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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANDREA VAN SCOY, et al., No. 2:08-cv-02237-MCE-KJN

Plaintiffs,

v.

AMENDED PRETRIAL SCHEDULING ORDER

NEW ALBERTSON'S, INC., et
al.,

Defendants.

_____/

After reviewing the parties' Joint Stipulation and Request to Modify the Pretrial Scheduling Order, the Court makes the following Amended Pretrial Scheduling Order modifying the trial and trial related dates only.

I. SERVICE OF PROCESS

All named Defendants have been served and no further service is permitted without leave of court, good cause having been shown.

II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

No joinder of parties or amendments to pleadings is permitted without leave of court, good cause having been shown.

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1 III. JURISDICTION/VENUE

2 Jurisdiction is predicated upon 28 U.S.C. sections 1331,
3 1337 and 1367. Jurisdiction and venue are not contested.

4 IV. FINAL PRETRIAL CONFERENCE

5 The Final Pretrial Conference is set for **May 17, 2012** at
6 **2:00 p.m.** At least one of the attorneys who will conduct the
7 trial for each of the parties shall attend the Final Pretrial
8 Conference. If by reason of illness or other unavoidable
9 circumstance a trial attorney is unable to attend, the attorney
10 who attends in place of the trial attorney shall have equal
11 familiarity with the case and equal authorization to make
12 commitments on behalf of the client.

13 Counsel for all parties are to be fully prepared for trial
14 at the time of the Final Pretrial Conference, with no matters
15 remaining to be accomplished except production of witnesses for
16 oral testimony.

17 The parties shall file, not later than **April 26, 2012**, a
18 Joint Final Pretrial Conference Statement. The provisions of
19 Local Rules 281 shall apply with respect to the matters to be
20 included in the Joint Final Pretrial Conference Statement. In
21 addition to those subjects listed in Local Rule 281(b), the
22 parties are to provide the Court with a plain, concise statement
23 that identifies every non-discovery motion tendered to the Court
24 and its resolution. Failure to comply with Local Rule 281, as
25 modified by this Pretrial Scheduling Order, may be grounds for
26 sanctions.

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1 At the time of filing the Joint Final Pretrial Conference
2 Statement, counsel shall also electronically mail to the Court in
3 digital format compatible with Microsoft Word or WordPerfect, the
4 Joint Final Pretrial Conference Statement in its entirety
5 including the witness and exhibit lists. **These documents shall**
6 **be sent to: mceorders@caed.uscourts.gov.**

7 The parties should identify first the core undisputed facts
8 relevant to all claims. The parties should then, in a concise
9 manner, identify those undisputed core facts that are relevant to
10 each claim. The disputed facts should be identified in the same
11 manner. Where the parties are unable to agree as to what
12 disputed facts are properly before the Court for trial, they
13 should nevertheless list all disputed facts asserted by each
14 party. Each disputed fact or undisputed fact should be
15 separately numbered or lettered.

16 Each party shall identify and concisely list each disputed
17 evidentiary issue which will be the subject of a motion in
18 limine.

19 Each party shall identify the points of law which concisely
20 describe the legal issues of the trial which will be discussed in
21 the parties' respective trial briefs. Points of law should
22 reflect issues derived from the core undisputed and disputed
23 facts. Parties shall not include argument or authorities with
24 any point of law.

25 The parties shall prepare a joint statement of the case in
26 plain concise language which will be read to the jury at the
27 beginning of the trial. The purpose of the joint statement is to
28 inform the jury what the case is about.

1 The parties are reminded that pursuant to Local Rule 281
2 they are required to list in the Joint Final Pretrial Conference
3 Statement all witnesses and exhibits they propose to offer at
4 trial. After the name of each witness, each party shall provide
5 a brief statement of the nature of the testimony to be proffered.
6 The parties may file a joint list or each party may file separate
7 lists. These list(s) shall not be contained in the body of the
8 Joint Final Pretrial Conference Statement itself, but shall be
9 attached as separate documents to be used as addenda to the Final
10 Pretrial Order.

11 Plaintiffs' exhibits shall be listed numerically.
12 Defendants' exhibits shall be listed alphabetically. The parties
13 shall use the standard exhibit stickers provided by the Court
14 Clerk's Office: pink for plaintiff and blue for defendant. In
15 the event that the alphabet is exhausted, the exhibits shall be
16 marked "AA-ZZ" and "AAA-ZZZ" etc. After three letters, note the
17 number of letters in parenthesis (i.e., "AAAA(4)") to reduce
18 confusion at trial. All multi-page exhibits shall be stapled or
19 otherwise fastened together and each page within the exhibit
20 shall be numbered. All photographs shall be marked individually.
21 The list of exhibits shall not include excerpts of depositions,
22 which may be used to impeach witnesses. In the event that
23 Plaintiffs and Defendants offer the same exhibit during trial,
24 that exhibit shall be referred to by the designation the exhibit
25 is first identified. The Court cautions the parties to pay
26 attention to this detail so that all concerned, including the
27 jury, will not be confused by one exhibit being identified with
28 both a number and a letter.

