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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LUIS MANUEL MORA, individually)
and on behalf of the class,)
)
Plaintiff,)
)
v.)
)
HARLEY-DAVIDSON CREDIT CORP., a)
corporation; and DOES 1 through)
10, inclusive,)
)
Defendants.)

1:08-cv-1453 OWW GSA
SECOND SCHEDULING
CONFERENCE ORDER
Defendant's X-MSJ Filing
Deadline: 5/3/10
Plaintiff's Opposition and
its X-MSJ Filing Deadline:
6/4/10
Defendant's Reply re its X-
MSJ Filing Deadline:
6/21/10
Defendant's Opposition to
Plaintiff's X-MSJ Filing
Deadline: 7/6/10
Plaintiff's Reply to its X-
MSJ Filing Deadline:
7/23/10
Hearing Date for X-MSJ:
8/16/10 10:00 Ctrm. 3

I. Date of Scheduling Conference.
February 11, 2010.
II. Appearances Of Counsel.
Kemnitzer, Barron & Krieg, LLP by William M. Krieg, Esq.,
and Patrick C. McManaman, Esq., appeared on behalf of Plaintiff.

1 Reed Smith LLP by Heather B. Hoesterey, Esq., appeared on
2 behalf of Defendant.

3 III. Summary of Pleadings.

4 Plaintiff's Position.

5 1. This case involves Plaintiff's purchase of a 2006
6 Harley-Davidson motorcycle on October 4, 2006. It is undisputed
7 that during the course of Plaintiff's purchase transaction,
8 Plaintiff dealt only with the selling dealer, (Golden Valley
9 Harley Davidson, "Golden Valley," an authorized Harley-Davidson
10 dealer) regarding the purchase and finance of the vehicle. Under
11 that contract, Golden Valley arranged financing for the purchase
12 of Plaintiff's motorcycle through HDCC. Plaintiff alleges that
13 the motorcycle was defective and unrepaired after a reasonable
14 number of repair attempts. Plaintiff voluntarily surrendered the
15 motorcycle to HDCC in about August 2007.

16 2. California's Rees-Levering Automobile Sales Finance
17 Act, Civ. Code §§ 2981, et seq. ("ASFA") requires lenders such as
18 HDCC to provide a "notice of intent to dispose of a repossessed
19 vehicle ("Notice") before it sells or otherwise disposes of a
20 repossessed or surrendered vehicle. Civ. Code § 2983.2. If the
21 lender fails to give a legally compliant notice, it loses its
22 right to any "deficiency," or money due from the buyer/debtor.
23 On or about September 4, 2007, HDCC sent Plaintiff a Notice that
24 failed to comply with ASFA and the applicable provisions of the
25 California Commercial Code, which are incorporated by reference
26 into ASFA's requirements. CC § 2983.8.

27 3. In his Complaint for Restitution and Damages, Plaintiff
28 and the class allege Defendant violated Rees-Levering Automobile

1 Sales Finance Act, Civil Code §§ 2981 et seq. and Business and
2 Professions Code §§ 17200, et seq. Plaintiff and the class seek
3 restitution, damages, and such other legal and equitable relief
4 as allowed by law, and attorney's fees and costs. As outlined in
5 Plaintiff's complaint, Plaintiff is seeking to represent a class
6 of persons that "consists of all persons from whom HDCC and its
7 associates, affiliates, and subsidiaries claims it is owed a
8 deficiency that was invalid due to HDCC's defective NOTICES(S)
9 and its failure to comply with the notice requirements of Rees-
10 Levering." Complaint 4, ¶ 14.

11 4. Defendant's initial discovery responses have identified
12 and produced two separate "notices of intent" during the relevant
13 period and additionally identified thousands of putative class
14 members. Substantially more than \$5 million in total
15 deficiencies exist related to those motorcycles that were sold as
16 a result of transactions accomplished at various California
17 dealerships.

18 Defendant's Position:

19 1. Plaintiff did not purchase the motorcycle pursuant to a
20 conditional sales contract, rather, Plaintiff financed his
21 motorcycle purchase by obtaining a direct loan from HDCC's
22 subsidiary, Eaglemark Savings Bank ("ESB") and ESB assigned its
23 rights to HDCC. Plaintiff surrendered the motorcycle and HDCC
24 provided Plaintiff with a Notice of Intent to Dispose of
25 Repossessed Collateral ("Notice"). After the sale of the
26 motorcycle, HDCC attempted to collect from Plaintiff, but
27 Plaintiff failed to pay the remaining deficiency due on the loan.
28 HDCC has filed an answer and affirmative defenses to Plaintiff's

1 Complaint. In relevant part, HDCC denies that the Notice
2 provided to Plaintiff failed to comply with applicable law and
3 denies that Plaintiff's claims are appropriate for class
4 treatment.

5 IV. Legal Issues.

6 A. Uncontested.

7 1. Jurisdiction exists under 28 U.S.C. §§ 1332, 1441
8 and 1446.

9 2. Venue is proper under 28 U.S.C. § 1391.

10 3. For the supplemental claims, the substantive law
11 of the State of California provides the rule of decision.

12 B. Contested.

13 1. All remaining legal issues are disputed.

14 V. Consent to Magistrate Judge Jurisdiction.

15 1. The parties have not consented to transfer the
16 case to the Magistrate Judge for all purposes, including trial.

17 VI. Corporate Identification Statement.

18 1. Any nongovernmental corporate party to any action in
19 this court shall file a statement identifying all its parent
20 corporations and listing any entity that owns 10% or more of the
21 party's equity securities. A party shall file the statement with
22 its initial pleading filed in this court and shall supplement the
23 statement within a reasonable time of any change in the
24 information.

25 VII. Discovery Plan and Cut-Off Date.

26 A. Rule 26(f)(1): Changes to Rule 26(a) disclosures.

27 1. The parties believe that no changes to the
28 requirements of Rule 26(a) are needed. Rule 26(a)(1) initial

1 disclosures were completed on August 14, 2009. The parties will
2 further supplement the respective witnesses and documents
3 pursuant to Rule 26 as discovery continues.

4 B. Rule 26(f)(2):

5 1. Subject on Which Discovery May be Needed.

6 a. The Complaint for Restitution and Damages
7 contains two causes of action against Defendant Harley-Davidson
8 Credit Corp. The first cause of action alleges violation of the
9 Rees-Levering Automobile Sales Finance Act, the second cause of
10 action alleges violations of Business and Professions Code
11 § 17200, et seq. Both causes of action are based upon
12 Plaintiff's allegations that HDCC's notice of intent to dispose
13 of a repossessed vehicle ("NOTICE") failed to comply with Civ.
14 Code § 2983.2.

15 2. Progress of Court Ordered Discovery.

16 a. Plaintiff propounded discovery (special
17 interrogatories and production requests) on August 20, 2009 and
18 granted Defendant's initial request for an extension to respond.
19 On October 6, 2009, Defendant provided partial responses and its
20 objections which included objections involving confidentiality
21 and trade secret. Given Defendant's objections, Plaintiff
22 stipulated to Defendant's request for a protective order which
23 Defendant filed on November 19, 2009. Following an extensive
24 meet and confer process, Plaintiff received Defendant's
25 supplemental responses pursuant to the protective order, on
26 January 6, 2010. Based on these responses, Plaintiff filed a
27 Notice of Motion to Compel on January 21, 2010, setting a hearing
28 on the motion for February 19, 2010. On February 2, 2010, as a

1 result of Defendant providing additional supplemental responses,
2 Plaintiff withdrew the Motion. Plaintiff is scheduled to take
3 the depositions of Defendant's employees on March 9-10, 2010.

4 3. Further Planned Discovery.

5 a. Plaintiff's Position: Plaintiff's depositions
6 of Defendant's employees on March 9-10, 2010, are conducted as
7 part of the Court ordered initial discovery and will address
8 issues relevant to class certification in accordance with the
9 Order. Plaintiffs anticipate additional discovery will be
10 required regarding the alleged defective NOTICE, Plaintiff's
11 purchase transaction, the loan, Plaintiff's surrender of the
12 motorcycle, communications between Plaintiff and HDCC, and
13 Plaintiff's account. The discovery remaining will consist of
14 document requests, special interrogatories, request for
15 admissions, as well as deposition of Plaintiff, third party
16 percipient witnesses, employees of Defendant HDCC, and experts.

17 b. Defendant's Position: Pursuant to this
18 Court's initial Scheduling Order, Plaintiff has conducted initial
19 discovery regarding the forms of Notices of Intent provided to
20 putative class members during the class period and the size of
21 the alleged class. Defendant requests that discovery remain
22 bifurcated so discovery on the issue of liability continues and
23 asserts no further discovery should be exchanged at this time on
24 the issue of class certification. Defendant anticipates
25 additional discovery will be required regarding the Plaintiff's
26 purchase transaction, the surrender of the motorcycle,
27 Plaintiff's receipt of the Notice, communications between HDCC
28 and Plaintiff and the alleged basis for Plaintiff's claims,

1 including written discovery and deposition discovery, including
2 the deposition of Plaintiff. There may be third party and expert
3 discovery.

4 4. Discovery Cut-Off and Expert Disclosures.

5 a. The parties propose a discovery (includes
6 both written discovery and deposition testimony) cut-off date of
7 November 15, 2010.

8 b. The parties propose initial expert
9 disclosures pursuant to Rule 26(a)(C)(i) be made by February 1,
10 2011.

11 c. The parties will exchange any and all expert
12 writings or reports on or before February 1, 2011.

13 d. The parties propose rebuttal expert
14 designations be made 30 days after the exchange of expert reports
15 according to Rule 26(a)(2)(C)(ii).

16 e. The parties propose that all Non-Dispositive
17 Pre-Trial Motions, including any discovery motions will be filed
18 before November 26, 2010.

19 f. The parties propose that all Dispositive Pre-
20 Trial Motions are to be filed no later than December 16, 2010.

21 5. Whether Discovery Should be Conducted in Phases.

22 a. Plaintiff's position: Plaintiff intends to
23 complete depositions on March 9-10, 2010. In keeping with the
24 Court's July 31, 2009 Order, the depositions will include issues
25 relevant to class certification. Upon completion of this initial
26 phase of discovery, Plaintiff intends to make his motion for
27 class certification. Subsequent to the completion of these
28 scheduled depositions, Plaintiff requests that discovery continue

1 in phases as follows: (a) written discovery; (b) oral
2 depositions; and (c) inspections.

3 b. Defendant's Position: Pursuant to this
4 Court's initial Scheduling Order, Plaintiff has conducted initial
5 discovery regarding the forms of Notices of Intent provided to
6 putative class members during the class period and the size of
7 the alleged class. Defendant requests that discovery remain
8 bifurcated so discovery on the issue of liability continues and
9 asserts no further discovery should be exchanged at this time on
10 the issue of class certification.

11 6. Whether Discovery Should be Focused on Any Issue.

12 a. At this time, the parties do not believe any
13 further focus or limitations on discovery beyond those provided
14 for by the Court and pursuant to the Rules of Civil Procedure and
15 relevant law are appropriate. The parties will continue to meet
16 and confer and report to this Court if the parties determine any
17 limitation is appropriate.

18 C. Rule 26(f) (3): Changes to Limitations on Discovery.

19 1. The parties agree that no changes to the
20 limitations on discovery imposed under Rule 26(f) (3) are
21 necessary.

22 D. Rule 26(f) (4): Other Orders.

23 1. Plaintiff's Position: Plaintiff will seek an
24 order certifying the class at the completion of depositions of
25 Defendant's employees, now scheduled for March 9 and 10 of 2010.
26 The judicial principle of "one-way intervention" prohibits a
27 determination of the merits as improper prior to a motion for
28 class certification and notice to the class.

1 2. Defendant's Position: Plaintiff's complaint is
2 based on the allegation that the Notice of Intent to "Dispose of
3 Repossessed Collateral" sent to Plaintiff does not comply with
4 the provisions of the California Automobile Sales Finance Act.
5 Whether the form of Notice complies with the provisions of the
6 ASFA is a matter of law. In the event the form of Notice sent to
7 Plaintiff complied with the ASFA, Plaintiff does not have
8 standing to pursue this alleged putative class action and is not
9 a proper class representative pursuant to FRCP 23. Accordingly,
10 Defendant believes the merits of Plaintiff's allegations are
11 appropriate for determination at the summary judgment stage.
12 Defendant proposes to bring a motion for summary judgment in
13 June, 2010 and believes the issue of class certification should
14 be reserved until after a determination of whether Plaintiff has
15 alleged any claim which can withstand summary judgment.

16 3. This matter is appropriate for alternative dispute
17 resolution pursuant to 28 U.S.C. § 651 in the form of mediation
18 and Defendant requests that this Court issue an Order requiring
19 the parties to complete ADR prior to May, 2010. A mediation on
20 the liability issue prior to determination of whether the matter
21 is appropriate for class treatment will promote judicial
22 efficiencies and save expenses and the undue burden associated
23 with class discovery.

24 E. Law and Motion.

25 1. Plaintiff Luis Mora anticipates the filing of a
26 motion for class certification following the depositions of
27 Defendant's employees, currently scheduled for March 9-10, 2010.
28 Defendant HDCC may file a motion for summary judgment.

1 F. Possible Joinder of Additional Parties.

2 1. The parties do not anticipate a joinder of
3 additional parties but would like to conduct discovery for
4 approximately 90 days before the time to add parties without
5 requiring a motion to amend expires.

6 VIII. Cross-Motions for Summary Judgment.

7 1. The Court has determined that, based on the
8 representations of Defendant, an early proceeding to determine
9 the legal sufficiency of the Notices in issue will serve the
10 interests of economy of the parties, conservation of judicial
11 resources, and reasonable expedition of the action.

12 2. Cross-motions for summary judgment are scheduled as
13 follows:

14 a. Defendant's motion to be filed by May 3, 2010.

15 b. Plaintiff's opposition and its cross-motion for
16 summary judgment shall be filed by June 4, 2010.

17 c. Defendant shall reply to the opposition to its
18 motion for summary judgment by June 21, 2010.

19 d. Defendant's opposition to Plaintiff's cross-motion
20 is due July 6, 2010.

21 e. Plaintiff's reply to Defendant's opposition to its
22 cross-motion for summary judgment is due on July 23, 2010.

23 f. The cross-motions for summary judgment shall be
24 heard on August 16, 2010, at 10:00 a.m. in Courtroom 3.

25 g. A Further Scheduling conference shall be held
26 immediately following the disposition of the dispositive motions.

27 IX. Motions - Hard Copy.

28 1. The parties shall submit one (1) courtesy paper copy to

1 the Court of any motions filed. Exhibits thereto shall be marked
2 with protruding numbered or lettered tabs so that the Court can
3 easily identify such exhibits.

4 X. Compliance With Federal Procedure.

5 1. The Court requires compliance with the Federal
6 Rules of Civil Procedure and the Local Rules of Practice for the
7 Eastern District of California. To aid the court in the
8 efficient administration of this case, all counsel are directed
9 to familiarize themselves with the Federal Rules of Civil
10 Procedure and the Local Rules of Practice of the Eastern District
11 of California, and keep abreast of any amendments thereto.

12 XI. Effect Of This Order.

13 1. The foregoing order represents the best
14 estimate of the court and counsel as to the agenda most suitable
15 to bring this case to resolution. The trial date reserved is
16 specifically reserved for this case. If the parties determine at
17 any time that the schedule outlined in this order cannot be met,
18 counsel are ordered to notify the court immediately of that fact
19 so that adjustments may be made, either by stipulation or by
20 subsequent scheduling conference.

21 2. Stipulations extending the deadlines contained
22 herein will not be considered unless they are accompanied by
23 affidavits or declarations, and where appropriate attached
24 exhibits, which establish good cause for granting the relief
25 requested.

26 ///

27 ///

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1 3. Failure to comply with this order may result in
2 the imposition of sanctions.

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4 IT IS SO ORDERED.

5 Dated: February 11, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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