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PRELIMINARY STATEMENT

Plaintiff Paul Ceglia's recent flurry of frivolous motions is his latest effort to derail the orderly discovery processes established by this Court. More than eleven months ago, on July 1, 2011, the Court granted Defendants' motion for expedited discovery so that Defendants could gather additional evidence establishing that Ceglia's claims are fraudulent and efficiently bring this case to an end. Doc. No. 83. Ceglia hijacked the ensuing expedited discovery process by filing countless bad-faith motions, concealing and destroying evidence, and defying court orders. Although Ceglia's obstruction caused the expedited discovery period to extend over a period of nearly nine months, it did not prevent that process from serving its purpose: Defendants and their experts found overwhelming evidence that the Work for Hire Document on which Ceglia's suit is based is a forgery, that the purported emails quoted in Ceglia's Amended Complaint are fabrications, and that this entire lawsuit is a fraud. On March 26, 2012, Defendants presented that evidence to the Court in their Motion to Dismiss, Doc. No. 319, and moved to stay general discovery in this case pending the resolution of that motion and Defendants' Motion for Judgment on the Pleadings. Doc. Nos. 321, 323.

On April 4, 2012, after more than four hours of oral argument on Defendants' Motion to Stay, this Court entered a carefully calibrated Order that stayed general discovery and provided for a "limited period of expert discovery," to be followed by further briefing and a decision on Defendants' Motion to Dismiss. Doc. No. 348. The Court also provided for limited discovery relating to the statute of limitations and laches defenses raised in Defendants' Motion for Judgment on the Pleadings. *See* Doc. Nos. 366, 401. Ceglia now seeks to disrupt these targeted discovery processes, and to obstruct an ultimate decision on Defendants' dispositive motions, through a series of vexatious filings meant to harass and delay, all in support of Ceglia's overarching objective of coercing Defendants to settle his fraudulent claims before the Court

dismisses his suit. Because the Court has directed Defendants to respond to three of Ceglia's motions on the same date, Defendants present their combined responses to those three motions in this omnibus opposition.

First, Ceglia has filed a slanderous Motion to Strike. Doc. No. 385. That motion seeks to strike both the expert report of Gerald LaPorte and Defendants' Motion to Dismiss, a 74-page document supported by seven sworn expert reports and declarations. Ceglia requests that extraordinary relief based on a charge that is completely false—that LaPorte, a world-renowned forensic chemist and document dating specialist, provided “perjured testimony” in his expert report when he concluded, with virtual certainty, that the ink on the first page of Ceglia's Work for Hire Document is less than two years old. Doc. No. 386 at 1. Ceglia's scurrilous accusations against LaPorte are untrue, resting entirely on patent mischaracterizations of LaPorte's testimony in previous cases.

Second, Ceglia has filed an abusive Motion to Compel. Doc. No. 389. That motion demands the production of numerous documents that this Court's Orders simply do not require Defendants to produce. For example, Ceglia asserts that the Court's July 1 Order and Defendants' representations during the April 4, 2012 oral argument necessitate the production of voluminous discovery underlying the examinations conducted by Defendants' experts. That argument blatantly misconstrues this Court's orders and Defendants' representations, and should be rejected. Moreover, this motion is procedurally defective: Defendants are prepared to meet and confer with Ceglia regarding his discovery requests to determine whether there should be a mutual exchange of documents between the parties in preparation for expert depositions. Ceglia's Motion to Compel is an improper attempt to avoid his meet-and-confer obligations and obtain unilateral and unwarranted written discovery from Defendants' experts.

Third, Ceglia has filed a frivolous Motion for Discovery Regarding Harvard Emails. Doc. No. 396. That motion insists that Ceglia should be allowed to obtain discovery of (1) backup tapes of Harvard’s email servers and (2) Zuckerberg’s personal computers, so that Ceglia can search for purported emails exchanged between Zuckerberg, Ceglia, and persons associated with StreetFax. These discovery demands are not authorized by the Court’s discovery orders. Indeed, Defendants have fully complied with those orders by producing all relevant emails “captured from Zuckerberg’s Harvard email account,” and Ceglia does not contend otherwise. Doc. No. 83 at 3. Ceglia instead seeks to expand the scope of discovery in this case. But Ceglia has made these same discovery requests, based on the same arguments, numerous times before—and this Court has rejected them on every occasion. *See* Doc. Nos. 250, 272, 284. In fact, Ceglia argued as recently as the April 4 oral argument that he was entitled to the same discovery that he seeks in his Motion for Discovery, and this Court rejected those arguments. *See* Doc. No. 348. There is no reason for the Court to revisit those previous rulings now. The Court should again deny Ceglia’s requests for wide-ranging discovery that will serve no purpose other than to harass Defendants and disrupt the orderly expert discovery process that this Court has established.

ARGUMENT

I. THE COURT SHOULD DENY CEGLIA’S MOTION TO STRIKE.

Ceglia’s Motion to Strike (Doc. No. 385) seeks to strike the entirety of Defendants’ Motion to Dismiss based solely on the demonstrably false and outrageous allegation that Defendants’ expert, Gerald LaPorte, offered “perjured testimony” in his expert report in support of Defendants’ Motion to Dismiss. Doc. No. 386 at 1. That slanderous accusation relies on claims that are either completely unsupported, patent mischaracterizations, or both.

LaPorte is a highly distinguished forensic chemist and document dating specialist who trained with the United States Secret Service and has nearly two decades of experience in forensic science. He works full time for the United States Department of Justice as the Forensic Policy Program Manager and Acting Associate Director in the Office of Investigative and Forensic Sciences at the National Institute of Justice. He has permission to operate as an independent consultant in civil matters and has done so since 2008. *See* Doc. No. 326 at 1 (Report of Gerald M. LaPorte (Declaration of Alexander H. Southwell dated March 26, 2012 (“Southwell Decl.”), Ex. B) (“LaPorte Report”)).

In this case, LaPorte conducted a well-established chemical ink dating test in August 2011 and concluded that it was “highly probable”—meaning that the evidence was “very persuasive” and that LaPorte was “virtually certain”—that the ink on the first page of the Work for Hire Document was less than two years old. LaPorte Report at 2 & n.2. LaPorte’s analysis involved the measurement of a solvent found in many inks called phenoxyethanol (PE). The ink is dated by comparing the PE ratio of the ink before and after heating. The standard benchmark in the field is that, if the amount of PE that evaporates is greater than 25%, it indicates that the ink is “fresh”—*i.e.*, less than two years old. LaPorte conducted this test twice on ink samples taken from the interlineation on page 1 of the Work for Hire Document. He determined that the level of PE decreased an average of 64%, more than twice the accepted benchmark for ink that is less than two years old. He thus concluded—to a virtual scientific certainty—that the ink was placed on the Work for Hire Document after August 2009, and not in 2003, as Ceglia claims. *See id.* at 15, 23.

In his Motion to Strike, Ceglia challenges the validity of the ink dating analysis performed by LaPorte. But Ceglia fails to cite a single source of authority—not one scholarly

article, research paper, case, or anything else—that supports his bald assertions that LaPorte’s analysis is unreliable. For example, Ceglia states that LaPorte’s PE analysis is a “variation” of a test developed by Ceglia’s former expert, Valery Aginsky, and asserts that “Aginsky’s version of the PE test . . . has never satisfied any court, much less the other experts in Aginsky’s field, of its validity or reliability.” Doc. No. 386 at 3-4. Ceglia cites nothing in support of these assertions, much less anything that would call into question the validity of the PE testing performed by LaPorte in this case. In reality, Aginsky is one of many researchers who have developed PE analysis for ink dating over the past 20 years, a period during which there have been several validation studies and refinements of the test. LaPorte’s expert report specifically cited a series of scholarly articles that support the development and validity of the analysis of PE for ink dating purposes. *See* LaPorte Report at 7-8.

Ceglia also makes recklessly false and wholly unsupported statements about the purported policies of the United States Government. He asserts that “LaPorte’s own employer with the U.S. Government prohibits him from using his variation of the PE test or any variation of the PE test in case work,” and that it was “not permitted to be used by the Secret Service in casework, LaPorte’s previous employer.” Doc. No. 386 at 4. But Ceglia’s own brief demonstrates that these assertions are false: As Ceglia recognizes, in *United States v. Rago*, LaPorte performed PE testing in his capacity as an employee of the Secret Service. *See United States v. Rago*, No. 1:08-cr-10268 (D. Mass., filed Sep. 11, 2008); *see also* Doc. No. 386 at 11. Ceglia nonetheless argues that his unsupported assertions about U.S. Government policy are “indisputable because Plaintiff’s expert, Larry Stewart, was LaPorte’s supervisor while LaPorte was at the Secret Service.” Doc. No. 386 at 4. That assertion cannot be credited for numerous reasons—the most obvious being that, for more than half of LaPorte’s tenure at the Secret

Service, Stewart was not his supervisor. LaPorte worked at the Secret Service from 2001 to 2009, but Stewart was the Secret Service's lab director only until May 2004, when he was arrested and charged with perjury.¹ See Press Release, United States Attorney S.D.N.Y., Secret Service Laboratory Director Charged with Committing Perjury at Martha Stewart - Peter Bacanovic Trial (May 21, 2004). Ceglia simply has nothing to say about LaPorte's work at the Secret Service from May 2004 to 2009.

Because he can cite no authority to support his argument that the PE test is unreliable, Ceglia also alleges that LaPorte himself has made "previous sworn statements that the PE test is not reliable." Doc. No. 386 at 3. That allegation is based on blatant mischaracterizations of LaPorte's testimony in other cases. For example, Ceglia disfigures LaPorte's testimony from the 2007 *Padilla* trial, claiming that LaPorte "specifically denies that PE is a reliable test." *Id.* at 6. LaPorte said no such thing during the *Padilla* trial, nor has he ever. In fact, Mr. LaPorte testified that there is no scientifically reliable way to determine "*exactly* when ink was put to paper." Doc. No. 386-1 at 54 (emphasis added). That is fully consistent with LaPorte's expert report in this case, which explained that PE testing determines whether ink was applied to paper within a two-year time period, not on an exact date. See LaPorte Report at 7-8. LaPorte did not claim anywhere in his report that he can determine the exact date an entry was written.

¹ Stewart was indicted by a grand jury and tried for perjury for his testimony in the Martha Stewart case. While he was ultimately acquitted, see Judgment of Acquittal, *United States v. Stewart*, No. 04 CR 554 (S.D.N.Y. Oct. 6, 2004), ECF No. 44, interviews with jurors indicate that his acquittal was due in part to the jury's skepticism of the prosecution's primary witness, who had previously lodged a sexual harassment claim against Stewart. See Colin Moynihan, Ink Expert in Stewart Trial Found Not Guilty of Perjury, N.Y. TIMES, Oct. 6, 2004, http://www.nytimes.com/2004/10/06/business/06ink.html?_r=1&ex=1254715200&en=97c6f9e5fe220d8d&ei=5090&partner=rssuserland (noting jurors' disbelief of Susan Fortunato's testimony). In any event, Stewart left the Secret Service when he was charged with perjury in 2004, and he did not return to the Secret Service thereafter.

Moreover, Ceglia intentionally distorts LaPorte’s testimony regarding the conclusiveness of his results. Based on prior testimony, Ceglia asserts that LaPorte “never obtained a ‘positive result’” or a “conclusive result.” Doc. No. 386 at 7, 10. As a general matter, as explained in the LaPorte Report, the results of PE testing reveal either that ink is less than two years old with some degree of certainty based on the known characteristics of the document, or that it cannot be determined whether the ink is less than two years old. *See* LaPorte Report at 7-8, 15-16. That the results of the test may sometimes be inconclusive in no way undermines the validity of the test, nor does it undermine the validity of the positive result in this case that the ink on the first page of the Work for Hire Document is less than two years old. Ceglia’s contrary characterization of LaPorte’s prior testimony is baseless. LaPorte testified only that, at the time of his testimony, he had not previously performed a PE test in a case, obtained a result that the ink was less than two years old, and testified about that result. *See, e.g.*, Doc. No. 386 at 7 (citing LaPorte’s testimony in the *Padilla* trial, in which he testified that he had “never testified about . . . a positive result,” but had “testified about the procedure itself”). Ceglia flatly misrepresents that testimony in claiming that LaPorte testified that he had never achieved a conclusive result in a PE test.

* * *

In short, the Court should deny Ceglia’s Motion to Strike because it is wholly unsupported by any facts and is instead premised on mischaracterized sound-bites taken out of context from LaPorte’s prior testimony.

In any event, this Court need not even consider the substance of Ceglia’s Motion to Strike at this time because the motion is procedurally improper. In its April 4 Order, this Court provided that Ceglia will have the opportunity to oppose Defendants’ Motion to Dismiss in

October 2012, after expert discovery is complete. Doc. No. 348. The proper time and place for Ceglia to present the mischaracterizations and outright falsehoods contained in his Motion to Strike is in that opposition, not in a premature motion filed even before expert depositions have commenced—a motion that is plainly intended to harass Defendants and undermine this Court’s well-considered orders. Indeed, the substance of Ceglia’s brief highlights its procedural impropriety: The purported issues that Ceglia raises regarding the use of PE testing and LaPorte’s prior testimony are the stuff of deposition questions, and are in no way grounds to “strike” a detailed report and a 74-page brief supported by an “avalanche” of evidence (Apr. 4, 2012 Tr. at 98:12) from the record before the limited period of expert depositions authorized by this Court have even begun.

II. THE COURT SHOULD DENY CEGLIA’S FIRST MOTION TO COMPEL.

Ceglia’s Motion to Compel (Doc. No. 389) should be denied. Ceglia seeks extensive discovery of documents relating to the examinations conducted by Defendants’ experts. This Court’s Orders do not require the production of those documents.

In its April 4 Order, this Court granted Ceglia 60 days to submit expert reports and 60 days thereafter to conduct expert depositions. *See* Doc. No. 348. It did not, however, grant Ceglia’s request for “expert written discovery under Rule 26” related to Defendants’ experts, made during oral argument by Ceglia’s lawyer Sanford Dumain (who now seeks permission to withdraw from this case). Apr. 4, 2012 Tr. at 203:11-12. Furthermore, in granting Defendants’ Motion to Stay Discovery in part, the Court’s April 4 Order confirmed that “[g]eneral discovery” under Rule 26 was “stayed.” Doc. No. 348. Going forward, only the “limited period of expert discovery” expressly authorized by that Order would be permitted. *Id.*

Ceglia’s Motion to Compel—and the underlying May 7, 2012 letter from Mr. Dumain that it incorporates by reference, *see* Doc. No. 390 at 1—impermissibly attempt to broaden this

“limited period of expert discovery.” Ceglia does not seek a small number of identified documents necessary to respond to specific findings in Defendants’ expert reports. Rather, the Motion to Compel and underlying May 7 letter are pretexts for broad discovery that, taken together, constitute an end-run around this Court’s explicit stay of “general” plenary discovery. Doc. No. 348. For example, Ceglia demands a native copy of Zuckerberg’s email records from Harvard, and demands computer forensic analysis of the so-called Parmet assets (*i.e.*, “the forensic copies of relevant computers currently in the possession of Parmet and Associates”). *See* Doc. No. 390-1 at 2. However, as explained in detail below with respect to Ceglia’s Motion for Discovery, which also presses these demands, this Court has already repeatedly rejected these same discovery requests. *See* Doc. Nos. 250, 272, 284, 348.

Ceglia fails to identify any authority to support his unwarranted requests. Contrary to Ceglia’s claim, the Court’s July 1 Order does not obligate Defendants to report every factual observation made by their experts or produce every piece of paper documenting the experts’ findings. The July 1 Order simply directs Defendants to “provide to the Court and Plaintiff all reports documenting the findings of [their] examination.” Doc. No. 83 at 3 (emphasis added). Defendants have fully complied with this directive, filing publicly each and every report prepared by Defendants’ experts during expedited discovery. Notwithstanding Ceglia’s assertions, the July 1 Order says nothing about the production of underlying documentation, including the “case notes,” correspondence with counsel, and “verbal reports” that Ceglia seeks. Doc. No. 390 at 5.

Ceglia’s citation of various colloquies from the April 4, 2012 oral argument is similarly unavailing. As described above, the Court rejected Ceglia’s request for “expert written discovery under Rule 26” related to Defendants’ experts. Apr. 4, 2012 Tr. at 203:11-12; Doc.

No. 348. In his Motion to Compel, Ceglia notes that the Court asked Mr. Dumain whether his client wanted some “sort of . . . safety mechanism” to capture documents on which Defendants relied but did not “reveal.” Apr. 4, 2012 Tr. at 203:23-204:1; *see* Doc. No. 390 at 3. Ceglia then misleadingly asserts in his Motion that Mr. Dumain “respectfully deferred the issue until something arose that the [C]ourt needed to address[,] to which the [C]ourt responded favorably.” Doc. No. 390 at 3. But in fact, Mr. Dumain responded that the parties would “deal with” any newly disclosed documents “in the deposition”—a binding admission that any dispute regarding document discovery would be resolved after the submission of expert reports and during the two-month phase of the case dedicated to expert depositions. Apr. 4, 2012 Tr. at 204:2-4 (emphasis added).

Defendants agree with the position Mr. Dumain took during the hearing: Requests for the production of specific documents necessary to prepare for and conduct expert depositions should be addressed during the next phase of the case. Defendants are willing to meet and confer with Ceglia after the submission of his expert reports to resolve consensually and without Court intervention any such specific requests.² But the broad production of documents that Ceglia now demands is not supported by any of the Court’s expedited discovery orders, nor has Ceglia shown that he would be entitled to these documents under the Federal Rules in any event.

Accordingly, Ceglia’s Motion to Compel should be denied.

² Plaintiff complains that he requested documents underlying Defendants’ expert reports some weeks ago and has not yet received a response. *See* Doc. No. 390 at 4. In fact, the request came from Ceglia’s counsel at Milberg LLP, and just as Defendants were about to respond to propose a meet-and-confer following the submission of expert reports, the Milberg attorneys abruptly removed their names from Ceglia’s filings, and soon thereafter announced their intent to withdraw. *See* Doc. No. 410 ¶¶ 2-6; Doc. No. 377 at 11; Doc. No. 376 at 11-12.

III. THE COURT SHOULD DENY CEGLIA'S MOTION FOR DISCOVERY.

Ceglia's Motion for Discovery Regarding Harvard Emails (Doc. No. 396) is also frivolous, and is yet another example of Ceglia alleging intentional, bad-faith misconduct without any factual basis. The invasive discovery sought by that motion—a wide-ranging search of Harvard's email servers and Zuckerberg's personal computers—is not authorized by this Court's orders. In fact, the Court has denied Ceglia's requests for this very discovery numerous times, including as recently as April 4. *See* Doc. No. 348. Ceglia ignores those rulings and continues to raise meritless arguments that this Court has already considered and rejected. Because there is no reason for the Court to reconsider its previous rulings, and because Ceglia's expansive discovery requests directly contravene the narrowly tailored discovery process established by this Court, Ceglia's Motion for Discovery should be denied.

This Court's July 1 Order provided that, after Ceglia complied with his production obligations, Defendants were required to "produce all emails in their original, native and hard-copy form between Defendant Zuckerberg and Plaintiff and/or other persons associated with StreetFax that were captured from Zuckerberg's Harvard email account." Doc. No. 83 at 2-3. Defendants have fully complied with that Order. When this Court ruled on April 4 that Ceglia had, after nine months of obstruction, satisfied the Court's July 1 Order (Doc. No. 348), Defendants produced all emails between Zuckerberg, Ceglia, and other persons associated with StreetFax that were captured from Zuckerberg's Harvard email account. The process through which those emails were captured is detailed in the Declaration of Bryan J. Rose, submitted in support of Defendants' Motion to Dismiss. Doc. No. 333.

Ceglia does not dispute that Defendants' email production fully satisfied this Court's July 1 Order. Indeed, he "accepts" that Defendants "have produced all emails they could recover from their analysis of the Harvard email system." Doc. No. 397 at 7. That should be the end of

the matter. Ceglia nevertheless argues that he should be granted broader discovery than permitted by this Court's existing orders. He alleges, without any basis, that Zuckerberg has "deleted emails from his account that are relevant to this case," and that the Court should therefore expand the scope of discovery by issuing an order (1) "authorizing a subpoena to be issued to Harvard University for all backup tapes of the Harvard email server from 2003-2004 containing or potentially containing the email account of Defendant Zuckerberg," and (2) "authorizing Plaintiff's computer expert to acquire all native format email messages from Defendant Zuckerberg's computers used during 2003-2004[,] forensic copies of which are currently in the possession of Parmet and Associates." *Id.*

This Court has already considered and rejected these same requests for expansive discovery of Harvard's email servers and Zuckerberg's personal computers, based on the same accusations, on numerous occasions. For example, in his November 1, 2011 motion for sanctions, Ceglia demanded "discovery of all emails from Zuckerberg's Harvard email account wherever copies of those emails may reside." Doc. No. 198 at 1. In support of that motion, Ceglia made the allegation that Zuckerberg had "deleted emails" from his Harvard account. Doc. No. 199 at 4. This Court rejected Ceglia's discovery request. *See* Doc. No. 272 (ordering that Ceglia's motion for sanctions be withdrawn). Similarly, in a motion filed on November 17, 2011 seeking to preclude Defendants from arguing that Ceglia's purported emails are fabrications, Ceglia again insisted that his experts should be granted access to "the complete email record of Defendant Zuckerberg." Doc. No. 223 at 1. He argued, based on the bald allegation that Zuckerberg may have "hit the 'delete' key," that he should be allowed to investigate whether Harvard made periodic "backups" of its "user email accounts" and whether those backups were available. Doc. No. 224 at 13, 17. He also argued that he was entitled to

discovery regarding “devices connected to the Harvard email server at any relevant time that could have retained copies of Mr. Zuckerberg’s deleted or un-deleted emails.” *Id.* at 15. Again, this Court rejected those arguments. *See* Doc. No. 272. And in his frivolous, November 25, 2011 “emergency” motion for a temporary restraining order and sanctions, Ceglia claimed that he was entitled to access “the forensic copies of at least five computers belonging to and used by Defendant Zuckerberg while a student at Harvard” in the possession of Parmet and Associates. Doc. No. 232 at 1; *see also* Doc. No. 231. This Court rejected that claim. *See* Doc. No. 284 at 13-14.

On April 4, in its ruling on Defendants’ Motion to Stay, this Court again rejected the same discovery requests that Ceglia raises in his Motion for Discovery. Doc. No. 348. In his opposition to Defendants’ Motion to Stay, Ceglia argued that, to determine “why Mr. Ceglia and Mr. Zuckerberg have differing email records,” he should be granted “discovery of the records and record retention practices of Harvard and Mr. Zuckerberg.” Doc. No. 345 at 3. At oral argument, Ceglia repeated his bald allegation that Zuckerberg may have “delete[d]” emails from his Harvard account, and argued at length that he should therefore be granted discovery of the “backup tapes” of the Harvard servers and “the computers that Parmet currently has in its possession.” Apr. 4, 2012 Tr. at 136:21, 138:15, 139:9-10; *see also id.* at 124, 132, 136-41, 143-45, 152, 157, 175. This Court rejected those arguments when it stayed general discovery and permitted only limited expedited discovery related to Defendants’ Motion to Dismiss. Doc. No. 348.

Outrageously, Ceglia fails to address this Court’s numerous previous rulings denying him the same invasive discovery that he seeks in his Motion for Discovery, much less present any legitimate justification for overturning those rulings. Nor does Ceglia demonstrate that he would

be entitled, under the Federal Rules, to the discovery he seeks even if this Court had not stayed general discovery pending the resolution of Defendants' dispositive motions. Instead, he merely continues to recycle his allegation that Zuckerberg "deleted emails from his [Harvard] account that are relevant to this case," and argues that he is therefore entitled to examine the Harvard email servers and Zuckerberg's personal computers. Doc. No. 397 at 7. Nothing in Ceglia's Motion for Discovery, however, remotely supports that claim.

Ceglia argues, based on a newly submitted declaration (Doc. No. 398), that he and Zuckerberg exchanged emails prior to June 2, 2003, and that Defendants have not produced any of those purported emails. Doc. No. 397 at 2-3. But Ceglia does not identify any specific email from that time period that Defendants have failed to produce. *See id.* Moreover, Ceglia's own production of purported emails does not include any emails exchanged between Ceglia and Zuckerberg prior to June 2, 2003. *See* Doc. No. 224, Ex. A. Rather, the earliest purported email in Ceglia's production is dated July 16, 2003. *See id.* at 94. Because Ceglia has asserted that he saved the text of "each of the emails between" him and Zuckerberg, Doc. No. 224 at 2, and because this Court's July 1 Order required Ceglia to produce all of his purported emails with Zuckerberg, Doc. No. 83, the absence of any emails prior to June 2, 2003 in Ceglia's production contradicts his allegation that Zuckerberg "deleted" those emails from his Harvard account.

In fact, Ceglia's newly-minted assertions in his declaration conflict not only with his own production of purported emails, but also with the allegations in his Amended Complaint. Ceglia's declaration asserts that he exchanged emails with Zuckerberg in February, March, and April 2003 that "included drafts of what became the eventual Facebook Contract that we signed on April 28, 2003 in Boston." Doc. No. 398 ¶ 7; *see also id.* ¶ 6. However, Ceglia told a far

different story regarding the creation of the Work for Hire Document in his Amended Complaint, where he alleged:

From his home office in Wellsville, New York, on April 25, 2003, Ceglia prepared the agreement on his computer, combining two different forms of agreements that were given to him in the past and modifying them to capture the terms that Zuckerberg and Ceglia agreed to over the telephone. The agreement covered both the work Zuckerberg agreed to do for StreetFax.com and their agreement concerning The Face Book. Ceglia printed and saved the agreement on April 25, 2003.

Doc. No. 39 ¶ 21 (emphasis added). This account, in which Ceglia prepared the Work for Hire Document on April 25, 2003 by combining two previous agreements “to capture the terms that Zuckerberg and Ceglia agreed to over the telephone,” is flatly inconsistent with Ceglia’s sworn statement now that he and Zuckerberg jointly prepared the Work for Hire Document by exchanging multiple drafts by email over a period of months in early 2003. Thus, in attempting to support his false allegation that Zuckerberg deleted his early emails with Ceglia, Ceglia has only further confirmed that his entire lawsuit is a lie.

Ceglia also alleges that Zuckerberg “deleted” emails from his Harvard account because copies of 22 emails appear in “threads” of email chains that Defendants produced, but do not appear as independent, native emails within the account. Doc. No. 397 at 4-6. As an initial matter, Ceglia’s allegation that Defendants have attempted to conceal these emails is absurd: Defendants’ production contains copies of the 22 emails that Zuckerberg supposedly “deleted.” In any event, that these 22 emails appear only in “threads” in Zuckerberg’s Harvard email account is not a basis for alleging, as Ceglia does, that Zuckerberg must have “deleted” these emails. Ceglia—who himself has not produced a single email with Zuckerberg in native form—fails to grasp that there could be any number of reasons, having nothing to do with Zuckerberg, that these emails do not appear in the account in native form, and Ceglia is free to pursue these issues in his deposition of Stroz Friedberg. Merely repeating his *ipse dixit* assertion that

Zuckerberg “deleted” emails from his Harvard account does not make it so, and certainly does not provide a valid justification for expanding the scope of discovery authorized by this Court’s orders. Again, Defendants fully complied with this Court’s orders by producing “all emails in their original, native and hard-copy form between Defendant Zuckerberg and Plaintiff and/or other persons associated with StreetFax that were captured from Zuckerberg’s Harvard email account.” Doc. No. 83 at 2-3. As Ceglia himself accepts, there are no relevant, native emails in Zuckerberg’s Harvard email account that Defendants did not produce. Doc. No. 397 at 7.

Ultimately, Ceglia’s Motion for Discovery is another attempt to further Ceglia’s ongoing campaign of harassment and abuse of the litigation process. Ceglia and his counsel have made clear that the purpose of their abusive barrage of discovery demands is to coerce Defendants to settle Ceglia’s fraudulent claims before the Court dismisses the case. *See* Doc. No. 323 at 2-4; *see also, e.g.*, Doc. No. 331, Southwell Decl., Ex. H (Ceglia stating in an email to the Daily Reporter in Wellsville: “You won’t go public Mark [Zuckerberg], you won’t IPO, you won’t pass go I won’t let you sell this company out from under me not while I have the power to stop you.”). Rather than condone Ceglia’s bad faith litigation strategy, the Court should adhere to its numerous previous rulings and reject Ceglia’s request that he be permitted to harass Defendants through a fishing expedition into the Harvard email servers and Zuckerberg’s personal computers.

CONCLUSION

The Court should deny Ceglia’s (1) Motion to Strike (Doc. No. 385), (2) First Motion to Compel (Doc. No. 389), and (3) Motion for Discovery Regarding Harvard Emails (Doc. No. 396).

Dated: New York, New York
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