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January 16, 2025

The Honorable Jessica G. L. Clarke
United States District Judge
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Berenson v. Biden*, No. 1:23-cv-03048-JGLC (S.D.N.Y.)
Plaintiff's Letter-Motion For Leave to File Proposed First Amended Complaint, Dkt. 115

Dear Judge Clarke:

We represent defendant Andrew M. Slavitt (in his individual capacity) in the above-referenced action and write in opposition to Plaintiff Alex Berenson's Letter-Motion Regarding a Proposed First Amended Complaint, Dkt. 115, filed by Plaintiff on January 13, 2025.

Plaintiff's January 13, 2025 letter-motion states that "[t]o the extent that this Court grants Mr. Berenson's motion for leave to amend (Dkt. 80), he asks for leave to include allegations from Mr. [Mark] Zuckerberg's appearance on the Joe Rogan Experience podcast in his amended complaint." Dkt. 115 at 2. If the Court denies Plaintiff's motion for leave to amend his complaint, then Plaintiff's letter-motion obviously is moot. But even to the extent the Court grants Plaintiff's motion for leave to file an amended complaint, Plaintiff's January 13, 2025 letter-motion seeking to add unspecified allegations from a multi-hour podcast to an amended complaint should be denied.

First, Plaintiff concedes that his "motion for leave to amend is fully briefed as is Defendants' renewed motions to dismiss." Letter-motion at 1. Plaintiff's letter-motion thus amounts to a surreply in support of his September 2024 motion for leave to file a first amended complaint. Dkt. 80 (Sept. 4, 2024). This Court's Individual Rules and Practices in Civil Cases bar such surreplies. *See Rule 4(b), Individual Rules and Practices in Civil Cases*, Jessica G.L. Clarke, United States District Judge (July 2, 2024) ("Surreply memoranda are not allowed (unless specifically permitted in extraordinary situations for good cause)."). Plaintiff did not request permission to file a surreply, and the facts asserted in the letter-motion do not reflect an extraordinary situation or show good cause.

Second, Plaintiff improperly frames his submission as a letter-motion. According to this District's Local Civil Rule 7.1(e), only "[a]pplications for extensions or adjournments, applications for a pre-motion conference, and similar non-dispositive matters may be brought by letter-motion." Plaintiff's letter-motion here seeks substantive relief and does not address the types of matters contemplated by the rule. Indeed, "[o]ther motions cannot be brought by letter-motion unless authorized by the judge's individual practices or order issued in a particular case." Local Rule 7.1(e). This Court's Individual Rules and Practices in Civil Cases permit letters seeking relief "if consistent with Local Civil Rule 7.1." Plaintiff's letter-motion is inconsistent

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with Local Civil Rule 7.1 and this Court has not issued an order permitting such a substantive request by letter-motion. Plaintiff's January 13, 2025 letter-motion is improper for this reason as well.

Third, as a substantive matter, Plaintiff's unspecified proposed allegations that he seeks to add to any amended complaint are not relevant to his claims and would be futile for the reasons stated by Mr. Slavitt in his briefing in support of his motion to dismiss and opposition to Plaintiff's motion for leave to amend. See Dkt. 88, 90, 107. Plaintiff's claims in this case are based on his suspension from Twitter, not Facebook or any other social media platform associated with Mr. Zuckerberg. See Dkt. 80-1 ¶¶ 241, 261. Plaintiff does not allege that any defendant's alleged interactions with Facebook or Meta caused him harm. In fact, Plaintiff does not even allege he had a Facebook account.

Plaintiff filed his letter-motion without meeting and conferring at least with Mr. Slavitt to try to find a mutually agreeable approach to this matter that would minimize the burden on the Court. His filing also has forced Mr. Slavitt to incur yet more expense in Plaintiff's meritless lawsuit. Mr. Slavitt respectfully requests that Plaintiff's January 13, 2025 letter-motion be denied.

Respectfully,

/s/ Michael H. Dore

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