

1 AARON K. McCLELLAN (Ca. SBN 197185)
 THOMAS P. MAZZUCCO (Ca. SBN 139758)
 2 HARLAN B. WATKINS (Ca. SBN 176458)
MURPHY PEARSON BRADLEY & FEENEY, P.C.
 3 88 Kearny Street, 10th Floor
 San Francisco, CA 94108
 4 Telephone: (415) 788-1900
 Facsimile: (415) 393-8087
 5 Email: amcclellan@mpbf.com
 tmazzucco@mpbf.com
 6 hwatkins@mpbf.com

7 ANDREW M. REIDY (*pro hac vice*)
 CATHERINE J. SERAFIN (*pro hac vice*)
 8 **DICKSTEIN SHAPIRO LLP**
 1825 Eye Street NW
 9 Washington, DC 20006
 Telephone: (202) 420-2200
 10 Facsimile: (202) 420-2201
 Email: reidya@dicksteinshapiro.com
 11 serafinc@dicksteinshapiro.com

12 Attorneys for the Federal Deposit Insurance
 Corporation as Receiver for Pacific State Bank

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

15 **PROGRESSIVE CASUALTY INSURANCE**
 16 **COMPANY,**
 17 **Plaintiff,**
 18 **v.**
 19 **MICHAEL L. DALTON, HAROLD HAND,**
KATHLEEN M. VERNER, PATRICIA A.
 20 **HATTON, MAXWELL M. FREEMAN,**
YOSHIKAZU MATAGA, GEORGE M.
 21 **SCHOFIELD, RICK SIMAS, GARY A.**
STEWART, RUSSELL MUNSON, STEVEN
 22 **KIKUCHI, STEVE ROSSO, JUSTIN GARNER,**
LAURA MAFFEI, LINDA OGATO and the
 23 **FEDERAL DEPOSIT INSURANCE**
CORPORATION AS RECEIVER FOR
 24 **PACIFIC STATE BANK,**
 25 **Defendants.**

CASE NO. 2:12-cv-00713-TLN-CKD
 Assigned to the
 Hon. Troy L. Nunley

**JOINT STIPULATION AND ORDER
 REGARDING DEFENDANT FEDERAL
 DEPOSIT INSURANCE CORPORATION
 AS RECEIVER FOR PACIFIC STATE
 BANK'S MOTION TO COMPEL
 PLAINTIFF PROGRESSIVE CASUALTY
 INSURANCE COMPANY TO PRODUCE
 ESI AND TO COMPLY WITH THE ESI
 ORDER AND TO EXTEND SCHEDULING
 ORDER DATES**

26
 27
 28

1 Now come Plaintiff Progressive Casualty Insurance Company (“Progressive”), Defendant
2 Federal Deposit Insurance Corporation as Receiver for Pacific State Bank (“FDIC-R”), and Defendants
3 Michael L. Dalton, Harold Hand, Kathleen M. Verner, Patricia A. Hatton, Maxwell M. Freeman,
4 Yoshikazu Mataga, George M. Schofield, Rick Simas, Gary A. Stewart, Russell Munson, Steven
5 Kikuchi, Steve Rosso, Justin Garner, Laura Maffei, and Linda Ogato (the “Ds & Os” and together with
6 Progressive and FDIC-R, the “Parties”), by and through their undersigned counsel, and hereby
7 stipulate as follows:

8 On May 14, 2014, FDIC-R filed a Motion to Compel Plaintiff Progressive Casualty Insurance
9 Company to Produce ESI and to Comply with the ESI Order. (Docket Entry (“DE”) 109). As a result
10 of subsequent discussions between Progressive and FDIC-R and subsequent developments in other
11 matters involving similar issues, the Parties stipulate as follows:

12 1. Progressive shall have until June 2, 2014, to produce the 565,000 “hit” documents
13 culled from the use of the search terms in this and four other cases¹ to FDIC-R subject to the clawback
14 provisions of Fed. R. Civ. Pro. 26(b)(5)(B), Fed. R. Evid. 502(d), and the Court’s existing ESI
15 protocol.

16 2. Progressive may apply privilege filters to the 565,000 documents and withhold
17 documents identified as more likely privileged as a result of application of privilege filters. However,
18 Progressive shall serve FDIC-R with a privileged document log which fully complies with Rule
19 26(b)(5)(A) for any documents withheld or redacted on the basis of privilege. Progressive shall
20 produce the first privilege log for one-third of the total documents withheld or redacted by June 19,
21 2014, the second privilege log by July 17, 2014, and the final privilege log by August 14, 2014.

22 3. FDIC-R withdraws its Motion to Compel Plaintiff Progressive Casualty Insurance
23 Company to Produce ESI and to Comply with the ESI Order (DE 109) without prejudice to FDIC-R’s
24
25

26 ¹ The other four cases are *Progressive Cas. Ins. Co. v. FDIC as Receiver for Omni National Bank*, No.
27 1:12-cv-01103-RLV (N.D. Ga.); *Progressive Cas. Ins. Co. v. FDIC as Receiver for Vantus Bank*, No.
28 5:12-cv-04041-DEO (N.D. Iowa); *Progressive Cas. Ins. Co. v. Delaney, et al.*, No. 2:11-cv-00678-
LRH-PAL (D. Nev.) (involving FDIC as Receiver for Sun West Bank); and *Progressive Cas. Ins. Co.
v. FDIC as Receiver for Silver State Bank*, No. 2:12-cv-00665-RLH-PAL (D. Nev.).

1 right to raise any issues regarding the sufficiency of Progressive’s production or its compliance with
2 this Stipulation.²

3 4. The Amended Scheduling Order (DE 108) provides that the schedule may be modified
4 upon a showing of “good cause.” Good cause exists in order to allow adequate time to complete the
5 ESI review and production as set forth above and other discovery. The Parties therefore stipulate to
6 the following modification of the current schedule:

7 Item	Current Deadline	Proposed Extension
8 Close of Fact Discovery	June 12, 2014	September 30, 2014
9 Expert Disclosures	August 12, 2014	September 30, 2014
10 Rebuttal Expert Disclosures	September 9, 2014	October 28, 2014
11 Dispositive Motions Hearing	December 24, 2014	January 15, 2015

12 The parties propose no change to the remaining deadlines, including the pretrial deadlines and
13 trial date.

14 5. The parties respectfully request that the Court enter an order to this effect.

15
16 Dated: May 30, 2014

MURPHY PEARSON BRADLEY & FEENEY, P.C.

17
18 By /s/ Aaron K. McClellan
19 Aaron K. McClellan
20 Murphy, Pearson, Bradley & Feeney, P.C.
21 88 Kearny Street, 10th Floor
22 San Francisco, CA 94108
23 Telephone: 415-788-1900
24 Facsimile: 415-393-8087
25 Email: amcclellan@mpbf.com

DICKSTEIN SHAPIRO LLP

26
27 By /s/ Catherine J. Serafin (as approved on 5-30-14)
28 Catherine J. Serafin (*pro hac vice*)
Andrew M. Reidy (*pro hac vice*)
1825 Eye Street NW

27 ² Progressive’s amenability to this stipulation is due to a recent order entered by the court in the action
28 captioned *Progressive Casualty Insurance Co. v. Delaney, et al.*, No. 2:11-cv-00678-LRH-PAL (D.
Nev.) (attached as Exhibit 1), addressing Progressive’s review and production of ESI in that matter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Washington, DC 20006
Telephone:(202) 420-2200
Facsimile: (202) 420-2201
Email: reidya@dicksteinshapiro.com
serafinc@dicksteinshapiro.com

Attorneys for the Federal Deposit Insurance
Corporation as Receiver for Pacific State Bank

1 DIEPENBROCK ELKIN LLP

2 By /s/ Eileen M. Diepenbrock (as approved on 5-
3 30-14)

4 Eileen M. Diepenbrock (SBN 119254)
5 500 Capitol Mall, Suite 2200
6 Sacramento, CA 95814
7 Telephone:916-492-5000
8 Facsimile: 916-446-2640
9 Email: emd@diepenbrock.com

7 LOSS, JUDGE & WARD, LLP

8 By /s/ Charles Chotvacs (as approved on 5-30-14)

9 Lewis K. Loss (*pro hac vice*)
10 Charles W. Chotvacs (*pro hac vice*)
11 Matthew J. Dendinger (*pro hac vice* pending)
12 Two Lafayette Centre
13 1133 21st St., NW, Suite 450
14 Washington, DC 20036
15 Telephone:202-778-4060
16 Facsimile: 202-778-4099
17 Email: lloss@ljwllp.com
18 cchotvacs@ljwllp.com
19 mdendinger@ljwllp.com

20 Attorneys for Progressive Casualty Insurance Co.

16 LAW OFFICE OF KENNETH M. MELEYCO

17 By /s/ Kenneth Meleyco (as approved on 5-30-14)

18 Kenneth N. Meleyco (SBN 57785)
19 2155 West March Lane, Suite 1-C
20 Stockton, CA 95207
21 Telephone:209-476-0851
22 Facsimile: 209-476-9429
23 Email: kmeleyco@sbcglobal.com

21 LAW OFFICE OF STEVEN A. CLAIR

22 By /s/ Steven A. Clair (as approved on 5-30-14)

23 Steven A. Clair (SBN 111450)
24 2155 West March Lane, Suite 1-C
25 Stockton, CA 95207
26 Telephone:209-476-0851
27 Facsimile: 209-476-9429
28 Email: steve@clairlaw.com

26 Attorneys for Defendants Justin Garner, Gary
27 Stewart, and Laura Maffei

TISDALE & NICHOLSON, LLP

By /s/ Kevin D. Hughes (as approved on 5-30-14)

Kevin D. Hughes (SBN 188749)
Linda J. Kim (SBN 181122)
2029 Century Park East, Suite 900
Los Angeles, CA 90067
Telephone: 310-286-1260
Facsimile: 310-286-2351
Email: KHughes@T-NLaw.com
LKim@T-NLaw.com

Attorneys for Defendants Michael Dalton,
Maxwell Freeman, Harold Hand, Patricia Hatton,
Yoshikazu Mataga, Russell Munson, Linda Ogata,
George Schofield, and Rick Simas

HAKEEM, ELLIS & MARENGO

By /s/ Adam A. Ramirez (as approved on 5-30-14)

Albert M. Ellis (SBN 79996)
Adam A. Ramirez (SBN 251064)
3414 Brookside Road, Suite 100
Stockton, CA 95219
Telephone: 209-474-2800
Facsimile: 209-474-2654
Email: aellis@hemlaw.com
aramier@hemlaw.com

Attorneys for Defendant Steve Rosso

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

IT IS SO ORDERED.

Dated: June 9, 2014



Troy L. Nunley
United States District Judge