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28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

E. LYNN SCHOENMANN,

No. C 10-03989 CRB

Plaintiff,

**ORDER DENYING DEFENDANTS'
MOTIONS**

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION, et al.Defendants.

On April 21, 2011, the Court granted in part and denied in part Defendants' motion to dismiss, allowing the case to proceed on the basis of Plaintiff's actual fraud allegations. See dk. 46. The Court's Order explicitly did not take a position on the standard of control that should apply to such cases. Id. at 10, n.11 ("Each party urges the Court to adopt its preferred definition of 'control.' The Court declines to do so at this time. The Court will entertain arguments on the appropriate standard at the motion for summary judgment stage of the litigation, if necessary."). Nonetheless, Defendants now ask the Court to certify the case for interlocutory appeal, particularly as to the appropriate standard of control. See dk. 48 at 1. Defendants further ask the Court to stay discovery pending interlocutory appeal, see dk. 49 – or at least to stay discovery until the motion to certify is heard, see dk. 53.¹ The Court finds this matter suitable for resolution without oral argument pursuant to Civil Local Rule 7-1(b), and

¹ They also move to shorten time for a hearing on this last motion. See dk. 54.

1 declines Defendants' invitations. Interlocutory appeal under section 1292(b) "is to be used
2 sparingly and only in exceptional cases." The Court does not believe that this is such a case.
3 Accordingly, the Court DENIES Defendants' motions and VACATES the upcoming hearing
4 dates on those motions.

5 **IT IS SO ORDERED.**

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7 Dated: May 27, 2011



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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE