

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEVADA

3 FEDERAL DEPOSIT INSURANCE
4 CORPORATION, AS RECEIVER OF
5 SILVER STATE BANK

6 Plaintiffs,

7 vs.

8 COREY L. JOHNSON; DOUGLAS E.
9 FRENCH; GARY A. GARDNER; and
10 TIMOTHY S. KIRBY

11 Defendants,

Case No.: 2:12-CV-209

**JOINT MOTION FOR
RECONSIDERATION OF ORDER
DENYING STIPULATION TO MODIFY
SCHEDULING ORDER REGARDING
EXPERT DISCLOSURES**

12 **I. Introduction**

13 The parties jointly move for reconsideration of the Court's Order of November 19, 2012
14 (Dkt. No. 69), which denied the parties' November 15, 2012 stipulation (Dkt. No. 67) to amend
15 the present Scheduling Order (Dkt. No. 58) regarding expert disclosures.

16 **II. Discussion**

17 The November 15, 2012 stipulation should have more clearly stated that the parties'
18 requested amendment of the scheduling order does not seek to lengthen the discovery period,
19 postpone the trial date, or extend any deadline except the expert disclosure deadline. That is, all
20 dates other than the expert disclosure deadline would remain unchanged under the parties'
21 proposal, and the expert disclosures would simply move to a later date within the existing
22 discovery period.
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24 Under the current schedule, the parties must both disclose their experts and serve reports
25 by January 22, 2013. The parties cannot meet this schedule due to the ongoing, but incomplete,
26 review of the voluminous document production, the need to coordinate the schedules of many
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1 attorneys and witnesses for depositions, and the expert witnesses' need for time to process the
2 information resulting from these discovery efforts. To be more precise, the FDIC has produced
3 12,305 documents, consisting of 165,478 pages,¹ including a 36,540-page production on or
4 about November 13, 2012. The latter production, consisting of 3,261 documents, consists of the
5 original files of the loans at issue.

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7 The parties therefore request that the expert disclosure deadline be amended so that initial
8 disclosures are exchanged by March 26, 2013, with responses exchanged by April 23, 2013.
9 The parties expect that this modification of the schedule will allow them to complete fact
10 discovery in sufficient time to enable the experts to prepare their reports. The modification
11 further leaves time within the existing schedule to complete expert depositions.

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13 Specifically, the parties wish to amend Paragraph 2(E) of the current Scheduling Order to
14 read as follows:

15 The parties shall exchange the information and reports required by Fed. R.
16 Civ. P. 26(a)(2)(B) and (a)(2)(C) by March 26, 2013. Rebuttal reports shall
17 be exchanged by April 23, 2013.

18 Again, the parties do not seek to extend the discovery period or move any date other than
19 the expert disclosure deadlines, and then only to postpone expert disclosures. The stipulation
20 does not affect other deadlines stated in the present Scheduling Order.

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¹ The FDIC's production includes documents under the following Bates prefixes: FDIC 1-74407, SSB 1-90462, and SSB-DF 1 -609.

1 For these reasons, which the parties did not fully articulate in their November 15, 2012
2 stipulation, the parties respectfully request that the Court reconsider its November 19, 2012
3 Order denying the stipulation.

4 Respectfully submitted,

5 OSBORN MALEDON, P.A.
6 By /s/ Maureen Beyers
7 Attorney for Kirby


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By /s/ Eric E. Reed
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8 EMMEL & KLEGEMAN, PC
9 By /s/ Allen D. Emmel
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By /s/ John R. McMillan
Attorney for Johnson

10 MULLIN HOARD & BROWN, LLP
11 By /s/ Anthony W. Kirkwood
12 Attorney for the FDIC

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15 IT IS SO ORDERED this 12th day
16 of December, 2012.

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19 Peggy A. Leen
20 United States Magistrate Judge
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CERTIFICATE OF SERVICE

The undersigned certifies that he filed the foregoing with the Court on December 10, 2012 using the ECF System, which will provide notice and a copy to the following:

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