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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GLEN WILSON,  
  
Plaintiff,  
  
v.  
  
SEARS, ROEBUCK AND CO.,  
  
Defendant.

Civil No. 08-cv-2061-L(JMA)  
  
**ORDER**  
  
**(1) DENYING DEFENDANT’S  
MOTIONS *IN LIMINE* [DOCS. 75,  
76],**  
  
**(2) DENYING PLAINTIFF’S  
REQUEST TO PURSUE CLAIM  
FOR FAILURE TO ENGAGE IN  
INTERACTIVE PROCESS [DOC.  
74]; AND**  
  
**(2) RESETTING FINAL PRETRIAL  
CONFERENCE**

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**I. MOTIONS IN LIMINE**

On October 10, 2011, Defendant Sears, Roebuck and Co. filed two motions *in limine*. The first seeks to bifurcate the trial on the issues of liability and punitive damages (Doc. 75) and the second seeks to bifurcate the trial on the issues of liability and damages (Doc. 76). Defendant argues that bifurcation will promote judicial economy, and with respect to bifurcating the punitive damages from the liability portion of trial, that the Court should apply California law that mandates bifurcation of punitive damages claims. Plaintiff Glen Wilson opposes both

1 motions, arguing, in essence, that bifurcation would be a waste of judicial resources given that this  
2 is a *bench trial*. The Court agrees with Plaintiff, and therefore **DENIES** both of Defendant's  
3 motions.

## 4 5 **II. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**

6 During the last Final Pretrial Conference held on September 19, 2011, the Court ordered  
7 Plaintiff to submit supplemental briefing regarding whether he should be allowed to pursue a  
8 claim against Defendant for failure to engage in the interactive process. Thereafter, Plaintiff  
9 filed the supplemental brief, arguing that in asserting a claim for failure to accommodate under  
10 California Government Code § 12940, Defendant was placed on notice of all violations included  
11 therein, and that asserting a claim for failure to accommodate necessarily implicates an  
12 allegation for failure to engage in the interactive process. The Court disagrees.

13 California courts have agreed that failure to engage in the interactive process is a separate  
14 violation that is independent from a failure to provide a reasonable accommodation for a  
15 disability. See Cal. Gov't Code §§ 12940(m)–(n); *Nadaf-Rahrov v. Neiman Marcus*, 166 Cal.  
16 App. 4th 952, 983 (2008); *Gelfo v. Lockheed Martin Corp.*, 140 Cal. App. 4th 34, 61 (2006). In  
17 *Nadaf-Rahrov*, the California Court of Appeals explained the difference between the two claims  
18 as follows:

19 Section 12940(m) applies even without a showing that the employer  
20 failed to engage in the interactive process. Where a necessary  
21 accommodation is obvious, where the employee requests a specific and  
22 available reasonable accommodation that the employer fails to provide,  
23 or where an employer participates in a good faith interactive process  
24 and identifies a reasonable accommodation but fails to provide it, a  
25 plaintiff may sue under section 12940(m). Section 12940(n), which  
26 requires proof of failure to engage in the interactive process, is the  
27 appropriate cause of action where the employee is unable to identify a  
28 specific, available reasonable accommodation while in the workplace  
and the employer fails to engage in a good faith interactive process to  
help identify one, but the employee is able to identify a specific,  
available reasonable accommodation through the litigation process. In  
short, the two causes of action address different factual circumstances.  
166 Cal. App. 4th at 983. Based on the foregoing and Plaintiff's failure to mention the  
interactive process anywhere in his complaint, the Court finds that Plaintiff has not pled a claim  
under § 12940(n) and therefore cannot proceed to trial on that claim.


1 **III. CONCLUSION & ORDER**

2 In light of the foregoing, the Court hereby:

- 3 (1) **DENIES** Defendant's motion *in limine* to bifurcate trial on the issues of liability  
4 and punitive damages (Doc. 75);
- 5 (2) **DENIES** Defendant's motion *in limine* to bifurcate trial on the issues of liability  
6 and damages (Doc. 76);
- 7 (3) **DENIES** Plaintiff's request to allow him to introduce evidence that Defendant  
8 failed to engage in the interactive process;
- 9 (4) **ORDERS** the parties to prepare, serve, and lodge the Proposed PTC Order by  
10 April 2, 2011 in compliance with Civil Local Rule 16.1(f.6) in accordance with  
11 this order; and
- 12 (5) **ORDERS** the Final Pretrial Conference be held on April 9, 2012 at 11:00 a.m. in  
13 Courtroom 14.

14  
15 **IT IS SO ORDERED.**

16  
17 DATED: January 3, 2012

18   
19 M. James Lorenz  
United States District Court Judge

20 COPY TO:

21 HON. JAN M. ADLER  
22 UNITED STATES MAGISTRATE JUDGE

23 ALL PARTIES/COUNSEL  
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