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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 CAPITAL ONE, NATIONAL ASSOCIATION,
a national banking association,

13 Plaintiff,

14 vs.

15 SFR INVESTMENTS POOL 1, LLC, a Nevada
16 limited liability company; SOUTHERN
17 HIGHLANDS COMMUNITY ASSOCIATION,
a Nevada non-profit corporation,

18 Defendants.

Case No. 2:15-cv-01324-KJD-PAL

**STIPULATION REGARDING
MOTION TO COMPEL,
DISPOSITIVE MOTIONS, AND
JOINT PRETRIAL ORDER**

(Third Request)

19 SFR INVESTMENTS POOL 1, LLC, a Nevada
20 limited liability company,

21 Counterclaimant/Cross-Claimant,

22 vs.

23 CAPITAL ONE, NATIONAL ASSOCIATION,
a national banking association; and EILAT
24 BENARON, an individual,

25 Counter-Defendants/Cross-Defendants.

26
27 Plaintiff Capital One, National Association (“Capital One”), defendant SFR
28 Investments Pool 1, LLC (“SFR”), and defendant Southern Highlands Community

1 Association (“Southern Highlands,” and together with Capital One and SFR, the
2 “Parties”) stipulate as follows:

3 1. On September 5, 2016, the Court entered an order (ECF No. 56)
4 granting the Parties’ stipulation to stay litigation based on the Ninth Circuit’s
5 decision in Bourne Valley Court Tr. v. Wells Fargo Bank, NA, 832 F.3d 1154 (9th Cir.
6 2016).

7 2. The order provided that the litigation stay would automatically lift when
8 the Ninth Circuit issued its mandate in Bourne Valley.

9 3. The order further provided that the dispositive motion deadline would
10 automatically reset to 30 days after the date the Ninth Circuit issued its mandate.

11 4. The order further provided that Capital One would be permitted to
12 depose SFR’s expert witness, Michael Brunson, after the stay was lifted.

13 5. The Court subsequently issued a minute order (ECF No. 57) which
14 deemed Capital One’s motion to compel against SFR (ECF No. 52) withdrawn. The
15 minute order stated the Parties could request reinstatement of the motion to compel
16 after the litigation stay was lifted.

17 6. The Ninth Circuit issued its mandate in Bourne Valley on December 14,
18 2016.

19 7. Accordingly, the dispositive motions deadline automatically reset to
20 January 13, 2017.

21 8. On December 29, 2016, SFR filed a Motion to Certify Question of Law to
22 Supreme Court of Nevada (ECF No. 58) and a Motion for Partial Summary Judgment
23 re: a Pure Issue of Law: Application of the Return Doctrine Post-*Bourne Valley* (ECF
24 No. 59).

25 9. Capital One intends to file a motion for summary judgment on or before
26 the January 13, 2017 deadline. The motion will address various arguments which do
27 not require the Parties to hold the deposition of Brunson or to reinstate Capital One’s
28 motion to compel. Capital One’s motion will be limited to three issues: (1) that

1 Capital One is entitled to summary judgment under Bourne Valley, (2) that the
2 Housing and Economic Recovery Act of 2008 preempted the subject foreclosure sale
3 from extinguishing the subject deed of trust, and (3) that the Nevada Supreme
4 Court's opinion in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev. Adv.
5 Rep. 75, 334 P.3d 408 (2014), does not apply retroactively.

6 10. In the event the Court denies Capital One's planned motion for
7 summary judgment, the Parties agree to hold the deposition of Brunson, to reinstate
8 the motion to compel, and to litigate any remaining issues not addressed in Capital
9 One's planned motion. These issues include, among other things, the sufficiency of
10 the foreclosure sale price, the validity of the foreclosure sale under Shadow Wood
11 Homeowners Ass'n v. N.Y. Cmty. Bancorp. Inc., 132 Nev. Adv. Rep. 5, 366 P.3d 1105
12 (2016), and Capital One's argument that the sale is a constructively fraudulent
13 transfer.

14 11. Accordingly, if the Court denies Capital One's planned motion for
15 summary judgment, the Parties will submit a further stipulation that reinstates
16 Capital One's motion to compel, schedules a date and time for the deposition of
17 Brunson, sets a deadline for filing any dispositive motions on the remaining issues in
18 the case, and sets a new deadline for the joint pretrial order.

19 12. Good cause exists for granting this stipulation because it will not be
20 necessary to hold the deposition of Brunson, to reinstate the motion to compel, or to
21 litigate any additional issues if the Court grants Capital One's planned motion for
22 summary judgment.

23 13. The Court previously granted a stipulation to extend the dispositive
24 motions deadline from April 15, 2016 to July 14, 2016 and to extend the pretrial order
25 deadline from May 13, 2016 to August 11, 2016 (ECF No. 37). This extension was
26 primarily due to a medical issue affecting Southern Highlands' Rule 30(b)(6)
27 deponent. The Court later granted a stipulation to extend the dispositive motion
28 deadline to September 12, 2016 and to extend the pretrial order deadline to October

1 11, 2016 (ECF No. 43). These deadlines were vacated when the Ninth Circuit issued
2 its Bourne Valley opinion and the Court stayed litigation.

3 Dated: January 9, 2017.

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IT IS ORDERED.

IT IS FURTHER ORDERED that in the event Plaintiff's motion for summary judgment is denied, the parties shall submit a stipulation and proposed order within 14 days of decision of the pending motion for summary judgment to request reinstatement of the motion to compel and complete the deposition described in this stipulation.


UNITED STATES MAGISTRATE JUDGE

Dated: January 10, 2017.