

1 JOHN GORE, Acting Assistant Attorney General
 2 SAMEENA SHINA MAJEED, Chief
 3 R. TAMAR HAGLER, Deputy Chief (CA 189441)
 4 VARDA HUSSAIN, Acting Special Litigation Counsel (VA 70132)
 5 CHRISTOPHER D. BELEN (VA 78281)
 6 ABIGAIL B. MARSHAK (NY Reg. No. 5350053)
 7 JUNIS L. BALDON (KY 93045)
 8 United States Department of Justice
 9 Civil Rights Division
 10 950 Pennsylvania Avenue, NW - NWB
 11 Washington, DC 20530
 12 Phone: (202) 353-1339
 13 Facsimile: (202) 514-1116
 14 Christopher.Belen@usdoj.gov

15 *Attorneys for Plaintiff United States of America*

16 *[Intervenors, Defendants, and Their Counsel Listed On Signature Pages]*

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19 SAN FRANCISCO DIVISION

20 UNITED STATES OF AMERICA,	}	
21 Plaintiff, and	}	Case No. 3:16-cv-04839-RS
22 EBERARDO PEREZ, et al.,	}	STIPULATED PROPOSED ORDER RE: DISCOVERY AND ELECTRONICALLY STORED INFORMATION AND FED. R. EVID. 502(D) ORDER
23 Intervenor Plaintiffs,	}	
24 vs.	}	
25 THE HOME LOAN AUDITORS, et al.,	}	
26 Defendants.	}	

27 **1. PURPOSE**

28 This Order will govern discovery, including the discovery of electronically stored information (“ESI”), in this case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the Discovery of Electronically Stored Information, and any other applicable orders and rules. This Order is intended to supplement – not override – any

1 confidentiality Order in this case.

2 **2. COOPERATION**

3 The parties are aware of the importance the Court places on cooperation and commit to
4 cooperate in good faith throughout the matter consistent with this Court's Guidelines for the
5 Discovery of ESI.

6 **3. PRESERVATION**

7
8 The parties have discussed their preservation obligations and needs, and they agree that
9 preservation, including preservation of potentially relevant ESI will be reasonable and
10 proportionate. By agreeing to preserve documents and ESI, they are not conceding that such
11 material is discoverable, nor are they waiving any claim of privilege. To reduce the costs and
12 burdens of preservation and to ensure proper documents and ESI are preserved, the parties
13 agree as follows:

14
15 a) The parties do not need to preserve the following categories of ESI: i) voicemail
16 messages on counsel's voicemail system; ii) delivery or read receipts of e-mail; iii) logs of
17 calls made to or from mobile devices; iv) temporary or cache files, including internet history,
18 web browser cache and cookie files, wherever located; v) server, system or network logs; vi)
19 system or log data from photocopiers or fax machines; and vii) auto-saved copies of electronic
20 documents.

21
22 b) Provided that each party preserves at least one copy of all relevant ESI in a
23 reasonably accessible location, the party is not required to keep duplicate copies of: 1) email or
24 other electronic messages (including attachments) sent to multiple recipients; 2) ESI on mobile
25 or portable devices (e.g., Blackberry, smart phones, flash drive); or 3) ESI on backup systems
26 used for system recovery or information restoration that are routinely purged or overwritten in
27
28

1 accordance with an established, documented, and routine system maintenance policy.

2 c) The parties do not need to specifically preserve relevant documents, things, or
3 ESI created by and exchanged 1) solely among attorneys or staff¹ within the United States
4 Department of Justice (which, for this document, includes the United States Attorney's Office
5 for the Northern District of California); 2) solely among attorneys or staff within Quadra &
6 Coll, LLP; (3) solely among attorneys or staff within Housing and Economic Rights
7 Advocates; (4) solely among attorneys or staff within the Law Offices of Armando S. Mendez;
8 (5) solely among attorneys or staff within the Law Offices of David M. Spieker; and/or (6)
9 solely among attorneys or staff within the Sodhi Law Group.
10
11

12 d) This Stipulation and Order does not modify, amend, limit, or obviate any party's
13 obligation to maintain and preserve documents, things, and ESI where required by law. Nor
14 does this Stipulation and Order affect any other obligations of the parties to preserve
15 documents, things, and ESI, such as pursuant to a party's own document retention policy, other
16 court order, administrative order, or in response to other reasonably anticipated litigation.
17

18 **4. SEARCH**

19 The parties agree that in responding to a Fed. R. Civ. P. 34 request, or earlier if
20 appropriate, they will meet and confer about methods to search ESI in order to identify ESI
21 that is subject to production in discovery and filter out ESI that is not subject to discovery.
22

23 **5. PRODUCTION FORMATS**

24 The parties agree generally to produce documents and information as searchable PDFs.
25 The PDFs shall be black-and-white, unless that color format would obscure or degrade
26

27 _____
28 ¹ In this document, "staff" includes employees as well as contractors, if applicable.

1 information (e.g., color-coded graphs or charts, printed photographs, redlines). The parties
2 agree to maintain unitization of documents and information to the extent feasible. For
3 example, each PDF file will contain one document, and the pages within the PDF will be in the
4 same order as maintained in the original document. All pages shall be Bates-numbered in
5 consecutive order in the format “XX#####” where “XX” represents the short character
6 abbreviation for the producing Party – *i.e.*, USPROD for United States; HERA for the
7 Intervenor Plaintiffs; L-A for Defendants Luna and Alcaraz; OG for Defendant Oralía
8 Gutierrez; SPIE for Defendant David Spieker; and LEON for Defendant Hortencia Leon – and
9 “#####” represents the five-digit or six-digit sequential number of the page being produced. A
10 party’s second and subsequent productions will begin with the next number in sequence after
11 the last page of the prior production. The parties agree to electronically “burn” a legible,
12 unique Bates Number onto the lower right hand corner of each page or at a location that does
13 not obliterate, conceal, or interfere with any information in the image. The parties will name
14 image files [Bates Number].tif or [Bates Number].jpg. For native electronic files, the parties
15 agree not to place Bates Numbers on each page, but to name each native file [Bates
16 Number].ext, with a placeholder PDF containing the name of the file before it was changed to
17 the Bates Number.

18
19
20
21 If particular information warrants a production format other than PDF (e.g., Excel
22 spreadsheets that exist in native electronic form, video or audio files, databases, social media
23 content, text messages and data from mobile devices, and web-based data), the parties will
24 promptly confer and cooperate to attempt to arrange for the mutually acceptable production of
25 such documents. The parties agree not to degrade the searchability or use of documents as part
26 of the document collection or production process, and they agree to remove any encryption,
27
28

1 locking, or passwords.

2 The parties will use production media most appropriate to the size of the production,
3 with a presumption that productions will be by CD/DVD sent via overnight delivery or via
4 electronic delivery. Where electronic delivery is not made electronically, the parties agree to
5 label each piece of Production Media with: (1) case number, (2) producing Party's name; (3)
6 production date; and (4) the Bates Number range(s) of the materials on the Production Media.
7

8 **6. INFORMATION PROTECTED FROM DISCOVERY**

9 a) Pursuant to Fed. R. Evid. 502(d), the production of privileged information,
10 work-product-protected information, or information subject to governmental privileges or
11 protections, whether inadvertent or otherwise, is not a waiver of privilege or protection from
12 discovery or disclosure in this case or in any other federal or state proceeding. For example,
13 the mere production of privileged or protected documents in this case as part of a mass
14 production is not itself a waiver in this case or in any other federal or state proceeding.
15 Nothing in this provision or Order, however, limits or affects the right of a Party to conduct a
16 review for privileged or protected material before production, as the Party deems necessary and
17 prudent.
18
19

20 b) The Parties agree that for each document, thing, or ESI withheld based on an
21 asserted claim of privilege or protection, the asserting party must produce a log pursuant to
22 FRCP 26(b)(5)(a), except as provided in (c) and (d) below. The parties agree to separately
23 identify and log email family members (email and e-mail attachments). The privilege log must
24 contain sufficient information to establish the basis for each of the elements of the asserted
25 privilege or protection for each item withheld, including: 1) Bates Numbers (beginning and
26 end); 2) type (*e.g.*, document or type of ESI); 3) title and purpose; 4) names of all attachments;
27
28

1 5) date created, sent or received; 6) authors, recipients, copy-ees (cc and bcc); and, 7)
2 privilege(s) or protection(s) claimed.

3
4 c) The Parties agree not to produce or describe on a privilege log communications
5 between a party's attorney and any witness required to provide a report under Fed. R. Civ. P.
6 26(a)(2)(B), except that the parties will disclose communications made discoverable by Fed. R.
7 Civ. P. 26(b)(4)(C).

8
9 d) The parties agree not to seek discovery of documents, things, and ESI that they
10 have agreed not to preserve pursuant to paragraphs 3(a) – (c), above. If any discovery request
11 appears to call for the production of documents, things or ESI covered by paragraphs 3(a) – (c),
12 the responding party is not required to search for, produce, or identify such information on a
13 privilege log. However, if a party preserves relevant documents, things, or ESI covered by
14 paragraphs 3 (a) – (c), in order to support a claim or defense in this case, the Party shall
15 produce such information or identify it on a privilege log.

16
17 e) If a Producing Party asserts that information it disclosed is privileged or
18 protected, the Producing Party will notify the Receiving Party and identify all material that it
19 believes contains the privileged or protected information (*e.g.*, by production date and the
20 Bates number(s) or Document ID). This constitutes a written demand for the return of the
21 privileged or protected information.
22

23 If a production contains information that the Receiving Party believes is privileged or
24 protected, the Receiving Party will promptly notify the Producing Party in writing, and provide
25 the information identifying the material it believes is privileged or protected (*e.g.*, production
26 date, Bates number(s) or Document ID (for native files)). Within 14 days after receiving
27
28

1 notification, the Producing Party may make a written request for return of the material. If the
2 Producing Party does not send a written request for return of the material to the Receiving
3 Party within 14 days, the Producing Party waives all claims of privilege or protection as to the
4 material. This waiver is only applicable to the specific material produced and does not operate
5 to waive privilege or protection as to any other documents or information.
6

7 When the Receiving Party receives a written demand for return of material, it will make
8 reasonable, good faith efforts to promptly sequester all material identified by the Producing
9 Party, and then notify the Producing Party whether the information will be returned or
10 destroyed. The Parties agree that the Receiving Party does not need to manually remove or
11 destroy copies on its disaster recovery or backup system before the information will be
12 overwritten in the normal course of operations, so long as access to the system is reasonably
13 limited to information technology or security personnel with a need to access the system.
14

15 If the Receiving Party must destroy or delete production media (e.g., CD) in order to
16 destroy or delete demanded material, the Producing Party will provide a duplicate copy of the
17 production media minus only demanded material within 14 days of its written request for
18 return of the material to the Receiving Party.
19

20 If the Receiving Party intends to challenge the claim of privilege or protection for
21 information demanded under this provision, it will keep one copy of the material in a sealed
22 envelope or a sequestered location while seeking a ruling from the Court.
23

24 **9. MODIFICATION**

25 This Stipulated Order may be modified by a Stipulated Order of the parties or by the
26 Court for good cause shown.
27

1 **IT IS SO STIPULATED**, through Counsel of Record.

2 DATED: August 15, 2017

3 JOHN GORE
Acting Assistant Attorney General
Civil Rights Division

4 SAMEENA SHINA MAJEED
5 Chief

6 /s/ Christopher Belen
7 R. TAMAR HAGLER, Deputy Chief (CA 189441)
8 VARDA HUSSAIN, Acting Special Litigation Counsel
(VA 70132)
9 CHRISTOPHER D. BELEN (VA 78281)
10 ABIGAIL B. MARSHAK (NY Reg. No. 5350053)
11 JUNIS L. BALDON (KY 93045)
12 United States Department of Justice
13 Civil Rights Division
14 950 Pennsylvania Avenue, NW - NWB
15 Washington, DC 20530
16 Phone: (202) 353-1339
17 Facsimile: (202) 514-1116
18 Christopher.Belen@usdoj.gov
19 Abigail.Marshak@usdoj.gov
20 Junis.Baldon@usdoj.gov

21 *Attorneys for the Plaintiff United States of America*

22 DATED: August 15, 2017

23 /s/ Joseph Jaramillo
24 JOSEPH JARAMILLO (SB# 178566)
25 jjaramillo@heraca.org
26 GINA DI GIUSTO (SB# 293252)
27 gdigiusto@heraca.org
28 HOUSING AND ECONOMIC RIGHTS
ADVOCATES
1814 Franklin Street, Ste. 1040
Oakland, CA 94612
Telephone: (510) 271-8443
Facsimile: (650) 392-8255

Attorneys for Intervenor Plaintiffs Eberardo Perez, Roberto Hernandez, Magdalena Galindo, DG, CH, and Housing and Economic Rights Advocates

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: August 15, 2017

/s/ Rebecca Coll
JAMES A. QUADRA, State Bar No. 131084
REBECCA M. COLL, State Bar No. 184468
QUADRA & COLL, LLP
649 Mission Street, 5th Floor
San Francisco, California 94105
Telephone: (415) 426-3502
Facsimile: (415) 795-4530

Attorneys for Defendants Raul Luna and Omar Alcaraz

DATED: August 15, 2017

/s/ Armando Mendez
ARMANDO S. MENDEZ, SBN 203909
1231 8TH STREET #600
MODESTO, CA 95354
(209) 622-0600

Attorney for Defendant Oralia Gutierrez

DATED: August 15, 2017

/s/ David Spieker
DAVID M. SPIEKER SBN 215548
ATTORNEY AT LAW
744 MILBANK DRIVE
MODESTO, CA 95357
TELEPHONE (209) 247-0271
davidspieker3104@yahoo.com

Defendant in propria persona

DATED: August 15, 2017

/s/ Jakrun Sodhi
JAKRUN S. SODHI, SBN: 200851
AMEET S. BIRRING, SBN: 297118
SODHI LAW GROUP
1301 K Street, Suite F
Modesto, CA 95354
Telephone: (209) 900-8200
Facsimile: (209) 900-8205
Jak@sodhilawgroup.com
Ameet@sodhilawgroup.com

Attorneys for Defendant Hortencia Leon

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

IT IS ORDERED that the forgoing Agreement is approved.

Dated: 8/15/17



Honorable Richard Seeborg

UNITED STATES DISTRICT JUDGE