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phone conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

24 Civ. 7214 (JGK)
Remote Proceeding

6 VISA INC.,

7 Defendant.

8 -----x

New York, N.Y.
January 6, 2025
12:15 p.m.

10 Before:

11 HON. JOHN G. KOELTL,

13 U.S. District Judge

14 APPEARANCES

16 U.S. DEPARTMENT OF JUSTICE

17 BY: EDWARD DUFFY

AARON TEITELBAUM

18 MICHELE TRICHLER

BEN MATELSON

20 WILKINSON STEKLOFF

Attorneys for Defendant

21 BY: ROXANA GUIDERO

BETH WILKINSON

22 BRIAN STEKLOFF

23 KIERAN GOSTIN

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(The Court and all parties appearing telephonically)

THE COURT: Who is on the line for the government,
please?

MR. DUFFY: Edward Duffy on the line for the
government, your Honor.

THE COURT: Good morning.

Who is on the line for the defendant?

MS. GUIDERO: Good morning, your Honor. This is
Roxana Guidero on behalf of Visa. I am joined on the line by
Beth Wilkinson, Brian Stekloff and Kieran Gostin as well.

THE COURT: Could you spell your last name for me,
please?

MS. GUIDERO: Of course, your Honor. It is
G-U-I-D-E-R-O.

THE COURT: Good morning, all.

I have reviewed your joint Rule 26(f) report. I know
that the time for the government to respond to the pending
motion to dismiss is January 21, 2025, and for Visa to reply
February 7, 2025. The Rule 26(f) report was very constructive.
The proposal to conduct various kinds of documentary discovery
while the motion to dismiss is pending is fine and you save, so
far as I can tell, having to brief a motion to stay discovery
while the motion to dismiss is pending. On page 4 there is a
comment that you intend to discuss coordination of discovery
with the private party plaintiffs. That's also very

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1 constructive. I have a conference with the private -- an
2 initial conference with the private party plaintiffs later in
3 January, January 28, I think.

4 The first dispute between the parties is with respect
5 to the number of interrogatories. On the bottom of page 4
6 going over to page 5, the government seeks 50; Visa seeks 25.
7 Visa is right, 25 is more than sufficient. There was a time
8 when at least one judge of this court prohibited
9 interrogatories. And, with the notion that interrogatories are
10 written by lawyers, responded by lawyers, to provide as little
11 information as possible but they are allowed. So, the rules
12 say 25 and our local rules set out the various limits and what
13 the interrogatories are supposed to be asking for at the
14 beginning of the case and contention interrogatories toward the
15 end of the case. So, you should follow the local rule and 25
16 is sufficient. Of course, the rules recognize that if you can
17 make a showing to me that additional interrogatories are in
18 fact worthwhile, you can always make that application. So, I
19 would accept Visa's position, page 5, no. B.

20 The next dispute then is over the number of
21 depositions. The parties agree, ultimately, on 350 hours total
22 for depositions for each side. Each wants a limit of 91 hours
23 for the depositions of the Visa witnesses. I couldn't limit
24 depositions that way at the outset. If it turns out that the
25 government is wasting their time with unnecessary Visa

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1 witnesses rather than third-party witnesses, the parties can
2 bring that to my attention but, plainly, it wouldn't be in the
3 government's interest to do that, and I certainly couldn't
4 decide before the fact that only 91 hours of the 350 hours
5 should be used up by the government's examination of the
6 witnesses. So, I would accept the government's position with
7 respect to the hours of deposition.

8 That leaves the dispute between the parties with
9 respect to the number of 30(b)(6) witnesses. The government
10 wants to have three 30(b)(6) witnesses. Visa says one 30(b)(6)
11 designation should be sufficient rather than seriatim 30(b)(6)
12 depositions. There is no explicit provision for more than one
13 30(b)(6) witness and, at the outset, Visa appears to be
14 correct, so one 30(b)(6) designation. Obviously, the
15 designation can include all of the appropriate subjects for a
16 30(b)(6) deposition and more than one witness can be the
17 appropriately designated witness for the 30(b)(6) deposition.
18 If, for some reason, this 30(b)(6) process is abused and it is
19 necessary to have a subsequent 30(b)(6) designation, again, the
20 parties can bring that to my attention. But, I should add that
21 the parties have been acting constructively so far so I'm not
22 sure that would ever occur. But, if it does, I am here.

23 That leads us then to page 8 where the parties have
24 agreed on various housekeeping matters with respect to the
25 conduct of depositions, calculation of time, corporate

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1 representative, additional time, all of which seem fine.
2 Cross-noticed depositions on page 9 seems fine. Paragraph 11,
3 what doesn't count, exclusions from the deposition limits for a
4 sentence is fine. The second sentence on paragraph 11, the
5 parties don't agree with respect to the treatment of
6 depositions taken with respect to establishing the location,
7 authenticity or admissibility of documents. With respect to
8 that, I agree with Visa that that should be included with the
9 regular time coming out of the parties' allotment of 350 hours.
10 Those are, plainly, constructive depositions trying to
11 authenticate documents so that they can be eventually
12 admissible at trial and should count towards the 350 hours.
13 350 hours is certainly sufficient and I would think that the
14 parties would cooperate in doing that.

15 As an aside, I'm pleased that the parties are thinking
16 about the trial of the case, and certainly there is going to be
17 a lot of discovery in the case but you should certainly conduct
18 the discovery in a way that is geared toward the eventual trial
19 of the case. So, depositions should be taken with a view
20 toward their admissibility at trial. When you use documents,
21 they should be used in such a way with an eye towards their
22 admissibility at trial. And, I would expect that you employ
23 your experts early so that you don't get to the point where the
24 experts are finally employed and they say here is what we need
25 for our expert opinions and they're relying on discovery that

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1 has never been taken. So, imagine, just from the structure of
2 the 26(f) report, that you are doing that so the notion of
3 depositions to authenticate documents is good and should come
4 out of the 350 hours.

5 That leads us to no. 12 on page 10. Visa has proposed
6 a schedule, proposes to talk to the parties about an
7 appropriate schedule. I looked over the government's schedule
8 and I thought it was a good schedule, a generous schedule, and
9 I would be prepared to adopt it but I haven't heard from Visa
10 on that schedule.

11 MS. GUIDERO: Your Honor, if I can provide just a
12 brief update there?

13 THE COURT: Yes. Sure.

14 MS. GUIDERO: This is Roxana Guidero on behalf of
15 Visa.

16 Since we failed the 26(f) report, again, in the spirit
17 of the cooperation and continuing to work with the government,
18 we sent a Visa proposed schedule to the government on
19 December 17. We haven't heard back substantively from the
20 government on that. Broadly speaking, I think there are some
21 elements with the government's schedule that we can agree to,
22 that the two items that we really wanted to alter the dates a
23 little bit for is to give a little bit more time for the
24 expert. As you noted, experts are going to be a core part of
25 this case and we thought there was a little bit more time

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1 needed for those extra reports as well as the time in between
2 the completion of expert discovery and the *Daubert* motions in
3 order to react to those expert reports in the *Daubert*, and we
4 also added a date for the disclosure of the expert witnesses,
5 just their names and the topics to the initial expert reports.

6 That is all to say that I think as the parties have
7 cooperated already we can continue to discuss the schedule. We
8 haven't had a chance to substantively discuss Visa's proposed
9 schedule with the government, given the holidays but we would
10 ask for an opportunity to do that and we can update the Court
11 on any progress we make.

12 MR. DUFFY: Your Honor, if I may?

13 THE COURT: Mr. Duffy, hold on. Mr. Duffy, before I
14 listen to you, the government's schedule says summary judgment
15 replies October 19, 2026, so that is almost two years from now
16 which means that the trial wouldn't take place, if there is
17 going to be a trial, until more than two years. That seems
18 generous. The notion about a date for the disclosure of
19 experts or the identity of experts seems reasonable to me. I
20 have already said that I thought it would be really important
21 for the parties to engage their experts sooner rather than
22 later so that they don't run into the situation of experts
23 saying they need further discovery that has never been taken.
24 But, I am not enthusiastic about having the case be drawn out
25 in some ways.

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1 So, those are a couple of observations. I certainly
2 applaud the parties working together and trying to come up with
3 an agreed upon schedule but not an overly long schedule.

4 So, Mr. Duffy?

5 MR. DUFFY: Yes, your Honor. We had a question, given
6 that we are proposing a trial date in early 2027, possibly the
7 end of 2026, we did want to check in with the Court to see if
8 there are any scheduling constraints or so forth that we should
9 be aware of with respect to the trial date itself.

10 THE COURT: I don't have another trial scheduled for
11 late 2026 or early 2027, so that is not a problem.

12 MR. DUFFY: OK. Great.

13 And then the other point --

14 THE COURT: Go ahead.

15 MR. DUFFY: -- we would not object to including a
16 deadline for the disclosure of expert witnesses of roughly
17 along the same time as the close of fact discovery, but we
18 informed Visa that our position is that our schedule should be
19 entered, your Honor.

20 THE COURT: OK. I will certainly allow the parties to
21 talk. If there is something else that should be changed, a
22 date for the disclosure of experts, perhaps March 17, 2026 is
23 fine.

24 MS. GUIDERO: I think that would be fine with us, your
25 Honor, on behalf of Visa.

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1 THE COURT: OK. So would Visa be looking for any
2 other change in the schedule other than that?

3 MS. GUIDERO: Your Honor, like I mentioned, all we
4 were talking about is just a period of just a few months of
5 extension. We hear you loud and clear about not postponing the
6 case unnecessarily. We do think that a little bit more wiggle
7 room in the expert reports and the time before the *Daubert*
8 motions would be warranted. Our proposed schedule had us going
9 out to *Daubert* and summary judgment replies to February 2027,
10 which is about four or so months after the government's
11 schedule. So, understanding that that was going to be your
12 reaction, I am sure we can land somewhere earlier. So, we can
13 work with the government on that.

14 THE COURT: Well, again, this is a long schedule as it
15 is and I don't foreclose the possibility that there might be a
16 need to change the schedule but I don't want the parties to
17 rely on that. This is a reasonable schedule. Building in
18 another four months or even another two months out of the gate
19 doesn't make any sense to me. So, I'll keep the schedule as it
20 is. You can add disclosure of the identity of experts
21 March 17, 2026 although, again, I urge you to get your experts
22 sooner rather than later. And, you probably have them already.
23 So, that's it, I think, for the Rule 26(f) report. There is
24 supplementation which is fine and I would ask the parties to
25 just take my ruling today and incorporate them into an amended

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1 Rule 26(f) report and case management plan and I can then enter
2 that. So, you all can do that promptly.

3 Is there anything else? You can do it by next Friday,
4 just so that you have a date. Is there anything else for me
5 today? One at a time. Mr. Duffy?

6 MR. DUFFY: Yes. I did want to inform the Court that
7 Aaron Teitelbaum, who is on the line, will be taking over as
8 lead for the case in the next few weeks. I am going to be
9 leaving the division and he will be taking over as lead
10 counsel.

11 THE COURT: OK.

12 MR. TEITELBAUM: Good afternoon, your Honor. This is
13 Aaron Teitelbaum.

14 THE COURT: OK.

15 Ms. Guidero, was there something else that you wanted
16 to tell me?

17 MS. GUIDERO: No. Nothing from Visa. Thank you, your
18 Honor.

19 THE COURT: All right. Thank you, all. I appreciate
20 the cooperation. I look forward to getting to the motion to
21 dismiss after it is fully briefed. Great.

22 OK. Bye now.

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