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**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE BANK OF AMERICA HOME
AFFORDABLE MODIFICATION PROGRAM
(HAMP) CONTRACT LITIGATION

No. 1:10-md-2193 RWZ

**MOTION BY ALL PLAINTIFFS
FOR ENTRY OF CASE MANAGEMENT ORDER NO. 1**

MOTION BY ALL PLAINTIFFS
FOR ENTRY OF CASE MGMT. ORDER NO. 1

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1 The undersigned law firms hereby move the Court for entry of the Proposed Case
2 Management Order No. 1 (“CMO No. 1”) filed concurrently herewith. The entry of CMO No. 1,
3 will, among other things, (a) establish procedures to govern the coordination of this proceeding
4 based on standards that have been applied in other Multidistrict Litigation proceedings; (b)
5 appoint Hagens Berman Sobol Shapiro LLP (Hagens Berman) and Roddy Klein & Ryan
6 (“RKR”) as Interim Lead Class Counsel, and (b) appoint a Plaintiffs’ Executive Committee
7 consisting of the following law firms: Cotchett, Pitre & McCarthy, Bolognese & Associates,
8 National Consumer Law Center, Shepherd Finkelman Miller & Shah LLP, Faruqui & Faruqui
9 LLP, and Langer, Grogan, & Diver, PC to represent the putative consumer class or classes in the
10 actions constituting *In re: Bank of America Home Affordable Modification Program (HAMP)*
11 *MDL 2193*, that the Judicial Panel on Multidistrict Litigation (“JPML”) transferred to this Court
12 for coordinated or consolidated pretrial proceedings. *The organizational structure proposed*
13 *herein has been approved by all plaintiffs and their counsel in the eight cases and the four tag-*
14 *along actions that comprise this proceeding.*¹ All plaintiffs and their counsel believe entry of
15 this proposed CMO No. 1 and the appointment of Interim Lead Class Counsel and Executive
16 Committee at this point in the litigation will promote efficient handling of the pending actions.
17
18

19 I. INTRODUCTION

20 Pursuant to Federal Rule of Civil Procedure 23(g), the law firms Hagens Berman and
21 RKR respectfully seek appointment as Interim Lead Class Counsel for the putative class in this
22 consolidated multidistrict litigation (“MDL”) and request the appointment of an Executive
23 Committee consisting of the law firms of Cotchett, Pitre & McCarthy, Bolognese & Associates,
24

25 _____
26 ¹ A list of cases is attached as Exhibit A to the proposed form of Pretrial Order No. 1 (filed contemporaneously).

1 National Consumer Law Center, Shepherd Finkelman Miller & Shah LLP, Faruqui & Faruqui
2 LLP, and Langer, Grogan & Diver, PC.

3 The appointment of Interim Lead Class Counsel and Executive Committee is appropriate
4 at this juncture because doing so will streamline the prosecution of this complex litigation, which
5 currently involves ten related and sometimes overlapping class actions and three related tag-
6 along actions. Declaration of Steve W. Berman in Support of Motion For Entry of Proposed
7 Case Management Order No. 1 (“Berman Decl.”) ¶¶ 3-4, Ex. A (Transfer Order dated October 8,
8 2010). Parties and counsel are located across the country. Due to the number of parties and
9 factual and legal issues involved, appointment of Interim Lead Class Counsel and the Executive
10 Committee is necessary for coordinating discovery, conducting depositions, communicating with
11 defense counsel, employing experts, and seeing that deadlines are met.
12

13 Hagens Berman and RKR each has an established record of experience, knowledge, and
14 commitment of resources. Hagens Berman has been involved in some of the largest class actions
15 in this country and has recovered some of the most significant settlements in history on behalf of
16 plaintiff classes. Attorneys from Hagens Berman include pioneers of class action law, who have
17 been nationally recognized for their efforts on behalf of plaintiffs in numerous landmark cases.
18 Berman Decl., ¶¶ 9-12, Ex. B. RKR has a long track record of leadership in consumer class
19 actions including especially mortgage related class actions. It has been appointed to represent
20 Plaintiffs in a variety of contexts, including some of the most prominent mortgage related
21 Multidistrict Litigation proceedings to be litigated in recent years. Declaration of Gary Klein in
22 Support of Motion For Entry of Proposed Case Management Order No. 1 (“Klein Decl.”) ¶ 3,
23
24
25
26

1 Ex. A-B. Both Hagens Berman and RKR have offices in Boston, which will streamline
2 efficiencies in this litigation. Berman Decl. at ¶ 8.

3 Additionally, the members of the Executive Committee have a proven track record of
4 experience, knowledge, and commitment of resources in similar class action cases. Berman
5 Decl., ¶ 13, Exs. C - H.

6
7 Hagens Berman and RKR, and the proposed members of the Executive Committee have
8 conferred with Plaintiffs' counsel for all known HAMP cases against Bank of America that have
9 been transferred to this Court regarding organization of these related cases, demonstrating their
10 commitment to advancing this litigation and working cooperatively with other parties and
11 counsel. Berman Decl., ¶ 7. While all counsel agree to the appointments requested herein,
12 Hagens Berman and RKR have been asked to consider additional requests for appointment to the
13 Executive Committee and will do so in coming months in light of anticipated additional case
14 transfers, the ultimate size of the case, and the potential need for a larger Committee. If such
15 appointments are warranted, appropriate application will be made to the Court.
16

17 II. PROCEDURAL HISTORY

18 This MDL proceeding arises from alleged failures by Bank of America and BAC Home
19 Loans Servicing LP's to satisfy agreements to modify home-mortgage loans through the Home
20 Affordable Modification Program ("HAMP"). Plaintiffs in all pending cases allege that Bank of
21 America fails to live up to its obligations to modify mortgages on behalf of homeowners and ask
22 the Court to enforce contracts into which Bank of America entered with individual Plaintiffs. All
23 the complaints also allege that Bank of America entered into a contract to participate in a federal
24 program to assist homeowners at risk of defaulting on their mortgages. This contract, known as
25 a Servicer Participation Agreement, incorporates written HAMP directives, and obligates Bank
26

1 of America to perform loan-modification services to benefit certain eligible homeowners.
2 Several cases allege that Bank of America breached its Servicer Participation Agreement and
3 that certain eligible homeowners have the right to enforce the agreement as its intended
4 beneficiaries perpetrated on Plaintiffs and other members of the class.

5 On October 26, 2010 the JPML issued an order pursuant to 28 U.S.C. § 1407 transferring
6 eight actions to the District of Massachusetts for coordinated or consolidated pre-trial
7 proceedings constituting *In re: Bank of America Home Affordable Modification Program*
8 *(HAMP) MDL 2193*. Since that time, an additional four actions have been designated as Tag
9 Along actions pursuant to Rules 7.4 and 7.5. *See* Berman Decl., ¶ 3.

10 With eight similar class actions pending before this court and most likely three more to
11 be transferred by the Panel as tag-along actions, designation of Plaintiffs' undersigned counsel as
12 Interim Lead Class Counsel to act on behalf of the putative class pursuant to Rule 23(g)(3) is
13 appropriate and necessary for the reasons set forth herein.
14
15

16 III. ARGUMENT

17 Rule 23(g)(3) of the Federal Rules of Civil Procedure provides that a court "may
18 designate interim counsel to act on behalf of the putative class before determining whether to
19 certify the action as a class action." When appointing lead counsel, the court must consider
20 (1) the work counsel has done in identifying or investigating potential claims in the action;
21 (2) counsel's experience in handling class actions, other complex litigation, and the types of
22 claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the
23 resources counsel will commit to representing the class." *See* Fed. R. Civ. P. 23(g)(1)(A).
24 Proposed Interim Lead Class Counsel more than satisfy these requirements.
25
26

