Plaintiff's Application for Continuance

C-08-4089-BZ

Doc. 32

PLAINTIFF'S UNOPPOSED APPLICATION FOR CONTINUANCE

Pursuant to Local Rules 7-11 and 40-1 of the Northern District of California, plaintiff Securities and Exchange Commission ("Commission") hereby files this Administrative Application to Continue the Summary Judgment Hearing Date, Expert Disclosure and Discovery Dates, Pretrial Conference Date and Trial Date in light of the revised settlement agreement between the Commission and defendant John Earl Brake. On September 11, 2009, the Commission notified the Court that the Commission and defendant John Earl Brake had just reached a tentative proposed settlement in the *Securities and Exchange Commission v. John Earl Brake*, Civil Action No. C-08-4089-BZ, litigation. Unfortunately, the Commission's counsel recently learned that the agreement reached shortly before September 11, 2009 was unlikely to receive the necessary Commission approval. As a result, the Commission and Mr. Brake have entered into another written settlement agreement that will hopefully be able to gain the necessary approval by the Commission.

Because a revised settlement agreement must be recirculated within the Commission, any action by the Commission on the revised agreement cannot be obtained before summary judgment motions must be filed on October 28, 2009 and opposition papers must be filed on November 10, 2009. It is furthermore possible that the Commission might not take final action on the revised settlement proposal before the current December 2, 2009 deadline for hearing dispositive motions.

Notably, once the Commission has filed its summary judgment motion, the Commission's incentive to settle this case could be significantly reduced. As a result, the Commission's attorneys have advised Mr. Brake that continuing to seek the Commission's approval of the revised settlement offer is contingent upon the Court's agreement to continue certain trial and pretrial dates.

While the revised proposed settlement is being submitted to the Commission for its consideration, the parties respectfully request that the Court continue the following pretrial and trial dates as follows:

The current deadline for designating experts will be extended from November 4, 2009 to December 16, 2009.

The current deadline for designating rebuttal experts will be extended from November 12, 2009 to December 23, 2009.

1	The current deadline for completing expert discovery will be extended from
2	November 19, 2009 to December 30, 2009.
3	The last date for hearing dispositive motions will be continued from December 2,
4	2009 to January 20, 2010.
5	The deadline for the submission of the joint pretrial conference statements, proposed
6	jury instructions and voir dire will be continued from December 15, 2009 to January 27, 2010.
7	The deadline for submitting objections to proposed jury instructions and voir dire will
8	be continued from December 18, 2009 to February 3, 2010.
9	The current pretrial conference date of December 22, 2009 will be continued to
10	February 9, 2010.
11	The current trial date of January 11, 2010 will continued to February 22, 2010.
12	If the Court agrees to the continuance being requested by the parties, the Commission will
13	promptly update the Court regarding any action by the Commission with respect to approval of the
14	revised settlement proposal.
15	Dated: October 19, 2009
16	John S. Yun
17	Marc J. Fagel John S. Yun
18	Kristin A. Snyder Attorneys for Plaintiff
19	SECURITIES AND EXCHANGE COMMISSION
20	So Stipulated:
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[PROPOSED] ORDER GRANTING CONTINUANCE

Based upon the Unopposed Application by the Securities and Exchange Commission ("Commission"), the Court finds that there is good cause to continue certain pretrial and trial dates so that the parties have time to seek the necessary approval by the Commission of a revised settlement offer by defendant John Earl Brake. Good cause appearing, the Court hereby orders a continuance of certain dates as follows:

The current deadline for designating experts will be extended from November 4, 2009 to December 16, 2009.

The current deadline for designating rebuttal experts will be extended from November 12, 2009 to December 23, 2009.

The current deadline for completing expert discovery will be extended from November 19, 2009 to December 30, 2009.

The last date for hearing dispositive motions will be continued from December 2, 2009 to January 20, 2010.

The deadline for the submission of the joint pretrial conference statements, proposed jury instructions and voir dire will be continued from December 15, 2009 to January 27, 2010.

The deadline for submitting objections to proposed jury instructions and voir dire will be continued from December 18, 2009 to February 3, 2010.

The current pretrial conference date of December 22, 2009 will be continued to February 9, 2010.

The current trial date of January 11, 2010 will continued to February 22, 2010.

The Commission's counsel are instructed to promptly update the Court regarding any action by the Commission with respect to approval of the revised settlement proposal.

SO ORDERED.

Dated: October 20, 2009

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United States Magistrate Judge