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 21 PROCESS ON SINCLAIR BRAUN LLP PER L.R. IA 11-1(b)

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25 **UNITED STATES DISTRICT COURT**
 26 **DISTRICT OF NEVADA**

27 BANK OF NEW YORK MELLON,
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 29 Plaintiff,
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 31 vs.
 32 FIDELITY NATIONAL TITLE
 33 INSURANCE COMPANY,
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 35 Defendant.

36 Case No.: 2:20-CV-02124-RFB-BNW
 37 **STIPULATION AND ORDER TO**
 38 **EXTEND DISCOVERY DEADLINES**
 39 **(Second Request)**

40 COMES NOW defendant Fidelity National Title Insurance Company (“Fidelity”) and
 41 plaintiff The Bank of New York Mellon (“BONY”) (collectively, the Parties), by and through
 42 their respective attorneys of record, hereby submit their Stipulation to Extend Discovery
 43 Deadlines by ninety (90) days in accordance with Local Rule 26-3 and Local Rule IA 6-1. The
 44 Parties are requesting an extension to the discovery deadlines to afford BONY additional time to



1 continue to produce its documents, including its loan file for the subject transaction and the file
2 from the underlying litigation. Based on the volume of the documents at issue, and the Parties'
3 desire to resolve certain pending discovery disputes without Court involvement, the Parties
4 request an additional ninety (90) days in order to complete discovery.

5 The request for an extension is supported by good cause in compliance with LR 26-3, has
6 been brought in good faith, is the first request for an extension of time to the discovery deadlines
7 and is not intended to cause delay.

8 **A. STATEMENT SPECIFYING THE DISCOVERY COMPLETED**

9 The Parties conducted the FRCP 26(f) conference on February 19, 2021. Thereafter, the
10 Parties submitted their proposed Stipulated Discovery Plan and Scheduling Order on March 23,
11 2021 (ECF No. 21). On March 26, 2021 the Court entered the Scheduling Order (ECF No. 22),
12 setting the following deadlines:

- 13 • Discovery Cutoff: September 16, 2021
- 14 • Dispositive Motion Cutoff: October 18, 2021; and
- 15 • Pretrial Order Deadline: November 17, 2021, or 30 days after resolution of
16 dispositive motions

17 The Parties have completed the following discovery to date:

- 18 • Fidelity's Initial Disclosure of Witness and Documents, April 12, 2021;
- 19 • BONY's Initial Disclosure of Witness and Documents, April 12, 2021;
- 20 • BONY's First Supplemental Disclosure of Witness and Documents, May 3, 2021;
- 21 • BONY's Second Supplemental Disclosure of Witness and Documents, June 16,
22 2021;
- 23 • BONY's Third Supplemental Disclosure of Witness and Documents, June 16,
24 2021;
- 25 • BONY's Fourth Supplemental Disclosure of Witness and Documents, June 30,
26 2021;
- 27 • Fidelity's Initial Expert Witness Disclosure with Report, July 19, 2021;
- 28 • BONY's Fifth Supplemental Disclosure of Witness and Documents, September 7,

1 2021;

2 The following discovery is in progress:

- 3 • Fidelity’s Subpoenas to Produce Documents, Information or Objects or to Permit
4 Inspection of Premises in a Civil Action to various third parties, notice of which
5 was provided to BONY on June 24, 2021;
- 6 • Fidelity’s First Set of Requests for Production, Requests for Admission, and
7 Interrogatories to BONY, served on July 6, 2021.
- 8 • BONY’s document production.

9 **B. A SPECIFIC DESCRIPTION OF THE DISCOVERY THAT REMAINS TO**
10 **BE COMPLETED**

11 The Parties need to conduct the following discovery:

- 12 • Final agreement on the terms of a Stipulated Protective Order and the Court’s entry
13 of the same;
- 14 • Deposition of FRCP 30(b)(6) Witness for BONY;
- 15 • Deposition of FRCP 30(b)(6) Witness for Fidelity;
- 16 • Deposition of various fact and expert witnesses; and
- 17 • Such other discovery that may be deemed necessary or appropriate.

18 **C. THE REASONS WHY THE DEADLINE WAS NOT SATISFIED OR THE**
19 **REMAINING DISCOVERY WAS NOT COMPLETED WITHIN THE**
20 **TIME LIMITS SET BY THE DISCOVERY PLAN**

21 Fidelity noticed the deposition of BONY’s Fed. R. Civ. P. 30(b)(6) designee for
22 November 9, 2021. BONY’s counsel advised that Akerman LLP will be withdrawing from this
23 action as counsel for BONY, and that new counsel would need to be involved in the process of
24 scheduling and defending BONY’s deposition. For that reason, BONY’s counsel stated that
25 BONY could not proceed on the date noticed, and that BONY would need to reschedule the
26 deposition once new counsel has appeared in the case. The parties anticipate that the testimony
27 given at the deposition of BONY’s 30(b)(6) designee will likely prompt the need for additional
28 depositions, and so the parties seek a 60-day extension of their existing discovery deadlines to

1 allow Akerman LLP to substitute out of the case, to allow new counsel to get up to speed on the
2 file, and to allow Fidelity additional time to complete its investigation. Finally, with the holidays
3 imminent, the parties anticipate scheduling conflicts. Extending discovery by two months would
4 not significantly delay resolution; discovery would close by February of next year (approximately
5 three months from today's date) so the case would still be ready for submission to the court on
6 summary judgment and/or trial by the spring of 2022. In accordance with Local Rule 26-3, good
7 cause exists for an extension to the discovery deadlines in order to allow the Parties to complete
8 discovery and resolve any disputes following the entry of a stipulated protective order in this case.

9 **D. A PROPOSED SCHEDULE FOR COMPLETING ALL REMAINING**
10 **DISCOVERY**

11 The Parties request that the current Scheduling Order (ECF No. 22) be extended as
12 follows:

- 13 1. Discovery Cutoff: currently December 17, 2021, **desired February 15, 2022;**
 - 14 2. Dispositive Motion Cutoff: currently January 14, 2022, **desired March 15, 2022;**
- 15 and,

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3. Last Day to File Joint Pre-Trial Order: currently February 18, 2021, **desired April 14, 2022**. In the event dispositive motions are filed, the date for filing the joint pretrial order shall be suspended until thirty (30) days after a decision of the dispositive motions. The disclosure required by FRCP 26(a)(3), and any objections thereto, shall be included in the pretrial order.

IT IS SO STIPULATED.

Dated: November 16, 2021

SINCLAIR BRAUN LLP

By: /s/-Kevin S. Sinclair
KEVIN S. SINCLAIR
Attorneys for Defendant
FIDELITY NATIONAL TITLE INSURANCE
COMPANY

Dated: November 16, 2021

AKERMAN LLP

By: /s/-Ariel E. Stern
ARIEL E. STERN
Attorneys for Plaintiff
THE BANK OF NEW YORK MELLON

Order

IT IS ORDERED that ECF No. 37 is GRANTED in part and DENIED in part. It is granted to the extent the parties request a 60-day extension, as demonstrated in their new, proposed deadlines. It is denied to the extent they request a 90-day extension on page 1, as this appears to be a typographical error.

IT IS SO ORDERED
DATED: 10:25 am, November 17, 2021


BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE

