

Pages 1 - 11

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Edward M. Chen, Judge

CAT BROOKS, individually and	)	
on behalf of all others	)	
similarly situated, et al.,	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	NO. C 21-01418-EMC
	)	
THOMSON REUTERS CORPORATION,	)	
	)	
Defendant.	)	
	)	

San Francisco, California
Tuesday, August 17, 2021

TRANSCRIPT OF REMOTE VIDEOCONFERENCE PROCEEDINGS

APPEARANCES: (Appearances via Zoom videoconference.)

For Plaintiffs:

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NICOLA C. MENALDO, ATTORNEY AT LAW

Reported By: Ruth Levine Ekhaus, RMR, RDR, FCRR
Official Reporter, CSR No. 12219

Tuesday - August 17, 2021

2:43 p.m.

P R O C E E D I N G S

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THE CLERK: Calling Civil Action 21-1418, Brooks, et al. versus Thompson Reuters Corporation.

Counsel, please state your appearances --

THE COURT: Oops. Sorry. I hit the wrong button. Sorry about that.

THE CLERK: Counsel, please state your appearances for the record, beginning with counsel for plaintiffs.

MR. MURA: Good afternoon. Andre Mura for the plaintiffs.

THE COURT: All right. Good afternoon, Mr. Mura.

MS. FAHRINGER: Good after, Your Honor. Susan Fahringer for Thompson Reuters.

THE COURT: All right. Thank you and good afternoon, Ms. Fahringer.

MS. MENALDO: Good afternoon. Nicola Menaldo for Thompson Reuters as well.

THE COURT: All right. Good afternoon, Ms. Menaldo.

Okay. Where do we go from here? I guess my first question is, you filed an ADR certificate, according to the statement, but for some reason, I didn't -- I don't have that.

What are the parties' thoughts about timing and format of any ADR process?

1 **MR. MURA:** Your Honor, plaintiffs would be open to
2 private mediation. And, in terms of a schedule, we're open to
3 proceeding along that track as defendants feel comfortable. So
4 if that -- if that is in agreement with defendants, then we can
5 discuss internally what a schedule would like look.

6 We did propose a deadline to pursue private mediation, and
7 we do find that that's helpful in a case schedule. I believe,
8 Thomson Reuters suggested not including a deadline.

9 **THE COURT:** Yeah. Your deadline, at least in the
10 schedule, is about a year after discovery begins.

11 **MR. MURA:** Yes, Your Honor.

12 **THE COURT:** Okay. What are defendant's thoughts?

13 **MS. FAHRINGER:** We're not opposed to mediation either,
14 and private mediation, I think, makes the most sense in a case
15 like this. So I think the parties are in agreement on that.

16 And we're not opposed to a deadline; we just didn't know
17 that it needed to be included in the case schedule. A deadline
18 a year from now would be fine. But either way, I think that
19 the parties are in a position to talk about that as discussions
20 ensue.

21 **THE COURT:** Okay. Well, the big question that comes
22 up in these cases, these putative class action cases, is
23 whether the parties are open to having discussions prior to
24 class cert, or is this one of those where the parties want to
25 go through the class cert process first.

1 So I guess -- I don't know if you've had that discussion
2 or thought about it, but I would like to get your sense of
3 that.

4 **MR. MURA:** I think plaintiffs are amenable to having
5 the discussion before class cert; sometimes that's fruitful.
6 So I don't have a particular preference about doing it, waiting
7 until after class certification for -- to have that dialogue.

8 **MS. FAHRINGER:** And for the defendant's part, I think,
9 the -- the approach is the same. We're open to discussions at
10 any time, open to them before class cert, as well after. I
11 would want to not preclude us from having ongoing discussions,
12 obviously. But I think counsel have been very cooperative and
13 professional with each other throughout the case, so I don't
14 think there is any issue in terms of beginning discussions at
15 any time.

16 **THE COURT:** Okay. Well, I like to encourage early
17 discussions. Especially in a complicated case, it makes sense.

18 Let me ask, if we are about to embark on discovery, the
19 plaintiff is proposing, you know, exchange of initial
20 disclosures fairly soon, and then, you know, within about
21 six months, disclosure of class cert experts, and go through
22 that process and then filing the motion really sort of
23 nine months, looks like, is what you're proposing.

24 **MR. MURA:** Yes, Your Honor.

25 **THE COURT:** I think the defendant has a little --

1 slightly elongated schedule, 14 months. But is that the
2 sequence of things that you -- I guess you're expecting fairly
3 extensive class cert expert testimony in this case.

4 **MR. MURA:** Yes, Your Honor. We intend to proceed
5 with -- there is no request to bifurcate discovery, so we would
6 seek discovery related to the class and the merits at the same
7 time. We find that's most productive for the case and most
8 efficient. And so the current schedule just anticipates that
9 that would be the discovery process.

10 And our timeline is a little faster than defendant's. It
11 would be our motion on class cert. We feel comfortable that we
12 can -- that this schedule is workable for us in terms of
13 getting the discovery we need before we get our motion on file.

14 **THE COURT:** All right. And, essentially, you're
15 talking about filing that motion, really, nine months from now,
16 which puts us around May -- May or June, it sounds like.

17 That sounds like a lot of time. I mean, maybe not enough
18 in defendant's eyes, but that seems like a lot of time.

19 Is there some reason why that's not sufficient time,
20 Ms. Fahringer or Ms. Menaldo?

21 **MS. FAHRINGER:** Yeah, a couple of thoughts on that,
22 Your Honor.

23 We tried -- in our proposal, we tried to keep pretty
24 closely to case schedules that the Court has adopted in the
25 most similar cases we could find.

1 We think that the -- there are a couple of meaningful
2 differences between our respective proposals. One of them, as
3 you noted, is that ours is generally a little bit elongated,
4 but not unusually so.

5 And the second is that we don't know what sort of class
6 experts plaintiffs will designate and there is a very short
7 timeline for designation of rebuttal experts in response under
8 their proposal.

9 So that -- so one issue relates to sort of the timing of
10 the class cert motion. Another issue relates to the discovery
11 around that that would support that motion.

12 And so we think our proposal is thoughtful and tries to
13 manage those issues in a way that makes -- that makes a lot of
14 sense. So that's -- those would be my overarching points.

15 And as you point out, they might feel like -- might feel
16 like a long time from now. But, you know, August was here
17 before I knew it this year, and I think May will be here quite
18 quickly -- especially because we don't know what's going to be
19 happening with COVID. We've got a lot of potential witnesses
20 who are not in state and we can't, you know, manage all of the
21 schedules that we're going to need to manage with the unknowns
22 that we have.

23 So as a result of all of that, we thought that our
24 schedule was the most realistic, and also was not unduly
25 lengthy. It wasn't slow-walking anything and it was quite --

1 you know, we spent a lot of time on this. And both parties
2 spent a lot of time negotiating this, and really wrestled with
3 how to make this work in the most efficient way possible.

4 And the final -- sorry for the long-winded answer. But
5 the final observation is that if we're going to be -- and I am
6 certainly not opposed and the defendant is not opposed to
7 having exploratory, ongoing discussions about possible
8 resolution of this case. It doesn't make sense to have an --
9 essentially, an expedited timeline for class certification and
10 class-related discovery.

11 It's a very, very complex case, potentially. And I think
12 time will benefit both parties, especially because this is a
13 very reasonable -- we think our proposal is quite reasonable.

14 And now I will stop. You can tell we put a lot of thought
15 into this, both sides, I think.

16 **THE COURT:** And once the motion is filed, there are
17 not that many differences in terms of the staggering the time
18 for the opposition. You've given yourselves several weeks
19 between opposition and motion, and opposition and reply, it
20 appears.

21 **MS. FAHRINGER:** The couple of -- the main differences
22 that I see are the briefing schedule on the -- on the -- you
23 know, the briefing for the class certification motion; there is
24 that difference. I'm not sure if the Court would capture that
25 in that description. But after that, I think, yeah, we've

1 got -- we've got generally similar -- similar deadlines.

2 The plaintiffs' deadline for close of fact discovery is a
3 little longer than ours, but not by much. And bar- -- our
4 following deadlines were mostly intended to take into account
5 that we don't know what's going to happen in response to a
6 class cert motion. I think it's going to be an interesting
7 motion potentially, especially in light of the Court's ruling
8 yesterday. And so, because of that, we thought that it might
9 be most efficient to regroup and revisit what happens next in
10 the case once the Court rules on the class certification
11 motion.

12 So that was why -- on the defendant's proposal, that's why
13 there was sort of a bookmark for those following deadlines
14 because we thought that there might be some meaningful unknowns
15 that might moot some of the thinking today.

16 **THE COURT:** All right. Well, here is -- here's what
17 I'm going to do: I'm going to direct the parties to stipulate
18 to a schedule that calls for the motion -- that's the key
19 triggering point -- the motion for class certification to be
20 filed 11 months. I think that's plenty of time. I know that
21 one wants 14, the other wants nine. It seems to me, even if
22 this is a complicated case, that's a lot of time to do it.

23 And then, to work out your briefing schedule -- I'm sure
24 you can compromise in terms of how many weeks between each
25 brief. And the fact that there would have already been

1 disclosure of class certification experts that -- it seems to
2 me, that takes some of the necessary time out. Because a lot
3 of times you file, then you disclose an expert, then you've got
4 to take the deposition. So that's already been done. That
5 suggests you don't need a huge amount of time in between, but,
6 you know, a reasonable amount time.

7 And then, the only thing I ask is that the date set for
8 the actual hearing -- give me three weeks between the reply
9 brief and that date. So -- and you can pick a date. I haven't
10 done the math, but my guess is if -- 11 months from now, that's
11 July, we'd probably hear this thing in September or --
12 September or October of '22. Gosh. That seems like a long
13 ways off, but as you say, time does fly. So I'd like to use
14 that. And then, I do think it's fair to set a close of fact
15 discovery two months after that because there is going to be a
16 lot to absorb.

17 And I don't want to set a trial date yet, other than to
18 say it will follow fairly quickly from class cert. But I --
19 without knowing what the case is going to look like if there is
20 class cert and, if so, what the scope looks like, I'm reluctant
21 to set a trial date. But I think you should know that there is
22 going to be a close of fact discovery two months after a ruling
23 on the class cert, so you can begin to anticipate that. And
24 then, we'll fill in the rest of the dates as we get there.

25 But the one thing is, I do want to set a marker on class

1 cert, and everything else before that, you know, you can fill
2 in.

3 MR. MURA: Okay.

4 THE COURT: So at least we'll be on track. And I hope
5 that you begin to engage, perhaps, a mediator -- since I'm sure
6 this is to be an iterative process, that perhaps you can begin
7 some early discussions as you begin to get some more
8 information and get a sense of what a settlement might look
9 like.

10 So I won't set a date, per se, other than what I think
11 I'll do is I'll revisit that. Right now, I'm just going to
12 encourage you to have that discussion, but I think at the next
13 settlement conference, I may to set a date and I want to see --
14 you know, obviously, we'd love to see you have those meaningful
15 discussions prior to the class cert process, if the parties are
16 amenable. But I'll think about a -- more about that. And,
17 perhaps, by then you will have engaged a mediator and we can
18 talk about what your thoughts are.

19 So what we should do is, maybe, get back together in
20 about -- I don't know -- four months from now and see how
21 things are going, and see how we're progressing. And in the
22 meantime, in the next, let's say, two weeks, if you can get to
23 me a scheduling order that I can sign off on.

24 MS. FAHRINGER: Will do, Your Honor.

25 THE COURT: Angie, four months gets us into, actually,

1 December --

2 THE CLERK: Yes, Your Honor. How about
3 December 28th at 2:30?

4 THE COURT: Well, I'm going to be merciful. I don't
5 know if we're all going to be here. We're usually off during
6 that period.

7 THE CLERK: The week prior would be December 21st.

8 THE COURT: Or the week before that. How's that?

9 THE CLERK: December 14th, that is filling up. But we
10 could do -- we could set it December 14th at 2:30.

11 THE COURT: Okay. Let's do that. We'll see you
12 before the end of the year and see where things are at.

13 MS. FAHRINGER: Thank you, Your Honor.

14 MR. MURA: Thank you, Your Honor.

15 THE COURT: Great.

16 MS. MENALDO: Thank you, Your Honor.

17 THE COURT: And I do hope that you will -- and I
18 expect that you will have at least identified a mediator by
19 then and we can talk about timing before then.

20 MR. MURA: Yes. Thank you.

21 THE COURT: Thank you.

22 --o0o--

23 (Proceedings adjourned at 2:57 p.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Sunday, December 5, 2021

A handwritten signature in blue ink, reading "Ruth Levine Ekhaus", followed by a horizontal line.

Ruth Levine Ekhaus, RMR, RDR, FCRR, CSR No. 12219
Official Reporter, U.S. District Court