

# GIBSON DUNN

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Client: 30993-00011

June 19, 2012

## VIA ELECTRONIC MAIL

The 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 14202

Re: 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 regarding Plaintiff Paul Ceglia's Motion to Disqualify Defendants' Counsel (Doc. No. 438), yet another of Ceglia's utterly bankrupt, abusive motions made solely to harass and delay. Defendants will oppose that Motion in accordance with the court-ordered schedule. Doc. No. 439.

We respectfully submit this letter today to request confirmation from the Court that the pendency of Ceglia's meritless motion does not prevent expert discovery from proceeding as scheduled. Defendants have noticed depositions of all five of Ceglia's purported experts. *See* Exhibit A. Those depositions are scheduled to begin next Tuesday, June 26, 2012. Defendants noticed those depositions two weeks ago, on June 5, 2012, at the immediate outset of the two-month window in which expert depositions are to be conducted. Doc. No. 348. Neither Mr. Boland nor Mr. Argentieri objected to or otherwise substantively responded to those deposition notices. Defendants then attempted to confirm the deposition dates and times by letter, sent to Ceglia's counsel on June 13, 2012. *See* Exhibit B. Again, neither Mr. Boland nor Mr. Argentieri objected to or otherwise substantively responded to that letter or the deposition dates noticed therein.

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. Indeed, Ceglia's purpose is laid plain near the conclusion of his moving brief, where he requests a stay of "all discovery" until the Court disposes of his Motion. Doc. No. 438 at 16. Ceglia has sought obstructionist extensions and delays on

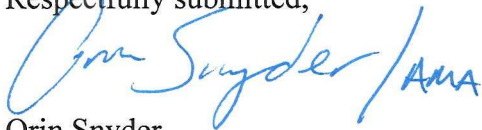
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numerous occasions previously. Most recently, this Court denied Ceglia's Motion for Extension of Time to File Expert Reports. Doc. No. 408. Moreover, in granting Plaintiff's Counsel's Motion to Withdraw, the Court admonished Ceglia that any requests for enlargements of time based on the need to retain new counsel would be viewed with disfavor. Doc. No. 423. Now that Ceglia can no longer use his lawyers' abandonment as a pretext for delay, he has stooped even lower by filing a frivolous disqualification motion.

This Court should not permit Ceglia to engage in self-help to further delay by filing yet another harassing, baseless motion. We respectfully ask the Court to confirm that the pendency of Ceglia's Motion to Disqualify does not adjourn the five scheduled depositions of Ceglia's experts that Defendants noticed weeks ago, and that Ceglia's experts must appear for their depositions as noticed.

We thank the Court for its prompt attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink that reads "Orin Snyder" followed by a stylized flourish that appears to be "AMA".

Orin Snyder

cc: Terrance Flynn, Esq.  
Dean Boland, Esq.  
Paul A. Argentieri, Esq.

# **EXHIBIT A**



Respectfully submitted,

/s/ Orin Snyder

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Matthew J. Benjamin

Amanda M. Aycok

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*Attorneys for Defendants Mark Zuckerberg and Facebook, Inc.*

# **EXHIBIT B**

June 13, 2012

VIA ELECTRONIC MAIL

Dean M. Boland, Esq.  
Boland Legal, LLC  
18123 Sloane Avenue  
Lakewood, Ohio 44107

Re: Ceglia v. Zuckerberg and Facebook, Inc., No. 1:10-cv-569 (RJA)

Dear Mr. Boland:

I write concerning some logistics for the upcoming expert depositions. Specifically, as we offered in recent filings, we are prepared to meet and confer regarding your requests for discovery concerning Defendants' expert reports in order to determine whether there should be a mutual exchange of documents between the parties in preparation for expert depositions. With respect to Plaintiff's experts, there are a number of categories of documents reflected in the reports which we hereby request sufficiently in advance of the depositions.<sup>1</sup> Those categories include:

1. List of all media presented to Plaintiff's computer forensics experts for inspection, as well as all documents, reports, filings, declarations, videos, handwriting exemplars, or other material provided to or reviewed by Plaintiff's experts prior to the submission of their reports;
2. Results of Mr. Grant's review of File Allocation Table for the two floppy disks identified in the Grant Report;
3. List of all software products/versions present on the two floppy disks identified in the Grant Report;
4. Complete list of "malware" purportedly identified by Mr. Broom on the Seagate hard drive, as discussed in the Broom Report;

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<sup>1</sup> In order to efficiently proceed with depositions of both parties' experts, we propose agreeing to produce any additional materials related to the experts' reports at least one week prior to the expert's deposition.

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5. Records of Mr. Broom's examination of the HP Pavilion computer, which allegedly contained the Seagate hard drive, and/or the computer's CMOS battery discussed in the Broom Report;
6. The "Test Services Request Form" sent by Larry Stewart to Integrated Paper Services (IPS), Inc., referred to in the December 13, 2011 letter from Walter Rantanen to Larry Stewart and identification of the samples provided to Mr. Rantanen (including detail on the contents of each vial provided, *e.g.*, how many samples each vial contained; from which document, page, and location the samples were taken; the size of the samples; and any other source or identifying information);
7. The materials Mr. Stewart claims in his Report were produced in discovery, on which he relies for the assertion that a Defendants' expert had knowledge of Stewart's findings related to the markings at the top of each page of the Work for Hire Document and the dull corner on the back of page 1 under ultra-violet examination (which in fact were not produced in discovery) (*see* Doc. No. 416, ¶ 195);
8. The results, data, captured images or pictures in electronic or hard-copy form, or thin layer chromatography plates<sup>2</sup> resulting from Mr. Stewart's "chemical analysis of the toner" (Doc. No. 416, ¶ 89) and other "testing methods, [which] included microscopy and thin layer chromatography" (Doc. No. 416, ¶ 93); and
9. Details of the contents and sources of Mr. Stewart's "library of standard toners," including any catalogue, index, directory, log, or similar information (*see* Doc. No. 416, ¶ 98-99).

Additionally, Plaintiff's recent filing of five expert reports raises questions regarding the status of several other retained Plaintiff's experts. During the course of this litigation, Plaintiff has filed sworn declarations submitted by his experts Valery Aginsky and John Paul Osborn. *See* Doc. Nos. 62, 66. Plaintiff's expert Erich Speckin attended the July 25, 2011 court-ordered Hard-Copy Document Inspection and took physical ink and other samples of the Work for Hire and Specifications Documents pursuant to Court Order. And in his filed report, Plaintiff's expert Neil Broome cryptically referred to an unnamed "Digital Imaging Expert," whom Plaintiff has not identified to Defendants or the Court. Yet none of these experts—not Dr. Aginsky, Mr. Osborn, Mr. Speckin, or the unnamed "Digital Imaging Expert"—filed reports in accordance with the Court's April 4, 2012 Order. Please advise as soon as possible whether Plaintiff intends to rely on these experts in this litigation, so that

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<sup>2</sup> We request that the plates be produced for inspection at a mutually agreed upon place and time sufficiently in advance of Mr. Stewart's deposition.



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Defendants may consider the appropriate course of action, including but not limited to noticing the experts' depositions during the brief court-ordered window.

Finally, although we have had some email correspondence concerning our deposition notices, we have not heard anything specific from you about any conflicts. We therefore will assume that the noticed depositions will all proceed, as follows:

Neil Broom – June 26, 2012

Jerry Grant – June 29, 2012

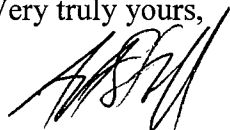
Jim Blanco – July 6, 2012

Larry Stewart – July 11, 2012

Walter Rantanen – July 13, 2012

Each deposition will commence at 10:00 a.m. ET and be held at Gibson Dunn's offices at 200 Park Avenue, 46<sup>th</sup> Floor, New York, New York 10166.

Very truly yours,



Alexander H. Southwell

cc: Paul Argentieri, Esq.