

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-cv-61991-BLOOM/Valle

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**1 GLOBAL CAPITAL, LLC, and
CARL RUDERMAN,**

Defendants, and

**1 WEST CAPITAL, LLC,
BRIGHT SMILE FINANCING, LLC,
BRR BLOCK, INC.,
DIGI-SOUTH, INC.,
GANADOR ENTERPRISES, LLC,
MEDIA PAY, LLC,
PAY NOW DIRECT, LLC, and
RUDERMAN FAMILY TRUST,**

Relief Defendants.

JOINT SCHEDULING REPORT

Pursuant to the Court's Order Requiring Scheduling Report And Certificates Of Interested Parties (DE 30), the parties held a telephone conference on September 27, 2018 to develop the following written discovery plan and scheduling report and order as required by Federal Rule of Civil Procedure 26(f) and Southern District of Florida Local Rule 16.1(b)(2) and (b)(3). Attending for each party were:

Plaintiff Securities and Exchange Commission: Robert Levenson and Christopher Martin

Defendant Carl Ruderman: Michael Pineiro

Defendant 1 Global Capital LLC and Relief Defendant 1 West Capital LLC: Jed Dwyer and Stephanie Peral

Relief Defendants Bright Smile Financing, LLC; BRR Block, Inc.; Digi South, Inc.; Ganador Enterprises LLC; Media Pay, LLO; and Pay Now Direct, LLC: Dan Newman

The Ruderman Family Trust, which has defaulted, was not represented.

Written Discovery Plan

The parties developed the following written discovery plan using the factors set forth in Federal Rule of Civil Procedure 26(f):

(A) What changes should be made in the timing, form, or requirement for disclosure under Rule 26(a), including a statement of when initial disclosures were made or will be made.

The parties agree to make the initial disclosures required by Rule 26(a) by Friday, October 26, 2018.

(B) The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues.

The parties believe this is a standard track case, with approximately 10 days required for trial, and believe it will require almost nine months to complete discovery. Discovery should be completed by June 21, 2019.

The parties anticipate seeking written and document discovery and taking depositions. The parties are unsure at this time if they see a need for taking more than 10 depositions per side as limited by Federal Rule of Civil Procedure 30(a)(2)(A); if one or more parties seeks more than 10 depositions the parties will attempt to arrive at a stipulation to be filed with the Court. The parties have also reached an agreement that without leave of court they are limited to no more than 30 requests for admission per side and no more than 10 contention interrogatories per side (out of the total of 25 interrogatories).

(C) Any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced.

The parties agree to preserve all discoverable or potentially discoverable information within their possession, custody, or control. Whenever feasible, the parties will produce all electronically stored information (“ESI”) in bates-stamped, OCR text, or tiff format. Alternatively, if unable to produce ESI in such a manner, the parties will produce the information in the existing stored format. The parties further agree that they will maintain all relevant ESI in its original format until final resolution of this matter.

(D) Any issues about claims of privilege or of protection as trial-preparation materials, including – if the parties agree on a procedure to assert these claims after production – whether to ask the Court to include their agreement in an order under Federal Rule of Evidence 502.

Defendant 1 Global Capital and Relief Defendant 1 West Capital have produced documents to the other parties under a “clawback” agreement, in which 1 Global and 1 West agreed to produce documents without an exhaustive, time-consuming privilege review. In exchange the other parties agreed to promptly notify and return to 1 Global and 1 West any documents they agree are privileged if they discover such documents after production.

Moreover, the parties have further agreed that if any party inadvertently produces ESI or other documents that the producing party claims after production are privileged, the producing party will notify the opposing party within a reasonable amount of time after learning that an inadvertent production of privileged material has occurred. Further, the receiving party shall promptly return, sequester, or destroy the material in question, and must take reasonable steps to retrieve the information from third parties, including expert witnesses. However, the parties reserve their right to claim the disclosed information was not privileged, or that the privilege was waived, and submit the matter to the Court if an agreement cannot be reached.

(E) What changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed.

None other than described elsewhere in this scheduling report.

(F) Any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

None at this time.

Scheduling Report

(A) The likelihood of settlement.

The Commission will likely settle its claims with Defendant 1 Global Capital, and Relief Defendants 1 West Capital and all those Relief Defendants currently represented by the Court-appointed Receiver. The Commission is discussing settlement with those parties now. The Commission and Defendant Carl Ruderman have discussed settlement but do not believe it is likely at this time.

(B) The likelihood of appearance in the action of additional parties.

The parties do not believe appearance by additional parties is likely.

(C) Proposed limits on the time:

(i) To select a mediator and schedule a time, date, and place for mediation.

November 2, 2018.

(ii) To join other parties and amend the pleadings.

November 30, 2018.

(iii) To disclose the identity of all expert witnesses and provide all disclosures required by Federal Rule of Civil Procedure 26(b)(2)(B).

March 22, 2019

(iv) To provide the identity of any rebuttal expert witnesses and their disclosures required by Federal Rule of Civil Procedure 26(b)(2)(B).

April 19, 2019

(v) To complete all discovery.

June 21, 2019. All discovery should be undertaken in sufficient time to allow for completion of all discovery by this date (i.e., written interrogatories or document requests should be served no later than 30 days before end of discovery).

(vi) Deadline for completing mediation.

July 12, 2019.

(vii) Deadline for filing dispositive pre-trial motions, including *Daubert* motions.

July 26, 2019.

(viii) Deadline for filing motions *in limine*.

September 13, 2019.

(ix) Submission of joint pre-trial stipulation (including witness and exhibit lists), proposed jury instructions and verdict form, or proposed findings of fact and conclusions of law, as applicable.

October 4, 2019.

(x) Calendar call.

November 4, 2019.

(xi) Trial begins.

November 12, 2019.

(D) Proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment.

The parties will work to streamline the issues. Once Defendant Ruderman answers, the parties will be in a better position to discuss simplification of claims and defenses.

(E) The necessity or desirability of amendments to the pleadings.

The Commission filed an Amended Complaint on September 26, 2018.

(F) The possibility of obtaining admissions of fact and of documents, electronically stored information or things which will avoid unnecessary proof, stipulations regarding authenticity of documents, electronically stored information or things, and the need for advance rulings from the Court on admissibility of evidence.

The parties will attempt to stipulate to the authenticity of documents and admissibility of evidence so as to avoid numerous mid-trial arguments and the need for rulings that will slow down trial. Once the parties discuss and file their final witness and exhibit lists, the parties can address unresolved evidentiary issues at the final pre-trial conference.

(G) Suggestions for the avoidance of unnecessary proof and of cumulative evidence.

The parties will attempt to reach pre-trial stipulations.

(H) Suggestions on the advisability of referring matters to a Magistrate Judge or master.

The parties are separately filing the form with what they consent to, if anything, for Magistrate jurisdiction. The parties do not believe referring matters to a special master would be appropriate.

(I) A preliminary estimate of the time required for trial.

Two weeks.

(J) Requested date or dates for conferences before trial, a final pre-trial conference, and trial.

The parties request that trial begin on November 12, 2019. They request a final pre-trial conference approximately three weeks before trial, October 21, 2019.

(K) Any issues about: (i) disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced; (ii) claims of privilege or of protection as trial-preparation materials, including – if the parties agree on a procedure to assert those claims after production – whether to ask the Court to include their agreement in an order under Federal Rule of Evidence 502; and (iii) when the parties have agreed to use the ESI Checklist available on the Court's website, matters enumerated on the ESI Checklist.

None at this time other than those identified in the written discovery plan.

(L) Any other information that might be helpful to the Court in setting the case for status or pre-trial conference.

None at this time.

October 2, 2018

Respectfully submitted,

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