1 The Final Pretrial Order will contain a stringent standard
2 for the offering at trial of witnesses and exhibits not listed in
3 the Final Pretrial Order, and the parties are cautioned that the
4 standard will be strictly applied. On the other hand, the
5 listing of exhibits or witnesses that a party does not intend to
6 offer will be viewed as an abuse of the court's processes.

7 The parties also are reminded that pursuant to Rule 16 of
8 the Federal Rules of Civil Procedure it will be their duty at the
9 Final Pretrial Conference to aid the Court in: (a) the
10 formulation and simplification of issues and the elimination of
11 frivolous claims or defenses; (b) the settling of facts that
12 should properly be admitted; and (c) the avoidance of unnecessary
13 proof and cumulative evidence. Counsel must cooperatively
14 prepare the Joint Final Pretrial Conference Statement and
15 participate in good faith at the Final Pretrial Conference with
16 these aims in mind. A failure to do so may result in the
17 imposition of sanctions which may include monetary sanctions,
18 orders precluding proof, elimination of claims or defenses, or
19 such other sanctions as the Court deems appropriate.

20 V. TRIAL BRIEFS

21 The parties shall file trial briefs not later than **May 3,**
22 **2012.** Counsel are directed to Local Rule 285 regarding the
23 content of trial briefs.

24 VI. EVIDENTIARY AND/OR PROCEDURAL MOTIONS

25 Any evidentiary or procedural motions are to be filed by
26 **April 26, 2012.** Oppositions must be filed by **May 3, 2012** and any
27 reply must be filed by **May 10, 2012.** The motions will be heard
28 by the Court at the same time as the Final Pretrial Conference.

1 VII. TRIAL SETTING

2 The trial is set for **July 16, 2012 at 9:00 a.m.** Trial will
3 be by jury. The panel will consist of **eight (8) jurors.** The
4 parties estimate a trial length of **twenty (20) days.**

5 VIII. SETTLEMENT CONFERENCE

6 At the Final Pretrial Conference, the Court may set a
7 settlement conference if the parties so request. In the event no
8 settlement conference is requested, the parties are free to
9 continue to mediate or attempt to settle the case with the
10 understanding that the trial date is a firm date.

11 In the event a settlement conference is set by the Court,
12 counsel are instructed to have a principal with full settlement
13 authority present at the Settlement Conference or to be fully
14 authorized to settle the matter on any terms. At least seven (7)
15 calendar days before the settlement conference, counsel for each
16 party shall submit to the chambers of the settlement judge a
17 confidential Settlement Conference Statement. Such statements
18 are neither to be filed with the Clerk nor served on opposing
19 counsel. Each party, however, shall serve notice on all other
20 parties that the statement has been submitted. If the settlement
21 judge is not the trial judge, the Settlement Conference Statement
22 shall not be disclosed to the trial judge.

23 Notwithstanding the foregoing, the parties may request a
24 settlement conference prior to the Final Pretrial Conference if
25 they feel it would lead to the possible resolution of the case.
26 In the event an early settlement conference date is requested,
27 the parties shall file said request jointly, in writing.

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1 The request must state whether the parties waive disqualification,
2 pursuant to Local Rule 270(b), before a settlement judge can be
3 assigned to the case. Absent the parties' affirmatively
4 requesting that the assigned Judge or Magistrate Judge participate
5 in the settlement conference AND waiver, pursuant to Local Rule
6 270(b), a settlement judge will be randomly assigned to the case.

7 IX. VOLUNTARY DISPUTE RESOLUTION PROGRAM

8 Pursuant to Local Rule 271 parties will need to lodge a
9 stipulation and proposed order requesting referral to the
10 Voluntary Dispute Resolution Program.

11 X. MODIFICATION OF PRETRIAL SCHEDULING ORDER

12 The parties are reminded that pursuant to Rule 16(b) of the
13 Federal Rules of Civil Procedure, the Pretrial Scheduling Order
14 shall not be modified except by leave of court upon a showing of
15 **good cause**. Agreement by the parties pursuant to stipulation
16 alone to modify the Pretrial Scheduling Order does not constitute
17 good cause. Except in extraordinary circumstances, unavailability
18 of witnesses or counsel will not constitute good cause.

19 XI. OBJECTIONS TO PRETRIAL SCHEDULING ORDER

20 This Pretrial Scheduling Order will become final without
21 further order of the Court unless objections are filed within
22 seven (7) court days of service of this Order.

23 IT IS SO ORDERED.

24 Dated: July 8, 2011

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26 MORRISON C. ENGLAND, JR.
27 UNITED STATES DISTRICT JUDGE
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