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11 IN THE UNITED STATES DISTRICT COURT FOR THE
12 DISTRICT OF NEVADA

13 CAPITAL ONE, NATIONAL)
14 ASSOCIATION, a national banking)
15 association,)

16 Plaintiff,

v.

17 SFR INVESTMENTS POOL 1, LLC, a)
18 Nevada limited liability company; and)
19 ANTHEM COUNTRY CLUB COMMUNITY,)
ASSOCIATION, a Nevada nonprofit)
corporation,)

20 Defendants.

21 _____)
22 SFR INVESTMENTS POOL 1, LLC, a)
Nevada limited liability company,)

23 Counterclaimant/Crossclaimant,

24 v.

) Case No. 2:17-cv-00604-RFB-NJK
) consolidated with
) Case No. 2:17-cv-00916-KJD-NJK

) **STIPULATED MOTION TO**
) **EXTEND DISPOSITIVE MOTION**
) **DEADLINE AND ORDER**
) **(FOURTH REQUEST UNDER**
) **CURRENT SCHEDULING ORDER)**

1 CAPITAL ONE, NATIONAL)
ASSOCIATION, a national banking)
2 Association; LEON BENZER, an individual;)
UNITED STATES OF AMERICA)
3)
Cross-Defendants,)
4 Counter-Defendants.)
5)

6 UNITED STATES OF AMERICA,)
7)
Plaintiff,)
8)
v.)
9)

10 LEON BENZER;)
SFR INVESTMENTS POOL 1, LLC;)
CAPITAL ONE, N.A.; ROCKTOP)
11 PARTNERS, LLC; WILMINGTON SAVINGS)
FUND SOCIETY, FSB, AS TRUSTEE OF)
12 STANWICH MORTGAGE LOAN TRUST A;)
ANTHEM COUNTRY CLUB)
13 COMMUNITY ASSOCIATION; and)
REPUBLIC SILVER STATE DISPOSAL INC.,)
14)
Defendants.)
15)

16 CAPITAL ONE, NATIONAL ASSOCIATION)
a national banking association,)
17)
Counter-Claimant/Cross-Claimant,)
18)
v.)
19)

20 UNITED STATES OF AMERICA;)
LEON BENZER, an individual;)
SFR INVESTMENTS POOL 1, LLC,)
21 a Nevada limited liability company; and)
ANTHEM COUNTRY CLUB)
22 ASSOCIATION, a Nevada corporation,)
23)
Counter-Defendant/Cross-Defendants.)
24)

25)

1 The United States of America; Rocktop Partners, LLC (“Rocktop”); Wilmington Savings
2 Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A (“Wilmington”); SFR
3 Investments Pool 1, LLC (“SFR”); and Anthem Country Club Community Association
4 (“Anthem”) (collectively, the “Parties”) hereby stipulate to extend the dispositive motion
5 deadline in this matter by 60 days, from April 30, 2020 to June 29, 2020.

6 **MEMORANDUM IN SUPPORT**

7 1. This consolidated proceeding concerns competing claims to the same piece of real
8 property. The Parties reached this stipulation and request the Court’s approval for two primary
9 reasons. First, the Parties have reached a tentative agreement to resolve an ongoing discovery
10 dispute by conducting a deposition of Capital One, National Association (“Capital One”). The
11 United States has issued a subpoena and has made contact with Capital One. However, the
12 Parties likely cannot complete the deposition in sufficient time to meet the current deadline,
13 particularly in light of business and work disruptions related to the Covid-19 pandemic.

14 2. Second, there is a potential need to amend the United States’ operative pleading to
15 include a new party. It is unlikely this issue can be resolved in advance of the current deadline.

16 ***Background***

17 3. From March 2018 to May 2019, these consolidated cases were stayed while the
18 Court awaited certain case law developments and while the Parties conducted a settlement
19 conference. (ECF Nos. 87-88, 91, 109-110, 127, & 136-138). Ultimately, settlement
20 negotiations were unsuccessful.

21 4. On May 24, 2019, the Court entered a new scheduling order that set a discovery
22 cutoff of August 22, 2019, a dispositive motion deadline of September 23, 2019, and a pretrial
23 order deadline of October 23, 2019. (ECF No. 144).

24 5. On August 19, 2019, Capital One, SFR, Anthem, and the United States filed a
25 Stipulation to Extend Discovery Cutoff, Dispositive Motion Deadline, and Pretrial Order

1 Deadline. (ECF No. 162). The Court partially granted the stipulation by extending the
2 dispositive motion deadline to December 23, 2019 to help resolve scheduling difficulties with the
3 deposition of a Rule 30(b)(6) witness of Capital One. (ECF No. 169).

4 6. Capital One made claims to the property based on two deeds of trust on the
5 property at issue. At a hearing on October 21, 2019, the Court ordered that Rocktop and
6 Wilmington be joined as parties because Capital One had transferred its interest in one deed of
7 trust to Rocktop and its interest in the other deed of trust to Wilmington. (ECF No. 214). On
8 January 6, 2020, Capital One moved to substitute Rocktop and Wilmington for Capital One.
9 (ECF No. 232). SFR and the United States oppose. (ECF Nos. 233 and 234). The motion is
10 pending.

