

MCGARRY DECLARATION EXHIBIT E

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

IN RE: BANK OF AMERICA HOME)	
AFFORDABLE MODIFICATION)	
PROGRAM (HAMP) CONTRACT)	
LITIGATION)	
)	Civil Action
)	No. MD-10:02193-RWZ
)	
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)	

TELEPHONE STATUS CONFERENCE

BEFORE THE HONORABLE RYA W. ZOBEL
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
John J. Moakley U.S. Courthouse
1 Courthouse Way
Boston, Massachusetts 02210
March 27, 2012
2:00 p.m.

* * * *

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APPEARANCES:

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-and-

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(Appearing telephonically)

1 discussing this for the last nine months, I think.

2 THE COURT: Well, how do you want to proceed?

3 MR. BROWN: I think the most efficient way to proceed
4 is to get some understanding from them as to what the -- get a
5 list of the database fields, how they work and how they can be
6 produced, and from that we will limit it as much as we can to
7 only those fields to be produced in native format. In other
8 words, in an electronic format that we can work with rather
9 than as screenshots.

10 MR. McGARRY: Your Honor, this is Jim McGarry.

11 I have to say, I'm somewhat dumbfounded by this
12 conversation. The production of sampling came out of a motion
13 to compel that was filed. And I'm not in the office today, so
14 I don't have those papers in front of me, but my memory of the
15 issues in the motion to compel was that they were -- asked for
16 a sampling of the loan files and the servicing records of the
17 -- of a sample of class members and that's -- loan files and
18 servicing records are the way that we described the types of
19 data that are produced on behalf of the named plaintiffs.

20 There certainly have been -- there certainly were
21 discussions in the course of the ESI protocol about any number
22 of things, on which there were or were not agreement, but what
23 I -- you know, what I hear today is a very different
24 discussion. I mean, today this -- the discussion I'm hearing
25 today is an effort to go back and redo certain aspects of the

1 ESI protocol, to produce documents about, you know, lord knows
2 how many different types of databases. You know, there was a
3 technology deposition six months ago in this case and plenty
4 of opportunity to follow up from that.

5 Perhaps what I can suggest, your Honor, is that both
6 parties go back, look at the -- what was sought in the motion
7 to compel, look at the ESI protocol, and then get together on
8 what's the most efficient, consistent way to do this to the
9 extent we can get agreement on it, because I don't see how
10 your Honor can order something here today in the context of
11 this dispute.

12 THE COURT: No, I wasn't intending to order. I was
13 going to suggest that the plaintiffs be -- let you know in a
14 very specific way what they want and then you can respond to
15 the extent that you -- to the extent to which you are able to
16 produce it and to the extent you cannot, why you cannot.

17 I gather that there is a lack of meeting of the minds
18 as to what the plaintiffs wanted and what the defendant was
19 prepared to give at this point in terms of the format in which
20 the stuff was to be produced. Am I misunderstanding?

21 MR. MCGARRY: This is Jim McGarry.

22 I don't think so, your Honor. I think you have it
23 exactly right.

24 THE COURT: So, would it be a problem for the
25 plaintiffs to tell the defendant the manner in which the data

1 is to be produced and what precise data you want?

2 MR. BROWN: We can certainly tell them again, your
3 Honor. I mean, we have told them, but we will certainly do it
4 again.

5 THE COURT: Okay. Do it again and be very specific
6 in terms of the thing that you want now, the data for the
7 sample that will form the basis of your case, I assume, down
8 the line, and then -- but so specific that they can really
9 understand what it is. I mean, I think the parties are sort
10 of talking past each other or did with respect to the protocol
11 earlier. So, maybe --

12 MR. BROWN: I think you're right.

13 I'm sorry, your Honor. This is Ari Brown again. I
14 think you're right.

15 The one thing I do want to clarify is that the way
16 we've conceived of this process, it is a two-step process in
17 which we need to know what the data points are and then we can
18 make a very specific request. The request we've made until
19 now is simply for a process by which to tell us what exists so
20 that we know what to ask for. It looks like we're, hopefully,
21 heading down that direction now.

22 I do want to just pick up on what Mr. Klein said
23 earlier, that this can really be done -- if there's
24 cooperation, we could really have this done by the time of our
25 next status conference, but if it is going in the way that

1 it's gone so far, it will take us at least two status
2 conferences.

3 THE COURT: So, let's see what we can do --

4 MR. BROWN: Go ahead. Sorry.

5 THE COURT: Let's do the best we can do.

6 Mr. McGarry, how do you feel about telling them what
7 your data points are?

8 MR. MCGARRY: Well, we've produced data dictionaries
9 already for certain systems. They -- you know, they had a
10 technology witness. I mean, it seems to me like we're -- what
11 I'm hearing is that -- you know, that we're the horrible cause
12 of all this delay, and what I'm hearing the plaintiffs saying
13 now is let's go back six months and revisit the technology
14 issues so that we can start over again, and we can do that.
15 I'm just not sure it's very productive.

16 THE COURT: Let me suggest, Mr. Klein and Mr. Brown,
17 that you tell them what data you want produced and the data
18 points that you want to have covered, and if they can, they
19 will do it. If they can't, they will tell you what they don't
20 have, but I think the burden really should be on you, to begin
21 with, certainly given what you have already discovered, to
22 tell them what you want. Can you do that?

23 MR. KLEIN: Your Honor, I think we hear you and I
24 think we're agreeable to going down the road of further
25 discussion.

1 I just want to lay out to you two problems that are
2 stymieing us. One is that Bank of America has known for well
3 over a year exactly what data and information we want. We
4 have requests out that are very specific in terms of the
5 information we're looking for.

6 And what's happened, your Honor, is that they gave us
7 a technology witness who was not able to testify about Bank of
8 America's main database. It just wasn't within his field of
9 knowledge.

10 We've asked them more than once for an additional
11 witness, and the response we consistently get is maybe we can
12 manage this problem without the additional witness because
13 we're supposedly getting documents that list the various data
14 points, but as far as we can tell, in the production, we
15 haven't seen them. So, our first order of business is going
16 to be to get a very clear statement from the defendant about
17 where in the document record there is -- those items are or,
18 really, having to go back for an additional deposition
19 witness.

20 But the idea that these issues are taking us back
21 nine months is -- and that it's plaintiffs' fault is
22 completely unfair. We've worked very, very hard in a vacuum
23 where we don't have full information about the systems.

24 THE COURT: Well, to the extent that at the moment
25 there is a misunderstanding about where you are, I think it's

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MR. MCGARRY: No, your Honor. Thank you.

THE COURT: Mr. Klein?

MR. KLEIN: No. Thank you for your time, your Honor.

THE COURT: Well, thank you all. And have a productive month.

MR. KLEIN: Thank you, your Honor.

MR. MCGARRY: Thank you very much, your Honor.

THE COURT: Bye.

COURTROOM DEPUTY CLERK URSO: Bye.

(Adjourned, 2:52 p.m.)

C E R T I F I C A T E

I, Catherine A. Handel, Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript, from Page 1 to Page 38, constitutes to the best of my skill and ability a true and accurate transcription of my stenotype notes taken in the matter of Civil Action No. MD-10-02193-RWZ In Re: Bank of America Home Affordable Modification Program (HAMP) Contract Litigation.

May 11, 2012
Date

/s/ Catherine A. Handel
Catherine A. Handel, RPR-CM, CRR