

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

MEMORANDUM OF LAW
REGARDING MOTION TO
STRIKE DEFENDANTS'
RESPONSES TO DOC. NO. 438.

MEMORANDUM

Plaintiff respectfully requests this court strike Defendants' response to Plaintiff's motions Doc. No. 438 filed via letter to the court. See Exhibit A.

Defendants' filed their responses to Plaintiff's Motion, Doc. No. 438 via transmission of a letter to the court and to counsel via email on June 19, 2012. *Id.* This use of a letter to respond to a filed motion is a violation of the Federal Rules of Civil Procedure and this Court's Local Rules.

Defendants' response to Plaintiff's Doc. No. 438 is excerpted below:

"[A] bankrupt, abusive motion[] made solely to harass and delay." Exhibit A at 1.

"Ceglia's Motion to Disqualify is a thinly-veiled effort to disrupt and hijack the Court's calibrated discovery schedule, to thwart Defendants' noticed depositions and to create disorder in these proceedings." *Id.*

"[Plaintiff] has stooped even lower by filing a frivolous disqualification motion." *Id.*

at 2.

Defendants then went on to essentially make another motion urging the court to issue an order that some vague “self help” cannot be exercised by Plaintiff. The rush is obviously on for Defendants to attempt to conduct depositions before this court has the opportunity to rule on the pending motions, Doc. No. 430 and Doc. No. 438 either one of which would necessarily cause the delay of those depositions. Defendants again attempt to exercise their financial advantage over Plaintiff to needlessly increase the costs to the Plaintiff and the cost in court time with senseless motion practice. Before Defendants letter was received, Plaintiff’s counsel had already responded to Defendants’ requests to coordinate schedules with suggestions to no duplicate efforts and insure the depositions are convenient for both counsel and the witnesses. Those plans should be worked out in the next few days assuming Defendants’ cooperation.

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. 430 and 438 and a separate motion for a denial of "self help" is the best way to describe the swamp gravy language used. 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. See Exhibit A at 2.

This is the second filing by Defendants intentionally made outside the record of this case. It is 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 requests are not merely administrative. Defendants' motion for some order regarding Plaintiff's "self help" is substantive. Defendants' responses to Plaintiff's pending motions are 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.

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

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. 430 and 438 and direct Plaintiff to submit his reply within the deadlines of the Federal and Local Rules or other timing as chosen by this court.

CONCLUSION

For the foregoing reasons, Mr. Ceglia respectfully requests the court strike Defendants' filed responses to Plaintiff's Motions, Doc. Nos. 430, 438 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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