

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA

Victor Porfirio Baloa Diaz, et al. v. EDI Korta LLC, et al.

Baloa Diaz v. EDI Korta LLC · No. 24-CV-20522-LEIBOWITZ/Elfenbein · Decided December 10, 2025

SUMMARY

This omnibus order addresses motions concerning expert-witness disclosures, exclusion of untimely expert opinions, application of foreign law, and judicial notice in a copyright-infringement action. The court grants Plaintiffs’ motion to exclude Defendants’ expert’s untimely non-damages opinions and considers Defendants’ motion to strike Plaintiffs’ handwriting expert, along with related motions.

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
WRITING FOR THE COURT	Marty Fulgueira Elfenbein
JURISDICTION	United States District Court for the Southern District of Florida
DECIDED	December 10, 2025
DOCKET	24-CV-20522-LEIBOWITZ/Elfenbein
DISPOSITION	other
PROCEDURAL POSTURE	Omnibus order resolving four referred pretrial motions in a copyright and trademark dispute: a motion to exclude defense expert opinions, a motion to strike plaintiffs’ handwriting expert, a motion to strike plaintiffs’ Venezuelan-law declaration, and a request for judicial notice of copyright-registration records.
STANDARD OF REVIEW	The Court applied its broad discretion to manage its docket and expert disclosures; Rule 37(c)(1)'s exclusion standard for untimely expert disclosures; Rule 44.1's reasonable-notice standard for foreign law; and Rule 201(b)'s judicial-notice standard.
PRECEDENTIAL VALUE	Nonprecedential district-court omnibus order
PARTIES	Victor Porfirio Baloa Diaz, et al. v. EDI Korta LLC, et al.

TOPICS

- expert testimony
- discovery dispute
- sanctions
- judicial notice
- copyright infringement

PRACTICE AREAS

Civil procedure

Evidence

Intellectual property

Copyright

QUESTIONS PRESENTED

1. Whether defendants' untimely affirmative, non-damages opinions in Leslie Zigel's purported rebuttal expert report should be excluded under Rules 26 and 37.
2. Whether plaintiffs' late disclosure of handwriting expert F. Harley Norwitch was substantially justified or harmless under Rule 37(c)(1).
3. Whether plaintiffs' Venezuelan-law declaration had to be stricken for lack of timely notice under Rule 44.1.
4. Whether the Court could take judicial notice of public U.S. Copyright Office catalog entries for three sound-recording registrations under Rule 201(b).

HOLDINGS

1. A party may not use a rebuttal expert disclosure to introduce untimely affirmative opinions addressing liability rather than rebutting the opposing party's expert opinions on the same subject. The non-damages portions of Zigel's report were subject to exclusion under Rules 26(a)(2) and 37(c)(1), and were stricken.
2. Plaintiffs' handwriting expert was properly excluded because the eleven-week delay in serving his report was neither substantially justified nor harmless.
3. The Venezuelan-law declaration was not subject to striking because defendants had already raised Venezuelan-law issues in their summary-judgment motion, thereby providing notice under Rule 44.1, and Rule 44.1 does not impose Rule 26(a)(2)'s expert-disclosure deadlines.
4. The Court may take judicial notice of publicly recorded U.S. Copyright Office catalog entries to establish the contents and public record of the registrations, without treating judicial notice as proof of the truth of disputed underlying assertions.

KEY QUOTATIONS

"they cannot cloak otherwise untimely affirmative opinions as "rebuttal" opinions." (Section III.a)

"If the harmlessness analysis were as simple as Plaintiffs suggest, then the deadlines in the Scheduling Order would be rendered meaningless." (Section III.b)

"Once Defendants raised these issues on summary judgment, Plaintiffs were not required to give notice of their intention to likewise raise issues of Venezuelan law." (Section III.c)

FACTUAL BACKGROUND

Plaintiffs allege that defendants copied plaintiffs' Venezuelan musical compositions, lyrics, and sound recordings into online music videos and streaming-platform uploads. Defendants disclosed attorney Leslie Zigel's rebuttal report after the deadline for affirmative expert reports, and the report included liability opinions concerning

copyright ownership, work-for-hire status, Venezuelan law, joint authorship, and the statute of limitations, in addition to damages rebuttal opinions. Plaintiffs disclosed handwriting expert F. Harley Norwitch eleven weeks after the expert-report deadline and after discovery closed, to address the authenticity of signatures on a Venezuelan copyright application and a recording agreement. Plaintiffs also submitted a declaration from Venezuelan-law attorney William Enrique Olivero Perez, while defendants sought judicial notice of three entries in the U.S. Copyright Office’s public catalog.

PROCEDURAL HISTORY

Plaintiffs filed a Copyright Act complaint on February 9, 2024. After the Court recommended dismissal without prejudice for pleading deficiencies, plaintiffs filed an amended complaint asserting direct, contributory, and vicarious copyright-infringement claims; Korta Records filed trademark and unfair-competition counterclaims. Following discovery, the parties filed the motions resolved by this order, which had been referred by District Judge David S. Leibowitz.

DISPOSITION

other

CASES CITED

- Smith v. Psychiatric Sols., Inc., 750 F.3d 1253, 1262 (11th Cir. 2014)
- Reese v. Herbert, 527 F.3d 1253, 1265-66 (11th Cir. 2008)
- Mustafa v. United States, No. 21-CV-20633, 2022 WL 18023327, at *3 (S.D. Fla. May 16, 2022)
- Brown v. NCL (Bahamas) Ltd., 190 F. Supp. 3d 1136, 1143 (S.D. Fla. 2016)
- Romero v. Drummond Co., 552 F.3d 1303, 1323 (11th Cir. 2008)
- Mitchell v. Ford Motor Co., 318 F. App’x 821, 825 (11th Cir. 2009)
- Stone v. Wall, 135 F.3d 1438, 1442 (11th Cir. 1998)
- Collins v. Collins, 36 So. 2d 417, 417 (Fla. 1948)
- Bethell v. Peace, 441 F.2d 495, 497 (5th Cir. 1971)
- Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1207 (11th Cir. 1981)
- World Fuel Servs., Inc. v. M/V PARKGRACHT, 489 F. Supp. 3d 1340, 1345 (S.D. Fla. 2020)
- BCCI Holdings (Luxembourg), Societe Anonyme v. Khalil, 184 F.R.D. 3, 9 (D.D.C. 1998)
- De Fernandez v. Seaboard Marine, Ltd., No. 20-CV-25176, 2022 WL 2869730, at *9 (S.D. Fla. July 21, 2022)
- Shahar v. Bowers, 120 F.3d 211, 214 (11th Cir. 1997)
- Navarro v. City of Riviera Beach, 192 F. Supp. 3d 1353, 1364 (S.D. Fla. 2016)
- Nationwide Van Lines, Inc. v. Transworld Movers Inc., 853 F. App’x 604, 606 (11th Cir. 2021)
- Brooks-Ngwenya v. Indianapolis Pub. Sch., 564 F.3d 804, 808 (7th Cir. 2009)
- Beckman v. Regina Caeli, Inc., 752 F. Supp. 3d 1346, 1375 (N.D. Ga. 2024)
- Sternbaum v. Refinery Lab, LLC, No. 22-CV-22002, 2022 WL 16745340, at *2 n.1 (S.D. Fla. Nov. 7, 2022)

- Island Software & Computer Serv., Inc. v. Microsoft Corp., 413 F.3d 257, 261 (2d Cir. 2005)
- United States v. Marder, 318 F.R.D. 186, 190, 194 (S.D. Fla. 2016)
- Hudson v. I.R.S., No. 03-C-172(TJM/RF), 2007 WL 2295048, at *10 (N.D.N.Y. Mar. 27, 2007)
- Spears v. City of Indianapolis, 74 F.3d 153, 157 (7th Cir. 1996)

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