

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNIVERSAL SECURE REGISTRY LLC,)
)
Plaintiff,)
)
v.)
)
APPLE INC., VISA INC. and)
VISA U.S.A., INC.,)
)
Defendants.)

C.A. No. 17-585 (JFB) (SRF)

~~PROPOSED~~ SCHEDULING ORDER

This 10th day of April, 2018, the Court having conducted an initial Rule 16 scheduling and planning conference pursuant to Federal Rule of Civil Procedure 16(b) and Local Rule 16.1 on April 3, 2018 and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

1. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before November 30, 2018.
2. Discovery. All discovery in this case shall be initiated so that it will be completed on or before July 2, 2019. Unless otherwise ordered by the Court, the limitations on discovery set forth in Local Rule 26.1 shall be strictly observed.
 - a. Rule 26(a)(1) Initial Disclosures. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) within five (5) days of the date of this Order.

b. E-Discovery Default Standard. The parties have reviewed the Court's Default Standard for Discovery of Electronic Documents, Including Discovery of Electronically Stored Information ("ESI"). The parties propose to adopt the Court's Default Standard for Discovery with the following exceptions.

- Paragraph 3 disclosures shall be due by May 3, 2018
- Paragraph 4(a) disclosures shall be due by May 3, 2018
- Paragraph 4(b) disclosures shall be due by June 18, 2018
- Paragraph 4(c) disclosures shall be due by August 10, 2018.
- Paragraph 4(d) disclosures shall be due by October 2, 2018.
- The parties will submit their modifications to Paragraph 5 by April 12, 2018.

c. Document Production. Document production shall be completed on or before February 8, 2019.

d. Interrogatories. A maximum of 12 common interrogatories are permitted to Defendants collectively by Plaintiff. A maximum of 12 common interrogatories are permitted for Defendants collectively to Plaintiff. Plaintiff is also permitted, for each Defendant, a maximum of 13 additional individual interrogatories. A maximum of 13 additional individual interrogatories are also permitted by each Defendant to Plaintiff.

e. Contention Interrogatories. In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof no later than the date established for the completion of document production, with the responsive answers due within thirty (30) days thereof. The adequacy of all such interrogatory answers shall

be judged by the level of detail each party provides; i.e., the more detail a party provides, the more detail a party shall receive.

f. Requests for Admission. Unlimited requests for admission as to authenticity of documents are permitted. The parties agree to work together to reach a stipulation that addresses authenticity of documents and thereby minimize or avoid the need for requests for admission as to authenticity. Plaintiff is permitted, for each Defendant, a maximum of 25 individual requests. A maximum of 25 individual requests are permitted by each Defendant to Plaintiff.

g. Depositions.

i. Timing. In the absence of agreement among the parties or by order of the Court, no deposition (other than those noticed under Fed. R. Civ. P. 30(b)(6)) shall be scheduled prior to the completion of document production.

ii. Limitation on Hours for Deposition Discovery. Plaintiff is limited, for each defendant, to a maximum of 65 hours for taking depositions (excluding expert depositions and non-party depositions). Defendants collectively are limited to a maximum of 65 hours for taking depositions (excluding expert depositions and non-party depositions) of Plaintiff. Defendants collectively may take a maximum of 21 hours of 30(b)(6) time of Plaintiff. Plaintiff is limited, for each defendant, to a maximum of 21 hours of 30(b)(6) time. Defendants collectively may take a maximum of 21 hours of deposition of Plaintiff's Kenneth P. Weiss (both 30(b)(1) deposition time and 30(b)(6) deposition time count against the 21 hour limit). The default deposition hour limit for all other witnesses, party or non-party, shall be 7 hours for each witness (absent written agreement or leave of Court and, in the case of non-parties, their agreement). The parties shall cooperate to modify the default 7 hour limit in the case of 30(b)(6)

designated witnesses where the number of designated topics for a particular designated witness cannot reasonably be covered within the 7 hour limit. The parties will also cooperate to modify the default 21 hour limit for 30(b)(6) depositions where additional hours are needed due to the number of 30(b)(6) witnesses designated on the noticed topics. In no event shall any single deposition exceed 7 hours on the record for a single day of testimony, unless the parties agree otherwise. If additional hours for party deposition discovery becomes necessary, the parties shall meet and confer in good-faith to try to reach agreement on the number of additional hours needed. There is no limit on the number of non-party depositions.

iii. Location of Depositions. The parties will cooperate in good-faith to try and reach agreement on a mutually agreeable location for depositions of party witnesses to take place.

h. Disclosure of Expert Testimony.

i. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before August 6, 2019.

ii. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before September 6, 2019.

iii. Reply expert reports from the party with the initial burden of proof are due on or before October 7, 2019.

iv. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition. Depositions of experts shall be completed on or before November 8, 2019.

v. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

i. Fact Witnesses to be Called at Trial.

i. Within one (1) month following the close of expert discovery, each party shall serve on the other parties a list of each fact witness (including any expert witness who is also expected to give fact testimony), who has previously been disclosed during discovery and that it intends to call at trial.

ii. Within one (1) month of receipt of such fact witness list, each party shall serve a list of each rebuttal fact witness that it intends to call at trial.

iii. The parties shall have the right to depose any such fact witnesses who have not previously been deposed in this case. Such deposition shall be held within one (1) month after service of the list of rebuttal fact witnesses and shall be limited to twenty (20) hours per side in the aggregate unless extended by agreement of the parties or upon order of the Court upon good cause shown.

j. Discovery Matters and Disputes Relating to Protective Orders.

i. Should counsel find they are unable to resolve a discovery matter or those other matters covered by this paragraph,¹ the parties involved shall contact chambers at (302) 573-4551 to schedule a telephone conference.

¹ Counsel are expected to *verbally* discuss the issues/concerns before seeking the Court's intervention.

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