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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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GLEN W. BEVER,

Case No. 1: 1:11-cv-1584-AWI-SKO AWI SKO

10

Plaintiff,

SCHEDULING ORDER (Fed. R. Civ. P. 16)

11

v.

Discovery Deadlines:

12

CAL WESTERN RECONVEYANCE
CORP. and CITIMORTGAGE, INC.,

Initial Disclosures: December 20, 2013

Non Expert Discovery: June 6, 2014,

Expert Disclosure: June 13, 2014

Supplemental Expert Disclosures: June 27, 2014

Expert Discovery: July 11, 2014

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Defendants.

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Non-Dispositive Motion Deadlines:

Filing: July 14, 2014,

Hearing: August 13, 2013

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Dispositive Motion Deadlines:

Filing: July 14, 2014,

Hearing: August 18, 2014

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Settlement Conference:

June 30, 2014, at 10:30 a.m.

Courtroom 9

20

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Pre-Trial Conference:

October 1, 2014, at 8:30 a.m.

Courtroom 2

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Trial: November 18, 2014, at 8:30 a.m.

Courtroom 2

2 Trial Days

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This Court conducted a scheduling conference on December 5, 2013. Plaintiff Glenn W.

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Bever appeared telephonically in Pro Se. Counsel Jillian Benbow appeared telephonically on

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behalf of Defendant CitiMortgage, Inc. There was no appearance made by Defendant Cal-

1 Western Reconveyance Corporation ("Cal-Western"), as this defendant has filed a "Notice of
2 Filing Bankruptcy." (Doc. 71.) Because of the discrete nature of the claims against Cal-
3 Western, the parties agreed the litigation could proceed against CitiMortgage, while the case
4 against Cal-Western would be stayed pursuant to 11 U.S.C. § 362. Pursuant to Fed. R. Civ. P.
5 16(b), the Court sets the following schedule for this action.

6 **1. Important Information about Scheduling and Trailing**

7 District Court Judges of the Fresno Division of the Eastern District of California currently
8 have the heaviest caseload in the nation. As a result, each District Judge schedules multiple trials
9 to begin on each available trial date. Civil cases will "trail" and begin as soon as a courtroom is
10 cleared. The law requires that the Court give any criminal trial priority over civil trials or any
11 other matter. A civil trial set to begin while a criminal trial is proceeding will trail the completion
12 of the criminal trial.

13 Without the ability to definitively predict which cases will actually go to trial or precisely
14 how long each will last, the Court cannot provide advance notice of which cases will trail or for
15 how long. Once the trial date arrives, counsel, parties and witnesses must remain on 24-hour
16 standby until a court is available. Since continuance to a date certain will simply postpone, but
17 not solve, the problem, continuances of any civil trial under these circumstances will no longer be
18 entertained, absent a specific and stated finding of good cause.

19 The parties are also informed that in response to its large caseload, the Fresno Division of
20 the Eastern District of California is assigning cases, whenever possible, to Article III District
21 Court Judges from around the nation as Visiting Judges. Pursuant to the Local Rules, Appendix
22 A, such reassignments will be random, and the parties will receive no advance notice before their
23 case is reassigned to an Article III District Court Judge from outside of the Eastern District of
24 California.

25 The parties are reminded that they may *consent to a United States Magistrate Judge* to
26 conduct all proceedings, including trial and entry of final judgment, pursuant to 28 U.S.C. §
27 636(c), Federal Rule of Civil Procedure 73, and Local Rule 305. The Eastern District Magistrate
28 Judges, all experienced former trial lawyers, use the same jury pool and same court facilities as

1 United States District Court Judges. Since Magistrate Judges do not conduct felony trials, they
2 have greater flexibility and can schedule *firm trial dates*. Judgment entered by a United States
3 Magistrate Judge is appealable directly to the United States Court of Appeals for the Ninth
4 Circuit.¹

5 **2. Current Status of Consent to the Magistrate Judge Jurisdiction**

6 Pursuant to 28 U.S.C. § 636(c), the parties have not consented to conduct all further
7 proceedings in this case, including trial, before the Honorable Sheila K. Oberto, U.S. Magistrate
8 Judge.

9 **3. Amendment to the Parties' Pleadings**

10 Any motions or stipulations requesting leave to amend the pleadings must be filed by no
11 later than February 7, 2014. The parties are advised that filing motions and/or stipulations
12 requesting leave to amend the pleadings by February 7, 2014, does not reflect on the propriety of
13 the amendment or imply good cause to modify the existing schedule, if necessary. All proposed
14 amendments must (A) be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the
15 amendment requires any modification to the existing schedule, *see Johnson v. Mammoth*
16 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P.
17 15(a), that such an amendment is not (1) prejudicial to the opposing party, (2) the product of
18 undue delay, (3) proposed in bad faith, or (4) futile, *see Foman v. Davis*, 371 U.S. 178, 182
19 (1962).

20 **4. Fed. R. Civ. P. 26(a)(1) Initial Disclosures**

21 Initial disclosures shall be completed on or before December 20, 2013.

22 **5. Discovery Cutoffs and Limits**

23 The parties are ordered to complete all discovery pertaining to non-experts on or before
24 June 6, 2014, and all discovery pertaining to experts on or before July 11, 2014.

25 The parties are directed to disclose all expert witnesses, in writing, on or before June 13,
26 2014, and to disclose all rebuttal experts on or before June 27, 2014. The written designation of

27 ¹ While there are scheduling benefits to consenting to Magistrate Judge jurisdiction, substantive rulings and decisions
28 will not be affected whether or not a party chooses to consent.

1 retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A),**
2 **(B) and (C) and shall include all information required thereunder.** Failure to designate
3 experts in compliance with this order may result in the Court excluding the testimony or other
4 evidence offered through such experts that are not disclosed pursuant to this order.

5 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to
6 experts and their opinions. Experts must be fully prepared to be examined on all subjects and
7 opinions included in the designation. Failure to comply will result in the imposition of sanctions,
8 which may include striking the expert designation and preclusion of expert testimony.

9 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
10 disclosures and responses to discovery requests will be strictly enforced.

11 **6. Pre-Trial Motion Schedule**

12 a. Non-Dispositive Pre-Trial Motions

13 Unless prior leave of the Court is obtained, all moving and opposition briefs or legal
14 memorandum in civil cases before Judge Oberto shall not exceed twenty-five (25) pages. Reply
15 briefs by the moving party shall not exceed ten (10) pages. These page limitations do not include
16 exhibits. Briefs that exceed this page limitation, or that are sought to be filed without leave, may
17 not be considered by the Court.

18 All non-dispositive pre-trial motions, including any discovery motions, shall be filed by
19 no later than 4:00 p.m. on July 14, 2014, and heard on or before August 13, 2014. Non-
20 dispositive motions are heard on Wednesdays at 9:30 a.m., before the Honorable Sheila K.
21 Oberto, United States Magistrate Judge in Courtroom 7. In scheduling such motions, the parties
22 shall comply with Local Rule 230. **Counsel must comply with Local Rule 251 with respect to**
23 **discovery disputes or the motion will be denied without prejudice and dropped from**
24 **calendar.** The Magistrate Judge may grant applications for an order shortening time pursuant to
25 Local Rule 144(e). However, if counsel does not obtain an order shortening time, the notice of
26 motion *must* comply with Local Rule 251. In addition to filing a joint statement electronically, a
27 copy of the joint statement shall also be sent to Judge Oberto's chambers by email to
28 SKOorders@caed.uscourts.gov.

1 Counsel may request to appear and argue non-dispositive motions by telephone, provided
2 a written request to so appear is made to the Magistrate Judge's Courtroom Clerk no later than
3 five (5) court days before the noticed hearing date and such request is granted. In the event that
4 more than one counsel requests to appear by telephone, then it shall be the obligation of the
5 moving part(ies) to arrange and originate a conference call to the court. Prior to filing a non-
6 dispositive motion the parties are ORDERED to meet, in person or by telephone, and confer to
7 discuss the issues to be raised in the motion.

8 b. Dispositive Pre-Trial Motions

9 All dispositive pre-trial motions shall be filed no later than July 14, 2014, and heard no
10 later than August 18, 2014, in Courtroom 2 before the Honorable Anthony W. Ishii, United States
11 District Judge. In scheduling such motions, counsel shall comply with **Fed. R. Civ. P 56 and**
12 **Local Rules 230 and 260.**

13 **Motions for Summary Judgment or Summary Adjudication:** Prior to filing a motion
14 for summary judgment or motion for summary adjudication the parties are ORDERED to meet
15 and confer, in person or by telephone, to discuss the issues to be raised in the motion.

16 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment
17 where a question of fact exists, 2) determine whether the respondent agrees that the motion has
18 merit in whole or in part, 3) discuss whether issues can be resolved without the necessity for
19 briefing, 4) narrow the issues for review by the court, 5) explore the possibility of settlement
20 before the parties incur the expense of briefing a summary judgment motion, and 6) arrive at a
21 joint statement of undisputed facts.

22 The moving party shall initiate the meeting and provide a draft of the joint statement of
23 undisputed facts. **In addition to complying with the requirements of Local Rule 260 the**
24 **moving party shall file a joint statement of undisputed facts.**

25 In the notice of motion, the moving party shall certify that the parties have met and
26 conferred as ordered above or set forth a statement of good cause for the failure to meet and
27 confer.

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1 **7. Pretrial Conference**

2 The Pretrial conference is set for October 1, 2014, at 8:30 a.m. in Courtroom 2 before the
3 Honorable Anthony W. Ishii, United States District Judge.

4 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule**
5 **281(a)(2)**. The parties are further directed to submit a digital copy of their pretrial statement in
6 Word format, directly to Judge Ishii's chambers by email at AWIorders@caed.uscourts.gov.

7 The parties' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for
8 the Eastern District of California, as to the obligations of counsel in preparing for the Pretrial
9 conference. The Court will insist upon strict compliance with those rules. In addition to the
10 matters set forth in the Local Rules the Joint Pretrial Statement shall include a Joint Statement of
11 the case to be used by the Court to explain the nature of the case to the jury during voir dire.

12 At the Pretrial conference, the Court will set deadlines, among others, to file motions in
13 limine, final witness lists, exhibits, jury instructions, objections, and other trial documents.

14 **8. Trial Date**

15 Trial is set for November 18, 2014, at 8:30 a.m. in Courtroom 2 before the Honorable
16 Anthony W. Ishii, United States District Judge.

- 17 a. This is a court trial.
- 18 b. Counsel's estimate of trial time: 2 days.
- 19 c. Counsel's attention is directed to Rule 285 of the Local Rules of the United States
20 District Court for the Eastern District of California, for preparation of trial briefs.

21 **9. Settlement Conference**

22 A Settlement Conference is scheduled for June 30, 2014, at 10:00 a.m. in Courtroom 9
23 before the Honorable Stanley A. Boone, U.S. Magistrate Judge. Unless otherwise permitted in
24 advance by the Court, **the attorneys who will try the case** shall appear at the Settlement
25 Conference **with the parties** and the person or persons having **full authority** to negotiate and
26 settle the case **on any terms**² at the conference.

27 ² Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements are
28 subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by
a person or persons who occupy high executive positions in the party organization and who will be directly involved

1 At least five (5) court days prior to the Settlement Conference, the parties shall submit,
2 directly to Stanley A. Boone chambers by e-mail to SABorders@caed.uscourts.gov, a
3 **Confidential Settlement Conference Statement**. The statement **should not be filed** with the
4 Clerk of the Court **or served on any other party**, however, the parties are **required to file** their
5 Notice of submission of Confidential Settlement Conference Statement (See Local Rule 270(d)).
6 Each statement shall be clearly marked "CONFIDENTIAL" with the date and time of the
7 Settlement Conference indicated prominently thereon. The parties are urged to request the return
8 of their statement if a settlement is not achieved, and if such a request is not made, the Court will
9 dispose of the statement.

10 The Confidential Settlement Conference Statement shall include the following:

- 11 a. A brief statement of the facts of the case,
- 12 b. A brief statement of the claims and defenses, i.e., statutory or other grounds upon
13 which the claims are founded, a forthright evaluation of the parties' likelihood of
14 prevailing on the claims and defenses, and a description of the major issues in
15 dispute,
- 16 c. A summary of the proceedings to date,
- 17 d. An estimate of the cost and time to be expended for further discovery, pretrial and
18 trial,
- 19 e. The relief sought, and
- 20 f. The party's position on settlement, **including present demands and offers and a**
21 **history of past settlement discussions, offers and demands.**

22 This Court will vacate the settlement conference if the Court finds the settlement
23 conference will be neither productive nor meaningful in resolving all or part of this case. As far
24 in advance of the settlement conference as possible, a party shall inform the Court and other
25 parties that it believes the case is not in a settlement posture so the Court may vacate or reset the
26 settlement conference. Otherwise the parties shall proceed with the settlement conference in

27 in the process of approval of any settlement offers or agreements. To the extent possible, the representative shall
28 have the authority, if he or she deems it appropriate, to settle the action on terms consistent with the opposing party's
most recent demand.

1 good faith to attempt to resolve all or part of this case.

2 **10. Requests for Bifurcation, Appointment of Special Master, or Other Techniques to**
3 **Shorten Trial**

4 Not applicable at this time.

5 **11. Related Matters Pending**

6 There are no pending related matters.

7 **12. Compliance with Federal Procedure**

8 All counsel are expected to familiarize themselves with the Federal Rules of Civil
9 Procedure and the Local Rules of Practice of the Eastern District of California, and to keep
10 abreast of any amendments thereto. The Court must insist upon compliance with these Rules if it
11 is to efficiently handle its increasing case load and sanctions will be imposed for failure to follow
12 the Rules as provided in both the Federal Rules of Civil Procedure and the Local Rules of
13 Practice for the Eastern District of California.

14 **13. Effect of this Order**

15 This order represents the best estimate of the court and counsel as to the agenda most
16 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the
17 parties determine at any time that the schedule outlined in this order cannot be met, counsel are
18 ordered to notify the court immediately of that fact so that adjustments may be made, either by
19 stipulation or by subsequent status conference.

20 **The dates set in this Order are considered to be firm and will not be modified absent**
21 **a showing of good cause even if the request to modify is made by stipulation. Stipulations**
22 **extending the deadlines contained herein will not be considered unless they are**
23 **accompanied by affidavits or declarations, and where appropriate, attached exhibits, which**
24 **establish good cause for granting the relief requested.**

25 The failure to comply with this order may result in the imposition of sanctions.
26 IT IS SO ORDERED.

27 Dated: December 6, 2013

28 /s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE