

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JEFFREY ANDERSON,
Plaintiff,
v.
PUNJAB, INC. d/b/a KWIK SAK and
KWIK SAK REAL ESTATE
HOLDINGS, LLC,
Defendants.

Case No. 3:16-cv-02635
District Judge Sharp
Magistrate Judge Brown

PROPOSED INITIAL CASE MANAGEMENT ORDER

Pursuant to Local Rule 11(d), the following Initial Case Management Plan is adopted.

1. Jurisdiction and Venue. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 and the Americans with Disabilities Act, 42 U.S.C. §§ 12181, et seq. (the "ADA").

2. Plaintiff's Theory of the Case.1

Not available.

3. Defendant's Theory of the Case.

Defendants deny all liability and contend that Plaintiff's claim should be dismissed. Plaintiff lacks standing to assert claims under the ADA arising out of Defendants' property/business to the extent he did not encounter the alleged barriers at the Defendants'

1 On March 21, 2017, counsel for Defendant Punjab, Inc. d/b/a Kwik Sak had a letter hand-delivered to the Plaintiff requesting that he participate in a conference call with counsel for the Defendants on March 23, 2017 to discuss the Proposed Initial Case Management Order. (See March 21, 2017 correspondence attached at Ex. A.) Plaintiff did not participate in the call. Further, Plaintiff did not provide his theory of the case or respond to the proposed pre-trial deadlines set out in the March 21, 2017 correspondence of this Proposed Initial Case Management Order.

property/business. Further, Plaintiff's claim is barred insofar as Defendants have provided alternative methods with substantially equivalent access; any barrier removal is not readily achievable; and any requested modification will be disproportionate in cost to the alteration to the primary function area. Additionally, Plaintiff's claim is barred insofar as he seeks modifications to unaltered elements that satisfy the relevant accessibility standards. Finally, Plaintiff's claim is barred insofar as he seeks modifications to elements that are not within the control of either Defendant.

4. Identification of the issues. Liability and relief under the ADA.

5. Need for other claims or special issues under Rules 13-15, 17-21, and Rule 23 of the Federal Rules of Civil Procedure. The Defendants do not anticipate counter-claims, cross-claims, third-party claims, and joinder of other parties or claims, or class action certification, or the need for resolution of any issues arising under the above-cited rules at this time.

6. Witnesses. At stage in the litigation, expected witnesses include the Plaintiff, Bobby Kumar and the Plaintiff and Defendants' experts, if any.

7. Initial Disclosures and Staging of Discovery.

The parties shall make their Rule 26(a)(1) disclosures on or before the close of business on September **April 14, 2017**.

Plaintiff shall make his expert disclosures and serve his Rule 26(a)(2) statements on or before **September 11, 2017**.

Defendants shall make their expert disclosures and serve their Rule 26(a)(2) statements on or before **October 26, 2017**.

All discovery shall be completed by **December 11, 2017**.

Prior to filing any discovery-related motion the parties will schedule and conduct a telephone conference with the Magistrate Judge. **[The counsel requesting the conference shall check with opposing counsel as to their availability before setting a time certain with the Court.]**

8. Dispositive/Daubert Motions. Dispositive and *Daubert* Motions shall be filed on or before **January 29, 2018**. Responses to dispositive and *Daubert* Motions shall be filed within **28 days** after the motion is filed, and the reply, if any, shall be filed within **14 days** after the response is filed. The motion and memoranda shall not exceed **25 pages** without leave of the Court, and the reply shall not exceed **five pages** without leave of the Court.

9. Other Deadlines. Any motion to amend the pleadings or add parties shall be filed on or before **May 26, 2017**.

10. Motions to seal: Any party requesting that documents or portions of documents be sealed must demonstrate compelling reasons to seal the documents and that the sealing is narrowly tailored to those reasons. The motion to seal, even if unopposed, must “analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations.” *Beauchamp v. Federal Home Loan Mortgage Co.*, No. 15-6067, 2016 WL 3671629 at *45 (6th Cir. Jul. 11 2016) (quoting *Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*, Nos. 15-1544, 1551, 1552, 2016 WL 3163073 at *3 (6th Cir. June 7, 2016)). Protective orders should not provide that documents produced in discovery and designated as “confidential” will automatically be sealed upon filing or use at trial. Any such language in a proposed protective order will be stricken and may result in denial of the motion to enter the protective order.

11. Modification of case management order. Any motion to modify the case management order or any case management deadline shall be filed at least seven days before the

earliest affected deadline. If the parties agree, the motion may be filed up to the earliest affected deadline. The motion must include a statement confirming that counsel for the moving party has discussed the requested modification or extension with opposing counsel and whether there is any objection to the motion. The motion (even if a joint motion) must also include: (i) all deadlines, even unaffected deadlines, so that it will not be necessary for the Court to review previous case management orders in consideration of the motion, and (ii) a statement that the requested extension will still conform to the requirements of Local Rule 16.01(d)(2)(f) that no dispositive motion, including response and replies, be filed later than 90 days in advance of the target trial date.

12. E-Discovery. The parties agree that Administrative Order 174 shall govern all e-discovery that may be necessary in this matter.

13. Meeting of Counsel and Parties to Discuss Settlement Prospects. Ninety (90) days from the date of the initial case management conference, counsel and clients shall confer and discuss whether this case can be resolved without further discovery proceedings. After the meeting is conducted, counsel shall prepare a report and file it with the Court reflecting that the parties met and that the parties made a good faith effort to evaluate the resolution of this case. This report should also include whether the parties believe that one of the Alternative Dispute Resolution (“ADR”) procedures under the Local Rules would further assist the parties in resolving this matter.

14. Consent to trial before the Magistrate Judge. The parties do not consent to trial before the Magistrate Judge.

15. Subsequent case management conferences. The Magistrate Judge shall conduct a subsequent case management conference on _____, at _____.

case management conference shall be held by telephone. The parties are directed to call 877-873-8017 and enter code 1958322# at the designated date and time.

16. Target trial date: This case will be tried by a jury. The parties expect the trial to last **five days**. The parties request a target trial date of **July 16-20, 2018**.

A pretrial conference shall be held on _____ at _____.m. A proposed pretrial order shall be submitted at the pretrial conference.

It is so **ORDERED**.

ENTERED this the ____ day of March, 2017.

Joe B. Brown
United States Magistrate Judge

APPROVED FOR ENTRY:

WEBB SANDERS PLLC

By: /s/ Daniel Crowell

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Real Estate Holdings, LLC*

SHACKELFORD, BOWEN, McKINLEY & NORTON, LLP

By: /s/ John Paul Nefflen

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Attorneys for Defendant Punjab, Inc. d/b/a Kwik Sak

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded by electronic means via the Court's electronic filing system and/or by first-class, United States mail, postage prepaid, on March 23, 2017, to:

Leslie Goff Sanders (TN #18973)

Daniel Crowell (TN #31485)

WEBB SANDERS PLLC

209 10th Avenue South

Suite 505

Nashville, TN 37203

Jeffrey Anderson

3456 Rainwood Drive

Nashville, TN 37207

/s/ John Paul Nefflen

John Paul Nefflen



A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS & COUNSELORS

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jnefflen@shackelfordlaw.net

March 21, 2017

VIA HAND DELIVERY

Jeffrey Anderson
3456 Rainwood Drive
Nashville, TN 37207

Re: *Jeffrey Anderson v. Punjab, Inc. d/b/a Kwik Sak and Kwik Sak Real Estate Holdings, LLC*, United States District Court, Middle District of Tennessee Case No. 3:16-cv-02635

Dear Mr. Anderson:

The Initial Case Management Conference in this matter is set for March 27, 2017 at 2:00 p.m. Pursuant to the Court's Order, it is your responsibility to initiate preparation of the Initial Case Management Order. Since we have not heard from you, we would like to suggest the following pre-trial deadlines:

April 14, 2017, Initial Disclosures
September 11, 2017, Plaintiff's Expert Disclosures
October 26, 2017, Defendants' Expert Disclosures
December 11, 2017, Completion of All Discovery
January 20, 2018, Daubert Motions and Dispositive Motions

Mr. Crowell and I will have a telephone conference on Thursday, March 23 at 11am. Please call (888) 363-4734 and enter 1168302 to join the call. Also, please send us your theory of the case before the conference. We need to file our proposed Initial Case Management Conference Order on Thursday afternoon.

Sincerely,

SHACKELFORD, BOWEN, McKINLEY & NORTON, LLP


John Paul Nefflen

JPN:jlc

cc: Daniel Crowell
Leslie Sanders

Shackelford, Bowen, McKinley & Norton, LLP
Dallas Nashville Austin

Jaci Carrell

From: Jaci Carrell
Sent: Tuesday, March 21, 2017 1:01 PM
To: John Nefflen
Subject: Delivery of letter dated 3/21/17 to Jeffrey Anderson re Initial Case Management Conference

Alex of Confidential Courier hand-delivered our letter to Jeffrey Anderson. When he knocked on the door, Anderson yelled out the window to him to see what he wanted. Alex told him he had a letter for him. Mr. Anderson told Alex just to leave the letter on his porch.

Jaci Carrell
Assistant to John Nefflen and Lauren Kilgore
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