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INSURANCE CORPORATION, Plaintiffs as  
assignee of certain claims

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

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

20 Plaintiffs,

21 vs.

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

24 Defendants.

**Case No.: 1:12-cv-01261-SAB**

**STIPULATION AND THIRD  
AMENDED SCHEDULING ORDER**

Hon. Stanley A. Boone

Complaint Filed: August 1, 2012

Trial Date: October 6, 2014

25  
26 IT IS HEREBY STIPULATED, by and between Plaintiffs Thomas T. Hawker,  
27 John J. Incandela, Dave Kraechan, Edwin Jay Lee and Edward J. Rocha (collectively  
28 “Insureds”), plaintiff by assignment the Federal Deposit Insurance Corporation as

1 Receiver for County Bank (the “FDIC-R”), and Defendant BancInsure, Inc.  
2 (“BancInsure”), through their respective counsel of record, as follows:

3 1. This Court initially issued an Amended Scheduling Order (Docket no. 37)  
4 following a May 28, 2013 Scheduling Conference.

5 2. After the parties met-and-conferred regarding the most efficient and  
6 economic ways to manage this litigation, they submitted a stipulation to the Court  
7 requesting an Amended Scheduling Order. On August 29, 2013, this Court issued an  
8 Amended Scheduling Order (Docket No. 50) setting new dates and deadlines.

9 3. In an effort to build additional time into the schedule to resolve discovery  
10 disputes, the parties submitted a stipulation to the Court requesting a Second Amended  
11 Scheduling Order. On November 14, 2013, this Court issued an Amended Scheduling  
12 Order (Docket No. 59) setting the current summary judgment dates and deadlines.

13 4. The parties have continued to diligently pursue discovery related to the  
14 coverage issues since the issuance of the Second Amended Scheduling Order. However,  
15 the parties need additional time to take at least three depositions of witnesses that, based  
16 on scheduling conflicts, could not be completed by the due date of the opening summary  
17 judgment brief. In addition, the parties need additional time to exchange records and  
18 information regarding the completeness of the records produced or made available to date  
19 by each party.

20 5. Accordingly, the parties agree that good cause exists to adopt a Third  
21 Amended Scheduling Order such that 1) certain contract interpretation issues may still be  
22 addressed early in the litigation and prior to the resolution of other issues that could either  
23 be rendered moot or otherwise impacted by the early resolution of coverage issues, and  
24 so that 2) that all discovery related to the contract interpretation issue may be completed  
25 before cross summary-judgment motions are completely briefed before this Court.

26 6. The parties reiterate that an early resolution of the contract interpretation  
27 issues could substantially reduce costs and simplify the remaining issues to be resolved in  
28 the litigation irrespective of which party prevails on cross-summary-judgment motions

1 planned at the completion of “Phase I” as described below. Thus, if the Insureds and the  
2 FDIC-R prevail against coverage defenses raised in response to the Second Count for  
3 Breach of Contract, Count IV for Reformation would potentially become moot as would  
4 defenses raised by BancInsure to such claims such as estoppel and statute of limitations.  
5 If BancInsure prevails as to coverage defenses raised in Response to Count II, Count III  
6 for Breach of the Covenant of Good Faith and Fair Dealing would potentially become  
7 moot.

8 7. The parties stipulate to and respectfully request that the Court issue a  
9 Third Amended Scheduling Order that amends the following dates and deadlines in this  
10 matter:

- 11 a. Phase I Discovery Completion: January 24, 2014
- 12 b. Phase I Motion Filing Deadline: January 31, 2014
- 13 c. Phase I Opposition Filing Deadline: February 21, 2014
- 14 d. Phase I Reply Filing Deadline: March 5, 2014
- 15 c. Phase I Motion Hearing: March 12, 2014
- 16 d. Further Case Management Conference: March 28, 2014

17 8. The parties stipulate that the trial date will remain October 6, 2014. The  
18 parties further stipulate that neither will contest the other's request for a continuance of  
19 the current trial date of up to 60 days.

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

23 **SO STIPULATED:**  
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28

1 DATED: December 18, 2013

HINSHAW & CULBERTSON LLP

2  
3 By: /s/ Edward F. Donahue  
4 Edward F. Donohue  
5 Christopher J. Borders  
6 John T. Meno  
7 Attorneys for Defendant BANCINSURE,  
8 INC.

9 DATED: December 18, 2013

JOSEPH AND COHEN, A P.C.

10 By: /s/ Jonathan M. Cohen  
11 Jonathon D. Joseph  
12 Jonathan M. Cohen  
13 Attorneys for the Insureds

14 DATED: December 18, 2013

NOSSAMAN LLP

15 By: /s/ James H. Vorhis  
16 Patrick J. Richard  
17 James H. Vorhis  
18 Joan M. Cotkin  
19 Attorneys for FEDERAL DEPOSIT  
20 INSURANCE COMPANY, Plaintiffs as  
21 assignee of certain claims

22 **ORDER**

23 IT IS SO ORDERED.

24 Dated: December 19, 2013

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26 \_\_\_\_\_  
27 UNITED STATES MAGISTRATE JUDGE  
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