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The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER OF WASHINGTON MUTUAL BANK,

Plaintiff,

vs.

KERRY K. KILLINGER, STEPHEN J. ROTELLA, DAVID C. SCHNEIDER, LINDA C. KILLINGER, and ESTHER T. ROTELLA,

Defendants.

Case No. 2:11-cv-00459

SECOND AMENDED STIPULATION AND [PROPOSED] ORDER TO SET TIME FOR DEFENDANTS TO FIRST RESPOND TO COMPLAINT AND RELATED BRIEFING SCHEDULE

Note on Motion Calendar: June 16, 2011

Plaintiff Federal Deposit Insurance Corporation, as Receiver of Washington Mutual Bank (“FDIC”) and Defendants Kerry K. Killinger, Linda C. Killinger, Stephen J. Rotella, David C. Schneider, and Esther T. Rotella (“Defendants”), through their respective counsel, submit this Stipulation and [Proposed] Order to modify the date by which Defendants must answer or otherwise first respond to the FDIC’s Complaint (Dkt. No. 1) and, to the extent one or more motions to dismiss are filed, the dates by which opposition and reply briefs shall be filed.

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RECITALS

WHEREAS, the FDIC filed its Complaint in the Western District of Washington on March 16, 2011 (Dkt. No. 1);

WHEREAS, counsel for Defendants agreed to accept service of the Complaint on their behalf;

WHEREAS, the Court previously entered an order extending the time for Defendants to answer or otherwise respond to the Complaint to June 17, 2011 (Dkt. No. 45);

WHEREAS, the parties disclosed in their Joint Status Report, filed on June 13, 2011, that they have been engaged in mediation in an attempt to settle the dispute;

WHEREAS, the parties have now exchanged settlement term sheets reflective of a potential settlement. The parties are diligently working to resolve their remaining disputes. In some instances, the settlement terms must have consent of certain third parties. The parties have reserved additional sessions with the mediator for June 29 and June 30, 2011, in the event they are unable to resolve the matters at issue in the interim;

WHEREAS, the parties agree that it would be counterproductive to their efforts to settle this matter were motion to dismiss briefing to be commenced at this time. They correspondingly agree that it would facilitate the potential settlement of this action if the motion to dismiss briefing were deferred a short additional period of time; and

WHEREAS, the parties jointly respectfully request that the Court extend the time in which defendants are required to file their initial response to the Complaint to and including July 1, 2011, the day after conclusion of the last scheduled mediation session. The proposed schedule revision does not change the existing September 15, 2011 noting date of the motions to dismiss.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the FDIC and Defendants, that Defendants shall each have until the end of July 1, 2011 to answer or otherwise respond to Plaintiff's Complaint. Any opposition shall be due on August 22, 2011,

1 and any reply shall be due on September 15, 2011. The changes are shown in the following
2 chart:

Filing	Previous Due Date	New Due Date
Defendants' Answer or First Response to Complaint	June 17, 2011	July 1, 2011
Opposition	August 16, 2011	August 22, 2011
Reply	September 15, 2011	September 15, 2011

7 IT IS SO STIPULATED.

8 DATED this 16th day of June, 2011.

9 **REED SMITH LLP**

DAVIS WRIGHT TREMAINE LLP

10
11 By: s/ Barry Rosen
12 Barry Rosen (*pro hac vice*)
13 10 South Wacker Drive
14 Suite 4000
Chicago, IL 60606
Tel: (312) 207-1000
E-mail: brosen@reedsmith.com

By: s/ Steven P. Caplow
Stephen M. Rummage, WSBA #11168
Steven P. Caplow, WSBA #19843
1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
Tel.: (206) 757-8108
Fax: (206) 757-7136
E-mail: steverummage@dwt.com
stevencaplow@dwt.com

15 *Attorneys for the Federal Deposit Insurance*
16 *Corporation*

**SIMPSON THACHER & BARTLETT
LLP**

Barry R. Ostrager (*pro hac vice*)
Mary Kay Vyskocil (*pro hac vice*)
425 Lexington Avenue
New York, New York 10017
Tel.: (212) 455-2000
Fax: (212) 455-2502
Email: bostrager@stblaw.com
mvyskocil@stblaw.com

-and-

Deborah L. Stein (*pro hac vice*)
1999 Avenue of the Stars, 29th Floor
Los Angeles, California 90067
Tel.: (310) 407-7500
Fax: (310) 407-7502
Email: dstein@stblaw.com

*Attorneys for Stephen J. Rotella, David C.
Schneider, and Esther T. Rotella*

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WILLIAMS & CONNOLLY LLP

By: s/ David D. Aufhauser
David D. Aufhauser (*pro hac vice*)
725 Twelfth Street, N.W.
Washington, D.C. 20005
Tel.: (202) 434-5000
Fax: (202) 434-5029
E-mail: daufhauser@wc.com

Attorneys for Kerry and Linda Killinger

1 **[PROPOSED] ORDER**

2 Based on the foregoing Stipulation,

3 IT IS HEREBY ORDERED that Defendants shall each have up to and including July 1,
4 2011 to answer or otherwise respond to the Plaintiff Federal Deposit Insurance Corporation, as
5 Receiver of Washington Mutual Bank’s Complaint (Dkt. No. 1) in Case No. 2:11-cv-00459. In
6 addition, any opposition shall be due on August 22, 2011, and any reply shall be due on
7 September 15, 2011.

8
9 DATED this ____ day of June, 2011.

10
11 _____
12 THE HONORABLE MARSHA J. PECHMAN
13 United States District Judge

14 Presented by:

15 **DAVIS WRIGHT TREMAINE LLP**

15 **SIMPSON THACHER & BARTLETT
16 LLP**

16 By: s/ Steven P. Caplow
17 Stephen M. Rummage, WSBA #11168
18 Steven P. Caplow, WSBA #19843
19 1201 Third Avenue, Suite 2200
20 Seattle, Washington 98101-3045
21 Tel.: (206) 757-8108
22 Fax: (206) 757-7136
23 E-mail: steverummage@dwt.com
24 stevenaplow@dwt.com

16 Barry R. Ostrager (*pro hac vice*)
17 Mary Kay Vyskocil (*pro hac vice*)
18 425 Lexington Avenue
19 New York, New York 10017
20 Tel.: (212) 455-2000
21 Fax: (212) 455-2502
22 Email: bostrager@stblaw.com
23 mvyskocil@stblaw.com

24 -and-

24 Deborah L. Stein (*pro hac vice*)
25 1999 Avenue of the Stars, 29th Floor
26 Los Angeles, California 90067
27 Tel.: (310) 407-7500
Fax: (310) 407-7502
Email: dstein@stblaw.com

22 *Attorneys for Stephen J. Rotella, David C.
23 Schneider, and Esther T. Rotella*

CERTIFICATE OF SERVICE

1
2 I hereby certify that on June 16, 2011, the foregoing was electronically filed with the
3 Clerk of the Court using the CM/ECF system which will send notification of such filing to all
4 counsel of record who receive CM/ECF notification, and that the remaining parties shall be
5 served in accordance with the Federal Rules of Civil Procedure.

6 DATED this 16th day of June 2011.

7
8 Davis Wright Tremaine LLP

9 By s/ Steven P. Caplow
10 Steven P. Caplow, WSBA #19843
11 Suite 2200
12 1201 Third Avenue
13 Seattle, Washington 98101-3045
14 Tel: (206) 757-8018
15 Fax: (206) 757-7700
16 E-mail: stevencaplow@dwt.com
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