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February 22, 2016

**VIA ECF and By Hand Delivery**

Hon. James C. Francis  
Magistrate Judge  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, New York 10007-1312

**Re: Mortgage Resolution Servicing, LLC v. JPMorgan Chase Bank, N.A., et al.**  
**Civil Action No. 15-CV-293 (LTS) (JCF)**

Dear Magistrate Judge Francis:

This firm represents the Plaintiffs in this case. I write on behalf of all parties in accordance with the Order of Reference (Docket 31) and Rules 1.A and 1.E of Your Honor's Individual Practices to respectfully request that the Court extend the discovery dates presently governing this case in accordance with the attached Proposed Revised Scheduling Order.

The parties agree that since the entry of the Initial Pre-Trial Order (Docket 32), subsequent events, including a stay of discovery pending the outcome of a motion to transfer, and a pending motion to dismiss certain claims, have made it necessary to request an extension of the dates therein.

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For comparison purposes, the table below sets forth the existing and proposed dates:

<b>Task to be Completed</b>	<b>Initial Pretrial Order</b>	<b>Proposal</b>
Amendment/Joinder	May 21, 2015	Unchanged, except for such applications as may be made in response to this Court's decision(s) on motion(s) to dismiss
Non-expert discovery	February 29, 2016	September 2, 2016
Plaintiff expert disclosure		September 30, 2016
Defendant expert disclosure		November 30, 2016
Rebuttal disclosure		December 16, 2016
Expert discovery	April 29, 2016	January 27, 2017
Dispositive motions	May 31, 2016	February 28, 2017
Pretrial conference	September 29, 2016	
No depositions before	October 1, 2015	April 15, 2016
Begin meeting with Magistrate Judge Francis re settlement by	November 6, 2015	May 6, 2016

As background, Plaintiffs contend that they purchased thousands of defaulted residential mortgage loans from Chase with the goal of working out payment plans with the borrowers to enable them to remain in their homes. Among other things, Plaintiffs allege that the Defendants sold them defective loans, subsequently released liens on loans they had already sold to Plaintiffs, and accepted and retained payments on loans they no longer owned. Plaintiffs also allege that Defendants did this and other actions as part of a scheme to apply these loans they did not own to their obligations to provide approximately \$8 billion in consumer relief they were obliged to provide pursuant to certain settlement agreements and consent orders entered into with the government and 49 states. Plaintiffs have alleged claims including breach of contract, fraud, tortious interference, conversion, slander of title and for liability under civil RICO. Defendants deny Plaintiffs' allegations and contest the claims.

Plaintiffs' principal, Laurence Schneider, has a *qui tam* case pending in the District of Columbia, now captioned *United States of America et al ex rel. Lawrence Schneider v. J.P. Morgan Chase Bank, National Association, et al.*, 114-CV-01047-RMC (the "*qui tam* Case") in which he contends that Defendants violated the terms of a consent judgment entered in *United States v. Bank of America*, 922 F. Supp. 2d 1, 4 (D.D.C. 2013) that provided, among other things, that Defendants provide refinancing and other consumer relief to mortgage customers who satisfy certain eligibility criteria. Defendants deny the allegations and contest the claims.

Defendants moved to transfer this case to the District of Columbia as a related case (Docket 42). In its Order dated June 18, 2015 (Docket 58), this Court stayed discovery pending resolution of Defendants' motion to transfer. The Court denied that motion on October 28, 2015 (Docket 75). In the Initial Pre-Trial Order and in Your Honor's decision denying the motion to transfer, this Court ordered the parties to coordinate discovery with the *qui tam* Case, in which discovery has not yet begun.

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Shortly after this Court denied the motion to transfer, Defendants filed a Rule 12(b)(6) motion to dismiss all claims except those for breach of contract. That motion was fully briefed as of December 18, 2015 and is now pending before the Court. Following briefing of the motion to dismiss, the parties began working on document discovery and preliminary interrogatories. Plaintiffs have already served their written responses to Defendants' demands and Defendants' written responses will be due on February 24, 2016.

The parties agree that with the stay of discovery pending the motion to transfer, as well as the briefing on the motion to dismiss, the dates in the existing Initial Pre-Trial Order cannot be adhered to. For good cause shown herein, therefore, we jointly request that the Court adopt the dates set forth in the attached Proposed Revised Scheduling Order.

There has been no prior request to reschedule these dates, except, as set forth above, to the extent that requests were made and granted to stay discovery pending the outcome of the motion to transfer. No new dates were decided upon at that time.

We thank the Court for its consideration of this submission.

Respectfully submitted,

/s/ Suzan Arden

Suzan Arden

SA/sh

cc: Robert Wick, Esq. (via ECF and email)  
Christian Pistilli, Esq. (via ECF and email)  
Michael Nicholson, Esq. (via ECF and email)  
Michael Maya, Esq. (via ECF and email)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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S & A CAPITAL PARTNERS, INC., et al.,	:	
	:	
Plaintiffs,	:	No. 15-cv-00293-LTS-JCF
	:	
- against -	:	<u>[PROPOSED] AMENDED PRE-TRIAL</u>
	:	<u>SCHEDULING ORDER</u>
JPMORGAN CHASE BANK, N.A., et al.,	:	
	:	
Defendants.	:	
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Upon the joint application of Plaintiffs S & A Capital Partners, Inc., Mortgage Resolution Servicing, LLC, and 1st Fidelity Loan Servicing, LLC, and Defendants JPMorgan Chase Bank, N.A., Chase Home Finance, LLC, and JPMorgan Chase & Co., the Court hereby amends and supersedes its Pre-Trial Scheduling Order in this matter, entered on April 24, 2015, and makes the following provisions for scheduling and trial in this matter.

1. Amendments to Pleadings. Additional Parties

All applications to amend pleadings or join parties, or amendments or joinders as of right, were required to have been made by **May 21, 2015, except for such applications as may be made in response to this Court’s decision(s) on motion(s) to dismiss.**

2. Discovery

- a. All non-expert witness discovery in this matter must be completed by **September 2, 2016.**
- b. Plaintiffs must make their expert witness disclosures described in Rule 26(a)(2) of the Federal Rules of Civil Procedure concerning expert(s), if any, to be offered on issues as to which they the burden of proof or otherwise in support of their case, on or before **September 30, 2016.** Defendants shall make their expert witness disclosures on or before **November 30, 2016.** Rebuttal disclosures must be made no later than **December 16, 2016.** Such disclosures must be made in writing, signed and served, but must not be filed with the Court.
- c. All expert witness discovery must be completed by **January 27, 2017.**

3. Dispositive Pre-Trial Motions

Dispositive motions, if any, seeking resolution, in whole or in part, of the issues to be raised at trial must be served and filed on or before **February 28, 2017.** No pre-motion conference is required, but the parties must comply with the consultation and certification requirements of Paragraph A.2.b. of the Individual Practices Rules of the undersigned. If the movant believes the motion, if granted, would obviate entirely the necessity of a trial

in this matter, the movant may so state in a separate MOTION FOR STAY, which must be served and filed with the moving papers, and may in such stay motion request that the Court defer the remaining requirements of this Order pending its decision on the dispositive motion. Unless the Court grants such stay motion, the filing of a dispositive motion does not affect the parties' obligations under this Order.

4. Other Pre-Trial Motions

Other motions, including but not limited to motions in limine relating to evidentiary issues, must be filed and served no later than thirty (30) days before **the date set forth in paragraph 9 below**, unless otherwise allowed by the Court for good cause shown.

5. Preliminary Conference

Counsel for the parties must confer preliminarily at least forty-five (45) days before **the date set forth in paragraph 9 below**. At or prior to this preliminary conference, counsel shall provide copies of each proposed exhibit for inspection by opposing counsel and for waiver or noting of objection and shall make the disclosures required by Fed. R. Civ. P. 26(a)(3). At the preliminary conference, counsel must discuss (a) settlement, (b) any anticipated further motion practice, including motions in limine, and (c) the matters required to be addressed in their Joint Pre-Trial Statement, as set forth in paragraph 6 below.

6. Joint Pre-Trial Statement

Counsel for all parties shall confer and shall prepare, execute and file with the Court, with one courtesy copy provided to chambers of the undersigned, no later than seven (7) days before **the date set forth in paragraph 9 below**, a single document captioned JOINT PRE- TRIAL STATEMENT, which shall include:

- a. A concise statement of the legal issues to be decided.
- b. A concise statement of the material facts not in dispute.
- c. A witness list containing the names, addresses and a brief summary of the testimony of each witness each party will call. A person not identified on this list may not be called during a party's case in chief.
- d. A final exhibit list in tabular form containing the following information for all exhibits to be offered at trial. Exhibits not identified on this list may not be offered during a party's case in chief. The format shall be substantially as illustrated below.

Exhibit Number or Letter	Description	Objection(s), if any	Status

- i. Plaintiffs exhibits shall be identified by numbers (e.g., Plaintiffs Exhibit 1, Plaintiffs Exhibit 2) and Defendant's Exhibits shall be identified by letters (e.g., Defendant's Exhibit A, Defendant's Exhibit B). If there is more than one Plaintiff or Defendant, the parties shall coordinate their designations so as to avoid duplication.
  - ii. In the "Objection(s)" column of the table, one asterisk should be entered to indicate exhibits to which no party objects on grounds of authenticity, and two asterisks should be entered to indicate exhibits to which no party objects on any ground. Any objections must be explained briefly, with citation to the relevant Federal Rule of Evidence or other legal authority.
  - iii. The "Status" column should be left blank, for later use by the Court.
- e. A list of the depositions, if any, to be offered at trial, with notation and explanation (including citation to the relevant legal authority) of any objections to the designations.
  - f. Stipulations, if any, as to the admissibility of exhibits and depositions.
  - g. Each party's statement as to whether the case is to be tried before a jury.
  - h. A statement as to whether or not all parties consent to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).
  - i. Each party's estimate of the time required for presentation of its case.

