

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' REPLY TO CEGLIA'S RESPONSE TO ORDER TO SHOW CAUSE

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PRELIMINARY STATEMENT

In its comprehensive ruling of June 28, 2012, the Court analyzed Ceglia's five frivolous, bad faith motions, and concluded:

[T]he complete dearth of any evidence supporting Plaintiff's Motion to Strike, First Motion to Compel, Motion for Discovery, Motion to Vacate, and Motion to Disqualify Counsel, as well as the fact that Plaintiff's Motions to Vacate and to Disqualify are accompanied by requests to stay discovery pending resolution of such motions, gives rise to more than suspicion that such motions were filed solely to unreasonably and vexatiously multiply the proceedings, and especially to derail the schedule for the limited discovery of experts set forth in the April 4, 2012 Order. [Accordingly], *an award of sanctions appears warranted.*

Doc. No. 457 at 42-43 (emphasis added and footnote omitted).

Ceglia's response to the Order to Show Cause (Doc. No. 460) confirms that this Court's initial view was exactly right: *none* of Ceglia's five motions was supported by evidence or had objective merit, *none* was presented in good faith, and *all* are deserving of sanctions. In choosing to file these motions, Ceglia and his attorneys—Dean Boland and Paul Argentieri—plainly acted with the improper purpose of derailing expedited discovery on the eve of expert depositions. Their strategy was to burden and harass Defendants by multiplying the proceedings and extending Ceglia's fraud in hopes of extracting a settlement.

A party's bad faith can be inferred "from the meritlessness of a motion," *Eisemann v. Greene*, 204 F.3d 393, 397 (2d Cir. 2000), as well as from factual misstatements made to support the claim, *Johnson v. Univ. of Rochester Med. Ctr.*, 715 F. Supp. 2d 427, 429-30 (W.D.N.Y. 2010), *aff'd*, 642 F.3d 121 (2d Cir. 2011), both of which are present here. Ceglia's motions are utterly without legal merit and riddled with factual misrepresentations. No reasonable lawyer

would have made the arguments contained therein. They appear to have been filed without the benefit of basic legal research. For example, the Motion to Disqualify relied on the New York Disciplinary Rules, which were repealed years ago. Similarly, the Motion to Vacate failed even to cite the direct, on-point, and controlling Supreme Court decision in *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991)—a case that Defendants had repeatedly cited in prior briefs and that even five minutes of legal research by a first-year law student would have located—that made abundantly clear that Ceglia’s arguments had no merit.

This Court has not even seen the full extent of the harassing misconduct of Ceglia’s attorneys. In addition to filing the Motion to Vacate, Boland served on Defendants’ lawyers a Motion for Rule 11 Sanctions based on the same false premise—that federal courts lack the power to dismiss a fraudulent lawsuit. *See* Ex. A. That the sanctions motion was prepared in bad faith is evident from the utter bankruptcy of the legal arguments—along with the fact that, after threatening each individual attorney with sanctions, Boland sarcastically ended every letter with “Have a nice week.” *Id.* Boland has made a mockery of these proceedings.

Ceglia has now conceded the obvious: that “this court, of course, has the inherent power to dismiss this case pre-trial for fraud provided Defendants meet the rigorous clear and convincing [evidence] standard.” Doc. No. 460 at 18. Defendants’ motion to dismiss will soon be ripe for decision. In the meantime, this Court has the power and the duty to protect its own processes from those who litigate in bad faith.

The Court’s prior sanction for Ceglia’s defiance of court orders appears to have had no deterrent effect on Ceglia and his lawyers. The Court should send a stronger message this time around, and make clear that their abusive, harassing, bad faith litigation misconduct will not be tolerated. It should order Ceglia to compensate Defendants for the reasonable attorneys’ fees

caused by his misconduct, direct Boland and Argentieri to pay a fine to the Court, and award all other relief the Court may deem appropriate. *Cf.* Doc. No. 283 (ordering Ceglia to pay attorneys' fees and imposing civil contempt sanction of \$5,000).

ARGUMENT

I. **This Court May Impose Sanctions Based On Section 1927, Rule 11, Or Its Inherent Power.**

This Court has at least three grounds on which it can sanction Ceglia, Boland, and Argentieri for their misconduct and abuse of the judicial process.

First, 28 U.S.C. § 1927 empowers a court to sanction an attorney who “multiplies the proceedings in any case unreasonably and vexatiously.” Sanctions are proper under § 1927 when a court finds “clear evidence that (1) the offending party’s claims were entirely without color, and (2) the claims were brought in bad faith—that is, ‘motivated by improper purposes such as harassment or delay.’” *Eisemann v. Greene*, 204 F.3d 393, 396 (2d Cir. 2000) (quoting *Schlaifer Nance & Co. v. Estate of Warhol*, 194 F.3d 323, 336 (2d Cir. 1999)). “A claim is colorable when it reasonably might be successful, while a claim lacks a colorable basis when it is utterly devoid of a legal or factual basis.” *Schlaifer Nance & Co.*, 194 F.3d at 337. Facts showing an intent to harass or delay establish bad faith under Section 1927, but bad faith can also be inferred “from the meritlessness of a motion,” *Eisemann*, 204 F.3d at 397.

Second, the Court can impose sanctions against an attorney and/or his client under Federal Rule of Civil Procedure 11. *See* Fed. R. Civ. P. 11(c)(1) (“the court may impose an appropriate sanction on any attorney, law firm, or party that violated [Rule 11] or is responsible for the violation”). Rule 11 requires an attorney to certify “to the best of [his] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances” that his court filings are “not being presented for any improper purpose, such as to harass, cause

unnecessary delay, or needlessly increase the cost of litigation,” Fed. R. Civ. P. 11(b)(1), and that his “factual contentions have evidentiary support,” Fed. R. Civ. P. 11(b)(3).

Third, the Court can invoke its inherent power to impose sanctions on Ceglia and his attorneys. A court has “inherent power to award attorneys’ fees against the offending party and his attorney when it is determined a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” *Agee v. Paramount Commc’ns, Inc.*, 114 F.3d 395, 398 (2d Cir. 1997) (internal quotation marks omitted).

A party’s factual misstatements can support sanctions under any of the three bases discussed above. *See Johnson v. Univ. of Rochester Med. Ctr.*, 715 F. Supp. 2d 427, 429-30 (W.D.N.Y. 2010) (§ 1927), *aff’d*, 642 F.3d 121 (2d Cir. 2011); Fed. R. Civ. P. 11(b)(3) (by signing motion, attorney certifies that his factual contentions have evidentiary support); *Sierra Club v. U.S. Army Corps of Eng’rs*, 776 F.2d 383, 391 (2d Cir. 1985) (awarding sanctions under inherent power because party had “misrepresented the significance of . . . data” bearing on the case); *Veliz v. Crown Lift Trucks*, 714 F. Supp. 49, 60 (E.D.N.Y. 1989) (“[s]anctions may be imposed . . . pursuant to the Court’s inherent power” based on “plaintiff’s counsel’s intentional misrepresentation”).

II. All Five Ceglia Motions Warrant Sanctions.

All five of Ceglia’s abusive, harassing motions warrant sanctions under any of the above standards.

A. Ceglia’s Motion To Strike (Doc. No. 385)

Ceglia’s Motion to Strike was an outrageous, bad faith filing that demands severe sanctions. Ceglia sought to strike the expert report of Gerald LaPorte, as well as Defendants’ Motion to Dismiss, based on a claim that was not just false but libelous—that LaPorte, a world-renowned forensic chemist and document dating specialist, provided “perjured testimony” in his

expert report. Doc. No. 386 at 1. LaPorte concluded in his report, based on an analysis of a solvent called phenoxyethanol (PE) found in many inks, that it was “virtually certain” that the ink on the first page of Ceglia’s Work for Hire Document was less than two years old. Doc. No. 326 at 2 & n.2 (emphasis omitted). Ceglia asserted in his Motion to Strike that this conclusion conflicted with LaPorte’s “previous sworn statements that the PE test is not reliable,” and with his prior testimony that he “never obtained a ‘positive result’” or a “conclusive result” from a PE test. *Id.* at 3, 7, 10 (emphasis omitted). But as Defendants demonstrated in their response, the LaPorte Report was fully consistent with LaPorte’s prior testimony, and Ceglia’s assertions to the contrary were based entirely on patent misrepresentations of that prior testimony. *See* Doc. No. 413 at 3-8.

This Court agreed with Defendants and denied Ceglia’s Motion to Strike, concluding that Ceglia’s characterization of LaPorte’s testimony in previous cases constituted “a gross misrepresentation which would be detected by even the marginally literate.” Doc. No. 457 at 15. The Court found that a “plain reading” of LaPorte’s prior testimony established that he had *not* stated, as Ceglia falsely claimed, that PE testing cannot reliably establish whether ink is less than two years old, or that he had never obtained a conclusive result from a PE test. *Id.* Instead, LaPorte had merely testified that “no scientifically reliable methodology existed to ‘exactly’ determine the age of the ink at issue, or when the ink was placed on the paper,” and that he had not previously, “in connection with the same action, performed a PE test, obtained a result indicating the subject ink was less than two years old, and testified as to such result.” *Id.* at 15-16. “In short,” the Court explained, LaPorte’s prior testimony was “completely consistent with the expert representations made in the LaPorte Report, and Plaintiff’s misrepresentation of such testimony fails to support Plaintiff’s Motion to Strike.” *Id.* at 16. The Court concluded that

Ceglia's Motion to Strike was "completely without merit" and that "none of the information on which Plaintiff relies in support of his Motion to Strike provides even colorable support for the motion." *Id.* at 19.

Incredibly, despite these clear findings by the Court, Ceglia asserts that his Motion to Strike was based on a "reasonable reading of LaPorte's testimony." Doc. No. 460 at 5. That Ceglia even makes this demonstrably baseless argument is proof positive that he still doesn't get it—and that strong sanctions are necessary to get the attention of this litigant and his runaway lawyers. This Court emphasized *repeatedly* that Ceglia's motion was based on "gross misrepresentation[s]" of LaPorte's previous statements. Doc. No. 457 at 15; *see also id.* at 16 ("Plaintiff's misrepresentation of such testimony fails to support Plaintiff's Motion to Strike."); *id.* ("Plaintiff has grossly mischaracterized LaPorte's expert testimony"); *id.* at 19 (explaining that Ceglia's characterizations of LaPorte's prior work were "simply beyond the court's comprehension"). Far from being "reasonable" interpretations of LaPorte's testimony, these gross misrepresentations were deliberate, bad faith attempts to mislead the Court. Ceglia and his lawyers apparently assumed, mistakenly, that the Court would rely on the representations in their briefs and not check the underlying record.

Ceglia contends that this Court erred by "fixating" on LaPorte's testimony that PE testing cannot "exactly" establish when ink was placed on paper. Doc. No. 460 at 5. He asserts that his characterizations of LaPorte's testimony were reasonable because the word "exactly" is "amorphous" and "undefined," because LaPorte "never entered a declaration explaining his use of the word 'exactly,'" and because the parties and the Court can only "speculat[e]" about the meaning of that word. *Id.* at 5-6. These assertions are absurd. There is *no* ambiguity in the meaning of the word "exactly" or in LaPorte's testimony: LaPorte testified that there is no

scientifically reliable way to determine “exactly when ink was put to paper.” Doc. No. 386-1 at 54. That testimony is perfectly clear, and is perfectly 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.

Even now, Ceglia is not being honest with the Court. While he argues that his motion was based on the claim that LaPorte’s testimony was ambiguous, that is simply false: the Motion to Strike contended that there was *no* ambiguity in the testimony, and the motion challenged what Ceglia described as “*unequivocal* perjurious testimony.” Doc. No. 386 at 2 (emphasis added); *see also id.* at 9-10 (asserting that LaPorte made an “obvious false statement” and committed “obvious fraud”).

Ceglia argues that he should not be sanctioned because Defendants and the Court have “conceded” that LaPorte “intentionally violated” Federal Rule of Civil Procedure 26(a) by omitting his involvement in two previous cases from his report. Doc. No. 460 at 4 (emphasis omitted). Defendants and the Court have “conceded” no such thing. The LaPorte Report was submitted pursuant to this Court’s expedited discovery orders, not Rule 26. Thus, the Rule’s disclosure requirements did not apply, and neither Defendants nor LaPorte violated the Rule. (For the sake of clarifying the record, Defendants note that, contrary to the suggestion in the Order, *see* Doc. No. 457 at 15, the LaPorte Report did not omit LaPorte’s previous testimony in the *Padilla* case, which is the testimony on which Ceglia’s Motion to Strike primarily relied. *See* Doc. No. 326, Ex. A at 8 (disclosing *Padilla*.)

This Court correctly found that Ceglia advanced a “gross misrepresentation” of LaPorte’s prior testimony, and that his Motion to Strike therefore was “completely without merit” and

lacked “even colorable support.” Doc. No. 457 at 15, 19. Because nothing in Ceglia’s response rebuts this Court’s findings, sanctions are warranted.

B. Ceglia’s Motion To Compel (Doc. No. 389)

Ceglia’s Motion to Compel was an abusive and transparent attempt to circumvent the limits on expert discovery in this Court’s April 4, 2012 Order. In that Order, the Court granted Ceglia 60 days to submit expert reports and 60 days thereafter to conduct expert depositions. *See* Doc. No. 348. But the Court *denied* Ceglia’s request for “expert written discovery under Rule 26” related to Defendants’ experts. Doc. No. 350 at 203:11-12. The Court also ruled that “[g]eneral discovery” under Rule 26 was “stayed,” and made clear that only the “limited period of expert discovery” expressly authorized by that Order would be permitted. Doc. No. 348. Ceglia deliberately attempted an end-run around those rulings in his Motion to Compel, in which he claimed that this Court’s July 1, 2011 and April 4, 2012 Orders required Defendants to produce voluminous materials relating to their experts—including laboratory notes, electronic scans of any document examined by their experts, digital images, images stored using laboratory instruments, instrument printouts, instrument calibration information, maintenance records for devices used to generate images, and all metadata pertaining to any electronic data relating to this case. Doc. No. 390 at 5.

This Court had no difficulty rejecting Ceglia’s Motion to Compel and concluding that it “relie[d] on a misconstruction of the July 1, 2011 and April 4, 2012 Orders.” Doc. No. 457 at 21. The Court explained that its July 1 Order merely required Defendants to produce ““all reports documenting the findings of [their] examination,”” and thus did “not require Defendants also [to] make available . . . experts’ notes, images, scans, or photographs.” *Id.* at 21-22 (quoting Doc. No. 83). The Court also observed that its July 1 Order referenced the Court’s Hard-Copy

Document Inspection Protocol (Doc. No. 84) and Electronic Asset Inspection Protocol (Doc. No. 85), but “[n]either Protocol Document . . . contains *any* language” requiring the production of the materials that Ceglia requested. *Id.* at 22 (emphasis added). Moreover, the Court explained that Ceglia’s former counsel, Sanford Dumain, had “agreed that any dispute regarding document discovery would be resolved after the submission of expert reports,” and that Ceglia’s Motion to Compel was therefore not only meritless, but also improperly “premature.” *Id.* at 22-23.

Although this Court squarely rejected Ceglia’s “misconstruction” of its Orders, Doc. No. 457 at 21, Ceglia argues that he should not be sanctioned because he “interpreted that [the July 1 Order] would entitle [him to] copies of all of Defendants’ images, scans and photographs captured by their experts.” Doc. No. 460 at 8. Ceglia’s after-the-fact explanation is not remotely plausible. As this Court found, his Motion to Compel blatantly mischaracterized the scope of this Court’s Orders, none of which contained *any* language that supported his demands for wide-ranging discovery of Defendants’ experts.

Ceglia engages in further misrepresentation when he asserts that he “has made repeated requests” for the material sought in his Motion to Compel “with no response,” and that he “is not in receipt of the requested expert materials just days prior to scheduled depositions.” Doc. No. 460 at 8-9. In fact, Defendants have shared substantial amounts of material underlying their expert reports in preparation for expert depositions.

C. Ceglia’s Motion For Discovery (Doc. No. 396)

Ceglia’s Motion for Discovery is a textbook example of a bad faith filing that lacked any colorable factual basis. Ceglia alleged, without any supporting facts, that Mark Zuckerberg “deleted emails from his account that are relevant to this case,” and that the Court should therefore issue an order “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 further “authorizing Plaintiff’s computer forensics 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.” Doc. No. 397 at 7.

Of course, this Court had 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. *See* Doc. No. 413 at 12-13; Doc. No. 457 at 26-27. Ceglia completely ignored these prior rulings in his motion and proceeded as though they simply did not exist. The Court denied Ceglia’s motion, properly condemning his attempt “to reargue discovery motions already disposed of by the court without any justification for doing so.” Doc. No. 457 at 26.

Ceglia claims that he had not previously sought the discovery that he demanded in his Motion for Discovery. He asserts that his Motion for Discovery “sought emails in [three] categories”—emails referenced within other emails; emails between the parties prior to June 2003; and emails between the parties after November 2003—and that his requests for these particular categories of emails could only have been made after Defendants’ production of emails in April 2012. Doc. No. 460 at 9. But that argument mischaracterizes his motion, which plainly did *not* seek discovery limited to those three categories of emails. Rather, it sought unfettered discovery of the backup tapes of the Harvard email server and Zuckerberg’s personal computers. Doc. No. 397 at 7. It was those wide-ranging discovery requests that this Court had already considered and rejected. *See* Doc. No. 413 at 12-13. Because Ceglia continues to ignore the undeniable fact that his motion sought the same discovery that he had already been denied on multiple occasions, sanctions are warranted.

In addition to rearguing (and failing to mention) prior rulings without justification, Ceglia's Motion for Discovery improperly sought what this Court correctly described as "a fishing expedition for emails [Ceglia] speculates may exist." Doc. No. 457 at 27. Ceglia alleged in his motion that he exchanged emails with Zuckerberg in February, March, and April 2003 that "included drafts of what became the eventual Facebook Contract that the parties signed on April 28, 2003 in Boston," and that Zuckerberg had deleted those emails. Doc. No. 397 at 3; *see also* Doc. No. 398 ¶¶ 6-7. However, as the Court recognized, that allegation was flatly inconsistent with Ceglia's Amended Complaint, which alleged that he 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*." Doc. No. 39 ¶ 21 (emphasis added). This Court correctly concluded that Ceglia's allegation "that the Contract's terms were negotiated with Zuckerberg over the telephone strongly undermines [Ceglia's] assertion that Defendants' failure to produce any emails from the Harvard email server backup tapes dated prior to June 2, 2003 establishes Zuckerberg destroyed such evidence." Doc. No. 457 at 27.

Ceglia offers no meaningful response to the undeniable fact that he sought discovery based on allegations that are contradicted by his Amended Complaint. He asserts that "Defendant made no such argument" concerning a conflict. Doc. No. 460 at 11. But that is false: Defendants demonstrated in detail in their response to Ceglia's motion that his allegations conflicted with the allegations in his Amended Complaint. *See* Doc. No. 413 at 14-15. Ceglia also argues that "[t]his is another factual claim that is subject to reasonable dispute on all sides," and that his counsel was "entitled to rely on [Ceglia's] factual claims in this regard" because they were "objectively reasonable." Doc. No. 460 at 10-11. But there is nothing "reasonable" about Ceglia's conflicting stories: Ceglia's Motion for Discovery squarely contradicts his Amended

Complaint with respect to the origins of the fraudulent Work for Hire Document, and it amounts to bad faith to file a motion based on factual allegations that contradict the complaint's allegations without even acknowledging the conflict.

This Court also explained that Ceglia's Motion for Discovery was meritless because, in alleging that Zuckerberg had deleted emails exchanged between the parties, Ceglia "wholly ignored" a fundamental point: "[A]ny email sought by [Ceglia] would necessarily have been sent from Zuckerberg to [Ceglia], such that [Ceglia] would already have a copy of it." Doc. No. 457 at 27. Ceglia responds that "[t]his factual claim assumes that the emails in the Harvard production are authentic, unaltered and complete." Doc. No. 460 at 11. But that response misses the point. This Court was not suggesting that Ceglia had obtained copies of the alleged emails that he sought through Defendants' production. Rather, the Court was making the obvious point that, if any emails had actually been exchanged between Ceglia and Zuckerberg prior to June 2003, Ceglia would already have copies of those emails in the records that he claims to have so meticulously kept. *See* Doc. No. 224 at 2 (claiming that Ceglia saved the text of "each of the emails between" him and Zuckerberg). That Ceglia does not have such emails—and that he did not produce any such emails when ordered by this Court to produce all of his purported emails with Zuckerberg (*see* Doc. No. 83)—contradicts Ceglia's false allegation that Zuckerberg "deleted" them from his Harvard account, and confirms that Ceglia's arguments in his Motion for Discovery were a bad faith pretense for harassing Defendants through invasive, unwarranted, and repetitive demands for discovery of the Harvard backup tapes and Zuckerberg's personal computers.

Finally, Ceglia argues that sanctions are unwarranted based on the inexplicable assertion that Defendants do not dispute that "Plaintiff sent emails to Defendant Zuckerberg before April

2003[,] one of which contained an electronic copy of the Facebook Contract.” Doc. No. 460 at 11. Here, Ceglia ignores Defendants’ Motion to Dismiss, in which Defendants presented overwhelming forensic evidence proving that what Ceglia calls the “Facebook Contract” is a forgery that did not exist in April 2003, and thus could not possibly have been emailed from Ceglia to Zuckerberg at that time. In light of Defendants’ clear position—and the overwhelming evidence—that his alleged contract is a fraud, Ceglia’s assertion that Defendants do not dispute that Ceglia sent that document to Zuckerberg in April 2003 can only be a deliberate misrepresentation.

D. Ceglia’s Motion To Vacate (Doc. No. 426)

Ceglia’s Motion to Vacate was so frivolous that it could not have been filed in good faith. In that motion, Ceglia sought to vacate this Court’s April 4 discovery order because, according to Ceglia, the fraud he is perpetrating on the Court is “intrinsic,” and New York state law purportedly prohibits dismissals based on intrinsic fraud. *See* Doc. No. 427 at 2-3.

As Defendants pointed out, the Supreme Court rejected Ceglia’s argument more than two decades ago in *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991)—a decision that Ceglia’s Motion to Vacate did not even mention. In *Chambers*, the Court held that a federal court has the inherent power to dismiss lawsuits for fraud, and that a federal court’s exercise of its inherent power when it is sitting in diversity is not limited by state law. *Id.* at 44-45, 51-53. Thus, as this Court concluded in denying Ceglia’s Motion to Vacate, “it is settled that federal courts sitting in diversity have inherent power to dismiss an action for fraud,” and any state-law distinction between extrinsic and intrinsic fraud is “irrelevant” to the exercise of this “well-established inherent authority.” Doc. No. 457 at 30-32.

Ceglia's motion was frivolous for an additional reason: As this Court recognized, all of the decisions on which he relied "involve[d] collateral attacks seeking relief from final judgments," and those decisions have no relevance to the Court's exercise of its inherent power to dismiss in this case, where "there has yet to be any judgment, let alone a final judgment." *Id.* at 29-30 (emphasis omitted). Indeed, it should be self-evident that the standard for re-opening final judgments that occurred months or even years previously is far more demanding than the standard for dismissing a claim that has yet to be adjudicated. Because any reasonable attorney would have recognized that Ceglia's Motion to Vacate was "without any foundation in law," *id.* at 32, it is apparent that Ceglia filed that motion in bad faith.

Ceglia's response confirms that conclusion. Ceglia contends that he should not be sanctioned because his Motion to Vacate was arguing "by analogy that New York law prohibited the remedy Defendants seek here," Doc. No. 460 at 13, and he offers a lengthy analysis of the historical development of the *Erie* doctrine in support of that claim. *See id.* at 15-18. All of this is complete gibberish because Ceglia continues to ignore the Supreme Court's on-point, directly controlling decision in *Chambers*, which squarely held that state law is *irrelevant* to the exercise of a federal court's inherent power to dismiss for fraud on the court. Ceglia's obstinate refusal to accept the clear holding of *Chambers* is further proof, if any were needed, that his arguments lack any foundation in law.

Ceglia mischaracterizes this Court's Order when he asserts that the Court relied on a "conclusory procedural/substantive distinction" in denying his Motion to Vacate. Doc. No. 460 at 19. In fact, the Court made clear that the question whether New York state law on intrinsic and extrinsic fraud is procedural or substantive was ultimately "irrelevant" to the outcome of Ceglia's motion. Doc. No. 457 at 31. As the Court correctly explained, *Chambers* holds that the

Court has the “inherent authority to reject at the outset of a case claims based on demonstrable fraud,” regardless of what New York law has to say on the matter. *Id.* at 32.

Ultimately, Ceglia makes a surprising and powerful concession: He “agrees that this court, of course, has the inherent power to dismiss this case pre-trial for fraud provided Defendants meet the rigorous clear and convincing [evidence] standard.” Doc. No. 460 at 18. In other words, ***Ceglia concedes that Defendants have been correct all along*** in arguing that, if they establish by clear and convincing evidence that Ceglia has committed a fraud on the court (as they have done), this case should be dismissed. That is a devastating, conclusive admission that Ceglia’s Motion to Vacate had no merit, and that Ceglia was acting in bad faith when he represented to this Court that Defendants’ Motion to Dismiss was “completely, categorically without any foundation in law.” Doc. No. 427 at 2.

Ceglia’s objective to harass Defendants by asserting bogus legal arguments is further reflected in his Motion for Rule 11 Sanctions. Boland sent warning letters to each of Defendants’ attorneys, accompanied by a motion for sanctions claiming that “Defendants’ motion to dismiss for fraud on the court, Doc. No. 319, is not warranted by existing law” and violated Rule 11. *See* Ex. A. Each cover letter sarcastically ended with “Have a nice week.” *Id.* Courts have made clear that “[t]he district court judge should not tolerate turning the Rule 11 motion into a method of intimidation,” *Rush v. McDonald’s Corp.*, 966 F.2d 1104, 1123 (7th Cir. 1992), and this is a classic example of a tactical and meritless sanctions threat made solely to intimidate and harass Defendants. In fashioning an appropriate sanction for Ceglia and his attorneys, this Court should take into account their improper threats to seek sanctions against Defendants.

E. Ceglia’s Motion To Disqualify Counsel (Doc. 437)

Ceglia’s Motion to Disqualify Counsel was particularly egregious. In that motion, Ceglia claimed that Defendants’ counsel should be disqualified because their “dual representation” of both Defendants purportedly gave rise to a conflict of interest that violated the New York Disciplinary Rules. Doc. No. 438 at 4-6. This Court forcefully rejected that claim, finding that there was “no evidence that the interests of Zuckerberg and Facebook are adverse to each other.” Doc. No. 457 at 36. The Court found that Ceglia’s allegations of a conflict were “conclusory and speculative,” and that Ceglia had “fail[ed] to establish even the potential for a conflict between Zuckerberg and Facebook.” *Id.* at 36-37. Moreover, the Court determined that Ceglia’s “arguments in support of the Motion to Disqualify are quixotic attempts to create issues where none exist.” *Id.* at 39. For example, Ceglia argued that the Orrick law firm did not oppose Ceglia’s Motion to Disqualify because it did not sign Defendants’ response—an argument that this Court correctly recognized was a “patent fallacy,” “a bald non-sequitur,” and “specious.” *Id.*

This Court also concluded that sanctions appeared to be warranted with respect to Ceglia’s Motion to Disqualify because, like many disqualification motions, it likely was “interposed for tactical reasons” and intended to achieve “unnecessary delay.” Doc. No. 457 at 36 (quoting *Capponi v. Murray*, 772 F. Supp. 2d 457, 471 (S.D.N.Y. 2009)). The Court found that Ceglia’s strategic motivations in filing the Motion to Disqualify were laid bare by the fact that the motion was “accompanied by [a] request[] to stay discovery,” which gave rise “to more than suspicion that [this motion was] filed solely to unreasonably and vexatiously multiply the proceedings, and especially to derail the schedule for the limited discovery of experts set forth in the April 4, 2012 Order.” *Id.* at 42-43.

Ceglia’s response is pathetic. It fails to offer one shred of evidence to rebut this Court’s conclusion that “an award of sanctions appears warranted.” Doc. No. 457 at 43. Rather than

contest the reasoning in this Court’s Order, Ceglia simply ignores it. He asserts that his Motion to Disqualify was filed in good faith because it “detailed for the court several existing conflicts between the Defendants as well as potential future conflicts.” Doc. No. 460 at 19-20. But this Court has already determined that the “existing” and “potential future conflicts” alleged in Ceglia’s motion were completely unfounded. Indeed, the Court specifically found that there was “no evidence” to support Ceglia’s fanciful allegations, and that his arguments were “quixotic,” “patent fallac[ies],” and “specious.” Doc. No. 457 at 36, 39. Ceglia cannot escape sanctions simply by disagreeing with the Court and arguing, contrary to the findings in this Court’s Order, that he established the existence of conflicts of interest between Defendants.

Ceglia also argues that “Defendants did not oppose any of [his] arguments of current and future conflicts.” Doc. No. 460 at 20. This is yet another blatant misrepresentation by Ceglia. Defendants explained at length in their response to Ceglia’s motion that his allegations of existing and potential conflicts were baseless. *See* Doc. No. 452 at 7-8. Defendants stated that “there is no actual conflict between the interests of Zuckerberg and the interests of Facebook in this case that would even require informed consent,” and that Defendants “have a complete unity of interest—to ensure that Ceglia’s fraudulent claims are dismissed as quickly as possible.” *Id.* Defendants also explained that Ceglia’s allegations of a conflict were “preposterous”—including, for example, his assertion “that Facebook would want to analyze the handwriting on Ceglia’s fraudulent Work for Hire Document, but Zuckerberg would not.” *Id.* at 7. In light of these explicit arguments in Defendants’ response, it is difficult to understand how Ceglia could possibly assert, in good faith, that his allegations of a conflict of interest were “substantively unopposed.” Doc. No. 460 at 20. This is another example of Ceglia making factual statements that are directly contradicted by the record before this Court.

Ceglia further contends that sanctions should not be imposed because he purportedly conducted a careful analysis of the law on disqualification before filing his motion. Doc. No. 460 at 19. This is not so. To the contrary, Ceglia's motion did not even cite the governing New York Rules of Professional Conduct, and instead cited only the New York Disciplinary Rules that were replaced in April 2009. *See* Doc. No. 457 at 34. Ceglia cannot credibly claim that he conducted a reasonable analysis when he relied entirely on rules that had been defunct for more than three years when he filed his motion. The fact that neither Boland (who certified his familiarity with the local rules and code of professional responsibility before being admitted) nor Argentieri (who is admitted to the New York bar and has practiced in New York for decades) were aware of this is stunning and disturbing, and is further evidence that the Motion to Disqualify was not the product of careful legal analysis and was not filed in good faith.

Ceglia takes issue with this Court's conclusion that his Motion to Disqualify was filed for purposes of harassment and delay by asserting that, "[i]n none of [his] motions did he seek to delay discovery." Doc. No. 460 at 22. This is another outright falsehood. Ceglia's Motion to Disqualify expressly requested a stay of discovery pending a ruling on the motion. *See* Doc. No. 438 at 19-20 ("Plaintiff respectfully requests . . . [t]hat the court stay all currently pending discovery until a decision is made regarding this motion."). Indeed, Ceglia expressly acknowledged that he was seeking to postpone "Defendants' currently noticed depositions." *Id.* at 17.

Ceglia argues that none of his motions "delayed any part of this case," that he "does not have the desire or resources to multiply these proceedings," and that he "does not benefit from . . . the work involved in filing motions merely for sport." Doc. No. 460 at 22, 24-25. These arguments are frivolous. The only reason that Ceglia's motions did not cause delay was that they

were denied. If Ceglia’s Motion to Disqualify had been successful, Ceglia would have achieved a massive delay and would have imposed an enormous burden on Defendants by forcing them to secure new counsel just as expert depositions were set to begin. Moreover, Ceglia’s assertion that he “does not have the desire or resources to multiply these proceedings” cannot be squared with the history of this case, which makes clear that Ceglia’s overarching litigation strategy is one of bad faith harassment and delay. Indeed, Defendants have been required to file *seven* motions to compel due to Ceglia’s refusal to comply with this Court’s orders—six of which have been granted (*see* Doc. Nos. 107, 117, 152, 208, 272, 317), and the seventh of which is pending. *See* Doc. No. 462. And this Court has already sanctioned Ceglia because he “chose to knowingly ignore the unambiguous orders of the court, thus obstructing the expedited discovery to be accomplished by compliance with such orders.” Doc. No. 283 at 23; *see also id.* at 22 (finding that Ceglia had demonstrated “a plain lack of respect” for court orders “which cannot be countenanced”).

The motivation underlying this campaign of delay is clear: Ceglia is seeking to drive up the costs of defending against his fraudulent claims by filing an endless string of frivolous motions, in hopes of coercing a settlement before the Court dismisses his case. It is clear that this Court’s prior sanctions have not been sufficient. This Court should send a strong message to Ceglia and his lawyers that future misconduct will not be tolerated.

CONCLUSION

For the foregoing reasons, the Court should impose strong and meaningful sanctions on Ceglia, Boland, and Argentieri for all five of the frivolous motions identified in the Order to Show Cause, and award all other relief the Court may deem appropriate.

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Respectfully submitted,

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