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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.
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INSURANCE CORPORATION AS
RECEIVER FOR COUNTY BANK, Plaintiffs
as assignee of certain claims

Case No.: CV F 12-1261-SAB

**STIPULATION AND FOURTH
AMENDED SCHEDULING ORDER**

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

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

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

16 4. In an effort to provide the parties additional time to resolve discovery
17 disputes and related issues with document productions, the parties submitted a stipulation
18 to the Court requesting a Third Amended Scheduling Order. On December 19, 2013, this
19 Court issued a Third Amended Scheduling Order (Docket No. 72) setting new dates and
20 deadlines.

21 5. On January 31, 2014, the parties filed cross-motions for partial summary
22 judgment and supporting documentation. See Docket Nos. 74-88.

23 6. The parties agree that due to the importance of the legal issues covered by
24 the pending motions and the scope of discovery to date that good cause exists to amend
25 the current briefing and hearing deadline, and for the Court to adopt a Fourth Amended
26 Scheduling Order such that the parties are permitted additional time to file opposition and
27 reply papers respecting the issues of contract interpretation raised in the cross-motions for
28 partial summary judgment.

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

11 8. The parties stipulate to and respectfully request that the Court issue a
12 Fourth Amended Scheduling Order that amends the following dates and deadlines in
13 this matter:

- 14 a. Phase I Opposition Filing Deadline: March 7, 2014
- 15 d. Phase I Reply Filing Deadline: March 26, 2014
- 16 c. Phase I Motion Hearing: April 2, 2014
- 17 d. Further Case Management Conference: April 18, 2014

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

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

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SO STIPULATED:

DATED: February 20, 2014

HINSHAW & CULBERTSON LLP

By: /s/ Edward F. Donahue
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DATED: February 20, 2014

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DATED: February 20, 2014

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INSURANCE COMPANY, Plaintiffs as
assignee of certain claims

IT IS SO ORDERED.

Dated: February 21, 2014



UNITED STATES MAGISTRATE JUDGE