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ORANGE COUNTY, CALIFORNIA MANDATORY MEDIATION PROGRAM INTO EFFECT ON FORECLOSURE-RELATED LAWSUITS

By *T. Robert Finlay, Esq., Wright, Finlay & Zak*

For those of you who were not aware, Judge Nakamura in Orange County recently rolled out a mandatory mediation program on any foreclosure-related lawsuits before Judge Velasquez (which is all wrongful foreclosure litigation in Orange County). The specific details and start date of the new program were a closely held secret of the Court until the last few days. Finally, we have some specifics. The good news is that the program is far less onerous as originally proposed by the Court. The program went into effect on February 26th and has two aspects:

Voluntary Mediation: In cases where the Defendants have not made a general appearance, i.e., a demurrer, answer or general denial, the Court is asking the parties to submit to voluntary mediation on the 2nd Friday from the date of whatever hearing was presently going on, e.g., TRO or Preliminary Injunction Hearing. Although Judge Velasquez is strongly encouraging the lending defendants to agree to mediation, participation is entirely voluntary.

Mandatory Settlement Conference (“MSC”): In cases where the Defendants have appeared, the Court is ordering the parties to attend a Mandatory Settlement Conference within 3-4 weeks. For example, in Court on March 2nd, the Court was setting the MSC’s for March 26th. Although the MSCs will be handled in the same manner as the Voluntary Mediations, the MSCs are mandatory. A couple of notes about who must appear at the MSCs and how they can appear:

- This new program is simply an extension of the Court’s existing MSC authority. Under the existing rules, all parties must personally attend the MSC. This would include (if

named in the action), the Servicer, Investor and Trustee. At the March 2nd hearings, the Court did not specifically address who should appear or in what manner. In my cases, I specifically asked for permission for my Servicing client to appear telephonically. Judge Velasquez indicated that Judge Nakamura had not given him any guidance on whether parties could appear telephonically; but, granted my request upon the

condition that I have some available by phone during the entire MSC. That said, it appears for now that, if asked, Judge Velasquez will allow parties to appear telephonically.

- As for the Investor, no one today addressed the question of whether the Investor must appear. However, I think Judge Velasquez will grant any requests to allow the Servicer to appear for the Investor (at least for now).
- **As for the Trustee, the Court excused any trustees who had filed a DNMS from attending the MSC. In addition, the Court seemed inclined to grant requests to excuse the trustee from appearing even if it hasn’t filed a DNMS (with the understanding that the trustee does not bring anything to the table when discussing a loan mod).**

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As you can see, the implemented version of the Mediation Program is far better than the program originally proposed at the February 5th Information Meeting. Instead of having as little as 8 days from notice of a TRO to the actual MSC, it appears that Defendants will have 3-4 weeks from appearing in the action to the MSC. While the additional time is definitely welcome, Servicers will still have to gear up to mediate the cases relatively quickly. Please let me know if you have any further questions regarding this new program.



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