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Attorneys for Defendant  
 FEDERAL DEPOSIT INSURANCE  
 CORPORATION

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

HENRY BOTELHO, an individual,  
  
 Plaintiff,  
  
 vs.  
  
 MORTGAGEIT, INC., a New York  
 corporation; INDYMAC BANK, F.S.B.;  
 and DOES 1-100, Inclusive,  
  
 Defendants.

Case No. 4:08-cv-04316

STIPULATION TO ALLOW FDIC AS  
 CONSERVATOR TO INTERVENE  
 AND BE SUBSTITUTED FOR  
 INDYMAC BANK F.S.B. AND FOR  
 STAY OF PROCEEDINGS; [Proposed]  
 ORDER THEREON

WHEREAS On July 11, 2008, IndyMac Bank, F.S.B. was closed by the Office of Thrift Supervision and the Federal Deposit Insurance Corporation ("FDIC") was appointed as receiver (the "Receiver"). On the same date, a new institution, IndyMac Federal Bank F.S.B. ("IndyMac Federal") was chartered and all of the insured deposits and substantially all the assets of IndyMac, including this litigation, were transferred to IndyMac Federal. IndyMac Federal was then placed into conservatorship, and the FDIC was appointed as conservator (the "Conservator");

WHEREAS the Conservator stands in the shoes of IndyMac to perform all functions of the institution, in the name of the institution, including to defending this action;

Case No. 4:08-cv-04316  
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WHEREAS in order to protect its interest the Conservator seeks to intervene pursuant to FRCP 24(a) and substitute itself in the place and stead of IndyMac pursuant to FRCP 25(c);

WHEREAS FRCP 24(a) permits a non party to intervene in an action when the non party claims an interest relating to the property or transaction that is the subject of the action and disposition of this action without intervention would impair the Conservator's ability to protect its interest in IndyMac;

WHEREAS FRCP 25(c) provides that when there has been a transfer of interest from a party to the litigation to a non party the action the court may substitute the non party in the action;


WHEREAS 12 USC § 1821(d)(12)(A)(i) provides that the Conservator may request a 45 day stay of any civil action or legal proceeding to which an insured depository institution has become a party;

WHEREAS 12 USC § 1821 (d)(12)(B) provides that upon receipt of a request by any receiver pursuant to 12 USC § 1821(d)(12)(A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties;

WHEREAS, the parties hereto, stipulate between themselves that the Conservator be given leave to intervene in this action and substitute itself for IndyMac; and that this action be stayed for 45 days from the date of this Order to allow the Conservator to investigate the claims of Plaintiff.

Dated: 9/29/08

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
JOSHUA R. MANDELL

By:   
JOSHUA R. MANDELL  
Attorneys for Defendant  
FEDERAL DEPOSIT INSURANCE  
CORPORATION

Dated: Sept 29, 2008

JENKINS MULLIGAN & GABRIEL  
LLP  
TOM JENKINS  
DAN MULLIGAN

By: [Signature]  
DAN MULLIGAN  
Attorneys for Plaintiff  
HENRY BOTELHO

Dated: \_\_\_\_\_

REED SMITH LLP  
LORENZO EMILIO GASPARETTI  
KAREN A. BRAJE  
KRISTINE HUAJEAN CHEN

By: \_\_\_\_\_  
LORENZO EMILIO GASPARETTI  
Attorneys for Defendant  
MORTGAGEIT, INC.

IT IS ORDERED that:

1. The FDIC as conservator for IndyMac Federal Bank F.S.B. is granted leave to intervene as of right in this matter and to be substituted in the place and stead of IndyMac Bank, F.S.B.

2. All proceedings against all parties in this matter shall be hereby stayed for 45 days from the date of entry of this order, \_\_\_\_\_, 2008.

Dated: \_\_\_\_\_

United States District Court Judge

Dated: \_\_\_\_\_

JENKINS MULLIGAN & GABRIEL  
LLP  
TOM JENKINS  
DAN MULLIGAN

By: \_\_\_\_\_  
DAN MULLIGAN  
Attorneys for Plaintiff  
HENRY BOTELHO

Dated: September 29, 2008

REED SMITH LLP  
LORENZO EMILIO GASPARETTI  
KAREN A. BRAJE  
KRISTINE HUAJEAN CHEN

By: *Karen A. Braje*  
LORENZO EMILIO GASPARETTI  
Attorneys for Defendant *Karen A. Braje*  
MORTGAGETT, INC.

IT IS ORDERED that:

1. The FDIC as conservator for IndyMac Federal Bank F.S.B. is granted leave to intervene as of right in this matter and to be substituted in the place and stead of IndyMac Bank, F.S.B.
2. All proceedings against all parties in this matter shall be hereby stayed for 45 days from the date of entry of this order,

Dated: \_\_\_\_\_  
10/1/08

*Claudia Witt* 2008  
United States District Court Judge