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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ING BANK, fsb,

Plaintiff,

No. CIV S-09-1174 WBS EFB PS

vs.

RAMON P. FAZAH,

Defendant.

STATUS (PRETRIAL SCHEDULING) ORDER

This action was referred to the undersigned under Eastern District of California Local Rule 302(c)(21), pursuant to 28 U.S.C. § 636(b)(1). On January 20, 2010, the case was before the undersigned for a status (pretrial scheduling) conference. Attorney Lawrence A. Callaghan appeared on behalf of plaintiff; defendant appeared *pro se*. After hearing, and pursuant to the parties' status reports filed January 14 and 15, 2010, the court enters the following scheduling order:

NATURE OF CASE

Plaintiff's amended complaint, filed May 11, 2009, seeks declaratory relief under the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601 *et seq.*, and alleges claims for breach of contract and judicial foreclosure as a result of defendant's alleged failure to pay the amounts due on his loan with plaintiff. Dckt. No. 5.

1 SERVICE OF PROCESS

2 Service of process is undisputed and defendant has answered.

3 JOINDER OF PARTIES/AMENDMENTS

4 No further joinder of parties or amendments to pleadings is permitted except with leave
5 of court, good cause having been shown.

6 JURISDICTION/VENUE

7 Jurisdiction and venue are undisputed and are hereby found to be proper.

8 MOTION HEARING SCHEDULES

9 All law and motion, except as to discovery, shall be completed by October 27, 2010. The
10 word “completed” in this context means that all law and motion matters must be heard by the
11 above date. Counsel (and/or pro se parties)¹ are cautioned to refer to the Local Rules regarding
12 the requirements for noticing such motions on the court’s regularly scheduled law and motion
13 calendar. This paragraph does not preclude motions for continuances, temporary restraining
14 orders or other emergency applications, and is subject to any special scheduling set forth in the
15 “MISCELLANEOUS PROVISIONS” paragraph below.

16 The parties should keep in mind that the purpose of law and motion is to narrow and
17 refine the legal issues raised by the case, and to dispose of by pretrial motion those issues that
18 are susceptible to resolution without trial. To accomplish that purpose, the parties need to
19 identify and fully research the issues presented by the case, and then examine those issues in
20 light of the evidence gleaned through discovery. If it appears to counsel after examining the
21 legal issues and facts that an issue can be resolved by pretrial motion, counsel are to file the
22 appropriate motion by the law and motion cutoff set forth above.

23 ALL PURELY LEGAL ISSUES ARE TO BE RESOLVED BY TIMELY PRETRIAL
24 MOTION. Counsel are reminded that motions in limine are procedural devices designed to

25
26 ¹ Any reference to “counsel” in this order includes parties appearing *in propria persona*.

1 address the admissibility of evidence. COUNSEL ARE CAUTIONED THAT THE COURT
2 WILL LOOK WITH DISFAVOR UPON SUBSTANTIVE MOTIONS PRESENTED IN THE
3 GUISE OF MOTIONS IN LIMINE AT THE TIME OF TRIAL.

4 DISCOVERY

5 All discovery shall be *completed* by September 28, 2010. The word “completed” means
6 that all discovery shall have been conducted so that all depositions have been taken and any
7 disputes relative to discovery shall have been resolved by appropriate order if necessary and,
8 where discovery has been ordered, the order has been complied with. Motions to compel
9 discovery must be noticed on the undersigned’s calendar in accordance with the Local Rules and
10 must be heard not later than August 25, 2010. Initial disclosures shall be completed by March
11 19, 2010.

12 EXPERT DISCLOSURE

13 The parties are to designate in writing and file with the court, and serve upon all other
14 parties, the names of all experts they propose to tender at trial, pursuant to the following
15 schedule: initial expert disclosures shall be made on or before June 28, 2010; rebuttal expert
16 disclosures shall be made on or before July 28, 2010.

17 An expert witness not appearing on said lists will not be permitted to testify unless the
18 party offering the witness demonstrates: (a) that the necessity of the witness could not have been
19 reasonably anticipated at the time the lists were exchanged; (b) the court and opposing counsel
20 were promptly notified upon discovery of the witness; and (c) that the witness was promptly
21 proffered for deposition. Failure to provide the information required along with the expert
22 designation may lead to preclusion of the expert’s testimony or other appropriate sanctions.

23 For the purposes of this scheduling order, experts are defined as “percipient” and “Rule
24 26” experts. Both types of experts shall be listed. Percipient experts are persons who, because
25 of their expertise, have rendered expert opinions in the normal course of their work duties or
26 observations pertinent to the issues in the case. Another term for their opinions are “historical

1 opinions.” Percipient experts are experts who, unless also designated as Rule 26 experts, are
2 limited to testifying to their historical opinions and the reasons for them. That is, they may be
3 asked to testify about their opinions given in the past and the whys and wherefores concerning
4 the development of those opinions. However, they may not be asked to render a current opinion
5 for the purposes of the litigation.

6 Rule 26 experts, who may be percipient experts as well, shall be specifically designated
7 by a party to be a testifying expert for the purposes of the litigation.² The Rule 26 expert may
8 express opinions formed for the purposes of the litigation. A party designating a Rule 26 expert
9 will be assumed to have acquired the express permission of the witness to be so listed.