11 7. On November 25, 2019, the Rule 30(b)(6) deposition of Capital One was held.
12 The witness was an employee of Carrington Mortgage Services, LLC, an entity that provides
13 loan servicing. During the deposition, a dispute arose as to whether the witness was prepared to
14 testify about certain topics in the deposition notices issued by SFR and the United States.

15 8. To allow the Parties time to hold a second deposition, the Parties requested and
16 obtained a further extension of the dispositive motion deadline to February 28, 2020. (ECF Nos.
17 230-231).

18 9. The second deposition was held on January 15, 2020. The witness was an
19 employee of Rocktop. During and after the deposition, a dispute arose as to various issues,
20 including (1) whether the witness was adequately prepared to testify about certain policies and
21 procedures of Capital One; (2) whether the witness was adequately prepared to testify about
22 certain entries in Capital One's servicing records; (3) whether the desired testimony was relevant
23 and proportional to the needs of the case; and (4) the degree to which the parties had previously
24 communicated or reached agreement on these issues.

1 10. The Court approved a stipulation among the parties to extend the dispositive
2 motion deadline until April 30, 2020, while they negotiated these issues. (ECF No. 238).

3 ***The New Proposed Deposition and Scheduling Issues***

4 11. The parties continued to meet and confer. They discussed whether deposing a
5 witness from Capital One would help resolve the disputes concerning the Rule 30(b)(6)
6 depositions of witnesses from Rocktop and Carrington. To move forward, and without intending
7 to waive any substantive rights, the Parties agreed to submit a stipulation for the Court's
8 approval to allow the United States to contact Capital One directly pursuant to Nevada Rule of
9 Professional Conduct 4.2, and to issue a subpoena directly to Capital One. (ECF No. 245).

10 12. The Court approved the stipulation on March 10, 2020. (ECF No. 246).

11 13. The United States subsequently issued a subpoena to Capital One for a deposition
12 on April 15, 2020. The United States did not propose an earlier date because of the uncertainty
13 posed by the Covid-19 situation, and because it believed that Capital One would reasonably ask
14 for time to prepare a witness. Counsel for the United States has spoken with an in-house
15 attorney for Capital One. Capital One appears willing to cooperate, but counsel did not believe
16 the witness could be available and prepared by April 15.

17 14. During a recent meet and confer, the Parties expressed concerns that if the
18 deposition did not happen until April 15 or after, it would be too close to the April 30 dispositive
19 motions deadline to be practical, especially if there are delays in obtaining a transcript, or
20 technical difficulties in arranging a web-based deposition with multiple parties. (In light of the
21 Covid-19 pandemic, the Parties anticipate that the deposition will occur by video or internet
22 conference.) Further, Rocktop and Wilmington intend to move for a protective order to
23 eliminate two subtopics contained in the subpoena to Capital One. The Parties have discussed
24 scheduling the deposition during the week of May 4, 2020, assuming the Court approves this
25

1 stipulation, and subject to the resolution of Rocktop and Wilmington’s motion for a protective
2 order.

3 ***The Potential New Party***

4 15. The United States brought the second of these two consolidated cases to foreclose
5 federal tax liens on the property in dispute. Under the applicable statute, 26 U.S.C. § 7403(a),
6 the United States is required to name other persons who may claim an interest in the property as
7 defendants, so that their claims may be adjudicated and, if appropriate, their claims satisfied
8 from the sales proceeds.

9 16. The United States typically obtains a title report on disputed property to check for
10 other potential lienholders at the start of litigation, and did so here. However, because the
11 litigation has been pending for over three years, the United States recently obtained an updated
12 title report in mid-February of 2020. In reviewing the report in preparation for dispositive
13 motions, counsel determined that an entity it had not previously named appeared to have filed a
14 lien on the property at issue in 2018, after the litigation was well under way and after the United
15 States filed a *lis pendens* notice.

16 17. In an abundance of caution, the United States contacted the counsel that had filed
17 the lien on the property. The lienholder’s attorney acknowledged receipt of the message, and
18 replied that he would discuss the matter with his client. The United States does not know yet
19 whether the potential lienholder will wish to assert a claim to the proceeds, to sign a disclaimer,
20 or take other action.

21 18. Without waiving any rights to object to any new claims on the merits, the other
22 Parties agreed they would not object to an extension of time to allow the United States to further
23 investigate the new claim. The United States informed the other parties that it may be
24 appropriate to seek leave to amend the operative complaint to name the new claimant.
25

Request for Relief

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2 19. Good cause exists for the requested 60-day extension. It will allow the Parties to
3 conduct a deposition of Capital One (assuming the resolution of Rocktop and Wilmington’s
4 anticipated motion for a protective order), which should help reduce disputes about the adequacy
5 of the prior depositions. It will also allow the United States to investigate the new potential
6 claimant, without cutting out a potentially legitimate claim.

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1 WHEREFORE, the parties jointly seek the Court's authorization approval to extend the
2 dispositive motions deadline from April 30, 2020, to June 29, 2020.

3 DATED this 10th day of April, 2020.

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19
20 **IT IS SO ORDERED:**

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22 _____
UNITED STATES MAGISTRATE JUDGE

23 DATED: April 13, 2020