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6 **CO-LEAD CLASS COUNSEL**



10 **IN THE UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **SAN JOSE DIVISION**

14 FELTON A. SPEARS, JR. and
 15 SIDNEY SCHOLL, on behalf of themselves and
 all others similarly situated,

16 Plaintiffs,

17 vs.

18 FIRST AMERICAN EAPPRAISEIT
 (a/k/a eAppraiseIT, LLC),
 19 a Delaware limited liability company,

20 Defendant.

) Case No. 5-08-CV-00868 (RMW)
) **STIPULATION AND [] ORDER:**
) **(1) EXTENDING THE NUMBER OF**
) **DEPOSITIONS PER SIDE TO 25; and**
) **(2) EXTENDING THE REMAINING**
) **DEADLINES IN THE ACTION BY FOUR**
) **(4) MONTHS**

1 Plaintiffs Felton A. Spears, Jr. and Sidney Scholl (collectively “Plaintiffs”), and
2 Defendant eAppraiseIT, LLC (“EA”), by and through their respective counsel of
3 record and pursuant to Local Rules 6-2 and 7-12, enter into the following stipulation
4 for an order (1) granting leave of Court from Fed. R. Civ. P. 30(a)(2)(A)(i) to allow
5 each side to take up to twenty-five (25) depositions in this action; and (2) to extend the
6 remaining deadlines in the action by four (4) months pursuant to the schedule detailed
7 below.

8 WHEREAS, on April 25, 2012, the Court Granted Plaintiffs’ Motion for Class
9 Certification of Plaintiffs’ single remaining claim under RESPA, 12 U.S.C. § 2607(a),
10 certifying a Class of “All consumers in California and throughout the United States
11 who, on or after June 1, 2006, received home loans from Washington Mutual Bank,
12 FA in connection with appraisals that were obtained through eAppraiseIT.” Dkt. No.
13 249, p. 12.

14 WHEREAS, on August 1, 2012, the Court entered a Revised Amended Order
15 Regarding Class Notice, Appointment of Lead Counsel, and Pre-Trial Scheduling
16 setting forth deadlines for distribution of Class Notice, merits discovery cutoff, expert
17 reports, supplemental and rebuttal expert reports, dispositive motions, mediation and
18 trial. Dkt. No. 260, p. 3. There has been no prior extension of any of the deadlines set
19 forth in this Order.

20 WHEREAS, the Parties have been actively conducting discovery in this action
21 and have identified dozens of fact witnesses with potentially relevant information that
22 the Parties would like to depose prior to a trial in this action. These fact witnesses
23 include dozens of individuals who are not currently affiliated with either Party,
24 including former employees of Defendant, and former employees of Washington
25 Mutual Bank, F.A. (“WaMu”), an alleged co-conspirator in this action.

26 WHEREAS, good cause exists for leave from Fed. R. Civ. P. 30’s limit of ten
27 (10) depositions per side given the size of this case, the number and size of the parties
28 and non-parties with potentially relevant information, and the number of individuals

1 with potentially relevant information. Indeed, in the Order certifying the Class, the
2 Court acknowledged the significant “volume and complexity of the evidence
3 required” for trial of this class action. Dkt. No. 249, p. 11.

4 WHEREAS, based upon discovery to date, the Parties believe 25 fact witness
5 depositions per side (with cross-notices not counting against that limit), plus the
6 depositions of any proffered experts, will allow them to properly prepare their cases
7 for trial, especially given that the Parties anticipate their requested fact witnesses will
8 overlap and the total number of fact witness depositions in this action will be less than
9 50.

10 WHEREAS, given that most of the fact witnesses to be deposed are not
11 affiliated with either Party, the Parties will have to issue subpoenas for their testimony
12 which, due to coordinating schedules, could take several months to complete.

13 WHEREAS, the Parties have also each issued subpoenas to J.P.Morgan Chase,
14 N.A. (“Chase”). Chase is the entity that purchased all of the Class members’ loans
15 from the Federal Deposit Insurance Company (“FDIC”) after WaMu went into
16 receivership. The Parties each seek documents relating to over 200,000 putative Class
17 members’ loans. While the Parties have been working with Chase for several months
18 regarding the production of the information requested, Chase has not yet produced the
19 documents the Parties have requested due to the alleged number of records involved
20 and alleged logistical issues.

21 WHEREAS, Plaintiffs have issued subpoenas to additional third parties for
22 documents relevant to the issues in this action, such as the FDIC and Office of the
23 Comptroller of the Currency, and are working with those third parties for the
24 production of those documents.

25 WHEREAS, Plaintiffs have requested additional documents from EA that EA is
26 in the process of preparing to produce. These documents include documents it
27 received from the FDIC in another action between those entities that the FDIC has
28 designated as being “confidential.” Due to the “confidential” designation of the

1 documents in the other action, EA is working with the FDIC for consent to allow
2 production of the materials in Plaintiffs' case which may involve a modification to the
3 Stipulated Protective Order (Dkt. No. 177) entered in this action to protect the privacy
4 of borrowers should the FDIC deem it necessary.

5 WHEREAS, in addition to the above outstanding discovery issues, on
6 November 2, 2012, EA filed a Motion for Leave to File a Third-Party Complaint
7 against the FDIC which the Court has not yet resolved. Dkt. No. 266.

8 WHEREAS, the Parties cross-moved for judgment on the pleadings (Dkt. Nos.
9 283 and 286) to narrow the issues at trial, and those motions are currently scheduled
10 for oral argument on March 29, 2013.

11 WHEREAS, until the Court resolves EA's Motion for Leave to File a Third-
12 Party Complaint, and the Parties' cross-motions for judgment on the pleadings, there
13 are unresolved issues as to the parties in the case and the scope of the Parties' claims.

14 WHEREAS, given the number of depositions to be completed, the production
15 of documents from and through third parties to be completed, and the unresolved
16 issues regarding the parties and the claims at issue for trial, good cause exists to
17 extend the current deadlines by four (4) months to complete discovery and prepare
18 this action for trial.

19 NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, IT IS
20 HEREBY STIPULATED by and between the parties, that:

21 1. Plaintiffs and EA each may take up to twenty-five (25) fact witness
22 depositions in this action, and the deposition of any proffered expert;

23 2. The pending deadlines for merits discovery cutoff, expert reports,
24 supplemental and rebuttal expert reports, dispositive motions, other motions, pretrial
25 conference, pre-trial briefs and trial date are extended by four (4) months pursuant to
26 the below schedule:
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28

1	<u>Event</u>	<u>Prior Deadline</u>	<u>New Deadline</u>
2	Merits discovery cutoff	May 13, 2013	September 13, 2013
3	Expert reports	June 12, 2013	October 14, 2013
4	Supplemental and rebuttal expert reports	November 11, 2013	March 11, 2014
5	Expert discovery cutoff (including any	December 30, 2013	April 30, 2014
6	discovery relating to or arising from Plaintiffs' aggregate inflation analysis)		
7	Mediation	January 29, 2014	May 29, 2014
8	Dispositive motion cutoff	February 12, 2014	June 1

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Ronald M. Whyte