

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARLIN LUSTGRAAF,

Plaintiff,

vs.

BRYAN S. BEHRENS, SUNSET FINANCIAL
SERVICES, INC.,

Defendants.

8:08CV335

MEMORANDUM AND ORDER

JEAN POOLE, Trustees of the Poole Family Trust;
and DEE POOLE, Trustees of the Poole Family
Trust;

Plaintiffs,

vs.

BRYAN S. BEHRENS, SUNSET FINANCIAL
SERVICES, INC.,

Defendants.

8:08CV399

MILO VACANTI,

Plaintiff,

vs.

SUNSET FINANCIAL SERVICES, INC., BRYAN
S. BEHRENS,

Defendants.

8:08CV436

WILLIAM GREEN, JOANN GREEN,

Plaintiffs,

vs.

SUNSET FINANCIAL SERVICES, INC., BRYAN
S. BEHRENS,

Defendants.

8:09CV13

MILO VACANTI,

Plaintiff,

vs.

SUNSET FINANCIAL SERVICES, INC.,
BRYAN S. BEHRENS,

Defendants.

8:09CV44

The above-captioned cases involve common questions of law and fact. Consolidating the cases will serve the interests of justice and judicial economy.

Accordingly,

IT IS ORDERED:

- 1) The following cases are consolidated for discovery and pretrial preparation:
8:08-cv-00335-JMG-CRZ Lustgraaf v. Behrens et al
8:08-cv-00399-JMG-CRZ Poole et al v. Behrens et al
8:08-cv-00436-JMG-CRZ Vacanti v. Sunset Financial Services, Inc. et al
8:09-cv-00013-JMG-CRZ Green et al v. Sunset Financial Services, Inc. et al
8:09-cv-00044-JMG-CRZ Vacanti v. Sunset Financial Services, Inc. et al
- 2) 8:08-cv-00335-JMG-CRZ Lustgraaf v. Behrens et al is hereby designated as the “Lead Case,” and 8:08-cv-00399-JMG-CRZ Poole et al v. Behrens et al; 8:08-cv-00436-JMG-CRZ Vacanti v. Sunset Financial Services, Inc. et al; 8:09-cv-00013-JMG-CRZ Green et al v. Sunset Financial Services, Inc. et al; and 8:09-cv-00044-JMG-CRZ Vacanti v. Sunset Financial Services, Inc. et al are designated as a “Member Cases.”
- 3) The court's CM/ECF System has the capacity for “spreading” text among consolidated cases. If properly docketed, the documents filed in the Lead Case will automatically be filed in the Member Case. To this end, the parties are instructed to file in the Lead Case, 8:08-cv-00335-JMG-CRZ Lustgraaf v. Behrens et al, all further documents except those described in paragraph 4 and to select the option “yes” in response to the System’s question of whether to spread the text.
- 4) The parties may not use the spread text feature to file complaints, amended complaints, and answers; to pay filing fees electronically using pay.gov; to file items related to service of process; or to file notices of appeal.
- 5) If a party believes that an item in addition to those described in paragraph 4 should not be filed in both of these consolidated cases, the party must move for permission to file the item in only one of the cases. The motion must be filed in both of the consolidated cases using the spread text feature.
- 6) Any motion for separate trials on the plaintiffs' claims shall be filed on or before February 22, 2013, in the absence of which the above-captioned cases will also be consolidated for trial on the court's own motion.

IT IS FURTHER ORDERED that the final progression order is as follows:

- 1) The jury trial of this case is set to commence before John M. Gerrard, United States District Judge, in the Special Proceedings Courtroom, United States Courthouse, Omaha, Nebraska at 9:00 a.m. on **September 23, 2013**, or as soon thereafter as the case may be called, for a duration of ten (10) trial days. This case is subject to the prior trial of criminal cases and such other civil cases as may be scheduled for trial before this one. Jury selection will be held at commencement of trial.
- 2) The Pretrial Conference is scheduled to be held before the undersigned magistrate judge on **September 10, 2013 at 10:00 a.m.**, and will be conducted by WebEx conferencing. To facilitate this conferencing method, the parties' proposed Pretrial Conference Order and Exhibit List(s) must be emailed to zwart@ned.uscourts.gov, in either Word Perfect or Word format, by 5:00 p.m. on September 9, 2013. An email will be sent to counsel of record with the instructions and codes for participating in the pretrial conference by WebEx.
- 3) A telephonic conference with the undersigned magistrate judge will be held on **May 14, 2013 at 1:00 p.m.** to discuss the status of case progression and potential settlement. Counsel for plaintiff shall place or arrange the call.
- 4) Supplemental mandatory disclosures shall be served by January 28, 2013.
- 5) The deadline for completing written discovery under Rules 33 through 36 of the Federal Rules of Civil Procedure is May 13, 2013. Motions to compel Rule 33 through 36 discovery must be filed by April 29, 2013.
- 6) The deadlines for complete expert disclosures, (both retained experts, ([Fed. R. Civ. P. 26\(a\)\(2\)\(B\)](#)), and non-retained experts, ([Fed. R. Civ. P. 26\(a\)\(2\)\(C\)](#)), are:

For the plaintiff(s):	February 25, 2013
For the defendant(s):	March 27, 2013
Plaintiffs' rebuttal (if any):	April 19, 2013
- 7) The deposition deadline is May 13, 2013.
- 8) The deadline for filing motions to dismiss and motions for summary judgment is June 10, 2013.

- 9) The deadline for filing motions to exclude testimony on *Daubert* and related grounds is June 10, 2013.
- 10) Motions in limine shall be filed on or before August 5, 2013.
- 11) The parties shall comply with all other stipulations and agreements recited in their Rule 26(f) planning report that are not inconsistent with this order.

January 2, 2013.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge