

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

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

Plaintiff,

**MOTION FOR EXTENSION OF
TIME**

v.

MARK ELLIOT ZUCKERBERG, Individually, and
FACEBOOK, INC.

Defendants.

MEMORANDUM

Plaintiff respectfully requests an order from this court extending the time for his submission of expert reports from 30 days following Defendants' compliance with the court's order in response to Plaintiff's First Motion to Compel. Doc. No. 390. In an alternative to the extension of time, Plaintiff requests an order authorizing him to have his experts amend their reports within 30 days following Defendants' submission to Plaintiff of the additional material being sought.

The court scheduled a discovery conference in this matter for March 28, 2012. Near to the time of that matter, defense counsel Snyder sought a continuance of that conference for a personal matter. Defendants' motion was granted. The conference was held one week later on April 4, 2012. Plaintiff has not previously requested an extension of time to reply to the discovery order or motion in this matter.

At the April 4, 2012 hearing, Plaintiff noted the compressed time schedule to respond to Defendants' motion to delay or defer discovery. The court responded by encouraging Plaintiff to ask for an extension of time if it felt that was necessary.

As of this writing, Plaintiff is due to submit on June 3, 2012 completed expert reports in response to Defendants' expert reports. Doc. No. 348.

Currently pending motions include:

1. An objection to Doc. No. 348 pending before District Court Judge Arcara.; and
2. A motion to strike the expert report of Gerald LaPorte and the Motion to Dismiss which features this report; and
3. A motion to compel Defendants compliance with this court's order, Doc. No. 83; and
4. That same motion to compel seeks an order that Defendants provide information underlying their expert reports they have previously not provided, but led the court to believe on April 4, 2012 that they had provided to Plaintiff.

Both Plaintiff's paper experts, Larry Stewart and Jim Blanco, along with Plaintiff's computer expert are without information that was provided to Defendants' experts by Plaintiff. See Doc. No. 390. Defendants' computer experts' report was so poorly organized and in places purposefully misleading, it has also taken an inordinate amount of time to merely decipher what outlandish claims connect with what piece of evidence.

For example, Stroz's report misleadingly refers to all items it analyzed as "Ceglia Media" knowing full well that only some of that media belonged to or was

ever used by Paul Ceglia, Plaintiff. Stroz attempts to paper over the reality that the most crucial media where it saw phantoms of fraud within every keystroke of every file, did not belong to Paul Ceglia and was never used by him.¹

Another example of their misdirection which required extra hours, in some cases double or triple the normal time of analyzing such a report, is evident on page 45 of 102. On that page, trumpeting the alleged use of a hex editor, Stroz vaguely identifies the location of such critical evidence as follows:

“Among the documents Mr. Ceglia produced are six Microsoft Word files that were produced on a CD in Sarasota, Florida.” Id.

As Stroz admits they had access to “1,087 CDs, twelve of which were made available” them in Sarasota, Florida. Id. at 7. Stroz never identifies which one of the CDs the above statement refers to. Stroz never identifies the 12 CDs they obtained in Sarasota. They refer to evidence that they have essentially dropped as a needle in a computer haystack.

More misdirection occurs as evidenced on page 15 of 102 of Doc. No. 325.

Stroz inserts this headline at the top of that page.

“A. The StreetFax Contract Was Found on Two Different Ceglia Hard Drives.” Id.

Obviously, this headline is designed to lead the reader to the notion that this contract is so obviously authentic that it is found in multiple locations or on

¹ Ceglia Media is Stroz’s generic term to confusingly and intentionally refer to computers Paul Ceglia used and computers owned and used by Paul Ceglia’s parents, Carmine and Vera Ceglia. It is important to note that some of the most dramatic statements about supposed fraud evidence are focused on media that was not Paul Ceglia’s, but that of his parents. These farcical conclusions will be addressed in Plaintiff’s expert reports to the extent Plaintiff’s computer expert has access to the same information Stroz Friedberg claims to have accessed.

multiple computers owned by Plaintiff. That is false.

Reading the paragraph under this misleading headline, Stroz reveals the truth. The Street Fax Contract claim is not that the document was found in multiple locations or on multiple computers owned by Plaintiff. It was actually only claimed to have been found in one place. The headline refers to the fact that the one computer on which this document was claimed to have been found was forensically imaged, i.e. copied and the document was then on that forensic image or copy. This is self evident that any document on a hard drive that is forensically imaged now results in a copy of that document on the copy of the drive. Nonetheless, Stroz attempts here to magnify this triviality to prop up their report.

In addition, Stroz notes in a footnote, something critical to the value of their report. On that same page, in footnote four, Stroz notes that the Seagate hard drive was imaged by Plaintiff's expert on March 29, 2011. Therefore, that image is the copy of that drive that is the closest in time to whatever events occurred or were allegedly documented on that drive. Stroz then notes, without explanation as to the obviously forensically un-sound approach to this case, that they imaged that Seagate hard drive themselves on July 15, 2011. In the intervening four months between those imaging processes, that hard drive was quite understandably returned to its owner. This is the essence of forensic imaging of drives. Once imaged, the drive is no longer a relevant piece of data because a clone copy is preserved through the forensic imaging process. Thus, a user of that drive after March 29, 2011 is free to do whatever they wish with that Seagate drive without

worrying about altering or destroying evidence in the case because the forensic copy, whose accuracy Stroz does not dispute, operates to protect any accidental alteration to that evidence.

For no reason that is scientifically sensible, Stroz Friedberg's entire report is based upon data they found on the copy of the Seagate drive they captured **after the drive had been returned to its owner**. They intentionally declined to review or analyze for their report, the most relevant and accurate data available, the earliest forensic image of the Seagate drive. This fact was purposefully not apparent in their report and was only discovered after many weeks of evaluation of their report and its confusing and sometimes non-existent descriptions and nomenclature.

Stroz provided no serial numbers, model numbers or other information to precisely identify and link particular computers or drives to their report conclusions. This game of hide the ball also resulted in significant loss of time and unnecessary expense in merely assessing Stroz's claims.

EXPEDITED BRIEFING IS APPROPRIATE

Plaintiff asks this court for an expedited briefing schedule on this motion.

The proposed schedule is:

1. Defendants' response due by Thursday, May 31, 2012 at noon.
2. Plaintiff's reply, if any, due by Friday, June 1, 2012 at noon.

This expedited briefing schedule is appropriate for three reasons:

1. Plaintiff is currently due to file his expert reports on June 3, 2012, Sunday of this

week; and

2. The issue of requesting an extension is not such a complicated legal or factual matter that Defendants reasonably need more than 48 hours to meaningfully respond; and
3. ECF notifications are sent via email to all parties. This court can take judicial notice that Defendants will be aware of this request immediately upon its filing as a result of notifications on their mobile devices including emails.

CONCLUSION

Plaintiff respectfully requests an order from this court extending the time for his submission of expert reports from 30 days following Defendants' compliance with the court's order in response to Plaintiff's First Motion to Compel. Doc. No. 390.

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Respectfully submitted,

/s/Dean Boland

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