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INSURANCE CORPORATION, Plaintiffs as
assignee of certain claims

15 **UNITED STATES DISTRICT COURT**
16 **EASTERN DISTRICT OF CALIFORNIA**
17 **FRESNO DIVISION**

18 THOMAS T. HAWKER; JOHN J.
INCANDELA; DAVE KRAECHAN;
EDWIN JAY LEE; EDWARD J. ROCHA;
19 and FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver,

20 Plaintiffs,

21 vs.

22 BANCINSURE, INC.; and DOES 1 through
23 10, inclusive

24 Defendants.
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Case No.: CV F 12-1261-SAB

**STIPULATION AND ORDER
CONTINUING SCHEDULING
CONFERENCE**

1 IT IS HEREBY STIPULATED, by and between Plaintiffs Thomas T. Hawker,
2 John J. Incandela, Dave Kraechan, Edwin Jay Lee and Edward J. Rocha (collectively
3 “Insureds”), plaintiff by assignment the Federal Deposit Insurance Corporation as
4 Receiver for County Bank (the “FDIC-R”), and Defendant BancInsure, Inc.
5 (“BancInsure”), through their respective counsel of record, as follows:

6 1. On August 29, 2013, this Court entered a Second Amended Scheduling
7 Order that set the case for phased discovery so that the parties could file cross-motions
8 for summary judgment on the second claim for breach of contract in the First Amended
9 Complaint. Docket no. 50. That Order set dates for Phase I filing deadlines, the Phase I
10 summary judgment hearing, and a further post-hearing case management conference. *Id.*;
11 *see also* docket nos. 59, 72.

12 2. The parties filed their cross-motions for summary judgment on January 31,
13 2014. On February, 21, 2014, this Court entered its Fourth Amended Scheduling Order
14 extending the opposition and briefing deadlines. Docket no. 90. That Fourth Amended
15 Scheduling Order set the hearing for the cross-motions on April 2, 2014, and the post
16 hearing case management conference on April 16, 2014. *Id.*

17 3. This Court entertained oral argument on the motions on April 2, 2014. At
18 that hearing, this Court moved the further case management conference to May 6, 2014.
19 Docket no. 123.

20 4. On April 7, 2014, the Court issued its order on the cross-motions for
21 summary judgment on the second claim for breach of contract, granting BancInsure’s
22 motion and denying the FDIC-R’s motion. Docket No. 125. A further scheduling
23 conference is currently set for May 6, 2014.

24 5. Counsel for the parties have met-and-conferred regarding the best way to
25 maximize efficiency while minimizing costs and the burden on this Court. Accordingly,
26 the parties are discussing an option that might entail having the FDIC-R dismiss its
27 remaining claims without prejudice so that an appeal may be taken to the Ninth Circuit
28 on the Order for Summary Judgment. The parties believe this may be the most efficient

1 way to pursue this case. As they are discussing the mechanics of such a plan, the parties
2 believe it is in the best interest of all parties and the Court to continue the scheduling
3 conference from May 6, 2014 at 10:00 a.m. to May 27, 2014 at 11:00 a.m.

4 SO STIPULATED:

5 DATED: April 29, 2014

HINSHAW & CULBERTSON LLP

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8 By: /s/ Edward F. Donohue
Edward F. Donohue
9 Attorneys for Defendant BANCINSURE,
INC.

10 DATED: April 29, 2014

JOSEPH AND COHEN, A P.C.

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12
13 By: /s/ Jonathan M. Cohen
Jonathan M. Cohen
14 Attorneys for the Insureds

15 DATED: April 29, 2014

NOSSAMAN LLP

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17 By: /s/ James H. Vorhis
James H. Vorhis
18 Attorneys for FEDERAL DEPOSIT
19 INSURANCE COMPANY, Plaintiff as
20 assignee of certain claims

21 IT IS SO ORDERED.

22 Dated: April 29, 2014

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UNITED STATES MAGISTRATE JUDGE