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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT GRUDER,
Plaintiff,
v.
BOOMSOURCING, LLC, *et al.*,
Defendants.

Case No.: 3:20-cv-00796-BEN-AHG

ORDER:

(1) GRANTING IN PART AND DENYING IN PART JOINT MOTION TO EXTEND DISCOVERY DEADLINES; and

(2) ENTERING AMENDED SCHEDULING ORDER

[ECF No. 28]

This matter comes before the Court on the Joint Motion to Extend Discovery Deadlines, filed on January 22, 2021. ECF No. 28. The parties seek an eight-month extension of all discovery deadlines in the case in light of Plaintiff’s recent filing of an Amended Complaint on January 4, 2021, newly naming Boomsourcing, LLC as a Defendant, followed by Plaintiff’s dismissal of the originally named defendant Crisp Marketing, LLC. *See id.*; *see also* ECF Nos. 23, 25, 26.

Under Fed. R. Civ. P 16(b)(4), “[a] schedule may be modified only for good cause and with the judge’s consent.” “Good cause” is a non-rigorous standard that has been

1 construed broadly across procedural and statutory contexts. *Ahanchian v. Xenon Pictures,*
2 *Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010). The good cause standard focuses on the diligence
3 of the party seeking to amend the scheduling order and the reasons for seeking
4 modification. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).
5 “[T]he court may modify the schedule on a showing of good cause if it cannot reasonably
6 be met despite the diligence of the party seeking the extension.” Fed. R. Civ. P. 16, advisory
7 committee’s notes to 1983 amendment. Therefore, “a party demonstrates good cause by
8 acting diligently to meet the original deadlines set forth by the court.” *Merck v. Swift*
9 *Transportation Co.*, No. CV-16-01103-PHX-ROS, 2018 WL 4492362, at *2 (D. Ariz.
10 Sept. 19, 2018).

11 The Court finds good cause to extend the Scheduling Order to permit sufficient time
12 for Plaintiff and the newly named Defendant to conduct discovery. However, the parties
13 have not shown good cause for the eight-month extension requested. The case remains a
14 relatively straightforward TCPA case between two parties, and the Court thus sees fit to
15 impose a similar case schedule as it imposed in the initial Scheduling Order (ECF No. 13),
16 which allowed approximately four months of fact discovery following the Case
17 Management Conference.

18 Accordingly, the Joint Motion is **GRANTED IN PART** and **DENIED IN PART**.
19 The Scheduling Order is hereby **AMENDED** as follows:

20 1. All fact discovery shall be completed by all parties by **May 24, 2021**.
21 “Completed” means that all discovery under Rules 30-36 of the Federal Rules of Civil
22 Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of
23 time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking
24 into account the times for service, notice and response as set forth in the Federal Rules of
25 Civil Procedure. **Counsel shall promptly and in good faith meet and confer with regard**
26 **to all discovery disputes in compliance with Local Rule 26.1(a). A failure to comply**
27 **in this regard will result in a waiver of a party’s discovery issue. Absent an order of**
28 **the court, no stipulation continuing or altering this requirement will be recognized by**

1 **the court.** The Court expects counsel to make every effort to resolve all disputes without
2 court intervention through the meet and confer process. If the parties reach an impasse on
3 any discovery issue, the movant must e-mail chambers at
4 efile_goddard@casd.uscourts.gov no later than 45 days after the date of service of the
5 written discovery response that is in dispute, seeking a telephonic conference with the
6 Court to discuss the discovery dispute. The email must include: (1) at least three proposed
7 times mutually agreed upon by the parties for the telephonic conference; (2) a neutral
8 statement of the dispute; and (3) one sentence describing (not arguing) each parties'
9 position. The movant must copy opposing counsel on the email. No discovery motion may
10 be filed until the Court has conducted its pre-motion telephonic conference, unless the
11 movant has obtained leave of Court. **All parties are ordered to read and to fully comply**
12 **with the Chambers Rules of Magistrate Judge Allison H. Goddard.**

13 2. The parties shall designate their respective experts in writing by
14 **June 25, 2021**. Pursuant to Federal Rule of Civil Procedure 26(a)(2)(A), the parties must
15 identify any person who may be used at trial to present evidence pursuant to Rules 702,
16 703 or 705 of the Federal Rules of Evidence. This requirement is not limited to retained
17 experts. The date for exchange of rebuttal experts shall be by **July 26, 2021**. The written
18 designations shall include the name, address and telephone number of the expert and a
19 reasonable summary of the testimony the expert is expected to provide. The list shall also
20 include the normal rates the expert charges for deposition and trial testimony.

21 3. By **June 25, 2021**, each party shall comply with the disclosure provisions in
22 Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure
23 requirement applies to all persons retained or specially employed to provide expert
24 testimony, or whose duties as an employee of the party regularly involve the giving of
25 expert testimony. **Except as provided in the paragraph below, any party that fails to**
26 **make these disclosures shall not, absent substantial justification, be permitted to use**
27 **evidence or testimony not disclosed at any hearing or at the time of trial. In addition,**
28 **the Court may impose sanctions as permitted by Federal Rule of Civil Procedure**

1 **37(c).**

2 4. Any party shall supplement its disclosure regarding contradictory or rebuttal
3 evidence under Federal Rules of Civil Procedure 26(a)(2)(D) and 26(e) by
4 **July 26, 2021**.

