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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DUNCAN LINDSEY,

Plaintiff,

v.

ELSEVIER INC., et al.,

Defendants.

Case No.: 16-cv-00959-GPC (DHB)

ORDER GRANTING IN PART AND DENYING IN PART JOINT MOTION RE DISCOVERY AND OTHER PRETRIAL PROCEEDINGS

(ECF No. 39)

On May 15, 2017, the parties filed a Joint Motion Re: Discovery and Other Pretrial Proceedings, seeking to extend the deadlines set forth in the Amended Scheduling Order by approximately three to six months. (ECF No. 39.) After review of the Joint Motion, the Court **GRANTS IN PART** and **DENIES IN PART** the Joint Motion. The Court only finds good cause to extend certain deadlines by approximately one (1) month. Accordingly, the Amended Scheduling Order (ECF No. 38) is amended as follows:

1. The parties shall designate their respective experts in writing by **June 26, 2017**. Pursuant to Fed. R. Civ. P. 26(a)(2)(A), the parties must identify any person who may be used at trial to present evidence pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This requirement is not limited to retained experts. The written designations shall

1 include the name, address and telephone number of the expert and a reasonable summary
2 of the testimony the expert is expected to provide. The list shall also include the normal
3 rates the expert charges for deposition and trial testimony. The parties must disclose the
4 identity of any rebuttal experts on or before **July 10, 2017**.

5 2. By **August 14, 2017**, each party shall comply with the disclosure provisions
6 in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure
7 requirement applies to all persons retained or specially employed to provide expert
8 testimony, or whose duties as an employee of the party regularly involve the giving of
9 expert testimony. **Except as provided in the paragraph below, any party that fails to**
10 **make these disclosures shall not, absent substantial justification, be permitted to use**
11 **evidence or testimony not disclosed at any hearing or at the time of trial. In addition,**
12 **the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

13 3. Any party shall supplement its disclosure regarding contradictory or rebuttal
14 evidence under Fed. R. Civ. P. 26(a)(2)(D) and 26(e) by **September 18, 2017**.

15 4. All discovery shall be completed by all parties by **October 23, 2017**.
16 “Completed” means that all discovery under Rules 30-36 of the Federal Rules of Civil
17 Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of
18 time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking
19 into account the times for service, notice and response as set forth in the Federal Rules of
20 Civil Procedure. **Counsel shall promptly and in good faith meet and confer with**
21 **regard to all discovery disputes in compliance with Local Rule 26.1(a).** The Court
22 expects counsel to make every effort to resolve all disputes without court intervention
23 through the meet and confer process. If the parties reach an impasse on any discovery
24 issue, counsel shall file an appropriate joint motion within the time limit and according to
25 the procedures outlined in Magistrate Judge David H. Bartick’s Civil Chambers Rules,
26 which are posted on the Court’s website. **A failure to comply in this regard will result**
27 **in a waiver of a party’s discovery issue. Absent an order of the Court, no stipulation**
28 **continuing or altering this requirement will be recognized by the Court.**

1 5. Please be advised that failure to comply with any discovery order of the Court
2 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on
3 the introduction of experts or other designated matters in evidence.

4 6. All pretrial motions, including those addressing Daubert issues related to
5 dispositive motions must be filed by **November 27, 2017**. Pursuant to Honorable Gonzalo
6 P. Curiel's Civil Pretrial & Trial Procedures, all motions for summary judgment shall be
7 accompanied by a separate statement of undisputed material facts. Any opposition to a
8 summary judgment motion shall include a response to the separate statement of undisputed
9 material facts. Counsel for the moving party must obtain a motion hearing date from the
10 law clerk of the judge who will hear the motion. Motion papers **MUST** be filed and served
11 the same day of obtaining a motion hearing date from chambers. A briefing schedule will
12 be issued once a motion has been filed. The period of time between the date you request a
13 motion date and the hearing date may vary. Please plan accordingly. Failure to make a
14 timely request for a motion date may result in the motion not being heard.

15 7. A Mandatory Settlement Conference shall be conducted on **February 7, 2018**
16 at **10:00 a.m.** in the chambers of Magistrate Judge David H. Bartick. Counsel shall submit
17 settlement statements **directly** to Judge Bartick's chambers by **January 31, 2018**.¹ The
18 parties may either submit confidential settlement statements or may exchange their
19 settlement statements. Each party's settlement statement shall set forth the party's
20 statement of the case, identify controlling legal issues, concisely set out issues of liability
21 and damages, and shall set forth the party's settlement position, including the last offer or
22 demand made by that party, and a separate statement of the offer or demand the party is
23 prepared to make at the settlement conference. **The settlement conference briefs shall**
24 **not be filed with the Clerk of the Court.**

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27 ¹ Statements under 20 pages in length, including attachments and exhibits, shall
28 be e-mailed to chambers at efile_Bartick@casd.uscourts.gov. Statements exceeding 20
pages in length, including attachments and exhibits, must be delivered directly to chambers.

1 All named parties, all counsel, and any other person(s) whose authority is
2 required to negotiate and enter into settlement shall appear in person at the
3 conference. The individual(s) present at the Mandatory Settlement Conference with
4 settlement authority must have the unfettered discretion and authority on behalf of the party
5 to: 1) fully explore all settlement options and to agree during the Mandatory Settlement
6 Conference to any settlement terms acceptable to the party (*G. Heileman Brewing Co., Inc.*
7 *v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th Cir. 1989)), 2) change the settlement position
8 of a party during the course of the Mandatory Settlement Conference (*Pitman v. Brinker*
9 *Int'l, Inc.*, 216 F.R.D. 481, 485-86 (D. Ariz. 2003)), and 3) negotiate a settlement without
10 being restricted by any predetermined level of authority (*Nick v. Morgan's Foods, Inc.*,
11 270 F.3d 590, 596 (8th Cir. 2001)).

12 Governmental entities may appear through litigation counsel only. As to all other
13 parties, appearance by litigation counsel only is not acceptable. Retained outside corporate
14 counsel shall not appear on behalf of a corporation as the party who has the authority to
15 negotiate and enter into a settlement. **The failure of any counsel, party or authorized**
16 **person to appear at the Mandatory Settlement Conference as required shall be cause**
17 **for the immediate imposition of sanctions.** All conference discussions will be informal,
18 off the record, privileged, and confidential.

19 8. All other deadlines in the Amended Scheduling Order (ECF No. 38) remain
20 in effect.

21 9. The parties are advised that the Court will not grant any further extension of
22 these deadlines.

23 IT IS SO ORDERED.

24 Dated: May 22, 2017



25
26 DAVID H. BARTICK
27 United States Magistrate Judge
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