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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Oakland Division

David Iversen,

No. C 10-05566 LB

Plaintiff,

**CASE MANAGEMENT AND
PRETRIAL ORDER (JURY)**

v.

Wells Fargo Bank,

Defendant.

Following the Case Management Conference held on March 31, 2011, the Court **HEREBY**
ORDERS the following:

I. GENERALLY APPLICABLE RULES

Parties shall comply with the procedures in the Federal Rules of Civil Procedure, the local rules, the general orders, Judge Beeler's standing order, and the Northern District's general standing order for civil cases titled "Contents of Joint Case Management Statement." Local rules, general orders, general standing orders, and a summary of the general orders' electronic filing requirements (including the procedures for emailing proposed orders to chambers) are available at <http://www.cand.uscourts.gov> (click "Rules" or "ECF-PACER").

II. CASE MANAGEMENT AND TRIAL DATES

All hearings shall be held in Courtroom 4, 3rd Floor, U.S. District Court, 1301 Clay Street, Oakland, California. The following are the disclosure, filing, and hearing dates for the case:

CASE MANAGEMENT AND PRETRIAL ORDER
C 10-05566 LB

Case Event	Filing Date/Disclosure Deadline/Hearing Date
Exchange initial disclosures	4/7/2011 (per parties' joint CMC statement)
Date to seek leave to add new parties or amend the pleadings	5/5/2011
Updated Joint Case Management Conference Statement	6/2/2011
Further Case Management Conference	6/9/2011 at 10:30 a.m.
ADR completion date	60 days after resolution of class certification
Last hearing date for motion for Rule 23 class certification	3/15/2012
Non-expert discovery completion date	to be set
Expert disclosures required by Federal Rules of Civil Procedure	to be set
Rebuttal expert disclosures	to be set
Expert discovery completion date	to be set
Last hearing date for dispositive motions	to be set
Meet and confer re pretrial filings	to be set
Pretrial filings due	to be set
Oppositions, Objections, Exhibits, and Depo Designations due	to be set
Final Pretrial Conference	to be set
Trial	to be set
Length of Trial	to be set

At the case management hearing, and in response to the court's questions about class size (and whether the potential class was large enough so that a date a year out is necessary), the parties confirmed that their proposed date was an outside hearing date. Based on this representation and the parties' assertions that they are collaborating to proceed efficiently, the court adopts the parties' general time frame.

For the same reasons, the court adopts the joint recommendation that discovery proceed first with discovery relevant to class certification and Plaintiff's individual claims, and then with discovery generally. The only issue – discussed in the next section – is the interplay of class discovery on damages and the possibility of settlement discussions before resolution of class

1 certification. (Right now, the parties contemplate private mediation with 60 days after resolution of
2 the class certification but are open to the possibility of earlier mediation.) The parties agreed that if
3 class discovery is not sufficient for the damages assessment that is needed for any earlier settlement
4 discussions, they will cooperate informally to exchange that information.

5 Finally, and for the same reasons, the court will set the dates now reflected in the above chart as
6 “to be set” after resolution of the class certification motion.

7 **II. ALTERNATIVE DISPUTE RESOLUTION**

8 The parties have agreed to participate in private mediation to occur within 60 days after the
9 resolution of any class certification motion. As the case progresses, counsel will continue to
10 evaluate whether mediation at an earlier point would be productive. The parties shall notify the
11 Court promptly if the case resolves.

12 **III. DISCOVERY PROCEDURES**

13 A. The parties shall comply with the procedures regarding discovery and discovery disputes in
14 Judge Beeler's standing order.

15 B. Each side shall be limited to ten depositions and twenty-five interrogatories, as provided by
16 Federal Rules of Civil Procedure 30 and 33, absent a further court order.

17 C. If the ADR specified in the previous section is being conducted before the discovery cut-off
18 deadline, counsel must meet and confer in person or by telephone no later than 21 days before the
19 ADR and **before** preparing any exchanged or confidential settlement statements required by the
20 ADR process. The purpose of the meeting is to identify and exchange whatever discovery is needed
21 for all sides to evaluate the case for settlement. Counsel shall cooperate in providing discovery
22 informally and expeditiously before ADR.

23 **IV. MOTIONS**

24 The parties shall file any motions, oppositions, and reply briefs on the schedule set forth in Civil
25 L. R. 7. The parties also shall file the procedures in Judge Beeler's standing order regarding
26 statements of fact in summary judgment motions.

27 **V. PRETRIAL FILINGS AND PROCEDURES**

1 the *Ninth Circuit Manual, California Civil Jury Instructions (CACI)*, or other applicable instructions.
2 The parties shall include a short statement of the case to be read to the jury during voir dire as part of
3 the preliminary instructions. Undisputed instructions must be identified as, e.g., “Stipulated
4 Instruction No. ____: [*Instruction Title*].” Disputed instructions must be identified as “[*Party's*
5 *Name*]’s Disputed Instruction No. ____: [*Instruction Title*].” The parties’ different versions of
6 disputed instructions shall bear the same instruction number and be filed together in their logical
7 place in the jury instructions. All instructions -- disputed or undisputed -- shall be supported by
8 citation (including pin cites) in the format used by the *Ninth Circuit Manual*.

9 **3. Separate Memoranda on Disputed Jury Instructions.** Each party should file a
10 memorandum of law -- organized by instruction number -- regarding disputed jury instructions.

11 **4. Motions In Limine.** Each motion shall be in a separate memorandum entitled
12 “[*Party's Name*]’s Motion in Limine [#] to Exclude [*Subject*],” be limited to circumstances requiring
13 advance ruling, and be no longer than seven pages absent leave of court. Usually five motions in
14 limine are sufficient.

15 **5. Trial Briefs On Any Issues of Law.**

16 **6. Joint Voir Dire Questions Supplemented With Separate Requests.**

17 **7. Joint Proposed Verdict Form** or separate verdict forms if a joint form is not possible.

18 **8. Copies of Federal Rule of Civil Procedure 26(a)(3) Disclosures.** *See* Section V.D
19 for procedures regarding designation of depositions. By designating an exhibit, a party generally
20 waives any objection to it if offered by the other side absent clearly available objections (such as
21 objections under Rules 402 and 403 or admissions by party opponents that would be inadmissible
22 hearsay if offered by the party opponent).

23 **9. Wordperfect or Word Versions Emailed To Chambers.** In addition to e-filing and
24 lodging paper copies of all filings, *see* Judge Beeler’s standing order, counsel shall email the joint
25 proposed order, the jury instructions, and the verdict form in Wordperfect or Word to
26 lbpo@cand.uscourts.gov.

27 **B. 14 Days Before Pretrial Conference.** The court will set the date after resolution of class
28 certification. The parties shall file the following:

1 **1. Oppositions to Motions In Limine.** Each opposition shall be in a separate
2 memorandum entitled “[*Party’s Name*]’s Opposition to Motion in Limine [#] to Exclude [*Subject*],”
3 link electronically to the prior e-filed motion in limine, and be no longer than seven pages absent
4 leave of court.

5 **2. Objections to Exhibits and Use of Depositions** as set forth in Federal Rule of Civil
6 Procedure 26(a)(3)(B). Objections not raised are waived.

7 **3. Lodge Joint Set of Trial Exhibits with Deputy Clerk.** The parties must prepare a
8 *joint, single* set of all trial exhibits. *See* V.C (regarding exhibit numbering and organization). The
9 exhibits shall be in three-ring binders, and each exhibit must be tagged and separated by a label
10 divider identifying the exhibit number. Spine labels should identify the exhibits in a particular
11 binder. The exhibit binders should be marked “”Original” and will be the official record both at trial
12 with the witnesses and on appeal. Lodge the exhibits with the deputy clerk, Lashanda Scott.

13 **4. Lodge Second “Chambers Copy” of Joint Set of Trial Exhibits.** The parties shall
14 lodge (not file) a second “chambers copy” of the binders of trial exhibits referenced in the preceding
15 paragraph. Those binders should be marked “Chambers Copy.”

16 **5. Copies of Deposition Designations For Witnesses Appearing Only By Designation.**
17 *See* V.D (transcript designation procedures and process for filing copy with the Court).

18 **6. Copies of Designation of Interrogatories and Admissions.** *See* V.E (procedures and
19 process for filing copy with the Court).

20 **C. Exhibit Numbering and Organization**

21 **1. Meet and Confer Re Exhibit Numbers.** Before submitting exhibit lists and binders,
22 counsel must meet and confer to establish usable numbering conventions and eliminate duplicate
23 exhibits. Use numbers only, not letters, and if possible, exhibit numbers should be the same
24 numbers used in depositions. Otherwise, the deposition transcript must be conformed to the new
25 exhibit number to avoid jury confusion and to ensure that every exhibit has a unique number.
26 Blocks of numbers should be assigned to fit the needs of the case: *e.g.*, Plaintiff has 1 to 99,
27 Defendant A has 100 to 199, Defendant B has 200 to 299, *et cetera*. All exhibits should be marked
28 “Trial Exhibit No. __,” not Plaintiff’s Exhibit or Defendant’s Exhibit.

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2. Exhibit Tags and Binders. The exhibit tag shall be in the following form:

<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA</p> <p>TRIAL EXHIBIT 100</p> <p>Case No. _____</p> <p>Date Entered _____</p> <p>By _____ Deputy Clerk</p>
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The tag should be on or near the lower right-hand corner if possible and on the back if it is not. Counsel should fill in the tag but leave the last two spaces blank.

D. Deposition Designation For Witnesses Appearing By Deposition. These procedures apply only to deposition designation for witnesses who appear by deposition and do not apply to reading depositions of live witnesses into the record while the witnesses are testifying.

1. Designating Counsel. To designate deposition testimony, counsel shall photocopy the cover page, the page where the witness is sworn, and each page with any proffered testimony (with lines through testimony not proffered). Counsel shall put lines through objections or colloquy unless they are needed to understand the question. Any corrections (including conforming exhibit numbers to trial exhibit numbers) shall be done by hand. The finished packet should be the script that allows smooth presentation of the witness, the oath, and the testimony. The packet must be provided to the other parties at least 30 days before the pretrial conference. For voluminous designations, the Court requires advance notice by designating counsel because more lead time is required. Counsel must be reasonable.

2. Reviewing Counsel. Reviewing parties must promptly review the packet and highlight in yellow any passages objected to and write in the margin the legal basis for the objections. If a completeness objection is made, the objecting party must insert the additional passages needed to

1 cure the completeness objection. A completeness objection generally should be made only if a few
2 extra lines will cure the problem. Such additions shall be highlighted in blue, and an explanation for
3 the inclusion shall be legibly handwritten in the margin. Counsel must line out any irrelevant
4 portions of the additional pages. Reviewing counsel must return the packets to the proffering party
5 to consider whether to accept the adjustments.

6 **3. Counsel To Meet And Confer Re Adjustments.** Counsel must meet and confer to
7 address reviewing counsel's comments and any other issues.

8 **4. Designating Counsel To Assemble Final Packet.** Counsel for the proffering party
9 must collate and assemble a final packet that covers all remaining issues and provide it to the Court
10 14 days before the pretrial conference (as required by section V.B.5). Any objections must be
11 highlighted and annotated as described in the preceding paragraphs. If exhibits are needed to
12 resolve the objections, designating counsel should include copies, with the relevant passages
13 highlighted and tagged. The Court will read the packet and make its rulings in the margins in a
14 distinctive manner.

15 **5. Counter-Designations.** The reviewing party must make any counter-designations by
16 providing a packet with the counter-designated passages to the original designating counsel at the
17 same time as the reviewing party returns its objections to designating counsel. The original
18 designating counsel must supply any objections in the manner described in this section.

19 **6. Video Depositions.** The parties shall follow the same procedures to facilitate ruling on
20 objections. The videos should omit dead time and objections and colloquy not necessary to
21 understand the answers.

22 **E. Requests For Admissions And Interrogatories.** Please designate responses to requests for
23 admissions and interrogatory answers in the same manner and under the same timetable as
24 deposition designations.

25 VI. PRETRIAL CONFERENCE

26 Lead counsel for each party shall attend.

27 VII. PRETRIAL ARRANGEMENTS

1 **A. Daily or Real-Time Reporting.** Please make arrangements ten days before the trial date
2 with Odile Hansen, Supervisor of the Court Reporting Services, at 510-637-3534.

3 **B. Electronic Presentation of Evidence.** The Court provides no equipment other than an
4 easel. If counsel will use electronic equipment such as computers, projectors, and screens, the
5 parties should share equipment to the extent possible. Extension cords should be taped to the carpet
6 for safety. The United States Marshal requires a court order to allow equipment into the
7 courthouse. Please work with Lashanda Scott (510-637-3525) on all courtroom layout issues.

8 **VIII. TRIAL AND TRIAL PROCEDURES**

9 **A. Schedule.** The trial day is 8:30 a.m. to 1:30 p.m. (or slightly longer to finish a witness)
10 with two fifteen-minute breaks, Monday through Friday. Counsel should arrive at 8:15 a.m. or
11 earlier if any matters must be addressed outside of the jury's presence.

12 **B. Jury Selection.** There are no alternate jurors in civil cases, and the jury will be selected as
13 follows.

14 The attached questionnaire will be given to the potential jurors, and copies of the responses will
15 be given to counsel at the beginning of voir dire.

16 The Court's jury selection procedures vary depending on the size of the ultimate jury.
17 Assuming a final jury of 8 and 6 peremptory challenges, the Court will call eighteen jurors to fill the
18 jury box and a row in front of the bar. The jurors will be given numbers 1 through 18. The
19 remaining jurors will be seated in the public benches. The Court will generally consider hardship
20 excuses at this point. The Court then will question the 18 jurors and will allow counsel limited voir
21 dire. The Court will address challenges for cause outside of the jurors' presence, determine whether
22 to fill any empty seats, and if so, question the new jurors and consider any additional challenges for
23 cause. After a short recess, each side will exercise its peremptory challenges out of the presence of
24 the jurors. Of the remaining jurors, the eight (or other number of) jurors with the lowest numbers
25 will be the final jury.

26 The Court will adjust the starting numbers depending on the number of jurors to be seated and
27 the number of peremptory challenges allowed. Also, the Court may alter these procedures in its
28 discretion.

1 Once the jury is selected, the jurors' names will be read, and they will be seated in the jury box
2 and sworn.

3 **C. Jury Notetaking.** Jurors may take notes. Note pads will be distributed at the beginning of
4 each trial and collected at the end of the day and locked in the jury room. The Court will instruct the
5 jury on the use of notes in its preliminary and final jury instructions.

6 **D. Time Limits.** Ordinarily, the Court sets time limits for opening statements, witness
7 examinations (direct, cross, or re-direct), and closing arguments at the final pretrial conference. All
8 of your examination time for all witnesses must fit within your witness time limits. The time taken
9 at a side bar or on objections will be charged to the examining party unless otherwise ordered.

10 **E. Opening Statements.** Counsel must meet and confer about, and exchange, any visuals,
11 graphics, or exhibits to be used in the opening statements, allowing for time to work out objections
12 and any reasonable revisions. Opening statements begin after the jury is sworn.

13 **F. Advance Notice of Witness Order of Proof.** By 2 p.m., counsel must give written notice
14 of the order of witnesses for the next court day and the exhibits (including merely illustrative
15 exhibits) to be used on direct examination (other than for true impeachment of a witness). The
16 parties shall notify the Court by the end of the day of any objections to the exhibits, and the Court
17 will schedule a conference that afternoon or the following morning to resolve the dispute. The Court
18 encourages two days' notice. If two days' notice is given, then by 2 p.m. on the calendar day
19 immediately preceding the testimony, opposing counsel must provide any objections to the exhibits
20 and shall provide a list of all exhibits to be used with the same witness on cross-examination (other
21 than for impeachment).

22 **G. Witness Examinations.** Generally there should be only one examining lawyer per witness
23 per party, and the examining lawyer must make any objections to the opposing counsel's
24 examination. The parties shall have witnesses ready to testify so that trial gaps are avoided. Gaps
25 may be construed as resting one's case. In cases with multiple parties, counsel must coordinate
26 cross-examination to avoid duplication of testimony. When multiple parties are on one side, only
27 one counsel may cover a subject matter. Counsel shall place copies of exhibits to be used by a
28 witness on the witness stand before the witness testifies.

1 Witnesses (except named parties) are excluded from the courtroom except when they are
2 testifying. If a testifying witness has not been excused before a recess, that witness shall be seated
3 back on the stand when the court reconvenes. If a new witness is ready to be called immediately
4 after a recess, the witness should be in the first row after the recess.

5 Counsel should refrain from eliciting testimony about undisputed facts set forth in stipulations
6 filed with the court. The appropriate party or the Court may read into the record the undisputed facts
7 at appropriate points in the trial.

8 **H. Expert Testimony.** Direct expert testimony is limited to matters disclosed in the expert's
9 reports. Omitted material ordinarily may not be added on direct examination. Illustrative
10 animations, diagrams, charts, and models may be used on direct examination only if they were
11 part of the expert report, except that an expert may use simple drawings (such as those drawn by the
12 witness at trial) that plainly illustrate a report's contents. If cross-examination fairly opens the door,
13 however, an expert may go beyond the written report on cross-examination and/or re-direct
14 examination. By written stipulation, all parties may relax these requirements. As to damages
15 studies, the cut-off for *past damages* is the date of the expert report (or an earlier date selected or
16 used by the expert). Experts may project *future damages* after this cut-off date if they can meet
17 substantive standards for future damages. With timely leave of Court or by written stipulation, the
18 experts may update their reports (or provide supplemental reports) to a date closer to the time of
19 trial.

20 **I. Use of Depositions To Impeach A Trial Witness.** The following procedures apply.

21 1. On the first day of trial, counsel shall bring the original and clean copies of the
22 depositions to be used at trial. If counsel might use a deposition against a witness, counsel shall
23 provide the Court with a copy at the outset of the examination. Opposing counsel should have
24 copies of witness depositions immediately available.

25 2. Counsel should seek permission from the Court before reading a passage into the
26 record. For example, counsel should state, "I wish to read page 210, lines 1 to 10, from the witness's
27 deposition." Counsel should pause briefly to allow any objection.
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1 3. The first time counsel reads a deposition, counsel should state the deponent's name, the
2 name of the lawyer asking the question, and whether the deposition was a Federal Rule of Civil
3 Procedure 30(b)(6) deposition. The first time a deposition is read, the Court will instruct the jury
4 about depositions.

5 4. When reading the passage, counsel shall employ the following technique. Counsel shall
6 state, "question" and then read the question exactly, and then state, "answer" and read the answer
7 exactly. This will allow the jury and court reporter to follow who said what at the deposition.
8 Opposing counsel may ask to read additional testimony necessary to complete the context. It is not
9 necessary to ask, "didn't you say XYZ in your deposition" to lay a foundation.

10 **J. Use of Depositions of Party-Deponents.** Subject to Rule 403, a party's depositions may be
11 used for "any purpose" and may be read into the record whether or not they contradict (and
12 regardless of who is on the stand). For example, a short party deposition excerpt may be used as
13 foundation for questions for a different witness on the stand.

14 **K. Use of Depositions For Witnesses Appearing Only By Deposition.** When the packet (*see*
15 V.D for procedures to assemble deposition packets) is read to the jury, the examiner shall read the
16 questions (and any relevant colloquy) from the lectern while a colleague sits in the witness stand and
17 reads the answers. While reading the deposition, the reader and "witness" shall refrain from undue
18 emphasis or dramatization. If a read-in is short, a single attorney can read it all, being careful to say
19 "question" and "answer" for the court reporter's and jury's comprehension. Exhibits may be
20 projected onto the screen as they are referenced. Court reporters do not transcribe video excerpts so
21 counsel must file an exact copy of what was shown.

22 **L. Exhibits.** The parties must obtain prior permission from the Court for jury notebooks. At
23 the end of each day, counsel must confer with each other and with the deputy clerk to confirm what
24 exhibits are in evidence and any limitations on their use. Counsel should bring any differences to
25 the Court's attention. Similarly, before closing argument, counsel must confer with each other and
26 the deputy clerk to finalize the exhibits and prepare any final exhibit list. That list may include a
27 brief non-argumentative description of the exhibit to help the jury access the exhibits.

28 **M. Stipulations.** Counsel must read all stipulations to the jury for them to be part of the

1 record.

2 **N. Objections.** Counsel shall stand when making objections, give only the legal basis
3 (“objection, calls for speculation” or “objection, hearsay”), and refrain from making speeches.

4 **O. Side Bar Conferences** are discouraged. If matters must be discussed outside the jury's
5 presence, counsel should raise them at the beginning or end of the day or while the jury is on break.

6 **P. Charging Conference.** Before the close of evidence, the Court will provide draft final jury
7 instructions to the parties and allow a reasonable time for review. Thereafter, the Court will hold
8 one or more charging conferences to address objections, modifications, or additions to the
9 instructions. The parties must renew any specific instruction request -- including those requested
10 pretrial -- at the conference or it will be deemed waived. For example, if a party wants to request an
11 instruction that the Court omitted from its draft instructions, the party must re-request it at the
12 charging conference or the request will be deemed waived or abandoned.

13 **IT IS SO ORDERED.**

14 Dated: March 31, 2011



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16 LAUREL BEELER
17 United States Magistrate Judge

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CONFIDENTIAL

JUROR QUESTIONNAIRE

Please fill out this form as completely as possible and print clearly. Since we want to make copies for the attorneys and the Court, do not write on the back of any page. If you need more room, continue at the bottom or on the side of the page. Thank you for your cooperation.

- 1. Your name: _____
- 2. Your age: _____
- 3. City in which you reside: _____
- 4. Your place of birth: _____
- 5. Do you rent or own your own home? _____

6. Are you married or do you have a domestic partner? ____ Yes ____ No

7. Please list the occupation of your spouse or domestic partner.

8. If you are not married and do not have a domestic partner, are you (circle one, if applicable):

single separated divorced widowed

9. If you have children, please list their ages and sex and, if they are employed, please give their occupations.

10. What is your occupation and how long have you worked in it? (If you are retired, please describe your main occupation when you were working).

11. Who is (or was) your employer?

12. How long have you worked for this employer? _____

13. Please describe your education background:

Highest grade completed: _____

College and/or vocational schools you have attended:

Major areas of study: _____

14. Have you ever had jury experience? _____ Number of times? _____

If yes: State/County Court _____ Federal Court _____

When? _____ Was it a civil or criminal case? _____

Did any of the juries reach a verdict ? ____ Yes ____ No