

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,	:	X
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 1:10-cv-00569-
	:	RJA
MARK ELLIOT ZUCKERBERG and	:	
FACEBOOK, INC.,	:	
	:	
Defendants.	:	
	:	
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**DEFENDANTS’ NOTICE OF MOTION AND INCORPORATED
MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR EXTENSION OF TIME**

PLEASE TAKE NOTICE that the undersigned move this Court to adjourn the schedule set by the Court (Doc. No. 428) for the opposition and reply to Ceglia’s Motion to Vacate Doc. No. 348 for 7 days, so that Defendants’ opposition would be due Tuesday, June 19 and Ceglia’s reply would be due Thursday, June 21.

PLEASE TAKE FURTHER NOTICE that, pursuant to Local Civil Rule of Procedure 7 of this Court, Defendants state their intention to file and serve reply papers if needed.

BACKGROUND AND ARGUMENT

On April 4, 2012, this Court entered a calibrated scheduling order for limited expert discovery and motions practice on Defendants’ motion to dismiss (“the April 4 Order”). *See* Doc. No. 348. On April 18, 2012, Ceglia filed Objections to this Court’s April 4 Order, requesting that Judge Arcara vacate the April 4 Order, arguing that Ceglia should be awarded the opportunity to conduct wide-ranging fact discovery. *See* Doc. No. 355. On May 24, 2012, Ceglia filed a motion to strike Defendants’ motion to dismiss and the expert report of Gerald

LaPorte . *See* Doc. No. 386. On May 27, 2012, Ceglia filed a motion to compel Defendants to produce documents which were not subject to this Court’s April 4 Order. *See* Doc. No. 390. Within the next three days, Ceglia filed three separate motions, all based on this Court’s April 4 Order and Defendants’ motion to dismiss: (1) a motion for extension of time to file his expert reports (Doc. No. 392), (2) a motion to strike Defendants’ request for a telephonic status conference, and (3) a motion for discovery of so-called “Harvard emails.” All of these motions have either been denied or are pending resolution by this Court.

On Friday, June 8, Ceglia filed yet another motion to vacate this Court’s April 4 Order and requested a scheduling conference to permit him to conduct wide-ranging fact discovery. *See* Doc. No. 427. On the same day, this Court set a scheduling order on this motion, requiring Defendants’ opposition four days later, by Tuesday, June 12, and Ceglia’s reply by Thursday, June 14. *See* Doc. No. 428. In his latest motion, Ceglia seeks, yet again, to make an end-run around this Court’s scheduling order by raising, for the first time, entirely new legal arguments based on New York State law related to challenging judgments and the propriety of seeking relief on the basis of fraud.

This filing is the latest example of Ceglia’s abusive litigation strategy. It is a transparent attempt to harass Defendants and saddle them with having to file responses to one frivolous motion after another, at a time when the parties are actively preparing for and about to commence expert depositions. The arguments Ceglia raises are not only baseless, they are obviously premature and should be presented in Ceglia’s opposition to the motion to dismiss.

Because Ceglia’s frivolous, strategically timed and harassing motion raises many legal arguments Ceglia has never presented before, Defendants request a short, seven-day extension to

respond. Absent an extension, Defendants will only have been given two business days to research the new legal issues and draft and file a response.¹

Dated: New York, New York
June 10, 2012

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Respectfully submitted,

/s/ Orin Snyder
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Attorneys for Defendants Mark Zuckerberg and Facebook, Inc.

¹ On June 9, Defendants sought consent from Ceglia for this extension by email. Ceglia's counsel refused the proposed extension, stating it "[s]eems masochistic to negotiate with a bully and his clenched fist no matter how expensive the suit is that he wears." Ex. 1 (attached).

EXHIBIT 1

From: Dean Boland [mailto:dean@bolandlegal.com]
Sent: Saturday, June 09, 2012 8:36 PM
To: Southwell, Alexander
Cc: paul.argentieri@gmail.com; Snyder, Orin; Dupree Jr., Thomas H.; Benjamin, Matthew J.
Subject: Re: Motion to vacate

Alex:

No. My client does not consent to any delay. And, you have no good faith basis to request such a delay. It would be an "unnecessary delay" as Rule 11 states it.

As you might recall, there would be a thirty day delay, right now, benefiting both parties as much as they may need it. But, your clients fought our request for that extension of time. Seems masochistic to negotiate with a bully and his clenched fist no matter how expensive the suit is that he wears.

Dean Boland.

On Sat, Jun 9, 2012 at 6:58 PM, Southwell, Alexander <ASouthwell@gibsondunn.com> wrote:

Mr. Boland:

Regarding the schedule for briefing your motion to vacate, Doc. No. 426, set by Judge Foschio yesterday afternoon, Doc. No. 428, Defendants will be asking the court to adjourn the schedule by a week. Please let me know by mid-day Sunday if you consent or not.

Thanks

Alex

Alexander H. Southwell
Partner

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This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

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Please note, I typically only review my emails once daily. If there is something urgent in any email, please do not hesitate to contact my office at [216-236-8080](tel:216-236-8080).

CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury pursuant to 28 U.S.C. § 1746, that on this 10th day of June, 2012, I caused the following documents to be filed with the Clerk of the District Court using its CM/ECF system, which would then electronically notify all counsel of record in this case: Defendants' Motion for Extension of Time.

Dated: New York, New York
 June 10, 2012

/s/ Orin Snyder _____

Orin Snyder

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