

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL J. FLYNN; and DENNIS LEE )  
MONTGOMERY and BRENDA )  
KATHLEEN MONTGOMERY, husband and )  
wife, )

Plaintiffs, )

v. )

NV MORTGAGE INC. d/b/a Soma Financial )  
d/b/a [www.mysoma.com](http://www.mysoma.com); COUNTRYWIDE )  
FINANCIAL CORPORATION; )  
COUNTRYWIDE HOME LOANS, INC.; )  
COUNTRYWIDE BANK, FSB; BANK OF )  
AMERICA, N.A., successor to the )  
COUNTRYWIDE DEFENDANTS; BAC )  
HOME LOANS SERVICING, LP, successor )  
to the COUNTRYWIDE DEFENDANTS, )  
LP; BANK OF AMERICA CORPORATION, )  
successor to the COUNTRYWIDE )  
DEFENDANTS; and DOES 1-50, )

Defendants. )

Case No. 2:13-cv-00360-RAJ

**DECLARATION OF JACOB M.  
DOWNS IN SUPPORT OF  
DEFENDANT'S OPPOSITION TO  
PLAINTIFFS' MOTION TO  
COMPEL AND FOR EVIDENTIARY  
SANCTIONS**

**NOTED FOR HEARING:  
NOVEMBER 28, 2014**

I, Jacob M. Downs, declare and state as follows:

1. I am an attorney with the law firm Lane Powell PC, counsel of record for Bank of America, N.A. and Bank of America Corporation ("Defendants") in this matter. I am over the age of 18, competent to testify and have personal knowledge of the matters set forth in this declaration. I make this declaration in support of Defendants' Opposition to Plaintiffs' Motion to Compel and For Evidentiary Sanctions.

DECLARATION OF JACOB M. DOWNS IN SUPPORT OF  
OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL  
AND FOR EVIDENTIARY SANCTIONS - 1

116589.1083/6220905.1

LANE POWELL pc  
1420 FIFTH AVENUE, SUITE 4200  
P.O. BOX 91302  
SEATTLE, WA 98111-9402  
206.223.7000 FAX: 206.223.7107

1           2.       On or about July 16, 2014, Plaintiff Michael J. Flynn reached out to schedule a  
2 meet and confer regarding the Defendants' Initial Disclosures.

3           3.       A meet and confer call was held on July 18, 2014, wherein counsel Flynn set  
4 forth his position that Defendants had failed to meet their Rule 26 obligations because they had  
5 not provided copies of documents or identify the documents by category and location. Flynn  
6 further stated that he believed Defendants are under an obligation to identify each database  
7 where the documents identified in the disclosures reside.

8           4.       Defendants agreed to provide supplemental disclosures, which were served on  
9 Plaintiffs on July 21, 2014. The parties subsequently exchanged correspondence regarding the  
10 sufficiency of Defendants' Supplemental Disclosures. Attached as **Exhibit A** is a true and  
11 correct copy of the e-mail correspondence exchanged between counsel on or about July 21,  
12 2014.

13          5.       The parties subsequently agreed to another meet and confer conference to  
14 discuss the disclosures on July 28, 2014.

15          6.       Another meet and confer was held by telephone on or about July 28, 2014, and I  
16 followed up that meeting by e-mail dated July 29, 2014 summarizing Defendants' position  
17 regarding the fact that their disclosures were adequate under FRCP 26. Attached as **Exhibit B**  
18 is a true and correct copy of the e-mail chain dated July 30, 2014.

19          7.       In further effort to avoid a motion to compel, Defendants provided a second  
20 Supplemental Disclosure on August 4, 2014. That same day, Defendants also provided  
21 Plaintiffs with Defendants' Responses to their Request for Production of Documents.

22          8.       Attached hereto as **Exhibit C** is a true and correct copy of the holding of  
23 *Theoharis v. Rongen*, Case No. C13-1345RAJ, 2014 BL 199478 (W.D. Wash. 2014).

24          9.       Attached hereto as **Exhibit D** is a true and correct copy of the lawsuit filed by  
25 Plaintiff Michael Flynn against co-Plaintiff Dennis Montgomery on September 28, 2009, in  
26 *Flynn v. Montgomery*, C.D. California Bankruptcy Court Case No. 2:10-ap-01305-BB.

27          10.       Attached hereto as **Exhibit E** is a true and correct copy of the article titled "The  
DECLARATION OF JACOB M. DOWNS IN SUPPORT OF  
OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL  
AND FOR EVIDENTIARY SANCTIONS - 2

1 Man Who Conned the Pentagon” from *Playboy Magazine*’s January/February 2010 edition.

2 11. Attached hereto as **Exhibit F** is a true and correct copy of the *Wikipedia, the*  
3 *free encyclopedia*, page for Dennis L. Montgomery, current as of November 24, 2014.

4 12. Attached hereto as **Exhibit G** is a true and correct copy of the article titled  
5 “Hiding Details of Dubious Deal, U.S. Invokes National Security” from *The New York Times*,  
6 dated February 19, 2011.

7 13. Attached hereto as **Exhibit H** is a true and correct copy of Plaintiffs’ FRCP  
8 26(a)(1) Initial Disclosures dated May 15, 2013.

9 14. Attached hereto as **Exhibit I** is a true and correct copy of the holding of  
10 *Obayashi Corp. v. Chartis Specialty Ins. Co.*, No. C11-962 TSZ, 2012 BL 204670 (W.D.  
11 Wash. 2012).

12 15. Attached hereto as **Exhibit J** is a true and correct copy of the article titled  
13 “Treasury Dept. anti-foreclosure program ‘abysmal,’ says watchdog” from *The Center for*  
14 *Public Integrity* website, dated January 27, 2011, updated May 19, 2014.

15 Executed on November 24, 2014, in .

17 /s/ Jacob M. Downs

18 Jacob M. Downs, WSBA No. 37982

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of November, 2014, I electronically filed the foregoing document: **DECLARATION OF JACOB M. DOWNS IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL AND FOR EVIDENTIARY SANCTIONS** with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

Paul E. Brain  
Brain Law Firm PLLC  
1119 Pacific Avenue, Suite 1200  
Tacoma, WA 98402  
pbrain@paulbrainlaw.com kmiddelton@paulbrainlaw.com jdavenport@paulbrainlaw.com  
Attorneys for Plaintiffs Dennis and Brenda Montgomery

Michael J. Flynn, Plaintiff *pro se*

Steven J. Dixon  
Jody M. McCormick  
WITHERSPOON KELLEY  
422 W. Riverside Ave., Suite 1100  
Spokane, WA 99201-0300  
sjd@witherspoonkelley.com  
jmm@witherspoonkelley.com  
Withdrawing Attorneys for Defendants

LANE POWELL, PC

By: s/ Jacob M. Downs

John S. Devlin, III, WSBA No. 23988  
devlinj@lanepowell.com

Jacob M. Downs, WSBA No. 37982  
downsj@lanepowell.com

1420 Fifth Avenue, Suite 4200

Seattle, WA 98101-2338

Telephone: (206) 223-7000

Facsimile: (206) 223-7107

Attorneys for Defendants Bank of America, N.A., as successor by merger to Countrywide Bank, FSB and BAC Home Loans Servicing, LP; Countrywide Home Loans, Inc.; and Bank of America Corporation for itself and as successor by merger to Countrywide Financial Corporation

DECLARATION OF JACOB M. DOWNS IN OPPOSITION  
TO PLAINTIFFS' MOTION TO COMPEL AND FOR  
EVIDENTIARY SANCTIONS - 4

116589.1083/6220905.1

LANE POWELL pc  
1420 FIFTH AVENUE, SUITE 4200  
P.O. BOX 91302  
SEATTLE, WA 98111-9402  
206.223.7000 FAX: 206.223.7107