

**GIBSON DUNN**

Gibson, Dunn &amp; Crutcher LLP

200 Park Avenue  
New York, NY 10166-0193  
Tel 212.351.4000  
www.gibsondunn.comOrin Snyder  
Direct: +1 212.351.2400  
Fax: +1 212.351.6335  
OSnyder@gibsondunn.com

May 30, 2012

Client: 30993-00011

VIA ELECTRONIC MAILThe Honorable Leslie G. Foschio  
United States Magistrate Judge  
United States District Court  
Western District of New York  
U.S. Courthouse  
2 Niagara Square  
Buffalo, New York 14202Re: Ceglia v. Zuckerberg and Facebook, Inc., No. 1:10-cv-569-RJA-LGF

Dear Judge Foschio:

We represent Defendants Facebook, Inc. and Mark Zuckerberg in the above-referenced action. We write to respectfully request a brief telephonic status conference with the Court regarding Plaintiff Paul Ceglia's Motion for an Extension of Time to file his expert reports (Doc. No. 392), as well as several other recent frivolous and harassing filings by Ceglia. A telephonic conference would serve Ceglia's request for expedited treatment of his Motion. *See* Doc. No. 392, at 5-6. Defendants' counsel will try to make ourselves available at the Court's convenience, but prefer a call between 1 p.m. and 2 p.m. today, Wednesday, May 30, 2012.<sup>1</sup>

Ceglia's recent filings are an attempt to disrupt this Court's carefully considered schedule and harass Defendants. As will be addressed more fully on the requested telephonic conference, the Court should therefore (1) summarily deny Ceglia's Motion for an Extension of Time, and (2) in the interests of judicial efficiency, institute a pre-motion procedure to prevent vexatious and abusive motions.

---

<sup>1</sup> On Friday, May 25, 2012, Defendants were informed that Sanford Dumain, Jennifer Young, and Melissa Clark of Milberg LLP, Peter Skivington of Jones & Skivington, and Robert Calihan will move shortly to withdraw from this case. Assuming this Court grants the anticipated motion to withdraw, these law firms would be the seventh, eighth, and ninth to abandon their representation of Ceglia, who is attempting to perpetrate a massive fraud on Defendants and this Court. In these circumstances, Defendants submit that only Mr. Boland and Mr. Argentieri need participate in the telephonic conference. And given Ceglia's request for expedited treatment of his Motion for an Extension of Time, *see* Doc. No. 392, at 5-6, Defendants expect that Mr. Boland and Mr. Argentieri would make themselves available for a brief telephone call.

The Honorable Leslie G. Foschio

May 30, 2012

Page 2

1. The Court Should Deny Plaintiff's Motion for an Extension of Time (Doc. No. 392)

On April 4, 2012, this Court entertained more than four hours of oral argument on Defendants' Motion to Stay Discovery. Granting and denying that Motion in part, the Court ultimately entered a calibrated Order (Doc. No. 348) giving Ceglia 60 days to file expert reports opposing Defendants' Motion to Dismiss. The long-standing deadline by which Ceglia must file his expert reports is Monday, June 4, 2012—ten weeks after Defendants filed their Motion to Dismiss (Doc. No. 319).

Now, in a transparent act of eleventh-hour gamesmanship, Ceglia asks the Court for an open-ended extension of this deadline. Ceglia bases his request on the pendency of three motions: (1) Ceglia's Rule 72 Objections to the April 4 Order (Doc. No. 355); (2) Ceglia's Motion to Strike Defendants' Motion to Dismiss and the accompanying expert report of Gerald M. LaPorte (Doc. No. 386); and (3) Ceglia's Motion to Compel Defendants' purported compliance with the Court's orders (Doc. No. 390). *See* Doc. No. 392, at 2. None of his three pending motions remotely justifies an extension. First, Ceglia's Rule 72 Objections do not stay his obligation to comply with the April 4 Order and Ceglia's scurrilous Motion to Strike—an unfounded attack on Mr. LaPorte based on misleadingly excerpted testimony—does not even purport to bear on his ability to timely submit expert reports.

Thus, the only proffered basis for Ceglia's requested extension is the pendency of his Motion to Compel (Doc. No. 390). That Motion seeks the production of various materials related to Defendants' experts that the Court's Orders do not require. For example, Ceglia has 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 open-ended, abusive discovery and the operative stay of plenary discovery. Accordingly, the pendency of that Motion does not support Ceglia's requested extension of his long-standing deadline to submit expert reports. As will be addressed further in the requested telephonic conference, Ceglia's Motion for an Extension of Time (Doc. No. 392) should be summarily denied.

2. The Court Should Impose a Pre-Motion Procedure

Recent events demonstrate that, absent some procedural or protective backstop, Plaintiff intends to use this Court as a tool to harass Defendants. As described above, on May 25, 2012, Defendants were informed that Sanford Dumain, Jennifer Young, and Melissa Clark of Milberg LLP, Peter Skivington of Jones & Skivington, and Robert Calihan will move shortly to withdraw from this case. That withdrawal would leave Ceglia to be represented only by

The Honorable Leslie G. Foschio  
May 30, 2012  
Page 3

Dean Boland and Paul Argentieri. As the Court is aware, Mr. Argentieri failed to appear at the most recent hearing—an absence that has yet to be explained, despite the Court’s request. See Apr. 4, 2012 Tr., at 15-17.

