

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEYLA M. TABER,
Plaintiff,
v.
DITECH FINANCIAL, LLC, et al.,
Defendants.

No. 2:18-CV-1795 KJM KJN
STATUS (PRETRIAL SCHEDULING)
ORDER

An initial scheduling conference was held in this case on August 10, 2018. Ronald Roundy specially appeared for plaintiff;¹ Joshua Bryan appeared for defendant.

Having reviewed the parties' Joint Status Report filed on August 3, 2018, 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.

¹ Mr. Roundy was unable to provide any substantive information so as to contribute to the court's discussion with counsel regarding case management. Plaintiff's counsel is cautioned that if in the future he avoids his obligations to meaningfully litigate this matter in this court, he may face an order to show cause why he should not be sanctioned.

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 III. JURISDICTION/VENUE

6 Jurisdiction is predicated upon 28 U.S.C. § 1332. Jurisdiction and venue are not
7 disputed.

8 IV. DISCOVERY

9 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) shall be
10 completed **within 30 days** of the scheduling conference. All discovery shall be completed by
11 **March 29, 2019**. In this context, “completed” means that all discovery shall have been
12 conducted so that all depositions have been taken and any disputes relative to discovery shall
13 have been resolved by appropriate order if necessary and, where discovery has been ordered, the
14 order has been obeyed. All motions to compel discovery must be noticed on the magistrate
15 judge’s calendar in accordance with the local rules of this court. While the assigned magistrate
16 judge reviews proposed discovery phase protective orders, requests to seal or redact are decided
17 by Judge Mueller as discussed in more detail below. In addition, while the assigned magistrate
18 judge handles discovery motions, the magistrate judge cannot change the schedule set in this
19 order, except that the magistrate judge may modify a discovery cutoff to the extent such
20 modification does not have the effect of requiring a change to the balance of the schedule.

21 V. DISCLOSURE OF EXPERT WITNESSES

22 All counsel are to designate in writing and serve upon all other parties the name,
23 address, and area of expertise of each expert that they propose to tender at trial not later than
24 **February 20, 2019**. The designation shall be accompanied by a written report prepared and
25 signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B). By **March 12,**
26 **2018**, any party who previously disclosed expert witnesses may submit a rebuttal list of expert
27 witnesses who will express an opinion on a subject covered by an expert designated by an adverse
28 party, if the party rebutting an expert witness designation has not previously retained an expert to

1 testify on that subject. The rebuttal designation shall be accompanied by a written report, which
2 shall also comply with the conditions stated above.

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

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

19 All experts designated are to be fully prepared at the time of designation to render
20 an informed opinion, and give the bases for their opinion, so that they will be able to give full and
21 complete testimony at any deposition taken by the opposing party. Experts will not be permitted
22 to testify at trial as to any information gathered or evaluated, or opinion formed, after deposition
23 taken subsequent to designation. All expert discovery shall be completed by **April 29, 2018**.

24 ////

25 ////

26 ////

27 ////

28 ////

1 VI. MOTION HEARING SCHEDULE

2 All dispositive motions, except motions for continuances, temporary restraining
3 orders or other emergency applications, shall be heard no later than April 5, 2019.² The parties
4 may obtain available hearing dates by checking Judge Mueller's page on the court's website.

5 All purely legal issues are to be resolved by timely pretrial motions. Local Rule
6 230 governs the calendaring and procedures of civil motions; the following provisions also apply:

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

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

10 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to
11 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,
12 652-53 (9th Cir. 1994).

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

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

22 Prior to filing a motion in a case in which the parties are represented by counsel,
23 counsel shall engage in a pre-filing meet and confer to discuss thoroughly the substance of the
24 contemplated motion and any potential resolution. Plaintiff's counsel should carefully evaluate
25 the defendant's contentions as to deficiencies in the complaint and in many instances the party
26 considering a motion should agree to any amendment that would cure a curable defect. Counsel

27
28

² Note that this date may not correspond to a law and motion calendar date.

1 should discuss the issues sufficiently so that if a motion of any kind is filed, including for
2 summary judgment, the briefing is directed only to those substantive issues requiring resolution
3 by the court. Counsel should resolve minor procedural or other non-substantive matters during
4 the meet and confer. **A notice of motion shall contain a certification by counsel filing the**
5 **motion that meet and confer efforts have been exhausted, with a brief summary of meet and**
6 **confer efforts.**

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

10 VII. SEALING

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

22 VIII. FURTHER SCHEDULING

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

28 ////

1 IX. SETTLEMENT CONFERENCE

2 The parties have expressed interest in appearing for settlement conference.
3 Magistrate Judge Deborah L. Barnes has been randomly selected. A settlement conference is
4 scheduled before Judge Barnes for **September 19, 2018** at 10:00 a.m. in Courtroom No. 27, 8th
5 Floor.

6 The parties are directed to submit their confidential settlement conference
7 statements to the Court using the following email address: dborders@caed.uscourts.gov. If a party
8 desires to share additional confidential information with the Court, they may do so pursuant to the
9 provisions of Local Rule 270(d) and (e). Statements are due at least 7 days prior to the Settlement
10 Conference. Each party is reminded of the requirement that it be represented in person at the
11 settlement conference by a person able to dispose of the case or fully authorized to settle the
12 matter at the settlement conference on any terms. See Local Rule 270.

13 X. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER

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


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

22 XI. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

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

25 IT IS SO ORDERED.

26 DATED: August 22, 2018.

27 
28 UNITED STATES DISTRICT JUDGE