UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MORTGAGE RESOLUTION SERVICING, LLC, 1ST FIDELITY LOAN SERVICING, LLC, and S & A CAPITAL PARTNERS, INC., Plaintiffs, v. JPMORGAN CHASE BANK, N.A., CHASE HOME FINANCE, LLC, and JPMORGAN CHASE & CO., Defendants.	ORAL ARGUMENT REQUESTED No. 15-cv-00293(LTS)(JCF)

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COMPEL AND DEFINE SCOPE OF DISCOVERY

CHAITMAN LLP
Helen Davis Chaitman
Lance Gotthoffer
Suzan Arden
465 Park Avenue
New York, New York 10022
Phone & Fax: 888-759-1114

Attorneys for Plaintiffs

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Plaintiffs S&A Capital Partners, Inc. ("S&A"), Mortgage Resolution Servicing, LLC ("MRS") and 1st Fidelity Loan Servicing, LLC ("1st Fidelity"), through their attorneys, Chaitman LLP, submit this memorandum of law in support of their motion, pursuant to Federal Rule of Civil Procedure 26 and 37 and Local Civil Rule 37.1,

(a) to compel Defendants JPMorgan Chase Bank, N.A., JPMorgan Chase & Company, and Chase Home Finance LLC (collectively, "Chase" or "Defendants"), to produce documents in response to Plaintiffs' document demands ("Plaintiffs' Requests") and

(b) to define the scope of discovery in this case.

PRELIMINARY STATEMENT

All fact discovery in this case is ordered to be complete by September 2, 2016. (Docket 91). To date, Plaintiffs have produced over 100,000 pages and are in the process of producing approximately 100,000 more. Nonetheless, **Defendants have not yet produced even a single document.**[1] We have exhausted ourselves in meet-and-confers, to no avail. We therefore are forced to burden the Court with this motion.

Plaintiff has asserted claims for breach of contract, associated torts, and for liability under civil RICO. There is a pending related *qui tam* case in the District Court for the District of Columbia and Judge Swain has indicated that discovery in both cases should be coordinated here.[2] All claims relate to Defendants' wrongful conduct, including the improper release of liens and forgiveness of loans they had already sold to Plaintiffs, among others, and for which Defendants claimed credit as part of an $8 billion package of consumer relief they had agreed to provide in settlement agreements with the federal government, and regarding its Servicing Participation Agreement ("SPA") with the Treasury.

[1] Defendants' Objections and Responses to Plaintiffs' First Request for the Production of Documents to all Defendants ("Plaintiffs' Requests" or "PR") is attached to the accompanying Declaration of Helen Davis Chaitman ("Chaitman Dec."), executed on May 27, 2016, as **Exhibit A.**

[2] Docket 32, Point 12, p. 6; Docket 87, p. 3,

Defendants have requested in their own demands, and Plaintiffs have been producing, categories of documents that relate only to the *qui tam* action. Nonetheless, Defendants have categorically refused to produce any of the categories of documents that relate to the *qui tam* case, that Defendants demanded that Plaintiffs produce and which Plaintiffs have produced.

However, regardless of whether the documents relate to the *qui tam* case or to the case pending in this Court, the Defendants refuse to produce a single document. Instead they have devoted their energies to inventing frivolous excuses for their failure to comply with Plaintiffs' discovery demands. One of Defendants' excuses is that there is a pending motion to dismiss the RICO claim. However:

- Discovery has not been stayed pending resolution of the motion; nor have Defendants even requested that it should be.

- Most of the discovery Plaintiffs have demanded is necessary for the breach of contract claims, as well as for the RICO claims. Indeed, Defendants have admitted that there is considerable factual overlap between the claims they have sought to dismiss and the breach of contract claims, which means that documents relevant to one type of claim are almost certainly relevant to the others.

Background

The Plaintiffs are in the business of buying mortgage loans (including the note, the mortgage or deed of trust, the full collateral file and the servicing file and history) that are not performing according to their original terms, (TAC[3] ¶ 12) with the goal of working out payment plans with the borrowers to enable them to remain in their homes (TAC ¶ 13). Plaintiffs claim that the Defendants, who are responsible for providing $8 billion of relief to consumers pursuant to certain settlements with the government, dumped large amounts of liabilities and defective loans on Plaintiffs and also committed wholescale fraud on Plaintiffs as part of a scheme to appear to comply with those

[3] The Third Amended Complaint in this action ("TAC") is attached to the Chaitman Dec. as **Exhibit B.**

settlements and the SPA. While Defendants seek to mischaracterize their wrongdoing as a mere breach of contract, Plaintiffs have alleged in the TAC that Defendants also committed wholescale fraud on Plaintiffs as part of a scheme to appear to comply with those settlements.

In the TAC, Plaintiffs allege that the Defendants first enticed them to purchase a series of mortgage loans that Defendants claimed were first lien residential mortgages which did not make financial sense for Defendants to retain—when they were really mostly deficiency claims that had been improperly serviced. Then, after entering into settlements with the government which required Defendants to pay out over $8 billion in consumer relief, Defendants sought consumer relief credit by forgiving loans and releasing liens that had previously been sold to the Plaintiffs. Based on this fact pattern, Plaintiffs brought claims for breach of contract (Counts One through Three), Conversion (Count Four), Tortious Interference (Count Five) Fraud and Negligent Misrepresentation (Count Six and Seven), Slander of Title (Count Eight) and for civil RICO liability (Count Nine).

Plaintiffs' principal, Laurence Schneider, has a *qui tam* case pending in the District of Columbia, now captioned *United States of America et al ex rel. Lawrence Schneider v. J.P. Morgan Chase Bank, National Association, et al.*, 114-CV-01047-RMC (the "*qui tam* Case") in which he contends that Defendants violated the terms of a consent judgment entered in *United States v. Bank of America*, 922 F. Supp. 2d 1, 4 (D.D.C. 2013), that required, among other things, that Defendants provide refinancing and other consumer relief to mortgage customers who satisfy certain eligibility criteria. Defendants moved to transfer this case to the District of Columbia as a related case (Docket 42). The Court denied that motion on October 28, 2015 (Docket 75). In the Initial Pre-Trial Order and in the decision denying the motion to transfer, this Court ordered the parties to coordinate discovery with the *qui tam* Case, in which discovery has not yet begun.

The dispute about the applicable scope of discovery here is fundamental. Plaintiffs have already produced approximately 100,000 pages and are on track to produce many thousands more.

Defendants have not produced even one document. In their motion to transfer, Defendants took the position that the claims in this case and the claims in the *qui tam* Case concern the same subject matter. In their motion to dismiss, Defendants took the position that Plaintiffs' breach of contract claims, which Defendants did not seek to dismiss, are duplicated by Plaintiffs' tort claims. Documents do not suddenly become less relevant to Plaintiffs' claims in this case simply because they may also be discoverable in the *qui tam* Case or because they may also relate to other claims in this case that are the subject of a motion to dismiss. Further, Defendants do not deny that they will take the position that, if a witness is deposed in this case, they will claim that this witness cannot be redeposed in the *qui tam* Case. In order to prepare properly for depositions, the parties must, of course, have access to all of the relevant documents before depositions begin.

Second, Defendants' contend that it is not "remotely feasible" for them to identify the loans they sold to the Plaintiffs, and their proposed strategy for dealing with that absurd proposition is to require the Plaintiffs to prepare lists of loan numbers of the loans that they believe they bought. Plaintiffs attached to the TAC the lists of loans that Defendants had provided to them when S&A Capital and 1st Fidelity purchased the loans. In addition, Plaintiffs have identified the loans MRS purchased on several occasions before commencing this lawsuit in an attempt to prevent Defendants from continuing to take action on loans they no longer owned.

Defendants, however, claim that this is insufficient because it is not a list of loan numbers, simply the identifying detail provided by Defendants to Plaintiffs. Defendants contended that the Plaintiffs must first itemize all the numbers before Defendants can produce any documents at all. However, Defendants turned the loans over to the Plaintiffs without ever providing any loan numbers and, we understand, Defendants have since changed some of the loan numbers that would have

applied in any case.[4] In order to provide the most scope for identifying all of the relevant loans, Plaintiffs have provided Defendants with lists of borrower information, including social security numbers and property details. Defendants are certainly able to produce the loan information based on social security numbers. While Defendants may change loan numbers for their own purposes, they have no power to change the borrowers' social security numbers.

Moreover, all but one of the requests for which Defendants have raised this issue do not require identification of the loans Defendants sold to Plaintiffs. As set forth below, the requests encompass loans whose details were itemized on a list Defendants sent to the Plaintiffs (referred to in the TAC as the "Corrupted List"), or relate to loans whose borrowers were the recipients of debt forgiveness letters pursuant to Defendants' obligations to provide consumer relief, or whose liens Defendants released starting in October 2013, apparently robo-signed as part of a project to avoid liability for Defendants' servicing violations. As such, since the purpose of the requests is for **Defendants** to identify loans, not Plaintiffs, Defendants do not require Plaintiffs to provide them with any identification of the loans they purchased to respond.

There are other discovery issues which Defendants have raised in order to obfuscate the process. Defendants have been unwilling to agree on the document custodians who possess responsive information and have refused to expand their search terms beyond 11. While Defendants represent that they are willing to negotiate the list of custodians and search terms, Plaintiffs do not know what documents are contained in the files Defendants deem appropriate to search, and what documents are not, beyond a bare statement in Defendants' response to Plaintiffs' interrogatories that the proposed custodians possess only information concerning "interactions with Plaintiffs and/or the

[4] For example, Launi Solomon of Chase sent an internal email dated December 18, 2009, copying Plaintiffs' Principal, regarding "Payments (MRS SALE)" in which she stated that "[t]here are issues due to dupe acct # project or something Larry Sandra [*sic*] says you know about? So some of these accts your group cant [*sic*] find under certain acct #s because we changed them?" Chaitman Dec. **Exh. C.**

loans and liens purchased by Plaintiffs from Chase."[5] Obviously, the discovery in the *qui tam* Case extends to loans that were not sold to Plaintiffs. In order to resolve some of these issues, Plaintiffs have asked Defendants to provide them with a deposition pursuant to Rule 30(b)(6) to evaluate the categories of documents stored in various locations as well as the costs and methodology for searching, reviewing and retrieving documents for production.

But Defendants contend that even the 30(b)(6) notice[6] is too broad, and that Plaintiffs are not entitled to know the location of documents Defendants object to producing. Thus, until the question of the scope of discovery is resolved, and until Defendants have explained to Plaintiffs what documents are stored in what databases or locations, Plaintiffs cannot even properly address the minutiae of Defendants' more impenetrable objections. Certainly, Plaintiffs cannot negotiate with Defendants regarding the identity of the appropriate custodians and search terms.[7]

ALLEGATIONS

Plaintiffs have pled that the Defendants, together with certain officers, debt collection agencies, the outside services that sent out thousands of debt forgiveness letters, and the persons and entities that released liens on collateral that had been transferred to the Plaintiffs, formed an enterprise as set forth in 16 U.S.C. § 1962(c) (TAC ¶ 208). Defendants' purpose, through control of the enterprise, was to dump massive liabilities onto the Plaintiffs so that Defendants could avoid liability. This permitted Defendants to represent to the federal government that they fulfilled the terms of the NMSA Consent Judgment and the RMBS Settlement by appearing to provide $8.2 billion of consumer relief when in fact they had not. (TAC ¶¶ 206-07, 210).

---

[5] *See* Defendants' Objections and Responses to Plaintiffs' First Set of Interrogatories to All Defendants, Chaitman Dec. **Exhibit D.** Compare with the eight custodians identified on Exhibit A to Defendants' Objections and Responses to Plaintiffs' First Request for the Production of Documents to All Defendants, Chaitman Dec. **Exhibit A.**

[6] A copy of the 30(b)(6) notice is attached to the Chaitman Dec. as **Exhibit E.**

[7] While Defendants have theoretically offered to negotiate regarding adding custodians or search terms, this offer is hollow because Plaintiffs cannot know in whose possession the relevant documents reside.

The scheme included multiple predicate acts, starting when Defendants' head of loan recovery knowingly misrepresented to Plaintiffs in 2008 that it was selling "closed end first lien residential mortgage loans" from which Defendants had decided to "walk away" based on a cost benefit analysis (TAC ¶ 212a) when they really intended to dump massive liabilities on Plaintiffs (TAC ¶212a) and when the majority of the loans were in fact deficiency claims, not first lien mortgages. (TAC ¶ 212a, 212b). Defendants' wrongful conduct continued through Defendants' mailing out hundreds of letters to homeowners forgiving loans Defendants had already sold to the Plaintiffs more than three years earlier and releasing vast numbers of liens on properties pledged to Plaintiffs as collateral through robo-signed releases executed from September 2012 through October 2013. (TAC ¶¶ 212 g, 212h).

Representations Regarding The First Lien Pool

In 2008, Chase represented to Plaintiffs that Chase wanted to sell a portfolio of first lien residential mortgages. In order to encourage plaintiffs to purchase the loan package, Chase represented that it contained some valuable loans that had been erroneously 'charged off,' removed from its primary System of Records and ported to Chase's Recovery department. (TAC ¶¶ 19-21). In October 2008 Chase sent Plaintiffs a preliminary data tape of the loan package, which was grossly incomplete (TAC ¶ 22). This was followed by a second data tape in November 2008 (the "November 2008 Data Tape"), which clearly identified the loans as first lien mortgages, but still lacked information including certain borrower names and collateral addresses. (TAC ¶ 24). Plaintiffs' due diligence revealed that the largest two loans were in excess of $500,000, fully secured and located in areas with houses valued over $1 million. (TAC ¶25). Chase represented that the loan sale had to close before the end of the year so that Chase could "get the loans off its books". (TAC ¶ 29). Despite these "cherries," in December 2008, Plaintiffs informed Defendants that they were not interested in making a competitive bid on the loans. (TAC ¶ 29).

Chase then offered to sell the loans to Plaintiffs for $200,000 (TAC ¶ 30). Plaintiffs accepted, based on their evaluation of the "cherries" and sent a formal offer to purchase approximately $100 million of "impaired first lien mortgage loans" on December 22, 2008 (TAC ¶¶ 31-32).

The MLPA

On February 4, 2009 Defendants provided Plaintiffs with the Mortgage Loan Purchase Agreement ("MLPA") for signature. It provided for the sale of 4,271 loans with an outstanding balance of over $172 million, but Defendants did not provide the list of loans being sold, which was supposed to form Exhibit A to the MLPA. (TAC ¶ 35). Plaintiffs requested a copy of the final data tape of the loans so it could be reviewed before signing the MLPA. Defendants represented that it would provide the final data tape after signature. (TAC ¶ 36).

The fully-executed version of the MLPA, which Defendants sent to Plaintiffs three weeks later, provided for the sale of 3,529 "nonperforming and/or impaired closed end first lien mortgage loans that are or have been delinquent for 180 days or more and have been or may otherwise be in default" with an outstanding balance of a little over $156 million. (TAC ¶ 38). Defendants then sent a data tape containing what purported to be Exhibit A (the "Corrupted List"). (TAC ¶¶ 39, 46).

