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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Christine Cameron,
Plaintiff,
v.
Lowes Home Centers Incorporated, *et al.*,
Defendants.

No. CV-17-08082-PCT-JJT

ORDER

At issue is Plaintiff Christine Cameron’s Motion to Preclude Testimony from Defense Expert Paul Zimmer (Doc. 159), to which Defendant Lowe’s Home Centers, LLC filed a Response (Doc. 161) and in support of which Plaintiff filed a Reply (Doc. 172). The Court will deny the Motion with leave to re-raise should it become ripe. As of now, it is not.

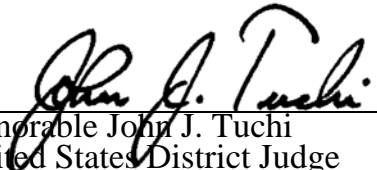
Plaintiff claims Mr. Zimmer’s expert report contains no opinions. Defendant acknowledges the same and indicates that is because Plaintiff has disclosed no evidence in support of any theory of economic loss. Defendant treats Mr. Zimmer as a rebuttal expert witness who would rebut as yet undisclosed economic loss evidence. Plaintiff counters that any opinion Mr. Zimmer would now offer is precluded because it was not disclosed by the deadline this Court set for rebuttal expert opinion disclosure under Fed. R. Civ. P. 26(a)(2). That may be true, but it is difficult to disclose an opinion whose formulation depends on disclosure of economic loss evidence which also has not yet been disclosed, and by

1 Plaintiff's own logic, also would be precludable as untimely under the Court's Case
2 Management and Scheduling Order.

3 In other words, there is nothing to decide on Plaintiff's Motion to preclude
4 Mr. Zimmer at this point. If Plaintiff never discloses economic loss evidence, there will be
5 no need for Mr. Zimmer to testify and the Motion will be mooted. If Plaintiff does later
6 disclose such evidence, or attempts to introduce it at trial without disclosure, the Court
7 would take up such a motion to preclude Mr. Zimmer at that point, concomitant with
8 Defendant's motion to preclude undisclosed evidence under the deadline set by the
9 Scheduling Orders. The Court reminds counsel for all parties that it will not allow
10 "sandbagging" by any party.

11 IT IS ORDERED denying Plaintiff Christine Cameron's Motion to Preclude
12 Testimony from Defense Expert Paul Zimmer (Doc. 159) with leave to re-urge as the case
13 develops.

14 Dated this 26th day of June, 2019.

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17 Honorable John J. Tuchi
18 United States District Judge
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