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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS STEVENS DUMAS,

NO. CIV. S-10-1523 LKK/KJM

Plaintiff,

v.

FIRST NORTHERN BANK, dba
FIRST NORTHERN, et al.,

Defendants.

_____ /

STATUS (PRETRIAL SCHEDULING) CONFERENCE

READ THIS ORDER CAREFULLY. IT CONTAINS IMPORTANT DATES WHICH THE COURT WILL STRICTLY ENFORCE AND WITH WHICH ALL COUNSEL AND PARTIES MUST COMPLY. A FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN THE IMPOSITION OF MONETARY AND ALL OTHER SANCTIONS WITHIN THE POWER OF THE COURT, INCLUDING DISMISSAL OR AN ORDER OF JUDGMENT.

Pursuant to court order, a Status (Pretrial Scheduling) Conference was held in chambers on October 18, 2010. Gabriel D. Klug appeared for John Sargetis as counsel for plaintiff; Henry

1 Friesen appeared telephonically as counsel for defendant Paramount
2 Residential Mortgage Group, Inc.; Joshua Abel appeared
3 telephonically as counsel for JPMorgan Chase Bank. After hearing,
4 the court makes the following findings and orders:

5 **SERVICE OF PROCESS**

6 All parties defendant have been served and no further service
7 is permitted except with leave of court, good cause having been
8 shown.

9 **JOINDER OF PARTIES/AMENDMENTS**

10 Except as provided herein, no further joinder of parties or
11 amendments to pleadings is permitted except with leave of court,
12 good cause having been shown. See Johnson v. Mammoth Recreations,
13 Inc., 975 F.2d 604 (9th Cir. 1992).

14 Plaintiff is granted ten (10) days to file and amended
15 complaint joining additional parties and he is to give notice of
16 the dates provided herein.

17 **JURISDICTION/VENUE**

18 Jurisdiction is predicated upon 28 U.S.C. §§ 1331, 1367 is
19 undisputed and is hereby found to be proper, as is venue.

20 **FICTITIOUSLY-NAMED DEFENDANTS**

21 This action, including any counterclaims, cross-claims, and
22 third-party complaints is hereby DISMISSED as to all DOE or other
23 fictitiously-named defendants.

24 **MOTION HEARING SCHEDULES**

25 All law and motion except as to discovery is left open, save
26 and except that it shall be conducted so as to be completed by

1 July 18, 2011. The word "completed" in this context means that all
2 law and motion matters must be **heard** by the above date. Because
3 this date is not necessarily a date previously set aside for law
4 and motion hearings, it is incumbent upon counsel to contact this
5 court's courtroom deputy, Ana Rivas at (916) 930-4133, sufficiently
6 in advance so as to ascertain the dates upon which law and motion
7 will be heard and to properly notice its motion for hearing before
8 that date. Counsel are cautioned to refer to Local Rule 230
9 regarding the requirements for noticing such motions on the court's
10 regularly scheduled law and motion calendar. **Opposition or**
11 **statement of non-opposition to all motions shall be filed not later**
12 **than 4:30 p.m. fourteen (14) days preceding the hearing date, or by**
13 **proof of service by mail not less than seventeen (17) days**
14 **preceding the hearing date.** This paragraph does not preclude
15 motions for continuances, temporary restraining orders or other
16 emergency applications, and is subject to any special scheduling
17 set forth in the "MISCELLANEOUS PROVISIONS" paragraph below.

18 At the time of filing a motion, opposition, or reply, counsel
19 are directed to email a copy in word processing format to [lk-](mailto:lk-pleadings@caed.uscourts.gov)
20 pleadings@caed.uscourts.gov.

21 The parties should keep in mind that the purpose of law and
22 motion is to narrow and refine the legal issues raised by the case,
23 and to dispose of by pretrial motion those issues that are
24 susceptible to resolution without trial. To accomplish that
25 purpose, the parties need to identify and fully research the issues
26 presented by the case, and then examine those issues in light of

1 the evidence gleaned through discovery. If it appears to counsel
2 after examining the legal issues and facts that an issue can be
3 resolved by pretrial motion, counsel are to file the appropriate
4 motion by the law and motion cutoff set forth supra.

5 **Unless prior permission has been granted, memoranda of law in**
6 **support of and in opposition to motions are limited to thirty (30)**
7 **pages, and reply memoranda are limited to fifteen (15) pages. The**
8 **parties are also cautioned against filing multiple briefs to**
9 **circumvent this rule.**

10 Where the parties bring motions for summary judgment, the
11 court will deem facts which are apparently undisputed as undisputed
12 under Fed. R. Civ. P. 56(d), unless specifically reserved and that
13 party tenders evidence to support the reservation.

14 ALL PURELY LEGAL ISSUES ARE TO BE RESOLVED BY TIMELY PRETRIAL
15 MOTION AND A FAILURE TO MAKE SUCH A MOTION WILL ORDINARILY BE
16 VIEWED AS A WAIVER AT THE TIME OF PRETRIAL. COUNSEL ARE CAUTIONED
17 THAT IF ANY LEGAL ISSUE THAT SHOULD HAVE BEEN TENDERED TO THE COURT
18 BY PRETRIAL MOTION MUST BE RESOLVED BY THE COURT AFTER LAW AND
19 MOTION CUTOFF, FOR INSTANCE WHERE THE ISSUE IS JURISDICTION,
20 SUBSTANTIAL SANCTIONS WILL BE LEVIED AGAINST COUNSEL WHO FAIL TO
21 TIMELY FILE AN APPROPRIATE MOTION.

22 Counsel are further reminded that motions in limine are
23 procedural devices designed to address the admissibility of
24 evidence. COUNSEL ARE CAUTIONED THAT THE COURT WILL LOOK WITH
25 DISFAVOR UPON SUBSTANTIVE MOTIONS PRESENTED IN THE GUISE OF MOTIONS
26 IN LIMINE AT THE TIME OF TRIAL.

1 **DISCOVERY**

2 No modifications of the discovery requirements found in the
3 Federal Rules is ordered.

4 All discovery is left open, save and except that it shall be
5 so conducted as to be completed by May 18, 2011. The word
6 "completed" means that all discovery shall have been conducted so
7 that all depositions have been taken and any disputes relative to
8 discovery shall have been resolved by appropriate order if
9 necessary and, where discovery has been ordered, the order has been
10 complied with. Motions to compel discovery must be noticed on the
11 magistrate judge's calendar in accordance with the local rules of
12 this court and so that such motions will be heard not later than
13 April 18, 2011. In this regard, all counsel are to designate in
14 writing and file with the court and serve upon all other parties a
15 final list of the names of all experts that they propose to tender
16 at trial not later than sixty (60) days before the close of
17 discovery herein established. At the time of designation, all
18 experts shall submit a written report. The contents of the report
19 must comply with Federal Rule of Civil Procedure 26 (A) (2) (b). All
20 experts so designated are to be fully prepared to render an
21 informed opinion at the time of designation so that they may fully
22 participate in any deposition taken by the opposing party. Experts
23 will not be permitted to testify at the trial as to any information
24 gathered or evaluated, or opinion formed, after deposition taken
25 subsequent to designation.

26 An expert witness not appearing on said lists will not be

1 permitted to testify unless the party offering the witness
2 demonstrates: (a) that the necessity of the witness could not have
3 been reasonably anticipated at the time the lists were exchanged;
4 (b) the court and opposing counsel were promptly notified upon
5 discovery of the witness; and (c) that the witness was promptly
6 proffered for deposition.

7 **MID-LITIGATION STATEMENTS**

8 Not later than fourteen (14) days prior to the close of
9 discovery, all parties shall file with the court and serve on all
10 other parties a brief statement summarizing all law and motion
11 practice heard by the court as of the date of the filing of the
12 statement, whether the court has disposed of the motion at the time
13 the statement is filed and served, and the likelihood that any
14 further motions will be noticed prior to the close of law and
15 motion. The filing of this statement shall not relieve the parties
16 or counsel of their obligation to timely notice all appropriate
17 motions as set forth above.

18 **FINAL PRETRIAL CONFERENCE**

19 The Final Pretrial Conference is **SET** for October 17, 2011, at
20 1:30 p.m. Counsel are cautioned that counsel appearing for
21 Pretrial will in fact try the matter.

22 Counsel for all parties are to be fully prepared for trial at
23 the time of the Pretrial Conference, with no matters remaining to
24 be accomplished except production of witnesses for oral testimony.
25 Counsel are referred to Local Rules 280 and 281 relating to the
26 contents of and time for filing Pretrial Statements. In addition

1 to those subjects listed in Local Rule 281(b), the parties are to
2 provide the court with a plain, concise statement which identifies
3 every non-discovery motion tendered to the court, and its
4 resolution. A FAILURE TO COMPLY WITH LOCAL RULES 280 AND 281 WILL
5 BE GROUNDS FOR SANCTIONS.

6 The parties shall file Separate Pretrial Statements, the
7 contents and timing of which are set forth in Local Rule 281,
8 except that the parties are to prepare a JOINT STATEMENT with
9 respect to the undisputed facts and disputed factual issues of the
10 case. See Local Rule 281(b)(3), (4), and (6). The parties are
11 reminded to include in their joint statement all disputed and
12 undisputed special factual information as required by Local Rule
13 281(b)(6).

