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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JAMES COTTLE and FREDERICK
SCHOENEMAN, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

PLAID INC., a Delaware corporation,

Defendant.

Case No.: 4:20-cv-03056-DMR

**PLAINTIFFS' ADMINISTRATIVE
MOTION TO CONTINUE CASE
MANAGEMENT CONFERENCE**

INTRODUCTION

Pursuant to Civil Local Rule 6-3, plaintiffs James Cottle and Frederick Schoeneman (collectively, “Plaintiffs”) respectfully request that the Court continue the Initial Case Management Conference (“Initial CMC”) currently set for August 5, 2020 to the first available date no less than 21 days after Plaintiffs file their proposed Consolidated Complaint, or a Consolidated Complaint consistent with any further order of the Court. Holding the CMC at that later date will allow the Court to move the case forward most efficiently, including addressing scheduling and discovery-related issues with the involvement of all parties and counsel in this action, rather than holding the Initial CMC with solely the involvement of parties in the first-filed *Cottle* action.

BACKGROUND

Plaintiffs filed their complaint on May 4, 2020. Dkt. 1. On May 5, 2020, the Court scheduled the Initial CMC for August 5, 2020. Dkts. 1, 10. Between June 25, 2020 and July 17, 2020, four additional putative class actions making substantially the same allegations and bringing substantially the same claims against Plaid were filed in this District. *See Mitchell v. Plaid Inc.*, 3:20-cv-04230-SK, *Curtis, et al. v. Plaid Inc.*, 4:20-cv-04344-DMR, *Anderson, et al. v. Plaid Inc.*, 3:20-cv-04480-JSC, and *Evans, et al. v. Plaid Inc.*, 3:20-cv-04804-JSC. Unopposed motions to relate those actions to the first-filed *Cottle* action were filed on June 26, 2020, July 8, 2020, July 17, 2020, and July 22, 2020, respectively. Dkts. 37, 42, 49, and 52. Those motions are currently pending.

On July 17, 2020, all parties in the *Anderson*, *Cottle*, *Curtis*, and *Mitchell* actions jointly filed a stipulation requesting that the Court consolidate those four actions under Federal Rule of Civil Procedure 42(a), and to appoint interim class counsel (the “Stipulation”). Dkt. No. 51. On July 24, 2020, the Plaintiffs in the *Evans* action, which was filed on the same day as the Stipulation, filed a notice of joinder in the Stipulation. *Evans* Dkt.16. The plaintiffs in all actions have filed consents to Magistrate Judge jurisdiction. Dkts. 15, 34; *Mitchell* Dkts. 9, 14; *Curtis* Dkts. 16-17; *Anderson* Dkts. 11, 13; *Evans* Dkts. 9-10. An order on the Stipulation is currently pending. Plaid’s deadline to respond to the *Cottle* complaint was July 22, 2020 (Dkt. 36), but

Plaid did not file a response, apparently in light of the pending Stipulation. If it is granted, Plaintiffs will file a Consolidated Complaint within one week of the Court's order granting the Stipulation. Dkt. 51.

ARGUMENT

The requested short continuance of the Initial CMC would maximize efficiency for the parties and the Court. If the Stipulation is approved, the Consolidated Complaint would replace the *Cottle* complaint as the operative complaint in this action and additional parties would be brought before this Court. It would be inefficient for the Court to hold a CMC while there is uncertainty as to whether additional plaintiffs will be consolidated in this action.

Plaid will not be prejudiced by the requested continuance: a CMC will not be required to resolve the Stipulation, which is unopposed by all parties, nor for plaintiffs to draft and file their Consolidated Complaint, if the Court approves the same. Plaintiffs asked Plaid to stipulate to Plaintiffs' continuance request and Plaid declined on the basis that it would only agree to a continuance until a date after the Court ruled on a motion to dismiss. Declaration of Shawn M. Kennedy ISO Plaintiffs' Administrative Motion, ¶ 3.

Plaintiffs could not agree to Plaid's counterproposal because it would effectively bypass Federal Rules 1, 16, and 26, preclude input from the Court on the scope of and timing discovery, and unnecessarily delay engagement on critical pretrial matters such as the protective order and protocol for exchanging electronically stored information, Initial Disclosures, and other discovery, creating significant delays later on as those matters will still need to be resolved. It would also prevent the Court from exercising meaningful oversight of this litigation from the outset as intended by the Federal Rules, which identify five purposes for a pretrial conference:

- (1) expediting disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation; and
- (5) facilitating settlement.

Fed. R. Civ. Proc. 16(a). The Advisory Committee Notes to Rule 16 also emphasize the value of early Court involvement: "Empirical studies reveal that when a trial judge intervenes personally

1 at an early stage to assume judicial control. . . the case is disposed of by settlement or trial more
2 efficiently and with less cost and delay than when the parties are left to their own devices.” *Id.*,
3 advisory committee note (1983).

4 Because an Initial CMC is an important mechanism for the parties to share their respective
5 views on the appropriate scope of pretrial discovery and to obtain needed input from the Court on
6 formulating and simplifying the issues, it is standard practice in the Northern District of
7 California to hold the Initial CMC before the pleadings are resolved. Plaid’s position that any
8 discussion of discovery or other case management issues should be deferred until an unspecified
9 date months or potentially years in the future risks creating inefficiencies by excluding the Court
10 from case management altogether for a protracted period.

11 In addition, Plaid’s proposal to delay indefinitely the Initial CMC—in essence, putting
12 this case on hold—would significantly prejudice Plaintiffs. Without commencement of civil
13 discovery, Plaid may modify its practices and software without any oversight over the effects on
14 putative class members. Additionally, over time memories fade and evidence is lost; in the
15 absence of the collaborative meet and confer process that the Federal Rules envision, relevant
16 evidence of Plaid’s conduct may not be preserved.

17 CONCLUSION

18 Accordingly, Plaintiffs respectfully request that the Court issue an order continuing the
19 Initial CMC currently set for August 5, 2020 to the first available date no less than 21 days after
20 Plaintiffs file their proposed Consolidated Complaint, or a Consolidated Complaint consistent
21 with any further order of the Court.

1 Dated: July 27, 2020

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