
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 13-cv-02707-WYD-MEH

MALIBU MEDIA, LLC,

Plaintiff,

v.

JOHN BUTLER,

Defendant.

SCHEDULING ORDER

**1. DATE OF CONFERENCE
AND APPEARANCES OF COUNSEL AND PRO SE PARTY**

The scheduling conference is set for February 25, 2014 at 10:00 a.m. in Courtroom A-501, on the fifth floor of the Alfred A. Arraj United States Courthouse located at 901 19th Street, Denver, Colorado before Magistrate Michael E. Hegarty. Plaintiff, Malibu Media, LLC, is represented by Jason Kotzker, Esq., of Kotzker Law Group, located at 9609 South University Boulevard, #632134, Highlands Ranch, CO 80163, telephone: (720) 339-8329. Defendant, John Butler, is represented by Richard W. Hanes, Esq. of Hanes & Bartels, LLC, located at 102 South Tejon Street, Suite #800, Colorado Springs, CO 80903, telephone: (719) 260-7900.

2. STATEMENT OF JURISDICTION

This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (district courts having subject matter jurisdiction over matters dealing with a federal question) and 28 U.S.C. § 1338 (district courts having subject matter jurisdiction over matters dealing with patents, copyrights, and trademarks) except that the Court does not have jurisdiction over the

works listed in Exhibit B to the Complaint for which there was no copyright registration at the time this matter was commenced.

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff: Plaintiff has sued Defendant for direct copyright infringement of 19 of Plaintiff's copyrighted movies, pursuant to 17 U.S.C. §§ 106 & 501, based on Defendant's actions of illegally downloading Plaintiff's works.

b. Defendant: Defendant denies the allegations of Plaintiff's Complaint and denies that Plaintiff has stated a cause of action upon which relief can be granted (FRCP 12(b)(6), among other affirmative defenses.

4. UNDISPUTED FACTS

The parties are not in the position to ascertain if there are any undisputed facts because Defendant has yet to answer Plaintiff's Complaint.

5. COMPUTATION OF DAMAGES

a. Amount of Damages: Plaintiff has not yet determined its actual damages or any additional profits made by Defendant. Pursuant to 17 U.S.C. § 504-(a) and (c) Plaintiff alleges that it is entitled to the statutory damages in an amount up to \$150,000, per infringement.

b. Other Relief: Plaintiff also seeks to enjoin Defendant from infringing Plaintiff's copyrighted works, and that Defendant permanently remove Plaintiff's works from their possession.

6. REPORT OF PRE-CONFERENCE DISCOVERY AND MEETING UNDER FED R. CIV. P. 26(f)

a. The Rule 26(f) meeting occurred on **February 14, 2014**.

b. Jason Kotzker, Esq. represented Plaintiff. Richard W. Hanes, Esq. represented Defendant.

c. 26(a)(1) disclosures will be exchanged on or before **March 18, 2014**.

d. The parties do not propose any changes to the timing or requirement of disclosures under Fed. R. Civ. P. 26(a)(1).

e. The parties do not have any agreements to conduct informal discovery.

f. The parties do not have any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system.

g. The parties do anticipate that their claims or defenses will involve extensive electronically stored information, and that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

h. The parties have not yet discussed settling this matter.

7. CONSENT

The Defendant does not consent to the exercise of jurisdiction of a magistrate judge.

8. DISCOVERY LIMITATIONS

a. The parties anticipate no more than 25 interrogatories and 10 depositions per side including experts.

b. The parties anticipate that the length of depositions will be no longer than 7 hours.

c. The parties anticipate no more that 25 requests for production and/or requests for admission per party.

d. The parties do not have any other recommendation for other planning or discovery orders at this time.

9. CASE PLAN AND SCHEDULE

a. Deadline for Joinder of Parties and Amendment of Pleadings: **June 26, 2014** with the caveat that pleadings can be amended as necessary to be consistent with facts uncovered through discovery.

b. Deadline to propound paper discovery: **September 18, 2014.**

Deadline to complete discovery: **October 17, 2014.**

c. Dispositive Motion Deadline: **December 10, 2014.**

d. Expert Witness Disclosures:

1. The parties anticipate 2 expert witnesses per party without leave of Court.

2. The parties shall designate all experts and provide opposing counsel and any pro se parties with all information specified in Fed. R. Civ. P. 26(a)(2) on or before **August 11, 2014.**

3. The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before **September 11, 2014.**

e. Identification of Persons to Be Deposed: The parties anticipate deposing each other. Additionally, Plaintiff anticipates deposing any person that may have had access to Defendants' internet service.

10. DATES FOR FURTHER CONFERENCES

a. A settlement conference will be held on April 23, 2014 at 9:30 o'clock a.m.

() *Pro se* parties and attorneys only need be present.

(X) Pro se parties, attorneys, and client representatives must be present.

(X) Each party shall submit a Confidential Settlement Statement to the magistrate judge on or before April 16, 2014 outlining the facts and issues, as well as the strengths and weaknesses of their case.

b. Status conferences will be held in this case at the following dates and times:

c. A final pretrial conference will be held in this case on February 9, 2015 at 9:30 o'clock a.m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than five (5) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

a. There are no discovery or scheduling issues which counsel after a good faith effort, were unable to reach an agreement at this time.

b. The parties anticipate that the trial will last no more than 3 days; Plaintiff has demanded a trial by jury.

c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facility at 212 N. Wahsatch Street, Colorado Springs, Colorado:

1. Motions in limine; and
2. Charging conference.

12. NOTICE TO COUNSEL AND PRO SE PARTIES

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1D by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1A.

In addition to filing an appropriate notice with the clerk's office, a *pro se* party must file a copy of a notice of change of his or her address or telephone number with the clerk of the magistrate judge assigned to this case.

In addition to filing an appropriate notice with the clerk's office, counsel must file a copy of any motion for withdrawal, motion for substitution of counsel, or notice of change of counsel's address or telephone number with the clerk of the magistrate judge assigned to this case.

13. AMENDMENTS TO SCHEDULING ORDER

The scheduling order may only be altered or amended upon a showing of good cause.

DATED this 25th day of February, 2014, in Denver, Colorado.

BY THE COURT:

S/Michael E. Hegarty
UNITED STATES MAGISTRATE JUDGE

APPROVED:

/s/ Jason Kotzker
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