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**ENDORSED  
 FILED  
 ALAMEDA COUNTY**  
**SEP 18 2013**  
 CLERK OF THE SUPERIOR COURT  
 By R. De Jesus, Deputy

9 Plaintiff's Counsel

10 **SUPERIOR COURT OF CALIFORNIA**  
 11 **ALAMEDA COUNTY – NORTHERN DIVISION**

12 JERRY TRAHAN, individually and on  
 13 behalf of other members of the general  
 14 public similarly situated,  
 15  
 16 Plaintiff,  
 17 vs.  
 18 U.S. BANK NATIONAL ASSOCIATION,  
 19 and DOES 1 through 50, inclusive,  
 20  
 21 Defendant.

Case No.: RG 09454803

Reservation No.: 1433392

**OBJECTIONS TO THE DECLARATION  
 OF ANDREW HILDRETH SUBMITTED  
 IN OPPOSITION TO PLAINTIFF'S  
 MOTION TO APPROVE SURVEY**

Date: September 25, 2013  
 Time: 2:30 p.m.  
 Dept.: 17  
 Hon. George C. Hernandez, Jr.

Material Objected to:	Grounds for Objection:	Ruling on the Objection
Hildreth Decl., ¶ 5. The sample that remains is not random (given that not all respond).	Assumes facts not in evidence.	Sustained: _____ Overruled: <u> X </u>
Hildreth Decl., ¶ 5. The sample is therefore comprised of self-selected (or individual choice based).	Conclusory; assumes facts not in evidence.	Sustained: _____ Overruled: <u> X </u>
Hildreth Decl., ¶ 6. ..instead the survey is designed to determine whether individual class members	Evidence Code 803: Improper Assumptions. Hildreth's opinion should be struck	Sustained: _____ Overruled: <u> X </u>

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1 2 3 4 5 6 7	were misclassified based on their job duties and where they spent their time.	because it is based in improper assumptions. <i>Hyatt v. Sierra Boat Co.</i> (1978) 79 Cal.App.3d 325, 337; <i>Sacramento &amp; San Joaquin Drainage Dist. Ex rel. State Reclamation Bd. v. Reed</i> (1963) 215 Cal.App.2d 60, 68. Hildreth misstates the purpose of the survey, which is to measure variation.	
8		Conslusory.	
9 10 11 12 13 14 15 16 17 18 19	Hildreth Decl., ¶ 6. A trial plan based on random sampling in this action cannot estimate the proportion of the class that was misclassified, if any, and cannot determine whether individual class members were misclassified.	Impermissible legal opinion. Legal expert witnesses must be qualified as such. Cal. Evid. Code §§ 720, 801. The proper interpretation of a statute, regulation or other law is an issue of law for the court to determine and expert testimony on such matters is therefore inadmissible. See e.g., <i>Summers v. A.L. Gilbert Co.</i> (1999) 69 Cal.App.4th 1155, 1178 [whether a duty exists]; <i>West v. Sundown Little League of Stockton, Inc.</i> (2002) 96 Cal.App.4th 351 [whether defendant significantly enhanced risk of plaintiff's injury].	Sustained: <u>X</u> Overruled: _____
20 21 22 23	Hildreth Decl., ¶ 7. The degree of variation in the elements to be measured may be such, especially in small populations, that sampling is not an efficient way to proceed.	Conclusory.	Sustained: _____ Overruled: <u>X</u>
24 25 26 27 28	Hildreth Decl., ¶ 8. Let us suppose that the true (unknown) population value is 5, but using the sample you estimate 7.7, with a 40 percent (relative to the estimated mean) margin of error at a 95 percent confidence interval.	Incomplete hypothetical, irrelevant.	Sustained: _____ Overruled: <u>X</u>
	Hildreth Decl., ¶ 8. Hearing	Impermissible legal opinion,	Sustained: <u>X</u>

1 2 3 4 5 6	testimony from a randomly selected subset of the population may be efficient at trial, but as the example above demonstrates, it is hardly representative or accurate of all class members, and certainly affects the aggregate potential liability of the defendant.	conclusory, speculation, and incomplete hypothetical.	Overruled: _____
7 8 9 10 11	Hildreth Decl., ¶ 10. ...then the Court, if it relied upon the survey to select a sample of testifying class members at trial, would select the wrong number of testifying witnesses for the sample and potentially arrive at the wrong conclusion.	Lacks foundation, conclusory, and based on speculation.	Sustained: <u>  X  </u>  Overruled: _____
12 13 14 15 16 17	Hildreth Decl., ¶ 12. The process of designing the questionnaire, and the questionnaire itself, is flawed. Not only is information absent from plaintiffs as to the process of designing the questionnaire, the questionnaire will produce biased responses and lead to the wrong conclusions from the data.	Conclusory and based on speculation.	Sustained: <u>  X  </u>  Overruled: _____
18 19	Hildreth Decl., ¶ 14. Dr. Krosnick has obviously decided...	Lacks foundation.	Sustained: <u>  X  </u>  Overruled: _____
20 21 22	Hildreth Decl., ¶ 14. ...to (1) measure the outside sales exemption with no proposal to address the administrative and commissioned sales exemptions;	Impermissible legal opinion.	Sustained: <u>  X  </u>  Overruled: _____
23 24 25 26 27	Hildreth Decl., ¶ 15. Dr. Krosnick appears to think that the question on whether an individual BBO was correctly classified as exempt simply revolves around estimating the number of hours spent working inside or outside of US Bank premises.	Impermissible legal opinion.	Sustained: <u>  X  </u>  Overruled: _____
28	Hildreth Decl., ¶ 16. Administrative exemption. I have	Irrelevant. The survey is intended to measure variation,	Sustained: <u>  X  </u>  Overruled: _____

1 2 3 4 5 6 7 8 9 10 11	been advised by defense counsel that if the Court is to determine whether BBOs are properly classified as exempt under the administrative exemption, this entails a consideration of the type of duties performed as a BBO that qualifies for the administrative exemption whether or not those duties are performed inside U.S. Bank property. A second requirement is that the number of overtime hours be estimated. From the set of estimates from the survey, the Court will then decide how many class members to call to testify at trial.	not exemptions.	
12 13	Hildreth Decl., ¶ 17. ... and even if related to sales activities may still constitute administratively exempt work.	Impermissible legal opinion.	Sustained: <u> X </u> Overruled: _____
14 15 16	Hildreth Decl., ¶ 18. Not only is "work" not defined sufficiently, but also the question of work (as defined) does not measure liability...	Assumes facts not in evidence. The testimony misstates the purposes of the survey. The survey is not intended to measure liability.	Sustained: <u> X </u> Overruled: _____
17 18 19 20 21 22	Hildreth Decl., ¶ 18. This is not a sufficient measure to establish liability in this matter. I am informed by counsel for U.S. Bank that liability needs to be established on a work-week by work-week basis for each and every week the individual worked at U.S. Bank as a BBO.	Assume facts not in evidence. The testimony misstates the purposes of the survey. The survey is not intended to measure liability.	Sustained: <u> X </u> Overruled: _____
23 24 25	Hildreth Decl., ¶ 19. The problem for Dr. Krosnick is that first the liability issue needs to be measured on a work-week by work-week basis.	Assumes facts not in evidence. The testimony misstates the purposes of the survey. The survey is not intended to measure liability.	Sustained: <u> X </u> Overruled: _____
26 27 28	Hildreth Decl., ¶ 19. Asking respondents to form some average in their head in the space of a few seconds, or even minutes, is inviting inaccuracy	Lacks foundation, conclusory and based on speculation.	Sustained: _____ Overruled: <u> X </u>

1	into the results.		
2	Hildreth Decl., ¶ 19. If liability is to be determined	Assumes facts not in evidence. The testimony misstates the	Sustained: <u> X </u>
3	accurately on a work-week by	purposes of the survey. The	Overruled: _____
4	work-week basis...	survey is not intended to	
5	Hildreth Decl., ¶ 19.	Assumes facts not in evidence.	Sustained: <u> X </u>
6	The average has no meaning for	The testimony misstates the	Overruled: _____
7	the definition of liability if	purposes of the survey. The	
8	liability is to be established on a	survey is not intended to	
9	workweek by work-week basis.	measure liability.	
10	Hildreth Decl., ¶ 20.	Assumes facts not in evidence.	Sustained: <u> X </u>
11	... and arrive at an average for	The testimony misstates the	Overruled: _____
12	use in a legal setting where	purposes of the survey. The	
13	accuracy is not only required, it	survey is not intended to	
14	can affect the defendant's	measure liability.	
15	aggregate liability.		
16	Hildreth Decl., ¶ 21.	Impermissible legal opinion.	Sustained: <u> X </u>
17	Further, the declarations (signed	Improper subject for expert	Overruled: _____
18	under oath) gathered by U.S.	opinion. Conclusory, assumes	
19	Bank in opposing class	facts not in evidence and calls	
20	certification (which I've	for speculation.	
21	previously reviewed) indicate that		
22	the nature of the BBO position at		
23	U.S. Bank may make it highly		
24	unlikely that the same procedures		
25	will be followed from one work		
26	week to another (let alone from		
27	one year to another) and that the		
28	usual and unusual occur at near		
	random intervals throughout their		
	work tenure. Some weeks they		
	would have high sales, some		
	weeks low sales. Some weeks		
	may require more hours to meet		
	outside clients, some weeks		
	would see more hours inside a		
	branch processing client loan		
	applications. The survey does not		
	test for this potential variation		
	that may impact not only a class		
	member's work hours but also the		
	percentage of time spent outside		
	the Bank or conducting other		
	exempt work. What Dr.		
	Krosnick's assumption (in		

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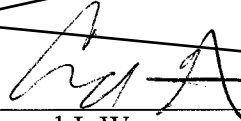
<p>paragraph 28) does illustrate is Plaintiff's view of the BBO world under which the survey questionnaire has been drafted.</p>		
<p>Hildreth Decl., ¶ 22. Further to the measurement issues, the survey data will be biased in a number of ways. The direction and magnitude of that bias to a large extent is unknown. Hence any measurement or estimated statistics (such as an estimate and its associated margin of error) from the data will equally be biased and inconsistent. Statistics from such data should not be relied upon.</p>	<p>Lacks foundation, conclusory and based on speculation.</p>	<p>Sustained: _____ Overruled: <u> X </u></p>
<p>Hildreth Decl., ¶ 25. The design of the survey further emphasizes that plaintiff wishes to use the individual's self-serving bias to his favor by essentially bribing the respondents to take part in the survey. While survey method does allow respondents to be compensated by way of a small token as a "thank you" for their time, \$25 for a 20 minute interview is tantamount to a bribe.</p>	<p>Lacks foundation, conclusory and based on speculation.</p>	<p>Sustained: <u> X </u> Overruled: _____</p>
<p>Hildreth Decl., ¶ 26. However, even if such monies were not promised for survey response up front, self-serving bias would also operate through the potential for financial gain from a decision in plaintiff's favor in the lawsuit. The problem for surveys that deal with individuals who stand to gain from the survey results if they are in their favor, is that responses are altered to suit their desired outcome. Asking individuals about the hours they worked, where they are either aware of the lawsuit, or are being</p>	<p>Lacks foundation, conclusory and based on speculation.</p>	<p>Sustained: _____ Overruled: <u> X </u></p>

