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## PRELIMINARY STATEMENT

Ceglia has served Defendants with discovery requests that go well beyond the limited discovery authorized by this Court. Incredibly, Ceglia is demanding documents and interrogatory responses concerning a category of discovery that Ceglia himself declared was “moot[ ]” (Doc. 377 at 8)—and as to which this Court stated that “**no further discovery on this issue is required.**” Doc. No. 401 at 7-8 (emphasis added). Notwithstanding this Court’s repeated reprimands and sanctions, Ceglia’s discovery requests demonstrate that he and his lawyers are determined to follow the same abusive and harassing approach to litigation that has characterized their conduct thus far. Indeed, when Defendants pointed out to Ceglia’s counsel that he was seeking discovery into an area that was expressly precluded by court order, he refused to withdraw or modify the requests in any way, leaving Defendants no choice but to seek a protective order from this Court.

The Court initially granted Ceglia discovery limited to two specific categories: (1) the rights purportedly created under the fake Work for Hire Document; and (2) how the formation of Thefacebook LLC necessarily divested Ceglia of his rights and interests in his purported partnership with Zuckerberg. Doc. No. 366 at 5. With regard to the first category, the Court clarified that discovery is limited to matters that directly concern Ceglia’s alleged rights and interests under the language of the Work for Hire Document. And with regard to the second category, the Court prohibited discovery based on Ceglia’s representation that the issue had become “moot[ ].” Doc. No. 377 at 8; Doc. No. 401 at 7-8.

Ceglia’s document requests and interrogatories are almost entirely directed toward the second, moot category of discovery. And to the extent they are not, they are improper for many

other reasons. Among other things, they are vague, overbroad, burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

For these reasons, Defendants respectfully request a protective order as to all of Ceglia's document requests and most of Ceglia's interrogatories. Defendants do not seek a protective order with respect to all of Ceglia's interrogatories—indeed, they are concurrently serving responses (prefaced by objections where necessary) to Interrogatory Nos. 2, 7, 8, 9, and 22 to Zuckerberg, and Interrogatory Nos. 2 and 17 to Facebook. Defendants also ask that they be awarded the reasonable costs and attorneys' fees they incurred in preparing this motion.

### **BACKGROUND**

On April 30, 2012, the Court granted in part Defendants' motion to stay discovery pending a ruling on Defendants' dispositive motions (Doc. No. 322) and converted Defendants' motion for judgment on the pleadings (Doc. No. 320) into a motion for partial summary judgment. Doc. No. 366 at 5. The Court ruled that Ceglia could serve interrogatories and document requests regarding two narrow categories of information:

(1) assuming, *arguendo*, the Work for Hire contract dated April 28, 2003 is authentic, what intellectual property rights and other ownership interests were created by the contract's language providing that Plaintiff, in exchange for helping fund Zuckerberg's development of FaceBook, would give Plaintiff "a half interest (50%) in the software, programming language and business interests derived from the expansion of that service to a larger audience," and (2) how the formation of the LLC necessarily divested Plaintiff of any and all interest in the partnership's assets, including intellectual property rights.

*Id.*

On May 8, Defendants moved for clarification of the Court's April 30 Order based on their concern that, absent clarification, Ceglia would intentionally misinterpret that Order to

permit far-reaching discovery into matters that have nothing to do with him or his claims. Doc. No. 373 at 1. Defendants therefore requested that the Court make clear that the discovery permitted under its April 30 Order is limited to (1) Ceglia's alleged rights and interests under the language of the Work for Hire Document, and (2) the effect that the formation of Thefacebook LLC had on Ceglia's alleged rights and interests. *Id.* at 1, 4-7.

In response, Ceglia agreed with Defendants that the first category of discovery in the Court's Order is limited to matters that directly concern his rights and interests under the language of the Work for Hire Document. Doc. No. 377 at 5. Ceglia also took the position that, with respect to the second category of discovery authorized in the Court's Order, discovery was no longer necessary. *Id.* at 8 (stating that, "[a]t least to item (2) of the court's order," Ceglia's acquisition of a document that he claims was filed in another case "moots discovery on that issue"). In their reply, Defendants explained that Ceglia had agreed with Defendants regarding the narrow scope of the first category of discovery in the Court's Order, and that both parties agreed that discovery in the second category is unnecessary. Doc. No. 380 at 2-4.

On May 30, the Court denied Defendants' motion for clarification, ruling that clarification was unnecessary in light of the positions taken by Ceglia in his response. Doc. No. 401 at 7-8. The Court found that Ceglia had adopted the same, narrow interpretation of the first category in the Court's April 30 Order as Defendants. *Id.* at 7 ("Plaintiff's interpretation of the scope of discovery permitted under the April 30, 2012 D&O is essentially the same as Defendants' interpretation.").

The Court also ruled, based on Ceglia's position that his acquisition of an alleged pleading in another case "moots" the need for discovery in the second category, that "no further discovery on this issue is required." *Id.* at 7-8 (emphasis added).

The Court also stated that, “[s]hould Defendants find any interrogatory Plaintiff serves to be beyond that permitted in accordance with the Order, Defendants may promptly move for a protective order.” *Id.* at 8.

On July 1, Ceglia served the attached requests for production of documents and interrogatories on Defendants. *See* Southwell Decl., Ex. A (Ceglia’s Request for Production of Documents to Defendant Zuckerberg); Southwell Decl., Ex. B (Ceglia’s Request for Production of Documents to Defendant Facebook); Southwell Decl., Ex. C (Ceglia’s Interrogatories to Defendant Zuckerberg); Southwell Decl., Ex. D (Ceglia’s Interrogatories to Defendant Facebook).

On August 2, the parties stipulated to an extension of the deadline for Defendants’ responses and objections to those written discovery requests until August 10. Southwell Decl. ¶ 3.

On August 7, Defendants conferred in good faith with Ceglia in an effort to resolve this dispute without action by the Court, yet Ceglia refused to withdraw or modify the discovery requests in any way. *See* Southwell Decl. ¶¶ 4-5.

## **ARGUMENT**

Under Rule 26, this Court has the authority to issue a protective order “forbidding . . . discovery” when there is “good cause” for such an order, and when it would protect a party from “annoyance,” “oppression,” and “undue burden [and] expense.” Fed. R. Civ. P. 26(c)(1). Thus, “if a requested party believes any discovery request served upon it to be irrelevant or unduly burdensome or oppressive, the requested party may seek a protective order upon good cause shown.” *Ortiz v. Twedt*, No. 02-CV-132F, 2004 WL 941790, at \*2 (W.D.N.Y. Mar. 31, 2004) (Foschio, J.). And a protective order is warranted when a plaintiff’s discovery

requests seek information that is “irrelevant to any claim or defense before the court and not likely to lead to information that is relevant to any such claim or defense.” *Id.* at \*3.

Those standards are readily satisfied here. There is good cause for a protective order because Ceglia’s document requests and interrogatories plainly exceed the narrow scope of discovery authorized by this Court’s Orders, and a protective order is necessary to protect Defendants from Ceglia’s vexatious litigation strategy of harassment and abuse. There is also good cause for a protective order because Ceglia’s document requests and interrogatories are overbroad and not reasonably calculated to lead to the discovery of admissible evidence. This Court’s May 30 Order expressly invited Defendants to seek a protective order in these circumstances, Doc. No. 401 at 8, and the Court should adhere to its prior Orders by prohibiting the improper discovery that Ceglia seeks.

Defendants do not seek a protective order with respect to all of Ceglia’s discovery requests. This Court has made clear that Ceglia may seek discovery in the first category in its April 30 Order regarding the rights that he allegedly received under the language of the Work for Hire Document, assuming that document is authentic. Although Defendants object to being asked to construe the legal effect of a fraudulent document that they never signed, Defendants have complied with this Court’s Orders by responding to Ceglia’s discovery requests that seek information falling within that narrow category of discovery. In particular, Defendants have responded to Interrogatory No. 2 to Zuckerberg and Interrogatory No. 2 to Facebook, which ask what intellectual property rights the alleged Work for Hire Document conveyed to Ceglia. In response, Defendants have explained that, even assuming that the Work for Hire Document is authentic, it did not confer any intellectual property rights on Ceglia. Indeed, the alleged terms of the Work for Hire Document could not convey any such rights because they are vague,

confusing, self-contradictory, and unenforceable. Defendants also have provided responses to Interrogatory Nos. 7, 8, 9, and 22 to Zuckerberg, and Interrogatory No. 17 to Facebook. Thus, Defendants do not seek a protective order with respect to those interrogatories. However, Defendants seek a protective order as to all of Ceglia's document requests, Interrogatory Nos. 3-6, 10-21, and 23 to Zuckerberg, and Interrogatory Nos. 3-16 and 18 to Facebook, because they seek information well outside the first—and only—category of discovery allowed under this Court's Orders.

**I. Requests for Production of Documents to Zuckerberg**

**Request No. 1:** *All documents executed by you or any representative or agent for you involving the purported to transfer [sic] any software, programming language, business interests or other intellectual property into Facebook before, during and after its incorporation in July 2004.*

A protective order is warranted because the request does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the request is overbroad and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to seek all documents relating to Facebook's software, programming language, business interests, and intellectual property executed by Zuckerberg or any of his representatives or agents at any time—*i.e.*, “before, during, and after” the incorporation of Facebook.

**Request No. 2:** *All documents reflecting Facebook's your [sic] claimed ownership rights in the software, programming language and business interests in the business **before** the incorporation of Facebook.*



A protective order is warranted because the request does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the request is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to seek all documents of any kind reflecting Zuckerberg's ownership rights in an unspecified "business" before Facebook was incorporated.

**Request No. 3:** *All agreements executed by you and any other person(s) or entities who claimed ownership in the business before the incorporation of Facebook in 2004.*

A protective order is warranted because the request does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the request is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to seek all agreements executed by Zuckerberg and any person who claimed an interest in an unspecified "business" before the incorporation of Facebook, even if such agreements are entirely unrelated to Facebook and have no relevance to this case. The request is also unduly vague because it is unclear whether the phrase "before the incorporation of Facebook in 2004" refers to when the agreements in question were executed, or when the persons who executed the agreements in question claimed an interest in the "business."

**Request No. 4:** *All documents reflecting your ownership rights in the software, programming language and business interests in the business after the incorporation of Facebook.*

A protective order is warranted because the request does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot

Category #2. A protective order is further warranted because the request is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to seek all documents of any kind reflecting Zuckerberg’s ownership rights in an unspecified “business” after Facebook was incorporated.

**Request No. 5:** *All documents supporting your claimed breach of the Facebook Contract with Plaintiff.*

A protective order is warranted because the request does not seek information within Category #1 of the Court’s April 30 Order, and because it purports to be based on the now-moot Category #2. Indeed, in requesting “[a]ll documents supporting your claimed breach of the Facebook Contract with Plaintiff,” the request clearly purports to seek documents in Category #2 that relate to the formation of Thefacebook LLC. A protective order is further warranted because the request is overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

**Request No. 6:** *All documents executed by you in connection with the incorporation of Facebook in July 2004.*

A protective order is warranted because the request does not seek information within Category #1 of the Court’s April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the request is overbroad and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to seek all documents executed by Zuckerberg that have any connection to the incorporation of Facebook, and thus requests a vast array of documents that are irrelevant to this case.

## **II. Requests for Production of Documents to Facebook**

**Request No. 1 (materially identical to Request No. 1 to Zuckerberg):** *All documents executed by Facebook or any representative or agent for Facebook involving the purported to transfer [sic] any software, programming language, business interests or other intellectual property into Facebook before, during and after its incorporation in July 2004.*

A protective order is warranted for the same reasons explained above with respect to Request No. 1 to Zuckerberg.

**Request No. 2 (materially identical to Request No. 2 to Zuckerberg):** *All documents reflecting Facebook's ownership rights in the software, programming language and business interests in the business just before the incorporation of Facebook.*

A protective order is warranted for the same reasons explained above with respect to Request No. 2 to Zuckerberg. This request is also unduly vague because it appears to seek documents reflecting Facebook, Inc.'s ownership rights before it was incorporated.

**Request No. 3 (materially identical to Request No. 3 to Zuckerberg):** *All agreements executed by Facebook and any other person(s) or entities who claimed ownership in the business before the incorporation of Facebook in 2004.*

A protective order is warranted for the same reasons explained above with respect to Request No. 3 to Zuckerberg. This request is also unduly vague because it appears to request agreements executed by Facebook, Inc. before it was incorporated.

**Request No. 4 (materially identical to Request No. 4 to Zuckerberg):** *All documents reflecting the ownership rights in the software, programming language and business interests in the business just after the incorporation of Facebook.*

A protective order is warranted for the same reasons explained above with respect to Request No. 4 to Zuckerberg.

**Request No. 5 (identical to Request No. 5 to Zuckerberg):** *All documents supporting your claimed breach of the Facebook Contract with Plaintiff.*

A protective order is warranted for the same reasons explained above with respect to Request No. 5 to Zuckerberg.

**Request No. 6:** *All documents executed by any persons involved with the incorporation of Facebook in July 2004 who claimed ownership of any percentage of the software, programming or business interests of the business being incorporated.*

A protective order is warranted because the request does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the request is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it seeks all documents executed by any person "involved with" the incorporation of Facebook who claimed ownership in the "business" being incorporated. That request arguably is not limited to documents that have any connection to Facebook or relevance to this case, and instead purports to request all documents ever executed, at any time, for any purpose, by anyone who was involved with the incorporation of Facebook and who claimed ownership of the unspecified "business."

### **III. Interrogatories to Zuckerberg**

**Interrogatory No. 3:** *Assuming the Facebook Contract between the parties is authentic, what are the ownership interests of all persons whom you claim owned any portion of the*

*software, programming language and business interests defined in #1 above after execution of the Facebook Contract on April 28, 2003?*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order: it seeks information regarding the ownership interests of persons other than Ceglia after the alleged execution of the fraudulent Work for Hire Document. A protective order is further warranted because the interrogatory is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to ask Zuckerberg to define the ownership rights of all persons in the software, programming language, and business interests of an unspecified business after April 28, 2003.

**Interrogatory No. 4:** *Assuming the Facebook Contract between the parties is authentic, list all persons with an ownership interest in the software, programming language and business interests as defined in #1 above at the time of the incorporation of thefacebook, Inc. (Facebook) in July 2004 and their respective percentage of ownership of each of the three items (i.e. software, programming language, business interests).*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the interrogatory is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to ask Zuckerberg to define the ownership rights of all persons in the software, programming language, and business interests of an unspecified business in July 2004.

**Interrogatory No. 5:** *Assuming the Facebook Contract between the parties is authentic, list the percentages of each person's ownership interest in the software, programming language*

*and business interests as defined in #1 that was [sic] transferred into Facebook on or after July 2004.*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the interrogatory is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to ask Zuckerberg to describe the transfer to Facebook of the ownership rights of all persons in the software, programming language, and business interests of an unspecified business in or after July 2004.

**Interrogatory No. 6:** *Assuming the Facebook Contract between the parties is authentic, list the consideration paid by Facebook to all persons whom you claim owned an interest in the software, programming language and business interests as defined in #1 in exchange for the transfer of that percentage ownership into Facebook on or after July 2004.*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the interrogatory is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to ask Zuckerberg to describe the consideration paid for the transfer to Facebook of the ownership rights of all persons in the software, programming language, and business interests of an unspecified business in or after July 2004.

**Interrogatory No. 10:** *Assuming the Facebook Contract between the parties is authentic, did the contract authorize you to use all, some or none of the StreetFax software for purposes other than StreetFax?*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order. A protective order is further warranted because the interrogatory is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to seek information regarding Zuckerberg's rights to use StreetFax software—an inquiry that has no relevance to this case.

**Interrogatory No. 11:** *Assuming the Facebook Contract between the parties is authentic, what were Plaintiff's intellectual property rights in the StreetFax software created by the contract?*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order. A protective order is further warranted because the interrogatory is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to seek information regarding Ceglia's intellectual property rights in StreetFax software—an inquiry that has no relevance to this case.

**Interrogatory No. 12:** *Assuming the Facebook Contract between the parties is authentic, what were your intellectual property rights in the StreetFax software created by the contract?*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order. A protective order is further warranted because the interrogatory is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to seek information regarding Zuckerberg's intellectual property rights in StreetFax software—an inquiry that has no relevance to this case.

**Interrogatory No. 13:** *Did you use any portion of the StreetFax software for any purpose related to Facebook or any other non-StreetFax purpose and if so*

*(A) on what date did that use begin*

*(B) describe that use of the StreetFax software*

*(C) on what date did use of that StreetFax software terminate?*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order. A protective order is further warranted because the interrogatory is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to seek information regarding Zuckerberg's use of StreetFax software—an inquiry that has no relevance to this case.

**Interrogatory No. 14:** *Assuming the Facebook Contract between the parties is authentic, did you inform Facebook upon its incorporation that you did not own 100% of the software, programming language and business interests of the business?*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the interrogatory is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to seek information regarding communications between Zuckerberg and Facebook that are irrelevant to this case and that relate to Zuckerberg's ownership rights in an unspecified "business."

**Interrogatory No. 15:** *If your answer to the previous question is "no", what percentage ownership in the software, programming language, and business interests did you tell Facebook you owned upon its incorporation?*



A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the interrogatory is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to seek information regarding communications between Zuckerberg and Facebook that are irrelevant to this case and that relate to Zuckerberg's ownership rights in an unspecified business.

**Interrogatory No. 16:** *List and describe all documents, including the year executed and all parties signing those documents reflecting the transfer into Facebook of any software, programming language and business interests as defined in #1 above.*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the interrogatory is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to ask Zuckerberg to "list and describe" all documents, executed by anyone, anywhere, at any time, reflecting the transfer of business interests into Facebook.

**Interrogatory No. 17:** *Provide the date when your ownership interest in Facebook fell below 50%.*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the interrogatory is overbroad and not reasonably calculated to lead to the discovery of admissible evidence: it

purports to ask Zuckerberg to identify “the date when [his] ownership interest in Facebook fell below 50%”—an inquiry that has no relevance to this case.

**Interrogatory No. 18:** *Assuming the Facebook Contract between the parties is authentic, what percentage ownership in the software, programming language and business interests of the business did Plaintiff own at the time of the incorporation of Facebook in Delaware?*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court’s April 30 Order, and because it purports to be based on the now-moot Category #2. Indeed, in purporting to ask Zuckerberg to define the “percentage ownership in the software, programming language and business interests of the business [Ceglia] own[ed] at the time of the incorporation of Facebook in Delaware,” the interrogatory clearly purports to seek information in Category #2 that relates to Ceglia’s alleged interests after the formation of Thefacebook LLC. A protective order is further warranted because the interrogatory is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. A protective order is also warranted because the interrogatory is unduly vague: it arguably purports to ask Zuckerberg to define Ceglia’s ownership in an unspecified “business.”

**Interrogatory No. 19:** *Assuming the Facebook Contract between the parties is authentic, was Plaintiff’s interest in the software, programming language and business interests of the business transferred into Facebook and if so, what was the date of that transfer?*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court’s April 30 Order, and because it purports to be based on the now-moot Category #2. Indeed, in purporting to ask Zuckerberg whether and when Ceglia’s “interest in the software, programming language and business interests of the business

transferred into Facebook,” the interrogatory clearly purports to seek information in Category #2 that relates to Ceglia’s alleged interests after the formation of Thefacebook LLC. A protective order is further warranted because the interrogatory is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. A protective order is also warranted because the interrogatory is unduly vague: it arguably purports to seek information regarding Ceglia’s ownership in an unspecified “business.”

**Interrogatory No. 20:** *Assuming the Facebook Contract between the parties is authentic and Plaintiff's interest in the software, programming language and business interests of the business was transferred into Facebook when was the fact of that transfer first publicly disclosed?*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court’s April 30 Order, and because it purports to be based on the now-moot Category #2. Indeed, in purporting to ask Zuckerberg when the alleged transfer of Ceglia’s supposed interests to Facebook was “first publicly disclosed,” the interrogatory clearly purports to seek information in Category #2 that relates to Ceglia’s alleged interests after the formation of Thefacebook LLC. A protective order is further warranted because the interrogatory is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. A protective order is also warranted because the interrogatory is unduly vague: it arguably purports to seek information regarding Ceglia’s ownership in an unspecified “business.”

**Interrogatory No. 21:** *Assuming the Facebook Contract between the parties is authentic, list and describe all acts and their dates of occurrence that you claim constitute your breach of the contract.*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. Indeed, in asking Zuckerberg to "list and describe all acts and their dates of occurrence that you claim constitute your breach of the contract," the interrogatory clearly purports to seek information in Category #2 that relates to the formation of Thefacebook LLC. A protective order is further warranted because the interrogatory is overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 23:** *List all dates when you or Defendant Facebook breached the Facebook Contract with Plaintiff and*

- (a) the act(s) which you claim breached the agreement; and*
- (b) whether that act(s) was ever repeated at any later point in time; and*
- (c) when that act(s) was communicated to Plaintiff, if ever; and*
- (d) when that act(s) was publicly disclosed, if ever.*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. Indeed, in asking Zuckerberg to provide information regarding his alleged breach of the Work for Hire Document, the interrogatory clearly purports to seek information in Category #2 that relates to the formation of Thefacebook LLC. A protective order is further warranted because the interrogatory is duplicative of Interrogatory No. 21, and because it is overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

#### **IV. Interrogatories to Facebook**

**Interrogatory No. 3 (identical to Interrogatory No. 3 to Zuckerberg):** *Assuming the Facebook Contract between the parties is authentic, what are the ownership interests of all*

*persons whom you claim owned any portion of the software, programming language and business interests defined in #1 above after execution of the Facebook Contract on April 28, 2003?*

A protective order is warranted for the same reasons explained above with respect to Interrogatory No. 3 to Zuckerberg.

**Interrogatory No. 4 (materially identical to Interrogatory No. 4 to Zuckerberg):**

*Assuming the Facebook Contract between the parties is authentic, list all persons with an ownership interest in the software, programming language and business interests as defined by Defendant Zuckerberg at the time of the incorporation of thefacebook, Inc. (Facebook) in July 2004 and their respective percentage of ownership of each of the three items (i.e. software, programming language, business interests).*

A protective order is warranted for the same reasons explained above with respect to Interrogatory No. 4 to Zuckerberg.

**Interrogatory No. 5 (identical to Interrogatory No. 5 to Zuckerberg):**

*Assuming the Facebook Contract between the parties is authentic, list the percentages of each person's ownership interest in the software, programming language and business interests as defined in #1 that was [sic] transferred into Facebook on or after July 2004.*

A protective order is warranted for the same reasons explained above with respect to Interrogatory No. 5 to Zuckerberg.

**Interrogatory No. 6 (materially identical to Interrogatory No. 6 to Zuckerberg):**

*Assuming the Facebook Contract between the parties is authentic, list the consideration paid by Facebook to all persons whom Defendant Zuckerbeg [sic] claimed owned an interest in the*

*software, programming language and business interests as defined by Defendant Zuckerberg in exchange for the transfer of that percentage ownership into Facebook on or after July 2004.*

A protective order is warranted for the same reasons explained above with respect to Interrogatory No. 6 to Zuckerberg.

**Interrogatory No. 7 (materially identical to Interrogatory No. 13 to Zuckerberg):**

*Did Defendant Zuckerberg use any portion of the StreetFax software for any purpose related to Facebook and if so:*

*(A) on what date did that use begin*

*(B) how was the StreetFax software or any portion of it used for any purpose related to Facebook*

*(C) on what date did use of that StreetFax software terminate?*

A protective order is warranted for the same reasons explained above with respect to Interrogatory No. 13 to Zuckerberg.

**Interrogatory No. 8 (materially identical to Interrogatory No. 14 to Zuckerberg):**

*Assuming the Facebook Contract between the parties is authentic, did Defendant Zuckerberg inform Facebook upon its incorporation that he did not own 100% of the software, programming language and business interests of the business?*

A protective order is warranted for the same reasons explained above with respect to Interrogatory No. 14 to Zuckerberg.

**Interrogatory No. 9 (materially identical to Interrogatory No. 15 to Zuckerberg):**

*If your answer to the previous question is "no", what percentage ownership in the software, programming language, and business interests did Defendant Zuckerberg tell Facebook he owned upon its incorporation?*

A protective order is warranted for the same reasons explained above with respect to Interrogatory No. 15 to Zuckerberg.

**Interrogatory No. 10 (identical to Interrogatory No. 16 to Zuckerberg):** *List and describe all documents, including the year executed and all parties signing those documents reflecting the transfer into Facebook of any software, programming language and business interests as defined in #1 above.*

A protective order is warranted for the same reasons explained above with respect to Interrogatory No. 16 to Zuckerberg.

**Interrogatory No. 11 (materially identical to Interrogatory No. 17 to Zuckerberg):** *Provide the date when Defendant Zuckerberg's ownership interest in Facebook fell below 50%.*

A protective order is warranted for the same reasons explained above with respect to Interrogatory No. 17 to Zuckerberg.

**Interrogatory No. 12:** *Please identify the current owner(s) of the software, programming language and business interests as defined by Zuckerberg relating to the Facebook Contract and those owners' respective percentages of ownership of each of those three items.*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the interrogatory is overbroad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence: it arguably purports to ask Facebook to identify all of its current owners and their respective percentages of ownership.

**Interrogatory No. 13:** *Was the business operated by Facebook just after incorporation in July 2004 the same business being operated by Defendant Zuckerberg just before incorporation?*

A protective order is warranted because the interrogatory does not seek information within Category #1 of the Court's April 30 Order, and because it purports to be based on the now-moot Category #2. A protective order is further warranted because the interrogatory is unduly vague: it asks whether "the business operated by Facebook just after incorporation in July 2004 [was] the same business being operated by Defendant Zuckerberg just before incorporation," but fails to specify what is meant by "the same business."

**Interrogatory No. 14 (materially identical to Interrogatory No. 18 to Zuckerberg):** *Assuming the Facebook Contract between the parties is authentic, what percentage ownership in the software, programming language and business interests of the business did Plaintiff own at the time of the incorporation of Facebook?*

A protective order is warranted for the same reasons explained above with respect to Interrogatory No. 18 to Zuckerberg.

**Interrogatory No. 15 (identical to Interrogatory No. 19 to Zuckerberg):** *Assuming the Facebook Contract between the parties is authentic, was Plaintiff's interest in the software, programming language and business interests of the business transferred into Facebook and if so, what was the date of that transfer?*

A protective order is warranted for the same reasons explained above with respect to Interrogatory No. 19 to Zuckerberg.

**Interrogatory No. 16 (identical to Interrogatory No. 20 to Zuckerberg):** *Assuming the Facebook Contract between the parties is authentic and Plaintiff's interest in the software,*



*programming language and business interests of the business was transferred into Facebook when was the fact of that transfer first publicly disclosed?*

A protective order is warranted for the same reasons explained above with respect to Interrogatory No. 20 to Zuckerberg.

**Interrogatory No. 18 (materially identical to Interrogatory No. 23 to Zuckerberg):**

*List all dates when you or Defendant Zuckerberg breached the Facebook Contract with Plaintiff and*

- (a) the act(s) which you claim breached the agreement; and*
- (b) whether that act(s) was ever repeated at any later point in time; and*
- (c) when that act(s) was communicated to Plaintiff, if ever; and*
- (d) when that act(s) was publicly disclosed, if ever.*

A protective order is warranted for the same reasons explained above with respect to Interrogatory No. 23 to Zuckerberg.

**CONCLUSION**

The Court should issue a protective order as to all of Ceglia's document requests; as to Interrogatory Nos. 3-6, 10-21, and 23 to Zuckerberg; and as to Interrogatory Nos. 3-16 and 18 to Facebook.

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