This Court is quite familiar with Mr. Boland’s obstructionist, harassing tactics. Last November, Mr. Boland filed a flurry of six motions seeking sanctions and to prohibit Defendants from presenting evidence of Plaintiff’s fraud to this Court, as well as a Thanksgiving-eve motion for a temporary restraining order and sanctions. See Doc. Nos. 188, 198, 201, 213, 223, 228, 231. As the Court well knows, these motions were utterly baseless. All seven motions were promptly withdrawn or denied by this Court, see Doc. No. 250, 272, 284, but not before Defendants were forced to expend substantial resources opposing them.

The anticipated withdrawal by Milberg LLP, Skivington, and Calihan promises a return to this outrageous harassment. Indeed, last Thursday, Ceglia filed—over Mr. Boland’s signature—Plaintiff’s Motion to Strike (Doc. No. 386), which seeks to strike Defendants’ 74-page Motion to Dismiss (Doc. No. 319) and the accompanying expert report of Gerald M. LaPorte (Doc. No. 326) on the basis of mischaracterized deposition testimony and outright falsehood. Milberg LLP, Skivington, and Calihan were not willing to put their names on this sanctionable motion. True to form, Mr. Boland has already posted to his blog a scurrilous article filled with defamatory misrepresentations about Mr. LaPorte. See “Facebook reliant on junk science for their entire defense,” available at <http://bolandlegal.com/site/facebook-reliant-on-junk-science-for-their-entire-defense> (last visited May 29, 2012). Defendants will respond to Plaintiff’s Motion to Strike in more detail in due course. For present purposes we highlight it as one of Boland’s latest abusive motions.

In the Motion to Strike, Mr. Boland previewed the obstructionist tactics that Ceglia intends to deploy during the next phase of his fraudulent lawsuit: “This will be the first of such motions Plaintiff will file as our experts wade through the web of false statements Facebook and Mark Zuckerberg have created over their nine months of obfuscation.” Doc. No. 386 at 14. In just four days, Mr. Boland has begun to make good on that promise, filing a declaration from Ceglia’s former attorney Nathan Shaman that does not relate to any pending motion (Doc. No. 387) and a Motion to Compel the production of documents that this Court’s Orders do not require (Doc. No. 389).

The deluge of motions that Mr. Boland previewed and has begun to file would violate this Court’s April 4, 2012 Order (Doc. No. 348). That Order provides Ceglia an opportunity to oppose Defendants’ Motion to Dismiss on a set schedule. As he did last November, Ceglia is simply trying to hijack the Court-ordered process, expand the page limits of his Opposition, and force Defendants to spend more money in the hopes of extorting a settlement—his goal since filing this fraudulent lawsuit nearly two years ago. Nine law firms ultimately refused

The Honorable Leslie G. Foschio

May 30, 2012

Page 4

to abet Ceglia's misconduct. Mr. Boland and Mr. Argentieri—whose harassing, scorched-earth tactics are well-known to this Court—appear willing to do so.

In order to prevent Ceglia, Mr. Boland, and Mr. Argentieri from inundating Defendants and this Court with frivolous, harassing papers intended solely to drive up the costs of litigation, Defendants respectfully ask the Court to impose a modest pre-motion procedure going forward. Specifically, Defendants respectfully request the Court to require Ceglia to submit a letter to the Court before filing any motion beyond those authorized by this Court's April 4 Order, in which Ceglia shall set forth in detail the basis for his anticipated motion. Defendants would then have an opportunity to submit a brief letter response, after which the Court would determine whether Ceglia's anticipated motion is amenable to summary disposition. Similar pre-motion procedures are routinely required as a matter of individual practice by district courts in this Circuit. *See, e.g.*, Individual Practices of Judge P. Kevin Castel, available at [http://nysd.uscourts.gov/cases/show.php?db=judge\\_info&id=408](http://nysd.uscourts.gov/cases/show.php?db=judge_info&id=408) (last visited May 29, 2012). Such a procedure would be well within this Court's discretion to impose here, given Ceglia's extensive history of litigation misconduct, which includes defiance of this Court's orders, concealment of evidence, frivolous assertions of privilege that his lawyers now admit they had no good-faith basis to make (*see* Declaration of Nathan Shaman (Doc. No. 387), which describes how Ceglia's lawyers made privilege assertions without basis), and false declarations and vexatious motions.

Again, Defendants' counsel will try to make ourselves available at the Court's convenience, but prefer a call between 1 p.m. and 2 p.m. today, Wednesday, May 30, 2012, to discuss this request and Plaintiff's various filings.

Respectfully submitted,

/s/ Orin Snyder

Orin Snyder

cc: Terrance Flynn, Esq.  
Dean Boland, Esq.  
Paul A. Argentieri, Esq.  
Sanford P. Dumain, Esq.  
Jennifer L. Young, Esq.  
Melissa R. Clark, Esq.  
Peter K. Skivington, Esq.  
Robert B. Calihan, Esq.