting Defendants One-Sided  
Expedited Discovery  
(Doc. No. 202)**

Ceglia seeks an order vacating the Court's order granting expedited discovery and scheduling all hearings necessary to begin regular discovery.

*Defendants' Response:* This motion is the latest in a long series of efforts by Ceglia to overturn or otherwise challenge the expedited discovery order. It should be denied because the reason for the expedited discovery — obtaining evidence to establish that Ceglia has forged documents and emails to manufacture his claims — has only become more pressing as more and more evidence of fraud comes to light as a result of this Court's discovery orders. Moreover, Ceglia still has not fully complied with this Court's orders, and canceling expedited discovery before it is complete would reward Ceglia for his ongoing, contumacious defiance of this Court's orders.

**Ceglia’s Motion for Sanctions for Spoliation of Email by Defendant Zuckerberg  
(Doc. No. 199)**

Ceglia seeks an order prohibiting Defendants from disputing the authenticity of the “emails” quoted in the First Amended Complaint, and granting Ceglia discovery of all copies of emails from Zuckerberg’s Harvard account, on the theory that Defendants’ expert Bryan Rose supposedly admitted that emails were deleted from the account.

*Defendants’ Response:* The motion — which reargues a prior motion that this Court has already considered and rejected (*see* Doc. Nos. 58 (Ceglia brief raising this claim); 83 (order denying Ceglia motion)) — is based entirely on a false characterization of the Rose declaration and should be denied because that declaration does not state that emails were deleted from the Harvard account. In the alternative, the motion should be denied as premature, as this Court’s expedited discovery order does not require Defendants to produce the Harvard emails until Ceglia has fully complied with his obligations.

**Ceglia’s Motion for an Order Prohibiting Defendants’ Reliance on Inadmissible  
Evidence in Any Dispositive Motion  
(Doc. No. 229)**

Ceglia seeks an order prohibiting Defendants from mentioning the emails and attached authentic contract that Ceglia sent to Jim Kole from the ceglia@adelphia.net account on March 3, 2004.

*Defendants’ Response:* There is absolutely no reason to prevent Defendants from presenting the Court with this critical, smoking-gun evidence — the authentic StreetFax contract — which they obtained as a result of the expedited discovery order. Indeed, the very purpose of the expedited discovery order was to authorize Defendants to obtain evidence that the Work for Hire agreement is a forgery. Ceglia’s motion attempts to make a brazen end-run around the procedure ordered by this Court. Once Ceglia has complied with his discovery obligations,

Defendants will present the Court with all the evidence of Ceglia's fraud, including the evidence that they found the authentic StreetFax contract both in Ceglia's old email account and on the server of the international law firm Sidley Austin.

**Ceglia's Motion for Order Prohibiting Defendants from Reliance on Argument that Ceglia-Zuckerberg Email Exchanges in the Amended Complaint Are Frauds in Any Dispositive Motion Filed During or at the End of Expedited Discovery (Doc. No. 224)**

Ceglia seeks an order prohibiting Defendants from disputing the authenticity of the "emails" quoted in the First Amended Complaint on the basis that Ceglia has shown that the emails are not fraudulent, and granting Ceglia expedited discovery into Zuckerberg's email accounts.

*Defendants' Response:* Here too, a key purpose of expedited discovery was to uncover evidence that the "emails" are fake, and Defendants should not be barred from presenting this evidence to the Court at the appropriate time. No reasonable person could believe that the Word documents on Ceglia's collection of floppy disks are actually cut-and-pasted email exchanges he had with Zuckerberg, and the "evidence" of purported authenticity in Ceglia's motion does not even come close to making his delusional claims legitimate. At a minimum, Ceglia's motion should be denied as an improper attempt to lure this Court into a premature ruling based on an incomplete record and to nullify the expedited discovery process ordered by this Court.

**Ceglia's Motion for Sanctions for Spoliation of Evidence by Defendants (Doc. No. 189)**

Ceglia seeks an order imposing a default judgment or other sanctions against Defendants for their experts having allegedly discolored the Work for Hire agreement.

