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11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

14 RICHARD G. WHITEHURST and
 15 LORRAINE D. WHITEHURST, as
 16 individuals and as trustees of the Whitehurst
 17 Family Trust,

18 Plaintiffs,

19 vs.

20 BANK OF AMERICA, NATIONAL
 21 ASSOCIATION, a national banking
 22 corporation; CHARLOTTE A. HEINL, as
 23 an individual dba Norge Cleaners; and
 24 DOES 1 through 100,

25 Defendants.

26 ASSOCIATION, a national banking
 27 corporation,

28 Counterclaimant,

vs.

RICHARD G. WHITEHURST and
 LORRAINE D. WHITEHURST, as
 individuals and as trustees of the Whitehurst
 Family Trust; and ROES 1 through 100,

Counterdefendants.

No.: C 09-04808 MEJ

**STIPULATION AND [PROPOSED]
 ORDER SETTING REVISED CASE
 MANAGEMENT ORDER**

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BANK OF AMERICA, NATIONAL ASSOCIATION, a national banking corporation,

Crossclaimant,

vs.

CHARLOTTE A. HEINL; and ZOES 1 through 100,

Crossdefendants.

Based on recent developments involving the investigation of Plaintiffs' property and in anticipation of additional subsurface sampling work occurring both on Plaintiffs' property as well as off-site on property not controlled by any Party in this action (where there has been difficulties obtaining access), Plaintiffs Richard G. Whitehurst and Lorraine D. Whitehurst, as individuals and as trustees of the Whitehurst Family Trust, and Defendants Bank of America, National Association and Charlotte A. Heinel, as an individual and doing business as Norge Cleaners, stipulate to amending the Court's May 2, 2012 Order Granting Request to Amend CMC Order (attached as Exhibit A) as follows, and respectfully request that the Court approve the same:

Event	Original CMO (2/5/2010)	Operative CMO (5/2/2012)	Proposed Deadlines
Disclosure of Expert Witnesses	7/6/2012	9/6/2012	4/5/2013
Rebuttal Expert Witnesses	7/16/2012	9/17/2012	4/26/2013
Close of Discovery	7/31/2012	10/1/2012	5/31/2013
File, Serve, and Notice Dispositive Motions	8/30/2012	8/30/2012	6/21/2013
Last Day for Hearing on Dispositive Motions	10/4/2012	11/1/2012	8/1/2013
Meet and Confer and Exchange Trial Papers	12/5/2012	2/5/2013	9/6/2013

1	File papers (per FRCP 26(a)(3) and joint pretrial conference statement	12/20/2012	2/20/2013	9/20/2013
2	Motions in limine – filed	12/20/2012	2/20/2013	9/20/2013
3	Motions in limine – oppositions	12/27/2012	2/27/2013	9/27/2013
4	File Trial Briefs	1/4/2013	3/4/2013	10/4/2013
5	File Joint Proposed and Disputed Voir Dire Questions	1/4/2013	3/4/2013	10/4/2013
6	File Joint set of additional proposed jury instructions	1/4/2013	3/4/2013	10/4/2013
7	Proposed Verdict forms	1/4/2013	3/4/2013	10/4/2013
8	Pretrial Conference	1/3/2013	3/7/2013	10/10/2013
9	Final Pretrial Conference	1/31/2013	3/28/2013	10/31/2013
10	Trial Date	2/4/2013	4/8/2013	11/4/2013

11 WHEREFORE, Plaintiffs and Defendants stipulate to and respectfully request that
12 this Court amend the existing Case Management Order to incorporate the dates proposed
13 above, while all other facets of the Court’s existing Case Management Order shall remain in
14 effect. (A revised Case Management Order is attached as Exhibit B.)

15 Dated: August ____, 2012.

PALADIN LAW GROUP

17 By: _____

18 John R. Till
19 Bret A. Stone
20 Brian R. Paget
21 Attorneys for Plaintiffs/Counter Defendants
22 Richard and Lorraine Whitehurst

23 Dated: August ____, 2012.

WOOD, SMITH, HENNING, BERMAN LLP

25 By: _____

26 David F. Wood
27 Matthew O. Kovacs
28 Jon-Erik W. Magnus
Attorneys for Defendant Charlotte A. Heintl
individually and dba Norge Cleaners

CLEANERS Dated: August ____, 2012.

REED SMITH LLP

By: _____

Todd O. Maiden
Phillip H. Babich
Attorneys for Defendant/Crossclaimant
Bank of America, National Association

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PURSUANT TO STIPULATION, IT IS SO ORDERED that this Court amends the existing Case Management Order to incorporate the dates proposed above, while all other facets of the Court's existing Case Management Order shall remain in effect.

DATED: August 14, 2012



Hon. Maria-Elena James
United States Chief Magistrate

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UNITED STATES DISTRICT COURT
Northern District of California

RICHARD G. WHITEHURST

Plaintiff(s),

v.

BANK OF AMERICA,

Defendant(s).

No. C 09-04808 MEJ

**SECOND AMENDED CASE MANAGEMENT
ORDER**

Pursuant to Federal Rule of Civil Procedure 16, the Court hereby VACATES all prior Case Management Conference Orders and ORDERS as follows:

A. ADR Program:

The Court hereby refer this matter to private mediation with the following dates:

6/18/2102: Start of Mediation

12/30/2012: Complete Mediation.

These mediation dates, set forth above, are based on the fact that an environmental report was received by the parties on or about June 29, 2012 instead of the May 7, 2012 date which had been anticipated by the parties. Based in part upon new data contained within the June 29th report, Plaintiffs' obtained a fixed cost clean-up quote from the Source Group and has shared that information with the other parties in this matter. The parties are currently looking at potential additional investigation work that may be required to further define the nature and scope of the contamination and potential remediation efforts that are available. The parties have already participated in a full day technical meeting and a full day mediation and have a second mediation date set for September 6, 2012.

B. Jury Trial:

The Court shall conduct a jury trial in this matter.



1 C. Pretrial Motions:

2 All pretrial motions shall be filed in accordance with Civil Local Rule 7. A motion may be
3 noticed pursuant to Civil Local Rule 7-2 without calling the Court. Civil law and motion is heard on
4 Thursday mornings at 10:00 a.m.

5
6 D. Discovery:

7 The parties shall abide by Magistrate Judge James' Standing Order Regarding Discovery and
8 Dispute Procedures.

9
10 E. Disclosure of Expert Witnesses:

11 1. Any party wishing to present expert witness testimony with respect to a claim or defense shall
12 serve on all other parties the name, address, qualifications, resume, and a written report which
13 complies with Federal Rule of Civil Procedure 26(a)(2)(B) by 04/05/2013.

14 2. This disclosure must be made with respect to a person who is either: (a) specifically retained
15 or specially employed to provide expert testimony pursuant to Federal Rule of Evidence 702;
16 or (b) a regular employee or agent or treating physician who may be called to provide expert
17 opinion testimony.

18 3. A party or counsel has a continuing duty to supplement the disclosure of expert witnesses when
19 required under Federal Rule of Civil Procedure 26(e)(1).

20
21 F. Rebuttal Expert Witnesses:

22 If the testimony of an expert is intended solely to contradict or rebut opinion testimony on the
23 same subject matter identified by another party, the party proffering a rebuttal expert shall disclose
24 the information required under Federal Rule of Civil Procedure 26(a)(2)(B) by 04/26/2013.

25
26 G. Limitation on Testimony by Expert Witnesses:

27 1. Unless the parties enter into a written stipulation otherwise, upon timely objection, an expert
28 witness shall be precluded from testifying about any actions or opinions not disclosed prior to



- 1 the expert's deposition. This is to ensure that all factual material upon which expert opinion
2 may be based is disclosed, and all tests and reports are completed, prior to the expert deposition.
- 3 2. Unless application is made prior to the close of expert discovery, each party is limited to calling
4 only one expert witness in each discipline involved in the case.
- 5 3. Any party objecting to the admissibility of the testimony of a person disclosed as an expert
6 witness must file a written motion in limine to exclude the testimony by the deadline set forth
7 below.

8

9 H. Close of Discovery:

- 10 1. All discovery, including depositions of expert witnesses, must be completed by 05/31/2013.
- 11 2. Pursuant to Federal Rule of Civil Procedure 16(b) and Civil Local Rule 26-2, a discovery
12 request or stipulation that calls for responses or depositions after the discovery cut-off date is
13 not enforceable except by order of the Court and upon a showing of good cause.
- 14 3. Pursuant to Civil Local Rule 26-2, no motions to compel discovery (including joint letters and
15 requests for telephonic conferences under Magistrate Judge James' discovery standing order)
16 may be filed later than 10 days after the discovery cut-off date.

17

18 I. Dispositive Motions:

- 19 1. Pursuant to Civil Local Rule 7-2, all dispositive motions shall be filed, served, and noticed by
20 06/21/2013. **The parties shall file a joint statement of undisputed facts pursuant to Civil
21 Local Rule 56-2(b) when filing a motion for summary judgment.**
- 22 2. The Court shall hear dispositive motions on or before 08/01/2013 at 10:00 a.m. in Courtroom
23 B, 15th Floor of the Federal Building, located at 450 Golden Gate Avenue, San Francisco,
24 California.

25

26 J. Exchange and filing of Trial Papers:

- 27 1. By 09/06/2013 lead counsel who will try the case shall meet and confer with respect to the
28 preparation and content of the joint pretrial conference statement and shall exchange (but not



1 file or lodge) the papers described in paragraph 2 below.

2 2. By 09/20/2013, counsel shall file the papers described in Federal Rule of Civil Procedure
3 26(a)(3) and a joint pretrial conference statement including the following:

4 (A) Substance of the Action: A brief description of the substance of claims and defenses
5 which remain to be decided.

6 (B) Relief Prayed: A detailed statement of all the relief claimed, particularly itemizing all
7 elements of damages claimed as well as witnesses, documents or other evidentiary
8 material to be presented concerning the amount of damages.

9 (C) Undisputed Facts: A plain and concise statement of all relevant facts not reasonably
10 disputable, as well as which facts parties will stipulate for incorporation into the trial
11 record without the necessity of supporting testimony or exhibits.

12 (D) Disputed Factual Issues: A plain and concise statement of all disputed factual issues
13 which remain to be decided.

14 (E) Agreed Statement: A statement assessing whether all or part of the action may be
15 presented upon an agreed statement of facts.

16 (F) Stipulations: A statement of stipulations requested or proposed for pretrial or trial
17 purposes.

18 (G) Witness list: A list of all witnesses to be called for trial. The parties shall submit a
19 page-length detailed summary of the substance of the proposed testimony of each
20 witness, which shall also specify to which disputed fact the testimony relates, and an
21 estimate of the time required for direct and cross examination of each witness.

22 (H) Exhibit list: A list of all exhibits to be offered at trial. The list shall state each proposed
23 exhibit by its number or alphabetical letter, description and sponsoring witness. All
24 documents shall be authenticated prior to trial.

25 (I) No party shall be permitted to offer any witness or exhibit that is not disclosed in its
26 witness or exhibit list, except with leave of the Court for good cause shown.

27 (J) Estimated Time of Trial: An estimate of the number of hours needed for the presentation
28 of each party's case.



- 1 (K) Settlement: A statement summarizing the status of the parties' settlement negotiations.
- 2 3. Motions in limine: Counsel are directed to meet and confer to resolve any evidentiary disputes
- 3 prior to filing motions in limine.
- 4 (A) Any motions in limine shall be filed by 09/20/2013.
- 5 (B) Any Opposition to motions in limine shall be filed by 09/27/2013.
- 6 (C) These matters will be deemed submitted on the papers without oral argument, unless the
- 7 Court orders otherwise.
- 8 4. Trial Briefs: Counsel shall file trial briefs setting forth the applicable legal standard, pursuant
- 9 to Ninth Circuit authority, for all significant disputed issues of law, including foreseeable
- 10 procedural and evidentiary issues, by 10/04/2013.
- 11 5. Joint Proposed Voir Dire: Counsel shall file a **joint** set of requested voir dire to be posed by the
- 12 Court by 10/04/2013. Any voir dire questions on which counsel cannot agree shall also be filed
- 13 separately by 10/04/2013. Counsel will be allowed brief follow-up voir dire after the Court's
- 14 questioning.
- 15 6. Joint Proposed Jury Instructions:
- 16 (A) Counsel shall file a **joint** set of additional proposed jury instructions by 10/04/2013.
- 17 Jury instructions from the Manual of Model Civil Jury Instructions for the Ninth Circuit
- 18 should be used whenever possible. The instructions shall be ordered in a logical
- 19 sequence, together with a table of contents.
- 20 (B) Any instruction on which counsel cannot agree shall be marked as "disputed" and
- 21 included within the jointly submitted instructions and accompanying table of contents,
- 22 in the place where the party proposing the instruction believes it should be given.
- 23 Argument and authority for and against each disputed instruction shall be included as
- 24 part of the joint submission, on a separate page directly following the disputed
- 25 instruction.
- 26 (C) The Court prefers that all jury instructions conform to the Manual of Model Civil Jury
- 27 Instructions for the Ninth Circuit.
- 28 (D) Counsel shall deliver to the Courtroom Deputy a copy of their joint proposed jury



1 instructions on a portable storage medium (such as a USB thumb drive) in WordPerfect
2 format. The label shall include the name of the parties, the case number and be entitled
3 “Proposed Jury Instructions.”

4 (E) At the close of Defendant’s case in chief, the Court shall hear oral argument on the
5 disputed jury instructions and will then render its rulings.

6 7. Proposed Verdict Forms, Joint or Separate: Counsel shall file any joint proposed verdict forms,
7 as well as any separate verdict forms, by 10/04/2013. Counsel shall deliver to the Courtroom
8 Deputy a copy of their joint proposed verdict forms on a portable storage medium in
9 WordPerfect. The label shall include the name of the parties, the case number, and be entitled
10 “Proposed Verdict Forms.”

11
12 K. Pretrial Conference:

13 On 10/10/2013 at 10:00 a.m., the Court shall hold a pretrial conference in Courtroom B, 15th
14 Floor, 450 Golden Gate Avenue, San Francisco, California. Lead counsel who will try the case must
15 attend the pretrial conference. The purpose of the pretrial conference is for the Court to rule on any
16 issues raised in the pretrial conference statement, motions in limine, and to discuss the trial of the case.

17
18 L. Final Pretrial Conference:

19 10/31/2013 at 10:00 a.m. in Courtroom B, the Court shall hold a final pretrial conference to
20 address any outstanding trial issues.

21
22 M. Trial Date:

23 1. The trial (including jury selection) shall commence on 11/04/2013 (Trial schedule: Monday
24 through Thursday, at 1:30 p.m. to 5:00 p.m.). The trial shall last an estimated eight days.

25 2. For any documents, including the deposition of a witness testifying at trial, which will be shown
26 to a witness but not admitted into evidence, counsel shall bring the original plus three copies
27 of the documents. The original document will be handed to the Court during testimony and the
28 copies will be given to the witness during the examination and to opposing counsel.



1 3. (A) Counsel shall maintain their own exhibits during trial. Exhibits are to be premarked with
2 exhibit tags attached to the upper lefthand corner. If a photo or chart is being used as an
3 exhibit, the exhibit tag should be placed on the back side of the exhibit. The Court will
4 only admit premarked exhibits which were listed on the earlier filed exhibit list.

5 (B) Plaintiff shall mark the exhibits numerically; Defendant shall mark the exhibits
6 alphabetically. The exhibit markers shall each contain the name and number of the case,
7 the number or alphabetical letter of the exhibit, and blank spaces to accommodate the
8 date admitted and the Deputy Clerk's initials.

9 4. On the day of trial, counsel shall bring the original premarked exhibits, a copy of the premarked
10 exhibits for opposing counsel, and two binders which contain a copy of each side's premarked
11 exhibits for the Court. The premarked exhibit binders are to be designated with label dividers
12 and given to the Courtroom Deputy on the morning of the trial.

13
14 N. Jury Selection:

15 1. The Jury Commissioner will summon 20 to 25 prospective jurors. The Courtroom Deputy will
16 select their names at random and seat them in the courtroom in the order in which their names
17 are called.

18 2. Voir dire will be asked of sufficient venire persons that eight (or more for a lengthy trial) will
19 remain after all peremptory challenges and an anticipated number of hardship dismissals and
20 cause challenges have been made.

21 3. The Court will then take cause challenges and discuss hardship claims from the individual
22 jurors at side bar. The Court will inform the attorneys which hardship claims and cause
23 challenges will be granted, but will not announce those dismissals until the process is
24 completed. Each attorney may then list in writing up to three peremptory challenges. The
25 attorneys will review each other's lists and then submit them to the clerk.

26 4. From the list of jurors in numerical order, the Court will strike the persons with meritorious
27 hardships, those excused for cause, and those challenged peremptorily. The Court will then call
28 the first eight people in numerical sequence remaining. These people will be the jury. All jurors



1 remaining at the close of the case will deliberate. There are no alternates (unless there is a
2 lengthy trial).

3

4 O. Sanctions:

5 Failure to comply with this Order is cause for sanctions under Federal Rule of Civil Procedure
6 16(f).

7

8 P. Transcripts and Recording Devices:

- 9 1. Counsel requesting a daily transcript shall contact Debra Campbell, Supervisor Court Reporting
10 Services, at (415) 522-2079, at least ten days in advance of the trial date.
- 11 2. If any video or tape recording equipment or demonstrative devices will be used, a signed order
12 will need to be obtained at least ten days in advance of the trial date for the items to clear
13 security.

14

15 Q. Questions:

16 All questions regarding these instructions should be directed to Rose Maher, Courtroom Deputy
17 Clerk to Judge James, at (415) 522-4708.

18 **IT IS SO ORDERED.**

19 Dated: August __, 2012

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Maria-Elena James
Chief United States Magistrate Judge

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