

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG, Individually, and
FACEBOOK, INC.

Defendants.

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

MOTION TO STRIKE
DEFENDANTS' RESPONSES TO
DOC. NOS. 386, 390 AND 392.

MEMORANDUM

Plaintiff respectfully requests this court strike Defendants' response to Plaintiff's motions Doc. Nos. 386, 390 and 392 filed via letter to the court. See Exhibit A. Plaintiff respectfully requests this court strike Defendants' motion for a pre-motion procedure also filed via letter to the court. Id.

Defendants' filed their responses to Plaintiff's Motions, Doc. Nos. 386, 390 and 392 via transmission of a letter to the court and to counsel via email on May 30, 2012. Id. Defendants' also filed a separate motion within that letter. Id. This use of a letter to respond to filed motions as well as to file a separate motion is a violation of the Federal Rules of Civil Procedure and this Court's Local Rules.

Defendants' responses to Plaintiff's pending motions are excerpted below:

Defendants' response to Doc Nos. 386, 390 and 392 in total.

“frivolous and harassing filings....” Id. at 1.

“an attempt to disrupt this Court’s carefully considered schedule and harass Defendants.” Id.

Defendants’ response to Doc. No. 392 specifically.

“the Court should...summarily deny Ceglia’s Motion for an Extension of Time....”
Id.

The bulk of page 2 of Exhibit A is also a direct and detailed response to Doc. No. 392.

Defendants’ Response to Doc. No. 390 specifically.

That Motion seeks the production of various materials related to Defendants’ experts that the Court’s Orders do not require. For example, demanded a native copy of Mr. Zuckerberg’s email records from Harvard, see Doc. No. 390-1, at 2, a request this Court has already repeatedly rejected. See, e.g., Doc. Nos. 272, 348. For this and other reasons Defendants will further explain in their formal opposition to Ceglia’s Motion to Compel, that motion is completely baseless. It is merely one more attempt to circumvent the Court’s numerous rejections of his requests to engage in openended, abusive discovery and the operative stay of plenary discovery. Id. at 2.

Local Rule 5.1(a) reads as follows:

“Filing Procedures. All civil cases filed in this Court are assigned to the Electronic Case Filing System (“ECF”). The procedures for electronic filing and any exceptions to the electronic filing requirements are set forth in the CM/ECF Administrative Procedures Guide. **All pleadings and other papers shall be filed and served in accordance with the Federal Rules of Civil Procedure and the CM/ECF Administrative Procedures Guide.**” Local Rule 5.1(a).

Emphasis added.

The form of Defendants' filing was a letter to the court on Gibson Dunn letterhead. However, the substance of that filing was a response to Plaintiff's pending motions, Doc. Nos. 386, 390 and 392 and a separate motion by Defendants. Each of Plaintiff's motions to which the letter responded were mentioned by ECF document number designation one or more times in Defendants' response. Further, their filing also included a separate motion on a pre-motion procedure. See Exhibit A at 2.

This filing is intentionally made outside the record of this case. The filing also asks the court for an off-the-record telephonic conference to be scheduled within hours of its filing. The Defendants' separate motion for a Pre-Motion procedure was also filed with the court wholly outside the Federal Rules and this Court's Local Rules.

The responsive portion of the filing in Exhibit A was made outside the ECF system. It did not include the filing of a Certificate of Service as required by the Court's Rules. The Motion portion of the filing was made outside the ECF system. It did not include a Notice of Motion. It did not include the filing of a Certificate of Service either.

This filing and the accompanying request for an off-the-record telephonic conference is not merely administrative. Defendants' motion for a pre-motion procedure is substantive. This filing represents Defendants' desire to engage in shadow litigation, off the record of the case, seeking to harness this court's authority to manipulate the proceedings outside the view of any reviewing court. In their

response to Plaintiff's Motion regarding their now disgraced expert, Gerald LaPorte, they neglect to even mention is violation of rule 26 via omission of relevant cases from CV attached to his so-called expert report. Nothing is frivolous about a motion seeking to alert the court to Defendants' pleadings filed in violation of the rules.

The responses and separate motion in Exhibit A also fail to satisfy Local Rule 10(a).

Finally, Mr. Snyder continues his baseless claim that "[n]ine law firms ultimately refused to abet Ceglia's misconduct." Exhibit A at 4. This not only defames Plaintiff and prior counsel, but openly defames current counsel as a lawyer abetting client misconduct. Snyder was provided, before May 30, 2012, the basis for the anticipated departure of some of the lawyers on Plaintiff's team in the form of a proposed stipulation. From his review of that stipulation, he knew the basis for the anticipated departure of some of the current counsel was purely differences between counsel regarding strategy. Despite that knowledge, he falsely claims an alternate basis for their departure in Exhibit A. This claim by Snyder, repeated throughout this case, is sanctionable on its own.

As an alternative to striking Defendants' responses and motion within Exhibit A, Plaintiff requests this court cause Exhibit A to be filed as Defendants' complete response to Plaintiff's motions, Doc. Nos. 386, 390 and 392 and direct Plaintiff to submit his reply within the deadlines of the Federal and Local Rules. Further, Plaintiff would request an order that Defendants' motion contained within Exhibit A be permitted only if Defendant properly files a Notice of Motion and

Certificate of Service.

CONCLUSION

For the foregoing reasons, Mr. Ceglia respectfully requests the court strike Defendants' filed responses to Plaintiff's Motions, Doc. Nos. 386, 390 and 392 in Exhibit A along with Defendants' Motion included within the improperly composed and filed Exhibit A, a pleading posing as a letter. Plaintiff also offers the above alternative for the court's consideration.

Respectfully submitted,

/s/Dean Boland

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