

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

DIGITAL RETAIL APPS, INC.,

Plaintiff,

vs.

H-E-B, LP,

Defendant.

CASE NO. 6:19-cv-00167-ADA

JOINT STIPULATION AND ORDER POSTPONING TRIAL

Plaintiff Digital Retail Apps, Inc. (“DRA”) and Defendant H-E-B, LP (“H-E-B”) (collectively, the “Parties,” and individually, a “Party”) hereby stipulate and agree as follows:

- 1) The worsening COVID-19 pandemic has raised significant concerns for both Parties’ attorneys, witnesses, and experts regarding the risks posed to anyone who attends in-person trial;
- 2) The Parties’ collective motions for summary judgment, *Daubert* motions, and motions to strike have been fully briefed, and the Parties’ motions *in limine* will be briefed by January 22 under the current schedule;
- 3) The Parties believe that while continuance of the existing trial setting is appropriate, the efficient preparation of the case will be aided by the Court’s consideration of these motions, which, as noted, will be ripe for consideration no later than January 22; and
- 4) The Parties have conferred and confirmed that they do not have any significant conflicts for trial in the weeks of April 19 and 26, 2021.

NOW, THEREFORE, SUBJECT TO APPROVAL BY THE COURT, IT IS HEREBY STIPULATED AND AGREED:

- A) The Parties should complete the briefing on any motions *in limine* under the current schedule;
- B) The Parties will separately inquire with the Court as to the possibility and availability for a hearing to argue the motions for summary judgment, *Daubert* motions, motions to strike, and motions *in limine* in advance of a rescheduled pretrial conference;
- C) The Court should postpone the trial date from February 19 to an available date in April in order to allow the COVID-19 situation to ameliorate;

D) For the Court's consideration, the Parties have proposed an alternative trial date in April and corresponding dates for a Final Pretrial Conference and filing pretrial submissions (e.g., exhibit list, jury instructions), shown below. If these dates are not workable for the Court, the Parties are happy to work with the Court to select alternative dates that are more convenient.

| Event | Proposed Date |
|---|----------------|
| File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, and designations) | March 8, 2021 |
| Deadline to meet and confer regarding remaining objections to pretrial disclosures | March 15, 2021 |
| File joint notice identifying remaining objections to pretrial disclosures | March 24, 2021 |
| Final Pretrial Conference | March 29, 2021 |
| Jury Selection/Trial | April 19, 2021 |

Dated: January 8, 2021

Respectfully submitted,

/s/ Robert R. Brunelli

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DIGITAL RETAIL APPS, INC.

Dated: January 8, 2021

Respectfully submitted,

/s/ Joseph P. Reid

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PURSUANT TO STIPULATION, IT IS SO ORDERED. THE COURT HEREBY
ADOPTS THE PARTIES' PROPOSED SCHEDULE.

Dated: January 13, 2021



THE HONORABLE ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE