

Thus, under the terms of the April 4 Order, all expert depositions were to be conducted between June 5, 2012 and August 4, 2012.

3. The April 4 Order specified that Plaintiff “shall have two months to file his opposition to Defendants’ motion to dismiss” after the “close of expert depositions”; and that “Defendants shall then have 30 days” to file a reply. Doc. No. 348. Because expert depositions were to close on August 4, 2012, the latest date on which all briefing on Defendants’ motion to dismiss could be completed consistent with the Court’s Order was November 4, 2012.

4. Due to scheduling conflicts and experts’ limited availability, the parties jointly moved on August 3, 2012 for a ten-day extension of the deadline to conclude expert depositions—from August 4, 2012 to August 14, 2012. Defendants stated in that motion that the extension request was made with the understanding that the deposition of Plaintiff’s expert, Erich Speckin, would occur in September 2012 to accommodate his travel schedule.

5. On August 6, 2012, the Court granted the parties’ motion for an extension, and extended “by 10 days the deadlines . . . for completion of expert depositions and the filing of Plaintiff’s response to Defendants’ motions to dismiss and Defendants’ replies.” Doc. No. 471. Thus, under the April 4 Order, as amended by the August 6, 2012 Order, the latest date on which all briefing on Defendants’ motion to dismiss could be completed became November 14, 2012.

6. On August 21, 2012—one week after the close of expert depositions—Plaintiff filed a 65-page Opposition to Defendants’ motion to dismiss. Doc. No. 481. Under the Court’s calibrated schedule, Defendants’ Reply in Support of their Motion to Dismiss is now due on September 20, 2012. Thus, all briefing on the motion to dismiss will now close approximately seven weeks before the latest date it could have been completed consistent with the Court’s orders.

7. During the expert-deposition period that ran from June 5, 2012 to August 14, 2012, a total of 25 depositions were noticed by both parties. Sixteen of those depositions were noticed by Plaintiff. Plaintiff ultimately took only five of the 16 depositions he initially noticed. Defendants made available, and scheduled dates certain for, the 11 remaining deponents prior to the expiration of the Court's deadline, but Plaintiff canceled those 11 depositions, many with less than 48 hours' notice. Until Plaintiff's untimely decision to cancel the 11 scheduled depositions, Defendants had been diligently preparing for, and stood ready to defend, those depositions.

8. Defendants noticed eight depositions of Plaintiff's experts, and conducted all eight before the close of discovery on August 14, 2012. A ninth deposition—of Plaintiff's expert Erich Speckin—is scheduled for September 24, 2012.

9. Defendants noticed the deposition of Plaintiff's expert Mr. Erich Speckin for July 30, 2012—before the Court's deadline for the close of expert discovery. Plaintiff's counsel refused, however, to accept service of this deposition notice for Mr. Speckin, notwithstanding that Mr. Speckin had been identified as one of Plaintiff's expert witnesses. Therefore, Defendants had to issue a Rule 45 subpoena for Mr. Speckin's deposition testimony. By the time Defendants issued this subpoena, Mr. Speckin was no longer available because he was traveling outside the contiguous United States (to South Africa and then remote Alaska) until approximately mid-September 2012. As an accommodation to Mr. Speckin, Defendants agreed to postpone his deposition until he returned to the contiguous United States in mid-September 2012. Mr. Speckin's deposition has now been scheduled for September 24, 2012, the earliest date proposed by Mr. Speckin's counsel. Mr. Speckin's deposition testimony is relevant to the issues raised in Defendants' motion to dismiss because he participated in the Court-ordered

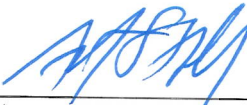
Hard-Copy Document Inspection and extracted ink samples from the Hard-Copy Documents (although he did not submit an expert report for Plaintiff).

10. The four-month period of expert discovery that closed on August 14, 2012 generated a large volume of information. Over 6,000 pages of deposition testimony and expert opinions were produced, many of which consist of complex technical and scientific analysis.

11. There remain a number of disputes over documents that are responsive to the Court's expedited discovery orders and that Ceglia has repeatedly refused to produce. Defendants have filed two motions to compel related to those issues, Doc. Nos. 512, 522, and there also exists a third dispute over missing documents related to Plaintiff's expert Mr. Larry Stewart, who was deposed on July 12, 2012. During that deposition, Mr. Stewart repeatedly referred to documents that Defendants had not been previously provided, in violation of the parties' mutual agreement that all documents underlying his testimony would be produced prior to his deposition. Defendants have engaged in substantial back-and-forth discussions with Ceglia's counsel regarding the documents that Mr. Stewart should have produced, but has wrongly withheld. Defendants explicitly kept Mr. Stewart's deposition open pending production of these missing documents, and may be compelled to seek judicial intervention in this matter too.

12. On September 10, 2012, I contacted Plaintiff's attorney Dean Boland via email at approximately 8:00 a.m. to seek his consent to this request for an extension of time within which to file the Reply. Mr. Boland has not as of yet responded.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this
10th day of September 2012 at New York, New York.



Alexander H. Southwell