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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WESTMINSTER HOUSE, LLC, a
Delaware limited liability company,

No. C 12-02026 WHA

Plaintiff,

v.

FRANK JAO, an individual; HAI NGOC
DINH, an individual,

Defendants.

**ORDER DENYING GOOD
FAITH SETTLEMENT WITH
PLAINTIFF AND VACATING
HEARING**

This case is scheduled for trial **NOVEMBER 18, 2013, AT 7:30 A.M.**, in Courtroom 8, 19th Floor, 450 Golden Gate Avenue, San Francisco, California, 94102. Defendant Frank Jao remains a party in this litigation and is expected to go to trial unless he is dismissed from the case, which has not happened yet. Defendant Jao has entered into a term sheet with plaintiff Westminster, but no final settlement has yet been reached.

Significantly, the term sheet is *not* contingent upon obtaining a good faith settlement bar. Nonetheless, based solely on the term sheet, defendant Jao now seeks a determination of a good faith settlement under Section 877 of the California Code of Civil Procedure, without a final written agreement. This relief is **DENIED** without prejudice to raising the issue if and when the other defendant, Hai Ngoc Dinh, loses the case on the merits and seeks contribution from defendant Jao. This is the just and proper outcome inasmuch as the term sheet is *not* a final agreement and the term sheet is *not* contingent on such a determination. Moreover, as defendant Dinh points out, the financial condition of Jao and his ability to pay more is in question.

1 Discovery on that issue would be appropriate before making a determination under Section 877.

2 The motion is **DENIED** and the hearing is **VACATED**.


3 If a dismissal of Jao is not entered before trial, he is fully expected to go to trial. Please
4 do not ask for continuances.

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6 **IT IS SO ORDERED.**

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8 Dated: October 15, 2013.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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