

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

ROZONE PRODUCTIONS, LLC;)	CIV. 09-5015
RTR ILLUMINATED INVESTORS 3, LLC;)	
and ROBERT T. ROSEN,)	
)	
Plaintiffs,)	DEFENDANTS RACZKOWSKI AND
)	STAR TICKETS' FORM 52 REPORT
vs.)	OF PARTIES' PLANNING MEETING
)	
ANDREW ROCKY RACZKOWSKI;)	
TICKETS PLUS INCORPORATED,)	
d/b/a STAR TICKETS PLUS;)	
GOOD MUSIC AGENCY, INC.,)	
d/b/a TALENT BUYERS NETWORK;)	
BRIAN KNAFF; and ROBERT J. STRUYK,)	
)	
Defendants.)	

Pursuant to the Court's ORDER FOR FORM 52 REPORT AND SCHEDULING INFORMATION [Doc # 22] and FED. R. CIV. P. 26(f), Defendants Raczkowski and Star Tickets submit the following as their Report of Parties' Planning Meeting:

A. Date and Place of the Meeting and Identification of the Parties and Their Attorneys

1. The date and place at which the meeting was held: Law offices of Gunderson, Palmer, Nelson & Ashmore, LLP, Rapid City, South Dakota, on May 13, 2009, at 9 a.m.

2. Name, address, and occupation of each party, together with the name and address of the attorney or attorneys who represented each party at the meeting:

(a) Plaintiffs Rozone Productions, LLC, a Texas limited liability company of Houston, Texas; RTR Illuminated Investors 3, LLC, a Texas limited liability company of Houston, Texas; and Robert T. Rosen, of Houston, Texas, were represented by Jason M. Smiley of Gunderson, Palmer, Nelson & Ashmore, LLP, P.O. Box 8045, Rapid City, South Dakota 57709;

(b) Defendants Andrew Raczkowski, CEO of Tickets Plus of Farmington Hills, Michigan, and Tickets Plus Incorporated, a Michigan corporation, of Southfield, Michigan, were represented by Jeffrey G. Hurd of Bangs, McCullen, Butler, Foye & Simmons, LLP, P.O. Box 2670, Rapid City, South Dakota 57709;

(c) Defendants Good Music Agency, Inc., a Montana corporation, with offices in Las Vegas, Nevada; Brian Knaff, President and CFO of Good Music Agency, Inc., of Las Vegas, Nevada; and Robert Struyk of Las Vegas, Nevada, were represented by G. Verne Goodsell of Goodsell Quinn, LLP, of P.O. Box 9249, Rapid City, South Dakota 57709.

3. Name of the insurance carriers and amount of liability coverage available:

(a) Andrew Raczkowski: Defendant Raczkowski is not currently aware of any insurance that would provide defense or indemnity coverage for the intentional torts or breach of contract claims alleged in the Complaint;

(b) Tickets Plus Incorporated, d/b/a Star Tickets Plus: Defendant Star Tickets is not currently aware of any insurance that would provide defense or indemnity coverage for the intentional torts or breach of contract claims alleged in the Complaint;

B. Description of the Case

4. A brief narrative of the facts giving rise to the lawsuit, including a description of legal claims and defenses:

Plaintiffs entered into a joint venture agreement to promote musical concerts on August 4, 5, and 6, 2008, at the Glencoe Campground during the Sturgis Motorcycle Rally in South Dakota. Good Music Agency and its agents and employees, including Brian Knaff, were retained by Plaintiffs to line up the musicians for the concerts. Star Tickets and its agents and employees, including Andrew Raczkowski, were selected to sell the tickets to the concerts. Robert Struyk, a former employee of Star Tickets, performed VIP catering services and solicited corporate sponsorships for the concerts. Plaintiffs allege that Defendants breached their contract with regard to the concerts and committed fraudulent acts and theft resulting in damages to the Plaintiffs, and Defendants deny these allegations. Good Music has made a counterclaim against Plaintiffs for breach of contract for failing to pay the talent in advance of the performance and for misrepresenting the financial capability of Plaintiffs to pay the talent, which breach and misrepresentation has damaged Good Music, and Plaintiffs deny these allegations. Defendants Star Tickets and Raczkowski's denials are asserted on their behalf by counsel. Because

Raczkowski is the CEO of Star Tickets and the primary witness with any knowledge on behalf of himself and Star Tickets, and because he is currently serving in Operation Enduring Freedom in Africa, with the United States Army, Star Tickets and Raczkowski cannot substantively respond. Their Counsel has been unable to determine the facts even to the extent necessary to provide a brief statement of facts.

5. A concise statement of the jurisdictional basis of the case, giving a brief narrative description as well as statutory references number: Jurisdictional basis for the case is diversity since the Plaintiffs are residents of Texas and all the Defendants are residents of Nevada and Michigan. The amount in controversy is in excess of \$75,000. Diversity jurisdiction is proper pursuant to 28 U.S.C. § 1332.

6. A brief statement of the material issues to be resolved: Liability and damages.

C. Pleadings

7. A statement of whether all pleadings have been filed and description of any amendments to the pleadings the party proposes to make, including the identification of any new parties to be added (if none so state): All pleadings have been filed. No new parties are anticipated at this time.

8. The date by which all motions which seek to amend the pleadings or add parties will be filed: See ¶26.

9. Whether jury trial is available under the law, and whether a jury trial has been timely demanded: Yes.

D. Initial Discovery Plan

10. Date by which all prediscovery disclosures required by Rule 26(a)(1) will be completed: See ¶26.

E. Discovery Plan

11. The procedure to be used for disclosure of electronic information: The following standards will govern electronic discovery until such time, if ever, the parties reach an alternative agreement.

Exchange of e-discovery materials. The parties' Initial Disclosures shall include the following information:

a. A list of the most likely custodians of relevant electronic materials, including a brief description of each person's title and responsibilities;

b. A list of each relevant electronic system that has been in place at all relevant times and a general description of each system, including the nature, scope, character, organization, and formats employed in each system;

c. The parties should also include other pertinent information about their electronic documents and whether those electronic documents are of limited accessibility, that is, those created or used by electronic media no longer in use, maintained in redundant electronic storage media, or for which retrieval involves substantial cost;

d. The name of the individual responsible for the party's electronic document retention policies ("the retention coordinator");

e. A general description of the party's electronic document retention policies;

f. The name of the individual who shall serve as the party's "e-discovery liaison";

g. A description of any problems reasonably anticipated to arise in connection with e-discovery.

E-discovery liaison. No later than the date the parties' initial disclosures are due, to promote communication and cooperation between the parties, each party shall designate a single individual through whom all e-discovery requests and responses are made ("the e-discovery liaison"). Regardless of whether the e-discovery liaison is an attorney (in-house or outside counsel), a third party consultant, or an employee of the party, he or she must be:

a. Familiar with the party's electronic systems and capabilities in order to explain these systems and answer relevant questions;

b. Knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues;

c. Prepared to participate in e-discovery dispute resolutions; and,

d. Responsible for organizing the party's e-discovery efforts to insure consistency and thoroughness and, generally, to facilitate the e-discovery process.

Search methodology. If the parties intend to employ an electronic search to locate relevant electronic documents, the parties shall disclose, within 30 days of making such decision, any restrictions as to the scope and the method which might affect their ability to conduct a complete electronic search of the electronic documents. The parties shall reach agreement as to the method of searching, and the words, terms, and phrases to be searched with the assistance of the respective e-discovery liaisons, who are charged with familiarity with the

parties' respective systems. The parties also shall reach agreement as to the timing and conditions of any additional searches which may become necessary in the normal course of discovery. To minimize the expense, the parties may consider limiting the scope of the electronic search (e.g., time frames, fields, document types).

Timing of e-discovery. Discovery of electronic documents shall proceed in the following sequenced fashion:

a. After receiving requests for document production, the parties shall search their documents, other than those identified as limited accessibility electronic documents, and produce responsive electronic documents in accordance with FED. R. CIV. P. 26(b)(2).

b. Electronic searches of documents identified as of limited accessibility shall not be conducted until the initial electronic document search has been completed;

c. Requests for information expected to be found in limited accessibility documents must be narrowly focused with a factual basis supporting the request; and,

d. On-site inspections of electronic media under FED. R. CIV. P. 34(b) shall be permitted where good cause and specific need have been demonstrated.

Format. If the parties cannot agree to the format for document production, electronic documents shall be produced to the requesting party as image files (e.g., PDF or TIFF). When the image file is produced, the producing party must preserve the integrity of the electronic document's contents, i.e., the original formatting of the document, its metadata and, where applicable, its revision history. After initial production in image file format is complete, a party must demonstrate particularized need for production of electronic documents in their native format.

Retention. The parties shall negotiate an agreement that outlines the steps each party shall take to segregate and preserve the integrity of all relevant electronic documents. In order to avoid later accusations of spoliation, a FED. R. CIV. P. 30(b)(6) deposition of each party's retention coordinator may be appropriate. The retention coordinators shall:

a. Take steps to ensure that e-mail of identified custodians shall not be permanently deleted in the ordinary course of business and that electronic documents maintained by the individual custodians shall not be altered;

b. Provide notice as to the criteria used for spam and/or virus filtering of e-mails and attachments; Documents filtered out by such systems shall be deemed nonresponsive so long

as the criteria underlying the filtering are reasonable. Within seven (7) days of identifying the relevant document custodians, the retention coordinators shall implement the above procedures and each party's counsel shall file a statement of compliance.

Privilege. Electronic documents that contain privileged information or attorney work product shall be immediately returned if the documents appear on their face to have been inadvertently produced or if there is notice of the inadvertent production. All copies shall be returned or destroyed by the receiving party.

Costs. Generally, the costs of discovery shall be borne by each party. However, the court will apportion the costs of electronic discovery upon a showing of good cause.

12. The number of interrogatories each party shall be permitted to serve: Fifty interrogatories by each party including all subparts.

13. The maximum number of depositions by each party (excluding expert witness depositions): 20.

14. The limits on the length of depositions, in hours: 7 hours.

15. The date by which all discovery (including expert discovery) shall be completed: See ¶26.

16. A statement of how many, if any, expert witnesses each party anticipates calling at trial, and a brief (one or two words) description of the type of experts anticipated, e.g., medical doctor, economist, accident reconstructionist, accountant:

Plaintiffs anticipate calling one or more experts concerning ticketing industry practices; one or more experts regarding electronic discovery and computer forensics; one expert regarding microscopy and crowd counting analysis; one or more experts on the subject of damages including accountants and/or economists.

Defendants anticipate rebuttal experts depending on the testimony of Plaintiffs' experts.

17. The date by which each party shall disclose the identity of expert witnesses and disclose the reports required under Rule 26(a)(2): Plaintiffs by September 15, 2009; See ¶26.

18. Whether the parties anticipate expert depositions: Yes.

19. The number of expert depositions each party shall be permitted to take:
Each expert may be deposed by the parties once.

20. The frequency with which discovery responses must be supplemented pursuant to Rule 26(a): The parties will make reasonable and good faith efforts to disclose discoverable information within 30 days of obtaining such information.

F. Dispositive Motions and Trial

21. Date by which all dispositive motions shall be filed: See ¶26.

22. Estimated trial time, including jury selection and instructions: 10 days.

G. Settlement

23. The parties should fully explore the possibility of settling this case at the Rule 26(f) meeting. If the case does not settle, the parties shall be fully prepared to advise the court about the status of settlement discussions. The parties shall advise the court whether they desire a settlement conference with a magistrate judge: The parties request a settlement conference upon the completion of discovery.

24. Plaintiff is directed to make a written settlement demand prior to the Rule 26(f) meeting. Defendant shall respond in writing to this demand as soon as possible. See ¶26.

25. If the plaintiff is unable to make a settlement demand, plaintiff shall be fully prepared: See Answer to No. 24.

a. To explain the inability:

b. To advise the court what is needed to evaluate settlement:

c. To advise the court of the earliest date the parties can realistically evaluate settlement:

26. Other matters the parties want to raise: Defendant Raczkowski is on active duty with the United States Army in Africa as part of Operation Enduring Freedom. He is the CEO of Star Tickets, and is also alleged to have been the primary actor on behalf of Star Tickets in the allegations contained in Plaintiffs' Complaint. Under the Soldiers and Sailors Relief Act, the action cannot proceed as to Defendant Raczkowski. As a practical matter, the action cannot proceed as to Star Tickets because Raczkowski's absence prevents Star Tickets from effectively investigating and responding to the allegations. As a matter of judicial economy, aside from written discovery upon the other defendants, the action should not proceed at all because any motions or depositions would be subject to repetition upon Raczkowski's return.

Raczkowski and Star Tickets request that all deadlines be fixed by the Court so as to provide sufficient opportunity for them to meet their responsibilities to the Court and other parties after Raczkowski returns from active duty, currently scheduled for September 2009.

Dated May 15, 2009.

BANGS, McCULLEN, BUTLER, FOYE
& SIMMONS, LLP

By /s/ Jeffrey Hurd
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CERTIFICATE OF SERVICE

The undersigned certifies that on May 15, 2009, he caused true and correct copies of the above to be served upon each of the persons identified below as follows:

- | | | | |
|--------------------------|------------------|-------------------------------------|----------------|
| <input type="checkbox"/> | First Class Mail | <input type="checkbox"/> | Overnight Mail |
| <input type="checkbox"/> | Hand Delivery | <input type="checkbox"/> | Facsimile |
| <input type="checkbox"/> | Electronic Mail | <input checked="" type="checkbox"/> | ECF System |

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/s/ Jeffrey G. Hurd
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