

1 **FENNEMORE CRAIG, P.C.**  
 2 DAVID W. DACHELET (NO. 6615)  
 3 LINDSAY A. HANSEN (NO. 11985)  
 4 300 S. 4th Street, 14th Floor  
 5 Las Vegas, Nevada 89101  
 Telephone: (702) 692-8000  
 Facsimile: (702) 692-8099  
 Email: [ddachelet@fclaw.com](mailto:ddachelet@fclaw.com)  
 Email: [lhansen@fclaw.com](mailto:lhansen@fclaw.com)

6 *Attorneys for Defendant*  
 7 *Green Tree Servicing LLC*

8 **UNITED STATES DISTRICT COURT**  
 9 **DISTRICT OF NEVADA**

10 JENNIFER T. FLORIO,  
 11 Plaintiff,  
 12 vs.

Case No.: 2:11-CV-01991-KJD-RJJ

13 VISTA PACIFIC HOLDINGS (Investor);  
 14 fka HLS ABC-100, LLC., (Investor); BSI  
 FINANCIAL SERVICES, INC.; fka  
 15 SERVIS ONE, INC. (Owner); ARCH BAY  
 HOLDINGS LLC., (Investor); QUANTUM  
 16 SERVICING CORPORATION fka  
 QUANTUM FINANCING; GREEN TREE  
 17 SERVICING LLC fka GREEN TREE  
 FINANCIAL CORPORATION; ASSET  
 18 ACCEPTANCE CAPITAL CORP.  
 (Investor); OCWEN LOAN SERVICING  
 19 LLC. fka OCWEN SERVICING  
 COMPANY; MORTGAGEIT, INC.,;  
 20 SEASIDE TRUSTEE, INC.,;  
 MORTGAGEIT, INC., DOES 1  
 21 THROUGH 100, INCLUSIVE,

**DEFENDANT GREEN TREE**  
**SERVICING LLC'S**  
**MOTION TO STAY DISCOVERY**  
**PENDING RESOLUTION OF**  
**MOTION TO DISMISS**

22 Defendants.

23 Defendant GREEN TREE SERVICING LLC (“Green Tree”), by and through its  
 24 undersigned counsel, moves this Court for an Order that discovery and the requirements  
 25 of LR 26-1 and Fed. R. Civ. P. 26(f) be stayed pending resolution of its Motion to Dismiss  
 26 (Doc. # 43).

27 Green Tree bases this Motion on the papers and pleadings already on file in this  
 28 case, the Memorandum of Points and Authorities that follows, and any oral argument this

1 Court chooses to entertain, all of which demonstrate the submittal of a stipulated  
2 discovery plan and scheduling order will be fruitless and/or wasteful until the Court rules  
3 on Green Tree's Motion to Dismiss.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I.**

6 **INTRODUCTION**

7 Green Tree should not be required to conduct discovery on claims that are subject  
8 to its pending Motion to Dismiss because the motion likely will cause the dismissal of  
9 numerous, if not all, of Plaintiff's sixteen spurious claims against Green Tree. The  
10 requirement to meet and confer and, thereafter, actually conduct written discovery and  
11 depositions on these spurious claims would waste both the parties' and this Court's  
12 resources. Instead, this Court should stay the requirements of LR 26-1 and Fed. R. Civ. P.  
13 26(f), so that, if necessary, discovery only will be conducted on those claims that remain  
14 after this Court decides Green Tree's pending Motion to Dismiss.

15 **II.**

16 **RELEVANT FACTS**

17 In June of 2009 – nearly three years ago – Plaintiff admittedly stopped making  
18 payments on her mortgage loan. As a result, Plaintiff's loan spiraled into default, and  
19 non-judicial foreclosure proceedings were initiated by the owner of Plaintiff's loan. On  
20 December 13, 2011, Plaintiff filed her Complaint alleging a laundry list of sixteen claims  
21 against Green Tree and a myriad of others involved in Plaintiff's mortgage loan. *See*  
22 *Compl. (Doc. #1)*. As a result, Green Tree – who is not the lender, beneficiary, trustee,  
23 current holder of the promissory note and deed of trust, foreclosing party, or evicting party  
24 – was forced to file the Motion to Dismiss that currently is pending before this Court. *See*  
25 *Motion to Dismiss (Doc. #43)*. Green Tree's Motion to Dismiss seeks dismissal of  
26 Plaintiff's entire Complaint. *Id.*

27 Given the pending Motion to Dismiss and the likelihood it will be granted, Green  
28 Tree submits that discovery, at this point, would be a waste of the parties' and this Court's

1 resources. Accordingly, Green Tree respectfully requests that discovery be stayed until  
2 the Court issues a ruling on Green Tree's Motion to Dismiss.

3 **III.**

4 **LEGAL ARGUMENT**

5 **A. COURTS HAVE BROAD DISCRETION TO STAY DISCOVERY WHEN THE**  
6 **PENDING MOTION TO DISMISS IS DISPOSITIVE OF ALL CLAIMS AND**  
7 **CAN BE DECIDED WITHOUT THE NEED FOR ANY DISCOVERY.**

8 Judges have a great deal of discretion in staying proceedings while dispositive  
9 motions are pending. *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). Stay of  
10 discovery is appropriate when (1) a pending motion is potentially dispositive of the entire  
11 case; and (2) where the dispositive motion can be decided without additional discovery.  
12 *Pac. Lumber Co. v. Nat'l Union Fire Ins. Co.*, 220 F.R.D. 349, 351-52 (N.D. Cal. 2003)  
13 (citing *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550, 1560 (11th Cir. 1985);  
14 *Church of Scientology v. IRS*, 991 F.2d 560, 563 (9th Cir. 1993)). Indeed, a stay of  
15 discovery pending resolution of a motion to dismiss is appropriate if it appears the  
16 opposing party has no chance of prevailing on the motion to dismiss. *See Wood v.*  
17 *McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) (the court may stay discovery when  
18 convinced plaintiff cannot state a claim for relief); *Turner Broad. Sys., Inc. v. Tracinda*  
19 *Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997) (same).

20 **B. DISCOVERY SHOULD BE STAYED IN THIS CASE.**

21 Here, both the facts and the law support the entry of an order to stay discovery.  
22 First, Green Tree's pending Motion to Dismiss is a dispositive motion directed to each of  
23 the sixteen spurious claims asserted in Plaintiff's Complaint. If the Motion is granted, it  
24 would render any discovery moot. Second, because Green Tree's Motion to Dismiss is  
25 based on Fed. R. Civ. P. 12(b)(6), it can certainly be decided without any discovery being  
26 conducted at all.

27 As such, both prongs outlined in *Pacific Lumber* are met, and this Court may  
28 properly, and should, stay discovery pending the outcome of Green Tree's Motion to  
Dismiss. Accordingly, the discovery requirements of LR 26-1 and Fed. R. Civ. P. 26(f)

1 should be stayed. Green Tree should not be required to expend valuable time and  
2 resources, not to mention incurring attorneys' fees, all to conduct discovery on claims that  
3 will likely be dismissed. Further, a stay of discovery would not prejudice either party, and  
4 would conserve both the parties' and the Court's resources.

5 **IV.**

6 **CONCLUSION**

7 Given that Plaintiff's Complaint fails to state a single claim upon which relief can  
8 be granted, it will be detrimental and burdensome for Green Tree to be required to  
9 conduct discovery and meet ongoing discovery deadlines before the parties know which  
10 of Plaintiff's claims, if any, that this Court deems viable. Should Plaintiff's claims be  
11 dismissed, then discovery will be totally unnecessary. Neither Green Tree nor Plaintiff  
12 should be required to expend the substantial time, effort and money necessary to conduct  
13 expensive discovery until the pleadings have been closed and the parties are actually  
14 aware of what claims, if any, and defenses are being asserted. Given that a stay of  
15 discovery would not prejudice either party, and would conserve the parties' and the  
16 Court's resources, Green Tree respectfully requests that this Court exercise its discretion  
17 and enter an order to stay all discovery in this matter until the Court issues its ruling on  
18 Green Tree's Motion to Dismiss.

19 DATED this 19th day of March, 2012.

20 **FENNEMORE CRAIG, P.C.**

21  
22 By: /s/ Lindsay A. Hansen

23 David W. Dachelet (No. 6615)  
24 Lindsay A. Hansen (No. 11985)  
25 300 S. Fourth Street, Suite 1400  
26 Las Vegas, Nevada 89101  
27 Telephone: (702) 692-8000  
28 Facsimile: (702) 692-8099

IT IS SO ORDERED.

*Attorneys for Defendant Green Tree  
Servicing LLC*

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28 \_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE

DATE: MARCH, 26, 2012

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