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9 Attorneys for Defendant EMC MORTGAGE LLC, formerly known as EMC MORTGAGE
 10 CORPORATION

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

13 ARMANDO PLASCENCIA and MELANIA
 14 PLASCENCIA, individually and on behalf of
 15 all others similarly situated,

16 Plaintiffs,

17 v.

18 LENDING 1ST MORTGAGE; LENDING 1ST
 19 MORTGAGE, LLC; EMC MORTGAGE
 20 CORPORATION, and DOES 1 through 10,
 21 inclusive,

22 Defendants.

Case No. 4:07-cv-04485-CW

CLASS ACTION

Hon. Claudia Wilken

FIFTH STIPULATION AND [~~PROPOSED~~] ORDER FOR RELIEF FROM CASE MANAGEMENT ORDER

Crtrm.: 2

Complaint Filed: August 29, 2007
 Trial Date: June 18, 2012

1 WHEREAS on January 25, 2010, the Court entered its Order Revising Case Management
2 Schedule (Dkt. No. 199); and

3 WHEREAS on August 13, 2010, the parties filed, and the Court entered, a Third Stipulation
4 and Order for Relief from Case Management Schedule Pursuant to Local Rule 16-2(d) extending
5 all deadlines because, among other reasons, Defendant Lending 1st needed to produce discovery
6 sufficient for Plaintiffs' counsel to identify absent class members (Dkt. No. 201); and

7
8 WHEREAS in November 2010, counsel for Defendant EMC Mortgage LLC ("EMC") and
9 Plaintiffs began meeting and conferring about EMC's desire to take discovery, including depositions,
10 of absent class members; and

11 WHEREAS on December 13, 2010, the parties filed, and the Court subsequently entered, a
12 Fourth Stipulation and Order for Relief from Case Management Schedule Pursuant to Local Rule
13 16-2(d) so as to enable the Parties to complete residual discovery, complete the meet-and-confer
14 process as to any remaining discovery disputes, and/or present any unresolved discovery dispute for
15 the Court's resolution (Dckt. No. 249); and

16
17 WHEREAS EMC and Plaintiffs were unable to reach an agreement as to whether the
18 discovery of absent class members sought by EMC should occur at all, but they agreed that in no
19 event could such discovery occur until after the class opt-out deadline; and

20
21 WHEREAS the December 15, 2010 Fourth Stipulation and Order for Relief from Case
22 Management Schedule Pursuant to Local Rule 16-2(d) stated Plaintiffs expected to file "a motion,
23 pursuant to Fed. R. Civ. P. 23(c)(2)(B), for this Court's approval of class notice within the next ten
24 days, likely time period for distribution of notice will be 14 days after Court approval, and return of
25 opt-out requests will be approximately 90 days after the class notice is mailed" (*Id.*); and

26 WHEREAS Plaintiffs filed their Motion for Approval of Class Notice on March 15, 2011
27 (Dckt. No. 250); and

28

1 WHEREAS class notice was approved on April 13, 2011, and the class opt-out deadline
2 was set for June 27, 2011 (Dckt. No. 253); and

3 WHEREAS the Fourth Case Management Order also stated "EMC Mortgage Corp. has
4 advised Plaintiffs of its desire to depose a number of absent class members after the expiration of the
5 notice and opt-out period, and Plaintiffs' position is that Defendants should not be permitted to take
6 discovery of absent class members" (Dckt. No. 249); and

7
8 WHEREAS after entry of the Fourth Stipulation and Order for Relief from Case
9 Management Schedule Pursuant to Local Rule 16-2(d) the parties continued to meet and confer
10 regarding whether the absent class discovery sought by EMC should be permitted following the
11 opt-out deadline, and Plaintiffs continued to object to such a request; and

12
13 WHEREAS on June 24, 2011, after the class notice was mailed and near the close of the
14 opt-out period, EMC and Plaintiffs filed a joint discovery dispute letter before Magistrate Judge
15 Spero regarding discovery of absent class members sought by EMC (Dckt. No. 254); and

16
17 WHEREAS on July 29, 2011, Magistrate Judge Spero conducted a telephonic discovery
18 hearing regarding discovery on absent class members, in which he granted EMC's motion in part,
19 and instructed the parties to meet and confer to prepare a joint proposal for limited absent class
20 discovery (Dckt. No. 257); and

21
22 WHEREAS on August 5, 2011, Magistrate Judge Spero conducted a status conference
23 regarding the parties' proposal for absent class discovery (Dckt. No. 260); and

24
25 WHEREAS after the August 5, 2011, status conference, Magistrate Judge Spero entered an
26 order, stating in pertinent part:

- 27
28
1. [EMC's] motion to take limited discovery of absent class members is
Granted.

1 2. On or before September 19, 2011, Defendants may take up fifteen (15)
2 depositions of absent class members of their choosing.

3 3. Defendants shall identify the chosen class members on or before August
4 12, 2011. Defendants shall produce to Plaintiffs' counsel all records relating to the
5 servicing of the loans of the chosen absent class members on or before August 19,
6 2011.

7
8 (Dckt. No. 261); and

9 WHEREAS Plaintiffs continue to object to absent class discovery and do not waive their
10 right to appeal Magistrate Judge Spero's order permitting such discovery; and

11 WHEREAS to complete the absent class member discovery provided in Magistrate Judge
12 Spero's Orders as well as any other outstanding discovery requires extending the current fact
13 discovery deadline and adjusting the other case management deadlines accordingly.

14 THEREFORE, the Parties hereby stipulate to, and request that the Court approve, an
15 extension of the deadlines in the Fourth Stipulation and Order for Relief from Case Management
16 Schedule Pursuant to Local Rule 16-2(d) by extending all deadlines therein by approximately forty-
17 five days, as follows:
18

19

Pretrial or Trial Event	Current Deadline	Requested Deadline
20 Completion of Fact Discovery:	8/19/2011	10/3/2011
21		
22 Disclosure of identities and 23 reports of Plaintiff's expert 24 witnesses:	8/19/2011	10/3/2011
25 Disclosure of identities and 26 reports of Defendants' expert 27 witnesses:	10/20/2011	12/5/2011
28 Disclosure of identities and reports of expert witnesses (Rebuttal):	11/16/2011	1/3/2012

1	Completion of Expert Discovery:	12/19/2011	2/2/2012
2	All case-dispositive motions and FCMC to be heard at 2:00 P.M. on or before:	3/22/2012	5/7/2012
3			
4	Dispositive motions shall be filed by:	2/9/2012	3/26/2012
5			
6	Final Pretrial Conference at 2:00 P.M. on:	6/5/2012	7/24/2012
7	A 5 day Jury Trial will begin at 8:30 A.M. on:	6/18/2012	8/6/2012
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9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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Dated: August 12, 2011

Ericksen, Arbuthnot, Kilduff, Day & Lindstrom, Inc.

By: /s/ J. Thomas Aldrich

J. Thomas Aldrich

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Mortgage LLC*

1 PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED. Case Dispositive Motion
2 and FCMC will be held on May 8, 2012 at 2:00 p.m. Pretrial will be held on August 6, 2012 at
2:00 p.m. Jury Trial (5 day) will begin on August 27, 2012 at 8:30 a.m.

3 Date: **8/18/2011**


4 CLAUDIA WILKEN
5 UNITED STATES DISTRICT JUDGE

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