

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

IN RE BANK OF AMERICA HOME AFFORDABLE MODIFICATION PROGRAM (HAMP) CONTRACT LITIGATION	MDL NO. 2193 <u>Centralized before the Honorable Rya W. Zobel</u>
This Document Relates To: All Actions	

**PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR EXTENSION OF TIME
TO FILE RESPONSE / REPLY**

Plaintiffs submit this brief response to the motion for an extension of time (Docket No. 184) filed by Defendants, Bank of America, N.A. and BAC Home Loans Servicing, LP, (collectively, "BOA").

Throughout this litigation, Plaintiffs' counsel have followed a practice of agreeing to reasonable requests of scheduling accommodations as a matter of professional courtesy. Plaintiffs have been on both the giving and receiving end of such courtesies. In this instance, the Defendant indicated that two of the attorneys on the defense counsel team were scheduled to take a ten-day vacation over the holidays – from December 24, 2012 through January 3, 2013. In keeping with the history of granting reasonable professional courtesies, Plaintiffs indicated that they were willing to accommodate the Defendant with a ten-day extension – as reflected in Defendant's motion, and the accompanying Exhibit D.

The additional four days requested by Defendants – from January 14 to January 18 are more significant than would appear at first blush. The Court has scheduled a hearing for January 23, 2013. Given the extraordinary delay already associated with the deposition that is the subject

of the underlying motion to compel,¹ it is of paramount importance that the parties allow the Court adequate time with the motion to compel papers to have a meaningful resolution of the dispute at the January 23 hearing. Defendant's requested extension through January 18, 2012 is only two business days before the January 23 hearing. Depending on the content of the Defendant's opposition, it is possible that Plaintiffs would seek leave to file a short reply brief, limited to the issues raised therein. The proposed extension to January 18 would make such a motion difficult prior to the January 23 hearing. As such, and in keeping with the ten-day duration of defense counsel's family vacations, Plaintiffs respectfully request that the deadline to respond be extended to January 14, 2013 only.²

However, should the Court believe that an extension of Defendant's response deadline to January 18, 2013 allows adequate preparation time to address the motion at the January 23 hearing, accounting for the possibility of motion for leave to reply, Plaintiffs of course defer to the Court's judgment in that regard.

WHEREFORE, Plaintiffs respectfully request that the Court grant Defendant's motion in part, allowing the opposition to Plaintiffs' motion to compel to be filed on or before January 14, 2013.

¹ The Declaration of Kevin Costello in Support of Plaintiffs' motion to compel describes a meet and confer process concerning this deposition that began in June 2012. *See* Docket No. 183 at ¶¶ 5-21. Following Plaintiffs' request for a corporate representative deponent, at that time, the parties held at least six telephonic conferences (June 11, July 12, August 23, November 1, December 7 and December 20), exchanged at least nine separate substantive written correspondence (June 12, September 1, September 28, October 15, October 23, November 13, November 21, November 30, and December 12), and raised the issue before the Court on at least two occasions (November 14 and December 13). *Id.* It is not an exaggeration to characterize this process as one involving extraordinary delay.

² If Defendants were to file their opposition on or before January 14, 2013, Plaintiffs can commit to making their motion for leave to reply, if any, on or before January 18, 2013. In Plaintiffs' view, this would allow the Court to have a full set of briefing to consider before the January 23 hearing.

Dated: December 29, 2012

/s/ Kevin Costello

Klein Kavanagh Costello, LLP
Gary Klein (BBO 560769)
Shennan Kavanagh (BBO 655174)
Kevin Costello (BBO 669100)
85 Merrimac St., 4th Floor
Boston, MA 02114
617.357.5500 (p)
617.357.5030 (f)
klein@kkcllp.com
kavanagh@kkcllp.com
costello@kkcllp.com

/s/ Steve W. Berman

Hagens Berman Sobol Shapiro LLP
Steve W. Berman
Ari Y. Brown
Tyler S. Weaver
1918 8th Avenue
Suite 3300
Seattle, WA 98101
206.623.7292 (p)
206.623.0594 (f)
steve@hbsslw.com
ari@hbsslw.com
tyler@hbsslw.com

Interim Co-Lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2012, a true and correct copy of this document was filed electronically. Notice of this filing will be sent by electronic mail to all counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Kevin Costello

Kevin Costello