

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

GREE, INC.,

Plaintiff,

v.

SUPERCELL OY,

Defendant.

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Case No. 2:19-cv-00311-JRG-RSP

ORDER

Before the Court are two motions. The first motion is Plaintiff GREE, Inc.’s Opposed Emergency Motion to Compel Timely Trial Depositions or, Alternatively, Preclude Untimely Trial Depositions (“Motion to Compel”). **Dkt. No. 196.** GREE’s Motion to Compel asks the Court to compel Defendant Supercell Oy to present Mr. Stephen Demirdjian and Mr. Seth Allison for trial depositions by February 22, 2021, in compliance with the Proposed Pretrial Order (Dkt. No. 181) section reading, “[f]urther, the party seeking to present a witness by video at trial shall present that witness or witnesses for trial deposition so that their trial depositions are complete no later than one week before jury selection.” (the “Agreement”) Dkt. No. 196 at 4 (quoting Dkt. No. 181).

The second motion is Supercell’s Opposed Motion for Leave to Amend the Proposed Joint Final Pre-Trial Order (“Motion to Amend”). **Dkt. No. 197.** Supercell’s Motion to Amend requests leave to amend the Pretrial Order to remove the above-quoted language.

Both the Motion to Compel and the Motion to Amend center around the same dispute: the Agreement and its enforcement. GREE’s Motion to Compel seeks to enforce the Agreement such that Supercell presents Mr. Demirdjian and Mr. Allison for trial depositions by February 22, 2021. Supercell’s Motion to Amend seeks to remove the Agreement from the Pretrial Order to permit

presenting Mr. Demirdjian and Mr. Allison between February 24, 2021 and February 26, 2021. Dkt. No. 197 at 3.

At the time the Pretrial Order was filed, the pretrial conference was scheduled more than a week before jury selection. *See* Dkt. No. 181; *see also* Dkt. No. 175 at 1. In response to an emergency weather situation, on February 15, 2021, the Court issued a Notice resetting the pretrial conference (with the concurrence of counsel for both sides) to February 23, 2021, less than a week before the trial date. *See* February 15, 2021 Notice; *see also* Dkt. No. 175 at 1.

Supercell argues that the Agreement was made “under the assumption that the Pretrial Conference would occur before” more than a week before jury selection. Dkt. No. 197 at 2. However, Supercell has not shown that the Agreement was predicated on that assumption. Supercell further argues that the pretrial conference would “clarify the evidence that could be offered in the depositions.” *Id.* at 3. GREE argues that if Supercell is not held to the Agreement, the trial depositions of Mr. Demirdjian and Mr. Allison would be conducted a mere two business days before jury selection, detracting from their ability to prepare for trial. Dkt. No. 196 at 2.

The Court recognizes the prejudice created by this short period before trial. Likewise, the Court sees minimal prejudice to Supercell in requiring them to provide Mr. Demirdjian and Mr. Allison before the pretrial conference. Both GREE and Supercell have been aware of the ongoing pandemic and that the Court’s schedule has responded flexibly to evolving circumstances. Supercell has not established that the Agreement was predicated on the pretrial conference occurring more than a week before jury selection, and the Court does not see a compelling reason to disregard the negotiated agreement.

Accordingly, the Court **GRANTS** GREE's Motion to Compel and **DENIES** Supercell's Motion to Amend. It is therefore **ORDERED** that Supercell provide Mr. Demirdjian and Mr. Allison for trial depositions by February 22, 2021.

SIGNED this 19th day of February, 2021.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE