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12 exception of Hesperia Lenders, LLC]

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14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**
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18 **In re:**)
19 **USA COMMERCIAL MORTGAGE**) **Case No. 2:07-cv-892-RCJ-GWF-BASE**
COMPANY,) **and**
20) **Case No. 3:07-cv-241-RCJ-VPC**
21 **Debtor.**) **OBJECTIONS TO COMPASS'S**
PROPOSED ORDER DIRECTING
MEDIATION

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23 On May 2, 2008, Compass unilaterally submitted to the Court a Proposed Order Directing
24 Mediation ("Proposed Mediation Order"). Plaintiff LLCs¹ object to the Proposed Mediation
25 Order filed by Compass on the following grounds:

26 ¹ During the proceedings in this case on April 28, 2008, the Court directed that Plaintiff LLCs be dismembered and
27 dissolved, and further directed that their sole representative and spokesperson, Ms. Donna Cangelosi, immediately
28 cease speaking for or purporting to act on behalf of Plaintiff LLCs. Given this development and its immediate
paralyzing effect on Plaintiff LLCs' ability to hear, consider or take action upon advice of counsel or to give
direction to their counsel with respect to actions to be taken in the case, these Objections are being submitted on

1 1. As of June 6, 2008, the date on which Compass urges the Court to order the parties to
2 yet another mediation, all beneficial property interests owned or held by Plaintiff LLCs, including
3 all claims and causes of action associated with those property interests heretofore asserted by
4 Plaintiff LLCs in this litigation, will have been reassigned, or reconveyed, by Plaintiff LLCs to
5 the individual direct lender members of the LLCs in compliance with the Court's pronouncements
6 at the April 28, 2008 hearing. Thus, as of June 6, 2008, Plaintiff LLCs will be, at most, nothing
7 more than shell entities which this Court has said are promptly to be "dismembered" and
8 "dissolved."² Moreover, as of that date, it is expected that many, many of the 1200 individual
9 direct lender members of Plaintiff LLCs will be exploring their options following the April 28,
10 2008 directives from the Court. Some lenders will have only just hired counsel in their individual
11 capacities as lenders, and those counsel will only just be familiarizing themselves with the facts
12 of the case and the proceedings to date in order to afford competent representation of their new
13 clients; it is hardly realistic to expect those new counsel to be able to adequately prepare for or to
14 competently represent their clients in a June 6, 2008 mediation session. Other direct lenders may
15 be considering forming associations or other organizations amongst themselves in order to seek
16 and obtain joint legal counsel and proceed with the litigation in that capacity; the establishment of
17 such representative organizations will, naturally, take some time and special care – particularly
18 given the Court's April 28, 2008 pronouncements and the Court's obvious distaste for the LLC
19 structure that previously existed for each of the loans at issue in the litigation. Still other lenders,
20 particularly those who cannot afford to hire counsel, will be contemplating entering the case
21 individually on a *pro se* basis. For all of these reasons, it is totally unrealistic for Compass to
22 suggest that a mediation could take place in this case on June 6, 2008.

23 2. This Court's pronouncements on April 28, 2008 make clear that the "LLCs" are *not* to
24 represent any direct-lender interests, either in mediation or in any other proceedings in this
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26 behalf of Plaintiff LLCs pursuant to Nev. R. Prof. Conduct 1.14 (b), which expressly permits counsel for a client,
27 when the client suffers a diminished capacity, to take reasonably necessary protective action in the client's interest.

28 ² See Transcript of April 28, 2008 Hearing at 16:11, 13.

1 litigation.³ The Court made clear that the LLCs were to be “dismembered” and “dissolved” and
2 their assets promptly reassigned to the individual direct lenders.⁴ In light of the Court’s
3 directives, Compass’s urging that the Court now essentially “reverse” its prior ruling and order
4 the LLCs to participate in a mediation is irrational, unreasonable and nonsensical.

5 3. Finally, Plaintiff LLCs object to the language mandating sanctions for failure to appear
6 at the mediation. As explained above, it will be impossible for the thousands of individual direct
7 lenders who make up Plaintiff LLCs to reorganize, select spokespersons, obtain financing, and
8 obtain legal counsel in a matter of 30 days. It would be grossly unfair to further penalize the
9 individuals by imposing sanctions on them for not completing a near-impossible task in less than
10 a month.

11 For all of the stated reasons, Plaintiff LLCs hereby object to the Proposed Order Directing
12 Mediation and urge the Court not to sign it or any similar order requiring Plaintiff LLCs’
13 participation in a mediation proceeding, or otherwise requiring individual members of the LLCs
14 to participate in such a mediation until they have been afforded sufficient time to seek and obtain
15 counsel and for the members and their new counsel to prepare for such mediation.

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³ *Id* at 14:1-5.
⁴ *See* Transcript of April 28, 2008 Hearing at 16:11, 13.

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DATED this 6th day of May, 2007.

FULBRIGHT & JAWORSKI L.L.P.

By: 
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exception of Hesperia Lenders, LLC]

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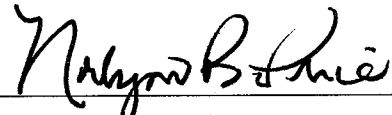
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CERTIFICATE OF SERVICE

This certifies that, pursuant to Rule 5 of the FEDERAL RULES OF CIVIL PROCEDURE, on the 6th day of May, 2008, a true and correct copy of the foregoing Motion to Withdraw as Counsel for Certain Plaintiff LLCs was served on all counsel of record via the Court's CM/ECF System.

By: 
Norlynn B. Price