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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER WILEY, et al.,
Plaintiffs,
v.
CALIBER HOME LOANS, INC.,
Defendant.

Case No.15-cv-05584-JST

PRETRIAL ORDER

This matter is scheduled for trial on April 3, 2017. A pretrial conference is scheduled for March 10, 2017 at 2:00 p.m.

The Standing Order for Civil Trials Before District Judge Jon S. Tigar provides that the parties must submit, among other things, proposed jury instructions at least five court days before the pretrial conference. Plaintiffs are currently in violation of this requirement. At the pretrial conference, Plaintiffs should explain why the Court should not strike the jury in this case as a sanction for failure to comply with the Court's standing order. Fed. R. Civ. P. 16(f).

Caliber requests that the Court instruct the jury regarding the tender rule. ECF No. 77 at 26. Caliber cites no case in which a jury has been asked to apply the tender rule. Moreover, the Court has twice rejected the application of the tender rule on the facts of this case, ECF No. 54 at 3-2; ECF No. 67 at 4, and the defenses to the tender rule are equitable ones which this Court will need to decide. Caliber should be prepared to discuss the facts the jury and the Court will need to decide at trial to determine the tender rule's application. Given that the parties do not dispute that Plaintiffs did not comply with the tender rule, the most appropriate approach may be for the Court to decide whether Plaintiffs have proven an equitable exception.

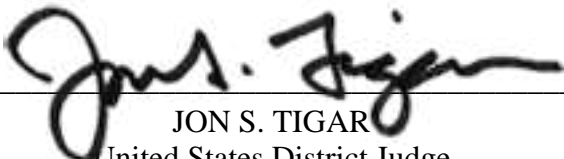
Caliber has also submitted a jury instruction regarding Plaintiff's claim under California

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Business & Professions Code section 17200. ECF No. 77 at 31. There is no right to a jury trial on a 17200 cause of action. Hodge v. Superior Court, 145 Cal. App. 4th 278, 284 (2006); Acad. of Motion Picture Arts & Scis. v. GoDaddy, Inc., No. CV 10-3738-AB (CWX), 2015 WL 12697732, at *2 (C.D. Cal. Apr. 10, 2015). This claim will be tried to the Court.

IT IS SO ORDERED.

Dated: March 6, 2017



JON S. TIGAR
United States District Judge