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 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 OAKLAND DIVISION

13 JEAN PHLEGER, an individual,
 14 Plaintiff and Counter-Defendant,
 15 vs.

Case No. C-07-01686 SBA (WDB)

**JOINT STIPULATION AND ORDER CONTINUING
 THE TRIAL DATE AND CERTAIN RELATED
 DATES**

16 COUNTRYWIDE HOME LOANS, INC. (dba
 17 AMERICA'S WHOLESALE LENDER);
 COUNTRYWIDE BANK, N.A.;
 18 RECONTRUST COMPANY, N.A.; FIRST
 NATIONAL MORTGAGE SOURCES, LLC;
 19 GEORGE W. HANNAH II, an individual; and
 DOES 1 through 10, inclusive,

20 Defendants and Counter-
 21 Plaintiffs.

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 23 AND RELATED CROSS-ACTIONS.
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1 WHEREAS plaintiff and counter-defendant Jean Phleger ("Plaintiff"); defendants and
2 counter-plaintiffs Countrywide Home Loans, Inc. and Countrywide Bank, F.S.B., fka
3 Countrywide Bank, N.A. (collectively, "Countrywide"); and third-party defendant Stewart Title of
4 California, Inc. ("Stewart Title") have engaged in discussions concerning the need to continue the
5 trial date.

6 WHEREAS defendants First National Mortgage Sources, LLC and George Hannah, II,
7 which are in the process of settling with Plaintiff, and not oppose continuing the trial and related
8 dates.

9 WHEREAS good cause exists for a continuance of trial because plaintiff's lead trial
10 counsel, Robert R. Moore, suffered serious health complications requiring emergency open-heart
11 surgery and rehabilitation. Because of the nature of the surgery, recuperation and rehabilitation
12 were slow and difficult, and that time, Mr. Moore could not directly participate in preparation of
13 this litigation for trial. Although Mr. Moore is making progress, at present he has not sufficiently
14 recovered to adequately represent the interests of his client at trial. His cardiologist has explained
15 to him that it is expected, given the nature of the surgery, that Mr. Moore's recovery is not yet
16 complete. As a result of Mr. Moore's condition, a number of his cases (trials) have been pushed to
17 the early portion of next year, further frustrating his ability to prepare for trial in this matter.

18 WHEREAS good cause exists for a continuance of trial because the parties have
19 experienced difficulty completing necessary fact witness and expert witness depositions. Many
20 deposition dates have ultimately proven unworkable, and third-party deponents have also required
21 depositions be cancelled or rescheduled. Rescheduling depositions, in turn, has proven difficult
22 because many of the depositions were to take, and have taken, place outside of California,
23 including in Jacksonville, Florida; Cherry Hill, New Jersey; New York, New York; Kansas City,
24 Missouri; and Fort Worth Texas. Locating former employees of defendants also proved difficult
25 and time consuming. Furthermore, expert discovery has also been delayed, with depositions
26 needing to be rescheduled.

27 WHEREAS good cause exists for a continuance of trial because at least one expert is
28 unavailable at the time trial is currently set for. Judi Souza is an important expert retained by

1 Plaintiff to testify concerning the duties of escrow holders and standards and practices within that
 2 industry. She has already submitted an expert report in this action and has been deposed. She is
 3 currently unavailable for the period the case is currently set for trial.

4 WHEREAS good cause exists for a continuance of trial because defendant First National
 5 Mortgage Sources, LLC, recently filed for bankruptcy, replaced its counsel, and commenced
 6 serious settlement negotiations with Plaintiff, which after extensive work resulted in agreement to
 7 a proposed settlement. On April 15, 2008, First National filed for bankruptcy in the United States
 8 Bankruptcy Court for the District of Kansas, Case No. 08-20832, staying this action as to First
 9 National. In June 2008, counsel for plaintiff and defendants First National's and Hannah's new
 10 counsel commenced serious and extensive settlement negotiations, which continued until October
 11 2008, when the parties signed a proposed settlement agreement, and defendant First National
 12 obtained the bankruptcy court's approval and moved this Court for a determination of good faith
 13 settlement.

14 WHEREAS all parties agree to continue the trial date and related dates to those set forth in
 15 the chart below:

<u>ACTIVITY</u>	<u>CURRENT DATE</u>	<u>PROPOSED REVISED DATE</u>
Mandatory Settlement Conference ¹	12/17/08 – 1/09/09	2/25/09 - 3/20/09
Pretrial Preparation Due	1/13/09	3/24/09
Joint Pretrial Statement Due	1/13/09	3/24/09
Trial Brief Due	1/13/09	3/24/09
Proposed Findings of Fact Due	1/13/09	3/24/09
Witness List Due	1/13/09	3/24/09
Designation of Discovery Excerpts Due	1/13/09	3/24/09

27 ¹ The parties have agreed to discuss the possibility of mediation with their respective clients,
 28 and will meet and confer on mediation in lieu of a Mandatory Settlement Conference if
 authority to mediate is given by their respective clients.

1 Dated: November 14, 2008

ALBORG VEILUVA & EPSTEIN LLP

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By: /s/ Daniel P. Beaver

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DANIEL P. BEAVER
Attorneys for Third- Party Defendant Stewart
Title of California, Inc.

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5 Dated: November 14, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

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By: /s/ Patrik Johansson

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PATRIK JOHANSSON
Attorneys for Defendants First National
Mortgage Sources LLC, and George
Hannah, II

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11 *Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding signatures,*
12 *Michael J. Betz hereby attests that concurrence in the filing of this document has been obtained.*

13 PURSUANT TO STIPULATION, IT IS SO ORDERED:

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Dated: _11/18/08

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By:



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HON. SAUNDRA BROWN ARMSTRONG
United States District Judge

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