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

Civil Action No. 1:12-cv-00886-MEH

MALIBU MEDIA, LLC,

Plaintiff,

v.

JEFF FANTALIS and BRUCE DUNN,

Defendants.

/

PLAINTIFF’S MOTION TO MODIFY SCHEDULE

Plaintiff, Malibu Media, LLC (“Plaintiff”), moves for the entry of an order modifying the schedule, and states:

1. The pleadings in this matter are still open. In due course, Plaintiff will move to dismiss Defendant’s Second Amended Counterclaim filed on October 23, 2012. Therefore, the pleadings will not likely be closed until mid to late November – at the earliest.

2. Neither party has taken a deposition.

3. Through this motion, Plaintiff respectfully requests that the Court modify the schedule as follows:

<u>Action</u>	<u>Current Deadline</u>	<u>Proposed Deadline</u>
Deadline to hold depositions.	October 26, 2012	February 14, 2013
Deadline to exchange Witness Lists	--	December 31, 2012
Deadline to exchange exhibits/deposition excerpts and object	April 16, 2013	April 12, 2013
Dispositive Motions	January 22, 2013	March 6, 2013

4. These changes can be made without altering the trial date and will produce a

fairer schedule that is less susceptible to creating unfair surprises both during the litigation and at trial.

5. Currently, the deadline to take depositions precedes the deadline to complete paper discovery. Plaintiff respectfully suggests that it makes more sense for the deadline to exchange paper discovery to precede the deadline for the parties to take depositions. Indeed, as is customary, Plaintiff will likely ask Defendant questions about his discovery responses and the documents he produces.

6. Currently, the witness list is due on April 19, 2013, which is after the deadline to take depositions. To avoid surprises at trial, Plaintiff would like to take the deposition of each of the people on Defendant's witness list. Accordingly, the deadline to exchange witness lists should precede the deadline for taking depositions.

7. Additionally, this Court's order requires the parties to provide lists of the objections each party has to the other party's proposed trial exhibits and the sections of the depositions which the parties intend to produce at trial, by no later than April 16, 2013. *See Trial Procedures Order* [Dkt. 51]. In order to lists of objections at the trial preparation conference, the parties need sufficient time in advance to review each others' exhibit and deposition transcript lists. For this reason, Plaintiff suggests that this Court add a deadline of April 12, 2013, which is five business days before the conference at which the parties must exchange the two lists.

8. Finally, the deadline to file dispositive motions is currently January 22, 2013. Plaintiff's proposed change causes the dispositive motion deadline to come 20 days after the proposed deadline to take depositions. Indeed, the parties often quote deposition testimony in dispositive motions and sequencing the events in this manner will enable them to do so.

9. Neither party will be prejudiced by the granting of this motion.

10. Since the schedule modification will aid with the orderly disposition of this matter, there is good cause to grant this motion.

11. Undersigned has conferred with Defendant who indicates that he opposes the entry an order granting the relief requested herein.

WHEREFORE, Plaintiff, respectfully requests that this Court enter an order modifying the schedule as follows:

<u>Action</u>	<u>Current Deadline</u>	<u>New Deadline</u>
Deadline to hold depositions.	October 26, 2012	February 14, 2013
Deadline to exchange Witness Lists	--	December 31, 2012
Deadline to exchange exhibits/deposition excepts and object	April 16, 2013	April 12, 2013
Dispositive Motions	January 22, 2013	March 6, 2013

A proposed order is attached hereto.

Dated: October 29, 2012

Respectfully submitted,

By: /s/ Jason Kotzker

Jason Kotzker

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Attorney for Plaintiff

CERTIFICATE OF COMPLIANCE WITH D.C. Colo. L. Civ. R. 7.1

Pursuant to D.C. Colo. L. Civ. R. 7.1(A), Plaintiff has conferred with Defendant, Mr. Fantalis, concerning the relief Plaintiff seeks herein. Mr. Fantalis opposes the relief sought.

By: /s/Jason Kotzker
Jason Kotzker

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2012 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all interested parties through this system. Service was also perfected by placing a copy of the foregoing in the U.S. Mail addressed to Mr. Fantalis

By: /s/Jason Kotzker
Jason Kotzker