THE HONORABLE BENJAMIN H. SETTLE

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF WASHINGTON**
**AT TACOMA**

CODY BRENNER, on his own behalf and on behalf of other similarly situated persons,

Plaintiff,

v.

VIZIO, INC., a California corporation,

Defendant.

Case No. 3:17-cv-05897-BHS

**STIPULATED MOTION AND ORDER TO MODIFY THE DEADLINE AND BRIEFING SCHEDULE RELATED TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

**NOTED FOR: NOVEMBER 1, 2018**



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## I. RELIEF REQUESTED

1. Pursuant to FRCP 16(b), Plaintiff Cody Brenner and Defendant VIZIO, Inc. (collectively, "the Parties") hereby jointly request the Court enter an order extending the deadline for Plaintiff's motion to certify the class to January 24, 2019, with Defendant's response being due on March 7, 2019, and Plaintiff's reply being due on March 28, 2019.

2. The Parties have conferred and jointly represent that they have good cause to request this continuance.

## II. STATEMENT OF FACTS

3. Plaintiff filed his Second Amended Complaint for Damages on June 1, 2018. Dkt. 35.

4. Defendant filed its Motion to Dismiss the Second Amended Complaint on June 15, 2018. Dkt. 37.

5. On July 30, 2018, the Court granted the Parties' prior stipulated motion and issued an order setting the deadline for Plaintiff's motion for class certification to be 90 days after entry of the Court's Order on Defendant's Motion to Dismiss. Dkt. 43.

6. The Court's Order on Defendant's Motion to Dismiss ("Order") was entered on September 24, 2018. Dkt. 45.

7. Based on the date of the Court's Order, the current deadline for Plaintiff's motion for class certification is December 24, 2018, causing the motion and the period for Defendant's response to fall during the holiday season. Dkts. 43, 45.

8. Extending Plaintiff's deadline for the motion for class certification to January 24, 2019, with Defendant's response being due on March 7, 2019, and Plaintiff's reply being due on March 28, 2019, would avoid the impact of the holiday season and enable the parties to avoid scheduling conflicts while preparing their class certification briefing and supporting evidence. This schedule, which provides six weeks for the response and three weeks for the reply, will also allow the parties to conduct discovery of issues and witnesses identified in the class certification briefing in a timely fashion.



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9. Both sides have served written discovery and otherwise diligently pursued discovery efforts after receiving the Court's Order on the Motion to Dismiss.

## III. EVIDENCE RELIED UPON

The Parties rely upon this Motion and the pleadings, files, and records in this proceeding.

## IV. AUTHORITY AND ARGUMENT

This Motion is based upon the Federal Rules of Civil Procedure, corresponding case law, and the Court's power to control its calendar. Orders entered before the final pretrial conference may be modified upon a showing of "good cause." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992) *citing* Fed. R. Civ. P. 16(b).

Here, good cause exists for modifying the current class certification deadline and related briefing schedule because the Parties anticipate that holiday scheduling conflicts and the timing constraints of the current schedule may impact their ability to adequately prepare briefing related to class certification.

## V. CONCLUSION

For the above-stated reasons, the Parties respectfully request that the Court grant their Stipulated Motion and issue a revised case scheduling order continuing the class certification motion deadline to January 24, 2019, with Defendant's response being due on March 7, 2019, and Plaintiff's reply being due on March 28, 2019.



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DATED this 1st day of November, 2018.

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**ORDER**

Having considered the parties' Stipulated Motion to Modify the Deadline and Briefing Schedule Related to Plaintiff's Motion for Class Certification, and good cause appearing, the Court hereby GRANTS the request. Plaintiff's Motion for Class Certification will be due on January 24, 2019, with Defendant's Response due on March 7, 2019, and Plaintiff's Reply due on March 28, 2019. The Court will issue a revised briefing schedule moving all related deadlines in accordance with the new class certification motion deadline.

DATED this 5th day of November, 2018.

BENJAMIN H. SETTLE
United States District Judge



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