*Defendants' Response:* Defendants have demonstrated through conclusive physical evidence that Ceglia (and/or others working in concert with him) tampered with the Work for

Hire agreement by “baking” it before it was produced to Defendants’ experts for inspection. Ceglia’s motion should be denied as a frivolous attempt to blame Defendants for wrongdoing that Ceglia himself committed. At a minimum, the Court should defer ruling on this motion until Ceglia has fully complied with the expedited discovery orders and Defendants are able to place before the Court the complete evidentiary record concerning Ceglia’s attempt to artificially age the contract.

**Ceglia’s Motion for Sanctions for Spoliation of Facebook Contract by Defendants (Doc. No. 214)**

Ceglia seeks an order prohibiting Defendants from challenging the authenticity of the Work for Hire agreement based on their experts’ alleged spoliation of the document by handling it without gloves.

*Defendants’ Response:* The motion should be denied because Ceglia’s lawyers and experts never suggested that there might be relevant fingerprint evidence on the document and in fact handled it repeatedly themselves without gloves during the examination, thus waiving this argument entirely.

**STATUS OF DISCOVERY AND FUTURE PROCEEDINGS**

Ceglia and his lawyers continue to obstruct discovery — more than six months after this Court directed him to comply. Ceglia still has not fully obeyed this Court’s expedited discovery orders. Defendants hope that Ceglia will come into compliance without the need for further Court intervention, but in the event Ceglia continues to refuse to fully comply, Defendants may need to seek judicial assistance.<sup>1</sup>

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<sup>1</sup> The current outstanding issues are as follows:  
(1) MSN Hotmail consent form – Paragraph 10 of this Court’s November 3, 2011 Order ("Order") required Plaintiff to execute a consent form for the inspection of his msn.com webmail account and to facilitate access to this

[Footnote continued on next page]

As this Court directed in its July 1 order, once Ceglia has fully complied with his discovery obligations, Defendants will submit expert reports detailing the evidence and their findings. At the same time, Defendants will move to dismiss this lawsuit based on Ceglia's litigation fraud, his tampering with and destroying critical evidence, and his extensive record of discovery misconduct.

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account. Plaintiff provided consent on the approved form but Microsoft has stated that the content on the form could not be verified. Defendants subsequently twice requested, on December 1 and 7, 2011, that Plaintiff re-execute a consent form. Plaintiff's counsel Dean Boland promised to provide that re-executed form by the morning of December 8, 2011. As of the time of this submission, he has not done so.

(2) Capsicum Group LLP electronic files acquisition – Paragraph 11 of the Order authorizes Stroz Friedberg to acquire from Plaintiff's experts and attorneys all files, in original native-file format, that were produced or are to be produced pursuant to the Court's expedited discovery orders, which includes the relevant agreements and emails. An attorney for Capsicum, one of Plaintiff's prior experts, notified counsel that Capsicum intended to make its files available to Stroz Friedberg on December 6, 2011. After an apparent objection by Plaintiff's counsel Dean Boland, that attorney notified Defendants' counsel on December 8<sup>th</sup> that Capsicum now intends to make available only "contracts," a patently incorrect reading of this Court's discovery orders.

(3) Paul Argentieri electronic files acquisition – Pursuant to paragraph 11 of the Order, Mr. Argentieri made available to Stroz Friedberg a select group of electronic files in their native-file format but did not provide access to certain other documents that were responsive to the Court's discovery orders and which Mr. Argentieri acknowledged possessing, such as the "Lawsuit Overview.pdf" document that Mr. Argentieri represented to the Court that he wrote. In response to Defendants' demand for that and any other improperly withheld documents, on November 26, 2011, Mr. Argentieri offered to have his IT consultant, Ed Flaitz, provide the document to Stroz Friedberg. Defendants accepted Mr. Argentieri's proposal as an accommodation, reserving the right to have Stroz Friedberg acquire the document directly. Stroz Friedberg is in communication with Mr. Flaitz and Mr. Argentieri to try to resolve this issue.

(4) Lake, A.P.C. electronic files acquisition – Plaintiff's former counsel Nathan Shaman informed Stroz Friedberg that his firm would make available for acquisition the electronic files that Stroz Friedberg identified; of course, pursuant to the Order, Plaintiff's experts and attorneys must themselves identify and make available the files that must be produced pursuant to the Court's expedited discovery orders. Stroz Friedberg is in communication with Mr. Shaman to try to resolve this issue.

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