

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

3
4 CRS RECOVERY, INC., a Virginia
5 corporation; and DALE MAYBERRY,

6 Plaintiffs,

7 v.

8 JOHN LAXTON, aka
9 johnlaxton@gmail.com; and
10 NORTHBAY REAL ESTATE, INC.,

11 Defendants.

No. C 06-7093 CW

ORDER REGARDING
DEFENDANT NORTHBAY
REAL ESTATE,
INC.'S MOTION TO
DISMISS

12 _____/

13 On June 12, 2007, this Court set the deadline for hearings on
14 dispositive motions in this case as February 28, 2008. See Docket
15 No. 34. After being extended once by the parties' stipulation,
16 the deadline was extended by Court order to September 4, 2008.
17 Docket Nos. 73, 102. The Clerk issued a notice continuing the
18 hearing to September 18, 2008. Docket No. 147. On September 18,
19 2008, the Court heard the parties' cross-motions for summary
20 judgment and subsequently granted Plaintiffs' motion and denied
21 Defendants' motion. Docket Nos. 168, 170. On appeal, the Ninth
22 Circuit determined that Defendants had raised disputed issues of
23 material fact and reversed in part the Court's grant of summary
24 judgment to Plaintiffs. Docket No. 203.

25 On July 13, 2010, the Court held an initial case management
26 conference following the remand. On December 6, 2011, the Court
27 held a further case management conference and set a final pretrial
28 conference for April 25, 2012 and a jury trial to start May 7,
2012. At neither of those case management conference did the

1 parties request, or the Court grant, an extension of the deadline
2 to hear dispositive motions.

3 On March 20, 2012, Defendant Northbay Real Estate, Inc. filed
4 a motion to dismiss Plaintiffs' claims pursuant to Federal Rule of
5 Civil Procedure 12(b)(1) and noticed its motion for hearing on
6 April 26, 2012, the day after the final pretrial conference is to
7 be held. Defendant has not sought the Court's permission to do so
8 and has not offered good cause to modify the scheduling order
9 under Rule 16(b). See Federal Rule of Civil Procedure 16(b)(4)
10 ("A schedule may be modified only for good cause and with the
11 judge's consent.").

12 Accordingly, within two days of the date of this Order,
13 Northbay Real Estate shall file an administrative motion seeking
14 an extension of the deadline to hear a dispositive motion and
15 demonstrating good cause to do so under Rule 16. Plaintiffs'
16 opposition to Northbay Real Estate's administrative motion, if
17 any, shall be filed within three days thereafter. If Northbay
18 Real Estate fails to comply with the terms of this Order, their
19 motion to dismiss will be denied. The current briefing schedule
20 on the motion to dismiss remains in effect. The hearing on the
21 motion to dismiss shall take place alongside the final pretrial
22 conference on April 25, 2012 at 2:00 p.m.

23 IT IS SO ORDERED.

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25 Dated: 3/23/2012

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28 CLAUDIA WILKEN
United States District Judge