False Representations and Warranties in the MLPA

Defendants made three key representations and warranties in the MLPA: (1) that the information on the data tape—*i.e.* the Corrupted List—"is true and correct in all material respects as of the date such data tape was compiled"; (2) that Defendants are the sole owner of the loans with full authority to sell them; and (3) that each loan "complies in all material respects with all applicable . . . laws" (TAC ¶ 43, TAC Exhibit 3 §6).

All of these warranties were false at the time they were made. First, the Corrupted List did not include the basic information necessary to service the loans. (TAC ¶46). Second, contrary to the representation and warranty that Defendants owned the loans, the Corrupted List contained loans

Defendants had previously sold to third parties and loans Defendants had never owned.[8] (TAC ¶¶ 56, 60h). (TAC ¶ 56). Third, the loans did not comply with applicable laws. (TAC ¶¶ 59-60).

Conduct Subsequent to Execution of the MLPA

In addition to the multiple misrepresentations Defendants made prior to execution of the MLPA, Plaintiffs allege that Defendants subsequently breached it by, among other things, (1) failing to provide MRS with assignments of the notes and mortgages for the loans (TAC ¶ 65); (2) sending letters misrepresenting Defendants as owners of the loans and directing borrowers of some loans to make payments to Defendants instead of MRS or its designees (TAC ¶ 68); (3) collecting payments from insurance companies pursuant to title insurance claims related to the mortgage loans (TAC ¶¶ 69-70); (4) "recalling" certain loans (TAC ¶¶ 71-74); (5) contacting borrowers and misrepresenting that Defendants had reacquired the loans and that the borrowers had to pay Defendants (TAC ¶ 85); (6) collecting and retaining payments on certain of the loans (TAC ¶ 86); (7) changing the loan numbers of certain performing loans (TAC ¶ 87).

Misrepresentation of Loan Ownership to Government Agencies

Plaintiffs further allege that Defendants misrepresented to certain government enforcement agencies that MRS, not Chase, was responsible for the pre-sale conduct of Defendants regarding loans that had been sold (TAC ¶ 88), and that MRS, not Chase, was responsible for violations regarding loans that Defendants had never sold to MRS (TAC ¶ 89).

The National Mortgage Settlement and Residential Mortgage Backed Securities Settlement

Plaintiffs have pled that Defendants were party to the National Mortgage Settlement Agreement ("NMS"), reflected in a consent judgment (the "NMS Consent Judgment") (TAC ¶¶ 92-

[8] For example, on February 17, 2010, Launi Solomon of Chase sent an email to Plaintiffs' Principal in which she discussed the need for MRS to close two accounts Chase had sold to MRS because the accounts were "fraud": one for Syed Ali and one for Ricardo Salinas. She acknowledged that "it was our fault we sold it. It was clearly in the notes that its fraud." Chaitman Dec. **Exh. F.**

97). Among other things, Defendants were required to provide $4.2 billion of consumer relief to borrowers whose loans they owned. (TAC ¶ 100). Accordingly, from September 13, 2012 through January 13, 2013, as part of this $4.2 billion consumer relief, Defendants sent over 50,000 letters to borrowers forgiving various loans. However, among these loans Defendants purportedly forgave thousands it did not own, including multiple loans it had sold to the Plaintiffs. (TAC ¶¶ 102-08). Plaintiffs have also pled that Defendant JPMC entered into a $13 billion settlement with the Department of Justice on November 19, 2013 ("RMBS Settlement") under the terms of which JPMC agreed to pay $13 billion in return for complete civil immunity. (TAC ¶ 146). Pursuant to the RMBS Settlement, these payments included $4 billion of consumer relief, pursuant to which Defendants wrongfully claimed credit for the full indebtedness owed by borrowers whose loans Defendants had already sold to Plaintiffs (TAC ¶ 147).

The Pre-DoJ Lien Release Project

Plaintiffs also allege that, starting in October 2013, Defendants released liens[9] on thousands of properties on which they had abandoned their servicing responsibilities in violation of legal requirements. (TAC ¶ 134). These liens included loans owned by Plaintiffs (TAC ¶¶ 135-37, 140), which caused them to lose revenue and also exposed them to litigation and regulatory action. (TAC ¶¶ 141-43). The releases appear to have been robo-signed (TAC ¶¶ 138, 144).

[9] On October 21, 2013, Chase expedited its Alternative Foreclosure Program, known as the Pre DOJ Lien release Project. Plaintiffs contend that as part of this process, JPMC specifically targeted loans owned by the Plaintiffs. The attached screen shot refers to loans owned by S & A Capital, 1st Fidelity Loan Servicing and Mortgage Resolution Servicing. The record keeping of the loans owned by the Plaintiff entities, whose liens were released, was notated in Chase's MSP system of records. Chaitman Dec. **Exh. G.**

On January 3, 2014, Jason Oquendo, Chase Project Manager, sent an email to Chase Credit Operations in which he changes the Internal Controls to obtain credits pursuant to the 2nd Lien Extinguishment Program. The email describes a number of new and changed fields. Chaitman Dec. **Exh. H.**

THE MEET AND CONFER PROCESS

The Plaintiffs have complied with their meet-and-confer obligations and have discussed the issues set forth herein extensively. Defendants served their Objections and Responses on February 24, 2016. On March 1, 2016, Plaintiffs sent a letter to Defendants raising these issues. Chaitman Dec. **Exh. I**. On March 16, 2016, Defendants responded. Chaitman Dec. **Exh. J.** On April 20, 2016 Plaintiffs sent another letter to Defendants to discuss Defendants' discovery obligations and served their 30(b)(6) notice. Chaitman Dec. **Exh. K.** On April 22, 2016, Defendants sent an email asking to meet-and-confer on the 30(b)(6) issue alone. Plaintiffs responded that they would meet-and-confer on all issues rather than in a piecemeal fashion. Chaitman Dec. **Exh. L.** Defendants did not respond until April 28, 2016, at which time they expressed their intention to move for a protective order on the 30(b)(6) notice if no agreement could be reached. Plaintiffs responded on April 29, 2016, asking again for a global meet-and-confer. Chaitman Dec. **Exh. M.** The parties conducted that meet-and-confer on May 12, 2016. Defendants followed up with an email outlining remaining issues on May 13, 2016 and Plaintiffs responded on May 20, 2016 (Chaitman Dec. **Exh. N**) at which time the parties agreed that they were unable amicably to resolve the question of the scope of discovery.

CATEGORIES OF DOCUMENTS IN DISPUTE

A list of the specific requests that would elicit documents that Defendants object to producing, so far as can be determined, fall into three categories: (1) Documents that relate to the *qui tam* Case or that Defendants claim are beyond the scope of the breach of contract claims (Plaintiffs' Request Nos. 7, 26, 27, 29, 31, 33-41); (2) Documents Defendants claim they cannot produce unless Plaintiffs provide them with a list of loans that Defendants sold (Plaintiffs' Request Nos. 3, 16-18, 21, 28 and 32); and (3) Documents that Defendants might produce, so long as they can be found in the files of eight proposed custodians, through the use of eleven proposed search terms.

This motion is addressed to the first two categories. The parties will discuss the third category and attempt to reach an agreement following resolution of the scope of discovery that is available.

ARGUMENT

STANDARDS ON DISCOVERY

"A party may serve on any other party a request within the scope of Rule 26(b)" to produce "any designated documents or electronically stored information" or "any designated tangible things." Fed. R. Civ. P. 34(a)(1). "On notice to other parties .... a party may move for an order compelling disclosure or discovery." Fed. R. Civ. P. 37(a)(1). Motions to compel, pursuant to Fed. R. Civ. P. 37, are left to the sound discretion of the district court. *See United States v. Sanders,* 211 F.3d 711, 720 (2d Cir.2000).

Under Rule 26 of the Federal Rules of Civil Procedure, as recently amended, the scope of discovery includes:

> any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

The Court should still construe relevance broadly, "'to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on' any party's claim or defense." *State Farm Mutual Automobile Ins. Co. v. Fayda*, No. 14 Civ. 9792, 2015 WL 7871037, at *2 (S.D.N.Y. Dec. 3, 2015), *quoting Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

While the Court must consider proportionality to discourage the overuse of discovery, as the advisory committee's notes to the 2015 amendment reveal, "the rule 'does not place on the party seeking discovery the burden of addressing all proportionality considerations.'" *Fayda* at *2. The burden remains on the party resisting discovery to show undue burden or expense. *Id.; Fletcher v.*

Atex, Inc., 156 F.R.D. 45, 54 (S.D.N.Y. 1994) (citing *In re "Agent Orange" Prod. Liability Litig.*, 821 F.2d 139, 145 (2d Cir. 1987) ("[I]f a party resists production on the basis of claimed undue burden, it must establish the factual basis for the assertion through competent evidence."). "The discovery process necessarily imposes burdens on a responding party." *Cartel Asset Mgmt. v. Ocwen Fin. Corp.*, No. 01 Civ. 1644, 2010 WL 502721, at *10 (D. Colo. Feb. 8, 2010); *Schartz v. Unified Sch. Dist. No. 512*, No. 95 Civ. 2491, 1996 WL 741384, *2 (D. Kan. Dec. 18, 1996) ("[d]iscovery, by its very nature, is inherently burdensome to some extent" and the operative question "is whether the discovery *unduly burdens*.") (emphasis added). Information still "need not be admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1).

There are three broad categories of documents that Defendants are presently unwilling even to search for, let alone produce. First, Defendants have refused to produce any documents other than those that are directly related to Plaintiffs' breach of contract claims. As discussed below, this ignores the fact that Defendants have themselves asked for Plaintiffs to produce documents that relate to the *qui tam* Case.

Second, Defendants have refused to make any attempt to identify the loans they sold to the Plaintiffs, claiming that it is somehow impossible for them to do so. This response does not even address the fact that all but one of the requests in question does not require any identification of the loans Plaintiffs purchased at all. Having taken this position, Defendants require Plaintiffs to produce identifiers for loan numbers that Plaintiffs contend they were sold, even though Defendants sold the loans without providing such a list and, indeed, with respect to the MRS loans, apparently changed some of the loan numbers in any event. Plaintiffs have now provided Defendants with lists of loans purchased by social security number, loan recipient, property address and amount, but Defendants' delay tactic is a specious position designed to insulate Defendants from liability, both in this case and

in the *qui tam* Case, for their actions with regard to selling or releasing loans that they had already sold to the Plaintiffs or others. This Court should not condone it.

Finally, Defendants have refused to review or produce any documents outside of those that are to be found in the files of a very narrow set of custodians, or that can be located by a very restricted set of 11search terms, eight of which are variations on Plaintiffs' names. It is impossible for Plaintiffs to know what documents are (and perhaps more importantly, are not) contained in those files and we have requested a Rule 30(b)(6) deposition to guide that inquiry. Defendants have challenged that notice and have signaled their intent to move for a protective order.

While Defendants have shown some willingness to negotiate on the identities of the custodians and range of search terms in the future, it would be futile to do so until the question of what subject matter is proper for discovery has been answered and until Plaintiffs have had a proper chance to establish the location and custodians of the documents they have requested be produced through a deposition pursuant to Rule 30(b)(6).

POINT I

DEFENDANTS SHOULD BE COMPELLED TO SEARCH FOR DOCUMENTS RESPONSIVE TO PLAINTIFFS' DEMANDS WITHOUT EXCLUDING DOCUMENTS APPLICABLE TO THE *QUI TAM* CASE AND WITHOUT THE PROVISO THAT THE DOCUMENTS MUST RELATE TO PLAINTIFFS' BREACH OF CONTRACT CLAIMS

In their response to Plaintiffs' demands, Defendants have improperly sought to limit the scope of discovery to exclude documents relevant to the *qui tam* Case and to include only those documents that **Defendants** consider to be responsive to Plaintiffs' claims of breach of contract. Defendants' argument seems to be that they should not have to produce documents in New York when they may not have to produce them in the District of Columbia. This objection is without validity in several respects. First, this Court has ordered the parties to coordinate discovery in this case with discovery

in the *qui tam* Case. Such coordination does not narrow the scope of discovery. To the contrary, it properly expands it to encompass discovery from both cases.

In many instances, the documents Plaintiffs have requested in this category are in fact relevant to both cases. Even if they were only relevant to the *qui tam* Case, however, Defendants have opened the door to the production of these documents with their own demand for Plaintiffs to produce documents that almost exclusively relate to the claims in the *qui tam* Case.

Second, none of the claims in this case have been dismissed and discovery has not been stayed in any respect in response to Defendants' pending motion to dismiss Plaintiffs' tort and RICO claims.[10] Further, Defendants argued in that motion to dismiss that Plaintiffs' tort claims are mere duplications of their breach of contract claims, and that the exact same conduct is alleged with regard to all claims. Unless they have suddenly changed this position, it is impossible to see how Defendants could make any principled determination regarding what documents would fall within the restrictions of relevance to the breach of contract claims and not be relevant to the other claims, or *vice versa*.

A. The Court Has Ordered, and Chase has Conceded, <u>That Discovery Should Be Coordinated</u>

This Court ordered in the initial Pretrial Order that the parties should coordinate discovery in both cases to avoid duplication.[11] Further, Judge Swain also provided in her Order issued on December 22, 2015 that the parties are "encouraged to coordinate informally discovery of common issues of fact, insofar is feasible, that may arise in the FCA action pending in D.C." (Docket 87, p. 3). During the course of motion practice and in the initial discovery in this case, all parties agreed that there is a substantial degree of overlap between the claims in this case and the claims in the *qui tam*

[10] Indeed, Defendants have not even proposed making such a motion and, if they had done so, Plaintiffs would have opposed it.

[11] Especially where, as here, the defendants are the same and there is a limited number of counsel, coordination of discovery is appropriate. *See, e.g. In re Uber Techs., Inc., Wage & Hour Employment Practices,* No. MDL 2686, 2016 WL 439976, at *2 (U.S. Jud. Pan. Mult. Lit. Feb. 3, 2016) (coordinating discovery and even pretrial motions in cases located throughout the country).

Case. Indeed, in that motion, Defendants argued that the claims in this case were largely encompassed by those in the *qui tam* Case and specifically contended that:

> [l]itigating these common factual questions in two different courts and on two different discovery schedules would impose substantial burdens on both Chase and the federal judiciary. . . nor should this Court be forced to waste time and questions of fact and discovery issues that [Plaintiffs' principal] has already placed before another federal court.

Docket 75, p. 11. Defendants cannot change their position now simply because they did not prevail on the motion to transfer.

It is axiomatic that the purpose of an order to coordinate discovery is to eliminate waste and to reduce the costs of discovery and litigation. *Fed. Hous. Fin. Agency v. Nomura Holding Am., Inc.*, No. 11CV6201 DLC, 2014 WL 4412388 (S.D.N.Y. Sept. 8, 2014) (discussing prior order coordinating discovery in RMBS actions in New York and Connecticut, and considering motion to revise schedule in New York); *Antweil v. Alfin Fragrances, Inc.*, No. 88 CIV. 0525 (JFK), 1988 WL 75275, at *1 (S.D.N.Y. July 12, 1988)*; See also Roxane Labs., Inc. v Abbott Labs.,* 2013 WL 5217571, at *3 (S.D. Ohio Sept. 16, 2013) (ordering coordination of discovery between cases at pretrial conference involving related cases to avoid overlap of discovery as an alternative to consolidation); *In re Dewey & LeBoeuf LLP,* 522 BR 464, 479 (Bankr. S.D.N.Y. 2014) ("Coordination of discovery "will reduce the potential for inconsistent adjudications and allow for more efficient, non-duplicative discovery than would be possible if the [ ] litigations were allowed to proceed in separate fora."); *See generally Alli v. Steward-Bowden*, No. 11 CIV. 4952 PKC KNF, 2013 WL 5229995, at *2 (S.D.N.Y. Sept. 17, 2013) (recommending consideration of coordinating discovery on *Monell* claims in other pending cases against the City relating to alleged assaults by corrections officers.)

As Judge Francis noted in his Memorandum and Order, dated October 28, 2015, denying Defendants' motion to transfer, Plaintiffs' breach of contract, tort and civil RICO claims all concern allegations that "the defendants, after selling mortgage loans to the plaintiffs, released liens securing

those loans, purported to forgive debt on mortgages they sold, and accepted and retained payments on loans they no longer owned." Memorandum and Order at 2-3, referencing TAC ¶¶ 152, 157, 162, 169, 172, 194 and 204, *see also* p.9 and n. 7, Chaitman Dec. **Exhibit N.** The Memorandum and Order also noted that the claims in the *qui tam* Case are, in essence, allegations that Defendants violated the terms of certain consent judgments with the government "by, among other things, improperly claiming credit for forgiving mortgage debt that they no longer owned." Memorandum and Order at 4, Chaitman Dec. **Exhibit N.**

As set forth above, in this case, Plaintiffs have pled that Defendants were party to the National Mortgage Settlement Agreement ("NMS"), reflected in a consent judgment (the "NMS Consent Judgment") in settlement of a complaint regarding misconduct related to their origination and servicing of single family residential mortgages (TAC ¶¶ 92-97). The NMS Consent Judgment provided both federal and state releases to the financial institutions in exchange for their promise, among other things, to adhere to certain specified servicing standards and to provide consumer relief to borrowers. (TAC ¶ 97-99). Among other things, Defendants were required to provide $4.2 billion of consumer relief to borrowers whose loans they owned. (TAC ¶ 100).

Accordingly, from September 13, 2012 through January 13, 2013, as part of this $4.2 billion consumer relief, Defendants sent over 50,000 letters to borrowers forgiving various loans. However, among these loans Defendants purportedly forgave thousands it did not own, including multiple loans it had sold to the Plaintiffs. (TAC ¶¶ 102-08). Though Plaintiffs attached lists of such loans as they are aware of to the TAC, nevertheless, Defendants purported to forgive multiple loans it sold to Plaintiffs that it has refused to identify. (TAC ¶¶ 107-08). Similarly, Plaintiffs have also pled that Defendant JPMC entered into a $13 billion settlement with the Department of Justice on November 19, 2013 ("RMBS Settlement") under the terms of which JPMC agreed to pay $13 billion in return for complete civil immunity. (TAC ¶ 146). Pursuant to the RMBS Settlement, these payments included

$4 billion of consumer relief, pursuant to which Defendants wrongfully claimed credit for the full indebtedness owed by borrowers whose loans Defendants had already sold to Plaintiffs (TAC ¶ 147).

In this case, Plaintiffs contend that this conduct, as well as other conduct described above that predates the NMS and RMBS, constitutes breach of contract, and forms the basis for Plaintiffs' tort claims including fraud and tortious interference. It is the same conduct, the use of loans that Defendants had already sold (to others as well as to Plaintiffs) as part of proof of Defendants' compliance with the consent judgments with the government, that provides the focus of the *qui tam* Case as well as for a portion of the claims in this case. Compliance with the NMS and RMBS provides a motive for, and the base of the civil conspiracy that forms a part of Defendants' wrongful conduct against Plaintiffs in this case. As such, documents evidencing such activity is relevant and discoverable in both cases.

Among the documents that Defendants have refused to produce on the basis that they are not relevant, either on the grounds that they relate to the *qui tam* Case or somehow do not relate to Plaintiffs' breach of contract claims, are those that identify those borrowers for whom Defendants claimed credit for providing consumer relief, those that relate to policies and procedures or manuals regarding when releases are to be provided, the criteria and methodology for selection of those borrowers, as well as communications with them, and documents regarding any investigation Defendants performed regarding release or discharge of those borrowers' liens or mortgages.

These documents will demonstrate the full scope of the loans for which consumer relief was claimed and will allow Plaintiffs to compare it to determine, finally and accurately, which loans that Defendants sold them have been compromised. The documents are also expected to show how Defendants decided what loans to identify, whether those criteria included proper provision to ensure that Defendants knew that they owned the loans and had the right to do forgive them. As such, they

are not simply relevant to the *qui tam* Case, but also directly concern the issues in the breach of contract case. Defendants should be compelled to produce them.

B. Defendants Have Opened the Door to Discovery that Relates to the *qui tam* Case

Defendants have made multiple requests to Plaintiffs in their own discovery demands, to produce documents that relate to the *qui tam* Case. For example, Defendants have asked that Plaintiffs produce documents including, but not limited to the following categories:

(1) communications between Plaintiffs and "any government regulators or authorities regarding Chase"[12],

(2) all documents "relating to Chase's alleged violations of federal, state and local laws and regulations"[13]

(3) all documents "relating to Chase's alleged violations of any agreements with federal and state governments"[14] and

(4) all documents relating to Plaintiffs' allegations regarding Chase's

(a) sale of "non-conforming deficiency claims in place of first mortgage loans;"

(b) withholding "information and documents concerning the loans it sold";

(c) sale of loans in which "Chase had violated applicable law in its dealings with the borrowers"

(d) acceptance and retention of "payments [Chase] received from borrowers and/or insurance companies on loans it sold" and

(e) pulling back of "valuable loans . . . and adding loans that violated loan servicing and consumer protection laws."[15]

Assuming that Defendants do not intend to seek documents simply for the sake of adding to Plaintiffs' costs, they must consider the requests appropriate for production here. Plaintiffs do not

[12] Defendants' Request No. ("DRN") 15, Chaitman Dec. **Exhibit O**.
[13] DRN 17
[14] DRN 18
[15] DRN 19

disagree, and have agreed to produce responsive, non-privileged documents. In complete contrast, however, Defendants have flatly refused to produce any documents covering the materials that Defendants have requested.

This includes directly comparable categories, such as communications between Defendants and any government agency regarding the loans Defendants sold to Plaintiffs *See* Plaintiffs' Request No. 26. Similarly, Defendants have asked that Plaintiffs produce "all documents relevant to Chase's Systems of Records for mortgage loans, including but not limited to the RCV1 System of Records" (Defendants' Request No. 16). They have, however, refused to produce any documents "relating to the reasons, criteria and/or process by which Defendants selected loans to be placed on their Recovery One ("RCV1") data basis [*sic*]"[16] This Court should not permit Defendants to claim that such documents are irrelevant or overly burdensome to produce, when they have conceded the relevance and propriety of such requests by asking for the documents themselves.

C. <u>The Requested Discovery Meets Proportionality Requirements</u>

The recent revisions to the Federal Rules now require that the court evaluate whether discovery demands are proportionate, taking into account (1) the importance of the issues at stake in the action, (2) the amount in controversy, (3) the parties' relative access to relevant information, (4) the parties' resources, (5) the importance of the discovery in resolving the issues, and (6) whether the burden or expense of the proposed discovery outweighs its likely benefit. Fed. R. Civ. P. 26. As the advisory committee notes, this restores proportionality factors to their former position in the subsection "defining the scope of discovery," as they were prior to the 1993 amendments to the rules and allows the court to "identif[y] and discourage[e] discovery overuse." It does not, however, change the responsibilities of the parties. *State Farm Mutual Automobile Ins. Co. v. Fayda*, No. 14 Civ. 9792, 2015 WL 7871037, at *2 (S.D.N.Y. Dec. 3, 2015)

[16] PRN 7

As set forth above, this Court has already generally considered the costs of litigation and economy of scale in ordering that the discovery in this case be coordinated with the *qui tam* Case to avoid duplication. Discovery is not yet under way in the *qui tam* Case. Documents produced here will not need to be re-produced in the District of Columbia when discovery starts. The same teams of attorneys represent Defendants in both cases and therefore the same documents will not need to be reviewed or reconsidered twice. Moreover, Plaintiffs anticipate that if a witness is deposed first in this case, Defendants will argue that this witness cannot be re-deposed in the *qui tam* Case. If the parties are generally to coordinate depositions to ensure that they are not duplicated, it is of course essential to ensure that the parties have access to all the documents they will need in order to prepare.

Defendants' objections to producing documents are in many cases deliberately oblique. They have raised a general objection (Number 4) that recites the revisions to the rule. It is not at all clear, however, which documents Defendants intend to withhold on proportionality grounds or how that impacts each particular request. With regard to the challenged subject matter of the *qui tam* Case, Plaintiffs cannot tell whether Defendants are resisting reviewing categories of documents in this case, or whether they are resisting reviewing those categories at all. If it is simply a question of whether the documents are reviewable in this case, then that question has already been answered by this Court's order that discovery be coordinated.

Defendants clearly have far more access to the relevant information than do Plaintiffs, and have far more extensive resources. It almost goes without saying that Defendants are in possession of documents that are otherwise inaccessible to the Plaintiffs. Defendants' internal communications, policies, procedures, lists of loans it owned, servicing histories, are all essential to determine Plaintiffs' claims and cannot be found through other sources.

The importance of the issues at stake—whether the Defendants have taken actions that, in addition to harming Plaintiffs directly, are also in violation of Defendants' obligations under their consent agreements with the government—are hard to overstate.

Finally, as yet Defendants have made no showing of any burden associated with the production, other than statements in correspondence that there are many employees and many files that the requests conceivably implicate. JPMC is the largest bank in the United States. Surely, the proportionality concerns of Rule 26 were not intended to relieve JPMC of its discovery obligations.

This Court should order Defendants to conduct discovery in this case that takes into account the needs of the *qui tam* Action. Accordingly, Defendants must search for and produce documents responsive to Plaintiffs' Request Nos. 7, 26, 27, 29, 31, and 33-41.

POINT II

DEFENDANTS MUST PRODUCE DOCUMENTS RELATING TO THE LOANS

Defendants have refused to produce documents that relate to specific loans sold, offered or transferred to the Plaintiffs unless the Plaintiffs first provide Defendants with a list of loan numbers that Plaintiffs contend Defendants sold them. By the terms of their initial objections[17], Defendants granted themselves the right to "determine[ ] that a given loan was not purchased by Plaintiffs" after which they will query an "appropriate" database and retrieve "reasonably accessible data." *See, e.g*

[17] During a recent meet-and-confer, Defendants suggested that they will identify any loans about which there is a dispute and try to resolve that dispute through the meet-and-confer process. However, Defendants claim that there is "no remotely feasible way for Chase to compile a list of loan numbers for loans that were purchased by Plaintiffs from Chase." *See* Letter from Christian Pistilli, Esq. to Suzan Arden, Esq., dated March 16, 2016 at page 2, Chaitman Dec. **Exhibit J.** Of course, Defendants provide no factual support for this contention, nor do they indicate what records they retain regarding loans they have sold, or where they can be located. There is nothing whatsoever to indicate that this information is inaccessible, or that locating it is either not "remotely feasible" or even burdensome. The burden of demonstrating that this information—which is presumably stored somewhere electronically—is not reasonably accessible is on the Defendants. Moreover, they must come forward with facts to support this contention. *See, e.g. O'Bar v. Lowe's Home Ctrs., Inc.*, No. 04 Civ. 19, 2007 WL 1299180, *5 n. 6 (W.D.N.C. May 2, 2007). This requires more than a simple cost estimate or conclusory characterization. *Spieker v. Quest Cherokee, LLC*, No. 07 Civ. 1225, 2009 WL 2168892, at *4 (D. Kan. July 21, 2009); *Mikron Indus., Inc. v. Hurd Windows & Doors, Inc.*, No. 07 Civ. 532, 2008 WL 1805727, at *2 (W.D. Wash. April 21, 2008).

Request No. 3, Chaitman Dec. **Exhibit A.** However, Defendants turned the loans over to the Plaintiffs without ever providing any loan numbers and, we understand, Defendants have since changed some of the loan numbers that would have applied in any case,[18] and as alleged in the TAC, Chase deliberately "changed the loan numbers of numerous valuable loans sold to MRS after the MLPA had been fully executed." (TAC ¶ 60 i). In order to provide the most scope for identifying all of the relevant loans, Plaintiffs have now provided Defendants with lists of borrower information, including social security numbers and property details.

It is inconsistent with Rule 26 for Defendants to attempt to dictate to the Plaintiffs the method that Plaintiffs may use to conduct their discovery. *See, e.g., Wynne v. McCormick & Schmicks's Seafood Rests., Inc.*, No. 06 Civ. 3153, No. C06-3153CW(BZ), 2006 WL 3422226, at *1 (N.D. Cal. Nov. 28, 2006) (holding that "the court is aware of no[authority] for the proposition that defendants can dictate the means of discovery that the plaintiffs must use" and granting a motion to compel the production of company-wide human resources data in a case challenging hiring practices in multiple restaurants rather than requiring the plaintiffs to first determine whether the practices related to only one of the restaurants rather than the whole chain.)

However, even if Defendants agree to produce information related to those loans with the assistance of this information, this does not resolve the dispute regarding what documents must be provided. All but one of the requests for which Defendants have raised this question do not require identification of the loans Plaintiffs believe they bought. The requests encompass loans whose details were itemized on a list Defendants sent to the Plaintiffs (referred to in the TAC as the "Corrupted List"), or relate to loans whose borrowers were the recipients of debt forgiveness letters pursuant to Defendants' obligations to provide consumer relief, or whose liens Defendants released starting in

[18] Chaitman Dec. **Exh. C.**

October 2013, apparently robo-signed as part of a project to avoid liability for Defendants' servicing violations. As such, since the purpose of the requests is for Defendants to identify loans, not Plaintiffs, it is not appropriate to require Plaintiffs to provide Defendants with any identification of the loans they purchased to respond.

Specifically, Request 3 asks Defendants to produce documents to identify the loans they "sold, transferred, put into the name of, designated as belonging to, or offered to sell to" the Plaintiffs. This request, by its terms, asks the *Defendants* to identify the loans, not for Plaintiffs to identify them:

> Request 3: Documents sufficient to identify the number, type and amount of every loan, the security therefor, the status of, and the identity of each and every borrower which Defendants sold, transferred, put into the name of, designated as belonging to, or offered to sell to Plaintiffs, irrespective of time period.

Requests 16, 17, 18 and 21 all ask Defendants to produce documents related to the loans set forth on the Corrupted List—a list that was generated by the Defendants, not the Plaintiffs. Plaintiffs can certainly provide Defendants with a copy of the Corrupted List that the Defendants provided to them if Defendants do not have a copy on hand and to the extent Plaintiffs have not already done so, but Defendants cannot ask Plaintiffs to compile an entirely new list for them that contains more of Chase's information about the loans than Chase ever provided to them.

> Request 16: All documents relating to the servicing of any of the loans set forth on the Corrupted List prior to their sale to Plaintiffs, including documents to and from loan servicers.
>
> Request 17: All documents relating to foreclosure of any mortgage loan set forth on the Corrupted List prior to their sale to Plaintiffs.
>
> Request 18: All documents relating to the actual principal balance and/or the amount Defendants charged off on any mortgage loan set forth on the Corrupted List prior to their sale to Plaintiffs.
>
> Request 21: All documents relating to the receipt by Defendants or any person or entity acting on any Defendant's behalf of any payments, whether from borrowers, insurance companies or any other source, regarding any of the loans set forth on the Corrupted List after February 25, 2009.

Request 28 asks the Defendants to identify the loan numbers and recipients of debt forgiveness letters sent by the Defendants in 2012 and 2013. Plaintiffs' list of loan numbers is not relevant to this request, except to the extent that the Plaintiffs expect some of their loans to be included within it. There may be more recipients than Plaintiffs are even aware of and so, unless Defendants identify all the loans, Defendants may not reveal which of Plaintiffs' loans were included among them.

> Request 28: Documents sufficient to determine the loan number and identity of recipients of debt forgiveness letters that were sent by Defendants on or around September 13, 2012, December 13, 2012, and/or January 13, 2013, including but not limited documents regarding loans that had previously been sold or transferred to others, including but not limited to any of the Plaintiffs.

Request 32 asks the Defendants to provide documents related to their release of liens on various properties pursuant to the "Pre-DOJ Lien Release Project." Again, Plaintiffs' list of loan numbers is not relevant to this request, except to the extent that the Plaintiffs expect some of their loans to be included within the loans for which Defendants released liens. Again, there may be more than Plaintiffs are aware of, since new cases are coming to light all the time, and so unless Defendants identify all the loans, Defendants may not reveal which of Plaintiffs' loans were included among them.

> Request 32: All documents relating to Defendants' release of liens on properties serviced by Defendants pursuant to the "Pre-DOJ Lien Release Project" as described in paragraph 134 of the TAC, including but not limited to those relating to Defendants' release of liens and/or discharge of mortgages on loans which Defendants had sold to Plaintiffs.

This issue is inextricably intertwined with the parties' dispute about the scope of discovery and therefore may be resolved now. Accordingly, this Court should order that Defendants must produce documents responsive to Plaintiffs' Request Nos. 3, 16-18, 21, 28 and 32 without restricting such response to those documents it can identify either by provision of a loan number or the lists of information Plaintiffs have provided.

CONCLUSION

For all the foregoing reasons, Plaintiffs' Motion to Compel should be granted in its entirety.

Dated: New York, New York
May 27, 2016

CHAITMAN LLP

By: */s/ Helen Davis Chaitman*
Helen Davis Chaitman
hchaitman@chaitmanllp.com

Lance Gotthoffer
lgotthoffer@chaitmanllp.com

Suzan Arden (SA-4715)
sarden@chaitmanllp.com

465 Park Avenue
New York, New York 10022
Phone & Fax: 888-759-1114

Attorneys for Plaintiffs

APPENDIX 1

Documents Defendants Refuse to Produce That Relate to the *qui tam* Case or are Purportedly Beyond the Scope of the Breach of Contract Claims (Discussed in Point I)

Request No. 5

All documents relating to Chase's submission of evidence of its provision of consumer relief as required by the Emergency Economic Stabilization Act of 2008 and relating to Chase's satisfaction of the consumer relief requirements of the National Mortgage Settlement Consent Judgment and its Exhibits as described and defined in paragraph 97 of the TAC. These documents should include identification of the number, type and amount of every loan, and the identity of every borrower for which Chase claimed consumer relief credit.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. Chase further objects to this request to the extent it seeks information subject to any confidentiality agreement, bank examination privilege, or other applicable privilege. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 7

All documents relating to the reasons, criteria and/or process by which Defendants selected loans to be placed on their Recovery One ("RCV1") data basis [*sic*]

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. Chase further objects to this request on the grounds that it is vague and ambiguous in referring to the RCVI "data basis". In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 26

All communications between Defendants and any government agency regarding any of the MLPA Loans, whether such communication exclusively concerns the MLPA Loans or otherwise.

Response

Chase objects to this request on the grounds that it is vague, ambiguous, overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. Chase further objects to this request to the extent it seeks information subject to any confidentiality agreement, bank examination privilege, or other applicable privilege. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 27

All documents relating to the selection of, and/or criteria for the selection of, and the methodology actually used for the selection of, recipients of debt forgiveness letters, including but not limited to those debt forgiveness letters that were sent by Defendants on or around September 13, 2012, December 13, 2012, and/or January 13, 2013.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 29

All documents evidencing communications with the borrowers for whose loans Chase claimed consumer relief pursuant to the Emergency Economic Stabilization Act of 2008, the NMS Consent Judgment, or the RMBS Settlement.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the

claims or defenses of the parties to this action or are disproportionate to the needs of the case. Chase further objects to this request to the extent it seeks information subject to any confidentiality agreement, bank examination privilege, or other applicable privilege. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 31

All documents relating to any communications between Defendants and any local or municipal authority, regardless of timeframe, regarding properties that served as collateral for loans that Defendants ultimately transferred to Plaintiffs.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 33

All documents relating to any investigation or research performed by or on behalf of Defendants prior to releasing such liens, discharging such mortgages, or forgiving loans that Defendants had sold to Plaintiffs.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. Chase further objects to this request on the grounds that it is vague and ambiguous in failing to specify the liens or mortgages to which it refers. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 34

All documents evidencing communications by Defendants whose persons engaged or hired to provide services with regard to releasing such liens, discharging such mortgages, or forgiving loans, including but not limited to those loans that Defendants had previously sold to Plaintiffs.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. Chase further objects to this request on the grounds that it is vague, ambiguous and unintelligible. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 35

All documents evidencing communications with borrowers for whom You granted loan modifications and for which You claimed consumer relief credits under Exhibit D of the NMS Consent Judgment as alleged in paragraph 100 of the TAC.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 36

Documents sufficient to identify the following information regarding, referring or relating to modifications of all first or second lien mortgage loans for which You claimed consumer relief credits under Exhibit D of the Consent Judgment: (i) Borrower name; (ii) Loan number; (iii) Property address; (iv) Original loan amount; (v) Origination date; (vi) Charge off amount; and (vii) Charge off date.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 37

All communications, and all documents regarding communications concerning any exclusion or carve-out from the RMBS Settlement of the claims in the False Claims Act lawsuit now captioned *United States of America et al ex rel. Lawrence Schneider v. J.P. Morgan Chase Bank, National Association, et al.*, 114-CV-01047-RMC, United States District Court for the District of Columbia and any prior caption.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. Chase further objects to this request to the extent it seeks information subject to any confidentiality agreement, bank examination privilege, or other applicable privilege. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 38

All documents regarding, referring or relating to Your communications with the Monitor of the NMS Consent Judgment, or firms and individuals employed by him, discussing RCV1, which is referred to in paragraph 60 of the TAC.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. Chase further objects to this request to the extent it seeks information subject to any confidentiality agreement, bank examination privilege, or other applicable privilege. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase

except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 39

Documents sufficient to identify the following information regarding, referring or relating to all loans where the loan was "lien released," and sent by You to National Title Clearing for processing the lien releases between January 1, 2013 – December 31, 2014: (i) Borrower name; (ii) Loan number; (iii) Property address; (iv) Original loan amount; and (v) Origination date.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 40

All policies, procedures, manuals, instructions, guidelines, or similar documents showing Your processes to determine when a lien release or Vacation of Lien Release is to be provided for a loan.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

Request No. 41

Documents sufficient to identify the following information regarding which loans were identified by You for a "Vacation of Modification of Mortgage", and sent by You to Nationwide Title Clearing for processing the Vacation of Modification of Mortgage between January 1, 2014 – December 31, 2014, including: (i) Borrower name; (ii) Loan number; (iii) Property address; (iv) Original loan amount; and (v) Origination date.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. In light of these objections and the General Objections and Responses set forth above, any materials responsive to this request will not be produced by Chase except to the extent that such materials are otherwise encompassed within Chase's commitments to produce set forth elsewhere herein.

APPENDIX 2

Documents Defendants Purportedly Require Identification of Loans to Consider What Documents They Will Produce (Discussed in Point II)

Request No. 3

Documents sufficient to identify the number, type and amount of every loan, the security therefor, the status of, and the identity of each and every borrower which Defendants sold, transferred, put into the name of, designated as belonging to, or offered to sell to Plaintiffs, irrespective of time period.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. Subject to and without waiving these objections and the General Objections and Responses set forth above, Chase will produce any responsive, non-privileged documents that it is able to locate in the custodial files of the individuals listed in Appendix A using the date ranges listed in Appendix A and the search terms listed in Appendix B hereto.

In addition, Chase will provide available, non-privileged data regarding any loan purchased by Plaintiffs from Chase under the MLPA pursuant to the following procedure:

(1) Plaintiffs shall provide Chase with a list of loan numbers for loans allegedly purchased by Plaintiffs from Chase;

(2) Unless Chase determines that a given loan was not purchased by Plaintiffs, Chase will query the appropriate database(s) and retrieve any reasonably accessible data regarding the loans; and

(3) Plaintiffs and Chase shall confer in good faith regarding which available data fields shall be produced for the loans.

Request No. 16

All documents relating to the servicing of any of the loans set forth on the Corrupted List prior to their sale to Plaintiffs, including documents to and from loan servicers.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. Subject to and without waiving these objections and the General Objections

and Responses set forth above, Chase will produce any responsive, non-privileged documents that it is able to locate in the custodial files of the individuals listed in Appendix A using the date ranges listed in Appendix A and the search terms listed in Appendix B hereto.

In addition, Chase will provide available, non-privileged data regarding any loan purchased by Plaintiffs from Chase under the MLPA pursuant to the following procedure:

(1) Plaintiffs shall provide Chase with a list of loan numbers for loans allegedly purchased by Plaintiffs from Chase;
(2) Unless Chase determines that a given loan was not purchased by Plaintiffs, Chase will query the appropriate database(s) and retrieve any reasonably accessible servicing-related data regarding the loans; and
(3) Plaintiffs and Chase shall confer in good faith regarding which available data fields (if any) shall be produced for the loans.

Request No. 17

All documents relating to foreclosure of any mortgage loan set forth on the Corrupted List prior to their sale to Plaintiffs.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. Subject to and without waiving these objections and the General Objections and Responses set forth above, Chase will produce any responsive, non-privileged documents that it is able to locate in the custodial files of the individuals listed in Appendix A using the date ranges listed in Appendix A and the search terms listed in Appendix B hereto.

In addition, Chase will provide available, non-privileged data regarding any loan purchased by Plaintiffs from Chase under the MLPA pursuant to the following procedure:

(1) Plaintiffs shall provide Chase with a list of loan numbers for loans allegedly purchased by Plaintiffs from Chase;
(2) Unless Chase determines that a given loan was not purchased by Plaintiffs, Chase will query the appropriate database(s) and retrieve any reasonably accessible data regarding the loans; and
(3) Plaintiffs and Chase shall confer in good faith regarding which available data fields (if any) shall be produced for the loans.

.

Request No. 18

All documents relating to the actual principal balance and/or the amount Defendants charged off on any mortgage loan set forth on the Corrupted List prior to their sale to Plaintiffs.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. Subject to and without waiving these objections and the General Objections and Responses set forth above, Chase will produce any responsive, non-privileged documents that it is able to locate in the custodial files of the individuals listed in Appendix A using the date ranges listed in Appendix A and the search terms listed in Appendix B hereto.

In addition, Chase will provide available, non-privileged data regarding any loan purchased by Plaintiffs from Chase under the MLPA pursuant to the following procedure:

(1) Plaintiffs shall provide Chase with a list of loan numbers for loans allegedly purchased by Plaintiffs from Chase;
(2) Unless Chase determines that a given loan was not purchased by Plaintiffs, Chase will query the appropriate database(s) and retrieve any reasonably accessible data regarding the loans; and
(3) Plaintiffs and Chase shall confer in good faith regarding which available data fields (if any) shall be produced for the loans.

Request No. 21

All documents relating to the receipt by Defendants or any person or entity acting on any Defendant's behalf of any payments, whether from borrowers, insurance companies or any other source, regarding any of the loans set forth on the Corrupted List after February 25, 2009.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case. Subject to and without waiving these objections and the General Objections and Responses set forth above, Chase will produce any responsive, non-privileged documents that it is able to locate in the custodial files of the individuals listed in Appendix A using the date ranges listed in Appendix A and the search terms listed in Appendix B hereto.

In addition, Chase will provide available, non-privileged data regarding any loan purchased by Plaintiffs from Chase under the MLPA pursuant to the following procedure:

(1) Plaintiffs shall provide Chase with a list of loan numbers for loans allegedly purchased by Plaintiffs from Chase;
(2) Unless Chase determines that a given loan was not purchased by Plaintiffs, Chase will query the appropriate database(s) and retrieve any reasonably accessible post-sale payment data regarding the loans; and
(3) Plaintiffs and Chase shall confer in good faith regarding which available data fields (if any) shall be produced for the loans.

Request No. 28

Documents sufficient to determine the loan number and identity of recipients of debt forgiveness letters that were sent by Defendants on or around September 13, 2012, December 13, 2012, and/or January 13, 2013, including but not limited documents regarding loans that had previously been sold or transferred to others, including but not limited to any of the Plaintiffs.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case.

Subject to and without waiving these objections and the General Objections and Responses set forth above, Chase will search for and produce documents sufficient to show the loan number and identity of recipients of debt forgiveness letters sent by Chase relating to loans purchased by Plaintiffs pursuant to the following procedure:

(1) Plaintiffs shall provide Chase with a list of loan numbers for loans allegedly purchased by Plaintiffs from Chase;
(2) Unless Chase determines that a given loan was not purchased by Plaintiffs, Chase will make reasonable efforts to determine whether a debt forgiveness letter was sent to a borrower regarding that loan; and
(3) Chase shall produce a copy of any such debt forgiveness letter as well as any subsequent communications with the borrower indicating that the debt forgiveness letter had been sent in error.

Request No. 32

All documents relating to Defendants' release of liens on properties serviced by Defendants pursuant to the "Pre-DOJ Lien Release Project" as described in paragraph 134 of the TAC, including but not limited to those relating to Defendants' release of liens and/or discharge of mortgages on loans which Defendants had sold to Plaintiffs.

Response

Chase objects to this request on the grounds that it is overly broad and unduly burdensome, calls for documents that are not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents that are not relevant to the claims or defenses of the parties to this action or are disproportionate to the needs of the case.

Subject to and without waiving these objections and the General Objections and Responses set forth above, Chase will search for and produce documents sufficient to show the loan number and identity of recipients of debt forgiveness letters sent by Chase relating to loans purchased by Plaintiffs pursuant to the following procedure:

(1) Plaintiffs shall provide Chase with a list of loan numbers for loans allegedly purchased by Plaintiffs from Chase;
(2) Unless Chase determines that a given loan was not purchased by Plaintiffs, Chase will make reasonable efforts to determine whether a lien release was recorded for the property by Chase; and
(3) Chase shall produce a copy of any such lien release as well as any subsequent instrument vacating the release.