

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 09-80396-KAM

VISION MEDIA TV GROUP, LLC,)
a Florida Limited Liability Company, *et al.*,)
Plaintiffs,)
)
v.)
)
JULIA FORTE, *et al.*,)
Defendants.)

AMENDED OPPOSITION TO MOTION TO STRIKE AND FOR GAG ORDER

Plaintiffs have filed a motion requesting that this Court (1) strike defendants' summary-judgment motion for exceeding the page limit, (2) issue a gag order barring public discussion of this case, and (3) defer plaintiffs' time to respond to the summary-judgment motion until those two requests are addressed. All three requests should be denied.

1. The combined text of our motion and memorandum is only 19½ pages. Plaintiffs contend that these documents exceed the Court's 20-page limit by incorrectly including the title page, table of contents, table of authorities, signature page, and certificate of service. But the page limit specifically excludes "[t]itle pages preceding the first page of text in a memorandum, signature pages, certificates of good faith conferences, and certificates of service." Local Rule 7.1(C)(2). We included a table of contents on the title page, and added a table of authorities for the Court's convenience, but such tables likewise should not be counted towards the page limit.

Plaintiffs also incorrectly contend that our separate statement of material facts should be included in the 20-page limit. But Rule 7.5(A) requires that summary judgment motions be accompanied by **both** "a memorandum of law" **and** "a concise statement of the material facts," and

Rule 7.5(C)(1) contains a separate, ten-page limit for such statements. Defendants have complied with that page limit as well. *See DeMaria v. Ryan P. Relocator Co.*, 512 F. Supp. 2d 1249, 1251 n.1 (S.D. Fla. 2007) (Court instructed defendants that statement of undisputed facts should be filed as a separate document and not as an exhibit to the motion for summary judgment); *National Partnership Inv. Corp. v. National Housing Dev. Corp.*, No. 97-8434, 2006 WL 3554118 (S.D. Fla. Nov. 16, 2006) (accepting late-filed statement of facts separately filed with reply).

In support of their motion, plaintiffs cited *Lawson v. Dollar General*, 2006 WL 1722345 (M.D. Fla. June 1, 2006), a Middle District case in which Judge Kovachevich was clearly provoked by the fact that the plaintiff there had filed a 4-page motion, a 20-page memorandum, and an 87-page statement of facts—a clear violation of the Middle District’s rules. Here, there has been no such evasion of the rules.

2. Plaintiffs ask for a gag order directed at plaintiffs’ counsel, restraining them from discussing this case publicly. But under *Bernard v. Gulf Oil Co.*, 619 F.2d 459 (5th Cir. 1980) (en banc), *aff’d on other grounds*, 452 U.S. 89 (1981), such an order is a prior restraint that cannot be issued without a strong showing of need. Vision Media’s expressed concern about the possible business impact of being criticized for having filed this lawsuit is not a basis for a prior restraint. *Organization for a Better Austin v. Keefe*, 402 US 415 (1971).

3. Finally, plaintiffs ask that their time to respond to the motion to dismiss or for summary judgment be deferred pending disposition of this motion. Because the motion is so insubstantial, it should not be a basis for any extension. Plaintiffs did not confer with defendants’ counsel—as the rules require—before filing their motion. Defendants, however, do not object to a reasonable extension for plaintiffs to respond to defendants’ motion, and if plaintiffs had conferred with

defendants' counsel, they would have been able to present a stipulated extension of time that would have been convenient for both parties.

For these reasons, plaintiffs' motion should be denied.

Respectfully submitted,

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January 26, 2010

Attorneys for Julia Forte and Octonet LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that January 27, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or

in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Judith M. Mercier

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Case No. 09-CV-80936-KAM
United States District Court, Southern District of Florida**

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