

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 1:10-cv-00569-
	:	RJA
MARK ELLIOT ZUCKERBERG and	:	
FACEBOOK, INC.,	:	
	:	
Defendants.	:	
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**DEFENDANTS' OPPOSITION TO CEGLIA'S MOTION
TO STRIKE DEFENDANTS' JUNE 19, 2012 LETTER**

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June 22, 2012

Defendants Mark Elliot Zuckerberg and Facebook, Inc. submit this memorandum in opposition to Ceglia's Motion to Strike Defendants' June 19, 2012 letter to the Court (Doc. No. 441). Ceglia's Motion, yet another baseless filing intended for the purpose of harassing Defendants and multiplying these proceedings, should be denied for four reasons.

First, this Court has already docketed, considered, and granted the relief requested in Defendants' June 19th letter. That letter sought, in the Court's words, "expedited consideration" of Ceglia's request to stay discovery while his baseless disqualification motion is pending. Doc. No. 451 at 3; *see also* Doc. No. 438 at 16-17; Doc. No. 447. In its June 20, 2012 Decision and Order (Doc. No. 451), the Court granted that "expedited consideration" of, and denied outright, Ceglia's requested stay. In so doing, the Court specifically noted "the importance of the issue raised by Defendants' [June 19th] letter." Doc. No. 451 at 2-3. The Court's Decision and Order thus effectively mooted Ceglia's Motion to Strike, which should be denied on that basis alone.

Second, in support of his Motion to Strike, Ceglia cites only Local Rule 5.1, which is inapposite. Doc. No. 442 at 2. That Local Rule pertains to the filing and service of pleadings and other papers. However, Defendants' June 19th letter does not constitute Defendants' formal opposition to Ceglia's disqualification motion. In fact, the June 19th letter explicitly states that Defendants "will oppose that Motion in accordance with the court-ordered schedule." Doc. No. 447 at 1. Defendants have now done so, in a formal opposition that also asks the Court to direct Ceglia's counsel to show cause why they should not be sanctioned under 28 U.S.C. § 1927. Doc. No. 452. Defendants' June 19th letter is not a pleading or memorandum, and Ceglia's attempt to strike it on that ground should be rejected.

Third, Defendants' submission of the July 19th letter is consistent with the practices of this Court and both parties to this case. The Court has accepted numerous letters from both parties pertaining to pending motions, *see e.g.*, Doc. Nos. 77, 244, 246, 369, 424, and dismissed

Ceglia's May 30, 2012 motion to strike another letter submitted by Defendants. Doc. No. 402. Indeed, Ceglia has himself submitted and filed without court permission a self-styled "memorandum in opposition," in which he requested substantive relief, in letter form. *See* Doc. No. 108. He cannot therefore be heard to complain about Defendants' submission.

Fourth, Defendants' counsel understand that Magistrate Judges in the United States District Court for the Western District of New York typically welcome letters with respect to discovery disputes and other ancillary matters. For example, Judge McCarthy's Individual Rules state that "[i]f discovery disputes arise, the parties shall initially advise the Court of the dispute via letter (copying opposing counsel)." This Court's Individual Rules state that letters that attempt to modify scheduling orders are not accepted and must be made by motion, but do not appear to otherwise prohibit letters on discovery issues.

Plaintiff's Motion to Strike Defendants' June 19, 2012 letter (Doc. No. 441)—a letter that this Court has already docketed and considered—should be denied.

Dated: New York, New York
 June 22, 2012

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Respectfully submitted,

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