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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable DONNA M. RYU, Magistrate Judge

IN RE: PLAID, INC.	)	NO. C-20-3056 DMR
PRIVACY LITIGATION,	)	
_____	)	WEDNESDAY, OCTOBER 7, 2020
		OAKLAND, CALIFORNIA
		INITIAL CASE MANAGEMENT CONFERENCE

**TRANSCRIPT OF ZOOM PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
RECORDING - 1:32 P.M. - 1:48 P.M.**

APPEARANCES:

For Plaintiffs:	Herrera Prudy LLP 4590 MacArthur Boulevard, Suite 500 Newport Beach, California 92660
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	Lieff Cabraser Heimann & Bernstein 250 Hudson Street, 8th Floor New York, New York 10013
BY:	Rachel Beman, Esquire
	Lieff Cabraser Heimann & Bernstein 275 Battery Street 29th Floor San Francisco, California 94111
BY:	Melissa Gardner, Esquire

(Appearances Continued)

Reported By:	Diane E. Skillman, Transcriber
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FOR DEFENDANT:

Gibson, Dunn & Crutcher
555 Mission Street, Suite 3000
San Francisco, California 94105

BY: **Ethan Dettmer, Esquire**

Wednesday, October 7, 2020

1:32 p.m.

Z O O M P R O C E E D I N G S

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THE COURT: Okay. So, Ms. Garcia, go ahead and call the case.

THE CLERK: Yes, Your Honor. This court is now in session. The Honorable Donna M. Ryu presiding.

Calling Civil Case C-20-3056 DMR In Re Plaid Incorporated Privacy Litigation.

Counsel, please state your appearances starting with plaintiffs' attorneys first.

MS. GEMAN: Good afternoon, Your Honor. Rachel Geman, Lieff Cabraser for plaintiffs.

THE COURT: Good afternoon.

MS. GARDNER: Good afternoon. Melissa Gardner, Lieff Cabraser for the plaintiffs.

MR. KENNEDY: Good afternoon, Your Honor. Shawn Kennedy of Herrera Purdy for the plaintiffs.

THE COURT: All right. Good afternoon.

MR. DETTMER: Hello, Your Honor. Ethan Dettmer from Gibson Dunn on behalf of Plaid.

THE COURT: Good afternoon to you as well.

All right. I want to start by asking you about amendments of parties. Do the plaintiffs intend to add any parties, any -- other than those that might be added as substitute

1 named plaintiffs if that becomes necessary along the way?

2 **MR. KENNEDY:** No, Your Honor. We do not intend at
3 this point to add any new parties.

4 **THE COURT:** Okay. Mr. Dettmer, does your client
5 intend to add any parties?

6 (Pause in the proceedings.)

7 **THE COURT:** For some reason I wasn't able to hear
8 you.

9 **MR. DETTMER:** I'm sorry, can you hear me now?

10 **THE COURT:** Perfect. Thank you.

11 **MR. DETTMER:** No, Your Honor, we do not have any
12 intention of adding any new parties.

13 **THE COURT:** Okay. So my ruling now is that no
14 parties may be added going forward except that plaintiff may
15 seek leave to add a substitute named plaintiff or plaintiffs,
16 if necessary, along the way.

17 Let's talk about ADR. Plaintiffs suggested private
18 mediation. Plaid said possibly private mediation, and neither
19 side told me when you think that would be appropriate. So, I
20 just want to at least get your initial views on this.

21 Who wants to speak for the plaintiff -- plaintiffs?

22 **MR. KENNEDY:** I can speak for the plaintiffs, Your
23 Honor.

24 Our position is, it's premature at this point. Maybe
25 perhaps after the Court rules on the pending motion to dismiss

1 and we get into some discovery. After that -- maybe after
2 discovery closes. There's probably a point which it makes
3 sense, but probably not right now.

4 **THE COURT:** Okay. Well, I guess I am asking you when
5 you think that point might be. Would it be after the close of
6 discovery or after ruling on the motions -- the pending --
7 sort of the pleading motion or motions, depending on how that
8 goes, or after, before class cert?

9 What are your views at this time?

10 **MR. KENNEDY:** Without knowing how discovery will go,
11 probably after the close of discovery.

12 **THE COURT:** Okay. Mr. Dettmer, what do you think on
13 your end?

14 **MR. DETTMER:** Thanks, Your Honor.

15 I think we want to be, obviously, pragmatic about this.
16 So I think it really depends on, for instance, the ruling on
17 the motion to dismiss, you know, depending on what happens
18 with that. That may be a real opportune time for a private
19 mediation.

20 It may be that it will take a little bit longer.
21 Obviously, we made a proposal on discovery. And if that -- if
22 Your Honor adopts that proposal, that may also provide a real
23 opportune time for a private mediation after that process is
24 done.

25 You know, our view is that we just want to be practical

1 about it. And as Your Honor knows, obviously the lawyers on
2 the call know, in litigation like this, there are, you know,
3 points of the case where private mediation really makes sense
4 and we obviously are going to be very willing to engage when
5 it does makes sense.

6 I think those are sort of the points at which it looks
7 like it's certainly a possibility that that would be a good
8 time for mediation.

9 **THE COURT:** Mr. Dettmer, does your client also think
10 that private mediation is the right process --

11 **MR. DETTMER:** Probably, yes.

12 **THE COURT:** Okay.

13 Then let's turn to discovery. So I already denied the
14 discovery stay that was requested by Plaid, and the case is
15 going to move forward.

16 And, Mr. Dettmer, I will allow you to have your say on
17 this to tell me what you want to tell me. But I did read
18 everything, and I would not be inclined to impose what I think
19 of as artificial limits on how discovery goes forward as
20 suggested by Plaid. I think there's no reason to deviate from
21 the norm here.

22 After *Dukes*, we really -- you know, we need to get fulsome
23 discovery for class cert and other things. I think it is not
24 necessarily efficient to limit things in the way that you are
25 suggesting in order to get some kind of early Rule 56,

1 particularly because I don't, you know -- like most judges on
2 this bench, I don't do more than one Rule 56 unless there's a
3 really good reason, and I don't think this is really suitable
4 for that.

5 But you stated in your papers that you felt like
6 plaintiffs put in some legal argument at the last minute that
7 didn't seem particularly fair to your client, so I wanted to
8 give you the opportunity to fill that out if you want and tell
9 me what you think.

10 **MR. DETTMER:** Sure. I appreciate, Your Honor, both
11 the opportunity and also giving me an indication of where your
12 leanings are. I appreciate that.

13 So let me explain why -- I understand, obviously, that
14 this is not the usual course. But I would note to you that
15 this is really not the usual case. And what's really unusual
16 about this case, in my view, is two particular things.

17 One is, we have 11 plaintiffs and not one of those
18 plaintiffs has actually alleged in the complaint that he or
19 she interacted with Plaid. They say they had dealings
20 consistent with what's alleged in the complaint, but none of
21 them come out and say, I used Plaid services.

22 Second, not one of the plaintiff says in the complaint
23 that they suffered any kind of concrete actual injury or harm
24 because of what Plaid did or didn't do.

25 And the reason for our submission, our proposal is, that

1 those two really critical fundamental facts, do we have a
2 plaintiff here who had dealings with the defendant, is, seems
3 to me, something that really ought to be resolved before you
4 start engaging in expensive and what looks to be very
5 contentious discovery.

6 Your Honor obviously knows that Rule 1 says we should have
7 just, speedy, and inexpensive resolution of matters and
8 Rule 26 explicitly gives Your Honor this tool of phasing --
9 or, you know, focused and limited discovery at the outset in
10 order to carry out that Rule 1, you know, goal.

11 And I think for three reasons what we have proposed here
12 really does make that tool particularly apt in this case.

13 Those three reasons are:

14 One, I think this sort of focused and limited discovery
15 can get accomplished in a pretty short time period. If it
16 turns out we are wrong, and you get this sort of limited and
17 focused rule against us on a limited or focused summary
18 judgment or summary adjudication, then there will be time to
19 have the sort of full discovery that the plaintiffs want.

20 However, given that they haven't even alleged it, alleged
21 interactions with Plaid, we think that resolving that critical
22 issue of, is there really a plaintiff in this case who
23 interacted with the defendant, should be resolved first.

24 The second reason is, and we just have to look at pages 9
25 and 10 of the Rule 26 report to see the plaintiffs appear to

1 be looking to take a real scorched-earth approach to discovery
2 here. They are suggesting on those pages that they want to
3 take discovery of pretty much everything having to do with
4 Plaid since 2012. They look really broad, and I anticipate
5 that that will be very contentious, and it could end up being
6 very time-consuming and expensive.

7 The third reason is, I do think that this plan is
8 manageable. These are two really kind of narrow issues that
9 we can focus on, get focused discovery, focused documents,
10 focused depositions, and get these focused Rule 56 motions on
11 file and decided quickly.

12 So I understand where Your Honor is coming from that this
13 is unusual, but given the state of the pleadings, I think this
14 really is an unusual case given those facts.

15 Happy to answer questions, obviously.

16 **THE COURT:** I understand what you're saying about
17 this. But I don't think that the proposed method is
18 necessarily consistent with Rule 1 being, you know, just and
19 efficient. It might be inexpensive for one side, but I don't
20 think that that plan is going to map well on this case.

21 And the points that you raise are good, and they are going
22 to be vetted, at least initially through the crucible of your
23 motion, your points about whether there's injury and whether
24 the pleadings are sufficient. So we will find that out.

25 But that's the normal way we do that, so I'm not going to

1 put, as I said, any artificial limits on discovery at this
2 juncture. I don't see a reason to do that.

3 So I would like you to go ahead and meet and confer on a
4 protective order using one of the models from our District as
5 your template. I'm assuming it's the one that's for patent
6 cases that has more levels of protection, but that's really up
7 to you to figure out between yourselves whether that is the
8 appropriate one.

9 So submit a proposed protective order by the end of the
10 month, by October 30th. And if you can't agree, then make
11 sure that you submit your competing proposals in a way that's
12 easiest for me to understand where your differences are.

13 So what I think that looks like is -- well, number one, I
14 would love to have you submit one that you all agree on, but
15 if that is not possible, each of you should do a redline using
16 the model that you're working off of because the model is
17 presumptively good. All right?

18 Then do a separate document that you are going to do in
19 the form of a joint chart where you have side by side your
20 competing language on whatever the particular dispute is. The
21 language and then your arguments so I can see them together
22 and understand, instead of having to flip through lots and
23 lots of pages to get at the fundamental difference between
24 your proposals. Okay? So that will happen by the end of the
25 month.

1 I think for the case schedule, I know the plaintiffs
2 wanted me to go ahead and issue a trial schedule, and I think
3 it's too early. I do often set one early on in the case, and
4 I think that what I would like to do here is at least get
5 through the first round of the challenge to the pleadings, and
6 we'll see where we are; whether Mr. Dettmer's client has a
7 good argument. If so, whether there's room to amend or not.
8 I think I'll know a lot by the end of that. But if there's
9 things going forward, then at that point I would probably set
10 a schedule, just so you all know. Okay?

11 So I would like to have you back for your next CMC on
12 February 3rd at 1:30, with your joint updated papers due
13 January 27th, 2021. I will likely see you before then because
14 I'm going to assume I'll need a hearing on your motion to
15 dismiss. But if for some reason I don't need a hearing, then
16 I won't have one. My default is generally, you know, give
17 folks a chance to argue in oral argument. Okay?

18 So, that's what I've got on my end. Is there anything
19 else that the plaintiffs want to talk about today?

20 **MS. GEMAN:** Your Honor, Rachel Geman. Can I ask a
21 clarifying question?

22 Would you like those hopefully agreed, but perhaps
23 competing protective orders submitted to your deputy via email
24 or served on ECF?

25 **THE COURT:** Filed on ECF. Okay?

1 Because it will be a -- sort of a disputed motion for a
2 protective order. I am assuming everybody thinks a protective
3 order is necessary, just, you know, maybe won't agree on every
4 term and need me to sort some things out. Although my strong
5 preference and what usually happens, folks, is that you are
6 able to reach compromises that make sense.

7 And I want us to get off on the right foot here. And I
8 will decide any, what I call, honest disputes, which means
9 that you all are very experienced lawyers. You know our
10 practices here. We expect that you work really hard to reach
11 reasonable compromises knowing what, in many of the areas,
12 what a likely outcome would be.

13 So that includes what Mr. Dettmer pointed out in your CMC
14 statement. Mr. Dettmer said, boy, these topics are really,
15 really broad. I didn't drill down to see exactly how broad
16 they are, honestly. Subject matter, I don't know how it is
17 going to map on to, for example, temporal scope and those type
18 of things.

19 Yeah, you will have to go through some serious meet and
20 confer to try and narrow down what is relevant and
21 proportional to the claims. And a lot of that is going to
22 happen on your end. I am here to handle those that really
23 nobody could fairly compromise on. And so, you know, bring
24 those to my attention. But nothing short of that. Okay?

25 All right? So, Ms. Geman, anything more from the

1 plaintiffs' side?

2 **MS. GEMAN:** I'm looking at my colleagues. I don't
3 have anything and it appears that neither Mr. Kennedy nor
4 Ms. Gardner does.

5 Thank you, Your Honor.

6 **THE COURT:** Okay. Mr. Dettmer, anything from Plaid?

7 **MR. DETTMER:** No, Your Honor. Thank you.

8 **THE COURT:** All right. Great. Thank you very much.
9 I look forward to reading your motion papers.

10 **MR. DETTMER:** Thank you.

11 **MR. KENNEDY:** Thank you.

12 **MS. GEMAN:** Thank you.

13 **THE COURT:** We are concluded on this matter.

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15 (Proceedings adjourned at 1:48 p.m.)
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District court, northern district of california, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

A handwritten signature in black ink, reading "Diane E. Skillman", is written over a horizontal line.

Diane E. Skillman, Transcriber

Friday, October 23, 2020