

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

In re: Bank of America Home Affordable  
Modification Program (HAMP) Contract  
Litigation

No. 1:10-md-02193

**DECLARATION OF JAMES W. MCGARRY IN SUPPORT OF  
OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL**

I, JAMES W. MCGARRY, an attorney admitted to practice before this Court and the courts of the Commonwealth of Massachusetts, hereby affirm under penalty of perjury:

1. I am a partner with the law firm of Goodwin Procter LLP, counsel for Defendant Bank of America, N.A. as successor by merger to BAC Home Loans Servicing L.P. (“Bank of America”), in the above-referenced action.

2. I submit this declaration in support of Bank of America’s Memorandum in Opposition to Plaintiffs’ Motion to Compel (Def.’s Mem.).

3. I am familiar with the facts and circumstances of this action by virtue of my personal involvement in this action and a review of the case files, and as counsel representing Bank of America at the February 16, 2012 telephone conference with the Court and the June 11, 2012 telephone conference with Plaintiffs’ counsel about the requests that are the subject of the pending Motion to Compel.

4. The information provided herein is true and correct to the best of my knowledge, information and belief, and is based on information known to me or from persons working under my supervision.

5. Attached hereto as Exhibit A is a true and accurate copy of a letter from G. Klein to D. Fetouh, dated July 10, 2012.

6. Attached hereto as Exhibit B is a true and accurate copy of excerpts of the deposition testimony of Christopher Orris, dated May 31, 2012 (filed under seal). BANA designated it confidential pursuant to the protective order on May 17, 2012.

7. Attached hereto as Exhibit C is a true and accurate copy of a letter from S. Goldstein to K. Costello, dated June 29, 2012 (filed under seal). BANA designated it confidential pursuant to the protective order on May 17, 2012.

8. Attached hereto as Exhibit D is a true and accurate copy of Plaintiffs' Second Request for Production, dated December 7, 2011 (filed under seal). BANA designated it confidential pursuant to the protective order on May 17, 2012.

9. Attached hereto as Exhibit E is a true and accurate copy of excerpts of the transcript of the Telephone Status Conference with the court, dated March 27, 2012.

10. Attached hereto as Exhibit F is a true and accurate copy of a letter from G. Klein to B. Brown, dated July 5, 2012.

11. Attached hereto as Exhibit G is a true and accurate copy of a letter from B. Brown to G. Klein, dated July 10, 2012.

12. On February 16, 2012, the parties held a telephone conference with the Court regarding Plaintiffs' Motion to Compel that was filed on December 2, 2011. During this telephone conference, and various other telephone conferences between the parties, the parties discussed the production of data that BANA reports to the United States Department of the Treasury ("Treasury Department"), through the Treasury Department's IR-2 system ("IR-2 data"). As a result of these conversations, on March 26, 2012, BANA produced the most recent IR-2 data it had provided to the Treasury Department for customers comprising the 26 states represented by Plaintiffs. This data consisted of spreadsheets of data for 825,213 loans, with numerous fields of data associated with each loan. The production of IR-2 data was never ordered by the Court, but rather was produced by BANA after the parties received guidance from the Court and following negotiations between the parties on this issue.

13. Also, during this February 2012 telephone conference, the Court directed the parties to meet and confer over the size of the sample and the amount of data sought with respect to plaintiffs' request for a sample of information regarding BANA customers.

14. The parties held a telephone conference on June 11, 2012 to discuss Plaintiffs' various discovery requests. During that telephone conference, Plaintiffs informed BANA that they would provide a list of proposed custodians and search terms for email searches. Plaintiffs' counsel conceded during the call that they expected BANA would find their proposal too voluminous and unacceptable.

15. Although BANA was prepared to discuss and share information regarding its various systems and databases and the data contained therein during the June 11, 2012 telephone conference with respect to Plaintiffs' sampling request, as the Court directed, Plaintiffs obviated the need for this discussion by stating that it would provide BANA with a "master list" of data points that it requested be included in this sample. The parties then moved on to discuss other topics during this telephone conference without further discussing the specific data points Plaintiffs were seeking.

Declared under penalty of perjury  
this 20<sup>th</sup> day of August, 2012

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|  | <p>Respectfully submitted,</p> <p><u>/s/ James W. McGarry</u><br/>James W. McGarry (BBO #633726)<br/>jmcgarry@goodwinprocter.com<br/>GOODWIN PROCTER LLP<br/>Exchange Place<br/>53 State Street<br/>Boston, Massachusetts 02109<br/>Tel.: 617.570.1000<br/>Fax: 617.523.1231</p> |
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document, filed under seal, will be sent by electronic mail to co-lead counsel Shennan Kavanagh, Gary Klein and Kevin Costello of Klein Kavanagh Costello, LLP, and Steve W. Berman and Ari Y. Brown of Hagens Berman Sobel Shapiro LLP on August 20, 2012.

/s/ James W. McGarry\_\_\_\_\_