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21 **UNITED STATES DISTRICT COURT**  
 22 **NORTHERN DISTRICT OF CALIFORNIA**  
 23 **(San Francisco)**

24	JUAN MURILLO aka JUAN MANUEL MURILLO;	)	Case No: C07-02199 MEJ
25	MARIA MURILLO aka MARIA JUDITH MURILLO;	)	
26	MARTHA JIMENEZ; AMALIA RIOS aka AMALIA	)	ALL PLAINTIFFS AND DEFENDANTS
27	GALVAN RIOS; and MARIA MUÑOZ,	)	FIRST FEDERAL MORTGAGE
28		)	BANKERS, INC. dba CITYWIDE HOME
	Plaintiffs,	)	LOANS,, RAM CAPITAL CORP.dba
		)	CITYWIDE PROPERTIES, BOBBY RAY

28 Murillo, et al. v. Cervantes, et al. – (Case no. C07-02199 MEJ) -  
 ALL PLAINTIFFS AND DEFENDANTS FIRST FEDERAL MORTGAGE BANKERS, INC., RAM CAPITAL CORP., BOBBY  
 RAY LEE, FRANCISCO CERVANTES, TERESA DIAZ’S STIPULATION AND [PROPOSED] AMENDED CASE  
 MANAGEMENT ORDER

1 vs.  
2 FRANCISCO CERVANTES; TERESA DIAZ;  
3 BOBBY RAY LEE; FIRST FEDERAL MORTGAGE  
4 BANKERS, INC. dba CITYWIDE PROPERTIES dba  
5 CITYWIDE HOME LOANS dba RAM CAPITAL  
6 CORP.; HAROLD BLANCO; EAGLE LITERACY  
7 GROUP, INC.; NEW CENTURY MORTGAGE  
8 CORP.; WELLS FARGO BANK, NA.; CHASE  
9 HOME FINANCE, LLC, OCWEN LOAN  
10 SERVICING, LLC and DOES 1-100,  
11  
12 Defendants.

) **LEE, FRANCISCO CERVANTES,**  
) **TERESA DIAZ'S STIPULATION AND**  
) **~~[PROPOSED]~~ AMENDED CASE**  
) **MANAGEMENT SCHEDULING**  
) **ORDER**

) **DATE:** TBD  
) **TIME:** TBD  
) **COURTROOM:** B, 15<sup>th</sup> Floor  
) **JUDGE:** U.S. Magistrate Judge  
) Maria-Elena James

10 The signatories below, who are parties to the above-entitled action, submit this accompanying  
11 Stipulation and [Proposed] Amended Case Management Scheduling Order, as attached, and  
12 respectfully request that the Court adopt this Order in this action for GOOD CAUSE shown pursuant  
13 to their joint stipulation here and also on information presented in the parties' accompanying Joint  
14 Status Report.

15 The parties to this action and their attorneys of record who are the signatories below and herein  
16 are specifically:

17 Plaintiffs Juan Murillo, Maria Murillo, Martha Jimenez, Amalia Rios and Maria Muñoz  
18 ("Plaintiffs") as represented by attorney Heidi M. Li and Matthew J. Webb of The Law Offices of  
19 Matthew J. Webb; and defendants RAM Capital Corporation dba Citywide Properties, Bobby Ray Lee,  
20 Francisco Cervantes, and Teresa Diaz as represented by attorneys B. Edward McCutchan, Jr. and  
21 Michael Maloney of Sunderland & McCutchan, LLP and defendant First Federal Mortgage Bankers,  
22 Inc. dba Citywide Home Loans as represented by attorneys L. Jay Pedersen and Jeffrey V. Ta of  
23 Bledsoe, Cathcart, et al., LLP. Collectively, the foregoing parties are referred to herein-below as "The  
24 Parties."

24 **~~[PROPOSED]~~ AMENDED SUPPLEMENTAL CASE MANAGEMENT ORDER**

25 Pursuant to Fed. R. Civ. P. 16, the Court has reviewed the Proposed Amended Case  
26 Management Order and ORDERS as follows:

1 A. ADR Program:

2 The Parties shall, subject to further determination by this Court at either at a Case Management  
3 Conference to be set in May of 2010 or through its subsequent issuance of a court order in May 2010,  
4 elect to refer the parties to Magistrate Judge James Larson for a follow-up Settlement Conference.  
5

6 B. Jury or Court Trial:

7 The Court shall conduct a jury trial in this matter.  
8  
9

10 C. Pretrial Motions:

11 1. All pretrial motions shall be filed in accordance with Civil Local Rule 7. A motion shall be  
12 noticed pursuant to Civil L.R. 7-2 without calling the Court. Civil law and motion is heard on  
13 Thursday mornings at 10:00 a.m.  
14

15 D. Discovery:

16 1. The parties shall abide by Judge James' standing order regarding discovery and dispute  
17 procedures.  
18  
19

20 E. Disclosure of Expert Witnesses:

21 1. Any party wishing to present expert testimony with respect to a claim or defense shall serve on  
22 all other parties the name, address, qualifications, resume and a written report which complies with  
23 Federal Rule of Civil Procedure 26 (a)(2)(B) on or before June 2, 2010.  
24

25 2. This disclosure must be made with respect to a person who is either (a) specifically retained or  
26 specially employed to provide expert testimony pursuant to Federal Rule of Evidence 702 or (b) a  
27 regular employee or agent or treating physician who may be called to provide expert opinion

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1 testimony.

2 3. **A party or counsel has a continuing duty to supplement the disclosure of expert witnesses**  
3 **when required under Federal Rule of Civil Procedure 26(e)(1).**

4  
5 F. Rebuttal Expert Witnesses:

6 1. If the testimony of the expert is intended solely to contradict or rebut opinion testimony on the  
7 same subject matter identified by another party, the party proffering a rebuttal expert shall make the  
8 disclosures required by Federal Rule of Civil Procedure 26(a)(2)(B), no later than June 23, 2010.  
9

10  
11 G. Limitation on Testimony by Expert Witnesses:

12 1. Unless the parties enter into a written stipulation otherwise, upon timely objection, an expert  
13 witness shall be precluded from testifying about any actions or opinions not disclosed prior to the  
14 expert's deposition. This is to ensure that all factual material upon which expert opinion may be based  
15 and all tests and reports are completed prior to the expert deposition.  
16

17 2. Unless application is made prior to the close of expert discovery, each party is limited to calling  
18 only one expert witness in each dispute involved in the case.

19 3. Any party objecting to the admissibility of the testimony of person disclosed as an expert  
20 witness must file a written motion *in limine* to exclude the testimony no later than the deadline set in  
21 the order for filing motions *in limine*.  
22

23  
24 H. Close of Discovery:

25 1. All discovery, including depositions of expert witnesses, must be completed by July 23, 2010.

26 2. Pursuant to Federal Rule of Civil Procedure 16(b) and Civil L.R. 26-2, a discovery request or  
27 stipulation that calls for responses or depositions after the discovery cut-off date are not enforceable

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1 except by order of the Court and upon a good showing of good cause.

2 3. Pursuant to Civil L.R. 26-2, no motions to compel discovery may be filed later than 10 days  
3 after the discovery cut-off date.

4  
5 I. Dispositive Motions:

6 1. Pursuant to Civil L.R. 7-2, as dispositive motions, including motion for summary judgment or  
7 summary adjudication along with a joint statement of undisputed facts pursuant to Civil L.R. 56-2(b),  
8 shall be filed, served and noticed by August 23, 2010. Further, pursuant to Court Order the parties  
9 shall file all oppositions to any such motions by September 14, 2010 and replies by no later than  
10 September 29, 2010:  
11

12 2. The Court shall hear dispositive motions on October 7, 2010 (during the Court's Thursday law  
13 and motion calendar) at 10:00 a.m. in Courtroom B, 15<sup>th</sup> Floor of the Federal Building, located at 450  
14 Golden Gate Avenue, San Francisco, California.  
15

16  
17 J. Exchange and filing of trial Papers:

18 1. By October 22, 2010, lead counsel who will try the case shall meet and confer with respect to  
19 the preparation and content of the joint pretrial conference statement and shall exchange (but not file or  
20 lodge) the papers described in paragraph 2 below.

21 2. By November 8, 2010 (no less than 45 days before trial) counsel shall file the papers described  
22 in Federal Rule of Civil Procedure 26(a)(3) and a joint pretrial conference statement including the  
23 following:  
24

25 (A) Substance of the Action: A brief description of the substance of claims and defenses which  
26 remain to be decided.

27 (B) Relief Prayed: A detailed statement of all the relief claimed, particularly itemizing all

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1 elements of damages claimed as well as witnesses, documents or other evidentiary material to be  
2 presented concerning the amount of damages.

3 (C) Undisputed Facts: A plain and concise statement of all relevant facts not reasonably  
4 disputable, as well as which facts parties will stipulate for incorporation into the trial record without  
5 the necessity of supporting testimony or exhibits.

6 (D) Disputed Factual Issues: A plain and concise statement of all disputed factual issues which  
7 remain to be decided.

8 (E) Agreed Statement: A statement assessing whether all or part of the action may be presented  
9 upon an agreed statement of facts.

10 (F) Stipulations: A statement of stipulations requested or proposed for pretrial or trial purposes.

11 (G) Witness List: A list of all witnesses to be called for trial. The parties shall submit a page-  
12 length detailed summary of the substance of the proposed testimony of each witness, which shall also  
13 specify to which disputed fact the testimony related and an estimate of the time required for direct and  
14 cross examination of each prospective witness.

15 (H) Exhibit List: A list of all exhibits to be offered at trial. The exhibit list shall list each  
16 proposed exhibit by its number or alphabetical letter, description and sponsoring witness. All  
17 documents shall be authenticated prior to trial.

18 (I) Estimated Time of Trial: An estimate of the number of hours needed for the presentation of  
19 each party's case.

20 (J) Settlement: A statement summarizing the status of the parties' settlement negotiations.

21 **No party shall be permitted to offer any witness or exhibit in its case in chief that is not**  
22 **disclosed in its witness or exhibit list without leave of the Court for good cause shown.**

23 3. Motions in limine: Counsel are directed to meet and confer to resolve any evidentiary disputes  
24 prior to filing motions in limine. Any motions *in limine* shall be filed by November 15, 2010 (no less

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1 than 45 days prior to trial). Any opposition to motions *in limine* shall be filed November 22, 2010 (no  
2 less than 38 days prior to trial). These matters will be deemed submitted on the papers without oral  
3 argument, unless the Court orders otherwise.

4 4. Trial Briefs: Counsel shall file briefs setting forth the applicable legal standard, pursuant to  
5 Ninth Circuit authority, all significant disputed issues of law, including foreseeable procedural and  
6 evidentiary issues by November 30, 2010.

7 5. Joint Proposed Voir Dire (Jury Trial Only): Counsel should submit a **joint** set of requested voir  
8 dire to be posed by the Court by December 6, 2010. Any voir dire questions on which counsel cannot  
9 agree shall be submitted separately by December 6, 2010. Counsel will be allowed brief follow-up voir  
10 dire after the Court's questioning.

11 6. Joint Proposed Jury Instructions (Jury Trial Only): Jury instructions § 1.01 through § 2.02 and  
12 § 3.01 through § 3.15 from the Manual of Model Civil Jury Instructions for the Ninth Circuit (1998  
13 Edition) will be given absent objection. Counsel shall submit a **joint** set of additional proposed jury  
14 instructions by December 6, 2010. The instructions shall be ordered in a logical sequence, together  
15 with a table of contents. Any instruction of which counsel cannot agree shall be marked "disputed,"  
16 and shall be included within the jointly submitted instructions believed it should be given. Argument  
17 and authority for and against each disputed instruction shall be included as part of the joint submission,  
18 on separate sheets directly following the disputed instruction., The Court prefers that all jury  
19 instructions conform to the Manual of Model Civil Jury Instructions for the Ninth Circuit.  
20

21 If possible, counsel shall deliver to the Courtroom Deputy a copy of their joint proposed jury  
22 instructions on a computer disk in WordPerfect or Word format. The disk label shall include the name  
23 of the parties, the case number and be entitled "Proposed Jury Instructions."  
24

25 At the close of Defendant's case in chief, the Court shall hear oral argument on the disputed  
26 jury instructions and will then render its rulings.

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1 7. Proposed Verdict Forms, Joint or Separate (Jury Trial Only): Counsel shall submit any **joint**  
2 proposed verdict forms and shall submit their separate verdict forms by December 6, 2010.

3 Whenever possible, counsel shall deliver to the Courtroom Deputy a copy of their joint  
4 proposed verdict forms on a computer disk in WordPerfect. The disk label shall include the names of  
5 the parties, the case number and be entitled "Proposed Verdict Forms."

6 8. Proposed Findings of Fact and Conclusions of Law (Court Trial Only): Counsel shall submit  
7 joint proposed findings of facts by December 6, 2010. Counsel shall submit separately a copy of their  
8 disputed findings of fact and conclusions of law by December 6, 2010.

9  
10 Whenever possible, counsel shall deliver to the Courtroom Deputy a copy of their joint findings  
11 of fact on a computer disk in WordPerfect. The disk label shall include the name of the parties, the  
12 case number and be entitled "Joint Proposed Findings of Facts."

13  
14 K. Pretrial Conference:

15 1. On December 16, 2010 (within 30 days prior to trial, during the Court's Thursday law and  
16 motion calendar is held on Thursdays) the Court shall hold a pretrial conference at 10:00 a.m. in  
17 Courtroom B, 15<sup>th</sup> Floor of the Federal Building, located at 450 Golden Gate Avenue, San Francisco,  
18 California. Lead counsel who will try the case must attend the pretrial conference. The purpose of the  
19 pretrial conference is for the court to rule on any issues raised in the final pretrial conference statement,  
20 motions *in limine*, and to discuss the trial of the case.  
21  
22

23  
24 L. Final Pretrial Conference:

25 1. On January 6, 2011 (4 days prior to trial, during the court's Thursday law and motion calendar)  
26 the Court shall hold a final pretrial conference to address any outstanding trial issue.  
27



1 M. Trial Date:

2 1. The trial shall commence [with jury selection taking place] on January 10, 2011 (Trial  
3 schedule: Monday through Thursday, at 1:30 p.m. to 5:00 p.m.). The trial shall last 8 days.

4 2. For any documents, including the deposition of witness testifying at trial, which will be shown  
5 presented to a witness but **will not be admitted into evidence**, counsel shall bring the original plus  
6 three clean copies of the documents. The original document will be handed to the Court during  
7 testimony, and the clean copies of the document will be given to the witness during the examination  
8 and to opposing counsel.

9  
10 3. Counsel shall maintain their own exhibits during trial. Exhibits are to be premarked with  
11 exhibit tags stapled to the upper left-hand corner. If a photo or chart is being used as an exhibit, the  
12 exhibit tag should be placed on the back side of the exhibit. **The Court will only admit premarked**  
13 **exhibits which were listed on the earlier filed exhibit list.**

14 Plaintiff shall mark the exhibits numerically; Defendant shall mark exhibits alphabetically. The  
15 exhibit markers shall each contain the name and number of the case, the number or alphabetical letter  
16 of the exhibit, and blank spaces to accommodate the date admitted and the Deputy Clerk's initials.

17  
18 4. On the day of trial, counsel shall bring the original premarked exhibits, a copy of the premarked  
19 exhibits for opposing counsel and two binders which contain a copy of each side's premarked exhibits  
20 for the Court. **The premarked exhibit binders are to be designated with label dividers.** The  
21 premarked exhibit binders will be given to the Courtroom Deputy on the morning of the trial.

22  
23  
24 N. Jury Selection:

25 1. The Jury Commissioner will summon 20-25 prospective jurors. The Courtroom Deputy will  
26 select their names at random and seat them in the courtroom in the order in which their names are  
27 called.

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1           Voir dire will be asked of sufficient venire persons that eight (or for more lengthy trial) will  
2 remain after all peremptory challenges and an anticipated number of hardship dismissals and cause  
3 challenges have been made.

4           The Court will then take cause challenges, and discuss hardship claims from the individual  
5 jurors, at side bar. The Court will inform the attorneys which hardship claims and cause challenges will  
6 be granted, but will not announce the dismissals until the process is completed. Each attorney may then  
7 list in writing up to three peremptory challenges. The attorneys will review each other's lists and then  
8 submit them to the clerk.  
9

10           Then, from the list of jurors in numerical order, the court will strike the persons with  
11 meritorious hardships, those excused for cause, and those challenged peremptorily. The Court will then  
12 call the first eight people in numerical sequence remaining. These people will be the jury. All jurors  
13 remaining at the close of the case will deliberate. There are no alternates.  
14

15  
16 O.   Sanctions:

17           Failure to comply with this Order is cause for sanctions under Federal Rule of Civil Procedure  
18 16(f).  
19

20 P.   Transcripts:

21           Counsel who wants to receive a daily transcript shall contact Robert Stuart, Supervisor Court  
22 Reporting Services, at (415) 522-2079, at least ten days in advance of the trial dates.  
23

24           If any video or tape recording equipment or demonstrative devices will be used, a signed order  
25 will need to be obtained at least 10 days in advance of the trial date for the items to clear security.  
26  
27



~~[PROPOSED]~~ ORDER

PURSUANT TO THE ABOVE STIPULATION, IT IS SO ORDERED.

February 24, 2010

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
MARIA-ELLEN JAMES  
UNITED STATES MAGISTRATE JUDGE