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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

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

 Plaintiffs,

 vs.

BANCINSURE, INC.; FEDERAL DEPOSIT INSURANCE CORPORATION; and DOES 1 through 10, inclusive

 Defendants.

**Case No.: CV F 12-1261-SAB
STIPULATION AND SECOND AMENDED SCHEDULING ORDER**

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

1. This Court initially issued an Amended Scheduling Order (Docket no. 37) following a May 28, 2013 Scheduling Conference.
2. After the parties met-and-conferred regarding the most efficient and economic ways to manage this litigation, they submitted a stipulation to the Court requesting an Amended Scheduling Order. On August 29, 2013, this Court issued an Amended Scheduling Order (Docket No. 50) setting new dates and deadlines.

1 3. The parties have diligently pursued discovery related to the coverage issues since
2 the issuance of the Amended Scheduling Order. The parties will have taken nine (9) depositions
3 in this case by November 19, 2013, will have served and responded to over a half-dozen sets of
4 written discovery, and served approximately ten subpoenas.

5 4. Despite these diligent efforts, the parties believe that additional time is needed to
6 resolve discovery disputes between the parties and permit additional discovery before the
7 deadline for filing cross-motions for summary judgment. Accordingly, the parties agree that
8 good cause exists to adopt a Second Amended Scheduling Order such that 1) certain contract
9 interpretation issues may still be addressed early in the litigation and prior to the resolution of
10 other issues that could either be rendered moot or otherwise impacted by the early resolution of
11 coverage issues, and so that 2) that all discovery related to the contract interpretation issue may
12 be completed before cross summary-judgment motions are completely briefed before this Court.

13 5. The parties reiterate that an early resolution of the contract interpretation issues
14 could substantially reduce costs and simplify the remaining issues to be resolved in the litigation
15 irrespective of which party prevails on cross-summary-judgment motions planned at the
16 completion of “Phase I” as described below. Thus, if the Insureds and the FDIC prevail against
17 coverage defenses raised in response to the Second Count for Breach of Contract, Count IV for
18 Reformation would potentially become moot as would defenses raised by BancInsure to such
19 claims such as estoppel and statute of limitations. If BancInsure prevails as to coverage defenses
20 raised in Response to Count II, Count III for Breach of the Covenant of Good Faith and Fair
21 Dealing would potentially become moot.

22 6. The parties stipulate to and respectfully request that the Court issue a Second
23 Amended Scheduling Order that amends the following dates and deadlines in this matter:

- 24 a. Phase I Discovery Completion: December 13, 2013
- 25 b. Phase I Motion Filing Deadline: December 20, 2013
- 26 c. Phase I Opposition Filing Deadline: January 17, 2014
- 27 d. Phase I Reply Filing Deadline: January 29, 2014
- 28 c. Phase I Motion Hearing: February 19, 2014

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d. Further Case Management Conference: March 14, 2014

7. The parties stipulate that the trial date will remain October 6, 2014.

8. The parties further stipulate and agree to engage in a formal alternative dispute resolution process, to be completed within 90 days of the Court's ruling on the Phase I motions.

SO STIPULATED:

DATED: November 13, 2013

HINSHAW & CULBERTSON LLP

By: /s/ Edward F. Donahue
Edward F. Donahue
Christopher J. Borders
John T. Meno
Attorneys for Defendant BANCINSURE, INC.

DATED: November 13, 2013

JOSEPH AND COHEN, A P.C.

By: /s/ Jonathan M. Cohen
Jonathon D. Joseph
Jonathan M. Cohen
Attorneys for the Insureds

DATED: November 13, 2013

NOSSAMAN LLP

By: /s/ James H. Vorhis
Patrick J. Richard
James H. Vorhis
Joan M. Cotkin
Attorneys for FEDERAL DEPOSIT
INSURANCE COMPANY, Plaintiffs as assignee
of certain claims

IT IS SO ORDERED.

Dated: November 13, 2013


UNITED STATES MAGISTRATE JUDGE