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The Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN HEINZ, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

AMAZON.COM, INC. and DOES 1 through
10, inclusive, and each of them,

Defendants.

No. 2:23-CV-01073-JNW

**STIPULATION AND ORDER
REGARDING DEFENDANT
AMAZON.COM, INC.'S RENEWED
MOTION TO DISMISS FIRST
AMENDED COMPLAINT**

Action Filed: January 11, 2023

Action Removed: February 5, 2023

Action Transferred: July 11, 2023

1 **STIPULATION REGARDING DEFENDANT**

2 **AMAZON.COM, INC.'S RENEWED MOTION TO DISMISS**

3 **FIRST AMENDED COMPLAINT**

4 Pursuant to the Office of the Clerk's July 18, 2023 letter regarding transfer (ECF No. 32),
5 Plaintiff Brian Heinz ("Plaintiff") and Defendant Amazon.com, Inc. ("Defendant"), by and
6 through their undersigned counsel, respectfully request as follows:

7 1. On January 11, 2023, Plaintiff commenced an action in the Superior Court of the
8 State of California in and for the County of Yolo, captioned *Heinz v. Amazon.com, Inc.*, Case No.
9 CV2023-0085 (the "State Court Action"). (ECF No. 1, Ex. A.)

10 2. On February 15, 2023, Defendant removed the action to the District Court for the
11 Eastern District of California. (ECF No. 1.)

12 3. On April 21, 2023, Plaintiff filed a First Amended Complaint ("FAC"). (ECF No.
13 21.)

14 4. On May 19, 2023, Defendant filed a Motion to Transfer or, in the Alternative,
15 Dismiss Plaintiff's FAC. (ECF No. 24.)

16 5. On July 11, 2023, the District Court for the Eastern District of California granted
17 Defendant's Motion to Transfer. (ECF No. 30.) Because the Court would transfer the case, it
18 "decline[d] to address the defendant's motion to dismiss," leaving resolution of Defendant's
19 pleading motion to the transferee court. (*Id.* at 13.) On July 11, 2023, this case was transferred
20 to this Court.

21 6. On July 18, 2023, the Office of the Clerk issued a letter informing the parties that
22 "[i]f a motion is pending and undecided at the time of transfer, the moving party must refile the
23 motion in this Court and note it for consideration on the Court's calendar in accordance with
24 LCR 7(d)." (ECF No. 32.)

1 7. Pursuant to the Court's July 18 Order, Defendant plans to refile its pending
2 Motion to Dismiss Plaintiff's FAC and to update it to address the arguments to this Court.

3 8. On July 25, 2023, counsel for the Parties conferred and agreed to the following
4 proposed stipulated briefing schedule for Defendant's renewed Motion to Dismiss Plaintiff's
5 FAC:

- 6 a. September 1, 2023 – Defendant's renewed Motion to Dismiss Plaintiff's FAC
7 due;
- 8 b. September 20, 2023 – Plaintiff's Opposition due;
- 9 c. September 29, 2023 – Defendant's Reply due;
- 10 d. October 6, 2023 – Noticed date for hearing on Defendant's renewed Motion to
11 Dismiss Plaintiff's FAC.

12 9. Also on July 18, 2023, the Court issued an Order Regarding Initial Disclosures,
13 Joint Status Report, and Early Settlement (the "July 18 Order"). (ECF No. 33.) The July 18
14 Order set the following deadlines:

- 15 a. August 8, 2023 – Deadline for Fed. R. Civ. P. 26(f) Conference;
- 16 b. August 22, 2023 – Initial Disclosures under Fed. R. Civ. P. 26(a)(1);
- 17 c. August 29, 2023 – Combined Joint Status Report and Discovery Plan as
18 Required by Fed. R. Civ. P. 26(f) and Local Civil Rule 26(f).

19 10. In the Parties' July 25 conferral, they further agreed that, in the interest of
20 preserving the parties' and Court's resources, the deadlines for conferral, disclosures, and filing
21 pursuant to Fed. R. Civ. Proc. 26(a)(1), (f) and Local Rule 26(f) (as set in the Court's July 18
22 Order, ECF No. 33) should be continued until a date after the Court resolves Defendant's Motion
23 to Dismiss, which may narrow the scope of the action or resolve the action in its entirety. The
24 Parties therefore respectfully request that the deadlines set in the Court's July 18 Order (ECF No.

1 33) be continued until a date after the resolution of Defendant's Renewed Motion to Dismiss
2 Plaintiff's FAC, if necessary.

3 11. This stipulation is signed by all parties who have appeared in the action and are
4 affected by the stipulation.

5 **NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and
6 between the Parties that Defendant shall have up to and including **September 1, 2023** to renew
7 its pending Motion to Dismiss Plaintiff's First Amended Complaint, Plaintiff shall have up to and
8 including **September 20, 2023** to oppose the renewed Motion to Dismiss Plaintiff's First
9 Amended Complaint, Defendant shall have up to and including **September 29, 2023** to file a
10 reply in support of its renewed Motion to Dismiss Plaintiff's First Amended Complaint, and the
11 hearing on Defendant's renewed Motion to Dismiss Plaintiff's First Amended Complaint will be
12 noticed for **October 6, 2023**.

13 The Parties further respectfully request that the Court vacate the Fed. R. Civ. P. 26(a)(1),
14 (f) and Local Rule 25(f) deadlines set in the July 18 Order, with those dates to be reset upon
15 resolution of Defendant's pending Motion to Dismiss Plaintiff's First Amended Complaint.

16 **SO STIPULATED AND JOINTLY SUBMITTED:**

1 DATED this 28th day of August, 2023.

2 Davis Wright Tremaine LLP
3 Attorneys for Defendant

4 By /s/ James H. Moon

James H. Moon

5 JOHN A. GOLDMARK (WSBA No. 40980)

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9 920 Fifth Avenue, Suite 3300

10 Seattle, Washington 98104-1610

11 DATED this 28th day of August, 2023.

12 Crosner Legal P.C.

13 Attorneys for Plaintiff

14 By /s/ Craig Straub

Craig Straub

15 ZACHARY M. CROSNER (*pro hac vice*
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20 Beverly Hills, California 90210

ORDER

1
2 Defendant shall have up to and including **September 1, 2023**, to renew its pending
3 Motion to Dismiss Plaintiff's First Amended Complaint, Plaintiff shall have up to and including
4 **September 20, 2023**, to oppose the renewed Motion to Dismiss Plaintiff's First Amended
5 Complaint, Defendant shall have up to and including **September 29, 2023**, to file a reply in
6 support of its renewed Motion to Dismiss Plaintiff's First Amended Complaint. The renewed
7 Motion to Dismiss Plaintiff's First Amended Complaint will be noted for **September 29, 2023**.
8 The Court will schedule a hearing with the parties if needed.

9 The Court **VACATES** the July 18, 2023, Order. Dkt. No. 33. The Court will reset
10 deadlines pursuant to Fed. R. Civ. P. 26(a)(1) and (f) and Local Rule 26(f) upon resolution of the
11 pending Motion to Dismiss Plaintiff's First Amended Complaint.

12 **IT IS SO ORDERED.**

13
14 Dated this 2nd day of August, 2023

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16 

17 _____
Jamal N. Whitehead
United States District Judge