

**UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**MALIBU MEDIA, LLC,**

**Plaintiff,**

**v.**

**Case No. 8:14-cv-01580-VCM-TBM**

**GREGORY WEAVER.**

**Defendant.**

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**CASE MANAGEMENT REPORT**

The parties have agreed on the following dates and discovery plan pursuant to Fed. R. Civ. P. 26(f) and Local Rule 3.05(c):

<b>DEADLINE OR EVENT</b>	<b>AGREED DATE</b>
<b>Mandatory Initial Disclosures (pursuant to Fed. R. Civ. P. 26(a)(1) as amended effective December 1, 2000) [Court recommends 30 days after CMR meeting]</b>	<b>May 15, 2015</b>
<b>Certificate of Interested Persons and Corporate Disclosure Statement [Each party who has not previously filed must file immediately]</b>	<b>May 15, 2015</b>
<b>Motions to Add Parties or to Amend Pleadings [Court recommends 1 - 2 months after CMR meeting]</b>	<b>July 6, 2015</b>
<b>Disclosure of Expert Reports Plaintiff: Defendant: [Court recommends 1 - 2 months before discovery deadline to allow expert depositions]</b>	<b>October 13, 2015 November 13, 2015</b>
<b>Discovery Deadline [Court recommends 6 - 8 months after defendant's first appearance]</b>	<b>January 15, 2016</b>

DEADLINE OR EVENT	AGREED DATE
<b>Dispositive Motions, <i>Daubert</i>, and <i>Markman</i> Motions</b> [Court requires 5 months or more before trial term begins]	February 1, 2016
<b>Meeting <i>In Person</i> to Prepare Joint Final Pretrial Statement</b> [10 days before Joint Final Pretrial Statement]	February 15, 2016
<b>Joint Final Pretrial Statement (<i>Including</i> a Single Set of Jointly-Proposed Jury Instructions and Verdict Form (with diskette), Voir Dire Questions, Witness Lists, Exhibit Lists with Objections on Approved Form)</b> [Court requires 6 weeks before Trial]	March 15, 2016
<b>All Other Motions Including Motions <i>In Limine</i></b> [Court requires 4 months or more before trial term begins]	March 31, 2016
<b>Final Pretrial Conference</b> [The Court will set a date]	
<b>Trial Term Begins</b> [Trial term must not be less than 5 months after dispositive motions deadline (unless filing of such motions is waived); district judge trial terms begin on the first Monday of each month; trials before magistrate judges will be set on a date certain after consultation with the parties]	April 11, 2016
<b>Estimated Length of Trial</b> [Number of trial days]	Four Days
<b>Jury / Non-Jury</b>	Jury
<b>Mediation Deadline:</b>  <b>Proposed Date of Mediation: January 15, 2016</b>  <b>Mediator: Gregg D. Thomas, Esq.</b> <b>Address: Thomas &amp; LoCicero, P.L.,</b> <b>601 South Boulevard, Tampa, FL 33606</b>  <b>Telephone: 813-984-3060</b>  [Absent arbitration, mediation is <i>mandatory</i> ; the Court recommends 7 days after the discovery deadline]	January 31, 2016

DEADLINE OR EVENT	AGREED DATE
All Parties Consent to Proceed Before Magistrate Judge	Yes ____ No <u>X</u> ____  Likely to Agree in Future ____

## I. Meeting of Parties in Person

Lead counsel must meet *in person* and not by telephone absent an order permitting otherwise. Counsel will meet in the Middle District of Florida, unless counsel agree on a different location. Pursuant to Local Rule 3.05(c)(2)(B) or (c)(3)(A),<sup>1</sup> a meeting was held by telephone on April 16, 2016 at 10:30 A.M. and was attended by:

Daniel Shatz.

Counsel for Plaintiff

Gregory Weaver

Defendant, Pro-Se

## II. Pre-Discovery Initial Disclosures of Core Information

### Fed. R. Civ. P. 26(a)(1)(A) - (D) Disclosures

Fed. R. Civ. P. 26, as amended effective December 1, 2000, provides that these disclosures are mandatory in Track Two and Track Three cases, except as stipulated by the parties or otherwise ordered by the Court (the amendment to Rule 26 supersedes Middle District of Florida Local Rule 3.05, to the extent that Rule 3.05 opts out of the mandatory discovery requirements):

The parties agree to exchange information described in Fed. R. Civ. P. 26(a)(1)(A) - (D) by no later than **May 15, 2015**.

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<sup>1</sup>A copy of the Local Rules may be viewed at <http://www.flmd.uscourts.gov>.

Below is a description of information disclosed or scheduled for disclosure, including electronically stored information as further described in Section III below.

### **III. Electronic Discovery**

The parties have discussed issues relating to disclosure or discovery of electronically stored information (“ESI”), including Pre-Discovery Initial Disclosures of Core Information in Section II above, and agree that (check one):

☐ No party anticipates the disclosure or discovery of ESI in this case;

☒ One or more of the parties anticipate the disclosure or discovery of ESI in this case.

If disclosure or discovery of ESI is sought by any party from another party, then the following issues shall be discussed:<sup>2</sup>

#### **Plaintiff and Defendant:**

The parties acknowledge that they are required to preserve relevant electronically stored information. The parties agree that their preservation obligations arise independently in law and equity, and do not require the entry of any order preserving documents and things from destruction or alteration. This includes the preservation of all of Defendant’s laptops, desktops, tablets, iPads, mobile phones, external storage devices, portable hard drives, external hard drives, and any other device which can be used to connect to the internet, download media files, or store electronic data (collectively, “computer hard drives”).

Plaintiff will be requesting complete forensically sound copies of Defendant’s computer hard drives. The parties agree that the forensically sound images will be created by a computer professional or Plaintiff’s expert and produced in EnCase E01 format.

Defendant agrees that he will preserve, and will immediately take efforts to prevent the destruction, expiration, deletion, overwriting, concealment, or modification (even if such data would otherwise expire, be deleted or overwritten, concealed, or modified in the normal course of business, including through the termination of user accounts) of Electronically Stored Information (“ESI”) reasonably related to this litigation in Defendant’s possession, custody, or control. Specifically, Defendant agrees that he will preserve:

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<sup>2</sup> See Generally: *Rules Advisory Committee Notes* to the 2006 Amendments to Rule 26 (f) and Rule 16.

- a. Defendant's laptops, desktops, tablets, mobile phones, external storage devices, portable hard drives, external hard drives, Network Attached Storage, USB (thumb) drives, and any other device which can be used to connect to the internet, download media files, or store electronic data (collectively, "Hard Drives"). Defendant can achieve preservation by retaining an expert to create forensically sound images of Defendant's Hard Drives or not engaging in any of the following activities: (1) deleting any data within any of Defendant's Hard Drives; (2) using data shredding, overwriting, or wiping applications; (3) defragmenting any Hard Drives; (4) re-imaging or replacing drives; (5) compressing a Hard Drive; (6) deleting internet cookies; (7) deleting browser history and favorites; (8) running any "disk clean-up" processes; (9) installing and uninstalling software on any Hard Drive; (10) updating an operating system on any Hard Drive; and/or (11) taking any actions inconsistent with Defendant's preservation obligations for electronically stored information or computer Hard Drives; and
- b. All contents of any third party cloud storage service such as Amazon Cloud Drive, Apple iCloud, DropBox, Google Drive, MediaFire, Mega, Microsoft SkyDrive, OneDrive, SpiderOak, and Ubuntu One; and
- c. Defendant's modem and router used in his home during the period of recorded infringement; and
- d. All emails, notifications, or correspondence from Defendant's Internet Service Provider ("ISP") to Defendant under the ISP's Copyright Alert System ("CAS"); and
- e. All emails, notifications, or correspondence from Defendant's Internet Service Provider to Defendant regarding a DMCA notice.

If there are disputed issues specified above, or elsewhere in this report, then (check one):

☐ One or more of the parties requests that a preliminary pre-trial conference under Rule 16 be scheduled to discuss these issues and explore possible resolutions. Although this will be a non-evidentiary hearing, if technical ESI issues are to be addressed, the parties are encouraged to have their information technology experts with them at the hearing.

**If a preliminary pre-trial conference is requested, a motion shall also be filed pursuant to Rule 16(a), Fed. R. Civ. P.**

☒ All parties agree that a hearing is not needed at this time because they expect to be

able to promptly resolve these disputes without assistance of the Court.

#### **IV. Agreed Discovery Plan for Plaintiffs and Defendants**

##### **A. Certificate of Interested Persons and Corporate Disclosure Statement —**

This Court has previously ordered each party, governmental party, intervenor, non-party movant, and Rule 69 garnishee to file and serve a Certificate of Interested Persons and Corporate Disclosure Statement using a mandatory form. No party may seek discovery from any source before filing and serving a Certificate of Interested Persons and Corporate Disclosure Statement. A motion, memorandum, response, or other paper — including emergency motion — is subject to being denied or stricken unless the filing party has previously filed and served its Certificate of Interested Persons and Corporate Disclosure Statement. Any party who has not already filed and served the required certificate is required to do so immediately.

Every party that has appeared in this action to date has filed and served a Certificate of Interested Persons and Corporate Disclosure Statement, which remains current:

\_\_\_\_\_ Yes

  x   No

Amended Certificate will be filed by all parties (party) on or before **May 15, 2015**.

##### **B. Discovery Not Filed —**

The parties shall not file discovery materials with the Clerk except as provided in Local Rule 3.03. The Court encourages the exchange of discovery requests electronically. *See* Local Rule 3.03 (f). The parties further agree as follows:

No further agreements on Discovery.

##### **C. Limits on Discovery —**

NONE

Absent leave of Court, the parties may take no more than ten depositions per side (not per party). Fed. R. Civ. P. 30(a)(2)(A); Fed. R. Civ. P. 31(a)(2)(A); Local Rule 3.02(b). Absent leave of Court, the parties may serve no more than twenty-five interrogatories, including subparts. Fed. R. Civ. P. 33(a); Local Rule 3.03(a). Absent leave of Court or stipulation of the parties each deposition is limited to one day of seven hours. Fed. R. Civ. P. 30(d)(2). The parties may agree by stipulation on other limits on discovery. The Court will consider the parties' agreed dates, deadlines, and other limits in entering the scheduling order. Fed. R. Civ. P. 29. In addition to the deadlines in the above table, the parties have agreed to further limit discovery as follows:

1. Depositions

Each deposition should last no longer than 7 hours.

2. Interrogatories

The parties agree to propound no more than 25 written interrogatories.

3. Document Requests

NONE

4. Requests to Admit

NONE

5. Supplementation of Discovery

NONE

**D. Discovery Deadline —**

Each party shall timely serve discovery requests so that the rules allow for a response

prior to the discovery deadline. The Court may deny as untimely all motions to compel filed after the discovery deadline. In addition, the parties agree as follows: N/A

**E. Disclosure of Expert Testimony —**

On or before the dates set forth in the above table for the disclosure of expert reports, the parties agree to fully comply with Fed. R. Civ. P. 26(a)(2) and 26(e). Expert testimony on direct examination at trial will be limited to the opinions, basis, reasons, data, and other information disclosed in the written expert report disclosed pursuant to this order. Failure to disclose such information may result in the exclusion of all or part of the testimony of the expert witness. The parties agree on the following additional matters pertaining to the disclosure of expert testimony: N/A

**F. Confidentiality Agreements —**

Whether documents filed in a case may be filed under seal is a separate issue from whether the parties may agree that produced documents are confidential. The Court is a public forum, and disfavors motions to file under seal. The Court will permit the parties to file documents under seal only upon a finding of extraordinary circumstances and particularized need. *See Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013 (11th Cir. 1992); *Wilson v. American Motors Corp.*, 759 F.2d 1568 (11th Cir. 1985). A party seeking to file a document under seal must file a motion to file under seal requesting such Court action, together with a memorandum of law in support. The motion, whether granted or denied, will remain in the public record.

The parties may reach their own agreement regarding the designation of materials as “confidential.” There is no need for the Court to endorse the confidentiality agreement. The



Court discourages unnecessary stipulated motions for a protective order. The Court will enforce appropriate stipulated and signed confidentiality agreements. *See* Local Rule 4.15. Each confidentiality agreement or order shall provide, or shall be deemed to provide, that “no party shall file a document under seal without first having obtained an order granting leave to file under seal on a showing of particularized need.” With respect to confidentiality agreements, the parties agree as follows: N/A

**G. Other Matters Regarding Discovery —**

NONE

**V. Settlement and Alternative Dispute Resolution.**

**A. Settlement —**

The parties agree that settlement is

\_\_\_\_\_ likely   x   unlikely (check one)

The parties request a settlement conference before a United States Magistrate Judge.

\_\_\_\_\_ yes \_\_\_\_\_ no \_\_\_\_\_ likely to request in future   x  

**B. Arbitration —**

The Local Rules no longer designate cases for automatic arbitration, but the parties may elect arbitration in any case. Do the parties agree to arbitrate?

\_\_\_\_\_ yes \_\_\_\_\_ no   x   likely to agree in future \_\_\_\_\_

\_\_\_\_\_ Binding \_\_\_\_\_ Non-Binding

**C. Mediation —**

Absent arbitration or a Court order to the contrary, the parties in every case will

participate in Court-annexed mediation as detailed in Chapter Nine of the Court's Local Rules. The parties have agreed on a mediator from the Court's approved list of mediators as set forth in the table above, and have agreed to the date stated in the table above as the last date for mediation. The list of mediators is available from the Clerk, and is posted on the Court's web site at <http://www.flmd.uscourts.gov>.

**D. Other Alternative Dispute Resolution —**

The parties intend to pursue the following other methods of alternative dispute resolution:

N/A

April 16, 2015

By: /s/ M. Keith Lipscomb

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*Defendant, Pro-Se*