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8 **UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION**

11 AGK SIERRA de MONTSERRAT,
 L.P., a Delaware limited partnership,

12 Plaintiff,

13 vs.

14 COMERICA BANK, a Texas
 15 corporation; and DOES 1 through 10,
 16 inclusive,

17 Defendants.

Case No. 2:15-cv-01280-KJM-DAD
 Honorable Kimberly J. Mueller

**STIPULATION AND ORDER TO
 STAY ACTION**

Complaint Filed: April 29, 2015
 Trial Date: July 17, 2017

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 19 Plaintiff AGK Sierra de Montserrat, L.P. (“AGK”) and Defendant Comerica
 20 Bank (“Comerica”) hereby stipulate and agree as follows:

21 WHEREAS, AGK alleges in this indemnity action that Comerica is obligated to
 22 indemnify it for any liability and expenses incurred in certain litigation matters,
 23 including a case pending in the California Superior Court, County of Placer, titled
 24 *Westwood Montserrat, Ltd. v. AGK Sierra de Montserrat, Ltd., et al.*, Case No.
 25 SCV0032447 (the “Westwood Action”);

26 WHEREAS, trial in the Westwood Action is currently set for February 27, 2017;

27 WHEREAS, because Comerica’s potential liability in this action might depend
 28 on the outcome of the Westwood Action, the parties are unable to complete discovery

THEODORA ORINGHER
 COUNSELORS AT LAW

1 or meaningfully consider settlement until the Westwood Action is resolved;

2 WHEREAS, among other things, according to the operative complaint in the
3 Westwood Action, the plaintiff is seeking at least \$2 million in damages or restitution,
4 so a judgment in AGK’s favor in the Westwood Action would potentially reduce
5 AGK’s alleged damages and Comerica’s alleged liability in this action by at least \$2
6 million, increasing the likelihood of any settlement;

7 WHEREAS, on November 5, 2015, the Court entered a scheduling order setting
8 the final pretrial conference for May 19, 2017, trial for July 17, 2017, and other case
9 deadlines [ECF Docket No. 11];

10 WHEREAS, the parties agree that a stay of approximately seven months, roughly
11 two months after the anticipated completion of the trial in the Westwood Action, is
12 warranted to conserve judicial resources and the resources of the parties, to permit time
13 for resolution of the Westwood Action, and provide the parties with the opportunity to
14 meaningfully consider settlement in light of the outcome of the Westwood Action;

15 WHEREAS, this Stipulation and Order is without prejudice to the right of either
16 party to request at any time that the Court lift the stay at any time prior to May 5, 2017,
17 or extend the stay past May 5, 2017.

18 NOW, THEREFORE, IT IS HEREBY STIPULATED that:

- 19 (1) this action should be stayed in its entirety through May 5, 2017;
20 (2) the current trial date and all other dates in the Court’s November 5, 2015
21 Scheduling Order should be vacated; and
22 (3) a scheduling conference should be set for _____, 2017 to reset the
23 trial date and other case deadlines.

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IT IS SO STIPULATED.

DATED: October 5, 2016 THEODORA ORINGHER PC

By: /s/ Edward E. Johnson
Timothy J. Gorry
Edward E. Johnson
Attorneys for Plaintiff
AGK Sierra de Montserrat, L.P.

DATED: October 5, 2016 LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Frank R. Perrott (as authorized on 10/5/2016)
Frank R. Perrott
Attorneys for Defendant Comerica Bank

IT IS SO ORDERED that:

- (1) this action is stayed in its entirety through May 5, 2017;
- (2) the current trial date and all other dates in the Court's November 5, 2015 Scheduling Order are vacated;
- (3) the parties are to file a joint status report on May 4, 2017, or within seven (7) days of the end of the Westwood action, whichever occurs first; and
- (4) a status conference is set for May 11, 2017, at 2:30 p.m.

Dated: October 12, 2016


UNITED STATES DISTRICT JUDGE