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9 *Attorneys for Defendants*
 10 *KMART CORPORATION and*
BIG LOTS STORES, INC.

11 UNITED STATES DISTRICT COURT
 12 EASTERN DISTRICT OF CALIFORNIA
 13 SACRAMENTO DIVISION

TROUTMAN SANDERS LLP
 5 PARK PLAZA
 SUITE 1400
 IRVINE, CA 92614-2545

15 SOFPOOL LLC, a limited liability
 16 company,

17 Plaintiff,

18 v.

19 KMART CORPORATION, a Michigan
 Corporation, BIG LOTS, INC., an Ohio
 Corporation, and BIG LOTS STORES,
 20 INC., an Ohio Corporation,

21 Defendants.

Case No. CV 10-03333 LKK (JFM)

Hon. Lawrence K. Karlton

**ORDER GRANTING DEFENDANTS' EX
 PARTE APPLICATION FOR
 CLARIFICATION OF EXPERT REPORT
 DEADLINES AND DESIGNATIONS**

22 AND RELATED COUNTERCLAIMS.
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The Court has reviewed Defendants Kmart Corporation and Big Lots Stores, Inc.’s (“Defendants”) *ex parte* application for clarification and modification of expert report deadlines and designations. After reviewing the *ex parte* application, the Declaration of Paul L. Gale, and the records and pleadings on file, and good cause appearing therefor, the Court GRANTS the *ex parte* application and ORDERS the following clarifications to the March 11, 2011 Status (Pretrial Scheduling) Conference Order (“Scheduling Order”):

1. Parties bearing the burden of proof on an issue at trial shall have served expert reports and disclosures on all such issues, including without limitation those pursuant to Fed. R. Civ. P. 26(a)(2)(B) and (C), and shall have filed their designation of such experts with the Court, on or before February 3, 2012.

2. Parties not bearing the burden of proof on an issue at trial shall serve expert reports and disclosures on all such issues, including without limitation those pursuant to Fed. R. Civ. P. 26(a)(2)(D)(ii), and shall file their designation of such experts with the Court, on or before February 24, 2012. Such non-proof bearing party may, but shall not be required to, designate and serve an expert report or disclosure even if the proof bearing party filed no designation or served no expert report on the issue.

3. All expert rebuttal reports to the expert reports served February 24, 2012 shall be served March 12, 2012.


4. Pursuant to the court’s scheduling order, all expert depositions shall be concluded by the March 21, 2012 date for close of discovery, absent agreement by the parties to extend that date to accommodate the schedules of experts or counsel. Order, Dkt. 23, at 4:25-26.

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5. No witness shall be permitted to offer opinion testimony during any proceeding in this action, including trial, who has not complied with the foregoing provisions, the Scheduling Order, the Federal Rules of Civil Procedure, and the Local Rules and Orders of this Court, absent a showing that precluding such opinion testimony would be manifestly unjust.

IT IS SO ORDERED.

DATED: February 13, 2012.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT