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

FRANK CORNEJO, et al.,	)	Case No.: 1:15-cv-000993 - JLT
	)	
Plaintiffs,	)	PRETRIAL ORDER
	)	
v.	)	Deadlines:
	)	Motions in Limine Filing: 9/2/16
OCWEN LOAN SERVICING, LLC, et al.,	)	Oppositions to Motions in Limine: 9/9/16
	)	Hearing on Motions in Limine: 9/15/16, 10:00 a.m.
Defendants.	)	
	)	Trial Submissions: 9/23/16

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In this action, the plaintiffs claim that the defendants are liable for violations of California law for actions taken during the foreclosure of their home.

**A. JURISDICTION/ VENUE**

This court has jurisdiction over this diversity action under 42 U.S.C § 1332. Also, the events that gave rise to this action occurred in Bakersfield, California. Accordingly, venue is proper in the United States District Court for the Eastern District of California sitting in Bakersfield. *See* 28 U.S.C. § 1391.

**B. JURY TRIAL**

Plaintiffs demanded a jury trial in this matter. (Doc. 17 at 47)

**C. UNDISPUTED FACTS**

1. On or about July 27, 1992, Plaintiffs obtained a mortgage loan (the “Loan”) from Medallion Mortgage Company in the original principal sum of \$113,400.00, which was reflected in a

1 promissory note secured by a deed of trust (the “Deed of Trust”) encumbering the real property located  
2 at 3425 Rancho Sierra Street, Bakersfield, CA 93306 (the “Property”).

3 2. The beneficial interest under the Deed of Trust was assigned to U.S. Bank.

4 3. Ocwen acquired the contractual right and responsibility to service the Loan from GMAC  
5 Mortgage, LLC.

6 4. Western Progressive was the duly appointed substitute trustee under the Deed of Trust.

7 5. Plaintiffs defaulted under the Loan in or about June of 2013 and remained in continuous  
8 default through April 29, 2015.

9 6. As a result of Plaintiffs’ default, on September 11, 2013, Ocwen sent Plaintiffs a  
10 demand letter wherein it notified them that they were in default under the Loan.

11 7. Ocwen assigned Stephanie Wenner as the internal “foreclosure coordinator” in charge of  
12 overseeing the foreclosure of the subject property and communicating with foreclosure trustees.

13 8. On October 22, 2014, a Notice of Default and Election to Sell Under Deed of Trust was  
14 recorded against the Property.

15 9. Following Plaintiffs’ failure to cure their default, on February 23, 2015, a Notice of  
16 Trustee’s Sale (the “Notice of Sale”) was recorded against the Property

17 10. The Notice of Sale put interested parties on notice that the Property would be sold at a  
18 public auction on March 27, 2015, but the sale date was postponed to April 29, 2015.

19 11. On April 29, 2015, the Property was sold at a public auction (the “Foreclosure Sale”)  
20 pursuant to the power of sale provisions under the Deed of Trust.

21 12. At the time of the Foreclosure Sale, it was Western Progressive’s understanding that  
22 Plaintiffs did not have a complete first lien loan modification application pending with respect to the  
23 Loan.

24 13. Title to the Property was conveyed to Kai Czak, Inc. through a Trustee’s Deed Upon  
25 Sale (“TDUS”).

26 14. Ocwen’s records do not reflect receipt of a completed loan modification application  
27 from Plaintiffs at any point in time prior to April 16, 2016.

28 15. During a January 24, 2014 call between Dora Cornejo and an Ocwen representative: (a)

1 Mrs. Cornejo explained to Ocwen that Plaintiffs suffered a financial hardship caused by a slowdown in  
2 their business; and (b) Ocwen agreed to provide Plaintiffs with a loan modification application.

3 16. On February 20, 2015, an Ocwen representative spoke with Dora Cornejo via telephone  
4 at which time the representative informed Mrs. Cornejo that Ocwen had not received any loan  
5 modification applications from Plaintiffs.

6 17. During a March 16, 2015 telephone conference between Ocwen and Frank Cornejo, Mr.  
7 Cornejo was advised that merely applying for a modification of the Loan would not stop the scheduled  
8 sale.

9 18. At the time Plaintiffs submitted their loan modification application on April 16, 2016  
10 (the "Subject Application"): (a) the Property was encumbered by the Deed of Trust, a lien in favor of  
11 the Internal Revenue Service ("IRS Lien"), a lien in favor of the California Franchise Tax Board (the  
12 "FTB Lien"), and a judgment lien in favor of State Farm Automobile Insurance Co. ("State Farm  
13 Lien"); and (b) Frank Cornejo owned a separate parcel of real property located at 1809 Potomac Ave.,  
14 Bakersfield, CA (the "Potomac Ave. Property").

15 19. The April 16, 2015 submission included the standard Profit & Loss form requested by  
16 Ocwen, although statement year, start date, end date, and Gross Receipts/Business Income sections  
17 were left blank.

18 20. By April 17, 2015, Ocwen's records reflected receipt from Plaintiffs of a Home  
19 Affordable Modification Program Financial Form, IRS Form 4506T, HOA/Condo Dues, Dodd Frank  
20 Certification, Hardship Statement, Profit and Loss Statement.

21 21. On April 21, 2015, Ocwen reviewed the Subject Application and determined that it was  
22 deficient as: (i) the profit and loss form was missing a start date and end date; (ii) it was not  
23 accompanied by tax returns; and (iii) it was not accompanied by pay stubs to support the income  
24 identified in Section 7 of the application.

25 22. On April 22, 2015, Ocwen set foreclosure bid instructions and therefore was proceeding  
26 with foreclosure.

27 23. Ocwen's logs reflect that, during an April 27, 2015 call, Dora Cornejo raised a dispute  
28 with Ocwen and contended that the Profit and Loss form and tax returns had already been submitted,

1 but Defendants deny that Ocwen received any supplemental documents in support of the Subject  
2 Application before April 28, 2015.

3 24. On April 28, 2015, Ocwen received a twenty-two page facsimile (the “Supplemental  
4 Submission”) from Plaintiffs containing: (a) a letter of explanation; (b) a hardship letter; (c) a Profit &  
5 Loss Statement; and (d) a copy of Plaintiffs’ 2013 tax returns.

6 25. On April 28, 2015 Ocwen employee Tabassum Asgar sent an internal email, marked  
7 high importance, identifying that the requested loan modification application documents had been  
8 received.

9 26. On April 28, 2015 Ocwen employee Tabassum Asgar sent an email, marked high  
10 importance, to Ocwen’s foreclosure coordinator Stephanie Wenner entitled “\*\*\*\*\*965 Request to  
11 postponed CSD for 04/29/2015” which identifies the loan modification as under review.

12 27. On April 28, 2015, an Ocwen representative had a separate conversation with Dora  
13 Cornejo, at which time Mrs. Cornejo represented that Plaintiffs’ financial hardship started in December  
14 of 2012.

15 28. On April 29, 2015, an Ocwen representative spoke with Dora Cornejo at which time  
16 Mrs. Cornejo advised Ocwen that Frank Cornejo filed for bankruptcy.

17 29. On April 29, 2015, Ocwen received a Notice of Filing Report of No Distribution (the  
18 “Bankruptcy Notice”) via facsimile which purported to reflect that Frank Cornejo was a debtor in a  
19 bankruptcy case pending in the U.S. Bankruptcy Court for the Eastern District of California (the  
20 “Bankruptcy”).

21 30. On April 30, 2015, Ocwen sent Plaintiffs a letter wherein it acknowledged its receipt of  
22 the Supplemental Submission.

23 31. None of the letters that Ocwen sent to Plaintiffs in connection with the Submitted  
24 Application were returned as undeliverable.

25 32. Ocwen never denied Plaintiffs’ loan modification application.

26 33. Ocwen can deny a loan modification application on the basis that the application is  
27 incomplete, terminating a review.

28 34. Ocwen’s records reflect that foreclosure coordinator Stephanie Wenner never responded

1 to internal Ocwen emails requesting to postpone the sale.

2 35. On April 30, 2015, Ocwen employee Ashlee McLane internally emailed and provided  
3 authority to cancel the foreclosure sale, but it was too late as the sale had already completed.

4 36. Ocwen continued to review Plaintiffs' loan modification application candidacy from  
5 April 16, 2015, through May 22, 2015.

6 37. As of May 1, 2015, Ocwen's records reflect that it had received all of the requested  
7 documents and information in connection with the Subject Application by April 28, 2015.

8 38. On May 1, 2015, Ocwen advised the foreclosure trustee that the loan was not involved  
9 in loss mitigation and authorized post-foreclosure procedures despite the fact that the account was still  
10 being reviewed for a modification.

11 39. On or about May 14, 2015, Ocwen sent Plaintiffs a letter congratulating them on  
12 qualifying for and obtaining a loan modification, and representing that the new loan would commence  
13 June 1, 2015, as long as Plaintiffs returned the signed documentation and initial payment of \$817.29.

14 40. The loan modification for which the Plaintiffs qualified provided objectively more  
15 favorable loan terms given the borrowers' financial hardship.

16 41. The loan modification agreement could not actually modify the loan absent a rescission  
17 of the Foreclosure Sale because the loan debt was extinguished by virtue of the foreclosure.

18 42. Plaintiffs were evicted from the subject property by the new owner and forcibly  
19 removed from the premises by the sheriff.

20 **D. DISPUTED FACTS**

21 All other facts in this case remain in dispute including but not limited to all facts relating to the  
22 following:

23 1. Whether Ocwen postponed the March 27, 2015 foreclosure sale of the Property to April  
24 29, 2015 in order to allow Plaintiffs to apply for loan modification.

25 2. Whether Plaintiffs submitted the loan modification application in its entirety on April  
26 16, 2015.

27 3. Whether by April 21, 2015, Ocwen had reviewed the documents submitted by Plaintiffs  
28 and decided that an additional profit and loss form and tax return would be required.

1           4.       Whether, if sent at all, Ocwen sent the April 21, 2015 letter concerning additional  
2 documents required for loan modification to the Plaintiffs by way of regular mail from Florida, and it  
3 was therefore unlikely for the letter to reach the Plaintiffs without prejudicing their ability to comply  
4 with Ocwen's seven day deadline for application.

5           5.       Whether Ocwen made no contact with the borrower on April 21, 2015 or April 22, 2015  
6 apart from purportedly sending an advisory letter concerning needed documents in the mail.

7           6.       Whether on April 22, 2015, Ocwen set foreclosure bid instructions and therefore was  
8 proceeding with foreclosure before Plaintiffs were aware of any additionally requested documents.

9           7.       Whether Plaintiffs did not receive any advisory letters from Ocwen until after the  
10 foreclosure sale had completed.

11          8.       Whether on April 27th and April 28th, 2015 Plaintiffs faxed and re-faxed documents to  
12 Ocwen which responded fully to Ocwen's request for additional documents, and which Plaintiffs  
13 contend had already been submitted in their previous faxes.

14          9.       Whether Plaintiffs' loan modification application was in review and had neither been  
15 approved nor denied by Ocwen at the time of the completed foreclosure sale on April 29, 2015.

16          10.      Whether Ocwen continued to review Plaintiffs' loan modification application candidacy  
17 from April 16, 2015 through May 22, 2015 without regard to any seven day application requirement  
18 and therefore waived the requirement.

19          11.      Whether Plaintiffs relied on the May 14, 2015 letter and returned the signed documents  
20 and initial payment.

21          12.      Whether Ocwen waived its seven day deadline by continuing to review the loan  
22 modification application from April 16, 2015 through May 22, 2015 and approving it for a favorable  
23 loan modification program.

24          13.      Whether an alternate foreclosure coordinator would normally have been available to  
25 address the needs attendant to the foreclosure of the property in Stephanie Wenner's absence.

26          14.      Whether Plaintiffs would have materially benefited from the loan modification if it was  
27 received before the foreclosure was completed because they would have kept their home.

28          15.      Whether Plaintiffs did not receive any advisory letters from Ocwen until after the

1 foreclosure sale had completed.

2 16. Whether Ocwen's conduct was reckless or resulted from willful misconduct.

3 17. Whether on September 25, 2013, an Ocwen representative spoke with Dora Cornejo via  
4 telephone, at which time she requested a loan modification application (the "First Application") and  
5 explained that Plaintiffs were encountering financial issues.

6 18. Whether on September 26, 2013, Ocwen sent Plaintiffs a letter that included  
7 instructions for submitting a loan modification application and a blank loan modification application  
8 (the "First Application").

9 19. Whether on October 29, 2013, an Ocwen representative spoke with Plaintiffs via  
10 telephone, at which time they requested a modification of the Loan.

11 20. Whether during its October 29, 2013 call with Plaintiffs, Ocwen agreed to provide  
12 Plaintiffs with a loan modification application and Plaintiffs agreed to return the completed application  
13 to Ocwen by November 18, 2013.

14 21. Whether on October 30, 2013, Ocwen sent Plaintiffs a letter that included instructions  
15 for submitting a loan modification application and a blank loan modification application (the "Second  
16 Application").

17 22. Whether Ocwen instructed Plaintiffs to submit the completed Second Application by  
18 November 29, 2013.

19 23. Whether on January 24, 2014, an Ocwen representative spoke with Dora Cornejo via  
20 telephone at which time she expressed an interest in being considered for a modification of the Loan.

21 24. Whether on January 30, 2014, Ocwen sent Plaintiffs a letter that included instructions  
22 for submitting a loan modification application and a blank loan modification application (the "Third  
23 Application").

24 25. Whether Ocwen instructed Plaintiffs to submit the completed Third Application by no  
25 later than April 24, 2014.

26 26. Whether on December 15, 2014, an Ocwen representative spoke with Dora Cornejo via  
27 telephone at which time she requested a loan modification application and explained that Plaintiffs  
28 suffered a financial hardship caused by a reduction in their self-employment income.

1           27.     Whether during its December 15, 2014 call with Dora Cornejo, Ocwen agreed to  
2 provide Plaintiffs with a loan modification application and Mrs. Cornejo agreed to return the  
3 application within 15 days.

4           28.     Whether on December 16, 2014, Ocwen mailed Plaintiffs a loan modification  
5 application (the “Fourth Application”).

6           29.     Whether the Fourth Application advised Plaintiffs that the completed application must  
7 be submitted to Ocwen at least seven business days prior to any scheduled foreclosure sale.

8           30.     Whether on February 17, 2015, Ocwen sent Plaintiffs another loan modification  
9 application (the “Fifth Application”).

10          31.     Whether on March 16, 2015, an Ocwen representative spoke with Frank Cornejo who  
11 requested a postponement of the foreclosure sale of the Property, which had been scheduled for March  
12 27, 2015.

13          32.     Whether at no point during the March 16, 2015 call or any point in time thereafter did  
14 Ocwen advise Plaintiffs that they were pre-approved for a modification of the Loan.

15          33.     Whether on April 16, 2015, Ocwen received the Subject Application via facsimile.

16          34.     Whether the Subject Application consisted of pages 5 through 16 of the Fourth  
17 Application and was not supported by any additional documents.

18          35.     Whether four days after receiving the Subject Application, on April 20, 2015, Ocwen  
19 sent Plaintiffs a letter wherein it acknowledged its receipt of the Subject Application.

20          36.     Whether the IRS Lien, FTB Lien, and State Farm Lien remained outstanding as of the  
21 date of the foreclosure sale of the Property.

22          37.     Whether Plaintiffs did not disclose the IRS Lien, FTB Lien, or the State Farm lien on  
23 the Subject Application, nor did they disclose the Potomac Ave. Property.

24          38.     Whether on April 21, 2015, Ocwen sent Plaintiffs a letter wherein it informed them that  
25 the Subject Application was incomplete and listed the additional documents that Ocwen required to  
26 complete the application.

27          39.     Whether the Supplemental Submission was the only other document submission that  
28 Ocwen received from Plaintiffs in support of the Subject Application.



1           40.     Whether Ocwen did not receive any documents from Plaintiffs explaining how their  
2 financial circumstances had changed at any point in time between September 26, 2013, and the date  
3 they submitted the Subject Application.

4           41.     Whether on April 28, 2015, an Ocwen representative spoke with Frank Cornejo  
5 regarding the Subject Application and informed him that Ocwen would not have enough time to review  
6 the application prior to the foreclosure sale of the Property, which was scheduled for April 29, 2015.

7           42.     Whether without making any promises to Plaintiffs, Ocwen nevertheless attempted to  
8 postpone the sale, but was unable to do so before the scheduled sale date and time of April 29, 2015, at  
9 10:00 a.m.

10          43.     Whether the Bankruptcy Notice was a fabricated document that Plaintiffs submitted to  
11 Ocwen in an effort to postpone the Foreclosure Sale.

12          44.     Whether due to its mistaken belief that the foreclosure sale could be rescinded, which  
13 was based, in part, on the Bankruptcy, Ocwen continued to review the Subject Application after the  
14 foreclosure sale.

15          45.     Whether to be considered for a first lien loan modification, Ocwen requires borrowers  
16 to submit a complete loan modification application at least seven business days before a scheduled  
17 foreclosure sale date (the "Submission Deadline Requirement").

18          46.     Whether the Submission Deadline Requirement is consistent with the deadlines  
19 prescribed under the Making Home Affordable Program and is necessary to allow Ocwen sufficient  
20 time to fully review loan modification applications prior to a scheduled foreclosure sale.

21          47.     Whether at no point in time did Ocwen waive its Submission Deadline Requirement for  
22 Plaintiffs, nor did it advise Plaintiffs that the Subject Application was complete at any point in time  
23 prior to the Foreclosure Sale.

24          48.     Whether Ocwen, as successor by assignment from GMAC Mortgage, LLC, is a party to  
25 a Consent Judgment entered in U.S. District Court for the District of Columbia Case No. 1:12-cv-  
26 00361-RMC.

27 **E.     DISPUTED LEGAL ISSUES**

28           1.     Whether Defendants violated section 2923.6 of the California Civil Code.

1           2.       Whether Defendants’ violation of section 2923.6 of the California Civil Code, if any,  
2 was material.

3           3.       Whether Plaintiffs submitted a “complete” application for a first lien loan modification  
4 within the meaning of section 2923.6(h) of the California Civil Code.

5           4.       Whether Defendants violated section 2924.10 of the California Civil Code.

6           5.       Whether Defendants’ violation of section 2924.10 of the California Civil Code, if any,  
7 was material.

8           6.       Whether Plaintiffs are entitled to an award of attorneys’ fees pursuant to section  
9 2924.12(i) of the California Civil Code.

10          7.       Whether Plaintiffs are entitled to treble or statutory damages pursuant to section  
11 2924.12(b) of the California Civil Code.

12          8.       Whether Plaintiffs are entitled to separate awards of treble or statutory damages  
13 pursuant to section 2924.12(b) of the California Civil Code for each proven violation of the HBOR.

14          9.       Whether Defendants are entitled to an award of attorneys’ fees if they are deemed to be  
15 the prevailing party in this action.

16 **F.       DISPUTED EVIDENTIARY ISSUES**

17           None other than motions in limine. Plaintiffs do not anticipate filing motions in limine at this  
18 time. Defendants anticipate filing motions in limine to limit the scope of any direct testimony offered  
19 by Plaintiffs or Hernan Ernie Cortez on the basis that their testimony is based on inadmissible hearsay.

20 **G.       SPECIAL FACTUAL INFORMATION**

21           None.

22 **H.       RELIEF SOUGHT**

23           Plaintiffs seek to recover actual and treble or statutory damages pursuant section 2924.12(b) of  
24 the California Civil Code. They also seek an award of attorney’s fees pursuant to section 2924.12(i).  
25 Defendants reserve the right to pursue an award of attorneys’ fees in the event that they are deemed the  
26 prevailing party in this action. Plaintiffs dispute the notion that Defendants have any statutory or  
27 contractual basis upon which to pursue attorneys’ fees even in the event that they are deemed the  
28 prevailing party in this action.

1 **I. ABANDONED ISSUES**

2 None.

3 **J. WITNESSES**

4 The following is a list of witnesses that the parties expect to call at trial, including rebuttal and  
5 impeachment witnesses. NO WITNESS, OTHER THAN THOSE LISTED IN THIS SECTION, MAY  
6 BE CALLED AT TRIAL UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT  
7 THIS ORDER SHOULD BE MODIFIED TO PREVENT “MANIFEST INJUSTICE.” Fed. R. Civ. P.  
8 16(e); Local Rule 281(b)(10).

9 **Plaintiffs’ Witness List:**

- 10 1. Dora Cornejo
- 11 2. Frank Cornejo
- 12 3. Hernan Ernie Cortez
- 13 4. Rashad Blanchard of Ocwen Loan Servicing, LLC
- 14 5. Stephanie Spurlock of Western Progressive Trustee, LLC
- 15 6. Melissa Gaeta
- 16 7. Monica Cornejo
- 17 8. Curtis D. Harris (Expert)

18 **Defendants’ Witness List:**

- 19 1. Rashad Blanchard of Ocwen Loan Servicing, LLC
- 20 2. Stephanie Spurlock of Western Progressive Trustee, LLC
- 21 3. Lance Ablin of Kai Czak, Inc.
- 22 4. Maria Hernandez of Franklin and Associates
- 23 5. Gary Crabtree of Affiliated Appraisers (Expert)
- 24 6. Dora Cornejo
- 25 7. Frank Cornejo
- 26 8. Hernan Ernie Cortez
- 27 9. Individual identified as “Tatsi” in Plaintiffs’ First Amended Complaint
- 28 10. Individual identified as “Tabu” in Plaintiffs’ First Amended Complaint

1 **K. EXHIBITS, SCHEDULES AND SUMMARIES**

2 The following is a list of documents or other exhibits that the parties expect to offer at trial.  
3 NO EXHIBIT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE ADMITTED UNLESS  
4 THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS ORDER SHOULD BE  
5 MODIFIED TO PREVENT “MANIFEST INJUSTICE.” Fed. R. Civ. P. 16(e); Local Rule 281(b)(11).

6 **Plaintiffs’ Exhibits**

- 7 1. Loan Modification Application facsimile, dated April 16, 2015
- 8 2. Loan Modification Deficiency letter, dated April 21, 2015
- 9 3. Loan Modification Offer Letter dated May 14, 2015
- 10 4. Franklin & Associates Profit and Loss dated April 22, 2015
- 11 5. 2013 U.S. Individual Income Tax Return of Dora and Francis Cornejo
- 12 6. Email from Ocwen employee Tabassum F. Asgar dated April 28, 2015
- 13 7. Ocwen REALSERVICING logs dated March 10, 2015 through May 28, 2015
- 14 8. Email from Ocwen employee Ashlee McLane dated April 30, 2015
- 15 9. Email from Ocwen employee Imma Kate Sta. Ines dated May 4, 2015
- 16 10. Email from Ocwen employee Lolita N. Llorente
- 17 11. Email from NMSCertificationMailbox@ocwen.com dated May 1, 2015
- 18 12. Email from Foreclosure.Bid@ocwen.com dated April 29, 2015
- 19 13. Email from Foreclosure.Bid@ocwen.com dated April 22, 2015
- 20 14. Email to tax@ocwen.com dated April 29, 2015
- 21 15. Email from WesternProgressive-CA@ocwen.com dated April 29, 2015
- 22 16. Trustee’s Deed Upon Sale (Kern County Instrument No. 0215057029)
- 23 17. Unlawful Detainer lawsuit in matter of Kai Czak, Inc. v. Cornejo et al. (Kern County  
24 Superior Court Case No. S-1500-CL-291623
- 25 18. Judgment entered in lawsuit in matter of Kai Czak, Inc. v. Cornejo et al. (Kern County  
26 Superior Court Case No. S-1500-CL-291623.
- 27 19. Receipts for court fees in the matter of Kai Czak, Inc. v. Cornejo et al. (Kern County  
28 Superior Court Case No. S-1500-CL-291623.

- 1 20. Retainer agreement between Dora and Frank Cornejo and John Loftus
- 2 21. Lease agreement dated August 1, 2015
- 3 22. Enterprise Rent-A-Car receipt dated August 25, 2015
- 4 23. Cashier's check in amount of \$817.40 (check no. 0794200820)
- 5 24. Ledger of payment for storage lockers
- 6 25. Receipt for Jeff's Notary Services dated May 20, 2015.
- 7 26. FedEx Office receipt
- 8 27. Office Max receipt
- 9 28. Walmart receipt
- 10 29. Furniture Mart receipt dated August 22, 2015
- 11 30. Used furniture receipt
- 12 31. Snider's Lock receipt dated August 26, 2015
- 13 32. Snider's Cyclery receipt dated August 26, 2015
- 14 33. Diary of Monica Cornejo
- 15 34. Oak Street Mobil receipt dated August 25, 2015
- 16 35. Notice of Entry dated May 1, 2015
- 17 36. Notice of Entry dated June 13, 2015
- 18 37. Davis-White & Associates receipt dated May 12, 2015
- 19 38. Handwritten notes
- 20 39. Fax transmittal dated April 23, 2015
- 21 40. Fax transmittal dated April 16, 2015
- 22 41. Appraisal report of Curtis Harris
- 23 42. Telephone recording of conversation between Melissa Gaeta, Dora Cornejo, and Ocwen
- 24 43. Plaintiffs' written timeline of events
- 25 44. Handwritten note dated May 4, 2015
- 26 45. Handwritten note dated May 1, 2015
- 27 46. Handwritten note dated April 30, 2015
- 28 47. Notice of IRS Tax Lien dated July 8, 2015

- 1 48. Payment of IRS Tax Lien from surplus proceeds dated November 16, 2015
- 2 49. Writ of Possession
- 3 50. Kern County Sheriff's Office Notice to Vacate dated August 24, 2015
- 4 51. FedEx receipt dated May 20, 2015
- 5 52. Signed loan modification agreement signed May 20, 2015
- 6 53. Complete application letter dated May 4, 2015
- 7 54. Ocwen letter dated April 20, 2015
- 8 55. Ocwen letter dated April 21, 2015
- 9 56. Ocwen letter dated April 30, 2015

10 **Defendants' Exhibits**

- 11 1. Deed of Trust Note executed by Plaintiffs on July 27, 1992
- 12 2. Deed of Trust recorded in the Official Records of Kern County, California, as Doc. No.
- 13 108724
- 14 3. Assignment of Deed of Trust recorded in the Official Records of Kern County,
- 15 California, as Doc. No. 158205
- 16 4. Notice of Default letter, dated September 11, 2013
- 17 5. Loan Modification Application letter, dated September 26, 2013
- 18 6. Loan Modification Application letter, dated October 30, 2013
- 19 7. Loan Modification Application letter, dated January 30, 2014
- 20 8. Loan Modification Application letter, dated December 16, 2014
- 21 9. Loan Modification Application letter, dated February 17, 2015
- 22 10. Loan Modification Application facsimile, dated April 16, 2015
- 23 11. Loan Modification Acknowledgment letter, dated April 20, 2015
- 24 12. Loan Modification Deficiency letter, dated April 21, 2015
- 25 13. Supplemental Loan Modification Application facsimile, dated April 28, 2015
- 26 14. Notice of Filing Report of No Distribution for U.S. Bankruptcy Court for the Eastern
- 27 District of California Case No. 12-1157
- 28 15. Loan Modification Acknowledgment letter, dated April 30, 2015

- 1           16.     Substitution of Trustee recorded in the Official Records of Kern County, California, as  
2 Doc. No. 118537
- 3           17.     Notice of Default recorded in the Official Records of Kern County, California, as Doc.  
4 No. 131229
- 5           18.     Notice of Trustee's Sale recorded in the Official Records of Kern County, California, as  
6 Doc. No. 020194
- 7           19.     Notice of Postponement Letter, dated March 11, 2015
- 8           20.     Trustee's Deed Upon Sale recorded in the Official Records of Kern County, California,  
9 as Doc. No. 057029
- 10          21.     Affidavit of Claim for Surplus Funds for State Farm Mutual Automobile Ins. Co.
- 11          22.     Abstract of Judgment recorded in the Official Records of Kern County, California, as  
12 Doc. No. 039897
- 13          23.     Notice of Federal Taxes Due from Internal Revenue Service
- 14          24.     Deed of Trust and Assignment of Rents recorded in the Official Records of Kern  
15 County, California, as Doc. No. 034898
- 16          25.     Grant Deed recorded in the Official Records of Kern County, California, as Doc. No.  
17 034896
- 18          26.     Notice of Federal Tax Lien recorded in the Official Records of Kern County, California,  
19 as Doc. No. 22713
- 20          27.     Notice of State Tax Lien recorded in the Official Records of Kern County, California, as  
21 Doc. No. 9539
- 22          28.     Release of Lien recorded in the Official Records of Kern County, California, as Doc. No.  
23 147033
- 24          29.     PACER Docket for (and relevant filings in) U.S. Bankruptcy Court for the Eastern  
25 District of California Case No. 12-16370
- 26          30.     Consent Judgment entered in U.S. District Court for the District of Columbia Case No.  
27 Consent Judgment entered in U.S. District Court for the District of Columbia Case No. 12-0361.
- 28          31.     PACER Docket for U.S. District Court for the District of Columbia Case No. 12-0361

- 1 32. Making Home Affordable Program Handbook for Servicers
- 2 33. Appraisal Report prepared by Gary Crabtree
- 3 34. Photographs of real property located at 3425 Rancho Sierra Street, Bakersfield, CA
- 4 93306
- 5 35. Substitution of Trustee and Full Reconveyance recorded in the Official Records of Kern
- 6 County, California, as Doc. No. 002863
- 7 36. Declaration of Frank Cornejo in Support of Opposition to Motion for Summary
- 8 Judgment
- 9 37. Declaration of Dora Cornejo in Support of Opposition to Motion for Summary Judgment
- 10 38. Telephone recordings between Ocwen and Plaintiffs for period of January 2015 through
- 11 May 20, 2015
- 12 39. Stewart Title of Sacramento Closing Document
- 13 40. Letter to Plaintiffs, dated November 24, 2010
- 14 41. Letter to Plaintiffs, dated April 12, 2010
- 15 42. Letter to Plaintiffs, dated January 5, 2012
- 16 43. Letter to Plaintiffs, dated March 20, 2012
- 17 44. Letter to Plaintiffs, dated July 11, 2012
- 18 45. Letter to Plaintiffs, dated July 30, 2012
- 19 46. Letter to Plaintiffs, dated November 9, 2012
- 20 47. Letter to Plaintiffs, dated December 11, 2012
- 21 48. Letter to Plaintiffs, dated January 31, 2013
- 22 49. Letter to Plaintiffs, dated April 11, 2013
- 23 50. Letter to Plaintiffs, dated May 3, 2013
- 24 51. Letter to Plaintiffs, dated May 9, 2013
- 25 52. Letter to Plaintiffs, dated June 10, 2013
- 26 53. Letter to Plaintiffs, dated July 18, 2013
- 27 54. Letter to Plaintiffs, dated July 30, 2013
- 28 55. Letters to Plaintiffs, dated August 6, 2013



- 1 56. Letter to Plaintiffs, dated August 16, 2013
- 2 57. Letter to Plaintiffs, dated September 10, 2013
- 3 58. Letter to Plaintiffs, dated September 23, 2013
- 4 59. Letter to Plaintiffs, dated November 18, 2013
- 5 60. Letter to Plaintiffs, dated August 20, 2013
- 6 61. Letter to Plaintiffs, dated October 7, 2013
- 7 62. Letters to Plaintiffs, dated October 29, 2013
- 8 63. Letter to Plaintiffs, dated November 27, 2013
- 9 64. Letter to Plaintiffs, dated December 6, 2013
- 10 65. Letter to Plaintiffs, dated April 6, 2014
- 11 66. Letter to Plaintiffs, dated May 13, 2014
- 12 67. Letter to Plaintiffs, dated June 25, 2014
- 13 68. Letter to Plaintiffs, dated October 17, 2014
- 14 69. Letter to Plaintiffs, dated October 24, 2014
- 15 70. Letter to Plaintiffs, dated February 24, 2014
- 16 71. Letter to Plaintiffs, dated May 13, 2014

17 On or before **September 9, 2016**, counsel **SHALL** meet and confer to discuss any disputes  
18 related to the above listed exhibits and to pre-mark and examining each other's exhibits. Any exhibits  
19 not previously disclosed in discovery **SHALL** be provided via e-mail or overnight delivery so that it is  
20 received by **August 30, 2016**.

21 1. At the exhibit conference, counsel will determine whether there are objections to the  
22 admission of each of the exhibits and will prepare separate indexes; one listing joint exhibits, one listing  
23 Plaintiff's exhibits and one listing Defendant's exhibits. In advance of the conference, counsel must  
24 have a complete set of their proposed exhibits in order to be able to fully discuss whether evidentiary  
25 objections exist. Thus, any exhibit not previously provided in discovery SHALL be provided at least  
26 five court days in advance of the exhibit conference.

27 2. At the conference, counsel shall identify any duplicate exhibits, i.e., any document which  
28 both sides desire to introduce into evidence. These exhibits **SHALL** be marked as a joint exhibit and

1 numbered as directed above. Joint exhibits **SHALL** be admitted into without further foundation.

2 All Joint exhibits will be pre-marked with numbers preceded by the designation “JT” (e.g. JT/1,  
3 JT/2, etc.). Plaintiff’s exhibits will be pre-marked with numbers beginning with 1 by the designation PX  
4 (e.g. PX1, PX2, etc.). Defendant’s exhibits will be pre-marked with numbers beginning with 501  
5 preceded by the designation DX (e.g. DX501, DX502, etc.). The Parties **SHALL** number each page of  
6 any exhibit exceeding one page in length (e.g. PX1-1, PX1-2, PX1-3, etc.).

7 If originals of exhibits are unavailable, the parties may substitute legible copies. If any document  
8 is offered that is not fully legible, the Court may exclude it from evidence.

9 Each joint exhibit binder shall contain an index which is placed in the binder before the exhibits.  
10 The index shall consist of a column for the exhibit number, one for a description of the exhibit and one  
11 column entitled “Admitted in Evidence” (as shown in the example below).

