

1 KIEVE LAW OFFICES
 2 Loren Kieve (Bar No. 56280)
 3 lk@kivelaw.com
 4 5A Funston Avenue
 5 The Presidio of San Francisco
 6 San Francisco, California 94129-1110
 7 Telephone: (415) 364-0060
 8 Facsimile: (435) 304-0060

9 Counsel for plaintiff E. Lynn Schoenmann,
 10 Trustee of the Bankruptcy Estate of
 11 UCBH Holdings, Inc.

12 (Other counsel listed in the signature block)

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

16 E. LYNN SCHOENMANN, Trustee of the
 17 Bankruptcy Estate of UCBH Holdings, Inc.,

18 Plaintiff,

19 v.

20 FEDERAL DEPOSIT INSURANCE
 21 CORPORATION, in its capacity as receiver
 22 for United Commercial Bank, and in its
 23 corporate capacity,

24 Defendant.

Case No. 3:10-cv-03989-CRB

**STIPULATION AND ~~PROPOSED~~
 ORDER TO EXTEND BRIEFING
 SCHEDULE AND RESET HEARING ON
 DEFENDANTS' MOTIONS TO DISMISS
 THE COMPLAINT**

Date: N/A
 Time: N/A
 Dept:

25 Subject to the approval of the Court, plaintiff E. Lynn Schoenmann, the chapter 7 trustee
 26 of the bankruptcy estate of UCBH Holdings, Inc. (the "Trustee"), and defendants Federal Deposit
 27 Insurance Corporation, in its capacity as receiver for United Commercial Bank (the "FDIC-
 28 Receiver") and in its corporate capacity ("FDIC-Corporate"), stipulate and agree as follows:

WHEREAS:

A. UCBH Holdings, Inc. ("UCBH") is a bank holding company that conducted its
 principal business through its wholly-owned bank subsidiary United Commercial Bank ("UCB").
 By order dated November 6, 2009, the California Department of Financial Institutions closed

1 UCB and appointed the FDIC-Receiver as its receiver. On November 24, 2009, UCBH filed a
2 petition under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the
3 Northern District of California and the Trustee was appointed soon thereafter.

4 B. The Trustee filed the complaint in this action on September 7, 2010. In the
5 complaint, the Trustee asserts claims against FDIC, including claims for avoidance or recovery of
6 certain alleged transfers that were made by UCBH to UCB before the bank's closing. The
7 Trustee consented to allow additional time for both the FDIC-Receiver and FDIC-Corporate to
8 respond to the complaint through and including December 7, 2010.

9 C. On December 7, 2010, FDIC-Corporate moved to dismiss the complaint as to it in
10 its entirety and the FDIC-Receiver moved to dismiss the complaint as to it in every respect other
11 than as to plaintiff's claims with respect to tax refunds, in Counts I and IX.¹ The motions to
12 dismiss were noticed for hearing on January 28, 2011.

13 D. In view of the additional time given to the FDIC to prepare the motions to dismiss
14 and because of the press of other demands, the Trustee's counsel has requested a similar amount
15 of additional time to respond to the motions, and counsel for the FDIC-Receiver and FDIC-
16 Corporate have also requested additional time to file their reply briefs than would be allowed
17 under this Court's local rules.

18 NOW THEREFORE, subject to the approval of the Court, the parties stipulate and agree
19 as follows:

20 1. The time for the Trustee to serve and file her responses to the pending motions to
21 dismiss filed by FDIC-Corporate and the FDIC-Receiver is extended through and including
22 February 11, 2011.

23 2. The time for FDIC-Corporate and the FDIC-Receiver to serve and file any reply
24 memoranda in further support of their respective motions to dismiss is extended through and
25 including February 25, 2011.

26 3. Due to prior obligations of lead counsel for the various parties, the parties would
27 not be available for a hearing on the motions to dismiss on either Friday, March 4, 2011 or Friday

28 ¹ On the same date, the FDIC-Receiver also filed its answer to the complaint.

1 March 11, 2011, which would be the first and second hearing dates provided for under this
2 Court's individual practices. In addition, lead counsel for FDIC-Corporate expects to be out of
3 the country for a number of weeks beginning the week of March 14, 2011 as the result of a
4 previously scheduled trip.

5 4. As a result of these scheduling issues, the parties respectfully request that the
6 hearing on the motions to dismiss be scheduled for either Tuesday, March 8, 2011 or Thursday,
7 March 10, 2011, on which dates all counsel would be available to attend. The parties recognize
8 that a hearing on these dates would reflect a departure from the Court's practice to hold hearings
9 on motions in civil matters on Friday mornings. In the event that a Friday hearing will be
10 required, the parties jointly respectfully request that the motions be scheduled for hearing on
11 Friday, May 6, 2011, which is the first Friday on which all lead counsel would be available.

12 IT IS SO STIPULATED.

13
14 Dated: January 11, 2011

KIEVE LAW OFFICES

15
16 By: /s/ Loren Kieve
LOREN KIEVE

17 Attorneys for Plaintiff E. Lynn Schoenmann

18 Dated: January 11, 2011

DLA PIPER LLP (US)

19
20 By: /s/ Todd C. Toral
TODD C. TORAL
KATHLEEN S. KIZER

21
22 Attorneys for Defendant FEDERAL DEPOSIT
23 INSURANCE CORPORATION, solely in its
24 capacity as Receiver of United Commercial Bank
25
26
27
28

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

Dated: January 11, 2011

FEDERAL DEPOSIT INSURANCE
CORPORATION

By: /s/ Thomas L. Holzman

THOMAS L. HOLZMAN

Attorneys for FEDERAL DEPOSIT INSURANCE
CORPORATION, in its corporate capacity

ORDER

The requested extensions of time are granted and the hearing on the motions to dismiss is set for
10:00 o'clock on _____ March 8, __, 2011.

Charles R. Breyer
United States District Judge

