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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

ACADEMY MORTGAGE
CORPORATIONN,

Defendant.

Case No. [16-cv-02120-EMC](#)

**ORDER DENYING DEFENDANT'S
MOTION FOR RELIEF FROM NON-
DISPOSITIVE PRETRIAL ORDER OF
MAGISTRATE JUDGE, AND
GRANTING RELATOR'S
ADMINISTRATIVE MOTION FOR
RELIEF FROM AMENDED CASE
MANAGEMENT AND PRETRIAL
ORDER**

Docket Nos. 257, 263

I. INTRODUCTION

In this *qui tam* False Claims Act suit, Gwen Thrower (“Relator”) alleges that Academy Mortgage Corporation (“Defendant”) falsely certified compliance with the U.S. Department of Housing and Urban Development’s (HUD’s) regulations, enabling it to obtain government insurance on the mortgage loans underwritten by Defendant, and to make claims on those loans.

Pending before the Court are (1) Defendant’s motion for relief from Magistrate Judge Sallie Kim’s August 6, 2021 order requiring Defendant to produce loan files in a data file that can be loaded into Encompass or IHM, *see* Docket Nos. 255 (“Order”); 257 (“Mot. 1”); and (2) Relator’s motion for administrative relief from this Court’s amended case management and pretrial order, *see* Docket Nos. 180 (“Am. CMC Order”), 263 (“Mot. 2”).

For the following reasons, this Court **DENIES** Defendant’s motion and **GRANTS** Relator’s administrative motion.

United States District Court
Northern District of California

1 B. Standard of Review

2 Pursuant to 28 U.S.C. § 636 (b)(1)(A), a district court may “designate a magistrate judge to
3 hear and determine any pretrial matter pending before the court.” Federal Rule of Civil Procedure
4 72(a) allows a party to file objections to the order. A district court considering objections to a
5 non-dispositive pretrial order must “modify or set aside any part of the order that is clear
6 erroneous or is contrary to law.” *See* 28 U.S.C. § 636 (b)(1)(A) (“A judge of the court may
7 reconsider any pretrial matter under this subparagraph (A) where it has been shown that the
8 magistrate judge’s order is clearly erroneous or contrary to law.”); *Osband v. Woodford*, 290 F.3d
9 1036, 1041 (9th Cir. 2022) (“A district judge may reconsider a magistrate’s order in a pretrial
10 matter if that order is ‘clearly erroneous or contrary to law.’” (quoting 28 U.S.C. § 636 (b)(1)(A));
11 *see also, Grimes v. City & Cnty. Of San Francisco*, 951, F.2d 236, 241 (9th Cir. 1991) (holding
12 that under the clearly erroneous standard, “[t]he reviewing court may not simply substitute its
13 judgment for that of the deciding court” (citing *United States v. BNS, Inc.*, 858 F.2d 456, 464 (9th
14 Cir. 1988))).

15 C. Discussion

16 Judge Kim ordered Defendant to produce the documents at issue in native format either by
17 providing Relator access to Defendant’s Encompass and IHM systems, or as a data file that can be
18 loaded onto Relator’s operating versions of Encompass and IHM. *See* Order at 3. Defendant
19 contends that it can only produce these documents as PDFs. *See* Mot. 1 at 2-3. The question is
20 whether Judge Kim’s August 6 Order is clearly erroneous or contrary to law because Defendant’s
21 production of a single, static PDF for each loan file satisfies its discovery obligations under the
22 Federal Rules.

23 First, Defendant contends it complied with the July 7 Order because a single, static PDF is
24 the *only* native format that exists for the files at issue. *Id.* at 2. Relator submitted publicly
25 available information indicating the “data files” Judge Kim ordered Defendant to produce do
26 indeed exist. *See* Docket No. 261 (“Relator’s Response”) at 4-5. In fact, Encompass users
27 routinely export loan file data in the course of their business. *Id.* In any case, even if the
28 Encompass data files do not exist, Defendant should have complied with Judge Kim’s July 7

1 Order by giving Relator direct access to Encompass and IHM. *See* July 7 Order; Order at 3.

2 Second, Defendant contends giving Relator direct access to its Encompass and IHM
3 systems is unwarranted. *See* Mot. 1 at 5. But Defendant’s *own* corporate representative, Ms.
4 Chavez, admitted that providing Relator access to Defendant’s Encompass or IHM systems is a
5 viable option. *See* Bexley Decl., Ex. A at 156:14–21, 186:20–187:11.

