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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

BRIAN JOHNSON,
Plaintiff,
v.
TARGET CORPORATION,
Defendant.

) 1: 13-CV-01714-AWI - JLT
)
) SCHEDULING ORDER (Fed. R. Civ. P. 16)
)
) Pleading Amendment Deadline: 5/5/2014
)
) Discovery Deadlines:
) Non Expert: 9/19/2014
) Expert: 12/1/2014
) Mid-Discovery Status Conference:
) 7/11/2014 at 8:30 a.m.

) Non-Dispositive Motion Deadlines:
) Filing: 12/15/2014
) Hearing: 1/12/2015

) Dispositive Motion Deadlines:
) Filing: 1/26/2015
) Hearing: 3/16/2015

) Pre-Trial Conference:
) 5/6/2015 at 10:30 a.m.
) Courtroom 2

) Trial: 7/7/2015 at 8:30 a.m.
) Courtroom 2
) Jury trial: 5-10 days

I. Date of Scheduling Conference

February 7, 2014.

1 **II. Appearances of Counsel**

2 Christy W. Granieri appeared on behalf of Plaintiff.

3 Kymberleigh Damron-Hsiao appeared on behalf of Defendant.

4 **III. Information Concerning the Court's Schedule**

5 Out of fairness, the Court believes it is necessary to forewarn litigants that the Fresno Division
6 of the Eastern District of California now has the heaviest District Court Judge caseload in the entire
7 nation. While the Court will use its best efforts to resolve this case and all other civil cases in a timely
8 manner, the parties are admonished that not all of the parties' needs and expectations may be met as
9 expeditiously as desired. As multiple trials are now being set to begin upon the same date, parties may
10 find their case trailing with little notice before the trial begins. The law requires that the Court give any
11 criminal trial priority over civil trials or any other matter. The Court must proceed with a criminal trial
12 even if a civil trial was filed earlier and set for trial first. Continuances of any civil trial under these
13 circumstances will no longer be entertained, absent a specific and stated finding of good cause. All
14 parties should be informed that any civil trial set to begin during the time a criminal trial is proceeding
15 will trail the completion of the criminal trial.

16 The parties are reminded of the availability of a United States Magistrate Judge to conduct all
17 proceedings in this action. A United States Magistrate Judge is available to conduct trials, including
18 entry of final judgment, pursuant to 28 U.S.C. § 28 U.S.C. 636(c), Federal Rule of Civil Procedure 73,
19 and Local Rule 305. The same jury pool is used by both United States Magistrate Judges and United
20 States District Court Judges. Any appeal from a judgment entered by a United States Magistrate Judge
21 is taken directly to the United States Court of Appeal for the Ninth Circuit. However, the parties are
22 hereby informed that no substantive rulings or decisions will be affected by whether a party chooses to
23 consent.

24 Finally, the Fresno Division of the Eastern District of California, whenever possible, is utilizing
25 United States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant
26 to the Local Rules, Appendix A, reassignments will be random, and the parties will receive no advance
27 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern
28 District of California.

1 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
2 conduct all further proceedings, including trial. **Within 10 days** of the date of this order, counsel
3 **SHALL** file a consent/decline form (provided by the Court at the inception of this case) indicating
4 whether they will consent to the jurisdiction of the Magistrate Judge.

5 **IV. Pleading Amendment Deadline**

6 Any requested pleading amendments are ordered to be filed, either through a stipulation or
7 motion to amend, no later than **May 5, 2014**.

8 **V. Discovery Plan and Cut-Off Date**

9 The parties have exchanged the initial disclosures required by Fed. R. Civ. P. 26(a)(1).

10 The parties are ordered to complete all discovery pertaining to non-experts on or before
11 **September 19, 2014**, and all discovery pertaining to experts on or before **December 1, 2014**.

12 The parties are directed to disclose all expert witnesses, in writing, on or before **October 10,**
13 **2014**, and to disclose all rebuttal experts on or before **November 3, 2014**. The written designation of
14 retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B),**
15 **and (C) and shall include all information required thereunder**. Failure to designate experts in
16 compliance with this order may result in the Court excluding the testimony or other evidence offered
17 through such experts that are not disclosed pursuant to this order.

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

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

24 A mid-discovery status conference is scheduled for **July 11, 2014** at 8:30 a.m. before the
25 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
26 California. A Joint Mid-Discovery Status Conference Report, carefully prepared and executed by all
27 counsel, shall be electronically filed in CM/ECF, one full week prior to the Conference, and shall be e-
28 mailed, in Word format, to JLTorders@caed.uscourts.gov. Counsel may appear via CourtCall,

1 providing a written request to so appear is made to the Magistrate Judge's Courtroom Clerk no later
2 than five court days before the noticed hearing date.

