

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’ OPPOSITION TO  
CEGLIA’S MOTION FOR PROTECTIVE ORDER**

On October 26, 2012, Plaintiff Paul Ceglia was arrested by federal agents on two felony counts for having brought this fraudulent lawsuit. Doc. No. 589-1 (*United States of America v. Ceglia*, No. 12-MJ-2842, Complaint (S.D.N.Y. Oct. 25, 2012)). During Ceglia’s detention hearing, United States District Judge Colleen McMahon stated, “It appears to me from reading the criminal complaint that the strength of the government’s case is overwhelming.” Doc. No. 589-4 (Oct. 31, 2012 Tr.) at 21:24-22:1. Since that time, a sitting grand jury duly empaneled in the Southern District of New York has returned an indictment against Ceglia on those same charges. *United States of America v. Ceglia*, No. 12-CR-876-ALC, Indictment (S.D.N.Y. Nov. 26, 2012).

Ceglia’s lawyer in this case, Paul Argentieri, recently informed Defendants and this Court that he received a grand jury subpoena, returnable December 3, 2012, demanding production of Ceglia’s forged Work for Hire document.<sup>1</sup> Nov. 27, 2012 Tr. at 17:1-3. Defendants are not

---

<sup>1</sup> Ceglia’s motion concerns only the version of the Work for Hire document produced to Defendants’ experts in July 2011, and no other physical electronic or hard-copy assets previously produced in this case. See Doc. No. 624-2 at 1 n.1. Not having reviewed the grand jury subpoena served on Mr. Argentieri, Defendants assume that that subpoena concerns the same hard-copy document. Defendants note that there are numerous, high-resolution images

aware of any motion to quash that subpoena filed by Mr. Argentieri in the criminal proceeding. Instead, Ceglia now moves the Court, in this civil proceeding, for a protective order “prohibiting the government or any other entity from taking possession of the original [contract] at issue in this case.” Doc. No. 624-2 at 1. The motion should be denied.

### ARGUMENT

Ceglia has no basis for seeking relief against the United States government in this civil proceeding. Rather, if Ceglia wishes to seek to prohibit the government from obtaining the Work for Hire document, he should move to quash the grand jury subpoena served on Mr. Argentieri, or otherwise seek a negotiated resolution, in the proceeding to which both Ceglia and the government are parties—the criminal proceeding pending in the Southern District of New York. Ceglia may not, however, obtain a blanket prohibition in this civil litigation that would effectively enjoin the Executive Branch of the United States Government from obtaining relevant evidence in an ongoing, independent grand jury investigation and criminal prosecution.<sup>2</sup>

Furthermore, and irrespective of the government’s non-participation in this proceeding, Ceglia does not even attempt to meet his burden to establish good cause for issuance of a protective order under Federal Rule of Civil Procedure 26(c). “In order to demonstrate good cause, a party must establish that the proposed discovery will result in a clearly defined, specific and serious injury.” *Carlson v. Geneva City Sch. Dist.*, 277 F.R.D. 90, 94 (W.D.N.Y. 2011)

---

of that document, taken both before and after the parties’ inspection in this case. Thus, Ceglia’s assertion that the document is “irreplaceable” is overstated. Doc. No. 624-2 at 2.

<sup>2</sup> See *United States v. Nixon*, 418 U.S. 683, 693 (1974) (holding that Article II of the Constitution gives the Executive Branch “exclusive authority and absolute discretion to decide whether to prosecute a case”); *Deaver v. Seymour*, 822 F.2d 66, 69, (D.C. Cir. 1987) (“[I]n no case that we have been able to discover has a federal court enjoined a federal prosecutor’s investigation or presentment of an indictment.”); *Ramos v. Winiewicz*, No. 12-cv-157, 2012 WL 1044530, at \*4 (W.D.N.Y. Mar. 23, 2012) (observing that the “basic doctrine of equity jurisprudence” instructs that the federal courts should not act, “and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law”) (quoting *Younger v. Harris*, 401 U.S. 37, 43–44 (1971)).

(quoting *In re Terrorist Attacks on Sept. 11, 2001*, 454 F. Supp. 2d 220, 222 (S.D.N.Y. 2006)). “[B]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, are not sufficient to satisfy the burden.” *McDonnell v. First Umum Life Ins. Co.*, No. 10 CV 08140, 2012 WL 13933, at \*1 (S.D.N.Y. Jan. 4, 2012) (internal quotation marks omitted); *see also Davis v. AT&T Corp.*, No. 98-CV-0189, 1998 WL 912012, at \*2 (W.D.N.Y. Dec. 23, 1998). And even when the movant has established good cause, the Court must then “consider other factors that may militate against issuing a protective order [such as] whether the order will prevent the threatened harm, whether there are less restrictive means of preventing the threatened harm, the interests of the party opposing the motion, and the interests of the public.” *Orillaneda v. French Culinary Institute*, No. 07 Civ. 3206, 2011 WL 4375365, at \*4 (S.D.N.Y. Sept. 19, 2011) (quoting *Koster v. Chase Manhattan Bank*, 93 F.R.D. 471, 479 (S.D.N.Y. 1982)).

Ceglia does not demonstrate how the government’s possession of the Work for Hire document “will result in a clearly defined, specific and serious injury.” *Carlson*, 277 F.R.D. at 94. Indeed, Ceglia admits that he does not know what forensic test the government intends to conduct, going so far as to assert that the government may not even need to test the Work for Hire document in order to prosecute the criminal case. *See* Doc. No. 624-2 at 3-4. And there are obvious less restrictive means of regulating the government’s possession or potential testing of the Work for Hire document, such as a motion to quash the federal grand jury subpoena served on Mr. Argentieri, or a negotiated protocol regarding the government’s possession of the Work for Hire document, in the criminal proceeding.

In fact, based on a November 30, 2012 letter from Assistant United States Attorneys Janis Echenberg and Christopher Frey to the Honorable Andrew L. Carter, Jr., docketed in the criminal proceeding on December 3, Defendants understand that there is continuing dialogue

between Ceglia and the government regarding the government's handling of the Work for Hire document. *See United States of America v. Ceglia*, No. 12-CR-876-ALC (S.D.N.Y.), Doc. No. 12. According to that letter, on November 30, Ceglia's counsel provided the government with a draft of a proposed discovery order that would govern the parties' handling of that document. The government informed Judge Carter that the parties' discussions are ongoing. The parties in the criminal proceeding have also jointly developed a protective order concerning the government's production of certain discovery materials to Ceglia. *See id.*, Doc. No. 13 (Protective Order on Consent). Given that Ceglia's interests are being vigorously represented in the criminal proceeding, and Mr. Argentieri's failure to exhaust his remedies in that proceeding, Ceglia's effort to obtain improperly wide-reaching relief from this Court is inappropriate.

Based on public representations made by the government during Ceglia's detention hearing and arraignment, Defendants also understand that, contrary to Ceglia's representations, the Work for Hire document has not been "securely maintained" in the safety deposit box where it was located at the time of the Court-ordered hard-copy document inspection in July-August 2011. *See* Doc. No. 624-2 at 1. During Ceglia's October 31, 2012 detention hearing, Ceglia himself told United States District Judge McMahon that "the original contract still sits in a safety deposit box under a civil attorney's name." Doc. No. 589-4 (Oct. 31, 2012 Tr.) at 25:22-23. In response, the government informed Judge McMahon that that safety deposit box "was closed in May of 2012," according to the bank. *Id.* at 29:8-15. The government also informed Judge Carter of this evidence during Ceglia's November 28, 2012 arraignment. *See* Nov. 28, 2012 Tr. at 16-17. Given Ceglia's false statements regarding the location of the Work for Hire document, as well as his history of destroying and manipulating evidence in this case, the government's need to take possession of the Work for Hire document may be well-founded.

Ceglia's motion for a protective order seeks improperly far-reaching relief against the United States government, which is not a party to this civil proceeding, and without attempting to meet his burden under Rule 26(c). To the extent Ceglia seeks to prohibit the government from obtaining the Work for Hire document, he should move to quash the grand jury subpoena served on Mr. Argentieri, or pursue a negotiated resolution (as Ceglia's criminal defense lawyer appears to be doing), in the proceeding to which both Ceglia and the government are parties—the criminal proceeding pending in the Southern District of New York. Accordingly, this Court should deny Ceglia's Motion for Protective Order (Doc. No. 624).

Dated: New York, New York  
December 12, 2012

Thomas H. Dupree, Jr.  
Erik R. Zimmerman  
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

Respectfully submitted,

/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.*