6 Lastly, Defendant contends it produced all the loan documents. *See* Mot. 1 at 4. Relator
7 challenges this characterization by pointing out that the single, static PDF Defendant produced for
8 each loan file omits “conversation logs, audit trails, and certain underwriting documents” that are
9 only available on Encompass. *See* Relator’s Response at 4. Ms. Chavez’s testimony confirms that
10 Defendant’s PDF production only contains documents in an Encompass “eFolder,” which includes
11 most, but not all, loan file documents. *See* Bexley Decl., Ex. A at 148:7–151:3. Relator is entitled
12 to review the entire loan documents to determine whether each loan file contains the FHA-
13 required information and whether each loan is eligible for FHA insurance. *See* Letter Brief 1 at 2.
14 Defendant’s production was therefore incomplete.

15 Accordingly, Defendant’s motion for relief from Judge Kim’s August 6 non-dispositive
16 pretrial order is **DENIED** because the order is neither clearly erroneous nor contrary to law.
17 Moreover, for the same reasons, Judge Kim’s order of monetary sanctions was proper.

18 **III. RELATOR’S ADMINISTRATIVE MOTION FOR RELIEF FROM AMENDED**
19 **CASE MANAGEMENT AND PRETRIAL ORDER**

20 Relator asks this Court for a six-month continuance of the trial setting and all pretrial
21 deadlines to complete discovery, including completing an underwriter review and deposing
22 Defendant’s underwriters. *See* Mot. 2 at 4. Despite several meet and confer efforts, Defendant
23 will only agree to a two-month continuance. *Id.* at 1-2. Trial courts have broad discretion to
24 manage their dockets and can modify their case management orders upon a showing of “good
25 cause,” which considers the moving party’s diligence and any prejudice that will result to the non-
26 moving party. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607, 609 (9th Cir. 1992).
27 Because Defendant does not argue that it will be prejudiced by a six-month delay, the only
28 question is whether there is good cause for it.

1 Relator has established there is good cause for a continuance because it has been diligent in
 2 pursuing discovery. Relator served written discovery requests, conferred with Defendant, and
 3 filed multiple joint discovery letter briefs to resolve the disputes. Defendant's noncompliance
 4 with the Federal Rules and with Judge Kim's multiple orders has obstructed discovery,
 5 specifically the production of the full loan files, causing delay. Without production of the loan
 6 files in a usable format, Relator's counsel cannot prepare to depose Defendant's underwriters, nor
 7 can they complete their own underwriting review. *See* Mot. 2 at 4. It is Defendant's
 8 noncompliance, not Relator's lack of diligence, that has made it impossible for Relator to
 9 complete non-expert discovery by the current deadline of September 23, 2021. *See* July 7 Order;
 10 Order. Given the sheer volume of documents to be produced and the time it takes to review those
 11 documents, a six-month continuance is appropriate.

12 Accordingly, the Court **GRANTS** Relator's administrative motion for a six-month
 13 continuance of the trial setting and all pretrial deadlines, as follows:

| | | |
|----|--|-----------|
| 14 | Trial | 9/26/2022 |
| 15 | Pretrial Conference | 8/30/2022 |
| 16 | Objections | 8/16/2022 |
| 17 | Joint pretrial statement | 8/9/2022 |
| 18 | Meet and Confer | 7/19/2022 |
| 19 | Last Day to Hear Dispositive Motions | 6/16/2022 |
| 20 | Last Day to File Dispositive Motions | 5/12/2022 |
| 21 | Expert Discovery Close | 5/5/2022 |
| 22 | Rebuttal Expert Disclosure | 4/14/2022 |
| 23 | Expert Disclosure / Non-expert Discovery | 3/24/2022 |
| 24 | | |

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26 **IV. CONCLUSION**

27 For the foregoing reasons, the Court **DENIES** Defendant's motion for relief from
 28 Magistrate Judge Kim's August 6 non-dispositive order and **GRANTS** Relator's administrative

1 motion for a six month-continuance of trial and pre-trial deadlines. Defendant shall comply with
2 Judge Kim's order by September 24, 2021. Relator shall submit to Judge Kim its attorneys' fees
3 declaration by September 27, 2021. Defendant's challenge thereto as to amount shall be filed by
4 October 7, 2021.

5 This order disposes of Docket Nos. 257 and 263.

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7 **IT IS SO ORDERED.**

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9 Dated: September 8, 2021

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12 EDWARD M. CHEN
13 United States District Judge
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United States District Court
Northern District of California