

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 14-1365 Caption [use short title] \_\_\_\_\_

Motion for: Leave to Supplement Response Ceglia v. Zuckerberg, et al.  
to Order to Show Cause

Set forth below precise, complete statement of relief sought:

Appellant seeks leave to supplement his  
response to the Court's Order to Show Cause  
by submitting three items relevant to the  
Court's consideration that were not available  
when the response was filed on March 20, 2015

MOVING PARTY: Paul D. Ceglia OPPOSING PARTY: Mark Elliot Zuckerberg, et al.  
 Plaintiff  Defendant  
 Appellant/Petitioner  Appellee/Respondent

MOVING ATTORNEY: Gil D. Messina OPPOSING ATTORNEY: Thomas Henderson Dupree, Jr.  
[name of attorney, with firm, address, phone number and e-mail]

Messina Law Firm, P.C. Gibson Dunn & Crutcher, LLP  
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Court-Judge/Agency appealed from: U.S. District Court, Western District of New York, Honorable Richard J. Arcara

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):  
 Yes  No (explain): \_\_\_\_\_

Opposing counsel's position on motion:  
 Unopposed  Opposed  Don't Know

Does opposing counsel intend to file a response:  
 Yes  No  Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?  Yes  No  
Has this relief been previously sought in this Court?  Yes  No  
Requested return date and explanation of emergency: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is oral argument on motion requested?  Yes  No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?  Yes  No If yes, enter date: April 16, 2015

Signature of Moving Attorney: s/ Gil D. Messina Date: April 1, 2015 Service by:  CM/ECF  Other [Attach proof of service]



**Relief Requested**

The plaintiff-appellant, Paul D. Ceglia, respectfully requests leave to supplement his response to this Court's Order to Show Cause to include: 1) a three page Order issued by the District Court on March 30, 2015, in the criminal case that relates to the fugitive disentitlement issue now before this Court; 2) a four page excerpt from the transcript of a hearing held before the District Court on March 24, 2015, in the criminal case; and 3) a three page forensic report produced by the United States Secret Service Forensic Laboratory and received from the Government late in the afternoon on March 19, 2015. These documents have a direct bearing on the Court's Order to Show Cause because they are relevant to whether the fugitive disentitlement doctrine should be invoked in these two civil appeals, as stated in the supporting Declaration of Gil D. Messina. The documents were received after, or too late to be included in, appellant's response filed on March 20, 2015.

**Facts in Support of Motion**

The Order issued on March 30, 2015, by the Honorable Vernon S. Broderick in the District Court addresses, in part, the Government's motion which was filed in the criminal case seeking to have that Court invoke the fugitive disentitlement doctrine and halt further proceedings in that case, including

discovery, during the defendant's absence. The District Court declined to do so and ordered certain discovery to be produced to the defense, including third-party discovery, under Rule 17 of the Federal Rules of Criminal Procedure. This is important because it signifies that the District Court – the Court directly affected by appellant's disappearance – is dealing with the fugitive disentitlement issue in the exercise of its sound discretion. *Ortega-Rodriguez v. United States*, 507 U.S. 234, 246 (1993); (citing *United States v. Anagnos*, 853 F.2d 1, 2 (1<sup>st</sup> Cir. 1988), which declined to follow *United States v. Holmes*, 680 F.2d 1372 (11th Cir. 1982), *cert. denied*, 460 U.S. 1015 (1983) because former fugitive's "misconduct was in the district court, and should affect consequences in that court, not in ours").

The transcript excerpt is from the bail forfeiture hearing held in the District Court on March 24, 2015. The excerpt relates to the defendant's disappearance and is a proper subject for consideration by this Court as the Court considers the equities, which is a proper consideration when deciding whether to invoke the disentitlement doctrine. *Wu v. Holder*, 646 F.3d 133, 135 (2d Cir. 2011) (quoting *Wu v. Holder*, 617 F.3d 97, 100 (2d Cir. 2010) (decision on whether to dismiss the appeal should be informed by the reasons for the doctrine and the equities of the case)).

Finally, the appellant seeks to supplement its response in these civil appeals with the forensic report from the United States Secret Service Forensic Laboratory which was produced by the Government and received by defense counsel on March 19, 2015. It was not analyzed by the defense's forensic experts in time to be included in appellant's response to the Order to Show Cause filed on March 20, 2015.<sup>1/</sup>

The Secret Service's report further serves to corroborate appellant's experts' reports in the underlying civil action that the Work for Hire Contract, the document upon which Ceglia sued Zuckerberg and Facebook in the Western District of New York, is authentic. The Secret Service's report establishes the falsity of Mark Zuckerberg's claim, upon which the Government has primarily based its prosecution, that the Work for Hire Contract is a forged document.

Appellant seeks permission to supplement his response to the Order to Show Cause in these civil appeals with the Secret Service's Report because the report is relevant to the Order to Show Cause entered in these civil appeals.

The report is potent evidence supporting the merits of Ceglia's appeals in the

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<sup>1</sup> The Secret Service's Report is included in appellant's opposition filed in this Court on March 23, 2015, in response to the Government's Motion to Dismiss the interlocutory appeal in *United States v. Ceglia*, Docket No. 15-628 on fugitive disentitlement grounds and for lack of jurisdiction.

underlying civil cases and it is, therefore, relevant to this Court's decision whether to impose fugitive disentitlement in the civil appeals. *See, Wu v. Holder*, 646 F.3d at 135-36.

**CONCLUSION**

Plaintiff-appellant respectfully requests that he be given leave to supplement his response to the Order to Show cause in these appeals with the three items described above.

Respectfully submitted,

Dated: April 1, 2015  
Holmdel, NJ

s/ Gil D. Messina  
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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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PAUL D. CEGLIA,

Plaintiff-Appellant,

v.

MARK ELLIOT ZUCKERBERG, et al.,

Defendants-Appellees.

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Docket No. 14-1365

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PAUL D. CEGLIA,

Plaintiff-Appellant,

v.

ERIC H. HOLDER, JR., as Attorney  
General of the United States, et al.,

Defendants-Appellees.

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Docket No. 14-1752

ON APPEALS FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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**DECLARATION OF GIL D. MESSINA IN SUPPORT OF  
APPELLANT’S MOTION TO SUPPLEMENT RESPONSE  
TO ORDER TO SHOW CAUSE (DOCUMENT 128)**

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Gil D. Messina, pursuant to 28 U.S.C. § 1746, does hereby declare under the pains and penalties of perjury of the United States as follows:

1. I am an attorney of record for the plaintiff-appellant Paul D. Ceglia in the two above-referenced appeals and am duly admitted to practice in the United States Court of Appeals for the Second Circuit. I am submitting this declaration in support of appellant's Motion to Supplement Response to Order to Show Cause.

2. I also represent Mr. Ceglia in the related criminal case pending against him in the U.S. District Court for the Southern District of New York. That case charges him with the crimes of wire and mail fraud for having initiated and pursued the civil action that is the subject of these civil appeals (*United States v. Ceglia*, Case No. 12-cr-876 (VSB)).

3. Mr. Ceglia now moves to supplement his response to this Court's Order to Show Cause entered in these civil appeals. That Order required him to show cause by March 20, 2015, why the pending civil appeals should not be dismissed on the grounds Mr. Ceglia is presumed to be a fugitive from the criminal court.

4. Ceglia filed his Response to the Order to Show Cause timely on March 20, 2015.



5. On the afternoon of March 19, 2015, Ceglia's attorneys were served with a forensic report by the Government in the criminal case that was prepared by the U.S. Secret Service, Office of Investigations, Forensic Services Division, Questioned Documents section. That report was unable to be analyzed by appellant's experts until after the response to the Order to Show Cause was filed the following day.

6. That report, like an earlier report from the U.S. Postal Service's Forensic Laboratory, did *not* conclude that the Work for Hire Contract – the contract upon which Ceglia brought his civil action – is a forged or inauthentic document. In fact, the Secret Service's report indicates that the toner on both pages of the Work for Hire Contract are indistinguishable and although chemical differences were detected between the two pages of the contract, that is often the case with paper from the same ream or roll in a paper production run. These findings are consistent with Ceglia's experts' conclusions in the civil action, including that the toner on both pages are identical and the fiber content of the pages show that the pages of the Work for Hire Contract came from the same mill production run.

7. The Government's Secret Service Report, as well as the Postal Service Report, were performed long after Ceglia had been criminally charged.

Rather than testing the Work for Hire Contract to determine authenticity, the Government's complaint was based primarily on Zuckerberg's say so that Ceglia had replaced page 1 of their contract with a forged page 1. The Government's belated forensic tests flatly contradict Zuckerberg's and the Government's charge.

8. The Secret Service's three page report should be reviewed by this Court in connection with the Order to Show Cause because it is consistent with, and strongly supports, the merits of Ceglia's appeal in the civil action. The strength of the merits of the underlying appeal is an important component that should be considered by this Court when deciding whether to impose the fugitive disentitlement doctrine. *Wu v. Holder*, 646 F.3d 133, 135-36 (2d Cir. 2011) (quoting *Wu v. Holder*, 617 F.3d 97, 100 (2d Cir. 2010)).

9. Appellant also requests leave to supplement his response with a four page excerpt from the transcript of the hearing held before the Honorable Vernon S. Broderick on March 24, 2015, which was also not available until after appellant's response was filed in this Court on March 20, 2015.

10. In the transcript, the appellant's father explained to the Court what he believes to have motivated the defendant to flee with his wife and two young children. Although the appellant's reasons for fleeing (if that is indeed the cause of his disappearance) do not excuse his absence, the explanation is something that

the Court should take into account when considering the disentitlement issue. *Wu v. Holder*, 646 F.3d 133, 135 (2d Cir. 2011) (quoting *Wu v. Holder*, 617 F.3d 97, 100 (2d Cir. 2010) (decision on whether to dismiss the appeal should be informed by the reasons for the doctrine and the equities of the case).

11. Finally, as argued in appellant's response to the Order to Show Cause. The defendant's flight may be considered an affront to the District Court, the court from whose jurisdiction he is said to have fled. It is not an affront to this Court's dignity or jurisdiction in the civil cases now on appeal. The District Court is fully able to deal with the disentitlement issue and is doing so.

12. The Government moved in the District Court to have the fugitive disentitlement doctrine invoked. The District Court denied the defendant's request to submit opposition to the Government's motion and proceeded to issue an Order on March 30, 2015.

13. The District Judge, who is fully conversant with the issues and equities involved here, ordered the Government to, *inter alia*, produce Rule 16 materials to the defense, and ordered third-party witnesses Facebook and Zuckerberg to comply with a Rule 17 subpoena and forthwith produce documents requested by the defense (subject to certain limitations that are unrelated to appellant's fugitive status and denied, without prejudice, defendant's request to

apply for the issuance of other Rule 17 subpoenas until Ceglia returns).

14. The appellant now seeks permission from this Court to supplement his response to the Order to Show Cause with the District Court's three page Order of March 30, 2015, which did not adopt the fugitive disentitlement doctrine in that Court as requested by the Government, although it is the court from which the defendant is presumed to have fled. *Ortega-Rodriguez v. United States*, 507 U.S. 234, 246 (1993) (citing *United States v. Anagnos*, 853 F.2d 1, 2 (1<sup>st</sup> Cir. 1988) which declined to follow *United States v. Holmes*, 680 F.2d 1372 (11th Cir. 1982), *cert. denied*, 460 U.S. 1015 (1983) because former fugitive's "misconduct was in the district court, and should affect consequences in that court, not in ours").

15. The defense respectfully submits that supplementation of his response to the Order to Show Cause with the three items described above will assist this Court in a proper determination of the issue raised by the Order to Show Cause.

Dated: April 1, 2015  
Holmdel, NJ

s/ Gil D. Messina  
Gil D. Messina