

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CARSON INDUSTRIES, INC.,
Plaintiff,
v.
AMERICAN TECHNOLOGY
NETWORK, CORP.,
Defendant.

Case No. [14-cv-01769-NC](#)

**AMENDED ORDER DEFINING
ISSUES TO BE TRIED AND
SETTING BRIEFING SCHEDULE
ON FURTHER TRIAL
PREPARATION**

After the pretrial conference held on October 7, 2015, this order further refines the claims and evidence that will be presented to the jury in this case. The trial has been continued to November 16.

1. AMENDED ISSUES TO BE TRIED

This case presents a dispute between two parties, Carson Industries Inc. and American Technology Network Corp., over the sale of night vision goggle kits. Carson sold night vision goggle kits to ATN. Carson shipped 880 goggle kits to ATN in December 2010. The price of the kits was \$599.45 per unit. The parties agree that ATN paid \$50,000 for the goggle kits. ATN returned parts of some of the goggle kits to Carson, asserting that the goggles were defective. Here is the dispute.

First, there is a dispute about the number of kits that ATN returned to Carson.

Case No. [14-cv-01769-NC](#)

1 Carson claims that ATN returned parts of 327 kits to Carson. ATN claims that it returned
2 parts of 419 kits to Carson. Second, there is a dispute over the value of the parts of the kits
3 that ATN returned and did not return to Carson. Carson credited \$75,778.98 to ATN for
4 the parts of the returned kits. As to the 327 goggle kits it says ATN returned, Carson
5 claims that ATN still owes \$120,241.17 [\$196,020.15 minus \$75,778.98].

6 Therefore, the total contract damages that Carson seeks from ATN is \$120,241.17.

7 On the other hand, ATN denies that it owes Carson any money for the partially
8 returned goggle kits. ATN has filed a counterclaim against Carson. First, ATN asserts
9 that the goods provided by Carson were defective, so Carson breached the contracts and its
10 warranty and is not entitled to payment from ATN on the kits ATN returned. Second,
11 ATN claims that it is entitled to damages from Carson of \$280,000 as an offset. ATN's
12 asserted damages are \$50,000 that it paid to Carson for allegedly defective goods and
13 \$230,000 (920 units at a rate of \$250 per unit) for losses ATN claims it suffered in
14 repairing the defective goggle kits. Carson denies that ATN is entitled to any damages as
15 an offset.

16 2. LEAVE TO FILE FURTHER BRIEFING

17 In the Court's ruling on Carson's motion for summary judgment, the Court held in
18 part that ATN's "defenses and counterclaims as to the 463 kits and 10 lenses fail as a
19 matter of law because ATN did not give Carson notice of breach." Dkt. No. 81 at 9. The
20 summary judgment order, however, did not entirely extend to the cost of repair of 920
21 units that it is now apparent that ATN is seeking to affirmatively recover at trial.
22 Accordingly, by October 16, 2015, Carson may file a supplemental summary judgment
23 motion that addresses ATN's claim for repair of 920 units. ATN may respond by October
24 23. Carson may reply by October 27.

25 Separately, by October 23 ATN must identify the evidence (expected witness
26 testimony and proposed trial exhibits) that support the proposition that it returned 419
27 (rather than 327) goggle units to Carson. This will assist the Court in organizing the
28 evidence and issues to be heard at trial.

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A further pretrial conference will take place November 4, 2015 at 2:00 p.m.,
courtroom D, San Francisco.

IT IS SO ORDERED.

Dated: October 9, 2015



NATHANAEL M. COUSINS
United States Magistrate Judge