1 The Advisory Committee notes to former Rule 23(g)(2)(A) explain that the rule
2 “authorizes [a] court to designate interim counsel during the pre-certification period if necessary
3 to protect the interests of the putative class.” The *Manual for Complex Litigation, Fourth*
4 (“MCL 4th”) elaborates as follows:

5
6 If . . . there are a number of overlapping, duplicative, or competing
7 suits pending in other courts, and some or all of those suits may be
8 consolidated, a number of lawyers may compete for class counsel
9 appointment. *In such cases, designation of interim counsel*
10 *clarifies responsibility for protecting the interests of the class*
11 *during pre-certification activities, such as making and responding*
12 *to motions, conducting any necessary discovery, moving for class*
13 *certification and negotiating settlement.*

14 MCL 4th § 21.11 (emphasis added).

15 Courts considering motions for appointment interim class counsel have generally applied
16 the factors set forth in Rule 23(g)(1)(A). *See, e.g., Pfaff v. State of Washington*, 2007 U.S. Dist.
17 LEXIS 90257, at *13-15 (W.D. Wash. Nov. 27, 2007); *Hill v. The Tribune Co.*, Nos. 05 C 2602,
18 2005 WL 3299144, at *3-4 (N.D. Ill. Oct. 13, 2005).² One California district court recently
19 observed the following:

20 Courts have held that the same standards applicable to choosing
21 class counsel at the time of class certification apply in choosing
22 interim class counsel. *See In re Air Cargo Shipping Services*
23 *Antitrust Litigation*, 240 F.R.D. 56, 57 (E.D.N.Y.2006) (“Although
24 neither the federal rules nor the advisory committee notes
25 expressly so state, it appears to be generally accepted that the
26 considerations set out in [Fed.R.Civ.P. 23(g)(1)(A) and (B)], which
governs appointment of class counsel once a class is certified,
apply equally to the designation of class counsel before
certification.”).

² These cases refer to the factors contained in former rule Fed. R. Civ. P. 23(g)(1)(C), which was renumbered to Fed. R. Civ. P. 23(g)(1)(A) by the December 1, 2007 Amendments to the Federal Rules of Civil Procedure.

1 *Four In One Co., Inc. v. SK Foods, L.P.*, No. 2:08-cv-03017-MCE-EFB, 2009 WL 747160, at *1
2 (E.D. Cal. March 20, 2009). *See also In re California Title Ins. Antitrust Litig.*, No. 08-01341
3 JSW, 2008 WL 4820752, at *1 (N.D. Cal. Nov. 3, 2008) (White, J.) (“[w]hen appointing interim
4 class counsel, a court must find that the applicant is adequate under [Rule 23(g)(1)(A) and
5 (B)].”). Application of these Rule 23(g) factors strongly supports appointing Hagens Berman
6 and RKR as Interim Co-Lead Class Counsel.
7

8 Here, approval of the proposed interim leadership structure will allow for, among other
9 things: (1) the coordinated preparation and filing of a consolidated amended complaint; (2) the
10 efficient prosecution of this action through a decision on class certification and appointment of
11 permanent class co-counsel; and (3) the facilitation of any potential settlement discussions that
12 may occur in the future. *See* Advisory Committee Notes to former Fed. R. Civ. P. 23(g)(2)(A).
13 Other benefits will also accrue, including providing third parties with assurances that they are
14 dealing with counsel with authority to negotiate document preservation and production issues.
15 Approving the proposed interim leadership structure and granting these firms Interim Co-Lead
16 Class Counsel and Executive Committee member status will provide all concerned with the
17 requisite indicator that these firms are empowered to act on behalf of the proposed class.
18

19 **A. Proposed Interim Co-Lead Class Counsel have Taken Significant Steps to Advance**
20 **This Litigation, Investigate the Underlying Claims, and are Familiar With the**
21 **Underlying Law**

22 Proposed Interim Co-Lead Class Counsel have expended substantial resources
23 investigating this case. As the Berman and Klein Declarations explain, Hagens Berman and
24 RKR have each has conducted numerous interviews with homeowners who have attempted to
25 obtain mortgage modifications from Bank of America, industry professionals, and other potential
26 witnesses. These two firms were among the first to investigate the failures in Bank of America’s

1 compliance with HAMP and to bring cases seeking to redress these failures on a class basis.
2 Proposed Interim Lead Class Counsel have each expended substantial attorney time developing
3 appropriate legal theories, opposing motions to dismiss, and are consequently extremely well
4 versed in the applicable law. Berman Decl., ¶ 5; Klein Decl., ¶¶ 7-8. Additionally, proposed
5 Interim Co-Lead Class Counsel have been working to actively advance this case by coordinating
6 with both defense counsel and other Plaintiffs' counsel to organize and streamline this litigation.
7 Berman Decl., ¶ 6; Klein Decl., ¶ 11. Proposed Co-Lead Class Counsel coordinated numerous
8 organizational meetings of all Plaintiffs' counsel to discuss future management of this case.
9 Berman Decl., ¶ 7; Klein Decl., ¶ 12.

11 **B. Proposed Interim Co-Lead Class Counsel are Experienced in Efficiently Litigating**
12 **Complex Commercial Litigation Including Class Actions and Multidistrict**
13 **Litigation Proceedings**

14 Both Hagens Berman and RKR have the experience and knowledge necessary to provide
15 the putative classes the best representation possible. As discussed in more detail below, each
16 firm has extensive experience with class actions and complex litigation generally, and with
17 actions regarding home mortgages in particular. *See generally* Berman Decl., Ex. B (Firm
18 Resume); Klein Decl. Ex. B, C.

19 **1. Hagens Berman Sobol Shapiro LLP**

20 Hagens Berman is one of the nation's preeminent and most experienced plaintiff-side
21 class action firms and possesses the background, experience, and requisite legal knowledge to
22 manage and prosecute the litigation and the claims asserted therein. Hagens Berman has been
23 repeatedly recognized as one of the nation's leading plaintiffs' law firms by the *National Law*
24 *Journal*. Since its founding, Hagens Berman has represented plaintiffs in class actions and other
25 complex, large-scale litigation across the country. To give just a few representative examples:
26

1 *New England Carpenters Benefits Fund, et al. v. First DataBank*
2 *Inc. and McKesson Corp.*, Case No. 05-11148 (D. Mass.). Hagens
3 Berman was lead counsel representing consumers and third-party
4 payers against healthcare services giant McKesson for violations of
5 the Racketeer Influenced and Corrupt Organizations Act (RICO)
6 for conspiring to fraudulently inflate the Average Wholesale Price
7 of most common prescription medicines. A settlement for \$350
8 million was approved in August 2009.

9 *In re Neurontin Marketing, Sales Practices and Products Liability*
10 *Litig.*, MDL 1629 (D. Mass.). Hagens Berman is co-lead counsel in
11 the MDL, and co-lead trial counsel in the related *Kaiser v. Pfizer*
12 trial conducted over 5 weeks in the winter of 2010. In the satellite
13 claims of Kaiser in the MDL, the trial involved the question
14 whether Pfizer had engaged in a decade-long racketeering in the
15 marketing of Neurontin for unproven medical uses, and whether
16 that marketing had a sweeping influence over prescribing the drug.
17 The jury returned a \$147 million verdict (after trebling).

18 *In re Bextra Marketing Sales Practices & Product Liability Litig.*,
19 MDL 1699 (N.D. Cal.). Hagens Berman filed suit against Pfizer
20 claiming that the pharmaceutical giant launched a misleading
21 marketing campaigns for its drugs Bextra and Celebrex. An \$89
22 million settlement has received preliminary approval.

23 *In re Pharmaceutical Industry Average Wholesale Price Litig.*,
24 MDL 1456 (D. Mass.). Since 2001 Hagens Berman has led this
25 litigation against 20 pharmaceutical companies. Serving as lead
26 counsel, Hagens Berman has participated in all phases of the case,
including a successful eight week trial with Steve Berman serving
as lead trial lawyer. To date, approximately \$210 million has been
recovered and the remainder of the case is still pending. The case
is considered at the top of the scale in terms of complexity of
discovery and motion practice.

In re Visa Check/MasterMoney Antitrust Litig, No. CV-96-5238
(E.D.N.Y.) Hagens Berman was appointed co-lead counsel by the
court in this case, in which a number of large and small merchants
and three trade associations sued Visa and MasterCard, alleging
that defendants have created a tying arrangement in violation of
§ 1 of the Sherman Antitrust Act by means of their ‘honor all
cards’ policy, which requires stores that accept defendants’ credit
cards to accept their debit cards as well. Plaintiffs also alleged that
defendants attempted and conspired to monopolize the debit card
market in violation of § 2 of the Sherman Act. *In re Visa*

1 *Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 129-30 (2d Cir.
2 2001). Following affirmation of class certification by the Second
3 Circuit, the parties ultimately settled the case on the eve of trial in
4 a settlement valued at \$3 billion.

5 *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*,
6 MDL No. 1486 (N.D. Cal.). Hagens Berman recently served as
7 co-lead counsel in this matter, recovering settlements in excess of
8 \$325 million for the direct purchaser class and winning praise from
9 the Honorable Judge Phyllis Hamilton for its skill, efficiency, and
10 cooperation with other parties and the Court.

11 In addition, Hagens Berman also played a major role in litigation by State Attorneys
12 General against the tobacco industry, representing 13 states and resulting in the largest state
13 settlement in history. Only two States took their cases against that industry to trial: Washington
14 and Minnesota. As a result, only two private firms tried cases on behalf of the States against the
15 industry. Hagens Berman is one of those firms.

16 Hagens Berman attorneys who will staff this matter include (but are not limited to) the
17 following experienced class action attorneys:

18 **Steve Berman** is Hagens Berman's managing partner and is regarded as one of the
19 country's top civil litigators. Recognized as one of the "Top 100 Influential Lawyers in
20 America" by the *National Law Journal*, Mr. Berman served as a special assistant attorney
21 general for 13 states in the tobacco litigation which resulted in the largest settlement in history.
22 He is an experienced trial lawyer in large scale cases. He was in the eighth week of trial of the
23 Washington tobacco trial when that litigation settled on a global basis. He has experience in
24 multidistrict litigation trials. He was part of the trial team in the WPPS Litigation (a four-month
25 trial) and is the lead trial lawyer for several classes in claims against twenty-two pharmaceutical
26 companies in *In re Average Wholesale Price Litigation*, MDL 1456 (D. Mass). In recognition of
his prominence, Mr. Berman was also retained by Microsoft to be part of the core national team

1 representing the company in antitrust class actions resulting from Judge Jackson's Findings of
2 Fact in the U.S. Department of Justice's antitrust case against the company.

3 **Ari Brown** has over ten years experience in prosecuting consumer protection cases
4 regarding abuses in the home mortgage industry including numerous class actions. Mr. Brown
5 graduated *magna cum laude* from Seattle University Law School in 1999, and served on the
6 Seattle University Law Review. Mr. Brown has litigated dozens of cases representing individual
7 homeowners against mortgage lenders and finance companies including *Anderson v. Wells*
8 *Fargo Home Mortgage, Inc.*, 259 F.Supp.2d 1143 (W.D. Wash. 2003) and *Brazier v. Sec. Pac.*
9 *Mortgage Inc.*, 245 F.Supp.2d 1136 (W.D. Wash. 2003). He has participated in many consumer
10 class actions focused on conduct by mortgage lenders as lead counsel, including *Pierce et al v.*
11 *Novastar Mtg. Inc.* 238 F.R.D. 624 (W.D. Wash 2006).
12

13 **2. Roddy Klein & Ryan**

14 RKR specializes in the representation of consumers in individual and class action cases
15 against mortgage lenders, finance companies, debt collectors, utilities, and others. RKR has
16 obtained several hundred million dollars in restitution and debt forgiveness for consumers by
17 successfully asserting claims under state and federal consumer protection laws on their behalf.
18

19 RKR is presently court appointed co-lead counsel in three major Multidistrict Litigation
20 proceedings addressing mortgage lending abuses and mortgage discrimination:
21

- 22 • *In Re Ameriquest Mortgage Co. Mortgage Lending Practices Litigation*, MDL No. 1715
23 (N.D. Ill.)
- 24 • *In re Wells Fargo Mortgage Lending Practices Litigation*, 08-cv-1930 MMC (N.D. Cal.)
- 25 • *In re Countrywide Financial Mortgage Lending Practices Litigation*, MDL No. 1974 JGH
26 (W.D. Ky.)

1 RKR has also litigated and resolved dozens of groundbreaking consumer protection and
2 civil rights class actions, particularly in the area of mortgage lending. A partial listing of the
3 firm's litigated cases includes the following:

- 4
- 5 • *Allen v. Decision One Mortgage Co., LLC and HSBC Finance Corp, Inc.*, C.A. NO. 07-
6 11669 GAO (D. Mass.) (class-wide monetary remedies and injunctive relief for mortgage
7 lending discrimination).
- 8 • *In re Household Lending Litigation*, Case No. C 02-1240 CW (N.D. Cal.) (\$172 million
9 settlement on behalf of nationwide class of home mortgage borrowers injured by
10 predatory mortgage lending practices);
- 11 • *Curry v. Fairbanks Capital Corporation*, 03-10875-DPW (D. Mass.) (\$55,000,000
12 settlement of nationwide class action based on predatory loan servicing practices on
13 behalf of class of 750,000 borrowers).

14 RKR attorneys who will staff this matter include:

15 **Gary Klein** is a nationally recognized expert on consumer law and consumer education.
16 His practice focuses upon unfair business practice cases, consumer protections for predatory
17 lending, mortgage discrimination, creation of sustainable homeownership opportunities, and
18 consumer bankruptcy. From 1991 to 2000, Mr. Klein was a Senior Attorney at the National
19 Consumer Law Center and Director of the Center's Sustainable Homeownership Initiative.

20 His litigation has involved groundbreaking issues in consumer protection and civil rights
21 law. Mr. Klein has testified frequently before both houses of Congress on consumer credit issues
22 and his legislative advocacy included successfully lobbying Congress in 1994 for passage of the
23 Homeownership and Equity Protection Act (HOEPA) and organizing opposition to credit
24 industry efforts to revise the nation's bankruptcy laws. He is a past director of the National
25 Association of Consumer Bankruptcy Attorneys and of the American Bankruptcy Institute.

26 **Shennan Kavanagh** specializes in complex consumer finance litigation including class
actions and challenges to unfair mortgage lending practices. A graduate of Suffolk University

1 Law School (J.D., *cum laude*, 2002) and the University of Vermont (B.A., 1997), she is admitted
2 to the state and federal courts in Massachusetts. In recent years, her practice focuses on
3 challenges to unfair and discriminatory mortgage lending practices and on class actions
4 involving lenders' abuses of the Bankruptcy Code.

5
6 Currently, Ms. Kavanagh is serving as co-chair of the Boston Bar Association's Class
7 Action Committee and is a member of the National Association of Consumer Advocates. She
8 recently co-authored an article for Northeastern University's Law Journal, *The Causes of the*
9 *Subprime Foreclosure Crisis and the Availability of Class-Action Responses* 2 N.U.L.J. 137
10 (2010).

11 **Kevin Costello** is admitted to practice before the courts of the Commonwealths of
12 Massachusetts and Pennsylvania, as well as the United States District Courts of Massachusetts
13 and the Eastern District of Pennsylvania. He is a 1996 honors graduate of Boston College, and a
14 2001 honors graduate of the University of Pennsylvania Law School.

15
16 Mr. Costello has an extensive history of using the law to protect vulnerable classes of
17 people. After law school internships with legal aid organizations in New York and San
18 Francisco, Mr. Costello was an Independence Fellow and staff attorney at the Elderly Law
19 Project of Community Legal Services in North Philadelphia, helping seniors navigate the health
20 care system. Mr. Costello also served as a law clerk to the Honorable Francis X. Spina of the
21 Massachusetts Supreme Judicial Court and to the Honorable Joseph H. Rodriguez of the U.S.
22 District Court for the District of New Jersey in Camden.

1 **C. Establishment of Executive Committee of Counsel**

2 Proposed Interim Lead Class Counsel requests authority to establish an Executive
3 Committee of law firms that have filed constituent cases in this proceeding. If so authorized,
4 Plaintiffs' counsel have agreed that the Executive Committee will consist of Cotchett, Pitre &
5 McCarthy, Bolognese & Associates, National Consumer Law Center, Shepherd Finkelman
6 Miller & Shah LLP, Faruqui & Faruqui LLP, and Langer, Grogan & Diver, PC. These firms'
7 extensive experience in representing large plaintiff classes makes them suitable as Executive
8 Committee Co-Chairs and members in this matter. Berman Decl., ¶ 13, Exs. C - H. Executive
9 Committee counsel, together with proposed Interim Co-Lead Class Counsel, have already taken
10 significant steps to identify and investigate Plaintiffs' claims and to advance this litigation.
11 Berman Decl., ¶ 13. They have performed substantial work in investigating the merits and have
12 consulted with art industry experts. *Id.* Additionally, the Executive Committee law firms are
13 located throughout the country. Berman Decl., ¶ 15, Exs. C-H. The national scope of these
14 firms will be important because defendants operations are located throughout the country. The
15 specific responsibilities of the Executive Committee are outlined in the proposed CMO No. 1.
16

17
18 **D. Proposed Interim Lead Class Counsel Can Devote Substantial Resources to the**
19 **Prosecution of this Action**

20 Proposed Interim Lead Class Counsel is familiar with the substantial resources necessary
21 to litigate a case of this magnitude. Hagens Berman has eight offices nationwide, including an
22 office located in Boston, and has numerous experienced staff. Berman Decl., ¶8, Ex. B. RKR has
23 offices in Boston and an extensive network of contacts on mortgage lending issues across the
24 country.

25 Proposed Interim Co-Lead Class Counsel have achieved excellent results in the past and
26 are committed to providing the resources required to prosecute this litigation through all phases,

1 including rigorous motion practice, discovery, class certification, summary judgment and trial.
2 Hagens Berman has prosecuted and financed some of the largest civil litigation in the United
3 States, including the tobacco litigation, and the average wholesale price litigation against most
4 major companies in the pharmaceutical industry. Berman Decl., ¶¶ 9-12, Ex. B. RKR has
5 successfully prosecuted many of the seminal mortgage lending cases of the past decade.
6 Proposed Interim Lead Class Counsel has the experience and resources to deal with large
7 volumes of documents and the substantial amount of discovery, motion practice, and trial work
8 that will be required in this action.

9 **E. Proposed Interim Lead Class Counsel Has Unanimous Support of Counsel in All**
10 **Pending Actions**

11 “Private ordering,” that is, achieving a consensus among the various plaintiffs’ attorneys
12 as to who should serve as lead counsel, is the most common method for selecting class counsel.
13 *See* MCL 4TH § 21.272. Under the “private ordering” approach, lawyers agree amongst
14 themselves on who can best serve as lead counsel and the court reviews the selection to “ensure
15 that counsel selected is adequate to represent the class interests.” *Id.* Courts recognize that
16 where large numbers of experienced counsel agree to be represented by a proposed group of
17 firms, as is the case here, they will serve well in this role. *See In re Air Cargo Shipping Servs.*
18 *Antitrust Litig.*, 240 F.R.D. 56 (E.D.N.Y. 2006); *see also* MCL 4TH § 10.224 (“the attorneys’
19 ability to command the respect of their colleagues and work cooperatively with opposing counsel
20 and the court” is an important factor in selecting counsel).

22 Here, proposed Interim Lead Class Counsel and Executive Committee counsel have met
23 and conferred in several meetings to which all Plaintiffs’ counsel were invited and have
24 unanimous support of all counsel in those actions. Berman Decl., 7. This fact strongly supports
25 Court approval of the organizational structure proposed herein.
26

1 **F. Proposed Interim Lead Class Counsel Will Continue to Work Cooperatively With**
2 **All Counsel**

3 Proposed Interim Co-Lead Class Counsel with the support of the proposed Executive
4 Committee believes that they can provide the most fair and adequate leadership structure for the
5 class. The organizational structure proposed in this CMO No. 1 is supported by all Plaintiffs and
6 their counsel in virtually all known actions. Berman Decl., ¶ 16. Proposed Interim Lead Class
7 Counsel is committed to a cooperative approach among all counsel, and with the permission of
8 the Court, has established an Executive Committee of counsel to ensure that the entire plaintiff
9 class is adequately represented. In carrying out this joint endeavor, proposed Interim Lead Class
10 Counsel will make every effort to avoid waste and duplication. Finally, Proposed Interim Lead
11 Class Counsel has already established and intends to maintain professional working relationships
12 with all counsel for Defendants in this action.
13

14 **IV. THE OTHER RELATED TERMS OF PTO NO. 1 ARE APPROPRIATE AND**
15 **SHOULD BE INCLUDED IN THE COURT'S ORDER AS PROPOSED**

16 In addition to Rule 42 consolidation and Rule 23(g) appointment of Co-Lead Interim
17 Class Counsel, proposed PTO No. 1 contains a number of other terms customarily included in
18 such pretrial orders in Multidistrict Litigation proceedings. These include provisions for:

- 19
- 20 • Efficient Docketing and Filing of Cases;
 - 21 • Application of the Order to Later Filed Cases;
 - 22 • Preservation of Evidence;
 - 23 • Funding Joint Costs of Litigation;
 - 24 • Service of Papers; and
 - 25 • Time Recording.

26 Plaintiffs respectfully submit that these terms should be entered as proposed.

1 Under PTO No. 1, counsel for all parties are also directed to cooperate with one another,
2 whenever possible, to promote the expeditious handling of pretrial proceedings in this action.
3 Each of the other directives included in PTO No.1 are engineered to facilitate the just, efficient
4 and cost-effective prosecution of this litigation. Each provision is consistent with directives that
5 have governed other Multidistrict Litigation proceedings in various district courts across the
6 country.
7

8 **V. CONCLUSION**

9 For the foregoing reasons, the undersigned firms respectfully entry of Case Management
10 Order No. 1 and grant such further relief as the Court deems just.
11

12 **Local Rule 7.1(A)(2) Certificate**

13 I, Gary Klein, hereby certify pursuant to Local Rule 7.1(A)(2) that Plaintiffs' counsel
14 consulted with counsel for Defendants before filing the foregoing motion. Defendants are
15 considering their position on the motion and reserve the right to oppose the motion in whole or in
16 part.
17

18
19 DATED: November 29, 2010
20

21 Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gary Klein, hereby certify that the foregoing document was electronically filed using the Court's ECF system on November 29, 2010. In addition, on November 29, 2010, I served a copy of the foregoing document by electronic mail to all counsel of record listed on the JPML Panel Service List.

/s/ Gary Klein
Gary Klein