

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,	:	X
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 1:10-cv-00569-
	:	RJA
MARK ELLIOT ZUCKERBERG and	:	
FACEBOOK, INC.,	:	
	:	
Defendants.	:	
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**DEFENDANTS’ REPLY MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION FOR PROTECTIVE ORDER**

In its April 30, 2012 and May 30, 2012 Orders, this Court permitted Ceglia to serve interrogatories and document requests regarding a limited category of information relating to Defendants’ motion for judgment on the pleadings: matters that directly concern Ceglia’s alleged rights and interests under the language of the Work for Hire Document, assuming that fraudulent document to be authentic (Category #1). Although this Court’s April 30 Order also initially authorized Ceglia to seek discovery in a second category—how the formation of Thefacebook LLC necessarily divested Ceglia of his alleged rights and interests (Category #2)—Ceglia subsequently announced that Category #2 was “moot[]” (Doc. No. 377 at 8), and this Court ruled in its May 30 Order that discovery in Category #2 was no longer allowed. Doc. No. 401 at 7-8. Thus, this Court’s Orders clearly limit discovery to information in Category #1. Ceglia nevertheless served interrogatories and discovery requests that go well beyond Category #1, and that, in fact, appear to be directed at the now-moot Category #2.

Defendants moved for a protective order. Doc. No. 475. Defendants explained that they had provided responses to Ceglia’s interrogatories that arguably seek information within

Category #1—including 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. But Defendants further explained that most of Ceglia’s discovery requests are not authorized because they are not directed at Category #1, and instead improperly appear to seek information in the now-moot Category #2. Defendants also explained that, in addition to being improper as a general matter, Ceglia’s discovery requests are also individually objectionable because they are phrased in terms that render them overly broad, unduly vague, and not reasonably calculated to lead to the discovery of admissible evidence.

Ceglia fails to provide a meaningful response. He does not dispute that he can no longer seek discovery as to Category #2 in this Court’s April 30 Order. In fact, he appears to abandon Category #2 entirely—he does not even mention it, much less attempt to argue that it justifies his discovery requests. Ceglia also does not dispute that he is limited to seeking discovery within Category #1, that Category #1 is limited to matters that directly concern his alleged rights and interests under the language of the Work for Hire Document, or that Defendants responded to his discovery requests that arguably seek information within that category. Ceglia nevertheless makes no attempt to argue that the discovery requests that Defendants have challenged in their motion fall within Category #1 in this Court’s April 30 Order, or that those requests seek information that directly concerns Ceglia’s alleged rights and interests under the language of the Work for Hire Document. And he offers no response whatsoever to Defendants’ individualized objections that his discovery requests are overly broad and unduly vague. These failures are fatal to Ceglia’s opposition, and require the entry of a protective order prohibiting Ceglia’s improper discovery requests.

Far from attempting to argue that his discovery requests seek information regarding his alleged rights and interests under the language of the Work for Hire Document and thus fall within Category #1, Ceglia argues that these requests are relevant to entirely different lines of inquiry—including new theories of breach that Ceglia raises for the first time in his response. For example, Ceglia now asserts that Zuckerberg breached the fraudulent Work for Hire Document “when, if ever, [he] transferred more than 50% of the company’s intellectual property, programming language, etc. to any other person or entity.” Doc. No. 494 at 2. And he argues that his discovery requests seek information related to this new theory of breach by attempting to establish when, if ever, Zuckerberg’s stake in Facebook fell below 50%. *See, e.g., id.* at 3-4. He further argues that his discovery requests are relevant to other matters, such as the rights that Zuckerberg transferred into Facebook, Inc., the representations that Zuckerberg made to Facebook, and how Zuckerberg allegedly used the source code for StreetFax. *See id.* at 3, 6-7.

These arguments miss the point. This Court granted discovery with respect to a narrow category of information—Ceglia’s alleged rights and interests created by the language of the alleged Work for Hire Document. Ceglia must therefore connect his discovery requests to that category of information—which he makes no attempt to do. To the contrary, Ceglia’s response confirms that he is seeking information on matters that have nothing to do with Category #1 in this Court’s April 30 Order, and that he is ultimately seeking to end-run the Court’s stay of plenary discovery. The Court should therefore grant a protective order against Ceglia’s improper and vexatious discovery requests.

I. Interrogatories to Zuckerberg

Interrogatory No. 1

Although Ceglia addresses this interrogatory in his response, Defendants do not seek a protective order with respect to this interrogatory. Rather, Defendants provided objections to this interrogatory in the objections and responses that they served on Ceglia. In any event, Ceglia's arguments in support of this interrogatory lack merit. As Defendants explained in their objections, the Work for Hire Document is fraudulent, and Defendants are therefore in no position to define its alleged terms. Ceglia argues that this interrogatory is "necessary to understand what Defendant Zuckerberg is claiming are [Ceglia's] 'intellectual property rights and other ownership interests' created by the contract." Doc. No. 494 at 4. But Ceglia ignores that Defendants have already answered that question in their responses to Interrogatory No. 2. Defendants have explained that, even assuming the Work for Hire Document is authentic, it did not confer any intellectual property rights on Ceglia. Thus, this interrogatory is unnecessary and irrelevant.

Interrogatory Nos. 3, 4, 5

A protective order is warranted because Ceglia concedes that these interrogatories seek information regarding the rights of persons other than Ceglia —as opposed to his alleged rights under the language of the Work for Hire Document, as allowed under Category #1 in this Court's April 30 Order. Indeed, Ceglia makes no attempt to connect these interrogatories to Category #1, and instead argues only that they are relevant to his newly minted theory of breach, which turns on when, if ever, Zuckerberg's share in Facebook fell below 50%. *See* Doc. No. 494 at 4-6.

Interrogatory No. 6

A protective order is warranted because Ceglia makes no attempt to connect this interrogatory to Category #1 in the Court’s April 30 Order, and instead argues only that it seeks information as to the unrelated question of “whether Defendant Zuckerberg transferred all, or just some portion” of his interest to Facebook, Inc. Doc. No. 494 at 6.

Interrogatory Nos. 10, 11, 12

A protective order is warranted because Ceglia makes no attempt to connect these interrogatories to Category #1 in the Court’s April 30 Order, and concedes that they relate solely to Zuckerberg’s and Ceglia’s rights to use StreetFax software—an inquiry that has no relevance in this case. *See* Doc. No. 494 at 7-8.

Interrogatory No. 13

A protective order is warranted because Ceglia makes no attempt to connect this interrogatory to Category #1 in the Court’s April 30 Order, and instead argues only that it seeks information as to the unrelated question of whether Zuckerberg allegedly engaged in a “singular breach” or a “continuous breach” of the fraudulent Work for Hire Document. Doc. No. 494 at 8.

Interrogatory Nos. 14, 15, 16

A protective order is warranted because Ceglia makes no attempt to connect these interrogatories to Category #1 in this Court’s April 30 Order, and instead argues only that they seek information as to the unrelated question of whether Zuckerberg transferred his interests to persons other than Ceglia. *See* Doc. No. 494 at 8-9.

Interrogatory Nos. 17, 18

A protective order is warranted because Ceglia makes no attempt to connect these interrogatories to Category #1 in this Court’s April 30 Order, and instead argues only that they

are relevant to his newly minted theory of breach, which turns on when, if ever, Zuckerberg's share in Facebook fell below 50%. *See* Doc. No. 494 at 9-10.

Interrogatory Nos. 19, 20

A protective order is warranted because Ceglia makes no attempt to connect these interrogatories to Category #1 in this Court's April 30 Order, and instead argues only that they seek information regarding "the transfer of intellectual property" into Facebook, Inc. in July 2004. *See* Doc. No. 494 at 10-11.

Interrogatory No. 21

A protective order is warranted because Ceglia makes no attempt to connect this interrogatory to Category #1 in this Court's April 30 Order, and instead argues only that it seeks information regarding Zuckerberg's alleged breach of the fraudulent Work for Hire Document. Doc. No. 494 at 11.

Interrogatory No. 23

A protective order is warranted because Ceglia makes no attempt to connect this interrogatory to Category #1 in the Court's April 30 Order, and instead argues only that seeks information as to the unrelated question of whether Zuckerberg allegedly engaged in a "singular breach" or an "ongoing breach" of the fraudulent Work for Hire Document. Doc. No. 494 at 11-12.

II. Interrogatories to Facebook

Ceglia asserts that his interrogatories to Facebook "are posed for the identical reasons behind those posed to Defendant Zuckerberg seeking information about the other side of the various transfer events noted above." Doc. No. 494 at 12. A protective order is therefore

warranted with respect to Ceglia's interrogatories to Facebook for all the reasons explained above.

III. Requests for Production of Documents to Zuckerberg and Facebook

Ceglia's response similarly confirms that a protective order is warranted with respect to all of his document requests to both Defendants. Ceglia does not attempt to justify his document requests on an individualized basis, and makes no attempt to connect these document requests to Category #1 in this Court's April 30 Order. Instead, he asserts that his document requests "all seek documentation that describes the property Defendant Zuckerberg did or did not transfer into Defendant Facebook at the time of its incorporation and what consideration (e.g. stock) was paid to Defendant Zuckerberg in exchange for that property." Doc. No. 494 at 12. Ceglia argues that such documentation is relevant to a new theory that Zuckerberg allegedly breached the fraudulent Work for Hire Document if he represented to Facebook that he owned "100% of the intellectual property [*sic*]." *Id.* Again, that argument misses the point because it fails to draw the necessary connection between Ceglia's document requests and the only category of discovery allowed by this Court's Orders—Ceglia's alleged rights and interests under the language of the fraudulent Work for Hire Document. Because Defendants have answered Ceglia's interrogatories that arguably seek information within that category, and because Ceglia's document requests do not seek information within that category, those document requests are improper.

* * *

The Court should enter a protective order because Ceglia's discovery requests exceed the scope of discovery permitted under this Court's Orders. Moreover, because Ceglia has not even attempted to establish that his discovery requests are related to Category #1 in this Court's April

30 Order, those requests are unquestionably abusive, and Defendants should be awarded the reasonable costs and attorneys' fees they incurred in preparing this motion. Ceglia asserts that his discovery requests "are not abusive" because "they are merely questions and lists of documents requested." Doc. No. 494 at 13. But that again ignores the basis for Defendants' motion. Although they are "questions and lists of documents," Ceglia's discovery requests are not remotely authorized by this Court's Orders, and instead constitute another episode in Ceglia's long-running saga of bad-faith litigation misconduct.

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. The Court should also award Defendants the reasonable costs and attorneys' fees they incurred in preparing this motion.

Dated: New York, New York
September 28, 2012

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