

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BRYAN ANTHONY REO, <i>Pro Se</i> ,)	Case No.: 1:19 CV 2103
)	
Plaintiff)	JUDGE SOLOMON OLIVER, JR.
)	
v.)	
)	
MARTIN LINDSTEDT, <i>Pro Se</i> ,)	
)	
Defendant)	<u>STATUS CONFERENCE ORDER</u>

The court held a telephonic status conference on the record with counsel for the parties in the within case on November 30, 2020, at 10:30 a.m. During the conference, the court and the parties discussed the process and timeline for moving this action to final resolution. Following the court's Order (ECF No. 44), granting summary judgment in favor of *pro se* Plaintiff Bryan Reo ("Plaintiff") on most of his claims, the question of damages is the only remaining issue to be resolved. Plaintiff indicated that he anticipates calling an expert in clinical psychology and, potentially, experts in search engine optimization and/or the Ohio legal market. *Pro se* Defendant Martin Lindstedt ("Defendant") did not indicate whether he intends to call any expert witnesses to testify.

Consistent with the court's discussion with the parties, Plaintiff shall file a memorandum within fourteen (14) days of the date of this Order setting forth the damages he asserts with respect to each claim, detailing the elements/items of damages he allegedly sustained, and identifying the evidence he intends to adduce in support thereof. Defendant may file a responsive memorandum

challenging Plaintiff's claimed damages and evidence within fourteen (14) days after Plaintiff files his memorandum. Plaintiff shall file any expert reports by January 19, 2021, or else proceed without any expert witnesses. Defendant shall file any rebuttal expert reports by March 1, 2021, or else proceed without any expert witnesses. The cut-off date for expert discovery is March 31, 2021. As discussed at the conference, the parties are entitled to conduct depositions and other discovery necessary to their case, including deposing the other party's experts.

Finally, the court notes that it will set a date for a jury trial on the issue of damages unless the parties file a stipulation indicating that they would prefer to proceed via bench trial. Plaintiff represented at the status conference that he would consider withdrawing his jury demand if doing so would expedite resolution of this action. However, Defendant maintained that he wants a jury trial. The law on this issue is clear: "Pursuant to Federal Rule of Civil Procedure 39, once a jury trial has been demanded, the trial will be heard by a jury unless consent to a bench trial is agreed upon by both parties." *CBR Funding, LLC v. Jones*, No. 13-1280, 2015 WL 5431969, at *3 (W.D. Tenn. Sept. 15, 2015) (emphasis added); *see also* Fed. R. Civ. P. 38(d) ("A proper demand may be withdrawn only if the parties consent."). Because Plaintiff's Complaint unambiguously invokes his right to a jury trial, (Compl., ECF No. 1-1), "an expectation existed that Defendant[] could rely upon Plaintiff's demand," *CBR Funding*, 2015 WL 5431969, at *3. Moreover, Defendant never objected to Plaintiff's jury demand or otherwise impliedly consented to a bench trial. *Contra Chicago Ins. Co. v. Capwill*, No. 3:01-CV-2588, 2010 WL 2723716, at *2 (N.D. Ohio July 8, 2010) ("Because of . . . their previous objection to a jury trial, Defendants' consent is not required for the Plaintiff to withdraw its jury demand."). Therefore, Plaintiff cannot withdraw his jury demand without Defendant's consent. With that said, Plaintiff's concerns regarding delay are well-taken. Restrictions

caused by the ongoing COVID-19 pandemic likely will delay the start of a jury trial, which will delay the ultimate resolution of this case. Moreover, a jury trial will require the parties to physically appear in court. By contrast, a bench trial could be conducted on a more expeditious timeline, and it may be conducted using videoconference technology, which would allow the parties to participate remotely. Should the parties decide they prefer a bench trial, they should file a joint stipulation on the record in conformity with Rule 39 indicating that desire. *See* Fed. R. Civ. P. 38(d); Fed. R. Civ. P. 39(a).

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

December 4, 2020