

ANGLIN FLEWELLING RASMUSSEN CAMPBELL & TRYTTEN LLP

1 RICHARD D. McCUNE, State Bar No. 132124
rdm@mccunewright.com
2 DAVID C. WRIGHT, State Bar No. 177468
dcw@mccunewright.com
3 JAE (EDDIE) K. KIM, State Bar No. 236805
jkk@mccunewright.com
4 **MCCUNEWRIGHT LLP**
2068 Orange Tree Lane, Suite 216
Redlands, California 92374
5 Telephone: (909) 557-1250
Facsimile: (909) 557-1275

6 MITCHELL M. BREIT (*pro hac vice*)
7 mbreit@hanlyconroy.com
8 ANDREA BIERSTEIN*
abierstein@hanlyconroy.com
9 JAYNE CONROY*
jconroy@hanlyconroy.com
10 **HANLY CONROY BIERSTEIN**
SHERIDAN FISHER & HAYES LLP
11 112 Madison Avenue
New York, New York 10016-7416
12 Telephone: (212) 784-6400
Facsimile: (212) 213-5949

DEREK Y. BRANDT (*pro hac vice*)
dbrandt@simmonsfirm.com
ANNA M. KOHUT (*pro hac vice*)
akohut@simmonsfirm.com
SIMMONS BROWDER GIANARIS
ANGELIDES & BARNERD LLC
One Court Street
Alton, Illinois 62002
Telephone: (618) 259-2222
Facsimile: (618) 259-2251

*Applications *Pro Hac Vice* to be Submitted

13 Attorneys for Plaintiffs, Charles P. Haggarty,
14 Gina M. Haggarty and all other similarly situated

15
16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION
18

19 CHARLES P. HAGGARTY and GINA M.
20 HAGGARTY, on behalf of themselves and all
others similarly situated,
21 Plaintiffs,
22 v.
23 WELLS FARGO BANK, N.A.
24 Defendant.

Case No.: 3:10-cv-02416-CRB
[Assigned to the Hon. Charles R. Breyer]
JOINT STIPULATION AND [REDACTED]
ORDER CONCERNING CHANGES
TO THE TRIAL DATE, MOTION DATE,
DISCOVERY DEADLINES AND
BRIEFING SCHEDULES

1 Pursuant to Civil L. R. 7-12, Plaintiffs CHARLES P. HAGGARTY and GINA M.
 2 HAGGARTY, and Defendant WELLS FARGO BANK, N.A., having met and conferred through
 3 their counsel of record, submit this Joint Stipulation and Proposed Order concerning changes to
 4 the trial date, the briefing and hearing dates for the Motion for Class Certification, the hearing
 5 date for the Motion for Judgment on the Pleadings, and Discovery Deadlines.

6 **Background**

7 Trial in this matter is currently scheduled for October 1, 2012. On June 8, 2012 (filed
 8 early June 9, 2012), the parties agreed to and submitted a stipulated schedule contemplating (a)
 9 that Plaintiffs would file their motion for class certification on June 22, 2012 (with hearing on
 10 August 3, 2012); (b) that fact discovery cutoff and initial expert disclosures would be due on
 11 August 3, 2012; and (c) that Defendant would file its motion for summary judgment on August
 12 3, 2012 (with hearing on September 14, 2012). [See Doc. 79] On June 12, 2012 the Court So-
 13 Ordered the joint stipulation. [See Doc. 80, entered June 14, 2012] Hearing on Defendant's
 14 Motion for Judgment on the Pleadings [Doc. 69] had previously been scheduled for June 22,
 15 2012.

16 Plaintiffs believe that, in light of intervening events, and for the reasons discussed below,
 17 the trial date should be continued to provide adequate time to provide notice to the class before
 18 the beginning of trial in the event the Court certifies the class. Plaintiffs also believe that the
 19 briefing schedule for the class certification motion should be continued for three weeks to allow
 20 Plaintiffs to complete certain discovery that could not be accomplished within the current
 21 schedule and to allow all parties to evaluate and address the impact on class certification of
 22 certain documents identified and produced by Wells Fargo for the first time after Plaintiffs filed
 23 their motion for class certification. This joint stipulation and proposal would allow Plaintiffs to
 24 withdraw the motion for class certification filed on June 22, 2012, and to refile the motion on
 25 July 13, 2012. Plaintiffs contend that as a result of the difficulties completing certain discovery,
 26 discovery deadlines should be extended to allow them time to finalize discovery before expert
 27 reports are due. Defendant does not agree with Plaintiffs' contentions regarding discovery

1 difficulties or the cause of such difficulties, but supports the requested continuances.

2 The parties also request that the hearing on the Motion for Judgment on the Pleadings and
3 Motion for Class Certification be continued to accommodate scheduling conflicts for counsel
4 responsible for arguing those motions.

5 The parties are prepared and would request a short status conference if the Court has any
6 questions or concerns about this request.

7 **Trial Date – Requested Continuance of Two Months.**

8 On June 18, 2012, the Court rescheduled the hearing on Defendant’s Motion for
9 Judgment on the Pleadings from June 22, 2012 to August 3, 2012. At the same time, the Court
10 also rescheduled the hearing date for Plaintiffs’ Motion for Class Certification from August 3,
11 2012 to August 24, 2012. Trial is presently set for October 1, 2012. Plaintiffs are concerned that
12 if the Court certifies the class on or after the August 24 hearing date, this will not leave sufficient
13 time for class notice before the beginning of trial. Even assuming that the Court certified the
14 class from the bench at the hearing and signed the proposed order submitted by Plaintiffs without
15 any changes, Plaintiffs do not believe that this would allow sufficient time for the parties to
16 prepare and obtain Court approval, print the class notice, provide the class with adequate time to
17 opt-out of the class, and tally and present the opt-out information to the experts and Court before
18 the beginning of trial.

19 As discussed in the following section, Plaintiffs believe that continuing the trial would
20 also allow time in the schedule to complete discovery that otherwise is likely to be incomplete
21 for the class certification motion and expert reports. Plaintiffs contend that a continuance of the
22 trial date for two months, to December 3, 2012, would allow the parties to complete discovery
23 and submit full information to the Court for Plaintiffs’ class certification motion and Defendant’s
24 motion for summary judgment. Plaintiffs contend it would also obviate the need for
25 supplemental expert reports otherwise likely necessary due to the state of discovery, as discussed
26 below.

27 Defendant does not necessarily agree with each of Plaintiffs’ contentions set forth above,
28 but supports the requested continuance.

1 **Class Certification Briefing Schedule and Discovery Schedule**

2 As contemplated in the joint stipulation and scheduling order entered on the docket on
 3 June 14, Plaintiffs filed their motion for class certification on June 22, 2012. However, due to
 4 the state of written discovery and in light of certain documents identified and produced by Wells
 5 Fargo after the filing of that motion, Plaintiffs contend that they have not had an opportunity to
 6 conduct or complete reasonable discovery prior to the filing of the motion. Specifically,
 7 Plaintiffs contend that they have not had an opportunity to either complete document review or
 8 take 30(b)(6) depositions before the class certification filing date, and that the documents
 9 produced by Wells Fargo on June 26, 2012 have potential impact on the class certification issues
 10 in the case.

11 Plaintiffs believe the history of the parties' efforts to complete discovery in a timely way
 12 is important. On January 31, 2012, Plaintiffs propounded a significant request for production of
 13 documents. The parties engaged in significant meet and confer that resulted in an agreed
 14 protective order, but a disagreement regarding the timing of the production. Plaintiffs filed a
 15 motion to compel on May 3, 2012 complaining that documents had not yet been produced.
 16 Defendants responded that they had committed tremendous resources to the project, but that,
 17 among other issues, Plaintiffs had an unrealistic expectation of how long the process would take
 18 to produce the large amount of documents requested from Wells Fargo.

19 The discovery dispute was referred to Magistrate Judge Jacqueline Scott Corley who
 20 conducted a conference call with the parties on May 10, 2012. In that conference call with Judge
 21 Corley, the parties agreed to meet and confer regarding a production schedule. During the
 22 following meet and confer sessions, Defendant indicated it would provide weekly rolling
 23 productions with Defendant's final production date being estimated as June 8, 2012. Wells
 24 Fargo did produce documents on a rolling production, starting on May 3, 2012. Wells Fargo has
 25 produced approximately 535,000 pages of non-privileged documents in the litigation to date. Of
 26 this, more than 92% (over 493,000 pages) was produced on June 5, 6, 7 and 8, 2012. An
 27 additional approximate 11,500 pages were produced on June 19 and 22, 2012. Defendant notes
 28 that the bulk of these pages were produced by the day Defendant indicated it would complete its
 production, and contends that the June 19 and 22 productions consisted of a small number of

1 documents that had initially been flagged as privileged and some additional servicing notes (2%
2 of pages produced). Defendant further contends that its conduct in discovery was reasonable
3 and appropriate at all times, particularly given the breadth of Plaintiffs' requests.

4 Plaintiffs do not assert in this stipulation that the timing and size of the production reflects
5 anything other than the challenges associated with the size of production. However, Plaintiffs
6 contend that the speed of the process has not allowed Plaintiffs to perform and complete
7 necessary discovery before the filing date for the class certification motion. Plaintiffs have felt
8 the document production needed to be complete before they could take 30(b)(6) depositions.
9 Those depositions were commenced on June 28, 2012. Under the existing schedule, Plaintiffs
10 were required to file their motion for class certification prior to the scheduled 30(b)(6)
11 depositions and therefore were not able to use 30(b)(6) testimony in support of their motion for
12 class certification (filed on June 22, 2012); under the proposal presented herein, Plaintiffs would
13 be allowed to withdraw their June 22, 2012 filing and would have the opportunity to use such
14 evidence in a new filing.

15 In addition, on June 26, 2012, Wells Fargo identified and produced for the first time two
16 additional "versions" of the ARM mortgage Notes at issue in this litigation. In the motion for
17 class certification filed on June 22, Plaintiffs sought certification of a class of borrowers whose
18 mortgages are (or were as of a specific date) on any of six particular Note "versions," exemplars
19 of which Wells Fargo previously produced. Wells Fargo takes the position in this litigation that
20 different Note versions contain varying language and cannot be treated as the same for class
21 certification purposes. With the introduction, after the filing of Plaintiffs' motion, of two new
22 Note "versions," Plaintiffs contend they should be afforded a reasonable opportunity to assess
23 whether they wish to seek certification of a class which also includes borrowers whose Notes
24 were on those forms. Wells Fargo has not yet issued updated discovery responses sufficient in
25 Plaintiffs' view to provide Plaintiffs with data reflecting the number loans outstanding on such
26 Note "versions," the outstanding principal balance on such loans, and the like. Under the
27 proposal herein, Plaintiffs would be allowed to withdraw without prejudice their motion for class
28 certification as filed on June 22, 2012, and file a new motion for class certification on July 13,
2012. Other adjustments to the briefing schedule are as noted below. Again, Wells Fargo

ANGLIN FLEWELLING RASMUSSEN CAMPBELL & TRYTTEN LLP

1 contends that its conduct has been reasonable at all times and further asserts that the two notes
 2 produced after filing of Plaintiffs’ class certification motion were difficult to locate and made up
 3 a tiny fraction of its total production.

4 Finally, Plaintiffs also contend that under the existing schedule, the document production
 5 issues described above will hinder their ability to complete expert disclosures by the present due
 6 date of August 3, 2012; under the proposal presented herein, the document production issues
 7 should not present an insurmountable hurdle to timely completion of Plaintiffs’ expert
 8 disclosures.

Hearing Dates for Motion for Judgment on the Pleadings and Motion for Class

Certification

10 When the Court rescheduled the hearing date of the Motion for Judgment on the
 11 Pleadings from June 22, 2012 to August 3, 2012, it created a scheduling conflict for Defendant’s
 12 counsel, Mark Flewelling, who is arguing the motion. Defendant requests, and Plaintiffs do not
 13 oppose, that the hearing on the motion for judgment on the pleadings be continued from August
 14 3, 2012 to August 10, 2012.

15 When the Court continued the hearing date on the Motion for Class Certification from
 16 August 3, 2012 to August 24, 2012, it created a scheduling conflict for Plaintiffs’ counsel,
 17 Andrea Bierstein, who is arguing the motion. Plaintiffs request, and Defendant does not oppose,
 18 that the hearing on the motion for class certification be continued from August 24, 2012 to
 19 August 31, 2012.

Parties Proposed Scheduling Changes

22 The Parties jointly agree to the requested scheduling change. Accordingly, the Parties do
 23 stipulate and propose the following changes to the current schedule of trial date, hearing for the
 24 motion for judgment on the pleadings, hearing for the motion for class certification, the pre-trial
 25 conference hearing, class certification briefing and discovery schedule:

	<u>Present Date</u>	<u>Proposed Date</u>
26 1. Trial Date	October 1, 2012	December 3, 2012
27 2. Pre-Trial Conference	September 27, 2012	November ²⁷ 27, 2012

28

ANGLIN FLEWELLING RASMUSSEN CAMPBELL & TRYTTEN LLP

- | | | | |
|----|--|-----------------|--------------------|
| 1 | 3. Hearing on the Motion for Judgment on the Pleadings | August 3, 2012 | August 10, 2012 |
| 2 | 4. Class Certification | | |
| 3 | a. Hearing | August 24, 2012 | August 31, 2012 |
| 4 | b. Plaintiffs' Motion
(June 22 Filing to be Withdrawn) | June 22, 2012 | July 13, 2012 |
| 5 | c. Defendant's Opposition | July 11, 2012 | August 1, 2012 |
| 6 | d. Plaintiffs' Reply | July 20, 2012 | August 10, 2012 |
| 7 | 5. Fact Discovery Cutoff: | August 3, 2012 | August 22, 2012, |
| 8 | 6. Initial Expert Disclosures: | August 3, 2012 | August 31, 2012 |
| 9 | At the time of disclosure, the disclosing party will provide | | |
| 10 | 3 dates between Aug. 31-Sept. 14 | | |
| 11 | 2012 that the disclosed expert is available for deposition. | | |
| 12 | 7. Rebuttal Expert Disclosures: | August 17, 2012 | September 14, 2012 |
| 13 | At the time of disclosure, the disclosing party will provide | | |
| 14 | 3 dates between September 14-28, | | |
| 15 | 2012 that the disclosed expert is available for deposition. | | |
| 16 | 8. Expert Discovery Cutoff: | August 31, 2012 | September 28, 2012 |

18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 Dated: June 29, 2012

Respectfully submitted
McCUNE WRIGHT, LLP

21

By: /s/ Richard D. McCune
Richard D. McCune
Attorney for Plaintiffs
Charles P. Haggarty and Gina M. Haggarty

22

23

24

25 Dated: June 29, 2012

REED SMITH, LLP

26

By: /s/ Jack R. Nelson
Jack R. Nelson
Attorneys for Defendant Wells Fargo Bank, N.A.

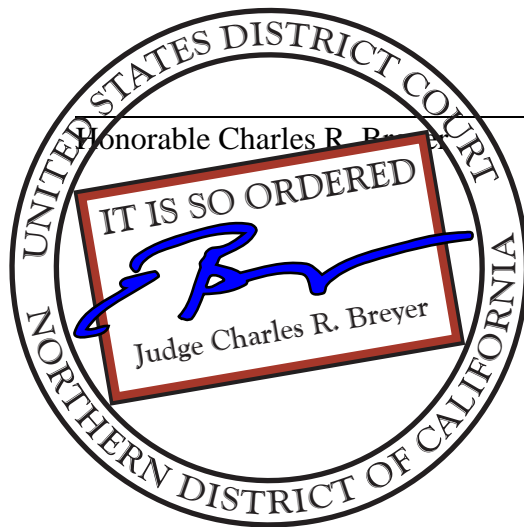
27

28

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

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

DATE: July 3, 2012



ANGLIN FLEWELLING RASMUSSEN CAMPBELL & TRYTTEN LLP