

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG, and
FACEBOOK, INC.,

Defendants.

**DECISION
and
ORDER**

10-CV-00569A(F)

APPEARANCES:

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Plaintiff's Motion to Stay (Doc. No. 362), filed April 27, 2012, is before the undersigned pursuant to the referral order of Hon. Richard J. Arcara dated May 27, 2011 (Doc. No. 41).

In a Decision and Order filed April 19, 2012 (Doc. No. 357) (“April 19, 2012 D&O”), the undersigned directed, *inter alia*, Plaintiff to produce to Defendants by April 30, 2012, Privilege Log Items 360 and 379 (respectively, “Item 360” and “Item 379”). On April 23, 2012, Plaintiff filed a motion (Doc. No. 358) (“Plaintiff’s Clarification Motion”) seeking clarification of the April 19, 2012 D&O, insofar as it directed Plaintiff’s production of Item 379. Plaintiff also advised that he intended to file objections to the April 19, 2012 D&O. Plaintiff’s Clarification Motion at 2, n. 1. The undersigned, in a Decision and Order filed April 26, 2012 (Doc. No. 361) (“April 26, 2012 D&O”), treated Plaintiff’s motion for clarification as a motion for reconsideration, and denied the motion as meritless.

On April 27, 2012, Plaintiff filed the instant motion (Doc. No. 362) (“Plaintiff’s Motion”), seeking to stay the April 19, 2012 D&O pending Plaintiff’s obtaining a ruling on the objections Plaintiff intends to file with regard to the April 19, 2012 D&O. Plaintiff’s Motion at 2. According to Plaintiff, the requested stay should be granted pursuant to Fed.R.Civ.P. 26(c) which permits the court, in its discretion, to stay discovery “for good cause.” *Id.* at 3. Plaintiff explains that good cause exists because without the stay, Plaintiff will be required to produce Items 360 and 379 despite Plaintiff’s continued assertion that the items are privileged, and before the District Judge is able to rule on Plaintiff’s anticipated objections to the April 19, 2012 D&O. *Id.* at 3-4.

In their response in opposition to Plaintiff’s motion filed April 30, 2012 (Doc. No. 363) (“Defendants’ Response”), Defendants urge the court to deny Plaintiff’s motion on the basis that Plaintiff has not attempted, and in any event cannot satisfy, the four-factor test for obtaining a stay pending appeal of an order, as set forth in *Mohammad v.*

Reno, 309 F.3d 95, 100 (2d Cir. 2002), Defendants' Response at 6-8, nor has Plaintiff demonstrated the good cause which Plaintiff erroneously asserts is the proper standard for the requested stay. *Id.* at 8-9. Defendants further maintain that Plaintiff, by delaying the filing of objections to the April 19, 2012 D&O, has created the situation in which he will be required to produce Items 360 and 379 before receiving the District Judge's decision on such objections. *Id.* at 9-10.

Upon consideration of the arguments set forth by all parties on Plaintiff's Motion, for the reasons set forth in Defendants' Response, particularly Plaintiff's failure to establish "the likelihood of success on the merits, [and] irreparable injury if a stay is denied," Defendants' Response at 6 (quoting *Mohammad*, 309 F.3d at 100), Plaintiff's motion to stay (Doc. No. 362), is DENIED.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

DATED: April 30, 2012
Buffalo, New York