14 The undisputed facts and disputed factual issues are to be set
15 forth in two separate sections. In each section, the parties
16 should identify first the general facts relevant to all causes of
17 action. After identifying the general facts, the parties should
18 then identify those facts which are relevant to each separate cause
19 of action. In this regard, the parties are to number each
20 individual fact or factual issue. Where the parties are unable to
21 agree as to what factual issues are properly before the court for
22 trial, they should nevertheless list in the section on "DISPUTED
23 FACTUAL ISSUES" all issues asserted by any of the parties and
24 explain by parenthetical the controversy concerning each issue.
25 Each individual disputed fact or factual issue shall include the
26 following introductory language: "Whether or not" The

1 parties should keep in mind that, in general, each fact should
2 relate or correspond to an element of the relevant cause of action.
3 Notwithstanding the provisions of Local Rule 281, the Joint
4 Statement of Undisputed Facts and Disputed Factual Issues is to be
5 filed with the court concurrently with the filing of plaintiff's
6 Pretrial Statement. If the case is tried to a jury, the undisputed
7 facts will be read to the jury.

8 Pursuant to Local Rule 281(b)(10) and (11), the parties are
9 required to provide in their Pretrial Statements a list of
10 witnesses and exhibits that they propose to proffer at trial, no
11 matter for what purpose. These lists shall not be contained in the
12 Pretrial Statement itself, but shall be attached as separate
13 documents to be used as addenda to the Final Pretrial Order.
14 Plaintiff's exhibits shall be listed **numerically**; defendant's
15 exhibits shall be listed **alphabetically**. In the event that the
16 alphabet is exhausted, defendant's exhibits shall be marked "2A-2Z,
17 3A-3Z, etc." The Pretrial Order will contain a stringent standard
18 for the proffering of witnesses and exhibits at trial not listed in
19 the Pretrial Order. Counsel are cautioned that the standard will
20 be strictly applied. On the other hand, the listing of exhibits or
21 witnesses which counsel do not intend to call or use will be viewed
22 as an abuse of the court's processes.

23 Pursuant to Local Rule 281(b)(12), a party is required to
24 provide a list of all answers to interrogatories and responses to
25 requests for admission that the party expects to offer at trial.
26 This list should include only those documents or portions thereof

1 which the party expects to offer in its case-in-chief. Unless
2 otherwise barred by a rule of evidence or order of this court, the
3 parties remain free to tender appropriate discovery documents
4 during trial for such purposes as, but not limited to, impeachment
5 or memory refreshment.

6 Pursuant to Local Rule 281(b)(8), the parties' Pretrial
7 Statements shall contain a "statement of legal theory, etc." Each
8 party shall commence this section by specifying as to each claim
9 whether federal or state law governs, and if state law, the state
10 whose law is applicable.

11 Counsel are also reminded that, pursuant to Fed. R. Civ. P.
12 16, it will be their duty at the Pretrial Conference to aid the
13 court in (a) formulation and simplification of issues and the
14 elimination of frivolous claims or defenses; (b) settling of facts
15 which should be properly admitted; and (c) the avoidance of
16 unnecessary proof and cumulative evidence. Counsel must prepare
17 their Pretrial Statements, and participate in good faith at the
18 Pretrial Conference, with these aims in mind. A FAILURE TO DO SO
19 MAY RESULT IN THE IMPOSITION of SANCTIONS which may include
20 monetary sanctions, orders precluding proof, eliminations of claims
21 or defenses, or such other sanctions as the court deems
22 appropriate.

23 **TRIAL SETTING**

24 Trial is **SET** for January 24, 2012, at 10:30 a.m. Trial will
25 be by jury. The parties represent in good faith that the trial
26 will take approximately eight (8) days.

1 **SETTLEMENT CONFERENCE**

2 A Settlement Conference will be set before a judge other than
3 the trial judge at the time of the Pretrial Conference.

4 Counsel are cautioned to have a principal capable of
5 disposition present at the Settlement Conference or to be fully
6 authorized to settle the matter on any terms and at the Settlement
7 Conference.

8 **MISCELLANEOUS PROVISIONS**

9 The parties are reminded that pursuant to Fed. R. Civ. P.
10 16(b), the Status (pretrial scheduling) Order **shall not be modified**
11 **except by leave of court upon a showing of good cause.** Counsel are
12 cautioned that changes to any of the scheduled dates will
13 necessarily result in changes to all other dates. Thus, even where
14 good cause has been shown, the court will not grant a request to
15 change the discovery cutoff date without modifying the pretrial and
16 trial dates.

17 **Agreement by the parties pursuant to stipulation does not**
18 **constitute good cause. Nor does the unavailability of witnesses or**
19 **counsel, except in extraordinary circumstances, constitute good**
20 **cause.**

21 The parties are reminded of their continuing obligation to
22 supplement their statements relative to the identification of
23 parent corporations and any publicly held company that owns 10% or
24 more of the party's stock within a reasonable time of any change in
25 the information.

26 The parties are admonished that they are not to cite or refer


1 to any of the quotations inscribed in the pavers on the front plaza
2 of the United States Courthouse in any written or oral presentation
3 to the court or a jury.

4 There appear to be no other matters presently pending before
5 the court that will aid the just and expeditious disposition of
6 this matter.

7 IT IS SO ORDERED.

8 DATED: October 20, 2010.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT