

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 1:10-cv-00569-
	:	RJA
MARK ELLIOT ZUCKERBERG and	:	
FACEBOOK, INC.,	:	
	:	
Defendants.	:	
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**REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR
CLARIFICATION OF THE COURT'S ORDER REGARDING DISCOVERY ON
DEFENDANTS' RULE 12(C) MOTION**

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May 18, 2012

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PRELIMINARY STATEMENT

Ceglia's Response to Defendants' Motion for Clarification demonstrates that the parties are in agreement on fundamental points. Ceglia and Defendants agree that this Court's April 30 Order, as written, provides only for "limited" and "narrowly tailored" discovery. Doc. No. 377 at 2, 4.* Ceglia and Defendants also agree that, with respect to the first category of discovery authorized in this Court's Order, discovery is limited to the rights and interests "that were granted to Ceglia under the [alleged] agreement." *Id.* at 5 (emphasis added).

Ceglia and Defendants further agree that, with respect to the second category of discovery authorized in this Court's Order, no discovery is necessary at this time. In fact, Ceglia specifically states that, "[a]t least to item (2) of the court's order," his acquisition of a document that he claims was filed in another case "**moots discovery on that issue.**" Doc. No. 377 at 8 (emphasis added). And even if discovery with respect to the second category of information in the Court's Order were still necessary, Ceglia and Defendants agree that such discovery should be limited to information directly concerning Ceglia. *See id.* at 9.

Although Ceglia argues that the Court should not adopt Defendants' proposed modifications to the language in this Court's Order, he mischaracterizes the effect of those modifications, which would merely clarify that the discovery allowed under the Court's Order is limited to information directly concerning Ceglia. Indeed, Ceglia's confusing efforts to distort Defendants' proposed language confirm that clarification is necessary to prevent misunderstandings and reduce the likelihood of future disputes regarding the scope of discovery permitted by the Court's April 30 Order.

* Ceglia filed his Response on May 16, 2012. Doc. No. 376. On the same day, he filed an amended version of that Response (Doc. No. 377), in which the only amendment was to remove counsel from Milberg LLP and Jones & Skivington from the signature block. *Compare* Doc. No. 376 at 11-12 *with* Doc. No. 377 at 11.

ARGUMENT

I. The Parties Agree That Discovery Under The First Category In This Court's April 30 Order Should Be Limited To Ceglia's Alleged Rights And Interests Under The Work For Hire Document.

The first category of discovery authorized by this Court's April 30 Order was:

“(1) assuming, *arguendo*, the Work for Hire contract dated April 28, 2003 is authentic, what intellectual property rights and other ownership interests were created by the contract's language providing that Plaintiff, in exchange for helping fund Zuckerberg's development of FaceBook, would give Plaintiff ‘a half interest (50%) in the software, programming language and business interests derived from the expansion of that service to a larger audience.’” Doc. No. 366 at 5. In their Motion for Clarification, Defendants requested that the Court clarify that this category is limited to matters that directly concern Ceglia's alleged rights and interests under the Work for Hire Document. Doc. No. 373 at 1. Defendants explained that this limitation was evident from the language and context of the Court's Order, but that clarification was necessary to prevent Ceglia from continuing his abusive litigation strategy of misconstruing the Court's orders and seeking invasive discovery into entirely irrelevant matters. *See id.* at 5-7.

In response, Ceglia does not dispute that the first category of discovery authorized by this Court's Order, as written, is limited to information that directly concerns Ceglia's alleged rights and interests under the Work for Hire Document. In fact, Ceglia agrees with Defendants' interpretation of the scope of that category: He states that the Court's Order is limited to information concerning the rights that were allegedly “granted to Ceglia under the agreement.” Doc. No. 377 at 5 (emphasis added); *see also id.* (“Defendants must provide through discovery what rights/property they are arguing were granted to Ceglia in the agreement.”) (emphasis added). Ceglia also agrees that the discovery provided under this Court's Order is “narrow” and “limited.” *Id.* at 1. Thus, the Court should grant the clarification requested by Defendants and

make clear that the first category of discovery permitted by the Court's Order is limited to matters that directly concern Ceglia's alleged rights and interests under the Work for Hire Document.

II. The Parties Agree That No Discovery Is Necessary With Respect To The Second Category In This Court's April 30 Order, And That Discovery Under The Second Category Should Be Limited To Information Concerning Ceglia In Any Event.

The second category of discovery authorized by this Court's April 30 Order was:

“(2) how the formation of the LLC necessarily divested Plaintiff of any and all interest in the partnership's assets, including intellectual property rights.” Doc. No. 366 at 5. Defendants requested that the Court clarify that this category is limited to matters directly concerning the effect that the formation of Thefacebook LLC had on Ceglia's alleged rights and interests. Doc. No. 373 at 1. Again, Defendants explained that this limitation was apparent from the language and context of the Court's Order, but that clarification was appropriate to prevent Ceglia from seeking wide-ranging discovery into information concerning Thefacebook LLC that has nothing to do with Ceglia. *See id.* at 5-7.

In response, Ceglia takes the position that, in light of his acquisition of a purported pleading in another case (a document he claims was filed by Defendants against Eduardo Saverin in California state court in July 2008), discovery is **no longer necessary** with respect to the second category of information identified in the Court's April 30 Order. He specifically states that, “[a]t least to item (2) of the court's order,” his acquisition of that alleged pleading “**moots discovery on that issue.**” Doc. No. 377 at 8 (emphasis added).

Defendants agree with Ceglia's position that no discovery is necessary with respect to the second category of information provided in the Court's April 30 Order. Indeed, Defendants opposed Ceglia's request for discovery on Defendants' Rule 12(c) Motion, and explained that no

discovery of any kind was necessary to resolve that motion. *See* Doc. No. 353. Although Defendants disagree with Ceglia’s characterization of the allegations in the purported pleading that he cites and his arguments regarding the legal significance of those allegations, that disagreement relates to the merits of Defendants’ Rule 12(c) Motion—not the issues raised in Defendants’ Motion for Clarification—and thus need be addressed only in subsequent briefing on the merits. At this stage, the dispositive point is that Ceglia and Defendants agree that discovery on the second category in this Court’s April 30 Order is no longer necessary. Thus, Defendants respectfully request that the Court delete that category from its Order, and modify the first category as Defendants have requested.

At minimum, this discovery should be limited to matters that directly concern Ceglia. Indeed, Ceglia expressly incorporates this limitation when he describes the second category in this Court’s Order as including documents necessary “to ascertain the legal effect of the formation of Thefacebook, LLC on the rights and interests of Plaintiff as set forth in the Work for Hire contract dated April 28, 2003, and how the formation of Thefacebook, LLC divested Plaintiff of his interests in Thefacebook, LLC’s assets, including intellectual property rights.” Doc. No. 377 at 9 (emphasis altered). Thus, to the extent that the Court allows any discovery under the second category in its Order despite Ceglia’s concession that such discovery is no longer necessary, the Court should grant Defendants’ request to clarify that this category is limited to matters concerning the effect that the formation of Thefacebook LLC had on Ceglia’s alleged rights and interests.

III. Ceglia’s Objections To Defendants’ Proposed Modifications To The Language Of The Court’s April 30 Order Are Misplaced.

In their Motion for Clarification, Defendants proposed minor revisions to the language of the Court’s April 30 Order that would clarify that the discovery allowed under that Order is

limited to matters that directly concern Ceglia's alleged rights and interests. *See* Doc. No. 373 at 8. Although Ceglia agrees with Defendants on the fundamental point that the scope of the discovery allowed by the Court's April 30 Order is limited to matters that directly concern his alleged rights and interests, he erroneously argues that the Court should not adopt Defendants' proposed modifications because they would "prevent" Ceglia from obtaining the discovery authorized by the Court, and would "significantly hamper" his ability to address Defendants' statute of limitations and laches defenses. Doc. No. 377 at 2, 9. Those arguments mischaracterize the modifications that Defendants have proposed, which would merely clarify that the discovery allowed by the Court's April 30 Order is limited to matters that directly concern Ceglia, and thus are actually relevant to the statute of limitations and laches issues in this case. The only thing that those proposed modifications would "significantly hamper" is Ceglia's ability to engage in further abuse of the litigation process and harassment of Defendants by seeking expansive discovery into matters of no relevance to him or the issues raised by Defendants' Rule 12(c) Motion.

If anything, Ceglia's confusing efforts to challenge Defendants' proposed modifications underscore that clarification of the Court's Order is appropriate. For example, Ceglia argues that there is a substantive difference between the language in the Court's Order, which granted discovery on "how the formation of the LLC necessarily divested Plaintiff of any and all interest in the partnership's assets, including intellectual property rights," Doc. No. 366 at 5, and the modified language that Defendants proposed, which would grant discovery "on the effect of the formation of the LLC on Plaintiff's interest in the partnership's assets, including Plaintiff's intellectual property rights." Doc. No. 373 at 8. But Ceglia fails to explain how this modification would do anything other than what Defendants have explained it would—clarify

that the proposed discovery in this category is limited to matters that concern Ceglia, and does not extend to matters concerning Thefacebook LLC that have nothing to do with Ceglia.

Ceglia's confusion regarding the proposed scope of Defendants' language suggests that he will be equally confused, absent clarification, with the scope of the discovery allowed by the Court's Order. Thus, clarification is appropriate to foreclose future disputes and briefing on these issues, and to prevent Ceglia from propounding improper and highly burdensome discovery requests that are outside the scope of this Court's Order.

CONCLUSION

Defendants respectfully request that the Court delete the second category of discovery in its April 30 Order and modify the first category by adopting the language proposed in the Memorandum of Law in Support of Defendants' Motion for Clarification.

Dated: New York, New York
May 18, 2012

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