

ATTORNEY OR PARTY WITHOUT AN ATTORNEY (NAME AND ADDRESS)	TELEPHONE NUMBER:	<b>FOR COURT USE ONLY</b>
ATTORNEY FOR (Name):		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA</b>		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PLAINTIFF:		
DEFENDANT:		
<b>LOAN MODIFICATION SETTLEMENT CONFERENCE STIPULATION AND ORDER</b>		CASE NUMBER:

The parties to this stipulation are:

\_\_\_\_\_, Borrower  
 \_\_\_\_\_, Lender  
 \_\_\_\_\_, Servicer  
 \_\_\_\_\_, Other

**1. Pursuant to CCP § 128 and 187, this Court hereby;**

- a.  Declines to rule on the TRO and declines to set a hearing for the preliminary injunction at this time, and instead approves this Stipulation and Order seeking an early settlement conference process and an early resolution of the entire action.
- b.  Vacates any previously granted TRO and vacates any hearing for the preliminary injunction at this time, and instead approves this Stipulation and Order seeking an early settlement conference process and an early resolution of the entire action.
- c.  Vacates any currently set case management or other hearing, and instead approves this Stipulation and Order seeking an early settlement conference process and an early resolution of the entire action.

**Failure to comply with all terms of this stipulation may result in the striking of this Order and cancellation of the Loan Modification Settlement Conference process, or other appropriate orders of the Court.**

**2. Parties stipulate as follows:**

- a. All foreclosure related activities are stayed per the terms of this order.
- b. Borrower shall:
  - (1) Make a payment in the amount of \$\_\_\_\_\_ per month toward the mortgage, on or before the \_\_\_\_ day of each month, beginning on \_\_\_\_\_,
  - (2) Keep current on the payment of property taxes,
  - (3) Maintain insurance on the property, and
  - (4) Obtain HUD counseling prior to the Loan Modification Settlement Conference.
- c. Parties shall prepare for the Readiness Conference as follows:
  - Plaintiff shall properly serve all Defendants with the Summons, Complaint, this Order, the TRO application, and any other papers that have not already been served, within five days of the date of this Order.
  - Plaintiff shall file all proofs of service within 20 days of the date of this order.
  - At least 21 calendar days before the Readiness Conference, Lender shall transmit to Borrower an itemized list of the documents it requires from Borrower.
  - Borrower shall provide all necessary financial information to Lender.
  - Lender may take the Readiness Conference off calendar up to 2 court days ahead of time, once Lender has received all necessary documents.

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- Lender shall notify Borrower that the Readiness Conference will be taken off calendar within one hour of doing so.
  - Lender must file a "Notice of Appearance" and first appearance filing fee (instead of a responsive pleading) before the date of the scheduled Readiness Conference
- d. Regarding the Loan Modification Settlement Conference ("LMSC"), parties stipulate as follows:
- Good faith participation by all parties in a meaningful settlement conference will be deemed full compliance with the requirements of CA Civil Code §2923.5 and *Mabry v. Superior Court*, 185 Cal. App. 4th 208 (2010). Any Civil Code §2923.5 or *Mabry* causes of action will be deemed moot and shall be stricken from the Complaint.
  - By participating in such LMSC the servicer is representing that it has full authority to modify the loan at issue.
  - All parties will provide worksheet and other materials prepared for the LMSC to the assigned neutral at least 10 days in advance of the LMSC. LMSC materials will not be filed or lodged with the court.
- e. Litigation is stayed for 90 days from the date this order is signed by the judge and filed. Defendants will be deemed served 90 days after entry of this order. Defendant's demurrer/motion to strike, if any, shall receive a hearing date within 30 days from filing the motion.
- f. Any foreclosure sale is stayed until after 120 days from the date of this order (unless the date is changed by the Court).
- g. If any party deems that this Order or any provision becomes inappropriate for this case, counsel may file an ex parte request, with 24 hours' notice to all parties. Ex parties are heard from 8:15 AM to 9 AM Monday through Friday.
- h. Servicer \_\_\_\_\_ stipulates that;
- Servicer will be asked to consider Borrower for a loan modification. Servicer may be asked why any proposed loan modification is rejected.
  - By withdrawing from the LMSC, servicer will lose the benefits provided by the stipulation and the LMSC, and the case will return to the court's regular litigation track.
  - Acceptance of any payments pursuant to this Order is without prejudice to the lender's / servicer / investor's Notice of Default, if any, and foreclosure proceedings, except as otherwise provided for in this Stipulation. Acceptance of said payments shall not be evidence that a lender / servicer / investor has waived any existing default on the underlying loan or deed of trust at issue.

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**(Attach additional signature pages if necessary)**

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DEFENDANT:	

**3. LOAN MODIFICATION SETTLEMENT CONFERENCE STIPULATION AND ORDER**

- a.  The  Case Management Conference  Preliminary Injunction Hearing currently set for \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_  AM  PM in Department \_\_\_\_\_ is hereby vacated.
- b.  Readiness Conference is set for \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_  AM  PM in Department \_\_\_\_\_.
- c.  Loan Modification Settlement Conference is set for \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_  AM  PM in Department \_\_\_\_\_.
- d.  Further Case Management Conference is set for \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_  AM  PM  in Department  in neutral's office located at \_\_\_\_\_.
- e.  Trial Setting Conference following ADR Review is set for \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_  AM  PM in Department\_\_\_\_\_.

**It is so ordered.**

Date: \_\_\_\_\_  
\_\_\_\_\_  
Judicial Office of the Superior Court

**4.  CLERK'S CERTIFICATE OF PERSONAL SERVICE**

I certify that I am not a party to this cause and that a true and correct copy of this document was hand-delivered to the parties listed below at \_\_\_\_\_ (time) on \_\_\_\_\_ (date) in the clerk's office calendar unit of the Santa Clara County Superior Court, located at 191 North First Street, San José, California.

David H. Yamasaki, Clerk of the Court, by \_\_\_\_\_, Deputy Clerk.

**5.  CLERK'S CERTIFICATE OF MAILING**

I certify that I am not a party to this cause and that a true and correct copy of this document was mailed first class postage prepaid in a sealed envelope addressed as shown below and the document was mailed at \_\_\_\_\_ (time) on \_\_\_\_\_ (date) in San José, California.

David H. Yamasaki, Clerk of the Court, by \_\_\_\_\_, Deputy Clerk.

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