

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG and  
FACEBOOK, INC.,

Defendants.

x

Civil Action No. 1:10-cv-00569-  
RJA

x

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR  
NINTH MOTION TO COMPEL AND FOR OTHER RELIEF**

Thomas H. Dupree, Jr.  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 955-8500

Orin Snyder  
Alexander H. Southwell  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue, 47th Floor  
New York, NY 10166-0193  
(212) 351-4000

Terrance P. Flynn  
HARRIS BEACH PLLC  
726 Exchange Street  
Suite 1000  
Buffalo, NY 14210  
(716) 200-5120

September 6, 2012

## **MEMORANDUM OF LAW**

More than fourteen months ago, this Court first ordered Plaintiff Paul Ceglia to produce to Defendants “all copies of the purported contract in hard-copy form, created on or before June 30, 2010.” Doc. No. 83 at 1. He still has not done so. Indeed, Ceglia’s latest violation of this Court’s orders is incontrovertible: in an August 21, 2012 declaration submitted to this Court, his own lawyer Paul Argentieri swore, under penalty of perjury, to the existence of several hard-copies of the Work for Hire document that were created on or before June 30, 2010. Doc. No. 484. Those documents were never produced for Defendants’ inspection.

Defendants respectfully request that this Court grant their Ninth Motion to Compel, and order Ceglia to produce the hard-copy documents described in the August 21 Argentieri declaration and to provide a sworn declaration attesting to their production or the circumstances of their destruction.

## **ARGUMENT**

This is the ninth Motion to Compel necessitated by Ceglia’s refusal to comply with this Court’s discovery orders. *See* Doc. Nos. 95, 129, 155, 245, 295, 382, 461, 512. This Court granted seven of Defendants’ previous Motions to Compel, *see* Doc. Nos. 107, 117, 152, 208, 272, 317, 357, 457, 478, and has not yet ruled on Defendants’ Eighth Motion to Compel.

On July 1, 2011, this Court granted Defendants’ Motion for Expedited Discovery and ordered Ceglia to produce several hard-copy documents for Defendants’ inspection. *See* Doc. No. 83 at 1. Those documents included “all copies of the purported contract in hard-copy form, created on or before June 30, 2010.”<sup>1</sup> *Id.* The Hard-Copy Document Inspection Protocol,

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<sup>1</sup> The Court ordered Ceglia to produce only those hard-copies of the Work for Hire document that existed as of the date he filed his state-court complaint, June 30, 2010.

entered by the Court that same day, required Ceglia to produce all hard-copy documents “no later than” July 15, 2011. *See* Doc. No. 85, ¶ 1.

On August 21, 2012—more than one year after the Court ordered Ceglia to produce these hard-copy documents—Ceglia filed his opposition to Defendants’ Motion to Dismiss. Doc. No. 481. Ceglia’s lawyer Paul Argentieri submitted a sworn declaration, under penalty of perjury, in support of Ceglia’s opposition. Doc. No. 484. In that declaration, Argentieri attested to the purported circumstances surrounding the creation of several hard-copy documents.

First, Argentieri swore that in June 2010, Ceglia “took the original Facebook Contract that was examined in July 2011 by Defendants [sic] experts, and copied it on a grocery store copier near his home in Wellsville, New York.” *Id.* ¶ 14. Second, Argentieri attested that Ceglia “took that photocopy from the grocery store copier”; that Ceglia scanned and “convert[ed] it to an electronic file”; that Ceglia sent that electronic file to Argentieri in a June 27, 2010 email; and that Argentieri then printed that electronic file “on an office printer.” *Id.* ¶¶ 3-7, 15. Third, Argentieri attested that he then made “multiple copies of that printout,” using an “inexpensive” copy machine with settings changed to make the copies “as dark as possible.” *Id.*, ¶¶ 8-11 (emphasis added). Thus, in his sworn declaration, Argentieri confirmed the creation, on or before June 30, 2010, of at least four “copies of the purported contract in hard-copy form”: the June 2010 copy created by Ceglia on the “grocery store copier”; the late June 2010 copy created by Argentieri of the electronic file “on an office printer”; and the late June 2010 darkened “multiple copies of the printout” created by Argentieri on his “inexpensive” copy machine. All of these copies (collectively, the “Argentieri Hard-Copies”) were created before June 30, 2010.

All of the Argentieri Hard-Copies fall squarely within the Court’s orders. Ceglia’s own attorney swears that they existed before June 30, 2010. As such, Ceglia should have produced

all of them to Defendants no later than July 15, 2011. *See* Doc. Nos. 83 at 1, 84, ¶ 1. He did not. He did not produce the Argentieri Hard-Copies in response to Defendants' recent specific request, characterizing that request as "spurious" and a "wishful thinking sighing expedition." *See* Southwell Decl., ¶¶ 3-4, Exs. A, B. He has never produced the Argentieri Hard-Copies to Defendants. By failing to do so, Ceglia has violated, yet again, the Court's expedited discovery orders.

## **CONCLUSION**

For the foregoing reasons, Defendants respectfully request that this Court grant their Ninth Motion to Compel, and order Ceglia to produce the Argentieri Hard-Copies for inspection at a mutually-agreeable location within ten days and to provide a sworn declaration attesting to their production or the circumstances of their destruction at least two days prior to the inspection. This Court should also award Defendants their attorneys' fees and costs, and all other relief to which they may be entitled.

Dated: New York, New York  
September 6, 2012

Respectfully submitted,

Thomas H. Dupree, Jr.  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 955-8500

Terrance P. Flynn  
HARRIS BEACH PLLC  
726 Exchange Street  
Suite 1000  
Buffalo, NY 14210  
(716) 200-5120

/s/ Orin Snyder  
Orin Snyder  
Alexander H. Southwell  
Matthew J. Benjamin  
Amanda M. Aycock  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue, 47th Floor  
New York, NY 10166-0193  
(212) 351-4000

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