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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10
11 BROOK NOBLE,

12 Plaintiff,

13 v.

14 WELLS FARGO BANK, N.A.,

15 Defendant,

Case No. 1:14-cv-01963-DAD-EPG

**ORDER SETTING MANDATORY
SCHEDULING CONFERENCE**

DATE: August 31, 2016

TIME: 9:30 A.M.

COURTROOM: 10 (6th Floor)

**ERICA P. GROSJEAN
U.S. MAGISTRATE JUDGE**

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19 Rule 16(b)(2) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) requires the
20 Court to enter a Scheduling Conference Order.¹ Therefore, it is ordered that all parties attend a
21 formal Scheduling Conference before United States Magistrate Judge Erica P. Grosjean, in
22 Courtroom 10 at the United States Courthouse, 2500 Tulare Street, Fresno, CA 93721.

23 **Appearance at Scheduling Conference**

24 Attendance at the Scheduling Conference is *mandatory* for all parties. Parties may appear
25 by their counsel, if represented. If a party is not represented by counsel, they must appear
26 personally at the Scheduling Conference. **Telephonic appearances are not available for pro se**

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28 ¹ This order will refer to the parties in the singular regardless of the number of parties listed in the complaint.

1 **parties, i.e., those not represented by counsel.** Trial counsel should participate in this Scheduling
2 Conference whenever possible. Additionally, although not required, local counsel are encouraged
3 to personally appear at the scheduling conference.

4 If one or more parties are represented by counsel and wish to appear telephonically,
5 counsel shall contact Michelle Rooney, Courtroom Deputy Clerk, at (559) 499-5962 sufficiently
6 in advance of the conference so that a notation can be placed on the Court's calendar.
7 Additionally, counsel are directed to indicate on the face page of their Joint Scheduling Report
8 that the conference will be telephonic. If the parties are appearing telephonically, each party shall
9 dial 1- (888) 251-2909 and enter access code 1024453.

10 **Joint Scheduling Report**

11 A Joint Scheduling Report, carefully prepared and executed by all counsel shall be
12 electronically filed in CM/ECF, one (1) full week prior to the Scheduling Conference and shall be
13 emailed in Word format to epgorders@caed.uscourts.gov. The Joint Scheduling Report shall
14 indicate the date, time, and courtroom of the Scheduling Conference. This information is to be
15 placed opposite the caption on the first page of the Report.

16 At least twenty (20) days prior to the Mandatory Scheduling Conference, trial counsel for
17 all parties shall conduct a conference at a mutually agreed upon time and place. This should
18 preferably be a personal conference between all counsel but a telephonic conference call
19 involving all counsel/pro se parties is permissible. The Joint Scheduling Report shall contain the
20 following items by corresponding numbered paragraphs:

21 1. Summary of the factual and legal contentions set forth in the pleadings of each
22 party, including the relief sought by any party presently before the Court.

23 2. Summary of major disputed facts and contentions of law.

24 3. A proposed deadline for amendments to pleadings. Any proposed amendment to
25 the pleadings shall be referenced in the Scheduling Conference Report. If the matter cannot be
26 resolved at the Scheduling Conference, the moving party shall file a motion to amend in
27 accordance with the Local Rules of the Eastern District of California.

28 4. The status of all matters which are presently set before the Court, e.g., hearings of

1 motions, etc.

2 5. A complete and detailed discovery plan addressing the following issues and
3 proposed dates:

- 4 a. A date for the exchange of initial disclosures required by
5 Fed. R. Civ. P. 26(a)(1) or a statement that disclosures have already been
6 exchanged;
- 7 b. A firm cut-off date for non-expert discovery. When setting this date, the
8 parties are advised that motions to compel must be filed and heard
9 sufficiently in advance of the deadlines so that the Court may grant
10 effective relief within the allotted discovery time. The Court recommends
11 this date be scheduled approximately ninety (90) days from the scheduling
12 conference;
- 13 c. A firm date for disclosure of expert witnesses, required by Fed. R. Civ. P.
14 26(a)(2), rebuttal experts, as well as a cut-off for the completion of all
15 expert discovery. The parties shall allow thirty (30) days between each of
16 the expert discovery deadlines;
- 17 d. Any proposed changes in the limits on discovery imposed by
18 Fed. R. Civ. P. 26(b); 30(a)(2)(A), (B); 30(d); or 33(a);
- 19 e. Whether the parties anticipate the need for a protective order relating to the
20 discovery of information relating to a trade secret or other confidential
21 research, development, or commercial information;
- 22 f. Any issues or proposals relating to the timing, sequencing, phasing or
23 scheduling of discovery; and
- 24 g. Whether the parties anticipate the need to take discovery outside the United
25 States and, if so, a description of the proposed discovery.

26 **Additional Disclosures Related to Electronic Discovery**

- 27 1. Discovery Relating to Electronic, Digital and/or Magnetic Data. Prior to a
28 Fed. R. Civ. P. 26(f) conference, counsel should carefully investigate their respective

1 client's information management system so that they are knowledgeable as to its
2 operation, including how information is stored and how it can be retrieved. Counsel shall
3 also conduct a reasonable review of their respective client's computer files to ascertain the
4 contents thereof, including archival and legacy data (outdated formats or media), and
5 disclose in initial discovery (self-executing routine discovery) the computer-based
6 evidence which may be used to support claims or defenses.

7 2. The parties shall meet and confer regarding the following matters during
8 the Fed. R. Civ. P. 26(f) conference, and address the status of Electronic Discovery and
9 any disagreements in their Statement, including:

10 a. Preservation: The parties shall attempt to agree on steps the
11 parties will take to segregate and preserve computer-based
12 information in order to avoid accusations of spoliation.

13 b. Scope of E-mail Discovery: The parties shall attempt to
14 agree as to the scope of e-mail discovery and attempt to agree upon
15 an e-mail search protocol. The parties should seek to agree on
16 search terms, custodians, and date ranges in advance of the
17 Conference so that any disputes can be addressed at the Conference.

18 c. Inadvertent Production of Privileged Information: The
19 parties should confer regarding procedures for inadvertent
20 production of privileged electronic material, including any
21 obligations to notify the other party, and procedures for bringing
22 any disputes promptly to the Court.

23 d. Data Restoration: The parties shall confer regarding whether
24 or not restoration of deleted information may be necessary, the
25 extent to which restoration of deleted information is needed, and
26 who will bear the costs of restoration; and the parties shall attempt
27 to agree whether or not back-up data may be necessary, the extent
28 to which backup data is needed and who will bear the cost of

1 obtaining back-up data.

2 6. Dates agreed to by all counsel for:

3 a. The filing of dispositive motions (except motions in limine or other trial
4 motions). The Court suggests this date be forty-five (45) days after the
5 expert discovery deadline.

6 b. A Pre-Trial Conference Date which shall be approximately one hundred
7 twenty (120) days after the dispositive motion filing deadline.

8 c. A Trial date which shall be approximately sixty (60) days after the
9 proposed Pre-Trial Conference date.

10 7. The parties are encouraged to discuss settlement, and must include a statement in
11 the Joint Scheduling Report as to the possibility of settlement. The parties shall indicate when
12 they desire a settlement conference, e.g., before further discovery, after discovery, after pre-trial
13 motions, etc. Among other things, counsel will be expected to discuss the possibility of settlement
14 at the Scheduling Conference. Note that, even if settlement negotiations are progressing, counsel
15 are expected to comply with the requirements of this Order unless otherwise excused by the
16 Court. If the entire case is settled, counsel shall **promptly** inform the Court. In the event of
17 settlement, counsel's presence at the conference, as well as the Joint Scheduling Report, will not
18 be required.

19 8. A statement as to whether the case is a jury or non-jury case. The parties shall
20 briefly outline their respective positions if there is a disagreement as to whether a jury trial has
21 been timely demanded, or as to whether a jury trial is available on some or all of the claims.

22 9. An estimate of the number of trial days required. If the parties cannot agree, each
23 party shall give his or her best estimate.

24 10. The parties' position regarding consent to proceed before a United States
25 magistrate judge. Note that the parties need not make a final decision on the issue of consent
26 until after the Scheduling Conference, but should state their current position in this Statement and
27 expect to make a final decision soon after the Scheduling Conference.

28 The parties may wish to consider that, when a civil trial is set before the district judges in

1 the Fresno Division, any criminal trial that conflicts with the civil trial will take priority, even if
2 the civil trial was set first. Continuances of civil trials under these circumstances may no longer
3 be entertained, absent good cause, but the civil trial may instead trail from day to day or week to
4 week until the completion of either the criminal case or the older civil case.

5 Parties are free to withhold consent or decline magistrate jurisdiction without adverse
6 substantive consequences.

7 11. Whether either party requests bifurcation or phasing of trial or has any other
8 suggestion for shortening or expediting discovery, pre-trial motions or trial.

9 12. Whether this matter is related to any matter pending in this court or any other
10 court, including bankruptcy court.

11 **Scheduling Order**

12 Following the Scheduling Conference, the Court will issue a Scheduling Order with the
13 benefit of the input of the parties. Once issued, the dates in the Scheduling Order shall be firm
14 and no extension shall be given without permission from the Court.

15 **Lack of Participation in the Joint Scheduling Report**

16 If any party fails to participate in the preparation of the Joint Scheduling Report, the non-
17 offending party shall detail the party's effort to get the offending party to participate in the Joint
18 Scheduling Report. The non-offending party shall still file the report one (1) full week prior to
19 the Mandatory Scheduling Conference and shall list the non-offending party's position on the
20 listed issues and proposed dates for a schedule. Absent good cause, the dates proposed by the
21 non-offending party will be presumed to be the dates offered by the parties. The offending party
22 may be subject to sanctions, including monetary sanctions to compensate the non-offending
23 party's time and effort incurred in seeking compliance with this Scheduling Order.

24 **Important Chamber's Information**

25 The parties are directed to the Court's website at www.caed.uscourts.gov under **Judges;**
26 **Grosjean (EPG); Standard Information (in the area entitled "Case Management**
27 **Procedures")** for specific information regarding Chambers' procedures. Information about law
28 and motion, scheduling conferences, telephonic appearances, and discovery disputes is provided

1 at this link.

2 **Sanctions for Failure to Comply**

3 Should counsel or a party appearing pro se fail to appear at the Mandatory Scheduling
4 Conference, or fail to comply with the directions as set forth above, an ex parte hearing may be
5 held and contempt sanctions, including monetary sanctions, dismissal, default, or other
6 appropriate judgment, may be imposed and/or ordered.

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9 IT IS SO ORDERED.

10 Dated: **July 8, 2016**

11 /s/ Eric P. Grogg
12 UNITED STATES MAGISTRATE JUDGE
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