1	asked about their effort as an		
2	employee at U.S. Bank, will self-		
3	serve and provide an inflated		
4	response.		
5	Hildreth Decl., ¶ 27.	Assumes facts not in evidence.	Sustained: _____
6	Where the respondent is also the		Overruled: <u>  X  </u>
7	actual subject of the survey itself,		
8	then a self-serving bias to some		
9	degree will be present, although		
10	the magnitude of that bias		
11	will remain unknown.		
12	Hildreth Decl., ¶ 28.	Lacks foundation, conclusory	Sustained: <u>  X  </u>
13	This is a strange term for a survey	and based on speculation.	Overruled: _____
14	that is required to collect precise		
15	economic measurements on time		
16	spent in various activities.		
17	Hildreth Decl., ¶ 28, fnt 6.	Lacks foundation, conclusory	Sustained: <u>  X  </u>
18	Confidentiality for respondents in	and based on speculation.	Overruled: _____
19	this instance is simply a way to		
20	hide individual responses		
21	from being examined and cross-		
22	checked.		
23	Hildreth Decl., ¶ 31.	Lacks foundation, conclusory	Sustained: <u>  X  </u>
24	Asking respondents to merely	and based on speculation.	Overruled: _____
25	reconfirm their own answers will		
26	not remove the uncertainties.		
27	Hildreth Decl., ¶ 31.	Lacks foundation, conclusory	Sustained: _____
28	The type of reconfirming exercise	and based on speculation.	Overruled: <u>  X  </u>
	(given in Question 18 of the		
	survey) that Dr. Krosnick		
	suggests is not sufficient to		
	remove recall errors.		
	Hildreth Decl., ¶ 31.	Incomplete hypothetical,	Sustained: _____
	Further, should the respondents	assumes facts not in evidence,	Overruled: <u>  X  </u>
	decide to change their answers,	lacks foundation, conclusory	
	does this invalidate the first set	and based on speculation.	
	of responses, or the second, or all		
	the responses that the respondents		
	gave? Obviously the respondent		
	has had second thoughts.		
	Hildreth Decl., ¶ 34.	Lacks foundation; assumes	Sustained: <u>  X  </u>
	Presumably, given the nature of	facts not in evidence,	Overruled: _____
	the question, it is not the case that	conclusory and based on	
	every U.S. Bank premises has a	speculation.	
	"US Bank" logo on it.		
	Hildreth Decl., ¶ 35.	Lacks foundation, assumes	Sustained: _____

1 2 3 4	By asking a BBO about his or her drive time last, and after suggesting work time is comprised of three components, the value of drive time will underestimated or depressed.	facts not in evidence, conclusory and based on speculation.	Overruled: <u>  X  </u>
5 6 7 8 9	Hildreth Decl., ¶ 35. I understand from Defense counsel that, depending on circumstances, driving to and from home, and/or driving between two U.S. Bank locations may constitute outside sales activities.	Impermissible legal opinion. Improper subject for this expert's alleged opinion.	Sustained: _____ Overruled: <u>  X  </u>
10 11 12 13	Hildreth Decl., ¶ 38. Because the tests suggested by Dr. Krosnick do not have a definite outcome, but an tt-ambiguous outcome, the tests cannot detect bias, nor correct for bias.	Conclusory, lacks foundation.	Sustained: _____ Overruled: <u>  X  </u>
14 15 16	Hildreth Decl., ¶ 38. First, because of the self serving nature of respondents in this survey...	Lacks foundation; assumes facts not in evidence, conclusory and based on speculation.	Sustained: <u>  X  </u> Overruled: _____
17 18 19	Hildreth Decl., ¶ 39. Independent of the fact that the data from a survey such as this is unilaterally biased, the tests suggested by Dr. Krosnick cannot detect bias either.	Lacks foundation, assumes facts not in evidence.	Sustained: _____ Overruled: <u>  X  </u>
20 21 22	Hildreth Decl., ¶ 43. However, this matter before the Court is not an eyewitness case as far as I am aware.	Impermissible legal opinion. Improper subject for expert opinion.	Sustained: <u>  X  </u> Overruled: _____

~~Dated: September 18, 2013~~

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Edward J. Wynne~~