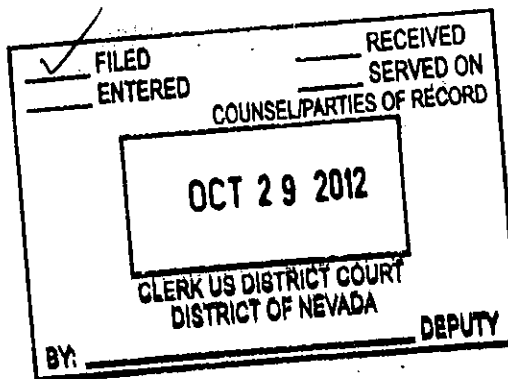


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7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA  
9

10 CHRISTOPHER BULEN and JANITH  
11 MARTINEZ,

12 Plaintiffs,

13 vs.

14 REALOGY CORPORATION, et al.,

15 Defendants.  
16

CASE NO. 3:10-CV-00755-RCJ-VPC

JOINT MOTION AND [PROPOSED]  
ORDER TO AMEND CLASS  
DEADLINES

17 Come now Plaintiffs Christopher Bulen and Janith Martinez ("Plaintiffs") and Defendants  
18 Realogy Corporation and Realogy Franchise Group LLC (hereafter "Realogy"), by and through  
19 undersigned counsel, and hereby jointly seek an order of this Court amending the current scheduling  
20 order relating to the completion of class discovery and class certification briefing. In support this  
21 Motion, the parties state as follows:

22 1. On June 25, 2012, this Court entered its current scheduling order setting various  
23 deadlines in this action, including a class discovery deadline of November 12, 2012, and a class  
24 certification briefing deadline of December 10, 2012 ("Class Deadlines"). With these and other  
25 deadlines in mind, the parties have been working diligently to complete necessary discovery in  
26 advance of the Class Deadlines.

27 2. On October 18, 2012, this Court held a case management conference in order to  
28 address discovery disputes that had arisen relating to Realogy's document production and regarding

1 the depositions Plaintiffs were seeking to take. During the hearing this Court ordered, *inter alia*, that  
2 Realogy was required to complete its production and produce all of its documents to Plaintiffs'  
3 counsel by close of business on Monday, October 29, 2012. *See* Doc. 92. The Court also directed  
4 Realogy to categorize documents that were still to be reviewed into 20 different categories in lieu of  
5 Realogy having to index the documents as to each of Plaintiffs' document requests. *Id.*

6 3. In terms of depositions, during the hearing counsel for Realogy proposed taking the  
7 depositions of Realogy employees Chris Sears, Rhonny Barragan, and Travis Bailey, along with a  
8 Realogy corporate representative witness, on November 6, 7 and 8 in Parsippany, New Jersey. This  
9 Court further ruled that while Plaintiffs would not, at present, be allowed to take the deposition of  
10 Alex Perriello, Plaintiffs would be permitted to proceed with the depositions of Katrina Najm and  
11 Kevin Doell. *See* Doc. 92. The parties were instructed to "meet and confer" to confirm the  
12 deposition dates. *Id.* This Court also instructed Plaintiffs' counsel to provide defense counsel with  
13 contact information for counsel for the attorney representing third-party defendant, Donald Paciello,  
14 in order for defense counsel to learn whether Mr. Paciello would be participating in the litigation and,  
15 in addition, in order to schedule Mr. Paciello's deposition. *Id.*

16 4. In accord with this Court's October 18 Order, Realogy has worked to expedite as  
17 much as possible Realogy's review and production of documents responsive to Plaintiffs' more than  
18 400 document requests. Since October 18, 2012, a 12-person document review team has worked to  
19 review more than 25,000 documents in an effort to locate, categorize, redact and Bates-label  
20 documents requested by Plaintiffs. Despite these efforts, however, Realogy is still in the process of  
21 scanning and running searches on the computers of other Realogy employees who are believed to  
22 have potentially responsive documents, and Realogy will not be able to conclude its production of  
23 documents by the Court-imposed deadline of October 29, 2012. Realogy can complete its production  
24 by November 16, 2012.<sup>1</sup> *Id.*

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25  
26  
27 <sup>1</sup> Realogy will follow the Court's order to produce documents on a "rolling basis." Doc. 92.  
28 Realogy will be making productions on October 26 and October 29, and will commit to producing  
documents on November 5 and 12, with a final production arriving in at Plaintiffs' counsel's office  
on November 16.

1           5.       In light of the fact that Realogy will not be able to produce all of its documents in  
2 advance of the currently scheduled depositions set to begin November 6—and given Plaintiffs' need  
3 to have the documents in advance of these depositions—counsel for Realogy contacted Plaintiffs'  
4 counsel in an attempt to develop revised Class Discovery deadlines and an agreeable deposition  
5 schedule.

6           6.       Although Plaintiffs have concerns about the ability to maintain the current trial date if  
7 the Class Discovery deadlines are moved, based on the representations by defense counsel that  
8 Realogy cannot complete its production by October 29, 2012, but will be completed by November 16,  
9 2012, Plaintiffs are agreeable to the following proposed modifications of the Class Discovery  
10 deadlines:

11                   Class discovery deadline extended from the current date of **November**  
12                   **10, 2012 to December 20, 2012** (an extension of 39 days).

13                   Class certification briefing deadline extended from the current date of  
14                   **December 10, 2012 until January 25, 2013** (an extension of 46 days).

15           7.       In order to complete the necessary depositions within this proposed amended class  
16 discovery schedule, Realogy has agreed to make its witnesses available the week of December 10,  
17 2012, pursuant to the following schedule:

18                               12/10 – Travis Bailey

19                               12/12 – Rhonny Barragan

20                               12/13 – Realogy Corporate Representative

21                               12/14 – Chris Sears

22           8.       Realogy has also agreed to coordinate the depositions (and accept subpoenas for)  
23 former employees Katrina Najm and Kevin Doell.<sup>2</sup> Realogy is also attempting to coordinate the  
24 depositions of these individuals on Tuesday, December 11 (or during the evening during the week of  
25 December 10) in order to complete all depositions during the week.

26           9.       Plaintiffs' counsel has agreed to produce Plaintiffs for their depositions on December  
27 18 and 19, 2012, with the depositions of Third-Party Defendant Donald Paicello to be scheduled at a

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28 <sup>2</sup> Following the October 18 hearing, counsel for Realogy learned that Mr. Doell is no longer an  
employee of Realogy.

1 time convenient for all of the parties and Mr. Paciello, but before the class discovery cut-off of  
2 December 21, 2012.<sup>3</sup>

3 10. On or about September 20, 2012, Plaintiffs served Donald Paciello and a FED. R. CIV.  
4 P. 30(b)(6) representative of Townsend Hoffman Corp. for deposition. Subsequently, on October 1,  
5 2012, the Realogy defendants were granted leave to file a third-party complaint naming Donald  
6 Paciello and Townsend Hoffman Corp. As noted in footnote three, counsel for Donald Paciello has  
7 suggested that Mr. Paciello may file bankruptcy in view of the third-party complaint filed by the  
8 Realogy Defendants. To avoid any further delay of the deposition of Mr. Paciello and/or the FED. R.  
9 Civ. P. 30(b)(6) deponent for Townsend Hoffman Corp., Plaintiffs propose that Mr. Paciello and  
10 Townsend Hoffman Corp. be afforded an extension of time to answer or otherwise plead until  
11 January 7, 2013, such that those depositions can occur without being threatened by a bankruptcy stay.  
12 Defendant disagrees with this proposal, believing instead that such an open extension could in fact  
13 serve to further delay the progress of this litigation. Defendants instead believes Paciello and the  
14 other third-party defendants should be held to the usual answer deadlines in order to enable the  
15 parties and this Court to know as soon as possible whether they will be appearing in the case, whether  
16 defaults should be taken, or as has been suggested is a possibility, if one or more of the third-party  
17 defendants will file bankruptcy.

18 11. Plaintiffs are extremely concerned about the possibility of this order affecting the  
19 scheduled trial date in this matter, and are only agreeing to this extension because Realogy has  
20 represented that it cannot produce the documents first requested on June 29, 2012, from Realogy  
21 before November 16, 2012. Given the dates set forth in the scheduling order, Plaintiffs foresee that it  
22 is extremely likely that the deadlines in the scheduling order, particularly the discovery cut-off, the  
23 expert witness deposition cut-off, and the due date for the pretrial order, will need to be extended due  
24 to Realogy's need for more time to review documents. Plaintiffs cannot agree with the factual  
25 statements set forth in paragraph 4 above, and do not understand why Realogy has waited until the  
26

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27 <sup>3</sup> It should be noted that counsel for Donald Paciello has suggested that Mr. Paciello may file  
28 bankruptcy. Under this scenario, it would be necessary for Realogy to seek leave of the bankruptcy  
court in order to be able to depose Mr. Paciello with respect to issues germane to the Realogy's third-  
party claims.

1 last minute to begin to review the alleged 25,000 documents, which relate to discovery requests made  
2 in either June or August 2012. Realogy disagrees with Plaintiffs' characterization of Realogy's  
3 document production efforts, and regrets that it has taken more time than anticipated to produce  
4 documents responsive to Plaintiffs' 400-plus document requests, Realogy believes with the proposed  
5 extension they can meet these and all future deadlines in the case.

6 12. Anticipating this Court's entry of the proposed order provided herewith, the parties do  
7 not believe any additional matters need to be addressed at the status conference currently scheduled  
8 for October, 31, 2012, and request that said conference be vacated.

9 WHEREFORE, for the reasons set forth herein, the parties seek an order of this Court  
10 extending the current class discovery deadline until December 21, 2012, and the class certification  
11 briefing deadline until January 25, 2013. Realogy further requests that its deadline to deliver  
12 documents to Plaintiffs' counsel be extended until November 16, 2013.

13 Respectfully submitted,

14 DATED: October 26, 2012.

15 LEVERTY & ASSOCIATES LAW, CHTD.

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**ORDER**

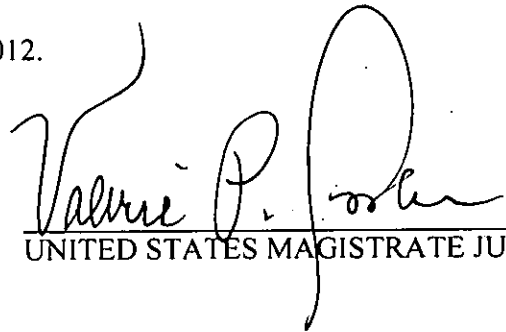
27 **IT IS SO ORDERED** that the current scheduling order relating to the completion of class  
28 discovery is extended until December 21, 2012, with class certification briefing due January 25,

1 2013.

2 **IT IS FURTHER ORDERED** that the Realogy defendants are granted an additional 18 days  
3 to complete their review and production of documents requested by Plaintiffs, to and including  
4 November 16, 2012.

5 **IT IS FURTHER ORDERED** that the Status Conference scheduled for October 31, 2012, is  
6 hereby vacated.

7 DATED: This 21<sup>st</sup> day of October, 2012.

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12 UNITED STATES MAGISTRATE JUDGE  
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