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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

VIRGINIA VARGAS,	)	1: 15-CV-00177 - LJO - JLT
	)	
Plaintiff,	)	SCHEDULING ORDER (Fed. R. Civ. P. 16)
	)	
v.	)	Pleading Amendment Deadline: 8/10/2015
	)	
J.C. PENNY CORPORATION, INC., et al.,	)	Discovery Deadlines:
	)	Initial Disclosures: 6/26/2015
Defendants.	)	Non-Expert: 3/25/2016
	)	Expert: 5/27/2016
	)	Mid-Discovery Status Conference:
	)	11/12/2015, 8:30 a.m.
	)	
	)	Non-Dispositive Motion Deadlines:
	)	Filing: 6/3/2016
	)	Hearing: 7/1/2016
	)	
	)	Dispositive Motion Deadlines:
	)	Filing: 7/13/2016
	)	Hearing: 8/24/2016
	)	
	)	Settlement Conference:
	)	1/8/2016 at 9:30 a.m.
	)	510 19th Street, Bakersfield, CA
	)	
	)	Pre-Trial Conference:
	)	11/30/2016 at 8:30 a.m.
	)	Courtroom 4
	)	
	)	Trial: 1/24/2017 at 8:30 a.m.
	)	Courtroom 4
	)	Jury trial: 5 days

1 **I. Date of Scheduling Conference**

2 May 19, 2015.

3 **II. Appearances of Counsel**

4 Craig Johnson appeared on behalf of Plaintiff.

5 Benjamin Johnson appeared on behalf of Defendant.

6 **III. Magistrate Judge Consent:**

7 **Notice of Congested Docket and Court Policy of Trailing**

8 Due to the District Judges' heavy caseload, the newly adopted policy of the Fresno Division of  
9 the Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set  
10 before a District Judge, the parties will trail indefinitely behind any higher priority criminal or older  
11 civil case set on the same date until a courtroom becomes available. The trial date will not be reset to a  
12 continued date.

13 The Magistrate Judges' availability is far more realistic and accommodating to parties than that  
14 of the U.S. District Judges who carry the heaviest caseloads in the nation and who must prioritize  
15 criminal and older civil cases over more recently filed civil cases. A United States Magistrate Judge  
16 may conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of  
17 Civil Procedure 73, and Local Rule 305. Any appeal from a judgment entered by a United States  
18 Magistrate Judge is taken directly to the United States Court of Appeal for the Ninth Circuit.

19 The Fresno Division of the Eastern District of California, whenever possible, is utilizing United  
20 States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant to the  
21 Local Rules, Appendix A, such reassignments will be random, and the parties will receive no advance  
22 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern  
23 District of California.

24 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to  
25 conduct all further proceedings, including trial. **Within 10 days** of the date of this order, counsel  
26 **SHALL** file a consent/decline form (provided by the Court at the inception of this case) indicating  
27 whether they will consent to the jurisdiction of the Magistrate Judge.

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1 **IV. Pleading Amendment Deadline**

2 Any requested pleading amendments are ordered to be filed, either through a stipulation or  
3 motion to amend, no later than **August 10, 2015**.

4 **V. Discovery Plan and Cut-Off Date**

5 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)  
6 on or before **June 26, 2015**.

7 The parties are ordered to complete all discovery pertaining to non-experts on or before **March**  
8 **25, 2016**, and all discovery pertaining to experts on or before **May 27, 2016**.<sup>1</sup>

9 The parties are directed to disclose all expert witnesses<sup>2</sup>, in writing, on or before **April 8, 2016**,  
10 and to disclose all rebuttal experts on or before **April 29, 2016**. The written designation of retained and  
11 non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and**  
12 **shall include all information required thereunder**. Failure to designate experts in compliance with  
13 this order may result in the Court excluding the testimony or other evidence offered through such  
14 experts that are not disclosed pursuant to this order.

15 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts  
16 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions  
17 included in the designation. Failure to comply will result in the imposition of sanctions, which may  
18 include striking the expert designation and preclusion of expert testimony.

19 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement  
20 disclosures and responses to discovery requests will be strictly enforced.

21 A mid-discovery status conference is scheduled on **November 12, 2015** at 8:30 a.m. before the  
22 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19<sup>th</sup> Street, Bakersfield,  
23 California, 93301. A Joint Mid-Discovery Status Conference Report, carefully prepared and executed  
24 by all counsel, shall be electronically filed in CM/ECF, one full week prior to the Conference, and shall  
25 be e-mailed, in Word format, to JLTorders@caed.uscourts.gov. The joint statement SHALL outline the  
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27 <sup>1</sup> Counsel agreed that depositions of treating physicians may be taken during the non-expert discovery period.

28 <sup>2</sup> In the event an expert will offer opinions related to an independent medical or mental health evaluation, the  
examination SHALL occur sufficiently in advance of the disclosure deadline so the expert's report fully details the expert's  
opinions in this regard.

1 discovery that has been completed and that which needs to be completed as well as any impediments to  
2 completing the discovery within the deadlines set forth in this order. Counsel may appear via  
3 CourtCall, providing a written request to so appear is made to the Magistrate Judge's Courtroom Clerk  
4 no later than five court days before the noticed hearing date.

5 **VI. Pre-Trial Motion Schedule**

6 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later  
7 than **June 3, 2016**, and heard on or before **July 1, 2016**. Non-dispositive motions are heard before the  
8 Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States Courthouse in  
9 Bakersfield, California.

10 No written discovery motions shall be filed without the prior approval of the assigned  
11 Magistrate Judge. A party with a discovery dispute must first confer with the opposing party in a good  
12 faith effort to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the  
13 moving party promptly shall seek a telephonic hearing with all involved parties and the Magistrate  
14 Judge. It shall be the obligation of the moving party to arrange and originate the conference call to the  
15 court. To schedule this telephonic hearing, the parties are ordered to contact Courtroom Deputy Clerk,  
16 Susan Hall at (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with**  
17 **Local Rule 251 with respect to discovery disputes or the motion will be denied without prejudice**  
18 **and dropped from calendar.**

19 In scheduling such motions, the Magistrate Judge may grant applications for an order shortening  
20 time pursuant to Local Rule 144(e). However, if counsel does not obtain an order shortening time, the  
21 notice of motion must comply with Local Rule 251.

22 Counsel may appear and argue non-dispositive motions via CourtCall, providing a written  
23 request to so appear is made to the Magistrate Judge's Courtroom Clerk no later than five court days  
24 before the noticed hearing date.

25 All dispositive pre-trial motions shall be filed no later than **July 13, 2016**, and heard no later  
26 than **August 24, 2016**, in Courtroom 4 at 8:30 a.m. before the Honorable Lawrence J. O'Neill, United  
27 States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56**  
28 **and Local Rules 230 and 260.**

1 **VII. Motions for Summary Judgment or Summary Adjudication**

2 **At least 21 days before** filing a motion for summary judgment or motion for summary  
3 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues  
4 to be raised in the motion.

5 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a  
6 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole  
7 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the  
8 issues for review by the court; 5) explore the possibility of settlement before the parties incur the  
9 expense of briefing a summary judgment motion; 6) to arrive at a joint statement of undisputed facts.

10 The moving party shall initiate the meeting and **SHALL** provide a complete, proposed  
11 statement of undisputed facts **at least five days before** the conference. The finalized joint statement  
12 of undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be  
13 deemed true. **In addition to the requirements of Local Rule 260, the moving party shall file the**  
14 **joint statement of undisputed facts.**

15 In the notice of motion the moving party shall certify that the parties have met and conferred as  
16 ordered above, or set forth a statement of good cause for the failure to meet and confer.

17 **VIII. Pre-Trial Conference Date**

18 **November 30, 2016**, at 8:30 a.m. in Courtroom 4 before Judge O'Neill.

19 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2).**  
20 The parties are further directed to submit a digital copy of their pretrial statement in Word format,  
21 directly to Judge O'Neill's chambers, by email at LJOorders@caed.uscourts.gov.

22 Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the  
23 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.  
24 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the  
25 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the  
26 Court to explain the nature of the case to the jury during voir dire.

27 **IX. Trial Date**

28 **January 24, 2017**, at 8:30 a.m. in Courtroom 4 before the Honorable Lawrence J. O'Neill,

1 United States District Court Judge.

2 A. This is a jury trial.

3 B. Counsels' Estimate of Trial Time: 5 days.

4 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of  
5 California, Rule 285.

6 **X. Settlement Conference**

7 A Settlement Conference is scheduled for **January 8, 2016** at 9:30 a.m., located at 510 19<sup>th</sup>  
8 Street, Bakersfield, California. The settlement conference will be conducted by Magistrate Judge  
9 Thurston. **If any party prefers that the settlement conference be conducted by a judicial officer**  
10 **who is not normally assigned to this matter, that party is directed to notify the Court no later**  
11 **than 60 days in advance of the scheduled settlement conference** to allow sufficient time for  
12 another judicial officer to be assigned to handle the conference.

13 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case**  
14 **shall appear** at the Settlement Conference **with the parties** and the person or persons having **full**  
15 **authority** to negotiate and settle the case **on any terms**<sup>3</sup> at the conference. Consideration of  
16 settlement is a serious matter that requires preparation prior to the settlement conference. Set forth  
17 below are the procedures the Court will employ, absent good cause, in conducting the conference.

18 **At least 21 days before** the settlement conference, Plaintiff **SHALL** submit to Defendant via  
19 fax or e-mail, a written itemization of damages and a meaningful<sup>4</sup> settlement demand which includes  
20 a brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days before**  
21 the settlement conference, Defendant **SHALL** respond, via fax or e-mail, with an acceptance of the  
22 offer or with a meaningful counteroffer, which includes a brief explanation of why such a settlement  
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24 <sup>3</sup> Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements  
25 are subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by a  
26 person or persons who occupy high executive positions in the party organization and who will be directly involved in the  
27 process of approval of any settlement offers or agreements. To the extent possible the representative shall have the  
28 authority, if he or she deems it appropriate, to settle the action on terms consistent with the opposing party's most recent  
demand.

<sup>4</sup> "Meaningful" means that the offer is reasonably calculated to settle the case on terms acceptable to the offering  
party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to the other party. If,  
however, the offering party is only willing to offer a settlement which it knows the other party will not accept, this should  
trigger a recognition the case is not in a settlement posture and the parties should confer about continuing or vacating the  
settlement conference via stipulation.

1 is appropriate.

2 If settlement is not achieved, each party **SHALL** attach copies of their settlement offers to  
3 their Confidential Settlement Conference Statement, as described below. Copies of these documents  
4 shall not be filed on the court docket.

5 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

6 At least five court days prior to the Settlement Conference, the parties shall submit, directly to  
7 Judge Thurston's chambers by e-mail to JLTOrders@caed.uscourts.gov, a Confidential Settlement  
8 Conference Statement. The statement **should not be filed** with the Clerk of the Court **nor served on**  
9 **any other party**, although the parties may file a Notice of Lodging of Settlement Conference  
10 Statement. Each statement shall be clearly marked "confidential" with the date and time of the  
11 Settlement Conference indicated prominently thereon.

12 The Confidential Settlement Conference Statement shall include the following:

- 13 A. A brief statement of the facts of the case.
- 14 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon  
15 which the claims are founded; a forthright evaluation of the parties' likelihood of  
16 prevailing on the claims and defenses; and a description of the major issues in dispute.
- 17 C. A summary of the proceedings to date.
- 18 D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.
- 19 E. The relief sought.
- 20 F. The party's position on settlement, including present demands and offers and a history  
21 of past settlement discussions, offers and demands.

22 **XI. Request for Bifurcation, Appointment of Special Master, or other**  
23 **Techniques to Shorten Trial**

24 Not applicable at this time.

25 **XII. Related Matters Pending**

26 There are no pending related matters.

27 **XIII. Compliance with Federal Procedure**

28 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure

1 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any  
2 amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently  
3 handle its increasing case load and sanctions will be imposed for failure to follow the Rules as provided  
4 in both the Federal Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of  
5 California.

6 **XIV. Effect of this Order**

7 The foregoing order represents the best estimate of the court and counsel as to the agenda most  
8 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the  
9 parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered  
10 to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by  
11 subsequent status conference.

12 **The dates set in this Order are considered to be firm and will not be modified absent a**  
13 **showing of good cause even if the request to modify is made by stipulation. Stipulations**  
14 **extending the deadlines contained herein will not be considered unless they are accompanied by**  
15 **affidavits or declarations, and where appropriate attached exhibits, which establish good cause**  
16 **for granting the relief requested.**

17 Failure to comply with this order may result in the imposition of sanctions.

18  
19 IT IS SO ORDERED.

20 Dated: May 19, 2015

/s/ Jennifer L. Thurston  
21 UNITED STATES MAGISTRATE JUDGE