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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ZARAH KIMBLE, SEHER BASAK, SARAH
SAKINAH GROZA O'LOUGHLIN, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

SPECIALIZED LOAN SERVICING, LLC,

Defendant.

Case No.: 16cv2519-GPC (BLM)

**ORDER REGARDING DEFENDANT'S
MOTION FOR PROTECTIVE ORDER
[ECF No. 58];**

**ORDER REGARDING PLAINTIFF'S
MOTION TO COMPEL PRODUCTION OF
DOCUMENTS AND RESPONSES TO
INTERROGATORIES [ECF No. 59]**

On March 6, 2018 the parties called the court regarding a discovery dispute. The court issued a briefing schedule, and the parties timely filed their respective motions [ECF Nos. 58, 59], oppositions [ECF Nos. 64, 67], and replies [ECF Nos. 68, 69]. For the reasons set forth below, Plaintiffs' Motion to Compel is **GRANTED** and Defendant's Motion for a Protective Order is **DENIED**.

I. FACTUAL BACKGROUND

Plaintiff Margarett Smith ("Plaintiff" or "Smith") filed a purported first amended class action complaint against Defendant Specialized Loan Servicing, LLC ("Defendant" or "SLS") for alleged violations of Regulation X of the Real Estate Settlement Procedures Act ("RESPA"), 12 C.F.R. § 1024.41; and California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code 17200 *et seq.* ECF No. 17. Prior to the filing of the FAC, Smith died on April 18, 2017. *Id.* at ¶ 8. On September 13, 2017, the Court granted movants Zarah Kimble, Seher Basak, and Sarah Sakinah Groza O'Loughlin's motion to substitute in as plaintiffs. ECF No. 30. A second

1 amended class action complaint was filed on September 21, 2017. ECF No. 32. Plaintiffs seek
2 to represent the following classes: “(1) Nationwide Class: All persons in the United States that
3 submitted a loss mitigation application to SLS on or after January 10, 2014; (2) California
4 Class: All California residents that submitted a loss mitigation application to SLS on or after
5 January 10, 2014.” ECF Nos. 32 at 37. On March 15, 2018, Plaintiffs filed a motion to
6 withdraw as named plaintiffs and substitute Nick Nikki as the named plaintiff. ECF No. 63. On
7 March 16, 2018, the District Judge issued a briefing schedule for the pending motion to
8 withdraw and scheduled a hearing on April 20, 2018 at 1:30 p.m. ECF No. 66.

9 **II. LEGAL STANDARD**

10 The scope of discovery under the Federal Rules of Civil Procedure is defined as follows:

11 Parties may obtain discovery regarding any nonprivileged matter
12 that is relevant to any party’s claim or defense and proportional to
13 the needs of the case, considering the importance of the issues at
14 stake in the action, the amount in controversy, the parties’ relative
15 access to relevant information, the parties’ resources, the
16 importance of the discovery in resolving the issues, and whether
the burden or expense of the proposed discovery outweighs its
likely benefit. Information within this scope of discovery need not
be admissible in evidence to be discoverable.

17 Fed. R. Civ. P. 26(b)(1).

18 District courts have broad discretion to determine relevancy for discovery purposes.
19 See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). District courts also have broad
20 discretion to limit discovery to prevent its abuse. See Fed. R. Civ. P. 26(b)(2) (instructing that
21 courts must limit discovery where the party seeking the discovery “has had ample opportunity
22 to obtain the information by discovery in the action” or where the proposed discovery is
23 “unreasonably cumulative or duplicative,” “obtain[able] from some other source that is more
24 convenient, less burdensome, or less expensive,” or where it “is outside the scope permitted
25 by Rule 26(b)(1)”).

26 **III. DISCUSSION**

27 **A. Plaintiffs’ Motion to Compel**

28 Plaintiffs move to compel Defendant to produce all documents and information in

1 response to Plaintiffs' First Set of Requests for Production and First Set of Interrogatories. ECF
2 No. 59 (hereinafter "Pl.'s MTC"). Plaintiffs explain that Defendant "has refused to produce any
3 of the documents or information that Plaintiffs require in order to move for class certification."
4 Id. at 8. Plaintiffs state that "SLS has not even responded to a single interrogatory" and [t]he
5 only documents [Defendant] has produced are the documents related to [the named] Plaintiffs
6 and an incomplete set of policies and procedures." Id. Plaintiffs contend that their "requests
7 seek information to determine, among other things, the size, scope, and membership of the
8 class, as well as SLS's conduct towards the class and damages suffered by class members." Id.
9 at 9.

10 Specifically, Plaintiffs seek a court order compelling Defendant to: (1) provide electronic
11 data in response to RFP Nos. 1, 2, 3, 8, 9 10, 13, 26 and Interrogatory No. 4 [Pl.'s MTC at 15-
12 22]; (2) produce a witness for a 30(b)(6) deposition regarding its databases [Pl.'s MTC at 22];
13 (3) produce documents and data necessary for class-wide discovery [Pl.'s MTC at 23-26]; (4)
14 describe how it processes loan modification applications in response to Interrogatory Nos. 5-8
15 [Pl.'s MTC at 26-27]; (5) produce internal compliance documents in response to RFP No. 4; (6)
16 produce training materials in response to RFP No. 28 [Pl.'s MTC at 29]; and (7) produce
17 communications with the CFPB in response to RFP No. 3 [Pl.'s MTC at 29].

18 Defendant responds that "Plaintiffs are not entitled to class discovery at this stage of
19 the case." ECF No. 64 at 12 (hereinafter "Def.'s Oppo."). Defendant argues that "Plaintiffs'
20 requests are disproportionate to the needs of this case, especially when considering that their
21 standing to maintain their individual claims, much less their class claims,¹ is untenable at
22 best." Id. at 14. Defendant further argues that Plaintiffs' discovery requests are objectionable
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25 ¹ Defendant argues that "the protections of Regulation X apply only to loans secured by
26 property that is a borrower's principal residence." Def.'s Oppo. at 5. Defendant contends that
27 "[s]ince the outset of this case, SLS has questioned the standing of the original plaintiff,
28 Margarette Smith ("Smith") (and, by extension, Plaintiffs, as her purported successors), to
maintain this action." Id. Defendant argues that "[t]o the extent Plaintiffs lack standing under
Regulation X, they are not adequate class representatives." Def.'s Oppo. at 14 n.10 (internal
citations omitted).

1 on their face. Id. at 14-15. For example, Defendant argues that the requests are “worded too
2 broadly” and “they contain no temporal limitation whatsoever or seek documents for an
3 excessive time period.” Id. at 15. Finally, Defendant argues that Plaintiffs’ deposition notice,
4 which seeks to depose an SLS employee on class-related issues, is “disproportionate to the
5 needs of this case to the same extent as the Discovery Requests.” Id. at 16.

6 Plaintiffs argue in their reply that Defendant’s argument regarding Plaintiffs’ standing
7 lacks merit “because SLS has never actually proven that Plaintiffs lacked standing.” ECF No. 68
8 at 7 (hereinafter “Pl.’s Reply”). Plaintiffs concede that as a result of new documents and
9 information Defendant recently submitted, the current named Plaintiffs do not have the
10 required personal knowledge of relevant events as required under the applicable statute;
11 accordingly, Plaintiffs seek to withdraw and substitute another named plaintiff, Nick Nikki. Id.
12 (citing ECF No. 63 (hereinafter “Pl.’s Mot. to Withdraw and Substitute”). Plaintiffs argue that
13 Defendant’s argument against the current named Plaintiffs are now moot. Pl.’s Reply at 7.

14 The scope of pre-class certification discovery lies within the sound discretion of the trial
15 court. Coleman v. Jenny Craig, Inc., 2013 WL 2896884, at * 4 (S.D. Cal. June 12, 2013) (citing
16 Kamm v. Cal. City Dev. Co., 509 F.2d 205 (9th Cir.1975)). In seeking discovery before class
17 certification, Plaintiffs bear the burden of making a prima facie showing that the Federal Rule
18 of Civil Procedure 23 requirements are satisfied or that discovery is likely to substantiate the
19 class allegations (Mantolete Burden). Salgado v. O’Lakes, 2014 WL 7272784, at * 4 (E.D. Cal.
20 Dec. 18, 2014); see also Coleman, 2013 WL 2896884, at * 4 (citing Mantolete v. Bolger, 767
21 F.2d 1416, 1424 (9th Cir. 1985) (“Although in some cases a district court should allow
22 discovery to aid the determination of whether a class action is maintainable, the plaintiff bears
23 the burden of advancing a prima facie showing that the class action requirements of Fed. R.
24 Civ. P. 23 are satisfied or that discovery is likely to produce substantiation of the class
25 allegations. Absent such a showing, a trial court’s refusal to allow class discovery is not an
26 abuse of discretion.”)).

27 Federal Rule of Civil Procedure 23(a) permits a class action to proceed where

28 (1) the class is so numerous that joinder of all members is

1 impracticable; (2) there are questions of law or fact common to the
2 class; (3) the claims or defenses of the representative parties are
3 typical of the claims or defenses of the class; and (4) the
4 representative parties will fairly and adequately protect the
5 interests of the class.

6 Additionally, a class action will only be certified if

7 (1) there is a risk of substantial prejudice from separate actions; or
8 (2) declaratory or injunctive relief benefitting the class as a whole
9 would be appropriate; or (3) “the questions of law and fact
10 common to class members predominate over any questions
11 affecting only individual members and ... a class action is superior
12 to other available methods for fairly and efficiently adjudicating the
13 controversy.

14 Coleman, 2013 WL 2896884, at *4. “In determining whether to grant discovery the court
15 must consider its need, the time required, and the probability of discovery resolving any
16 factual issue necessary for the determination” of whether a class action is maintainable. Id.
17 (citing Kamm, 509 F.2d at 210) (stating that “[t]he propriety of a class action cannot be
18 determined in some cases without discovery, as, for example, where discovery is necessary to
19 determine the existence of a class or set of subclasses. To deny discovery in a case of that
20 nature would be an abuse of discretion. Where the necessary factual issues may be resolved
21 without discovery, it is not required.”).

22 The Court has carefully reviewed and considered all of the briefing, supporting
23 declarations and exhibits. The Court will address each category of disputed discovery requests
24 below.

25 **1. Plaintiffs Seek Electronic Data in Response to RFP Nos. 1, 2, 3, 8, 9, 10,**
26 **13, 26 and Interrogatory No. 4.**

27 Defendant’s primary objection to all of Plaintiffs’ discovery requests is Plaintiffs’ alleged
28 lack of standing. ECF No. 59-1 at 35, 36, 37, 41-42, 44, and 55 (hereinafter Decl. and
Supporting Exhibits in support of Pl.’s MTC”); see also Def.’s Oppo. at 12, 14. Defendant
argues that “[Plaintiffs’ discovery requests] are not proportional to the needs of this case”
under Rule 26 because the applicable statute “does not apply to Borrower (and, by extension,
Plaintiffs) insofar as the subject property was not her principal residence.” Decl. and

1 Supporting Exhibits in support of Pl.'s MTC at 41-42; see also Def.'s Oppo at 12, 14 ("Plaintiffs'
2 requests are disproportionate to the needs of this case, especially when considering that their
3 standing to maintain their individual claims, much less their class claims, is untenable at
4 best.").

5 Plaintiffs respond that Defendant's opposition ignores that Plaintiffs have sought to
6 substitute an adequate class representative. Pl.'s Reply at 5. Plaintiffs argue that Defendant's
7 proportionality arguments, which are premised on the position that the named plaintiffs are
8 not adequate class representatives, "completely ignores that another class member subject to
9 *the same misconduct* by SLS, Mr. Nikki, is ready and willing to step forward as class plaintiff."
10 Id. 5-7 (emphasis in original). Plaintiffs further argue in their reply that "disallowing class
11 discovery would cause massive delay and would be highly prejudicial to Plaintiffs," particularly
12 in light of the upcoming deadline to file a motion for class certification on May 7, 2018. Id. at
13 5-6.

14 The Court finds Defendant's refusal to provide discovery on this basis to be without
15 merit and an inappropriate effort to stymie Plaintiffs' efforts to comply with the Court's
16 scheduling order. Defendant provides no legal authority for its position that a standing
17 objection relieves Defendant of its discovery obligations. As Plaintiffs point out, Defendant's
18 "merits objections do not relieve it of its burden to produce relevant, discoverable materials –
19 particularly where discovery has not been stayed." Pl.'s MTC at 30. Moreover, Defendant
20 continues to refuse to provide discovery even though it has not filed a motion challenging
21 Plaintiffs' standing, Plaintiffs have filed a motion to substitute in a new named Plaintiff, and
22 this Court has not bifurcated or stayed discovery. Defendant also fails to provide an
23 individualized analysis of why a specific discovery request is not proportional given the facts of
24 this case and, instead, merely repeats its claim that it will not produce any discovery because
25 it believes the named Plaintiffs lack standing. Defendant's objection to Plaintiffs' discovery
26 requests on the basis that they are not proportional due to Plaintiffs' alleged lack of standing is
27 without legal or factual support and accordingly, the Court **OVERRULES** this objection.

28 Defendant provides minimal individualized challenges to Plaintiffs' remaining discovery

1 requests, but the Court will address the requests and objections below.

2 **a. RFP Nos. 8-10 and Interrogatory No. 4**

3 RFP Nos. 8 and 10 seek relevant documents and data stored in the electronic databases
4 that SLS uses to service mortgages and process loss mitigation applications. ECF No. 59-1 at
5 15 (hereinafter “Decl. and Supporting Exhibits in support of Pl.’s MTC”). RFP No. 9 seeks
6 database dictionaries for all such databases. Id. Interrogatory No. 4 requests that SLS describe
7 each database, program, software or system used to process loan modification applications
8 submitted to SLS from October 7, 2012 through the present. Id. at 28. Plaintiffs request that
9 the documents responsive to these requests be produced in the format in which they are kept
10 in the ordinary course of business (not hard copy, pdf, or tiff). Id. at 16. Plaintiffs argue that
11 “[t]he core issue in this case is whether SLS complied with RESPA, and the data contained in
12 SLS’s loan servicing databases will reveal—and is necessary to prove—whether and to what
13 extent SLS complied with 12 C.F.R. §1024.41.” Pl.’s MTC at 16. Plaintiffs assert that these
14 requests are also necessary to prove the elements of Rule 23 at class certification, including
15 “the number of borrowers in the putative class (numerosity), SLS’s uniform treatment of the
16 class members (commonality), the predominance of the class wide RESPA violations over
17 individual issues (predominance), and the similarity of the class treatment to Plaintiffs’
18 individual claims (typicality).” Id. at 17. Plaintiffs further argue that these requests are related
19 to Plaintiffs’ burden of showing damages on a class wide basis, and contend Plaintiffs will be
20 prejudiced if the requested discovery is not produced. Id. at 17-18.

21 In addition to its proportionality objection based on Plaintiffs’ standing, which the Court
22 has denied, Defendant objected to these requests on the basis that they are “overly-broad in
23 that [they] contain no temporal limitation and describe[] a scope of documents using omnibus
24 terms.” Decl. and Supporting Exhibits in support of Pl.’s MTC at 41-42. Finally, Defendant
25 objected to the requests to the extent they seek “privileged documents.” Id.

26 Plaintiffs argue that Defendant’s objections to the temporal scope of the requests fail
27 because Plaintiffs have agreed to negotiate the temporal scope of the requests. Decl. and
28

1 Supporting Exhibits in support of Pl.'s MTC at 78 (letter to SLS from Plaintiffs' counsel noting
2 requests for which Plaintiffs are willing to limit the temporal scope). For example, Plaintiffs
3 agreed "to limit the scope of RFP Nos. 8 and 10 to documents, data, and information dating to
4 October 7, 2012 (reflecting the statute of limitations under the UCL)." Id. Notably, Defendant
5 does not address Plaintiffs' agreement to limit the scope of these requests in the Opposition or
6 supporting declaration. See Def.'s Oppo and Declaration in support of Oppo. of Brian A. Paino.
7 Defendant also does not provide any guidance or legal authority regarding an appropriate time
8 frame for each discovery response.² Id.

9 Plaintiffs' Motion to Compel further responses to RFP Nos. 8-10 and Interrogatory No. 4
10 is **GRANTED**. First, contrary to the requirements of Fed. R. Civ. P. 34(b)(2)(C), Defendant
11 has not identified which responsive materials are being withheld on the basis of its objections
12 and has not described the responsive materials that it will produce. Defendant also has not
13 complied with Fed. R. Civ. P. 34(b)(2)(B) by producing the non-objectionable responsive
14 documents in the required time frame. Second, to the extent that Defendant is withholding
15 documents based upon concerns regarding the personal and private information of third
16 parties, the withholding is improper as a protective order governing the disclosure of
17 confidential information has been entered by this Court [see ECF No. 44]. If the withholding is
18 based upon a privilege, than Defendant must provide Plaintiff with a privilege log. Third,
19 Defendant does not provide a response to the temporal limitations proposed by Plaintiffs and
20 the single argument articulated by Defendant is incomplete and not tied to any specific
21 discovery request [see supra n. 2 and Oppo. at 11] so the Court accepts Plaintiffs' dates.
22 Fourth, Defendant also fails to tie its objection to Plaintiffs' use of omnibus terms to any
23 specific discovery requests and fails to articulate why the terms prevent Defendant from

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25 ² Defendant sets forth an argument that Plaintiff's unfair competition law claim is premised on
26 violations of 12 C.F.R. § 1024.41, which did not go into effect until January 10, 2014, so any
27 conduct prior to January 10, 2014 is irrelevant. Oppo. at 15. However, Defendant does not
28 tie this argument to a specific discovery request or requests. Defendant also does not discuss
the relevant time frame for any of Plaintiffs' other legal claims. Accordingly, the Court will
utilize the dates proposed by Plaintiffs.

1 producing any responsive documents. While terms such as “related to” or “reflecting” may
2 render a request unreasonably overbroad, Defendant has not presented any argument
3 supporting such a finding as to any specific request in this case so the Court overrules this
4 objection. See e.g. S.D. Cal. Civ. R. 7.1(f)(3)(c) (“[t]he opposition must contain a brief and
5 complete statement of all reasons in opposition to the position taken by the movant, an
6 answering memorandum of points and authorities, and copies of all documentary evidence
7 upon which the party in opposition relies”); see also See Montgomery v. Wal-Mart Stores, Inc.,
8 2013 U.S. Dist. LEXIS 133754, * 25-26 (S.D. Cal. July 17, 2015) (held that a document request
9 “seek[ing] production of all deposition transcripts and exhibits from other case(s) or claim(s)
10 related to the incident” was not overbroad because it was “narrowly tailored.”) Finally, the
11 Court has not bifurcated discovery so Defendant’s argument that the requested discovery must
12 wait until after the class certification motion is decided, fails. Defendant is **ORDERED** to
13 produce additional responses to RFP Nos. 8-10 and Interrogatory No. 4 (using the temporal
14 limitations proposed by Plaintiffs) on or before **April 20, 2018**.

15 In their moving papers, Plaintiffs propose using the sampling methodology³ set forth in
16 Ms. Persinger’s January 31, 2018 letter, rather than requiring Defendant to analyze and
17 produce all of its loan data. Decl. and Supporting Exhibits in support of Pl.’s MTC at 111.
18 Defendant fails to address this suggestion in its opposition. See Oppo. Plaintiffs’ sampling
19 proposal appears reasonable and given Defendant’s lack of opposition, the Court **ORDERS**

20
21 ³ Plaintiffs proposed that, rather than conduct an analysis of all loan data possessed by SLS,
22 the parties utilize a sampling method. Persinger Decl., ¶¶ 17-18. Plaintiffs proposed sampling
is summarized below:

- 23 1. SLS will provide a spreadsheet of loans from January 1, 2014 to the present for which
24 the borrower submitted a loan modification application.
- 25 2. Plaintiffs will provide the spreadsheet to their statistics expert, Dr. Abraham J. Wyner.
26 Dr. Wyner will produce a statistically robust sample of loans.
- 27 3. Plaintiffs will provide the sample to SLS, along with an explanation of Dr. Wyner’s
28 methodology.
4. SLS will then provide the complete electronic loan records for the sample, as those
records are maintained in the ordinary course of business.

See Persinger Decl., ¶¶ 17-18.

1 Defendant to produce responsive information and documents consistent with Plaintiffs'
2 sampling proposal for the disputed requests identified by Plaintiffs.

3 **b. RFP Nos. 1-3, 13 and 26**

4 RFP Nos. 1, 2, 3, 13 and 26 seek documents, including internal documents, related to
5 SLS's compliance or non-compliance with RESPA's loss mitigation procedures, including but not
6 limited to training materials and relevant communications with the Consumer Financial
7 Protection Bureau. Decl. and Supporting Exhibits in support of Pl.'s MTC at 14, 16, 26. In
8 addition to the proportionality objection, which the Court has denied, Defendant objected to
9 these requests on the grounds that they are "overly-broad in that [they] contain no temporal
10 limitation and describe[] a scope of documents using omnibus terms." Decl. and Supporting
11 Exhibits in support of Pl.'s MTC at 35, 36, 37, 44, and 55. Defendant also objected to the
12 requests to the extent they seek "privileged documents." Id. With respect to RFP Nos. 1, 2,
13 and 13, Defendant agreed to produce, subject to its objections, "all relevant, non-privileged
14 documents in its possession that are responsive to this request." Id. at 35-36. With respect to
15 RFP Nos. 3 and 26, Defendant failed to provide any specific objections other than overbreadth.
16 Decl. and Supporting Exhibits in support of Pl.'s MTC at 44, and 55.

17 Plaintiffs argue that these documents are relevant to Plaintiffs' motion for class
18 certification, which will "rest on the ability to show through common evidence that SLS did not
19 make a reasonable effort to comply with RESPA in 2013 during the grace period before RESPA
20 became effective in 2014, as well as after it became effective." Pl.'s MTC at 21. Plaintiffs
21 contend that the requested discovery is "proportional to the needs of this case, and SLS
22 should be ordered to meet and confer to develop search terms and then to produce
23 electronically stored information in such a manner that Plaintiffs can search it. . ." Id. (internal
24 citation omitted). Plaintiffs agree to limit the scope of RFP No. 26 to correspondence from
25 January 10, 2014 to the present. Id. at 81-83. Defendant's Opposition fails to address or
26 expand on its basis for withholding the requested discovery and fails to address Plaintiff's
27 proposed temporal limitation or to propose a more appropriate limitation. See Def.'s Oppo..
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1 For the reasons set forth above, the Court finds that the requested documents are
2 relevant at this stage, Defendant's general objections are inappropriate and without support,
3 and Defendant's refusal to provide any responsive discovery is improper and without merit.
4 Plaintiffs' Motion to Compel further responses to RFP Nos. 1, 2, 3 and 13 and 26 is **GRANTED**,
5 adding the temporal limitations suggested by Plaintiffs, and Defendant is **ORDERED** to
6 produce responsive documents to RFP Nos. 1, 2, 3, 13 and 26 on or before **April 20, 2018**.
7 For electronically stored information (ESI) responsive to these requests, the Court **ORDERS**
8 Defendant to meet and confer with Plaintiffs and agree on search terms on or before **April**
9 **13, 2018**.

10 **2. Plaintiffs Request a Witness for a 30(b)(6) Deposition Regarding**
11 **Defendant's Databases.**

12 Plaintiffs move to compel the testimony of a 30(b)(6) witness knowledgeable about
13 "electronic databases, systems, and software used by [Defendant] to service mortgages,
14 including, but not limited to, any activities relating to RESPA, foreclosure, loss mitigation
15 applications, or compliance." Pl.'s MTC at 22; see also Decl. and Supporting Exhibits in
16 support of Pl.'s MTC at 87-89. Plaintiffs contend that this is necessary "to understand the data
17 that [Defendant] will eventually need to provide from its databases, and to confirm that the
18 production is complete and includes data from *all* relevant platforms and databases." Pl.'s
19 MTC at 22. Plaintiffs also claim that access to the data in Defendant's databases "is essential
20 for Plaintiffs to carry their burden at class certification and prove the merits of their case." Id.
21 at 23. Plaintiffs claim they served Defendant with notice of the deposition on January 24,
22 2018 and that Defendant did not object in writing to the notice. Id. at 22; Decl. and
23 Supporting Exhibits in support of Pl.'s MTC at 3, 87-90. Plaintiffs further claim that Defendant
24 orally objected to the proposed location of the deposition during a meet-and-confer on
25 February 1, 2018, and that Plaintiffs agreed to hold the deposition in Colorado where
26 Defendant is headquartered or another mutually agreeable location at a mutually agreeable
27 time, and that Defendant agreed to consider it. Pl.'s Mot. at 22; Decl. and Supporting Exhibits
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1 in support of Pl.'s MTC at 4-5. Plaintiffs contend that it was not until a meet-and-confer on
2 March 1, 2018 that Defendant asserted its objection to the 30(b)(6) request based on
3 Plaintiffs' standing. Pl.'s Mot. at 22; Decl. and Supporting Exhibits in support of Pl.'s MTC at 7.
4 Plaintiffs argue that Defendant waived its objections to this deposition by failing to serve
5 Plaintiffs with any written objections. Pl.'s Mot. at 22. Additionally, Plaintiffs argue that
6 because Defendant has not objected that a deposition in Colorado at a mutually agreeable
7 time is "inconvenient, burdensome, or expensive," Defendant must produce a 30(b)(6) witness
8 as requested. Id. at 22-23 (internal citation omitted).

9 Defendant responds that "SLS notified Plaintiffs in writing of its objection to the location
10 of the proposed deposition." Def.'s Oppo. at 16 (citing ECF No. 65 at 2, ¶ 6 (hereinafter
11 "Amended Decl. and Supporting Exhibits in support of Def.'s Oppo.") Defendant further argues
12 that "at most, a failure to object to the Deposition Notice in writing would have constituted a
13 waiver of errors or irregularities with the notice." Id. (citing Fed. R. Civ. P. 32(d)(1)).
14 Notwithstanding this, Defendant argues broadly "[b]ecause the Deposition Notice sought
15 class-related discovery, it is disproportionate to the needs of the case to the same extent as
16 the Discovery Requests." Id. Plaintiffs argue in their reply that Defendant's position on this
17 issue is confusing. Pl.'s Reply at 8. "SLS complains that Plaintiffs sought to schedule the
18 deposition in Oakland, but Plaintiffs agreed that the deposition could be held in Colorado at a
19 date and time that was mutually agreeable." Id. (citing Persinger Decl. ¶ 18). Plaintiffs note
20 that the offer to hold the deposition in Colorado still stands. Id.

21 An organization may be deposed in the following manner:

22 In its notice or subpoena, a party may name as the deponent a public or private
23 corporation, a partnership, an association, a governmental agency, or other
24 entity and must describe with reasonable particularity the matters for
25 examination. The named organization must then designate one or more officers,
26 directors, or managing agents, or designate other persons who consent to testify
27 on its behalf; and it may set out the matters on which each person designated
28 will testify. A subpoena must advise a nonparty organization of its duty to make
this designation. The persons designated must testify about information known
or reasonably available to the organization. This paragraph (6) does not preclude
a deposition by any other procedure allowed by these rules.

1 Fed. R. Civ. P. 30(b)(6).

2 Because the Court has denied Defendant's proportionality objection based on the
3 standing issue, the only remaining dispute in connection with Plaintiffs' request for a 30(b)(6)
4 deposition regarding Defendant's databases appears to be in connection with the timing and
5 location of the deposition. Accordingly, Plaintiffs' Motion to Compel the testimony of a
6 30(b)(6) witness knowledgeable about "[t]he electronic databases, systems, and software
7 used by [Defendant] to service mortgages, including, but not limited to, any activities relating
8 to RESPA, foreclosure, loss mitigation applications, or compliance" is **GRANTED**. The Court
9 **ORDERS** the noticed deposition to occur in Colorado on or before **April 20, 2018** unless the
10 parties agree on another time or place.

11 **3. Plaintiffs' Remaining Discovery Requests-RFP Nos. 3-4, 6, 15-17, 19,**
12 **21-23, 25-28 and Interrogatory Nos. 1-3, 5-8**

13 Plaintiffs move to compel responses to Requests for Production Nos. 3-4, 6, 15-17, 19,
14 21-23, and 25-28 and Interrogatories 1-3 and 5-8. Pl.'s MTC at 23-30; see also Decl. and
15 Supporting Exhibits in support of Pl.'s MTC at 33-58. Plaintiffs explain in detail in their Motion
16 to Compel about the categories of documents and information they seek and why they are
17 relevant, and make legal and factual arguments in support of production. Pl.'s MTC at 23-30.
18 Defendant objected to these requests for various reasons in their original responses served on
19 January 9, 2018, but Defendant failed to respond to Plaintiffs' arguments regarding these
20 requests. See Decl. and Supporting Exhibits in support of Pl.'s MTC at 33-58; see also Def.'s
21 Oppo. at 14-15. Instead, Defendant merely argued broadly and apparently as to all discovery
22 requests that "these discovery requests are objectionable" because they are "worded too
23 broadly" and "contain either no temporal limitation" or "seek documents for an excessive time
24 period." Def.'s Oppo. at 14-15. For the reasons discussed above, the Court adopts the
25 temporal limitations proposed by Plaintiff, overrules Defendant's general objections, and finds
26 Defendant's failure to produce documents and provide substantive responses improper.

27 Interestingly, in its opposition, Defendant includes a statement that "the Discovery
28

1 Requests seek information for borrowers without regard for the exemptions under 1024.41.”
2 Id. at 15. Defendant fails to connect this statement or objection to any of Plaintiffs’ specific
3 requests. Instead, Defendant simply cites the following code sections “12 C.F.R. §
4 1024.41(c)(1) (requiring submission of application at least 37 days prior to scheduled
5 foreclosure sale) [and] 12 C.F.R. § 1024.41(i) (limiting rights to first complete application)”
6 without any explanation of why or how these code sections apply to the disputed requests. Id.
7 Because Defendant fails to provide legal authority and analysis explaining its objection or
8 statement and tying it/them to specific discovery requests, the Court overrules this objection.
9 See S.D. Cal. Civ. R. 7.1(f)(3)(c).

10 Plaintiffs’ Motion to Compel further responses to Requests for Production Nos. 3-4, 6,
11 15-17, 19, 21-23, and 25-28 and Interrogatories 1-3 and 5-8 is **GRANTED**. Defendant is
12 **ORDERED** to produce responsive information and documents to these requests on or before
13 **April 20, 2018**. For electronically stored information (ESI) responsive to these requests, the
14 Court **ORDERS** Defendant to meet and confer with Plaintiffs and agree on search terms on or
15 before **April 13, 2018**. For the disputed requests where Plaintiffs seek a sampling,
16 Defendant is **ORDERED** to produce responsive information and documents consistent with
17 Plaintiffs’ sampling proposal. See Persinger Decl., ¶¶ 17-18.

18 **B. Defendant’s Motion for a Protective Order Requesting a Stay of**
19 **Discovery.**

20 Defendant filed a Motion for Protective Order on the basis that good cause exists to
21 stay class discovery in this case because of “(1) Plaintiffs’ factual misrepresentations in the
22 SAC; and (2) the possibility that they lack standing under Regulation X.” ECF No. 59-1 at 11-
23 15 (hereinafter “Def.’s Mot. for PO”). Defendant contends “[b]ecause Plaintiffs have not yet
24 addressed the misstatements in the SAC, SLS submits that class discovery should be stayed for
25 a minimum of 60 days⁴ to allow SLS to pursue the Rule 11 Motion, as necessary, and
26

27 ⁴ Defendant’s reply in support of its Motion for Protective Order seeks class discovery in this
28 case should be stayed indefinitely. ECF No. 69 at 7.

1 separately move for a determination on Plaintiffs' standing under Regulation X to the extent
2 the issue is not resolved through the Rule 11 Motion." Id. at 16. Plaintiffs oppose on the
3 grounds that Defendant's Motion is an "attempt to distract the Court from SLS's reprehensible
4 conduct." ECF No. 67 at 6 (hereinafter "Pl.'s Oppo."). Plaintiffs argue that "(1) the Court has
5 already concluded that Plaintiffs' substantive allegations against SLS state a claim for violations
6 of RESPA, and (2) a substitute named plaintiff, Mr. Nikki, who suffered the same kinds of
7 violations as Plaintiffs, stands ready to assume the role of named plaintiff in this case." Id.
8 Plaintiffs further argue that "[Defendant's] positions on the merits of the individual Plaintiffs'
9 claims have never warranted staying class discovery" and that "Plaintiffs are entitled to obtain
10 discovery regarding any non-privileged matter that is relevant to any party's claim or defense
11 and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1) (citing Pershing Pac. West,
12 LLC v. MarineMax, Inc., 2013 WL 941617, at *2 (S.D. Cal. Mar. 11, 2013)).

13 The Court finds no basis to stay discovery. Defendant has not established that Plaintiff
14 made material factual representations in the SAC which affect the validity of the claim(s) nor
15 has it filed a motion for Rule 11 sanctions, the two articulated bases for this motion. In
16 addition, as discussed above with regards to Plaintiffs' motion to compel, the Court finds that it
17 is appropriate and important for discovery to continue. For these reasons, and in light of the
18 upcoming hearing before the District Court Judge regarding Plaintiffs' Motion to Withdraw as
19 Named Plaintiffs and Substitute Nick Nikki as Named Plaintiff on April 20, 2018 [ECF No. 66]
20 and the quickly approaching class certification deadline on May 7, 2018 [ECF No. 61], the
21 Court **DENIES** Defendant's Motion for Protective Order staying discovery.

22 **IT IS SO ORDERED.**

23 Dated: 4/6/2018

24 
25 Hon. Barbara L. Major
26 United States Magistrate Judge
27
28