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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD STAYCHOCK, et al.,
Plaintiffs,
v.
KLEAN KANTEEN, INC.,
Defendant.

No. 2:17-cv-1012 KJM CMK

STATUS (PRETRIAL SCHEDULING)
ORDER

KLEAN KANTEEN, INC.,
Counterclaim Plaintiff,
v.
RICHARD STAYCHOCK, et al.,
Counterclaim Defendants,

An initial scheduling conference was held in this case on September 14, 2017.
Mieke Malmberg appeared for plaintiffs; Evan Nadel appeared for defendant.

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1 Having reviewed the parties' Joint Status Report filed on September 7, 2017, and
2 discussed a schedule for the case with counsel at the hearing, the court makes the following
3 orders:

4 I. SERVICE OF PROCESS

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

7 The parties have agreed to accept service of any additional filings or documents
8 associated with the case by email to their counsel, provided that the serving party also sends
9 courtesy copies by U.S. mail.

10 II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

11 Plaintiffs intend to amend their complaint. Any stipulation or motion to amend
12 shall be filed with the court no later than **October 9, 2017**. Any further joinder of parties or
13 amendments to pleadings is not permitted without leave of court, good cause having been shown.
14 *See Fed. R. Civ. P. 16(b); Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992).

15 III. JURISDICTION/VENUE

16 Jurisdiction is predicated upon 28 U.S.C. § 1331. Jurisdiction and venue are not
17 disputed.

18 IV. DISCOVERY

19 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) have been
20 completed. All discovery shall be completed by **April 26, 2018**. In this context, "completed"
21 means that all discovery shall have been conducted so that all depositions have been taken and
22 any disputes relative to discovery shall have been resolved by appropriate order if necessary and,
23 where discovery has been ordered, the order has been obeyed. All motions to compel discovery
24 must be noticed on the magistrate judge's calendar in accordance with the local rules of this court.
25 While the assigned magistrate judge reviews proposed discovery phase protective orders, requests
26 to seal or redact are decided by Judge Mueller as discussed in more detail below. In addition,
27 while the assigned magistrate judge handles discovery motions, the magistrate judge cannot
28 change the schedule set in this order, except that the magistrate judge may modify a discovery

1 cutoff to the extent such modification does not have the effect of requiring a change to the
2 balance of the schedule.

3 The parties may have electronically stored information (“ESI”) in a variety of
4 formats, which will be produced to the opposing party in electronic images. The parties have
5 agreed to accept service of any additional filings or documents associated with the case by email
6 to their counsel, provided that the serving party also sends courtesy copies by U.S. mail.

7 The parties shall file a joint stipulation with the court within fourteen (14) days of
8 the scheduling conference outlining their processes for producing ESI.

9 The parties believe certain confidential business and employment record may
10 require certain privacy protections. The parties shall file a proposed joint discovery protective
11 order within fourteen (14) days of the scheduling conference. The procedures for any “claw-
12 back” of privileged documents or challenge to a claim of privilege after “claw-back” will be set
13 forth in the parties’ proposed protective order.

14 V. DISCLOSURE OF EXPERT WITNESSES

15 All counsel are to designate in writing, file with the court, and serve upon all other
16 parties the name, address, and area of expertise of each expert that they propose to tender at trial
17 not later than **May 16, 2018**. The designation shall be accompanied by a written report prepared
18 and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B). By **May 31,**
19 **2018**, any party who previously disclosed expert witnesses may submit a supplemental list of
20 expert witnesses who will express an opinion on a subject covered by an expert designated by an
21 adverse party, if the party supplementing an expert witness designation has not previously
22 retained an expert to testify on that subject. The supplemental designation shall be accompanied
23 by a written report, which shall also comply with the conditions stated above.

24 Failure of a party to comply with the disclosure schedule as set forth above in all
25 likelihood will preclude that party from calling the expert witness at the time of trial. An expert
26 witness not appearing on the designation will not be permitted to testify unless the party offering
27 the witness demonstrates: (a) that the necessity for the witness could not have been reasonably
28 anticipated at the time the list was proffered; (b) that the court and opposing counsel were

1 promptly notified upon discovery of the witness; and (c) that the witness was promptly made
2 available for deposition.

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

12 All experts designated are to be fully prepared at the time of designation to render
13 an informed opinion, and give the bases for their opinion, so that they will be able to give full and
14 complete testimony at any deposition taken by the opposing party. Experts will not be permitted
15 to testify at trial as to any information gathered or evaluated, or opinion formed, after deposition
16 taken subsequent to designation. All expert discovery shall be completed by **June 28, 2018**.

17 **VI. LIMITATIONS ON DISCOVERY**

18 The court grants the parties’ request to limit the number of party depositions to
19 eight (8) per side, with each side reserving the right to request additional depositions for good
20 cause shown.

21 **VII. MOTION HEARING SCHEDULE**

22 All dispositive motions, except motions for continuances, temporary restraining
23 orders or other emergency applications, shall be heard no later than **October 5, 2018**.¹ The
24 parties may obtain available hearing dates by checking Judge Mueller’s page on the court’s
25 website.

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

1 All purely legal issues are to be resolved by timely pretrial motions. Local Rule
2 230 governs the calendaring and procedures of civil motions; the following provisions also apply:

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

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

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

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

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

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

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

4 VIII. SEALING

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

16 IX. MARKMAN HEARING

17 The following schedule is set for the convening of a *Markman* hearing:

- 18 1. Defendant's opening brief shall be filed no later than January 26, 2018
- 19 2. Plaintiff's Opposition Brief shall be filed no later than February 9, 2018.
- 20 3. Defendant's Reply Brief shall be file no later than February 16, 2018.
- 21 4. Hearing set for February 22, 2018 at 10:00 a.m. in Courtroom No. 3. The hearing is
22 anticipated to take a half day.

23 X. SETTLEMENT CONFERENCE

24 The parties have expressed interest in a settlement conference and are amenable to
25 a settlement conference convened as soon as possible by a member of the court's Voluntary
26 Dispute Resolution Panel (VDRP). Accordingly, this matter is referred to the court's ADR
27 Coordinator, Sujean Park, for the convening of a VDRP session. A principal with full settlement
28 authority for each party shall appear at the VDRP session.

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

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

5 **XI. FURTHER SCHEDULING**

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

11 **XII. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER**

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

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

20 **XIII. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER**

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

23 IT IS SO ORDERED.

24 DATED: September 21, 2017.

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28 UNITED STATES DISTRICT JUDGE