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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TERI BROWN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

JONATHAN NEIL & ASSOCIATES,
INC.,

Defendant.

Case No. 1: 17-cv-00675-LJO-SAB
SCHEDULING ORDER (Fed. R. Civ. P 16)
Class Certification Deadline:
Motion Filing: January 12, 2018
Discovery Deadline: December 11, 2017

I. Date of Scheduling Conference

The Scheduling Conference was held on **July 27, 2017**.

II. Appearances of Counsel

Yitzchak Zelman telephonically appeared on behalf of Plaintiffs.

Christopher Egan telephonically appeared on behalf of Defendants.

III. Consent to Magistrate Judge

The parties have not filed a consent or decline form in this matter.

1 The Fresno Division of the Eastern District of California now has the heaviest District
2 Judge caseload in the entire nation. While the Court will use its best efforts to resolve this case
3 and all other civil cases in a timely manner, the parties are admonished that not all of the parties'
4 needs and expectations may be met as expeditiously as desired. As multiple trials are now being
5 set to begin upon the same date, parties may find their case trailing with little notice before the
6 trial begins when the case is heard before a United States District Judge. The law requires the
7 Court give any criminal case priority over civil trials and other matters, and the Court must
8 proceed with criminal trials even if a civil trial is older or was set earlier. Continuances of civil
9 trials under these circumstances will no longer be entertained, absent a specific and stated finding
10 of good cause. If multiple trials are scheduled to begin on the same day, this civil trial will trail
11 day to day or week to week until completion of any criminal case or older civil case.

12 The parties are advised of the availability of a United States Magistrate Judge to conduct
13 all proceedings in this action. A United States Magistrate Judge is available to conduct trials,
14 including entry of final judgment, pursuant to 28 U.S.C. § 28 U.S.C. 636(c), Federal Rule of Civil
15 Procedure 73, and Local Rule 305. The parties are free to withhold consent or decline magistrate
16 jurisdiction without adverse substantive consequences.

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

18 The parties shall exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1) on or
19 before **August 18, 2017**.

20 **V. Amendments to Pleading**

21 Any motions or stipulations requesting leave to amend the pleadings must be filed no later
22 than **September 29, 2017**. 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,
27 609 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an amendment is not
28 (1) prejudicial to the opposing party, (2) the product of undue delay, (3) proposed in bad faith, or

1 (4) futile, *see* Foman v. Davis, 371 U.S. 178, 182 (1962).

2 **VI. Class Certification**

3 The Court finds that discovery shall proceed by a phased approach in this matter. This
4 first phase shall relate to class certification. Any motions for class certification shall be filed on
5 or before **January 12, 2018**. The hearing on the class certification motion shall be set before the
6 undersigned pursuant to the Local Rule.

7 **VII. Discovery Plan and Cut-Off Dates**

8 The parties are ordered to complete all class certification discovery on or before
9 **December 11, 2017**.

10 The written designation of retained and non-retained experts shall **be made pursuant to**
11 **Fed. R. Civ. P. 26(a)(2), (A), (B) and (C) and shall include all information required**
12 **thereunder**. Failure to designate experts in compliance with this order may result in the Court
13 excluding the testimony or other evidence offered through the experts that are not properly
14 disclosed in compliance with this order.

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

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

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

1 discovery deadlines. Compliance with these discovery cutoffs requires motions to compel be
2 filed *and heard* sufficiently in advance of the discovery cutoff so that the Court may grant
3 effective relief within the allotted discovery time. A party's failure to have a discovery dispute
4 heard sufficiently in advance of the discovery cutoff may result in denial of the motion as
5 untimely.

6 **VIII. Pre-Trial Motion Schedule**

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

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

13 As noted, all non-expert discovery, including motions to compel, shall be completed no
14 later than **December 11, 2017**. All expert discovery, including motions to compel, shall be
15 completed no later than **December 11, 2017**. Compliance with these discovery cutoffs requires
16 motions to compel be filed *and heard* sufficiently in advance of the discovery cutoff so that the
17 Court may grant effective relief within the allotted discovery time. A party's failure to have a
18 discovery dispute heard sufficiently in advance of the discovery cutoff may result in denial of the
19 motion as untimely. Non-dispositive motions are heard on Wednesdays at 10:00 a.m., before
20 United States Magistrate Judge Stanley A. Boone in Courtroom 9.

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

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

1 ***Discovery Disputes:*** If a motion is brought under Fed. R. Civ. P. 37, the parties must
2 prepare and file a Joint Statement re Discovery Disagreement (“Joint Statement”) as required by
3 Local Rule 251. The Joint Statement must be filed seven (7) calendar days before the scheduled
4 hearing date. Courtesy copies of all motion-related documents, declarations, and exhibits must be
5 delivered to the Clerk’s Office by 10:00 a.m. on the fourth court day prior to the scheduled
6 hearing date. Motions will be removed from the court’s hearing calendar if the Joint Statement is
7 not timely filed or if courtesy copies are not timely delivered. In order to satisfy the meet and
8 confer requirement set forth in Local Rule 251(b), the parties must confer and talk to each other
9 in person, over the telephone or via video conferencing before the hearing about the discovery
10 dispute. The Court may issue sanctions against the moving party or the opposing party if either
11 party fails to meet and confer in good faith.

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

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

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

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

25 In the Notice of Motion, the moving party shall certify that the parties have met and
26 conferred as ordered above or set forth a statement of good cause for the failure to meet and
27 confer.

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1 **IX. Related Matters Pending**

2 There are no related cases currently pending.

3 **X. Compliance with Federal Procedure**

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

10 Additional requirements and more detailed procedures for courtroom practice before
11 United States Magistrate Judge Stanley A. Boone can be found at the United States District Court
12 for the Eastern District of California's website (www.caed.uscourts.gov) under Judges; United
13 States Magistrate Judge Stanley A. Boone (SAB). In the area entitled "Case Management
14 Procedures," there is a link to "Standard Information." All parties and counsel shall comply with
15 the guidelines set forth therein.

16 **XI. Effect of this Order**

17 The foregoing order represents the best estimate of the court and counsel as to the agenda
18 most suitable to dispose of this case. If the parties determine at any time that the schedule
19 outlined in this order cannot be met, counsel are ordered to notify the court immediately of that
20 fact so that adjustments may be made, either by stipulation or by subsequent status conference.

21 **Stipulations extending the deadlines contained herein will not be considered unless**
22 **they are accompanied by affidavits or declarations, and where appropriate attached**
23 **exhibits, which establish good cause for granting the relief requested. The parties are**
24 **advised that due to the impacted nature of civil cases on the district judges in the Eastern**
25 **District of California, Fresno Division, that stipulations to continue set dates are disfavored**
26 **and will not be granted absent good cause.**

27 **Lastly, should counsel or a party appearing pro se fail to comply with the directions**
28 **as set forth above, an ex parte hearing may be held and contempt sanctions, including**

1 monetary sanctions, dismissal, default, or other appropriate judgment, may be imposed
2 and/or ordered.

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4 IT IS SO ORDERED.

5 Dated: July 27, 2017


UNITED STATES MAGISTRATE JUDGE

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