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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIA AMEZCUA,

Plaintiff,

v.

J.C. PENNEY PROPERTIES, INC., et al.,

Defendants.

No. 2:17-cv-0865 KJM EFB

STATUS (PRETRIAL SCHEDULING)

ORDER

An initial scheduling conference was held in this case on August 31, 2017. Mark Ketcherside appeared for plaintiff; Taylor Rhoan appeared for defendants.

Having reviewed the parties' Joint Status Report filed on August 24, 2017, and discussed a schedule for the case with counsel at the hearing, 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.

II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

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

1 III. JURISDICTION/VENUE

2 Jurisdiction is predicated upon 28 U.S.C. § 1332(a)(1). Jurisdiction and venue are
3 not disputed.

4 IV. DISCOVERY

5 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) shall have
6 been completed by **September 8, 2017**. All discovery shall be completed by **July 20, 2018**. In
7 this context, “completed” means that all discovery shall have been conducted so that all
8 depositions have been taken and any disputes relative to discovery shall have been resolved by
9 appropriate order if necessary and, where discovery has been ordered, the order has been obeyed.
10 All motions to compel discovery must be noticed on the magistrate judge’s calendar in
11 accordance with the local rules of this court. While the assigned magistrate judge reviews
12 proposed discovery phase protective orders, requests to seal or redact are decided by Judge
13 Mueller as discussed in more detail below. In addition, while the assigned magistrate judge
14 handles discovery motions, the magistrate judge cannot change the schedule set in this order,
15 except that the magistrate judge may modify a discovery cutoff to the extent such modification
16 does not have the effect of requiring a change to the balance of the schedule.

17 V. DISCLOSURE OF EXPERT WITNESSES

18 All counsel are to designate in writing, file with the court, and serve upon all other
19 parties the name, address, and area of expertise of each expert that they propose to tender at trial
20 not later than **September 14, 2018**. The designation shall be accompanied by a written report
21 prepared and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B).
22 By **October 12, 2018**, any party who previously disclosed expert witnesses may submit a
23 supplemental list of expert witnesses who will express an opinion on a subject covered by an
24 expert designated by an adverse party, if the party supplementing an expert witness designation
25 has not previously retained an expert to testify on that subject. The supplemental designation
26 shall be accompanied by a written report, which shall also comply with the conditions stated
27 above.

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1 Failure of a party to comply with the disclosure schedule as set forth above in all
2 likelihood will preclude that party from calling the expert witness at the time of trial. An expert
3 witness not appearing on the designation will not be permitted to testify unless the party offering
4 the witness demonstrates: (a) that the necessity for the witness could not have been reasonably
5 anticipated at the time the list was proffered; (b) that the court and opposing counsel were
6 promptly notified upon discovery of the witness; and (c) that the witness was promptly made
7 available for deposition.

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

17 All experts designated are to be fully prepared at the time of designation to render
18 an informed opinion, and give the bases for their opinion, so that they will be able to give full and
19 complete testimony at any deposition taken by the opposing party. Experts will not be permitted
20 to testify at trial as to any information gathered or evaluated, or opinion formed, after deposition
21 taken subsequent to designation. All expert discovery shall be completed by **November 16,**
22 **2018.**

23 VI. MOTION HEARING SCHEDULE

24 All dispositive motions, except motions for continuances, temporary restraining
25 orders or other emergency applications, shall be heard no later than **December 21, 2018.**¹ The

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¹ Note that this date may not correspond to a law and motion calendar date.

1 parties may obtain available hearing dates by checking Judge Mueller's page on the court's
2 website.

3 All purely legal issues are to be resolved by timely pretrial motions. Local Rule
4 230 governs the calendaring and procedures of civil motions; the following provisions also apply:

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

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

8 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to
9 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,
10 652-53 (9th Cir. 1994).

11 The court values the importance of training young attorneys. The parties are
12 encouraged to consider assigning oral argument to a young attorney. If a written request for oral
13 argument is filed before a hearing, stating an attorney of four or fewer years out of law school
14 will argue the oral argument, then the court will ordinarily hold the hearing, although the court's
15 schedule and calendar may require the hearing to be reset. Otherwise, the court may find it
16 appropriate in some actions to submit a motion without oral argument.

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

20 Prior to filing a motion in a case in which the parties are represented by counsel,
21 counsel shall engage in a pre-filing meet and confer to discuss thoroughly the substance of the
22 contemplated motion and any potential resolution. Plaintiff's counsel should carefully evaluate
23 the defendant's contentions as to deficiencies in the complaint and in many instances the party
24 considering a motion should agree to any amendment that would cure a curable defect. Counsel
25 should discuss the issues sufficiently so that if a motion of any kind is filed, including for
26 summary judgment, the briefing is directed only to those substantive issues requiring resolution
27 by the court. Counsel should resolve minor procedural or other non-substantive matters during
28 the meet and confer. **A notice of motion shall contain a certification by counsel filing the**

1 **motion that meet and confer efforts have been exhausted, with a brief summary of meet and**
2 **confer efforts.**

3 The parties are cautioned that failure to raise a dispositive legal issue that could
4 have been tendered to the court by proper pretrial motion prior to the dispositive motion cut-off
5 date may constitute waiver of such issue.

6 VII. SEALING

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

18 VIII. SETTLEMENT CONFERENCE

19 The parties have expressed interest in a settlement conference after some initial
20 discovery has been completed, and are amenable to a settlement conference convened by a
21 member of the court's Voluntary Dispute Resolution Panel (VDRP). Accordingly, this matter is
22 referred to the court's ADR Coordinator, Sujean Park, for the convening of a VDRP session to
23 take place in **March 2018**. A principal with full settlement authority for each party shall appear
24 at the VDRP session.

25 In the event no VDRP panelist is available during the time frame set forth above,
26 the case will be referred to another judge of this court for settlement.

27 The parties are reminded to promptly notify the court if they settle this case prior
28 to the scheduled VDRP conference date.

1 IX. FURTHER SCHEDULING

2 The court will set a Final Pretrial Conference date after the resolution of any
3 dispositive motions, or passage of the dispositive motion cutoff, with a trial date being
4 determined at the pretrial conference. The parties should be prepared to confirm a trial date
5 within 60 to 120 days from the date of the final pretrial conference, and should be available for
6 trial accordingly.

7 X. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER

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

13 As noted, the assigned magistrate judge is authorized to modify only the discovery
14 dates shown above to the extent any such modification does not impact the balance of the
15 schedule of the case.

16 XI. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

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

19 IT IS SO ORDERED.

20 DATED: September 19, 2017.

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24 UNITED STATES DISTRICT JUDGE
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