

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Digital Media Solutions, LLC v. Zeetogroup, LLC

Digital Media Solutions · No. 3:22-cv-01184-AHG · Decided March 9, 2023

OPINION

Digital Media Solutions, LLC v. Zeetogroup, LLC

PER CURIAM.

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9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 12 DIGITAL MEDIA SOLUTIONS, LLC, Case No.: 3:22-cv-01184-AHG 13 Plaintiff,
SCHEDULING ORDER

REGULATING DISCOVERY

14 v.

AND OTHER PRE-TRIAL

15 ZEETOGROUP, LLC, PROCEEDINGS

16 Defendant. 17

18 Pursuant to Rule 16.1(d) of the Local Rules, a Case Management Conference 19 (“CMC”) was
held on February 17, 2023. During the CMC, the parties indicated that they 20 intended to consent
to the undersigned as the presiding judge in this case and in the related 21 case Zeetogroup, LLC
v. Digital Media Solutions, LLC et al., Case No. 3:22-cv-01396- 22 AHG. See ECF No. 28. Due
to the pending consent, the Court determined it was 23 appropriate to issue a Scheduling Order
once the consent process was complete. The parties 24 have now submitted a Notice, Consent, and
Reference of a Civil Action to a Magistrate 25 Judge in both actions. ECF No. 32. After consulting
with the attorneys of record for the 26 27 28 1 parties and being advised of the status of the case
during the CMC, and good cause 2 appearing, IT IS HEREBY ORDERED: 3 1. The deadline for
the parties to file a joint motion proposing a briefing schedule 4 for Defendant to file a renewed
summary judgment motion² is March 20, 2023. 5 2. The deadline for the parties to amend
pleadings or add new parties is

6 March 31, 2023.

7 3. The parties must disclose the identity of their respective experts in writing by

8 August 28, 2023. The date for the disclosure of the identity of rebuttal experts must be on

9 or before September 25, 2023. The written designations must include the name, address 10 and
telephone number of the expert and a reasonable summary of the testimony the expert 11 is
expected to provide. The list must also include the normal rates the expert charges for 12 13 1

Some of the dates herein may differ from the dates provided to the parties during the 14 CMC, since the Court anticipated at the time that the consent process would be completed 15 sooner. 16

2 Defendant Zeetogroup, LLC (“Defendant” or “Zeetogroup”) previously filed a Motion 17 for Summary Judgment on September 13, 2022 (ECF No. 6), which the Court denied as moot when the case was dismissed without prejudice for lack of subject matter jurisdiction. 18 ECF No. 18. However, following dismissal, the Court permitted Plaintiff Digital Media 19 Solutions, LLC (“Plaintiff” or “DMS”) to conduct limited jurisdictional discovery regarding the citizenship of Zeetogroup’s sole member Stephen Goss, which was the 20 linchpin of the jurisdictional dispute. ECF No. 23. Based on Mr. Goss’s deposition 21 testimony, DMS filed an Amended Complaint in this action and responded to the Court’s Order to Show Cause in the related action with evidence tending to show that Mr. Goss is 22 a citizen of California for purposes of diversity jurisdiction. During the CMC, counsel for 23 each side confirmed that although Zeetogroup does not expressly concede that subject- matter jurisdiction lies in this Court, it has no intention of disputing jurisdiction in either 24 case moving forward. Thus, because the case remains in federal court at this juncture, the 25 Court finds it appropriate to grant Defendant’s request to re-brief its motion for summary judgment. Nonetheless, because defects in subject-matter jurisdiction are nonwaivable, see 26 *Broce v. Arco Pipe Line Co.*, 28 F. App’x 653, 654 (9th Cir. 2002), the Court will sua 27 sponte analyze that threshold question before ruling on the merits of the anticipated summary judgment motion. 28

1 deposition and trial testimony. The parties must identify any person who may be used 2 at trial to present evidence pursuant to Fed. R. Evid. 702, 703 and 705, respectively. 3 This requirement is not limited to retained experts. 4 4. On or before August 28, 2023, each party must comply with the disclosure 5 provisions in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure. This disclosure 6 requirement applies to all persons retained or specifically employed to provide expert 7 testimony or whose duties as an employee of the part regularly involve the giving of 8 expert testimony. 9 5. Any party shall supplement its disclosure regarding contradictory or rebuttal 10 evidence under Fed. R. Civ. P. 26(a)(2)(c) by September 25, 2023. 11 6. Please be advised that failure to comply with this section or any other 12 discovery order of the court may result in the sanctions provided for in Fed. R. Civ. 13 P. 37 including a prohibition on the introduction of experts or other designated 14 matters in evidence. 15 7. All fact discovery must be completed by all parties on or before July 31, 2023. 16 All expert discovery must be completed by all parties on or before October 27, 2023. 17 “Completed” means that all discovery under Rules 30-36 of the Federal Rules of Civil 18 Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of 19 time in advance of the cut-off date, so that it may be completed by the cut-off date, taking 20 into account the times for service, notice and response as set forth in the Federal Rules of 21 Civil Procedure. Counsel shall promptly and in good faith meet and confer with 22 regard to all discovery disputes in compliance with Local Rule 26.1(a). A failure to 23 comply in this regard will result in a waiver of a party’s discovery issue. Absent an 24 order of the court, no stipulation continuing or altering this requirement will

be 25 recognized by the court. The Court expects counsel to make every effort to resolve all 26 disputes without court intervention through the meet and confer process. If the parties 27 reach an impasse on any discovery issue, the movant must e-mail chambers at 28 efile_goddard@casd.uscourts.gov no later than 45 days after the date of service of the 1 written discovery response that is in dispute, seeking a telephonic conference with the 2 Court to discuss the discovery dispute. The email must include: (1) at least three proposed 3 times mutually agreed upon by the parties for the telephonic conference; (2) a neutral 4 statement of the dispute; and (3) one sentence describing (not arguing) each parties' 5 position. The movant must copy opposing counsel on the email. No discovery motion may 6 be filed until the Court has conducted its pre-motion telephonic conference, unless the 7 movant has obtained leave of Court. All parties are ordered to read and to fully comply 8 with the Chambers Rules of Magistrate Judge Allison H. Goddard. 9 8. Because the parties consented to the Magistrate Judge as the Presiding Judge, 10 the Court will refer this matter to another magistrate judge to conduct an early Mandatory 11 Settlement Conference ("MSC"). The MSC will be set by the assigned magistrate judge by 12 separate order. All parties are ordered to read and to fully comply with the Chambers Rules 13 of the assigned magistrate judge. 14 9. All dispositive pretrial motions, other than Daubert motions, must be filed on 15 or before December 4, 2023. Please be advised that counsel for the moving party must 16 obtain a motion hearing date from one of Judge Goddard's law clerks. Motions in Limine 17 are to be filed as directed in the Local Rules, or as otherwise set by Judge Goddard. Daubert 18 motions are due by March 1, 2024 and will be addressed during the Pretrial Conference. 19 10. Counsel must comply with the pre-trial disclosure requirements of Fed. R. 20 Civ. P. 26(a)(3) on or before March 1, 2024. 21 11. This order replaces the requirements under Civ. L. R. 16.1.f.6.c. No 22 Memoranda of Law or Contentions of Fact are to be filed. 23 12. The parties must meet and confer on or before March 8, 2024 and prepare a 24 proposed pretrial order in the form as set forth in Civ. L. R. 16.1.f.6. The Court will 25 entertain any questions concerning the conduct of the trial at the pretrial conference. 26 13. Objections to Pre-trial disclosures must be filed no later than March 15, 2024. 27 14. The Proposed Final Pretrial Conference Order as described above must be 28 prepared, served and lodged with Judge Goddard on or before March 22, 2024. 1 15. The final Pretrial Conference is scheduled for March 29, 2024 at 9:30 AM 2 before Magistrate Judge Allison H. Goddard, presiding by consent. Trial will begin on 3 || May 6, 2024 at 9:30 AM. The Court will notify the parties of the courtroom where the 4 || Pretrial Conference and Trial will take place by separate order as the dates draw nearer. 5 16. A post-trial settlement conference before a different magistrate judge may be 6 || held within 30 days of verdict in the case. 7 17. The dates and times set forth herein will not be modified except for good cause 8 shown. 9 18. Dates and times for hearings on motions must be approved by the Court's 10 || clerk before notice of hearing is served. 11 19. Briefs or memoranda in support of or in opposition to any pending motion 12 || must not exceed twenty-five (25) pages in length without leave of the Court. No reply 13 || memorandum will exceed ten (10) pages without leave of the Court. Briefs

and memoranda 14 || exceeding ten (10) pages in length must have a table of contents and a table of authorities 15 || cited. 16 IT IS SO ORDERED. 17 18 Dated: March 9, 2023 19 0 _ArwiorwH. Xyolard Honorable Allison H. Goddard 21 United States Magistrate Judge 22 23 24 25 26 27 28