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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TEAM ENTERPRISES, LLC.,

1:08-cv-00872-LJO-SMS

Plaintiff,

**ORDER DENYING DEFENDANTS' EX
PARTE APPLICATION FOR ORDER
SHORTENING TIME ON MOTION FOR
STAY OF DISCOVERY PENDING
MEDIATION (Doc. 263)**

vs.

WESTERN INVESTMENT REAL
ESTATE TRUST, et al.,

Defendants.

AND RELATED COUNTER, CROSS,
AND THIRD-PARTY ACTIONS.

Filed on Friday, November 6, 2009, at 2:04 p.m., the Court received and reviewed Defendants PKII Century Center LP, Pan Pacific Retail Properties, Inc./LLC, Kimco Realty Corporation, and Prudential Real Estate Investors application for ex parte order shortening notice time on motion for stay of discovery pending mediation; declaration of Anna L. Nguyen in support thereof, and proposed order (Doc. 263) on Monday morning, November 9, 2009. The court was out of chambers on November 5, 2009, in the afternoon and throughout the weekend on court

1 business. Plaintiff/Third-Party Defendants Team Enterprises'
2 (Doc. 264) and Defendants R.R. Street & Co. Inc. (Doc. 265)
3 oppositions hereto were received and reviewed on November 9,
4 2009. Defendant Legacy Vulcan Corp.'s opposition (Doc. 266)
5 hereto was received and reviewed on November 10, 2009.

6 The Court finds there is not good cause to shorten time for
7 purposes of hearing this motion in conjunction with Defendants'
8 noticed motion for protective order, set for hearing on November
9 13, 2009 (Doc. 252). Due to the press of business for the courts
10 in the Eastern District of California, and, specifically, due to
11 the email responses attached to the exhibits to the motion for
12 stay, from other named defendants in this lawsuit regarding their
13 disagreement with staying discovery pending mediation, the Court
14 finds there to be insufficient time for all parties potentially
15 impacted with this matter of a discovery stay to weigh in timely
16 prior to a motion four (4) days hence.

17 Further, this Court is sufficiently concerned with its own
18 order after informal telephonic status conference on October 26,
19 2009, that this case be mediated no later than January 31, 2010
20 (Doc. 260). Indeed, if the parties wish to privately mediate,
21 the Court is quite supportive. However, if there is disagreement
22 among the parties that the case is in mediation posture, the
23 Court cautions that setting such a session and relying on the
24 Court to micromanage discovery and other disputes up to a
25 mediation deadline is not the best and highest use of the Court's
26 resources when law and motion hearing dates are at a premium.

27 The Court did *not* "effectively institute[d] a litigation
28 hold at the October Status Conference by ordering the parties to

1 mediation by January 31, 2010" as Defendant Pan Pacific argues in
2 its points and authorities for stay of discovery. The Court does
3 not recall that issue being raised. Inasmuch as there appears to
4 be a disagreement regarding conducting discovery up to the
5 mediation, this Court defers that issue for resolution in the
6 future. Note: The court makes *no* representation that the matter
7 can or will be heard informally or formally by noticed motion
8 prior to any mediation.

9 Lastly, the Court is concerned with the focus of the
10 mediation anticipated by the various parties. Whether it is to
11 determine who is responsible for creating the pollution, or what
12 the depth and breadth of the pollution consists of, or what the
13 remediation costs are, and/or who is responsible for paying for
14 those costs, it seems wise to have all the identities and former
15 identities of each and every defendant disclosed.

16 Telephonic appearances at the November 13, 2009, hearing are
17 welcomed. It would be helpful for all parties to appear
18 regardless of whether each has a stake or a position in the
19 motion for protective order. The Court may well want/need to
20 clarify or change its order of October 26, 2009.

21
22 IT IS SO ORDERED.

23 **Dated:** November 10, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE