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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JIMMY GREER, individually, and on behalf of others similarly situated,,

Plaintiff,

v.

DICK’S SPORTING GOODS, INC., a Delaware corporation; and DOES 1 through 100, inclusive,

Defendant.

No. 2:15-cv-01063-KJM-CKD

STATUS (PRETRIAL SCHEDULING)

ORDER

An initial scheduling conference was held in this case on September 17, 2015. Bevin Allen appeared for the plaintiff; Paul Cowie appeared for the defendant.

Having reviewed the parties’ Joint Status Report filed on September 10, 2015, and discussed a schedule for the case with counsel at the hearing, the court will set schedule for class certification first. The court makes the following orders:

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.

1 II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

2 No further joinder of parties or amendments to pleadings is permitted without
3 leave of court, good cause having been shown. *See* Fed. R. Civ. P. 16(b); *Johnson v. Mammoth*
4 *Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992).

5 The parties have met and conferred regarding the plaintiff's fourth claim for
6 violation of Labor Code Section 204. Plaintiff has agreed to dismiss the allegation. The court
7 approves the parties' proposal that the deadline for pleadings amendments, including the
8 plaintiff's filing of an amended complaint to dismiss the fourth claim, be **October 1, 2015**.

9 The parties agree that defendant's answer can stand as the answer to the amended
10 complaint. The court orders the parties to file a stipulation confirming their agreement regarding
11 defendant's answer by **October 14, 2015**.

12 III. JURISDICTION/VENUE

13 Jurisdiction is predicated upon 28 U.S.C. §§ 1332(d), 1441, 1453 and 1446,
14 because minimal diversity exists and the amount in controversy exceeds \$5,000,000. Venue lies
15 in the Eastern District of California based on 28 U.S.C. §§ 1441, 1446(a), and 84(b). Jurisdiction
16 and venue are not disputed.

17 IV. DISCOVERY

18 The court approves the parties' agreement to allow up to 35 interrogatories and 15
19 depositions.

20 The court declines to strictly bifurcate class certification discovery from merits
21 discovery, while approving prioritizing discovery so that class certification matters are explored
22 first. Recognizing that there is likely to be some overlap of class certification and merits
23 discovery, the parties should meet and confer on the scope of the first stage of discovery
24 scheduled here. Any dispute that arises between the parties with respect to the scope will be
25 decided by the assigned magistrate judge.

26 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) shall be
27 completed by **October 8, 2015**. All class certification discovery shall be completed by **March**
28 **29, 2016**. In this context, "completed" means that all discovery shall have been conducted so that

1 all depositions have been taken and any disputes relative to discovery shall have been resolved by
2 appropriate order if necessary and, where discovery has been ordered, the order has been obeyed.
3 All motions to compel discovery must be noticed on the magistrate judge's calendar in
4 accordance with the local rules of this court. While the assigned magistrate judge reviews
5 proposed discovery phase protective orders, requests to seal or redact are decided by Judge
6 Mueller as discussed in more detail below. In addition, while the assigned magistrate judge
7 handles discovery motions, the magistrate judge cannot change the schedule set in this order,
8 even in connection with a discovery matter.

9 The parties shall file a joint proposed discovery protective order with the court by
10 **October 19, 2015.**

11 V. DISCLOSURE OF EXPERT WITNESSES

12 All counsel are to designate in writing, file with the court, and serve upon all other
13 parties the name, address, and area of expertise of each expert that they propose to tender with
14 respect to class certification not later than **May 10, 2016**. The designation shall be accompanied
15 by a written report prepared and signed by the witness. The report shall comply with Fed. R. Civ.
16 P. 26(a)(2)(B). By **May 31, 2016**, any party who previously disclosed expert witnesses may
17 submit a supplemental list of expert witnesses who will express an opinion on a subject covered
18 by an expert designated by an adverse party, if the party supplementing an expert witness
19 designation has not previously retained an expert to testify on that subject. The supplemental
20 designation shall be accompanied by a written report, which shall also comply with the conditions
21 stated above.

22 Failure of a party to comply with the disclosure schedule as set forth above in all
23 likelihood will preclude that party from relying on the expert witness on motions addressing class
24 certification. An expert witness not appearing on the designation will not be permitted to testify
25 unless the party offering the witness demonstrates: (a) that the necessity for the witness could not
26 have been reasonably anticipated at the time the list was proffered; (b) that the court and opposing
27 counsel were promptly notified upon discovery of the witness; and (c) that the witness was
28 promptly made available for deposition.

1 For purposes of this scheduling order, an “expert” is any person who may be used
2 at trial to present evidence under Rules 702, 703 and 705 of the Federal Rules of Evidence, which
3 include both “percipient experts” (persons who, because of their expertise, have rendered expert
4 opinions in the normal course of their work duties or observations pertinent to the issues in the
5 case) and “retained experts” (persons specifically designated by a party to be a testifying expert
6 for the purposes of litigation). A party shall identify whether a disclosed expert is percipient,
7 retained, or both. It will be assumed that a party designating a retained expert has acquired the
8 express permission of the witness to be so listed. Parties designating percipient experts must state
9 in the designation who is responsible for arranging the deposition of such persons.

10 All experts designated are to be fully prepared at the time of designation to render
11 an informed opinion, and give the bases for their opinion, so that they will be able to give full and
12 complete testimony at any deposition taken by the opposing party. Experts will not be permitted
13 to testify as to any information gathered or evaluated, or opinion formed, after deposition taken
14 subsequent to designation. All expert discovery shall be completed by **June 30, 2016**.

15 **VI. MOTION HEARING SCHEDULE**

16 Hearing on any motion for class certification will be set on **December 8, 2016**.

17 Local Rule 230 governs the calendaring and procedures of civil motions; the
18 following provisions also apply:

19 (a) The opposition and reply must be filed by 4:00 p.m. on the day due; and

20 (b) When the last day for filing an opposition brief falls on a legal holiday, the
21 opposition brief shall be filed on the last court day immediately preceding the legal holiday.

22 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to
23 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,
24 652-53 (9th Cir. 1994).

25 The court places a page limit of twenty (20) pages on all moving papers, twenty
26 (20) pages on oppositions, and ten (10) pages for replies. All requests for page limit increases
27 must be made in writing at least fourteen (14) days prior to the filing of the motion.

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1 Prior to filing a motion in a case in which the parties are represented by counsel,
2 counsel shall engage in a pre-filing meet and confer to discuss thoroughly the substance of the
3 contemplated motion and any potential resolution. Plaintiff's counsel should carefully evaluate
4 the defendant's contentions as to deficiencies in the complaint and in many instances the party
5 considering a motion should agree to any amendment that would cure a curable defect. Counsel
6 should discuss the issues sufficiently so that if a motion of any kind is filed, including for
7 summary judgment, the briefing is directed only to those substantive issues requiring resolution
8 by the court. Counsel should resolve minor procedural or other non-substantive matters during
9 the meet and confer. **A notice of motion shall contain a certification by counsel filing the**
10 **motion that meet and confer efforts have been exhausted, with a brief summary of meet and**
11 **confer efforts.**

12 VII. SEALING

13 No document will be sealed, nor shall a redacted document be filed, without the
14 prior approval of the court. If a document for which sealing or redaction is sought relates to the
15 record on a motion to be decided by Judge Mueller, the request to seal or redact should be
16 directed to her and not the assigned Magistrate Judge. All requests to seal or redact shall be
17 governed by Local Rules 141 (sealing) and 140 (redaction); protective orders covering the
18 discovery phase of litigation shall not govern the filing of sealed or redacted documents on the
19 public docket. The court will only consider requests to seal or redact filed by the proponent of
20 sealing or redaction. If a party plans to make a filing that includes material an opposing party has
21 identified as confidential and potentially subject to sealing, the filing party shall provide the
22 opposing party with sufficient notice in advance of filing to allow for the seeking of an order of
23 sealing or redaction from the court.

24 VIII. SCHEDULE CONFERENCE

25 Once the motion for class certification has been resolved, the court will set the
26 schedule conference for the balance of the case.

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1 IX. SETTLEMENT CONFERENCE

2 No settlement conference is currently scheduled. A settlement conference may be
3 set at the time of the next scheduling conference or at an earlier time at the parties' request. In the
4 event that an earlier court settlement conference date or referral to the Voluntary Dispute
5 Resolution Program (VDRP) is requested, the parties shall file said request jointly, in writing. All
6 parties should be prepared to advise the court whether they will stipulate to the trial judge acting
7 as settlement judge and waive disqualification by virtue thereof.

8 Counsel are instructed to have a principal with full settlement authority present at
9 any Settlement Conference or to be fully authorized to settle the matter on any terms. Each judge
10 has different requirements for the submission of settlement conference statements; the appropriate
11 instructions will be sent to you after the settlement judge is assigned.

12 X. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER

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

18 XI. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

19 This Status Order will become final without further order of the court unless
20 objections are filed within fourteen (14) *calendar* days of service of this Order.

21 IT IS SO ORDERED.

22 DATED: September 28, 2015.

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26 UNITED STATES DISTRICT JUDGE
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