

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

BEA HUML, INDIVIDUALLY;
JOEY RODRIGUEZ, INDIVIDUALLY;
CHRISTOPHER LEE VALDEZ AND
ENEIDA VALDEZ (HUSBAND AND WIFE);
JOE BRUSCUELAS &
YVETTE BRUSCUELAS (HUSBAND AND
WIFE); AND
MARIBEL VILLALOBOS

Plaintiffs,

v.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION, MERS CORP, INC.;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
BAC HOME LOANS SERVICING, L.P.,
(A/K/A BANK OF AMERICA VIS-À-VIS A
MERGER); AND
THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK
CWABS, INC., ASSETT BACKED
SECURITIES SERIES 2007-09.

Defendants.

CAUSE NO. 3:12-CV-00146-DCG

PLAINTIFF'S REQUEST FOR RULE 16 FEDERAL RULE OF CIVIL
PROCEDURE MODIFICATION OF SCHEDULING ORDER;
NOTICE OF CONCURRENT REFERRAL OF MATTER TO
"CONSUMER FINANCIAL PROTECTION BUREAU"

TO THE HONORABLE JUDGE GUADERRAMA:

The Plaintiffs named hereinabove file this motion pursuant to Rule 16 of the Federal Rules of Civil Procedure and advise this court as follows.

I.

The Plaintiffs request a hearing or a sua sponte order pursuant to Rule 16 of the Federal Rules of Civil Procedure for a modification of the Scheduling Order previously entered herein to hold litigation in abeyance while this matter is referred to the "Consumer Financial Protection Bureau" ("CFPB").

“Rule 16. Pretrial Conferences; Scheduling; Management (a) PURPOSES OF A PRETRIAL CONFERENCE. In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

- (1) expediting disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation; and
- (5) facilitating settlement.

Then ...“(4) Modifying a Schedule. A schedule may be modified only for good cause and with the judge's consent.”

The court may appropriate action on items such as simplifying issues, eliminating frivolous claims or defenses and avoiding unnecessary proof and cumulative evidence. The court may also refer matters to a magistrate judge or a master, use special procedures to assist in resolving the dispute when authorized by statute or local rule, or adopt special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems.

Accordingly, good cause exists and the Plaintiff's request the court take such action and issue a Modified Scheduling Order holding litigation in abeyance.

II.

The court should take special action and hold proceedings in abeyance while the matter is being referred to the Consumer Financial Protection Bureau. The CFPB is a duly-empowered and chartered federal agency for investigation and enforcement of mortgage matters involving the “Dodd-Frank Act”, banking/ mortgage/ financial complaints, “MERS” and robo-signing. The CFPB's jurisdiction and purview is no different than, for example, that of the Internal Revenue Service regarding tax disputes and Equal Employment Opportunity Commission and employment disputes.

Regarding dispute adjudication, "The Office of Administrative Adjudication (OAA)" is an independent judicial office within the Consumer Financial Protection Bureau. Administrative Law Judges in the OAA hold hearings and decide on formal charges and actions initiated by the Bureau. The charges and actions initiated by the Bureau are based on alleged violations of federal statutes and the regulations that carry out the statutes' mandates. The OAA Docket Clerk compiles and maintains the official record of individual administrative cases.

OAA hearings are conducted in accordance with the Rules of Practice for Adjudication Proceedings (Rules of Practice) and the guidance in OAA Notices. Those rules and guidance outline the procedures and practices that people appearing before the OAA Judges must follow. The CFPB webpage has links to the Rules of Practice, the OAA Notices".

III.

Referral to the CFPB is well-advised and timely because, among many other things, the Defendants herein have: (a) complained of having to reply to "frivolous pleadings" (b) accused plaintiffs of being "serial filers of frivolous motions" (c) had to respond to "nonsensical" legal arguments (d) alleged that this action is a "waste of court time" and judicial resources (5) argued that the lions-share of MERS litigation is falling in favor of the defendants and their cohorts (6) lodged allegations that plaintiffs evidence of robo-signing is "frivolous" and amounts to nothing more than a "slide show" and finally (7) argued that the Defendant's race or Hispanic heritage plays no part in this dispute.

The CFPB is staffed with top-notch, qualified professionals and experts uniquely positioned to analyze difficult issues such as the "frivolous claims" containing robo-signed documents, foreclosures and the complex legal issues presented by MERS and so forth.

Plaintiffs request a hearing or sua sponte order of this court modifying the Scheduling Order to hold litigation in abeyance while the matter is pending with the CFPB. This request is not for the purposes of delay, but so that justice may be served.

Respectfully Submitted,

/s/ Richard A. Roman
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CERTIFICATE OF SERVICE

I hereby certify that on September 17th, 2012 a true and correct copy of the foregoing instrument has been forwarded to the attention of all opposing counsel via the CM/ ECF electronic filing system.

Richard A. Roman, Esq.

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ORDER

On this day came Plaintiff's request for a modification of Scheduling Order.

The request is:

GRANTED: _____ DENIED: _____

A hearing for further review is set on _____.

The Honorable David C. Guaderrama

