Ellsworth v. U.S. Bank, N.A. Doc. 263

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American Security Insurance Company

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

Stephen Ellsworth, Marilyn Weaver, and Lawrence and Donene Skelley, as individuals and as representatives of the classes and on behalf of the general public,

Plaintiffs,

v.

U.S. Bank, N.A., and American Security Insurance Company,

Defendants.

Case No. C12-2506-LB

JOINT STIPULATION AND ~~PROPOSED~~ ORDER TO CONTINUE SETTLEMENT CONFERENCE; DECLARATION OF PETER S. HECKER IN SUPPORT OF SAME

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JOINT STIPULATION TO CONTINUE SETTLEMENT CONFERENCE

Pursuant to Civil L.R. 7-12, 6-1(b) and 6-2, it is hereby stipulated by and between the parties, through their respective attorneys, that:

WHEREAS, U.S. Bank filed a Rule 23(f) Petition for Permission to Appeal Class Action Certification ("Rule 23(f) Petition") with the Ninth Circuit on June 27, 2014, and Plaintiffs Stephen Ellsworth, Marilyn Weaver, Donene Skelley, and Lawrence Skelley ("Plaintiffs") filed an opposition to the Rule 23(f) Petition on July 10, 2014;

WHEREAS, as this time the Rule 23(f) Petition remains pending before the Ninth Circuit;

WHEREAS, while U.S. Bank's Rule 23(f) Petition is pending, the Parties are working and will continue to work cooperatively to prepare the class data necessary for class notice and drafting class notice papers;

WHEREAS, Defendants do not anticipate that they will be able to provide the class data in time for the September 11, 2014 Settlement Conference (but do anticipate that they will be able to provide the data shortly thereafter);

WHEREAS, all parties agree that it would be premature to conduct the settlement conference at this time;

WHEREAS, on August 7, 2014, the Court entered an order setting a further Settlement Conference for September 11, 2014. (ECF No. 253.)

WHEREAS, on August 15, 2014, Magistrate Judge Beeler at the request of the parties entered an Order continuing the Case Management Conference to September 25, 2014;

WHEREAS, the parties agree that in the interest of judicial economy, the Settlement Conference scheduled for September 11, 2014 should be continued until October 7, 2014.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT, subject to the Court's approval, the Settlement Conference currently scheduled for September 11, 2014 at 9:30 a.m. shall be continued to October 7, 2014 at 9:30 a.m.

Dated: August 29, 2014

SHEPPARD MULLIN RICHTER & HAMPTON, LLP
CARLTON FIELDS JORDEN BURT, P.A.

By: */s/ Peter S. Hecker*
Peter S. Hecker

Attorneys for American Security Insurance Company

Dated: August 29, 2014

DORSEY & WHITNEY, LLP

By: */s/ Skip Durocher*
Skip Durocher

Attorneys for U.S. Bank, N.A.

Dated: August 29, 2014

NICHOLS KASTER, LLP

By: */s/ Kai Richter*
Kai Richter

Attorneys for Plaintiffs

FILER'S ATTESTATION

The undersigned filer attests, pursuant to Civil L.R. 5-1(i)(3), that concurrence in the filing of the document has been obtained from the other signatory to this document.

Dated: August 29, 2014

SHEPPARD MULLIN RICHTER & HAMPTON, LLP
CARLTON FIELDS JORDEN BURT, P.A.

By: */s/ Peter S. Hecker*
PETER S. HECKER

Attorneys for American Security Insurance Company

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: September 2, 2014

The Hon. N

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
GRANTED
Judge Nathanael M. Cousins

DECLARATION OF PETER S. HECKER

I, Peter S. Hecker, declare:

1. I am an attorney duly admitted to practice before this Court. I am a partner with the law firm of Sheppard Mullin Richter & Hampton, counsel for Defendant American Security Insurance Company ("American Security") in this case. I have personal knowledge of the facts set forth below.

2. As set forth in the above stipulation, the parties have stipulated that the Settlement Conference scheduled for September 11, 2014 should be continued to October 7, 2014.

3. The reason for the proposed extension is to promote efficiency and judicial economy by continuing the Settlement Conference while the parties prepare the data for class notice and related matters, and during the pendency of the Rule 23(f) motion now pending before the Ninth Circuit, and until after the Case Management Conference scheduled for September 25, 2014.

4. Pursuant to Civil L.R 6-2(a)(2), American Security provides the Court with a list of the following time modifications that have occurred in this case:

- On June 14, 2012, the parties stipulated to extend U.S. Bank's time to respond to the Complaint until July 3, 2012. (ECF No. 13)
- On July 9, 2012, the parties stipulated to extend Plaintiff's time to respond to U.S. Bank's motion to dismiss until July 24, 2012. (ECF No. 24)
- On August 3, 2012, the parties stipulated to extend American Security's time to respond to the Complaint until August 31, 2012. (ECF No. 30)
- On August 17, 2012, pursuant to stipulation, the Court entered a briefing schedule providing that Plaintiff's response to U.S. Bank's motion to compel arbitration was due on August 27, 2012 and U.S. Bank's reply was due on August 30, 2012. (ECF No. 42)
- On August 28, 2012, the Court continued the hearing on U.S. Bank's motion to compel arbitration to September 19, 2012 at 10:30 a.m. (ECF No. 48)
- On August 31, 2012, pursuant to stipulation, the Court continued the Case Management Conference to September 19, 2012 at 10:30 a.m. (ECF No. 56)
- On September 7, 2012, pursuant to stipulation, the Court extended Plaintiff's time to respond to American Security's motion to dismiss to September 28, 2012, and continued the hearing on the motion to dismiss until November 1, 2012 at 11:00 a.m. (ECF No. 81)

- On September 10, 2012, the Court continued the Case Management Conference to November 1, 2012 at 11:00 a.m.

- On September 13, 2012, the Court continued the hearing on U.S. Bank's motion to compel arbitration, from 10:30 a.m. on September 19, 2012 to 11:00 a.m. on the same day.

- On September 13, 2012, pursuant to stipulation, the Court extended Plaintiff's time to respond to American Security's motion to dismiss until September 28, 2012. (ECF No. 62)

- On October 29, 2012, the Court vacated the motion hearing on Defendants' motion to dismiss scheduled to take place on November 1, 2012 at 11:00 a.m. and scheduled the motion hearing to take place November 15, 2012 at 11:00 a.m., and also continued the Case Management Conference to November 15, 2012 at 11:00 a.m.

- On November 14, 2012, the Court vacated the Case Management Conference scheduled to take place on November 15, 2012 at 11:00 a.m. and scheduled the Case Management Conference to instead take place on February 7, 2013 at 10:30 a.m.

- On December 26, 2012, the parties stipulated to extend American Security's time to respond to the Complaint until January 3, 2013. (ECF No. 81)

- On January 2, 2013, pursuant to stipulation, the Court ordered the briefing schedule extended such that American Security's response to the Complaint was due on January 3, 2013. (ECF No. 82).

- On January 29, 2013, the Court continued the Case Management Conference to February 28, 2013 at 10:30 a.m.

- On March 4, 2013, the Court entered a Case Management and Pretrial Order, scheduled a further Case Management Conference for June 27, 2013, and referred the matter to Magistrate Judge Nathaniel M. Cousins for settlement purposes. (ECF No. 91)

- On March 5, 2013, the Court scheduled a Settlement Conference for July 9, 2013. (ECF No. 92)

- On March 29, 2013, the Court continued the Case Management Conference from 10:30 a.m. on June 27, 2013 to 11:00 a.m. on the same day.

- On May 30, 2013, at the request of the parties, Magistrate Judge Cousins rescheduled the Settlement Conference for July 26, 2013. (ECF No. 95)

- On June 21, 2013, at the request of the parties, the Court continued the Case Management conference to August 22, 2013. (ECF No. 99)

- On August 15, 2014, the Court continued the Case Management Conference to September 25, 2014.

5. Because the requested continuance is for a small period of time, and because as the parties agree, it is premature to proceed with the Settlement Conference at this time, the requested extension should not have any significant impact on the schedule for the case.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 29th day of August 2014 at San Francisco, California.

/s/ Peter S. Hecker
PETER S. HECKER