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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEATA KUREK and CHRISTIAN)
KUREK,)
) No. C 10-2155 BZ
Plaintiff(s),)
)
v.) **TRIAL SCHEDULING ORDER**
)
AMERICA'S WHOLESALE LENDER,)
et al.,)
)
Defendant(s).)
)
_____)

Following the Case Management Conference, **IT IS HEREBY ORDERED** that:

- 1. DATES
Trial Date: **Monday, 9/19/2011, 8:30 a.m., 5 days**
Pretrial Conference: **Tuesday, 8/30/2011, 4:00 p.m.**
Last Day to Hear Dispositive Motions: **Wednesday, 7/20/2011**
Last Day for Expert Discovery: **Friday, 6/17/2011**
Last Day for Rebuttal Expert Disclosure: **Friday, 6/10/2011**
Last Day for Expert Disclosure: **Friday, 6/03/2011**
Close of Non-expert Discovery: **Friday, 5/27/2011**
- 2. DISCLOSURE AND DISCOVERY

1 The parties are reminded that a failure to voluntarily
2 disclose information pursuant to Federal Rule of Civil
3 Procedure 26(a) or to supplement disclosures or discovery
4 responses pursuant to Rule 26(e) may result in exclusionary
5 sanctions. Thirty days prior to the close of non-expert
6 discovery, lead counsel for each party shall serve and file a
7 certification that all supplementation has been completed.

8 In the event a discovery dispute arises, **lead counsel** for
9 each party shall meet in person or, if counsel are outside the
10 Bay Area, by telephone and make a good faith effort to resolve
11 their dispute. Exchanging letters or telephone messages about
12 the dispute is insufficient. The Court does not read
13 subsequent positioning letters; parties shall instead make a
14 contemporaneous record of their meeting using a tape recorder
15 or a court reporter.

16 In the event they cannot resolve their dispute, the
17 parties must participate in a telephone conference with the
18 Court **before** filing any discovery motions or other papers.
19 The party seeking discovery shall request a conference in a
20 letter filed electronically not exceeding two pages (with no
21 attachments) which briefly explains the nature of the action
22 and the issues in dispute. Other parties shall reply in
23 similar fashion within two days of receiving the letter
24 requesting the conference. The Court will contact the parties
25 to schedule the conference.

26 3. MOTIONS

27 Consult Civil Local Rules 7-1 through 7-5 and this
28 Court's standing orders regarding motion practice. Motions

1 for **summary judgment** shall be accompanied by a statement of
2 the material facts not in dispute supported by citations to
3 admissible evidence. The parties shall file a joint statement
4 of undisputed facts where possible. If the parties are unable
5 to reach complete agreement after meeting and conferring, they
6 shall file a joint statement of the undisputed facts about
7 which they do agree. Any party may then file a separate
8 statement of the additional facts that the party contends are
9 undisputed. A party who without substantial justification
10 contends that a fact is in dispute is subject to sanctions.

11 In addition to **lodging** a Chambers copy of all papers, a
12 copy of all briefs shall be e-mailed in WordPerfect or Word
13 format to the following address: bzpo@cand.uscourts.gov.

14 4. PRETRIAL CONFERENCE

15 Not less than thirty days prior to the date of the
16 pretrial conference, the parties shall meet and take all steps
17 necessary to fulfill the requirements of this Order.

18 Not less than twenty-one days prior to the pretrial
19 conference, the parties shall: (1) serve and file a joint
20 pretrial statement, containing the information listed in
21 **Attachment 1**, and a proposed pretrial order; (2) serve and
22 file trial briefs, Daubert motions, motions *in limine*, and
23 statements designating excerpts from discovery that will be
24 offered at trial (specifying the witness and page and line
25 references); (3) exchange exhibits, agree on and number a
26 joint set of exhibits and number separately those exhibits to
27 which the parties cannot agree; (4) deliver all marked trial
28 exhibits directly to the courtroom clerk, Ms. Yiu; (5) deliver

1 one extra set of all marked exhibits directly to Chambers; and
2 (6) submit all exhibits in three-ring binders no wider than
3 three inches. Each exhibit shall be marked with an exhibit
4 label as contained in **Attachment 2**. The exhibits shall also
5 be separated with correctly marked side tabs so that they are
6 easy to find.

7 No party shall be permitted to call any witness or offer
8 any exhibit in its case in chief that is not disclosed at
9 pretrial, without leave of Court and for good cause.

10 Lead trial counsel for each party shall meet and confer
11 in an effort to resolve all disputes regarding anticipated
12 testimony, witnesses and exhibits. All Daubert motions,
13 motions *in limine*, and objections will be heard at the
14 pretrial conference. Not less than eleven days prior to the
15 pretrial conference, the parties shall serve and file any
16 objections to witnesses or exhibits or to the qualifications
17 of an expert witness. Oppositions shall be filed and served
18 not less than eleven days prior to the conference. There
19 shall be no replies.

20 Not less than twenty-one days prior to the pretrial
21 conference the parties shall serve and file requested voir
22 dire questions, jury instructions, and forms of verdict. The
23 following jury instructions from the *Manual of Model Civil*
24 *Jury Instructions for the Ninth Circuit* (2007 ed.) will be
25 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11,
26 3.1-3.3. Do not submit a copy of these instructions. Counsel
27 shall submit a joint set of case specific instructions. Any
28 instructions on which the parties cannot agree may be

1 submitted separately. The Ninth Circuit Manual should be used
2 where possible. Each requested instruction shall be typed in
3 full on a separate page with citations to the authority upon
4 which it is based. Proposed jury instructions taken from the
5 Ninth Circuit Manual need only contain a citation to that
6 source. Any modifications made to proposed instructions taken
7 from a manual of model instructions must be clearly indicated.
8 In addition, all proposed jury instructions should conform to
9 the format of the Example Jury Instruction attached to this
10 Order. Not less than eleven days prior to the pretrial
11 conference, the parties shall serve and file any objections to
12 separately proposed jury instructions.

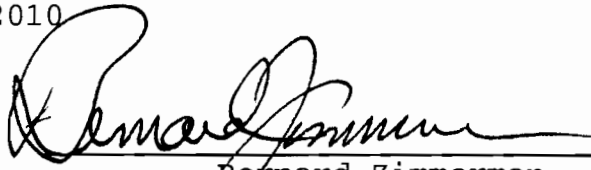
13 Jury instructions that the Court has given in prior cases
14 may be downloaded from the Northern District website at
15 **<http://www.cand.uscourts.gov>**. (Instructions are located on
16 the "Judge Information" page for Magistrate Judge Zimmerman).
17 The Court will generally give the same instructions in cases
18 involving similar claims unless a party establishes, with
19 supporting authorities, that the instruction is no longer
20 correct or that a different instruction should be given. CACI
21 instructions generally will be given instead of BAJI
22 instructions.

23 A copy of all pretrial submissions, except for exhibits,
24 shall be e-mailed in WordPerfect or Word format to the
25 following address: bzpo@cand.uscourts.gov.

26 At the time of filing the original with the Clerk's
27 Office, two copies of all documents (but only one copy of the
28 exhibits) shall be delivered directly to Chambers (Room 15-

1 6688). Chambers' copies of all pretrial documents shall be
2 three-hole punched at the side, suitable for insertion into
3 standard, three-ring binders.

4 Dated: December 1, 2010

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7 Bernard Zimmerman
8 United States Magistrate Judge
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ATTACHMENT 1

The parties shall file a joint pretrial conference statement containing the following information:

(1) **The Action.**

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

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) **The Factual Basis of the Action.**

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

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

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

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes..

(3) **Trial Preparation.**

A brief description of the efforts the parties have made to resolve disputes over anticipated testimony,

1 exhibits and witnesses.

2 (A) Witnesses to be Called. In
3 lieu of FRCP 26(a)(3)(A), a
4 list of all witnesses likely
5 to be called at trial, other
6 than solely for impeachment or
7 rebuttal, together with a
8 brief statement following each
9 name describing the substance
10 of the testimony to be given.

11 (B) Estimate of Trial Time. An
12 estimate of the number of
13 court days needed for the
14 presentation of each party's
15 case, indicating possible
16 reductions in time through
17 proposed stipulations, agreed
18 statements of facts, or
19 expedited means of presenting
20 testimony and exhibits.

21 (C) Use of Discovery Responses. In
22 lieu of FRCP 26(a)(3)(B), cite
23 possible presentation at trial
24 of evidence, other than solely
25 for impeachment or rebuttal,
26 through use of excerpts from
27 depositions, from
28 interrogatory answers, or from
responses to requests for
admission. Counsel shall
state any objections to use of
these materials and that
counsel has conferred
respecting such objections.

(D) Further Discovery or Motions.
A statement of all remaining
motions, including Daubert
motions.

(4) **Trial Alternatives and Options.**

(A) Settlement Discussion. A
statement summarizing the
status of settlement
negotiations and indicating
whether further negotiations
are likely to be productive.

(B) Amendments, Dismissals. A
statement of requested or
proposed amendments to
pleadings or dismissals of

1 parties, claims or defenses.

2 (C) Bifurcation, Separate Trial of
3 Issues. A statement of whether
4 bifurcation or a separate
5 trial of specific issues is
6 feasible and desired.

7 (5) **Miscellaneous.**

8 Any other subjects relevant to the trial of the action,
9 or material to its just, speedy and inexpensive
10 determination.
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ATTACHMENT 2

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3 **USDC**
Case No. CV10-02155 BZ
JOINT Exhibit No. _____

USDC
Case No. CV10-02155 BZ
JOINT Exhibit No. _____

4 Date Entered _____

Date Entered _____

5 Signature _____

Signature _____

6
7 **USDC**
Case No. CV10-02155 BZ
JOINT Exhibit No. _____

USDC
Case No. CV10-02155 BZ
JOINT Exhibit No. _____

8 Date Entered _____

Date Entered _____

9 Signature _____

Signature _____

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11 **USDC**
Case No. CV10-02155 BZ
PLNTF Exhibit No. _____

USDC
Case No. CV10-02155 BZ
PLNTF Exhibit No. _____

12 Date Entered _____

Date Entered _____

13 Signature _____

Signature _____

14
15 **USDC**
Case No. CV10-02155 BZ
PLNTF Exhibit No. _____

USDC
Case No. CV10-02155 BZ
PLNTF Exhibit No. _____

16 Date Entered _____

Date Entered _____

17 Signature _____

Signature _____

18
19 **USDC**
Case No. CV10-02155 BZ
DEFT Exhibit No. _____

USDC
Case No. CV10-02155 BZ
DEFT Exhibit No. _____

20 Date Entered _____

Date Entered _____

21 Signature _____

Signature _____

22
23 **USDC**
Case No. CV10-02155 BZ
DEFT Exhibit No. _____

USDC
Case No. CV10-02155 BZ
DEFT Exhibit No. _____

24 Date Entered _____

Date Entered _____

25 Signature _____

Signature _____