

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

DWAYNE RANSOM DAVIS and MELISA DAVIS, on behalf of themselves and all others similarly-situated,

Plaintiffs,

vs.

COUNTRYWIDE HOME LOANS, INC.; BANK OF AMERICA, N.A.; BAC GP, LLC; and BAC HOME LOANS SERVICING, LP,

Defendants.

Case No. 1:10-cv-1303-JMS/DML

**CASE MANAGEMENT PLAN**

**I. Parties and Representatives**

**A. Plaintiffs:**

Dwayne Ransom Davis  
Melissa Davis

**B. Defendants:**

Countrywide Home Loans, Inc.  
Bank of America, N.A.  
BAC GP, LLC  
BAC Home Loans Servicing, LP

**C. Counsel for Plaintiffs:**

Irwin B. Levin  
Richard E. Shevitz  
Eric S. Pavlack  
Vess A. Miller

Gabriel A. Hawkins  
COHEN AND MALAD, LLP  
One Indiana Square, Suite 1400  
Indianapolis, IN 46204  
Telephone: (317) 636-6481  
Facsimile: (317) 636-2593  
ilevin@cohenandmalad.com  
rshevitz@cohenandmalad.com  
epavlack@cohenandmalad.com  
vmiller@cohenandmalad.com  
ghawkins@cohenandmalad.com

Clifford T. Rubenstein  
MAURER RIFKIN & HILL, P.C.  
11550 North Meridian Street, Suite 115  
Carmel, IN 46032  
Telephone: (317) 844-8372  
Facsimile: (317) 573-5564  
crubenstein@mrhlaw.com

**D. Counsel for Defendants:**

Matthew R. Strzynski  
KRIEG DeVAULT LLP  
12800 North Meridian Street, Suite 300  
Carmel, Indiana 46032-9422  
Telephone: (317) 566-1110  
Facsimile: (317) 636-1507  
mstrzynski@kdlegal.com

Libby Y. Goodknight  
KRIEG DeVAULT LLP  
One Indiana Square, Suite 2800  
Indianapolis, Indiana 46204-2079  
Telephone: (317) 636-4341  
Facsimile: (317) 636-1507  
lgoodknight@kdlegal.com

Richard Cullen  
J. William Boland  
Bryan A. Fratkin  
Brian E. Pumphrey

McGUIRE WOODS LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219  
Telephone: (804) 775-1000  
Facsimile: (804) 775-1061  
[rcullen@mcguirewoods.com](mailto:rcullen@mcguirewoods.com)  
[wboland@mcguirewoods.com](mailto:wboland@mcguirewoods.com)  
[bfratkin@mcguirewoods.com](mailto:bfratkin@mcguirewoods.com)  
[bpumphrey@mcguirewoods.com](mailto:bpumphrey@mcguirewoods.com)

Bradley Kutrow  
McGUIRE WOODS LLP  
Bank of America Corporate Center  
100 North Tryon Street, Suite 2900  
Charlotte, North Carolina 28202-4011  
Telephone: (704) 343-2049  
Facsimile: (704) 373-8935  
[bkutrow@mcguirewoods.com](mailto:bkutrow@mcguirewoods.com)

## **II. Synopsis of Case**

**A.** Subject matter jurisdiction is based on both (i) 29 U.S.C. § 1332(d)(2), because the matter in controversy exceeds the sum or value of \$5 million, exclusive of interest and costs, and it is a class action brought by a citizen of a State that is different from the State where at least one Defendant is incorporated or does business; and (ii) 29 U.S.C. § 1331, because the RICO and FDCPA claims asserted by Plaintiffs arise under the laws of the United States of America.

Plaintiffs bring class action claims against Defendants for violations of RICO and the FDCPA through their use of perjured affidavits that were prepared and signed by “robo-signers” who signed such affidavits by the hundreds or thousands. Defendants submitted these affidavits in court proceedings in order to improperly expedite foreclosures and sheriffs’ sales of Plaintiffs’ and class members’ homes.

**B.** Defendants deny the allegations in Plaintiffs’ Complaint. Defendants deny engaging in any racketeering activity in violation of the federal RICO statute. Defendants assert that there was no scheme to defraud the trial courts or the Plaintiffs and other class members in the foreclosure of their property. Defendants maintain that the Plaintiffs failed to pay their mortgage and defaulted on their mortgage in October 2007, and that Plaintiffs did not make any monthly mortgage payments for approximately three years when the property was

foreclosed upon and sold at sheriff's sale. Defendants believe the Plaintiffs' Complaint is a direct attack on the validity of the state court judgment in the underlying foreclosure action. Additionally, Defendants contend that they were the owners of the security interest involved in the mortgage foreclosure action and thus cannot be liable under the FDCPA. Defendants have filed a motion to dismiss Plaintiffs' Complaint, on grounds that Plaintiffs' claims are barred by the *Rooker-Feldman* doctrine, *res judicata*, and collateral estoppel, and on grounds that Plaintiffs have failed to plead sufficient facts to state plausible RICO and FDCPA claims. The motion to dismiss is fully briefed and pending ruling by the Court.

Defendants further deny that this case can be certified as a class action under Rule 23 of the Federal Rules of Civil Procedure, because the certification requirement of typicality cannot be satisfied and individualized questions with respect to each putative class member's claims predominate over any common questions that might exist. Defendants intend to oppose any motion for class certification by the Plaintiffs in the event this case survives the pending motion to dismiss Plaintiffs' Complaint.

### **III. Pretrial Pleadings and Disclosures<sup>1</sup>**

- A.** The parties shall serve their Fed. R. Civ. P. 26 initial disclosures on or before **March 4, 2011.**
- B.** Plaintiffs shall file preliminary witness and exhibit lists **thirty (30) days after a ruling by the Court on class certification.**
- C.** Defendants shall file preliminary witness and exhibit lists **sixty (60) days after a ruling by the Court on class certification.**
- D.** All motions for leave to amend the pleadings and/or join additional parties shall be filed **thirty (30) days after a ruling by the Court on the pending motion to dismiss.**
- E.** Plaintiffs shall serve Defendants (but not file with the Court) a statement of special damages, if any, and make a settlement demand, **thirty (30) days after a ruling by the Court on class certification.** Defendants shall serve on the Plaintiffs (but not file with the Court) a response thereto within **thirty (30) days after receipt of the demand.**

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<sup>1</sup> The parties agree that in some instances the Anchor Date for purposes of the Case Management Plan should be the Court's ruling on Plaintiffs' anticipated motion for class certification, rather than the traditional date on which the case was filed with the Court.

- F.** Plaintiffs shall disclose the name, address, and vita of all expert trial witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B) **one hundred and eighty (180) days before trial.** However, if Plaintiffs use expert witness testimony at the summary judgment stage, such disclosures must be made no later than **sixty (60) days prior to the summary judgment deadline.** Disclosure of experts supporting any class certification motion is addressed in Section IV(B) of this Case Management Plan.
- G.** Defendants shall disclose the name, address, and vita of all expert trial witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B), **one hundred and fifty (150) days before trial.** However, if Defendants use expert witness testimony at the summary judgment stage, such disclosures must be made no later than **thirty (30) days prior to the summary judgment deadline.** Disclosure of experts opposing any class certification motion is addressed in Section IV(C) of this Case Management Plan.
- H.** Any party who wishes to limit or preclude expert testimony at trial shall file any such objections no later than **sixty (60) days before trial.** Any party who wishes to preclude expert witness testimony at the summary judgment stage shall file any such objections with their responsive brief within the briefing schedule established by Local Rule 56.1.
- I.** All parties shall file and serve their final witness and exhibit lists **one hundred and twenty (120) days before trial.** Close of discovery will be **ninety (90) days before trial.**
- J.** Any party who believes that bifurcation of discovery and/or trial is appropriate with respect to any issue or claim shall notify the Court as soon as practicable.
- K.** The parties have discussed the preservation and disclosure of electronically stored discovery information. The parties agree that their discovery and initial disclosure obligations shall include the identification and preservation of electronically stored information (“ESI”) to the fullest extent that term is defined by Fed. R. Civ. P. 34. The parties further agree to cooperate in good faith concerning the form in which ESI is to be produced. The parties reserve the right to withhold any discovery documents/data based on a known privilege or objection. Any extraordinary costs for duplication shall be allocated to the requesting party.
- L.** The parties have agreed that written discovery requests and responses may be served on the parties’ counsel via electronic mail at the electronic mail addresses set forth in this Case Management Plan. However, this will not alter the time

allowed for responding to discovery requests under the Federal Rules of Civil Procedure, including the three (3) additional days permitted following service.

## **IV. Class Certification Matters**

### **A. Plaintiffs' Motion for Class Certification**

- i.** Deadline for motion for class certification and supporting brief: **one hundred and twenty (120) days after a ruling by the Court on Defendants' pending motion to dismiss.**
- ii.** At the same time, Plaintiffs shall identify all experts and witnesses upon whom Plaintiffs rely in support of their motion for class certification (including the information contemplated by Fed. R. Civ. P. 26(a)(2)(B) as to experts) and file any expert reports and affidavits upon which they rely in support of their motion for class certification.
- iii.** Plaintiffs shall produce all respective documents, data, and information considered by each expert in forming his or her opinions within **three (3) business days** of the filing of any class certification motion and supporting expert reports. Plaintiffs shall make their experts available for depositions within **twenty-one (21) days** of the filing of any class certification motion and supporting expert reports.
- iv.** Once any class certification motion is filed, no amendments may be made to the Complaint (including the addition of any party as a plaintiff, defendant, or third-party defendant, until after the Court rules on any motions for class certification filed pursuant to this section.

### **B. Defendants' Opposition to Class Certification**

- i.** Defendants shall file their response to Plaintiffs' motion for class certification within **sixty (60) days of Plaintiffs' filing that motion.**
- ii.** At the same time, Defendants shall identify all experts and witnesses upon whom Defendants rely in opposing Plaintiffs' motion for class certification (including the information contemplated by Fed. R. Civ. P. 26(a)(2)(B) as to experts) and file any expert reports and affidavits upon which they rely in opposing Plaintiffs' motion for class certification.
- iii.** Defendants shall produce all respective documents, data, and information considered by each expert in forming his or her opinions within **three (3) business days** of the filing of any response in opposition to class

certification and opposing expert reports. Defendants shall make their experts available for depositions within **twenty-one (21) days** of the filing of any response in opposition to class certification and opposing expert reports.

### **C. Plaintiffs' Reply in Support of Class Certification**

Plaintiffs shall file their reply in support of motion for class certification within **sixty (60) days of Defendants' response to the motion.**

### **D. Class Certification Argument**

After the filing of all briefs concerning Plaintiffs' class certification motion, the Court may schedule an oral argument on such motion.

## **V. Discovery<sup>2</sup> and Dispositive Motions**

### **A. Appropriateness of Summary Judgment or Other Dispositive Motions**

Does any party believe that this case may be appropriate for summary judgment or other dispositive motion? If yes, the party(ies) that expect to file such a motion must provide a brief statement of the factual and/or legal basis for such a motion. [Note: A statement such as, "Defendant will seek summary judgment because no material facts are in dispute," is insufficient. Such a statement does not indicate to the Court that the parties used the CMP as an opportunity to seriously explore whether this case is appropriate for summary judgment or other dispositive motion. However, the failure to set forth a basis for a dispositive motion in the CMP will not bar a party from raising this argument at the motions stage.]

- i. **Track 4.** The parties believe that the time required for a ruling on class certification in this matter will affect scheduling in a manner that necessitates some additional flexibility and departure from Tracks 1-3, as follows:

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<sup>2</sup> The term "completed" regarding discovery means that counsel must serve their discovery requests in sufficient time to receive responses before this deadline. Counsel may not serve discovery requests within the 30-day period before this deadline unless they seek leave of Court to serve a belated request and show good cause for the same. In such event, the proposed belated discovery request shall be filed with the motion, and the opposing party will receive it with service of the motion but need not respond to the same until such time as the Court grants the motion.

- (1) Dispositive motions shall be filed no later than **120 days following the Court's ruling on the Plaintiffs' motion for class certification.**
- (2) Responses to dispositive motions shall be filed no later than **60 days after the dispositive motion(s) is (are) filed.**
- (3) Replies in support of dispositive motions shall be filed no later than **30 days after the response(s) is (are) filed.**

ii. On January 20, 2011, Plaintiffs served written interrogatories and requests for production on Defendants. The parties have agreed that, during the pendency of a ruling on Defendants' Motion to Dismiss, Defendants will only respond to interrogatory nos. 1-6 and request for production nos. 1 and 2, to the extent Defendants are able to reasonably ascertain information responsive to the discovery requests. Notwithstanding this agreement to provide limited discovery to Plaintiffs, Defendants do not waive, and expressly preserve, any objections to the Plaintiffs' discovery requests. The parties agree that all other discovery shall be stayed pending resolution of Defendants' Motion to Dismiss.

iii. Non-expert witness discovery and discovery relating to liability issues shall be completed **one hundred and fifty (150) days before trial.**

iv. Expert witness discovery and discovery relating to damages shall be completed **ninety (90) days before trial.**

## **VI. Pre-Trial/Settlement Conferences**

An initial pre-trial conference is scheduled for \_\_\_\_\_, **201**\_. The parties are prepared to participate in any pre-trial or settlement conferences scheduled at the discretion of the Judge or Magistrate.

## **VII. Trial Date**

The parties request that the Court set a trial date in **February 2013**. The trial will be by jury and is anticipated to take two weeks.

## **VIII. Referral to Magistrate Judge**

At this time, all parties do not consent to refer this matter to the Magistrate Judge pursuant to 28 U.S.C. 636(b) and Federal Rules of Civil Procedure 73 for all further proceedings including trial.

[Indicating the parties' consent in this paragraph may result in this matter being referred to the Magistrate Judge for all further proceedings, including trial. It is not necessary to file a separate consent.]

## **IX. Required Pre-Trial Preparation**

### **A. TWO WEEKS BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:**

- i. File a list of witnesses who are expected to be called to testify at trial.
- ii. Number in sequential order all exhibits, including graphs, charts and the like, that will be used during the trial. Provide the Court with a list of these exhibits, including a description of each exhibit and the identifying designation. Make the original exhibits available for inspection by opposing counsel. Stipulations as to the authenticity and admissibility of exhibits are encouraged to the greatest extent possible.
- iii. Submit all stipulations of facts in writing to the Court. Stipulations are always encouraged so that at trial, counsel can concentrate on relevant contested facts.

B. A party who intends to offer any depositions into evidence during the party's case in chief shall prepare and file with the Court and copy to all opposing parties either:

- i. brief written summaries of the relevant facts in the depositions that will be offered. (Because such a summary will be used in lieu of the actual deposition testimony to eliminate time reading depositions in a question and answer format, this is strongly encouraged.); or
  - (1) if a summary is inappropriate, a document which lists the portions of the deposition(s), including the specific page and line numbers, that will be read, or, in the event of a video-taped deposition, the portions of the deposition that will be played, designated specifically by counter-numbers.
- ii. Provide all other parties and the Court with any trial briefs and motions in limine, along with all proposed jury instructions, voir dire questions, and areas of inquiry for voir dire (or, if the trial is to the Court, with proposed findings of fact and conclusions of law).

- iii. Notify the Court and opposing counsel of the anticipated use of any evidence presentation equipment.

**C. ONE WEEK BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:**

- i. Notify opposing counsel in writing of any objections to the proposed exhibits. If the parties desire a ruling on the objection prior to trial, a motion should be filed noting the objection and a description and designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection.
- ii. If a party has an objection to the deposition summary or to a designated portion of a deposition that will be offered at trial, or if a party intends to offer additional portions at trial in response to the opponent's designation, and the parties desire a ruling on the objection prior to trial, the party shall submit the objections and counter summaries or designations to the Court in writing. Any objections shall be made in the same manner as for proposed exhibits. However, in the case of objections to video-taped depositions, the objections shall be brought to the Court's immediate attention to allow adequate time for editing of the deposition prior to trial.
- iii. File objections to any motions in limine, proposed instructions, and voir dire questions submitted by the opposing parties.
- iv. Notify the Court and opposing counsel of requests for separation of witnesses at trial.

**X. Other Matters**

There are no other matters for the Court's attention at this time.

Respectfully submitted,

/s/ Eric S. Pavlack  
Irwin B. Levin  
Richard E. Shevitz  
Eric S. Pavlack  
Vess A. Miller  
Gabriel A. Hawkins  
COHEN AND MALAD, LLP  
One Indiana Square, Suite 1400  
Indianapolis, Indiana 46204  
(317) 636-6481  
FAX: (317) 636-2593  
[ilevin@cohenandmalad.com](mailto:ilevin@cohenandmalad.com)  
[rshevitz@cohenandmalad.com](mailto:rshevitz@cohenandmalad.com)  
[epavlack@cohenandmalad.com](mailto:epavlack@cohenandmalad.com)  
[vmiller@cohenandmalad.com](mailto:vmiller@cohenandmalad.com)  
[ghawkins@cohenandmalad.com](mailto:ghawkins@cohenandmalad.com)

Clifford T. Rubenstein  
MAURER RIFKIN & HILL, P.C.  
11550 North Meridian Street, Suite 115  
Carmel, Indiana 46032  
(317) 844-8372  
FAX: (317) 573-5564  
[crubenstein@mrhlaw.com](mailto:crubenstein@mrhlaw.com)  
*Counsel for Plaintiffs*

/s/ Libby Y. Goodknight  
KRIEG DeVAULT LLP  
One Indiana Square, Suite 2800  
Indianapolis, Indiana 46204-2079  
(317) 636-4341  
FAX: (317) 636-1507  
[lgoodknight@kdlegal.com](mailto:lgoodknight@kdlegal.com)

Matthew R. Strzynski  
KRIEG DeVAULT LLP  
12800 North Meridian Street, Suite 300  
Carmel, Indiana 46032-942  
(317) 566-1110  
FAX: (317) 636-1507  
[mstrzynski@kdlegal.com](mailto:mstrzynski@kdlegal.com)

Richard Cullen, *pro hac vice*  
J. William Boland, *pro hac vice*  
Bryan A. Fratkin, *pro hac vice*  
Brian E. Pumphrey, *pro hac vice*  
McGUIRE WOODS LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219  
(804) 775-1000  
FAX: (804) 775-1061  
[rcullen@mcguirewoods.com](mailto:rcullen@mcguirewoods.com)  
[wboland@mcguirewoods.com](mailto:wboland@mcguirewoods.com)  
[bfratkin@mcguirewoods.com](mailto:bfratkin@mcguirewoods.com)  
[bpumphrey@mcguirewoods.com](mailto:bpumphrey@mcguirewoods.com)

Bradley Kutrow, *pro hac vice*  
McGUIRE WOODS LLP  
Bank of America Corporate Center  
100 North Tryon Street, Suite 2900  
Charlotte, North Carolina 28202-4011  
(704) 343-2049  
FAX: (704) 373-8935  
[bkutrow@mcguirewoods.com](mailto:bkutrow@mcguirewoods.com)  
*Counsel for Defendants*

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\_\_\_\_\_  
PARTIES APPEARED IN PERSON/BY COUNSEL ON  
FOR A PRETRIAL/STATUS CONFERENCE.

\_\_\_\_\_  
APPROVED AS SUBMITTED.

\_\_\_\_\_  
APPROVED AS AMENDED.

\_\_\_\_\_  
APPROVED AS AMENDED PER SEPARATE ORDER.

\_\_\_\_\_  
APPROVED, BUT ALL OF THE FOREGOING DEADLINES ARE  
SHORTENED/LENGTHENED BY \_\_\_\_\_ MONTHS.

\_\_\_\_\_  
APPROVED, BUT THE DEADLINES SET IN SECTION(S)  
\_\_\_\_\_ OF THE PLAN IS/ARE  
SHORTENED/LENGTHENED BY \_\_\_\_\_ MONTHS.

\_\_\_\_\_  
THIS MATTER IS SET FOR TRIAL BY \_\_\_\_\_ ON  
\_\_\_\_\_. FINAL PRETRIAL  
CONFERENCE IS SCHEDULED FOR  
\_\_\_\_\_ AT \_\_\_\_\_.M.,  
ROOM \_\_\_\_\_.

\_\_\_\_\_  
A SETTLEMENT/STATUS CONFERENCE IS SET IN THIS CASE  
FOR \_\_\_\_\_ AT \_\_\_\_\_.M. COUNSEL SHALL  
APPEAR:

\_\_\_\_\_  
IN PERSON IN ROOM \_\_\_\_\_; OR

\_\_\_\_\_  
BY TELEPHONE, WITH COUNSEL FOR  
INITIATING THE CALL TO ALL OTHER PARTIES AND ADDING  
THE COURT JUDGE AT (\_\_\_\_\_) \_\_\_\_\_; OR

\_\_\_\_\_  
BY TELEPHONE, WITH COUNSEL CALLING THE  
JUDGE'S STAFF AT (\_\_\_\_\_) \_\_\_\_\_; OR

\_\_\_\_\_  
DISPOSITIVE MOTIONS SHALL BE FILED NO LATER THAN

Upon approval, this Plan constitutes an Order of the Court. Failure to comply with an Order of the Court may result in sanctions for contempt, or as provided under Rule 16(f), to and including dismissal or default.

**Approved and So Ordered.**

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Date

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U. S. District Court  
Southern District of Indiana