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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DOLORES BANUELOS,  
Plaintiff,  
v.  
J. C. PENNEY CORPORATION, INC.,  
Defendant.

Case No.: C 09-0255 PVT  
**ORDER VACATING TRIAL AND PRETRIAL  
CONFERENCE DATES; SETTING BRIEFING  
AND HEARING SCHEDULE FOR  
DEFENDANT’S MOTION FOR SUMMARY  
JUDGMENT; AND WITHDRAWING  
REFERENCE TO MEDIATION**

On April 27, 2010, Defendant filed an untimely Motion for Summary Judgment. Pursuant to Federal Rules of Civil Procedure 56(c)(1)(A), “a party may move for summary judgment at any time until 30 days after the close of all discovery.” Fact Discovery in this case closed on January 15, 2010 and Expert Discovery closed on March 26, 2010. Thus, any motion for summary judgment should have been filed no later than April 26, 2010 (30 days would have run on April 25, 2010, which was a Sunday, so the deadline was the following business day). Because Defendant’s motion was untimely, Plaintiff was under no obligation to file any opposition. However, having reviewed the moving papers and the file herein, and in light of the fact Defendant’s motion was only one day late, the court finds it appropriate to vacate the trial and pretrial dates, excuse the late filing of the motion, and schedule briefing and hearing dates for the motion. Therefore,

IT IS HEREBY ORDERED that the previously set trial and pretrial dates are hereby

1 VACATED.

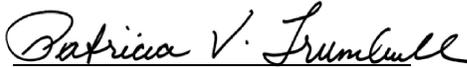
2 IT IS FURTHER ORDERED that, no later than June 15, 2010, Plaintiff shall file either a  
3 written opposition to Defendant's motion for summary judgment, or else a statement of non-  
4 opposition. *See*, CIVIL L.R. 7-3(a) & (b).

5 IT IS FURTHER ORDERED that Defendant may file a reply no later than June 22, 2010.

6 IT IS FURTHER ORDERED that the motion will be heard at 10:00 a.m. on June 29, 2010 in  
7 courtroom 5 of this court.

8 IT IS FURTHER ORDERED that the reference of this case to the court's mediation program  
9 is WITHDRAWN, because the court's ADR department reports that it has not been able to schedule  
10 any mediation due to Plaintiff's lack of response to their communications. In the event the parties  
11 believe a settlement conference would be beneficial, they may file a stipulation requesting reference  
12 to a Magistrate Judge for a settlement conference.

13 Dated: 5/19/10

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15 PATRICIA V. TRUMBULL  
16 United States Magistrate Judge  
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*Counsel automatically notified of this filing via the court's Electronic Case Filing system.*

copies mailed on 5/19/10 to:

Dolores Banuelos  
1574 Falcon Drive  
Apartment #4  
Salinas, CA 93905

/s/ Donna Kirchner for  
MARTHA BROWN  
Courtroom Deputy