12 **INDEX OF EXHIBITS**

<b>EXHIBIT#</b>	<b>DESCRIPTION</b>	<b>ADMITTED</b>	<b>IN EVIDENCE</b>
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13  
14  
15 3. As to any exhibit which is not a joint exhibit but to which there is no objection to its  
16 introduction, the exhibit will likewise be appropriately marked, i.e., as PX1, or as DX501 and will be  
17 indexed as such on the index of the offering party. Such exhibits will be admitted upon introduction  
18 and motion of the party, without further foundation.

19 4. Each exhibit binder shall contain an index which is placed in the binder before the  
20 exhibits. Each index shall consist of the exhibit number, the description of the exhibit and the three  
21 columns as shown in the example below.

22 **INDEX OF EXHIBITS**

<b>EXHIBIT#</b>	<b>DESCRIPTION</b>	<b>ADMITTED</b>	<b>OBJECTION</b>	<b>OTHER</b>
		<b>IN EVIDENCE</b>	<b>FOUNDATION</b>	<b>OBJECTION</b>

23  
24  
25 5. On the index, as to exhibits to which the only objection is a lack of foundation, counsel  
26 will place a mark under the column heading entitled “Admissible but for Foundation.”

27 6. On the index, as to exhibits to which there are objections to admissibility that are not  
28 based solely on a lack of foundation, counsel will place a mark under the column heading entitled

1 “Other Objections.”

2 After the exhibit conference, Plaintiff and counsel for the defendants **SHALL** develop four  
3 complete, legible sets of exhibits. The parties **SHALL** deliver three sets of their exhibit binders to the  
4 Courtroom Clerk and provide one set to their opponent, no later than 4:00 p.m., on **September 23, 2016**.  
5 Counsel **SHALL** determine which of them will also provide three sets of the joint exhibits to the  
6 Courtroom Clerk.

7 7. The Parties **SHALL** number each page of any exhibit exceeding one page in length.

8 **L. DISCOVERY DOCUMENTS**

9 The following is a list of discovery documents – portions of depositions, answers to  
10 interrogatories, and responses to requests for admissions – that the parties expect to offer at trial.  
11 **NO DISCOVERY DOCUMENT, OTHER THAN THOSE LISTED IN THIS SECTION, MAY BE**  
12 **ADMITTED UNLESS THE PARTIES STIPULATE OR UPON A SHOWING THAT THIS ORDER**  
13 **SHOULD BE MODIFIED TO PREVENT “MANIFEST INJUSTICE.”** Fed. R. Civ. P. 16(e); Local  
14 Rule 281(b)(12).

15 Plaintiffs intend to offer the following discovery documents at trial:

- 16 1. Deposition transcript for Rashard Blanchard (Ocwen’s Person Most Knowledgeable).
- 17 2. Defendant Ocwen’s Responses to Request for Production, Set One propounded by  
18 Plaintiffs.
- 19 3. Defendant Ocwen’s Responses to Requests for Admission, Set One propounded by  
20 Plaintiffs.
- 21 4. Defendant Western Progressive’s Responses to Requests for Production, Set One  
22 propounded by Plaintiffs.
- 23 5. Defendant Western Progressive’s Responses to Requests for Admission, Set One  
24 propounded by Plaintiffs.
- 25 6. Defendant U.S. Bank’s Responses to Requests for Admission, Set One propounded by  
26 Plaintiffs.
- 27 7. Deposition transcript for Hernan Ernie Cortez.

28 Defendants intend to offer the following discovery documents at trial:

- 1           1.     Deposition Transcript for Frank Cornejo.
- 2           2.     Deposition Transcript for Dora Cornejo.
- 3           3.     Deposition Transcript for Hernan Ernie Cortez.
- 4           4.     Response to Deposition Subpoena from Franklin & Associates.
- 5           5.     Response to Deposition Subpoena from Kai Czak, Inc.
- 6           6.     Plaintiff Frank Cornejo’s Responses to Ocwen Loan Servicing, LLC’s Requests for
- 7 Admission, Set One.
- 8           7.     Plaintiff Frank Cornejo’s Responses to Ocwen Loan Servicing, LLC’s Requests for
- 9 Production of Documents, Set One.
- 10          8.     Plaintiff Frank Cornejo’s Responses to Ocwen Loan Servicing, LLC’s Interrogatories,
- 11 Set One.
- 12          9.     Plaintiff Dora Cornejo’s Responses to Ocwen Loan Servicing, LLC’s Requests for
- 13 Admissions, Set One.
- 14          10.    Plaintiff Dora Cornejo’s Responses to Ocwen Loan Servicing, LLC’s Requests for
- 15 Production of Documents, Set One.
- 16          11.    Plaintiff Dora Cornejo’s Responses to Ocwen Loan Servicing, LLC’s Interrogatories,
- 17 Set One.
- 18          12.    Plaintiff Frank Cornejo’s Responses to Ocwen Loan Servicing, LLC’s Requests for
- 19 Admission, Set One
- 20          13.    Deposition Transcript for Rashad Blanchard

21           In the event the parties wish to admit any portion of a discovery document, the specific  
22 discovery request, e.g., interrogatory, request for admission, must be redacted so that any extraneous  
23 request/response is omitted.

24 **M.    FURTHER DISCOVERY OR MOTIONS**

25           No further discovery is sought by either party.

26 **N.    MOTIONS IN LIMINE**

27           Any party may file motions in limine. The purpose of a motion in limine is to establish in  
28 advance of the trial that certain evidence should not be offered at trial. “Although the Federal Rules of

1 Evidence do not explicitly authorize in limine rulings, the practice has developed pursuant to the  
2 district court's inherent authority to manage the course of trials." Luce v. United States, 469 U.S. 38,  
3 40 n. 2 (1984); Jonasson v. Lutheran Child and Family Services, 115 F. 3d 436, 440 (7th Cir. 1997).  
4 The Court will grant a motion in limine, and thereby bar use of the evidence in question, only if the  
5 moving party establishes that the evidence clearly is not admissible for any valid purpose. Id.

6 **In advance of filing any motion in limine, counsel SHALL meet and confer to determine**  
7 **whether they can resolve any disputes and avoid filing motions in limine. Along with their**  
8 **motions in limine, the parties SHALL file a certification demonstrating counsel have in good faith**  
9 **met and conferred and attempted to resolve the dispute. Failure to provide the certification may**  
10 **result in the Court refusing to entertain the motion.**

11 Any motions in limine must be filed with the Court by **September 2, 2016**. The motion must  
12 clearly identify the nature of the evidence that the moving party seeks to prohibit the other side from  
13 offering at trial. Any opposition to the motion must be served on the other party, and filed with the  
14 Court by **September 9, 2016**. The Court sets a hearing on the motions in limine on **September 15,**  
15 **2016**, at 9:30 a.m. Appearances via Courtcall are authorized.

16 The parties are reminded they may still object to the introduction of evidence during trial.

17 **O. STIPULATIONS**

18 The Parties have had discussions on a possible stipulation setting the fair market value of the  
19 Property at the time of the Foreclosure Sale. These discussions are ongoing.

20 **P. AMENDMENTS/ DISMISSALS**

21 None.

22 **Q. SETTLEMENT NEGOTIATIONS**

23 The Parties have engaged in periodic settlement discussions throughout the pendency of this  
24 case. Though they are amenable to participating in a settlement conference, due to the short time  
25 remaining before trial, the Court is unable to accommodate this request. However, the parties are urged  
26 to explore settlement discussions through informal means or to secure the assistance of a private  
27 mediator.

28 ///

1 **R. AGREED STATEMENT**

2 None

3 **S. SEPARATE TRIAL OF ISSUES**

4 None.

5 **T. APPOINTMENT OF IMPARTIAL EXPERTS**

6 None requested.

7 **U. ATTORNEYS' FEES**

8 The Parties agree that the matter of the award of attorneys' fees to the prevailing party will be  
9 handled by motion in accordance with Local Rule 293.

10 **V. TRIAL DATE/ ESTIMATED LENGTH OF TRIAL**

11 Jury trial is set for **September 26, 2016**, at 8:30 a.m. before the Honorable Jennifer L. Thurston  
12 at the United States Courthouse, 510 19<sup>th</sup> Street, Bakersfield, California. Trial is expected to last 4-7  
13 days.

14 **W. TRIAL PREPARATION AND SUBMISSIONS**

15 **1. Trial Briefs**

16 The parties are relieved of their obligation under Local Rule 285 to file trial briefs. If any party  
17 wishes to file a trial brief, they must do so in accordance with Local Rule 285 and be filed on or before  
18 **September 16, 2016.**

19 **2. Jury Voir Dire**

20 The parties are required to file their proposed voir dire questions, in accordance with Local Rule  
21 162.1, on or before **September 16, 2016.**

22 **3. Jury Instructions & Verdict Form**

23 The parties shall serve, via e-mail or fax, their proposed jury instructions in accordance with  
24 Local Rule 163 and their proposed verdict form on one another no later than **September 2, 2016.** The  
25 parties shall conduct a conference to address their proposed jury instructions and verdict form no later  
26 than **September 9, 2016.** At the conference, the parties **SHALL** attempt to reach agreement on jury  
27 instructions and verdict form for use at trial. The parties shall file all agreed-upon jury instructions and  
28 verdict form no later than **September 16, 2016**, and identify such as the agreed-upon jury instructions

1 and verdict forms. At the same time, the parties **SHALL** lodge via e-mail a copy of the joint jury  
2 instructions and joint verdict form (in Word format) to JLTOOrders@caed.uscourts.gov.

3 **If and only if, the parties after genuine, reasonable and good faith effort** cannot agree upon  
4 certain specific jury instructions and verdict form, the parties shall file their respective proposed  
5 (disputed) jury instructions and proposed (disputed) verdict form no later than **September 16, 2016**,  
6 and identify such as the disputed jury instructions and verdict forms. At the same time, the parties  
7 **SHALL** lodge via e-mail, a copy of his/their own (disputed) jury instructions and proposed (disputed)  
8 verdict form (in Word format) to JLTOOrders@caed.uscourts.gov.

9 In selecting proposed instructions, the parties shall use Ninth Circuit Model Civil Jury  
10 Instructions or California's CACI instructions to the extent possible. All jury instructions and verdict  
11 forms shall indicate the party submitting the instruction or verdict form (i.e., joint, plaintiff's,  
12 defendant's, etc.), the number of the proposed instruction in sequence, a brief title for the instruction  
13 describing the subject matter, the **complete** text of the instruction, and the legal authority supporting  
14 the instruction. Each instruction SHALL be numbered.

#### 15 **4. Statement of the Case**

16 The parties **SHALL** file a joint non-argumentative, brief statement of the case which is suitable  
17 for reading to the jury at the outset of jury selection on or before **September 16, 2016**. In the event  
18 they cannot agree on a joint statement, each side SHALL file a non-argumentative, brief statement of  
19 the case on or before **September 16, 2016**.

#### 20 **X. OBJECTIONS TO PRETRIAL ORDER**

21 Any party may, within 10 days after the date of service of this order, file and serve written  
22 objections to any of the provisions set forth in this order. Such objections shall clearly specify the  
23 requested modifications, corrections, additions or deletions.

#### 24 **Y. MISCELLANEOUS MATTERS**

25 None.

#### 26 **Z. COMPLIANCE**

27 Strict compliance with this order and its requirements is mandatory. All parties and their  
28 counsel are subject to sanctions, including dismissal or entry of default, for failure to fully comply with

1 this order and its requirements.

2

3 IT IS SO ORDERED.

4 Dated: August 29, 2016

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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