

1 ARIEL E. STERN.
 Nevada Bar No. 8276
 2 DIANA S. ERB
 Nevada Bar No. 10580
 3 AKERMAN SENTERFITT LLP
 400 South Fourth Street, Suite 450
 4 Las Vegas, Nevada 89101
 Telephone: (702) 634-5000
 5 Facsimile: (702) 380-8572
 Email: ariel.stern@akerman.com
 6 Email: diana.erb@akerman.com
 7 *Attorneys for Defendant*
BAC Home Loans Servicing, LP, improperly
 8 *named as Bank of America*

9
 10 **UNITED STATES DISTRICT COURT**
 11 **DISTRICT OF NEVADA**

12 GERALD B. NETZKY, and DIANNA
 NETZKY, husband and wife,
 13
 14 **Plaintiffs,**
 15 vs.
 16 BANK OF AMERICA, a Delaware Corporation;
 MTC FINANCIAL INC. a California
 Corporation, d/b/a TRUSTEE CORPS, a
 California Corporation,
 17
 18 **Defendants.**

Case No.: 2:11-cv-00128-PMP-LRL

**STIPULATED REQUEST
 TO STAY DISCOVERY**

(First Request)

19 It is stipulated and requested by and between Plaintiffs Gerald B. Netzky and Dianna Netzky,
 20 Defendant BAC Home Loans Servicing, LP, improperly named as Bank of America, ("BAC") by
 21 and through its attorneys, the law firm of Akerman Senterfitt, LLP, and Defendant MTC Financial
 22 Inc., d/b/a/ Trustee Corps, ("MTC") by and through its attorneys, the law firm of Robinson
 23 Belaustegui Sharp and Low that the discovery period in this case be stayed pending a decision on
 24 Defendants' motions to dismiss [Dkts. 4 and 20] currently set for hearing on June 6, 2011. The
 25 Parties stipulate and agree to submit a proposed discovery plan and scheduling order within ten (10)
 26 days of a decision on the pending motions to dismiss.

27 BAC filed a Petition for Removal on January 24, 2011 [Dkt. 1.] BAC filed its Motion to
 28 Dismiss [Dkt. 4] on January 31, 2011. MTC filed its Motion to Dismiss [Dkt. 20] on February 25,

AKERMAN SENTERFITT LLP
 400 SOUTH FOURTH STREET, SUITE 450
 LAS VEGAS, NEVADA 89101
 TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 2011. Plaintiffs responded to the motions to dismiss and filed an Amended Complaint on April 1,
2 2011 [Dkts. 28, 29, and 30]. Defendant MTC Financial, Inc. filed a motion to dismiss Plaintiffs'
3 amended complaint on April 15, 2011 [Dkt. 33]. Plaintiffs have stipulated to extend the deadline for
4 Defendant BAC to respond to their Amended Complaint [Dkts. 35 and 38].

5 The Ninth Circuit has affirmed stays of discovery in cases like this one where a stay would
6 prevent excessive cost and burden and enhance judicial economy. *See, e.g., Rutman* 829 F.2d at
7 738; *B.R.S. Land Investors*, 596 F.2d at 353; *Wood v. McEwan*, 644 F.2d 797, 801-02 (9th Cir. 1981)
8 (affirming stay of discovery pending ruling on a Rule 12(b)(6) motion to dismiss); *In re Graphics*
9 *Processing Units Antitrust Litig.*, 2007 WL 2127577, at *4 (N.D. Cal. July 24, 2007) (reasoning that
10 "allowing discovery prior to sustaining a complaint would defeat one of the rationales of *Twombly*,
11 at least when the discovery would be burdensome").

12 Courts have found that "stays [of discovery] are often deemed appropriate where the motion
13 to dismiss can resolve the case—at least as to the moving party." *In re Sulfuric Acid Antitrust Litig.*,
14 231 F.R.D. 331, 337 (N.D. Ill. 2005); *see also Institut Pasteur v. Chiron*, 315 F. Supp. 2d 33, 37
15 (D.D.C. 2004) (it is "well settled that discovery is generally considered inappropriate while a motion
16 that would be thoroughly dispositive of the claims in the complaint is pending") (internal quotations
17 omitted). Rather than impose on the parties the substantial time and expense of conducting
18 discovery necessary in this case and burden the Court with resolving discovery disputes, the sounder
19 practice is to stay discovery until Defendants' motions to dismiss are decided.

20 This Court has broad discretion to stay proceedings in order to control its docket and ensure
21 proper adjudication of litigation. *See Mediterranean Enters., Inc., v. Ssangyong Corp.*, 708 F.2d
22 1458, 1465 (9th Cir. 1983); *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936) (noting that "the
23 power to stay proceedings is incidental to the power inherent in every court to control the disposition
24 of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants").

25 In order to meet its obligations under Rule 26(a), the Parties will be required to expend
26 significant resources, and these resources will be needlessly spent if the Court dismisses the claims
27 against Defendants. Moreover, Plaintiffs cannot realistically conduct discovery until the Defendants
28 have answered their Complaint or Amended Complaint. The Answers will frame the issues in such

AKERMAN SENTERFITT LLP

400 SOUTH FOURTH STREET, SUITE 450
LAS VEGAS, NEVADA 89101
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 a manner that Plaintiffs can first decide on their method and content of discovery. Therefore, the
2 Parties stipulate to and respectfully request a stay of discovery pending a decision on Defendants'
3 motions to dismiss [Dkts. 4 and 20] currently set for hearing on June 6, 2011.

4 ///
5 ///
6 ///
7 ///
8 ///
9 ///
10 ///
11 ///
12 ///
13 ///
14 ///
15 ///
16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 This request is not made for purposes of delay or to prejudice any party in this action.

2 DATED this 12th day of May, 2011. DATED this 12th day of May, 2011.

3 **AKERMAN SENTERFITT LLP**

GERALD B. NETZKY

4
5 /s/ Diana S. Erb
6 ARIEL E. STERN, ESQ.
7 Nevada Bar No. 8276
8 DIANA S. ERB, ESQ.
9 Nevada Bar No. 10580
10 400 South Fourth Street, Suite 450
11 Las Vegas, Nevada 89101

/s/ Gerald B. Netzky
GERALD B. NETZKY
10361 Early Morning Avenue
Las Vegas, Nevada 89135

Pro Se Plaintiff

12 *Attorneys for Defendant*
13 *BAC Home Loan Servicing, LP, improperly*
14 *named as Bank of America*

15 DATED this 12th day of May, 2011.

DATED this 12th day of May, 2011.

16 **ROBISON BELAUSTEGUI SHARP & LOW**

DIANNA NETZKY

17 /s/ Michael E. Sullivan
18 MICHAEL E. SULLIVAN, ESQ.
19 Nevada Bar No. 5142
20 71 Washington Street
21 Reno, Nevada 89503

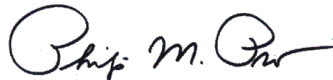
/s/ Dianna Netzky
DIANNA NETZKY
10361 Early Morning Avenue
Las Vegas, Nevada 89135

Pro Se Plaintiff

22 *Attorneys for Defendant*
23 *MTC Financial Inc. dba Trustee Corps.*

ORDER

24 **IT IS SO ORDERED** this _ 13th day of May, 2011.



UNITED STATES DISTRICT COURT JUDGE