

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SMARTMATIC USA CORP.,
SMARTMATIC HOLDING B.V., AND
SGO CORPORATION LIMITED,

Plaintiffs,

v.

HERRING NETWORKS, INC., D/B/A
ONE AMERICA NEWS NETWORK,

Defendant.

Civil Action No. 1:21-cv-02900-CJN

SECOND AMENDED JOINT STATUS REPORT

Plaintiffs Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited (collectively, “Smartmatic”) and Defendant Herring Networks, Inc. d/b/a One America News Network (“OAN”) file this *Second Amended Joint Status Report* in compliance with the Honorable Magistrate Judge Moxila A. Upadhyaya’s February 5, 2024 Order (Dkt. 183).

Attached hereto as Exhibit A is a Pending Discovery Disputes chart in a format similar to what was presented to the Court as Dkt. 163. As set forth in the Order, the chart has been updated to identify which disputes have been resolved, which disputes the parties are currently attempting to resolve, and which disputes have reached an impasse. The chart also includes the priority of pending discovery disputes for both Smartmatic and OAN. Disputes labeled “Round 2” are those that the parties respectfully request be heard at the Court’s next discovery hearing, to the extent the parties cannot resolve them in the meantime.

By: /s/ Caitlin A. Kovacs

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2024, the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will electronically mail notification of the filing to all counsel of record who are registered ECF users.

/s/ Caitlin A. Kovacs

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EXHIBIT A

SMARTMATIC V. OANN – PENDING DISCOVERY DISPUTES*Legend:**Grey = Dispute Resolved*

Report Topic #	Issue	Resolution Status	Briefing Status	Proposed Order
Smartmatic 1	Smartmatic's Motion to Compel Financial Documents (Dkt. 124; 12/1/23)	Meet and Confer Process Ongoing	Motion, Response If the parties make any progress regarding this issue in advance of the next Court hearing, they will update the Court on that progress and briefly describe what issues remain open.	Round 2
Smartmatic 2	Smartmatic's Motion to Compel OAN's Response to Smartmatic's Second Set of Requests for Production (Dkt. 129; 12/5/23)	Motion Denied as Moot	Motion	Resolved
Smartmatic 3	Smartmatic's Motion to Compel the Production of Documents from Related Actions (Dkt. 130; 12/7/23)	Motion Granted	Motion	Resolved
Smartmatic 4	Parties' May 5, 2023 Joint Notice of Unresolved Discovery Disputes (Dkt. 143-1; 5/31/23) For Smartmatic: (1) OAN's failure to produce documents; (2) OAN's failure to disclose relevant witnesses; (3) OAN's	Resolved and/or Encompassed Elsewhere	Smartmatic Disputes 1 and 2 are not briefed. Smartmatic Dispute 3 partially briefed.	Resolved

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	<p>failure to produce financial records; and (4) OAN's failure to agree to a date certain for completion of document production.</p> <p>For OAN: (1) discovery of governmental investigations; (2) discovery of criticisms and reputational issues; (3) discovery of damages; (5) discovery related to BOD meetings; and (6) discovery related to vendors and manufacturers.</p>		OAN Disputes are not briefed.	
Smartmatic 5	<p>Parties' Forthcoming Joint Notice of Unresolved Discovery Disputes</p> <p>For Smartmatic: (1) documents related to employment decisions; (2) documents related to oversight, structure, and decision making authority; (3) documents showing OANN's corporate governance structure; (4) documents sufficient to demonstrate every meeting that occurred regarding Smartmatic and Dominion; (5) documents concerning ratings, viewership, readership, and engagement data; (6) documents concerning the downloads of OANN applications, subscriptions, and clicks; (7) documents and communications from personal email</p>	Meet and Confer Process Ongoing	Not Briefed	Round 3

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	<p>addresses; and (8) documents and communications from text messages.</p> <p>For OAN: (1) Nine additional requested custodians; (2) Additional requested search queries; (3) Response to OAN's Interrogatory No. 4.</p>			
Smartmatic 6	Smartmatic's Motion for Protective Order Quashing Herring Network Inc.'s Second Set of Requests for Production (Dkt. 81; 6/7/23)	<p>Motion Denied</p> <p>Parties Ordered to Meet and Confer on Updates to the Requests and Plaintiffs' Responses</p>	<p>Fully Briefed</p> <p>Presented at Hearing on February 5, 2024</p>	<p>On Hold Pending Meet and Confer</p>
Smartmatic 7	Smartmatic's Emergency Motions to Stay Depositions (Dkt. 105; 10/12/23)	Resolved	Fully Briefed	Resolved
Smartmatic 8	Forthcoming Discovery Disputes: motion to compel designation of additional custodians, motion to compel the production of cell phone data, motion to compel documents related to OANN's possession of Smartmatic's private data, motion to compel response to Smartmatic's First Set of Interrogatories, and motion to compel documents regarding Michael Lindell and My Pillow.	Parties at Impasse regarding Production of Cell Phone Data Relating to OAN Employees Who Have Not Permitted Collection of Their Personal Cell Phones on Basis of	<p>Not Briefed</p> <p>The Parties will submit via email a short explanation of the cell phone data dispute (and any other issues on which the parties remain at impasse), with references to relevant case law, in advance of the next Court hearing.</p>	Round 2

Report Topic #	Issue	Resolution Status	Briefing Status	Proposed Order
		<p>Their Privacy Rights, including Cal. Lab. Code § 980(a)</p> <p>Meet and Confer Process Ongoing regarding Remaining Topics</p>		
OANN 1	Defendant's Renewed First Motion for International Discovery (Dkt. 157; 12/26/23)	Resolved	Fully Briefed	Resolved
OANN 2	Defendant's Opposed Motion to Compel Depositions (Dkt. 143-2; 10/3/23)	Resolved	Motion drafted, not filed	Resolved
OANN 3	Defendant's Motion to Compel Compliance with Rule 45 Subpoena (Dkt. 1; 1:23-mc-00116-TJK-MAU)	Resolved	Fully Briefed	Resolved
OANN 4	Defendant's Motion to Modify Deposition Limits (Dkt. 143-3; 10/6/23)	Resolved	Updated Joint Protocol Submitted and Entered	Resolved
OANN 5	Defendant's Opposed Motion to Compel Amended Initial Disclosures (Dkt. 143-4; 10/17/23)	<p>Motion Granted</p> <p>Amended Disclosures Due 2/20/24</p>	Fully Briefed	On Hold

Report Topic #	Issue	Resolution Status	Briefing Status	Proposed Order
OANN 6	Defendant's Opposed Motion to Compel Source Code and Machine Inspection (Dkt. 143-5; 10/23/23)	<p>Motion Granted in Part and Denied in Part</p> <p>Request Nos. 1-5 Denied</p> <p>Court Ordered Parties to Submit a Joint Statement to Court on 2/9/24 Concerning Revised Request No. 6.</p> <p>Request No. 7 is Taken Under Advisement by Court. Court Directed Parties To Meet and Confer Further Regarding Request No. 7 (2-5-24 Hearing Tr. at 111-112).</p> <p>Court Directed Parties to Meet and Confer Whether Plaintiffs Possess a Copy of Source</p>	<p>OANN Motion Submitted</p> <p>If the parties remain at impasse following a meet and confer, they will submit via email a short explanation of their respective positions, with references to relevant case law, in advance of the next Court hearing.</p>	Round 1 and Round 2

Report Topic #	Issue	Resolution Status	Briefing Status	Proposed Order
		<p>Code Provided for LA County with Respect to Request No. 1 (2-5-24 Hearing Tr. at 111-112).</p> <p>OANN is separately pursuing certain discovery from L.A. County.</p>		
OANN 7	Defendant's Motion to Compel Responses to Interrogatories and Requests for Production (Dkt. 144-6; 10/27/23)	Meet and Confer Process Ongoing	<p>Motion Submitted</p> <p>If the parties reach an impasse, they will submit a short explanation of the open issues with references to relevant case law via email in advance of the next Court hearing.</p>	Round 2
OANN 8	Defendant's Motion to Compel Document Production from Scott Circle Communications, Inc. (Dkt. 111; 11/2/23)	<p>Third-Party Dispute</p> <p>Meet and Confer Process Ongoing</p>	Fully Briefed	Round 3

Report Topic #	Issue	Resolution Status	Briefing Status	Proposed Order
OANN 9	Defendant's Renewed Second Motion for International Discovery (Dkt. 158; 12/26/23)	Resolved	Fully Briefed	Resolved
OANN 10	Defendant's Opposed Motion to Compel SEC Newgate US LLC to Produce Documents Pursuant to Rule 45 Subpoena (1:21-cv-02900-CJN)	Third-Party Dispute Meet and Confer Process Ongoing	Motion Filed	Round 3
OANN 11	Defendant's Opposed Motion to Compel Third Party George Soros ("Soros") to Comply with Rule 45 Subpoena (Transfer; Not assigned)	Third-Party Dispute	Motion Filed	Round 3
OANN 12	Defendant's Opposed Motion to Compel Third-Party Open Society Institute to Comply with Rule 45 Subpoena (Dkt. 126; 12/15/23)	Third-Party Dispute	Motion Filed	Round 3
OANN 13	Defendant's Emergency Motion to Strike Smartmatic Motions to Compel (Dkt. 131; 12/7/23)	Resolved	Motion Filed	Resolved
OANN 14	Defendant's Motion for Protective Order Forbidding Plaintiffs' Third-Party Discovery that Violates Standing Order (Dkt. 135; 12/8/23)	Resolved	Motion Filed	Resolved
OANN 15	Defendant's Unopposed Motion to File Under Seal Defendant's Opposed Motion	Motion Granted	Motion Filed	Resolved

Report Topic #	Issue	Resolution Status	Briefing Status	Proposed Order
	for Issuance of Letters of Request for Production (Dkt. 95; 9/13/23)			
OANN 16	Defendant's Opposed Motion to Compel Issues and Crisis Group to Comply with Rule 45 Subpoena (CA No. 1:21-cv-02900; 11/21/23)	Third-Party Dispute Meet & Confer in Progress	Fully Briefed	Round 2
OANN 17	Defendant's Opposed Motion to Compel Stanford University to Comply with Rule 45 Subpoena (Transferred from N.D. Cal. - Not Docketed; 1/12/24)	Third-Party Dispute Meet & Confer in Progress	Motion Filed	Round 3
OANN 18	Defendant's Opposed Motion to Compel Google to Comply with Rule 45 Subpoena (CA No. 1:24-mc-00001, E.D. Va.; 1/26/24)	Third-Party Dispute Meet & Confer in Progress	Motion Filed	Round 3
OANN 19	Dispute Over Plaintiffs' Production of Deposition Transcripts in Related Actions (RFP 71)	Meet & Confer in Progress OAN Seeks Prompt Production of Custodian and Expert Deposition Transcripts/Reports	Not Briefed If the parties remain at impasse following their meet and confer discussions, they will submit via email a short explanation of their respective positions, with references to	Round 2

Report Topic #	Issue	Resolution Status	Briefing Status	Proposed Order
		from the Related Actions Plaintiffs Oppose a Blanket Agreement to Production of Expert Transcripts and Reports At This Time and Believe <i>Herring Networks Inc. v. AT&T Inc., at al.</i> , No. 37-2022-00008623-CU-BC-CTL (Cal. Super. Ct., San Diego Cty.) Should Be Included in Definition of Related Actions	relevant case law, in advance of the next Court hearing.	