3 **VI. Pre-Trial Motion Schedule**

4 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
5 than **December 15, 2014**, and heard on or before **January 12, 2014**. Non-dispositive motions are
6 heard at 9:00 a.m., before the Honorable Jennifer L. Thurston, United States Magistrate Judge, at the
7 United States District Courthouse located at 510 19th Street, Bakersfield, California.

8 No written discovery motions shall be filed without the prior approval of the assigned
9 Magistrate Judge. A party with a discovery dispute must first confer with the opposing party in a good
10 faith effort to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the
11 moving party promptly shall seek a telephonic hearing with all involved parties and the Magistrate
12 Judge. It shall be the obligation of the moving party to arrange and originate the conference call to the
13 court. To schedule this telephonic hearing, the parties are ordered to contact Courtroom Deputy Clerk,
14 Susan Hall at (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with**
15 **Local Rule 251 with respect to discovery disputes or the motion will be denied without prejudice**
16 **and dropped from calendar.**

17 In scheduling such motions, the Magistrate Judge may grant applications for an order shortening
18 time pursuant to Local Rule 144(e). However, if counsel does not obtain an order shortening time, the
19 notice of motion *must* comply with Local Rule 251.

20 Counsel may appear and argue non-dispositive motions via CourtCall, providing a written
21 request to so appear is made to the Magistrate Judge's Courtroom Clerk no later than five court days
22 before the noticed hearing date.

23 All dispositive pre-trial motions shall be filed no later than **January 26, 2015**, and heard no
24 later than **March 16, 2015**, in Courtroom 2 at 8:30 a.m. before the Honorable Anthony W. Ishii, United
25 States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56**
26 **and Local Rules 230 and 260.**

27 **VII. Motions for Summary Judgment or Summary Adjudication**

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1 Prior to filing a motion for summary judgment or motion for summary adjudication the parties
2 are ORDERED to meet, in person or by telephone, and confer to discuss the issues to be raised in the
3 motion at least twenty-one days prior to the filing of the motion.

4 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
5 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
6 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
7 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
8 expense of briefing a summary judgment motion; 6) to arrive at a joint statement of undisputed facts.

9 The moving party shall initiate the meeting and provide a draft of the joint statement of
10 undisputed facts. **In addition to the requirements of Local Rule 260, the moving party shall file a**
11 **joint statement of undisputed facts.**

12 In the notice of motion the moving party shall certify that the parties have met and conferred as
13 ordered above, or set forth a statement of good cause for the failure to meet and confer.

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

15 **May 6, 2015**, at 10:30 a.m. in Courtroom 2 before Judge Ishii.

16 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2).**
17 The parties are further directed to submit a digital copy of their pretrial statement in Word format,
18 directly to Judge Ishii's chambers, by email at AWIOrders@caed.uscourts.gov.

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

24 **IX. Trial Date**

25 **July 7, 2015**, at 8:30 a.m. in Courtroom 2 before the Honorable Anthony W. Ishii, United States
26 District Court Judge.

27 A. This is a jury trial.

28 B. Counsels' Estimate of Trial Time: 5-10 days.

1 C. Counsel's attention is directed to Local Rules of Practice for the Eastern District of
2 California, Rule 285.

3 **X. Settlement Conference**

4 The parties do not wish a settlement conference to be set at this time. If they believe a
5 settlement conference is likely to be fruitful in the future, they may file a joint request for the Court to
6 set a conference.

7 **XI. Requests for Bifurcation, Appointment of Special Master, or other**
8 **Techniques to Shorten Trial**

9 Target intends to move the Court to bifurcate the issue of liability from that of damages.

10 **XII. Related Matters Pending**

11 There are no pending related matters.

12 **XIII. Compliance with Federal Procedure**

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

19 **XIV. Effect of this Order**

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

25 **The dates set in this Order are considered to be firm and will not be modified absent a**
26 **showing of good cause even if the request to modify is made by stipulation. Stipulations**
27 **extending the deadlines contained herein will not be considered unless they are accompanied by**

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1 **affidavits or declarations, and where appropriate attached exhibits, which establish good cause**
2 **for granting the relief requested.**

3 Failure to comply with this order may result in the imposition of sanctions.
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5 IT IS SO ORDERED.

6 Dated: February 7, 2014

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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