10 The parties shall comply with the information disclosure provisions of Federal Rule of
11 Civil Procedure 26(a)(2) for any expert, who is in whole or in part designated as a Rule 26
12 expert. This information is due at the time of designation. Failure to supply the required
13 information may result in the Rule 26 expert being stricken. All Rule 26 experts are to be fully
14 prepared to render an informed opinion at the time of *designation* so that they may fully
15 participate in any deposition taken by the opposing party. Rule 26 experts will not be permitted
16 to testify at trial as to any information gathered or evaluated, or opinion formed, which should
17 have been reasonably available at the time of designation. The court will closely scrutinize for
18 discovery abuse deposition opinions which differ markedly in nature and/or in bases from those
19 expressed in the mandatory information disclosure.

20 FINAL PRETRIAL CONFERENCE

21 The final pretrial conference is set before Judge William B. Shubb on January 24, 2011,
22 at 2:00 p.m., in Courtroom No. 5. Counsel are cautioned that counsel appearing for pretrial will
23 in fact try the matter. Counsel for all parties are to be fully prepared for trial at the time of the
24 pretrial conference, with no matters remaining to be accomplished except production of
25

26 ² The court is not interested in a designation of non-testifying Rule 26 experts.

1 witnesses for oral testimony. Counsel are referred to Local Rules 281 and 282 relating to pretrial
2 statements and conferences. A FAILURE TO COMPLY WITH LOCAL RULES 281 AND 282
3 WILL BE GROUNDS FOR SANCTIONS.

4 Notwithstanding Local Rule 281, the parties shall submit a *joint pretrial statement* not
5 later than fourteen days prior to the pretrial conference. The joint pretrial statement shall
6 conform with the requirements of Local Rule 281(b). The undisputed facts and disputed factual
7 issues shall be set forth in two separate sections. The parties should identify those facts which
8 are relevant to each separate cause of action. In this regard, the parties are to number each
9 individual fact or factual issues. Where the parties are unable to agree as to what factual issues
10 are properly before the court for trial, they should nevertheless list in the section on “DISPUTED
11 FACTUAL ISSUES” all issues asserted by any of the parties and explain by parenthetical the
12 controversy concerning each issue. The parties should keep in mind that, in general, each fact
13 should relate or correspond to an element of the relevant cause of action. The parties should also
14 keep in mind that the purpose of listing the disputed factual issues is to apprise the court and all
15 parties about the precise *issues* that will be litigated at trial. *The court is not interested in a*
16 *listing of all evidentiary facts underlying the issues that are in dispute.*³ The joint statement of
17 undisputed facts and disputed factual issues is to be filed with the court concurrently with the
18 filing of the joint pretrial statement.

19 Pursuant to Local Rule 281(b), the parties are required to provide in their pretrial
20 statement a list of witnesses and exhibits that they propose to proffer at trial, no matter for what
21 purpose. These lists shall not be contained in the pretrial statement itself, but shall be attached as
22 separate documents to be used as addenda to the final pretrial order. Plaintiff’s exhibits shall be
23 listed numerically; defendant’s exhibits shall be listed alphabetically. The pretrial order will
24 contain a stringent standard for the proffering of witnesses and exhibits at trial not listed in the

25 ³ However, with respect to the listing of undisputed facts, the court will accept
26 agreements as to evidentiary facts.

1 pretrial order. Counsel are cautioned that the standard will be strictly applied. On the other
2 hand, the listing of exhibits or witnesses which counsel do not intend or use will be viewed as an
3 abuse of the court's processes.

4 Counsel are reminded that, pursuant to Federal Rule of Civil Procedure 16, it will be their
5 duty at the pretrial conference to aid the court in (a) formulation and simplification of issues and
6 the elimination of meritless claims or defenses; (b) settling of facts which should be properly
7 admitted; and (c) avoidance of unnecessary proof and cumulative evidence. The parties must
8 prepare their joint pretrial statement, and participate in good faith at the pretrial conference, with
9 these aims in mind. A FAILURE TO DO SO MAY RESULT IN THE IMPOSITION OF
10 SANCTIONS which may include monetary sanctions, orders precluding proof, eliminations of
11 claims or defenses, or such other sanctions as the court deems appropriate.

12 TRIAL SETTING

13 A jury trial is set to commence before Judge William B. Shubb on March 29, 2011 at
14 9:00 a.m., in Courtroom No. 5. The parties anticipate that the trial will take approximately five
15 days.

16 SETTLEMENT CONFERENCE

17 No settlement conference is set at this time. If the parties conclude that an early
18 settlement conference would likely resolve the case, and are willing to stipulate to a settlement
19 conference before the undersigned, they may contact the undersigned's clerk to request that one
20 be scheduled. Each side shall also file a waiver of the trial judge acting as settlement judge prior
21 to the settlement conference.

22 SUMMARY OF ORDER

23 THE COURT SUMMARIZES THE SCHEDULING ORDER AS FOLLOWS:

24 1. The parties may conduct discovery until September 28, 2010. Motions to compel
25 discovery are to be noticed for hearing no later than August 25, 2010, as more specifically
26 described in this order.

1 2. The parties shall make their initial expert disclosures on or before June 28, 2010, and
2 their rebuttal expert disclosures on or before July 28, 2010, as described herein.

3 3. All pretrial motions, except motions to compel discovery, shall be completed as
4 described herein on or before October 27, 2010.

5 4. The final pretrial conference is set before Judge William B. Shubb on January 24,
6 2011 at 2:00 p.m., in Courtroom No. 5. Pretrial statements shall be filed in accordance with
7 Local Rules 281 and 282, and the requirements set forth herein.

8 5. A jury trial is set to commence before Judge William B. Shubb on March 29, 2011 at
9 9:00 a.m., in Courtroom No. 5.

10 IT IS SO ORDERED.

11 DATED: February 19, 2010.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE