UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA, Plaintiff, v. MARK ELLIOT ZUCKERBERG and FACEBOOK, INC., Defendants.	x : : : : : : : : : x	Civil Action No. 1:10-cv-00569-RJA

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION FOR PRODUCTION

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October 26, 2012

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REPLY MEMORANDUM

In their Motion for Production, Defendants set forth in meticulous detail the evidence demonstrating that Paul Ceglia's expert Larry Stewart lied under oath during his deposition and in his sworn statements to this Court. As Defendants explained, all of the evidence available—including documents, notes, testimony, and video—demonstrates (1) that Stewart lied about having personally extracted ink samples from the Work for Hire and Specifications Documents (together, the "Hard-Copy Documents") and (2) that Stewart lied about having mistakenly sent the wrong paper samples—samples taken not from the fraudulent Work for Hire document but from the undisputed Specifications Document—for testing.

Ceglia's opposition papers[1] confirm both mistruths. First, Stewart has now confirmed that, contrary to his sworn deposition testimony, he never actually took ink samples from the Hard-Copy Documents. Stewart Decl. (Doc. No. 575) ¶ 6. Second, rather than clearly stating (and documenting) that he sent paper samples taken from the Work for Hire document, Stewart offers only his "recollection" that he did so. *Id.* ¶ 7. But of course, Stewart's "recollection" is contradicted by overwhelming objective evidence that Stewart himself acknowledges. Because that overwhelming evidence conclusively establishes that Stewart sent paper samples from the wrong document to Plaintiff's expert Walter Rantanen, Rantanen's findings—which are inconclusive at best, in any event—become completely irrelevant.

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[1] Without explanation or permission, Ceglia filed a purported "Corrected/Amended" opposition on October 24, 2012 that includes revisions to the original brief and exhibits, five days after the deadline for his response to Defendants' motion. *See* Doc. No. 577. Defendants do not refer to this belated and unauthorized filing, but to Ceglia's timely opposition, filed October 18, 2012 (Doc. No. 573).

None of Ceglia's attempts to explain away Stewart's falsehoods have any merit, and most of them are completely irrelevant. Accordingly, and in light of the fact that Ceglia does not dispute his obligation to produce documents reflecting Stewart's sampling of the Hard-Copy Documents, this Court should enter an order directing Stewart personally to produce all such documents directly to Defendants and to provide a sworn certification that he has done so.

1. During his deposition, Stewart repeatedly testified that he took ink samples from the Hard-Copy Documents and that they are still in his possession. *See* Doc. No. 554 at 10-11. In their moving papers, Defendants set forth the overwhelming evidence demonstrating that Stewart's testimony was false, and that Plaintiff's expert Erich Speckin was the only one of Ceglia's experts to have taken ink samples from the Hard-Copy Documents. That evidence included Stewart's Inventory Worksheet; counsel's first-hand observations during the July 25, 2011 inspection; and videotape confirmation.

Stewart now admits that Defendants are correct: he did not take any ink samples. He attempts to explain away his obvious falsehoods by claiming that his "testimony at deposition, in context, was clearly referring to the Plaintiff's expert's team effort, Mr. Speckin and I, taking samples per the Court's order." Doc. No. 575 ¶ 6.

But Stewart's deposition testimony—particularly his use of the first-person pronoun—is to the contrary. *See, e.g.*, Stewart Tr. at 202:23-25 ("Q. You explain in the report that you took ink samples from the document, do you not? A. Yes, I do. I still have them."); 201:24-202:5 ("Q. In fact, you conducted no ink testing in this case; correct? A. No. I did physical analysis on the ink and decided at that point to hold off doing any chemical analysis and I still have the ink samples today, I have not tested them."). Moreover, in the meet-and-confer communications that preceded this motion, Boland and Stewart repeatedly represented that Stewart personally took

ink samples and still had them in his lab.[2] This is not the first time that Stewart has tried to take credit under oath for ink analysis actually performed by a colleague. This is precisely the same type of misconduct for which Stewart was indicted. *See* Doc. No. 554 at 2 n.1.

2. Ceglia and Stewart claim that the paper samples sent to Ceglia's expert Walter Rantanen are from the Work for Hire document, and that Rantanen's findings support that document's authenticity. At deposition, when confronted with substantial evidence to the contrary, Stewart baldly insisted that the paper samples were from the Work for Hire document. *See*, *e.g.*, Stewart Tr. 362:17-20.

Now, faced with the overwhelming objective evidence—exhaustively catalogued in Defendants' motion papers and supporting declarations, *see* Doc. Nos. 554 at 14-20—that he sent Rantanen paper samples from the wrong document, Stewart is willing to state only that it is his "recollection" that he submitted paper samples from the Work for Hire document. *Id.* ¶ 7. Conspicuously, Stewart does not affirmatively state that he <u>did</u> submit the correct paper samples to Rantanen, as he testified in his deposition. *See* Stewart Tr. 362:17-20. Nor does he identify <u>any</u> documentary evidence suggesting that he did so. And in fact, the evidence conclusively establishes that Stewart sent Rantanen paper samples from the six-page Specifications Document, <u>not</u> the Work for Hire document. That evidence includes: a glaring "conflict in the notations" on Stewart's paperwork that Stewart himself acknowledges, *id.*, ¶ 8; Stewart's Inventory Worksheet; Stewart's contemporaneous handwritten examination notes; the very

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2 *See*, *e.g.*, Southwell Decl. (Doc. No. 555) Ex. EE ("Stewart took samples of ink that remain untested in vials in his lab"). When pressed, Boland and Stewart <u>confirmed</u> that Stewart took ink samples and still had them. *Id.* at ¶¶ 39-41, Exs. EE-GG.

definitions in Stewart's expert report; the videotape of the July 25, 2011 inspection; and the results that Rantanen reported. *See* Doc. No. 554 at 14-17.

Tellingly, neither Ceglia nor Stewart address the fanciful tale that Stewart concocted from whole cloth during his deposition to explain away this evidence. Stewart stated under oath: that the samples provided to Rantanen came from the Work for Hire document; that Stewart took those samples when he was given "authority" to conduct "additional" sampling from the Work for Hire document; that he erroneously "renamed" the source of the "additional" samples as "Q2"—the name he consistently used elsewhere for the Specifications Document; and that he took "doubled [] sampling" that resulted in taking a total of 36 samples from each page of the Work for Hire document. *See id.* at 10. Stewart now appears to have abandoned this absurd explanation, which, as Defendants explained, was either obviously false or an admitted violation of the Court's orders, which never authorized "additional" paper sampling. *See id.* at 18-20.

Despite Stewart's effective admission that he sent the wrong paper samples to Rantanen, and Stewart's abandonment of the false cover-up he testified to under oath, Ceglia blithely asserts that "Mr. Stewart has confirmed that he sent samples from the two page FB contract." Doc. No. 573 at 2. Obviously, Stewart has "confirmed" no such thing. Ceglia cites to paragraph 7 of Stewart's declaration, which merely offers Stewart's "recollection" that he sent paper samples from the Work for Hire document to Rantanen. For Ceglia to distort Stewart's hedged statement about his "recollection" as confirmation of anything is disingenuous—it is another of Ceglia's serial "gross misrepresentation[s] which would be detected by even the marginally literate." Doc. No. 457 at 15.

Finally, Ceglia bizarrely rehashes his reliance on Rantanen's substantive findings to support his claim of the Work for Hire document's authenticity, and asserts that because

Defendants have not submitted the same type of paper test, Defendants have made some "admission of fact." Doc. No. 573 at 3, 6. This is absurd. Ceglia has consistently misrepresented Rantanen's finding that the paper samples he tested were "consistent with" having come from the "same mill and production run." As Rantanen explained during his deposition, that finding means only that it is not "factually impossible" for the samples to have come from the same mill and production run, and is perfectly consistent with the paper having come from different runs or mills. Rantanen Tr. 149:4-16. And Stewart acknowledged in his deposition that Rantanen's finding is completely consistent with Ceglia having created a fraudulent contract and printed each page on paper from the same production run. *See* Stewart Tr. 350:24-351:5.

But more importantly, Rantanen's findings are now completely irrelevant, given the overwhelming proof that he actually tested paper samples extracted from the undisputed Specifications Document, not the fraudulent Work for Hire document presented for inspection. Indeed, as Defendants explained, Rantanen's reported findings further support that conclusion. Specifically, the characteristics of the paper samples that Rantanen examined are consistent with the coloration and ultraviolet fluorescence of the Specifications Document, not the Work for Hire document. *See* Doc. No. 554 at 19.

3. In their attempt to cover up Stewart's lies and mistakes, Ceglia and Stewart continue to falsely assert that they have "previously provided, on multiple occasions, all documents in [Stewart's] possession, custody, or control responsive to Defendants' discovery requests." Stewart Decl. (Doc. No. 575) ¶ 2; *see also* Doc. No. 573 at 1. This is part of Ceglia's ongoing campaign of obfuscation: as detailed in the supporting Southwell Declaration (Doc. No. 555), Ceglia and Stewart have made this misrepresentation numerous times, both during

Stewart's deposition and after. Each time, Ceglia has subsequently produced additional documents that had not been previously produced, despite his continual representations that everything had been previously produced. *See* Doc. No. 555 ¶¶ 16-19, 22, 27, 36-40, 44-45. Any such statement by Ceglia or Stewart should be scrutinized by this Court.

Moreover, Stewart and Ceglia persist in making this representation in the face of clear evidence—and Stewart's own statements—to the contrary. Stewart testified in his deposition that he possessed an inventory worksheet that documented his ink samples. *See* Stewart Tr. at 372:11-373:6. He has produced no such document. Additionally, Defendants have presented clear and uncontested evidence that Stewart used two inventory worksheets on July 25, 2011 in order to record the source of the paper and toner samples in his sampling vials: a first worksheet to record the contents of vials 1-10, and a second worksheet to record the contents of vials 11-18. *See* Aycock Decl. (Doc. No. 556) ¶¶ 26-28. Stewart does not deny that he used a second worksheet at the inspection—instead he cryptically states that he has "no additional documents to provide to the Defendants." Stewart Decl. (Doc. No 575) ¶ 3. If that is true, then Stewart has destroyed or otherwise disposed of the second inventory worksheet used on July 25, 2011, in addition to any inventory worksheet that purportedly documented his ink samples.

4. Ceglia mischaracterizes Defendants' Motion for Production as a "Daubert challenge of Larry Stewart." Doc. No. 573 at 2. This is incorrect. Defendants are not—at this time, in this motion—making a *Daubert* challenge to Stewart's qualifications or methodology. In this motion, Defendants are challenging the truthfulness of Stewart's testimony, and requesting documents—which he stated that he possesses, *see, e.g.*, Stewart Tr. at 372:11-373:6—that would further confirm his false statements to this Court.

Ceglia proceeds to attack "Gibson Dunn's junior associate," Amanda Aycock, as a "non-expert lawyer" unqualified to "contradict a qualified expert" based on what she personally observed during the Court-authorized inspections and on videotape. Doc. No. 573 at 2. This is gratuitous and incorrect. It does not take an expert to recognize or to tell the truth. Aycock's declaration includes her first-hand observations from the inspections, as well as her review of all of the relevant documents and videotape.[3] And of course, Stewart has himself confirmed that Aycock's first-hand observations are completely accurate: Stewart never took any ink samples from the Hard-Copy Documents.

Moreover, Ceglia's criticism of Defendants' use of the video of the July 2011 Hard-Copy Inspections is hypocritical in the extreme. Ceglia has filed numerous motions relying on the videos of the inspection, including a motion requesting default judgment as relief. Doc. No. 189; *see also* Doc. Nos. 202, 214. Ceglia cannot be heard to argue that the video is persuasive and reliable evidence when he is requesting the most severe sanction against Defendants, but then assert that the video is not "authenticated" and "not evidence in this case" when it demonstrates his expert's lies. *See* Doc. No. 573 at 16. Moreover, Stewart himself analyzed and relied on the <u>same</u> video of the <u>same</u> July 25, 2011 inspection in rendering expert opinions to the Court—opinions on which Ceglia relied in opposing Defendants' Motion to Dismiss for Fraud. *See*, *e.g.*, Report of Larry F. Stewart (Doc. No. 416) ¶¶ 46-53.

5. As part of his effort to divert the Court's attention from his expert's lies, Ceglia makes a series of false representations. His most serious is one he has made before (*see* Doc.

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[3] Aycock was present at every single day of the Hard-Copy Inspections that took place in July 2011. Stewart—who draws conclusions from the video on a day he was not present, July 14, 2011, *see* Doc. No. 416 at ¶¶ 41-53—attended only one day. Ceglia's counsel Dean Boland was not present at all.

No. 563), and one that Defendants have already corrected on the record. Ceglia asserts, "Orin Snyder declared there was no dispute about the signatures on page two" of the Work for Hire document. Doc. No. 573 at 5 (citing June 30, 2011 Tr. at 56). As Defendants explained in their October 8, 2012 letter to the Court, Snyder made no such declaration. *See* Doc. No. 567. Rather, Snyder made clear that the purported "Mark Zuckerberg" signature on page two either "appears to be his signature or a very good copy of his signature," and did not agree that page two of the purported contract was authentic. June 30, 2011 Tr. 57:9-15 (emphasis added). At no point have Defendants ever conceded that the second page of Ceglia's forged Work for Hire document is authentic.[4]

6. Ceglia dedicates most of his opposition to a bizarre attack on the Gibson Dunn law firm. Ceglia's intention is obvious: to distract this Court from the basic, incontrovertible fact that Ceglia and Stewart have been caught red-handed in numerous lies. Ceglia's unhinged allegations are false and irrelevant. With regard to the *Chevron* litigation, Gibson Dunn obtained discovery revealing that certain of the lawyers and consultants purporting to represent the Ecuadorian plaintiffs were attempting to perpetrate a massive fraud that included intimidation of judges, bribery, fabrication of evidence, and the secret and unlawful ghostwriting of judicial

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[4] In another misrepresentation, Ceglia characterizes as false Snyder's statement to a reporter that in the Facebook case Plaintiff's counsel sought to have Snyder excluded from participation in the case because he was "too aggressive" and the judge "denied their request." Doc. No. 573 at 10. Ceglia claims, "Of course, this event never occurred." *Id*. However, as this Court knows, during the November 2, 2011 hearing, as reflected in the transcript, Argentieri made the astounding request that "Mr. Southwell be the point man here" instead of Snyder, and complained that "when any of the attorneys tries to deal with [Snyder] directly, he is hostile, uncooperative and --," and Boland agreed, "Very well, that is correct." Nov. 2, 2012 Tr. 141:9-21. The Court rightly denied this request, noting, "Mr. Snyder has been in first chair here and has been the primary weapon of choice here for the defendants in terms of his obviously excellent presentation . . . He is a senior partner, he is entitled to interject himself." Nov. 2, 2012 Tr. 141:23-142:8.

documents in pursuing a corrupt, multibillion-dollar judgment against Chevron. Indeed, the scope of the fraud, and the evidence of the plaintiffs' lawyers engaging in "inappropriate, unethical and perhaps illegal conduct" has sent "shockwaves through the nation's legal communities." *In re Chevron Corp.*, No. 1:10-mc-00021-22, Dkt. 77, at 3-4 (D.N.M. Sept. 2, 2010). As one federal court declared, "the concept of fraud is universal, and . . . what has blatantly occurred in this matter would in fact be considered fraud by any court." *Chevron Corp. v. Camp*, 2010 WL 3418394, at *6 (W.D.N.C. Aug. 30, 2010). *See generally Chevron Corp. v. Donziger*, 2012 WL 3538749 (S.D.N.Y. July 31, 2012). In falsely accusing Gibson Dunn of misconduct, Ceglia relies on press releases written on behalf of the individuals caught *perpetrating* the fraud.

CONCLUSION

It is now beyond dispute that Larry Stewart repeatedly lied under oath during his deposition and in his sworn statements to this Court. Indeed, Stewart went so far as to testify that he had been given "authority" to conduct "additional" sampling—a bizarre attempted cover-up that Stewart has now abandoned. Stewart is simply willing to say anything to avoid responsibility for his blatant, undeniable error—he had the wrong paper samples tested.

Because Ceglia still has not produced all of the documents reflecting Stewart's sampling of the Hard-Copy Documents, this Court should enter an order directing Stewart personally to produce all such documents directly to Defendants. This Court should also order Stewart to certify under oath that he has produced all such documents. Finally, Defendants request that the Court award Defendants their attorneys' fees and costs, and all other relief to which they may be entitled.

Dated: New York, New York
October 26, 2012

Respectfully submitted,

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