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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT HENLEY,
Plaintiff,
v.
LOWE'S HIW, INC.,
Defendant.

Case No. 1: 13-cv-00684-LJO-SAB
SCHEDULING ORDER (Fed.R.Civ.P 16)
Discovery Deadlines:
Initial Disclosures: 9/6/2013
Non-Expert Discovery: 4/2/2014
Expert Disclosure: 3/5/2014
Supplemental Expert Disclosure: 4/18/2014
Expert Discovery: 5/23/2014
Non-Dispositive Motion Deadlines:
Filing: 4/2/2014
Hearing: Pursuant to Local Rules
Dispositive Motion Deadlines:
Filing: 5/23/2014
Hearing: Pursuant to Local Rules
Pre-Trial Conference:
8/20/2014 at 8:15a.m.
Courtroom 4
Trial: 9/30/2014 at 8:30a.m.
Courtroom 4
5 Days

I. Date of Scheduling Conference

The Scheduling Conference was held on August 6, 2013.

1 **II. Appearances of Counsel**

2 John Lawrence Migliazzo appeared telephonically on behalf of Plaintiff.

3 Emily Burkhardt Vicente and Emily Aldrich telephonically appeared on behalf of
4 Defendant.

5 **III. Consent to Magistrate Judge**

6 Pursuant to 28 U.S.C. § 636(c), to the parties who have not consented to conduct all
7 further proceedings in this case, including trial,¹ before United States Magistrate Judge Stanley A.
8 Boone, you should be informed that because of the pressing workload of United States district
9 judges and the priority of criminal cases under the United States Constitution, you are strongly
10 encouraged to consent to magistrate judge jurisdiction in an effort to have your case adjudicated
11 in a timely and cost effective manner.

12 Presently, when a civil trial is set before Judge O'Neill, any criminal trial set which
13 conflicts with the civil trial will take priority, even if the civil trial was set first. Continuances of
14 civil trials under these circumstances will no longer be entertained, absent a specific and stated
15 finding of good cause, but the civil trial will instead trail from day to day or week to week until
16 the completion of either the criminal case or the older civil case.

17 **IV. Initial Disclosure under Fed. R. Civ. P. 26(a)(1)**

18 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P.
19 26(a)(1) on or before September 6, 2013.

20 **V. Amendments to Pleading**

21 Any motions or stipulations requesting leave to amend the pleadings must be filed by no
22 later than September 15, 2013. The parties are advised that filing motions and/or stipulations
23 requesting leave to amend the pleadings does not reflect on the propriety of the amendment or
24 imply good cause to modify the existing schedule, if necessary. All proposed amendments must
25 (A) be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the amendment requires any
26 modification to the existing schedule, *see Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,

27 _____
28 ¹ Except those proceedings delegated to the United States magistrate judges by 28 U.S.C. § 636(b) and the district
judges by the Local Rules for the Eastern District of California.

1 609 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an amendment is not
2 (1) prejudicial to the opposing party, (2) the product of undue delay, (3) proposed in bad faith, or
3 (4) futile, *see Foman v. Davis*, 371 U.S. 178, 182 (1962).

4 **VI. Discovery Plan and Cut-Off Dates**

5 The parties are ordered to complete all non-expert discovery on or before April 2, 2014,
6 and all expert discovery on or before May 23, 2014.

7 The parties are directed to disclose all expert witnesses, in writing, on or before March 5,
8 2014, and to disclose all supplemental experts on or before April 18, 2014. The written
9 designation of retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P.**
10 **26(a)(2), (A), (B) and (C) and shall include all information required thereunder.** Failure to
11 designate experts in compliance with this order may result in the Court excluding the testimony or
12 other evidence offered through the experts that are not properly disclosed in compliance with this
13 order.

14 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to
15 experts and their opinions. Experts must be fully prepared to be examined on all subjects and
16 opinions included in the designation. Failure to comply will result in the imposition of sanctions,
17 which may include striking the expert designation and the exclusion of their testimony.

18 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
19 disclosures and responses to discovery requests will be strictly enforced.

20 The parties are cautioned that the discovery/expert cut-off deadlines are the dates by
21 which all discovery must be completed. Absent good cause, discovery motions will not be heard
22 after the discovery deadlines. Moreover, absent good cause, the Court will only grant relief on a
23 discovery motion if the relief requested requires the parties to act before the expiration of the
24 relevant discovery deadline. In other words, discovery requests and deposition notices must be
25 served sufficiently in advance of the discovery deadlines to permit time for a response, time to
26 meet and confer, time to prepare, file and hear a motion to compel and time to obtain relief on a
27 motion to compel. Counsel are expected to take these contingencies into account when proposing
28 discovery deadlines. Compliance with these discovery cutoffs requires motions to compel be

1 filed *and heard* sufficiently in advance of the discovery cutoff so that the Court may grant
2 effective relief within the allotted discovery time. A parties' failure to have a discovery dispute
3 heard sufficiently in advance of the discovery cutoff may result in denial of the motion as
4 untimely.

5 **VII. Pre-Trial Motion Schedule**

6 Unless prior leave of Court is obtained at least seven (7) days before the filing date, all
7 moving and opposition briefs or legal memorandum in civil cases shall not exceed twenty-five
8 (25) pages. Reply briefs filed by moving parties shall not exceed ten (10) pages. Before
9 scheduling any motion, the parties must comply with all requirements set forth in Local Rule 230
10 and 251.

11 **A. Non-Dispositive Pre-Trial Motions**

12 As noted, all non-expert discovery, including motions to compel, shall be completed no
13 later than April 2, 2014. All expert discovery, including motions to compel, shall be completed
14 no later than May 23, 2014. Compliance with these discovery cutoffs requires motions to
15 compel be filed *and heard* sufficiently in advance of the discovery cutoff so that the Court may
16 grant effective relief within the allotted discovery time. A parties' failure to have a discovery
17 dispute heard sufficiently in advance of the discovery cutoff may result in denial of the motion as
18 untimely. Non-dispositive motions are heard on Wednesdays at 9:30 a.m., before United States
19 Magistrate Judge Stanley A. Boone in Courtroom 9.

20 In scheduling any non-dispositive motion, the Magistrate Judge may grant Applications
21 for an Order Shortening Time pursuant to Local Rule 144(e). However, if counsel does not
22 obtain an Order Shortening Time, the Notice of Motion must comply with Local Rule 251.

23 Counsel may appear and argue non-dispositive motions by telephone, providing a written
24 request to so appear is made to the Magistrate Judge's Courtroom Clerk no later than three (3)
25 court days before the noticed hearing date. In the event that more than one attorney requests to
26 appear by telephone then it shall be the obligation of the moving party(ies) to arrange and
27 originate a conference call to the court.

28 ***Discovery Disputes:*** If a motion is brought under Fed.R.Civ.P. 37, the parties must

1 prepare and file a Joint Statement re Discovery Disagreement (“Joint Statement”) as required by
2 Local Rule 251. The Joint Statement must be filed seven (7) calendar days before the scheduled
3 hearing date. Courtesy copies of all motion-related documents, declarations, and exhibits must be
4 delivered to the Clerk’s Office by 10:00 a.m. on the fourth court day prior to the scheduled
5 hearing date. Motions will be removed from the court’s hearing calendar if the Joint Statement is
6 not timely filed or if courtesy copies are not timely delivered. In order to satisfy the meet and
7 confer requirement set forth in Local Rule 251(b), the parties must confer and talk to each other
8 in person, over the telephone or via video conferencing before the hearing about the discovery
9 dispute. The Court may issue sanctions against the moving party or the opposing party if either
10 party fails to meet and confer in good faith.

11 **B. Dispositive Pre-Trial Motions**

12 All dispositive pre-trial motions shall be filed no later than May 23, 2014 and heard
13 pursuant to the Local Rules in Courtroom 4 before United States District Judge Lawrence J.
14 O’Neill. In scheduling such motions, counsel shall comply with **Fed.R.Civ.P 56 and Local**
15 **Rules 230 and 260.**

16 *Motions for Summary Judgment or Summary Adjudication:* Prior to filing a motion for
17 summary judgment or motion for summary adjudication, the parties are ORDERED to meet, in
18 person or by telephone, and confer to discuss the issues to be raised in the motion.

19 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment
20 where a question of fact exists; 2) determine whether the respondent agrees that the motion has
21 merit in whole or in part; 3) discuss whether issues can be resolved without the necessity of
22 briefing; 4) narrow the issues for review by the court; 5) explore the possibility of settlement
23 before the parties incur the expense of briefing a summary judgment motion; and 6) to arrive at a
24 Joint Statement of Undisputed Facts.

25 The moving party shall initiate the meeting and provide a draft of the Joint Statement of
26 Undisputed Facts. **In addition to the requirements of Local Rule 260, the moving party shall**
27 **file a Joint Statement of Undisputed Facts.**

28 In the Notice of Motion, the moving party shall certify that the parties have met and

1 conferred as ordered above or set forth a statement of good cause for the failure to meet and
2 confer.

3 **VIII. Pre-Trial Conference Date**

4 The Pre-Trial conference is set for **August 20, 2014 at 8:15 a.m. in Courtroom 4 before**
5 **United States District Judge Lawrence J. O'Neill.**

6 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule**
7 **281(a)(2)**. The parties are further directed to submit a digital copy of their Pretrial Statement in
8 Word format, directly to United States District Judge Lawrence J. O'Neill's chambers by email at
9 ljoorders@caed.uscourts.gov.

10 Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** for the Eastern
11 District of California, as to the obligations of counsel in preparing for the pre-trial conference.
12 The Court will insist upon strict compliance with those rules. In addition to the matters set forth
13 in the Local Rules, the Joint Pretrial Statement shall include a Joint Statement of the Case to be
14 used by the Court to explain the nature of the case to the jury during voir dire.

15 **IX. Trial Date**

16 Trial is set for **September 30, 2014 at 8:30 a.m. in Courtroom 4 before United States**
17 **District Judge Lawrence J. O'Neill.**

18 A. This is a Jury Trial.

19 B. Counsels' Estimate of Trial Time: 5 days.

20 C. Counsels' attention is directed to Local Rule 285 for the Eastern District of
21 California.

22 **X. Settlement Conference**

23 Should the parties desire a settlement conference, they will jointly request one of the
24 court, and one will be arranged. In making such request, the parties are directed to notify the
25 court as to whether or not they desire the undersigned to conduct the settlement conference or to
26 arrange for one before another judicial officer.

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1 **XI. Request for Bifurcation, Appointment of Special Master, or other Techniques**
2 **to Shorten Trial**

3 Not applicable at this time.

4 **XII. Related Matters Pending**

5 There are no pending related matters.

6 **XIII. Compliance with Federal Procedure**

7 All counsel are expected to familiarize themselves with the Federal Rules of Civil
8 Procedure and the Local Rules of the Eastern District of California, and to keep abreast of any
9 amendments thereto. The Court must insist upon compliance with these Rules if it is to
10 efficiently handle its increasing case load and sanctions will be imposed for failure to follow the
11 Rules as provided in both the Federal Rules of Civil Procedure and the Local Rules for the
12 Eastern District of California.

13 Additional requirements and more detailed procedures for courtroom practice before
14 United States Magistrate Judge Stanley A. Boone can be found at the United States District Court
15 for the Eastern District of California's website (www.caed.uscourts.gov) under "Judges." In
16 Judge Boone's section, in the area entitled "Case Management Procedures," click the link for
17 "Standard Information," which will direct you to a PDF document describing the practice
18 requirements specific to Judge Boone's courtroom.

19 **XIV. Effect of this Order**

20 The foregoing order represents the best estimate of the court and counsel as to the agenda
21 most suitable to dispose of this case. The trial date reserved is specifically reserved for this case.
22 If the parties determine at any time that the schedule outlined in this order cannot be met, counsel
23 are ordered to notify the court immediately of that fact so that adjustments may be made, either
24 by stipulation or by subsequent status conference.

25 **Stipulations extending the deadlines contained herein will not be considered unless**
26 **they are accompanied by affidavits or declarations, and where appropriate attached**
27 **exhibits, which establish good cause for granting the relief requested. The parties are**
28 **advised that due to the impacted nature of civil cases on the district judges in the Eastern**

1 **District of California, Fresno Division, that stipulations to continue set dates are disfavored**
2 **and will not be granted absent good cause.**

3 **Lastly, should counsel or a party appearing pro se fail to comply with the directions**
4 **as set forth above, an ex parte hearing may be held and contempt sanctions, including**
5 **monetary sanctions, dismissal, default, or other appropriate judgment, may be imposed**
6 **and/or ordered.**

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8 IT IS SO ORDERED.

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10 Dated: August 8, 2013

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UNITED STATES MAGISTRATE JUDGE