When feasible, the Joint Pre-Trial Statement should also be submitted to Chambers on a CO- Rom in WordPerfect version 6 or higher format.

The following documents must be annexed to, or submitted to Chambers concurrently with, the Joint Pre-Trial Statement:

One copy of each documentary exhibit to be offered at trial. Such exhibits must be pre-marked. In the event that a party intends to offer more than 15 documentary exhibits at the trial, the exhibits should be tabbed and included in a binder for easy reference. On the day of trial, counsel shall bring additional pre-marked copies for use by witnesses, the courtroom deputy, the court reporter, opposing parties and (if applicable) the jury.

7. Proposed Voir Dire, Requests to Charge and Verdict Form

- a. In a case to be tried before a jury, and no later than seven (7) days before **the Final Pre-Trial Conference date set forth in paragraph 9 below**:
  - i. each party shall serve on each other party and file with the Court its proposed voir dire and verdict form. Prior to service and filing of the

proposed voir dire and verdict form, counsel shall provide copies to opposing counsel for inspection and noting of objection; and

ii. The parties must file a single document captioned JOINT REQUESTS TO CHARGE, which must include the full text of all of their proposed jury instructions, with source citations. If the parties are not in agreement on a particular charge, the disputed language must be highlighted and any counterproposal(s) presented together with the disputed section. Disputed language must be accompanied by a brief explanation of the objection(s), with citations to the relevant legal authority.

b. When feasible, proposed voir dire, requests to charge and verdict forms shall also be submitted to Chambers on a CO-Rom in WordPerfect or Microsoft Word format.

8. Proposed Findings of Fact and Conclusions of Law

If the case is not to be tried before a jury, each party shall serve on each other party and file with the Court its proposed findings of fact and conclusions of law, which shall be broken down into separately enumerated paragraphs, no later than seven (7) days before **the Final Pre-Trial Conference date set forth in the following paragraph**. When feasible, the proposed findings of fact and conclusions of law should also be submitted on a CD-Rom in WordPerfect or Microsoft Word format.

9. Final Pre-Trial Conference

The parties are directed to appear before the undersigned in Courtroom No. 12D<sup>1</sup>, 500 Pearl Street, New York, NY 10007, for a final pre-trial conference on \_\_\_\_\_, at \_\_\_\_\_. The purpose of the conference is to explore the possibility of settlement, schedule the trial (which will, the Court's calendar permitting, commence within two weeks after the conference) if necessary, to review the issues to be tried and the proof to be offered in connection therewith, and to resolve any remaining pre-trial issues.

The counsel who plan to try the case must appear at such conference. Counsel attending the conference must seek settlement authority from their respective clients prior to such conference. If counsel is not granted such authority, the client must be present in person or available by telephone so that a settlement can be consummated if possible. "Settlement authority," as used in this order, includes the power to enter into stipulations and make admissions regarding all matters that the parties may reasonably anticipate discussing at the pre-trial conference including, but not limited to, the matters enumerated in this Pre-Trial Scheduling Order.

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<sup>1</sup> On the day of the conference, check the electronic board in the lobby to be certain of the proper courtroom.

The Court will not adjourn the final pre-trial conference or excuse the appearance of a party or its counsel unless a stipulation of settlement is on file prior to the pre-trial conference date set forth in this paragraph 9.

10. No Adjournment of Deadlines

The deadlines set forth in this Pre-Trial Scheduling Order will not be adjourned except in the Court's discretion upon good cause as shown in a written application signed by counsel, stating whether the other part(ies) consent, and served upon all parties. "Good cause," as used in this paragraph, does not include circumstances within the control of counsel or the client.

11. Non-Compliance with This Order

In the event that any party fails to comply with this Pre-Trial Scheduling Order, or is not prepared to go forward with trial on the date scheduled, the Court may impose sanctions or take other action as appropriate. Such sanctions and action may include assessing costs and attorney's fees, precluding evidence or defenses, dismissing the action, granting judgment by default, and/or other appropriate penalties.

In particular, the parties are advised that the Court may, without further hearing, render judgment in favor of the adverse party if a party is not prepared to proceed to trial within two weeks of the scheduled final pre-trial conference date.

12. Other Matters

The parties must use their best efforts to coordinate discovery in this action and in the qui tam action pending in the U.S. District Court for the District of Columbia. Discovery produced or taken in this action will, subject to any pertinent court orders, be deemed taken in the other action, and vice versa.

No deposition discovery may be taken before **April 15, 2016**.

The parties must begin meeting with Judge Francis for settlement purposes by **May 6, 2016.**

IT IS SO ORDERED.

Dated: New York, New York  
February \_\_, 2016

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