5 5. All expert discovery shall be completed by all parties by **August 27, 2021**.
6 The parties shall comply with the same procedures set forth in the paragraph governing
7 fact discovery. Failure to comply with this section or any other discovery order of the court
8 may result in the sanctions provided for in Federal Rule of Civil Procedure 37, including a
9 prohibition on the introduction of experts or other designated matters in evidence.

10 6. All other pretrial motions must be filed by **October 12, 2021**. Counsel for the
11 moving party must obtain a motion hearing date from the law clerk of the judge who will
12 hear the motion. The period of time between the date you request a motion date and the
13 hearing date may vary from one district judge to another. Please plan accordingly. Failure
14 to make a timely request for a motion date may result in the motion not being heard.
15 Deadlines for filing motions in limine will be set by the district judge at the final Pretrial
16 Conference.

17 7. When filing a Motion for Summary Judgment and/or Adjudication, the parties
18 need not file a separate statement of material facts absent prior leave of court.

19 8. A Mandatory Settlement Conference shall be conducted on **January 10, 2022**
20 at **9:30 a.m.** in the chambers of **Magistrate Judge Allison H. Goddard**. Plaintiff must
21 serve on Defendant a **written** settlement proposal, which must include a specific demand
22 amount, no later than **December 13, 2021**. The defendant must respond to the plaintiff **in**
23 **writing** with a specific offer amount prior to the Meet and Confer discussion. The parties
24 should not file or otherwise copy the Court on these exchanges. Rather, the parties must
25 include their written settlement proposals in their respective Settlement Conference
26 Statements to the Court. Counsel for the parties must meet and confer in person or by
27 phone no later than **December 20, 2021**. Each party must prepare a Settlement Conference
28 Statement, which will be served on opposing counsel and lodged with the Court no later

1 than **January 5, 2021**.

2 The Statement must be lodged in .pdf format via email to

3 efile_goddard@casd.uscourts.gov (not filed). The substance of the Settlement

4 Conference Statement must comply fully with Judge Goddard's Mandatory Settlement

5 Conference Rules (located at

6 <https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Mandatory%20Settlem>

7 [ent%20Conference%20Rules.pdf](https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Mandatory%20Settlem)). Each party may also prepare an **optional**

8 Confidential Settlement Letter for the Court's review only, to be lodged with the Court

9 no later than **January 5, 2021**. The Letter must be lodged in .pdf format via email to

10 efile_goddard@casd.uscourts.gov (not filed). Should a party choose to prepare a Letter,

11 the substance of the Settlement Conference Letter must comply fully with Judge

12 Goddard's Mandatory Settlement Conference Rules. **All parties are ordered to read**

13 **and to fully comply with the Chambers Rules and Mandatory Settlement**

14 **Conference Rules of Magistrate Judge Allison H. Goddard.**

15 9. In jury trial cases before the Honorable Roger T. Benitez, neither party, unless
16 otherwise ordered by the Court, is required to file Memoranda of Contentions of Fact and
17 Law pursuant to Civil Local Rule 16.1(f)(2).

18 10. Counsel shall comply with the pre-trial disclosure requirements of Federal
19 Rule of Civil Procedure 26(a)(3) by **January 17, 2022**. Failure to comply with these
20 disclosure requirements could result in evidence preclusion or other sanctions under
21 Federal Rule of Civil Procedure 37.

22 11. Counsel shall meet and take the action required by Civil Local Rule 16.1(f)(4)
23 by **January 24, 2022**. At this meeting, counsel shall discuss and attempt to enter into
24 stipulations and agreements resulting in simplification of the triable issues. Counsel shall
25 exchange copies and/or display all exhibits other than those to be used for impeachment.
26 The exhibits shall be prepared in accordance with Civil Local Rule 16.1(f)(4)(c). Counsel
27 shall note any objections they have to any other parties' Pretrial Disclosures under Federal
28 Rule of Civil Procedure 26(a)(3). Counsel shall cooperate in the preparation of the

1 proposed pretrial conference order.

2 12. Counsel for plaintiff will be responsible for preparing the pretrial order and
3 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By
4 **January 31, 2022**, plaintiff's counsel must provide opposing counsel with the proposed
5 pretrial order for review and approval. Opposing counsel must communicate promptly
6 with plaintiff's attorney concerning any objections to form or content of the pretrial order,
7 and both parties shall attempt promptly to resolve their differences, if any, concerning the
8 order.

9 13. The Proposed Final Pretrial Conference Order, including objections to any
10 other parties' Federal Rule of Civil Procedure 26(a)(3) Pretrial Disclosures shall be
11 prepared, served and lodged with the assigned district judge by **February 7, 2022**, and
12 shall be in the form prescribed in and comply with Civil Local Rule 16.1(f)(6).

13 14. The final Pretrial Conference is scheduled on the calendar of the **Honorable**
14 **Roger T. Benitez** on **February 14, 2022** at **10:30 AM**.

15 15. The parties must review the chambers' rules for the assigned district judge
16 and magistrate judge.

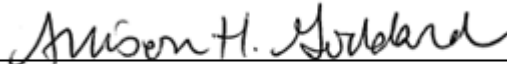
17 16. A post trial settlement conference before a magistrate judge may be held
18 within 30 days of verdict in the case.

19 17. The dates and times set forth herein will not be modified except for good cause
20 shown.

21 18. Plaintiff's counsel shall serve a copy of this order on all parties that enter this
22 case hereafter.

23 **IT IS SO ORDERED.**

24 Dated: January 26, 2021

25 
26 _____
27 Honorable Allison H. Goddard
28 United States Magistrate Judge