

1 obligated them to produce responsive documents. All three opt-in Plaintiffs
2 testified at their deposition taken in November 2010, that they had additional
3 responsive documents that they had not produced in response to Defendants'
4 written discovery requests. Counsel for Defendants repeatedly requested that
5 these Plaintiffs supplement their discovery responses which are required by the
6 Federal Rules of Civil Procedure, before and after their depositions were taken.
7 Plaintiff DeLeon finally responded that he could not locate the documents he
8 testified he still had at his deposition, and that he no longer had records in his
9 possession. Plaintiff Brian Sciara finally responded that he could not locate, and
10 believed he no longer had, a file that he testified he had at his deposition.
11 Plaintiff Robert Beals finally responded that he was unable to locate, and
12 believed he no longer had, the documents he testified he had during his
13 deposition. All three opt-in Plaintiffs had a legal duty to provide these
14 documents in response to Defendants' formal written discovery requests. All
15 three opt-in Plaintiffs also had a duty to preserve documents relevant to their
16 claims when they knew or should have known they would opt-in to this action
17 and/or sue the Defendants. The jury may, but is not required, to infer that the
18 failure of these three opt-in Plaintiffs to produce documents they testified at the
19 deposition they had, but no longer possess, would not support their claims in this
20 action, and would more likely support the Defendants' claims and defenses.

- 21 2. The court will approve the following extension of the Discovery Plan and Scheduling
22 Order deadlines:
- 23 a. Last date to disclose experts pursuant to Fed.R.Civ.P. 26(a)(2): **February 18,**
24 **2011.**
 - 25 b. Last date to disclose rebuttal experts: **March 18, 2011.**
 - 26 c. Last date to depose experts: **March 31, 2011.**
 - 27 d. Last date to file dispositive motions: **April 18, 2011.**
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1 e. The deadline for filing a Motion for Rule 23 Class Certification under the
2 court's Discovery Plan and Scheduling Order (Dkt. #92) expired May 20, 2009.
3 Although the parties subsequently stipulated, and the court ordered, multiple
4 extensions of the discovery cutoff and other deadlines in the Scheduling Order,
5 the deadline for filing the Rule 23 motion for class certification was not
6 extended. Plaintiffs did not request an extension of time to file the motion for
7 class certification before expiration of the May 20, 2009 deadline, or at any time
8 until submitting a motion, incorrectly mistitled as a stipulation (Dkt. #409) on
9 December 30, 2010. Denying Plaintiffs an opportunity to file a motion to certify
10 a Rule 23 class is case-dispositive of Plaintiffs' Rule 23 claims which is a matter
11 only the district judge may decide. However, the court will exercise its
12 jurisdiction over case management in this case and require the motion to certify a
13 class to be filed no later than March 4, 2011, **without prejudice to the**
14 **Defendants to argue that the motion is untimely.**

15 f. Last date to file joint pretrial order: **June 17, 2011, whether or not dispositive**
16 **motions are filed.**

- 17 3. The disclosures required by Fed.R.Civ.P. 26(a)(3), and any objections thereto, shall be
18 included in the pretrial order.
- 19 4. The settlement conference currently scheduled for February 10, 2011, is **VACATED,**
20 **and RESET for May 19, 2011 at 9:30 a.m.**
- 21 5. The Calendar call currently set before the Honorable Robert C. Jones on April 4, 2011,
22 is **VACATED,** and **RESET for July 18, 2011, at 8:30 a.m.**
- 23 6. The Trial currently set before the Honorable Robert C. Jones on April 16, 2011, is
24 **VACATED** and **RESET for July 26, 2011, at 8:30 a.m.**
- 25 7. No further extensions of the Discovery Plan and Scheduling Order Deadlines will be
26 granted. Any request to adjust these deadlines must be made to the district judge.

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8. Defendants' Motion (Dkt. #408) is **DENIED** as **MOOT** as the court has adjusted the Discovery Plan and Scheduling Order deadlines.

9. Plaintiffs' Motion, incorrectly titled a Stipulation (Dkt. #409) is **DENIED** and **STRICKEN**.

Dated this 25th day of January, 2011.


PEGGY A. FEEN
UNITED STATES MAGISTRATE JUDGE