

CLERK'S OFFICE U.S. DIST. COURT
AT CHARLOTTESVILLE, VA
FILED

MAR 18 2011

NULIA CLOUDLEY, CLERK
BY *[Signature]*
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

DONALD R. SCOTT, et al.,

Plaintiffs,

v.

GMAC MORTGAGE, LLC,

Defendant.

CASE NO. 3:10CV00024

ORDER AND
REPORT AND RECOMMENDATION

By: B. WAUGH CRIGLER
U.S. MAGISTRATE JUDGE

Upon the findings and conclusions set forth on the record of the March 18, 2011 hearing,
it hereby is

ORDERED

that plaintiffs' March 4, 2011 motion for sanction pursuant to Rule 37(c) hereby is GRANTED
as follows:

- (1) Defendant hereby is prohibited from using information obtained from the Pilot system in support of or opposition to any motions for summary judgment or partial summary judgment which have been filed by the parties;
- (2) Defendant hereby is prohibited from relying in whole or part on any information contained in the Pilot system in support of its motion to exclude the testimony of plaintiffs' expert witness;
- (3) Defendant hereby is prohibited from opposing any of plaintiffs' claims or supporting any of its defenses with the use of any information contained in the Pilot system;
- (4) Plaintiffs hereby are awarded all attorneys' fees and costs associated with filing and presentation of their motion for sanctions. Plaintiffs are to file a statement of fees and

costs within 20 days hereof, and defendant shall have 15 days thereafter to respond.

The undersigned will decide the matter without argument; and

It hereby is

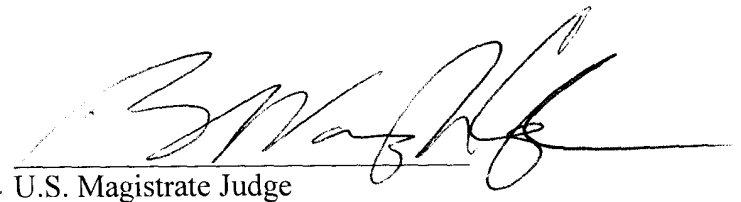
RECOMMENDED¹

as follows:

- (1) That the presiding District Judge enter default judgment against defendant on all issues of liability related to plaintiffs' claim for fraud;
- (2) That, in the event the case proceeds to trial before a jury, the presiding District Judge give an instruction informing the jury that the defendant failed to disclose to the plaintiffs the information it possessed concerning the application, processing and closing of the subject loan that was contained in the Pilot system and that the jury may draw an inference from such non-disclosure that the information was adverse to the defendant.

The Clerk of the Court is directed to transmit a copy of this Order and Report and Recommendation to all counsel of record.

ENTERED:


U.S. Magistrate Judge

3-18-2011
Date

¹ While the undersigned has authority under 28 U.S.C. § 636(b)(1)(A) to impose the full range of discovery sanctions pursuant to Rule 37, it is believed that the actual entry of default judgment and any instruction to the jury should be action taken by the presiding District Judge upon a report and recommendation by this court under 28 U.S.C. § 636(b)(1)(B).