

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CONSUMER FINANCIAL
PROTECTION BUREAU,

Petitioner,

v.

HARBOUR PORTFOLIO ADVISORS,
LLC;

NATIONAL ASSET ADVISORS,
LLC;

and

NATIONAL ASSET MORTGAGE,
LLC,

Respondents.

Case No. 2:16-cv-14183

HON. Nancy G. Edmunds
HON. Elizabeth A. Stafford

**MOTION TO HOLD RESPONDENTS NATIONAL ASSET ADVISORS,
LLC AND NATIONAL ASSET MORTGAGE, LLC IN CONTEMPT**

On February 16, 2017, this Court ordered Respondents National Asset Advisors, LLC and National Asset Mortgage, LLC (collectively, the National Asset Companies) to comply with the Consumer Financial Protection Bureau's (Bureau) September 8, 2016 Civil Investigative Demands (CIDs) within 30 days. On March 14, 2017, the Court extended the deadline to March 27, 2017. But the National Asset Companies have failed to comply with the Court's Orders.

The Bureau moves that the Court hold the National Asset Companies in contempt for failure to comply with the February 16, 2017 Order, as amended by

the March 14, 2017 Order. The Bureau further moves that the Court impose fines of \$5,000 per day until they comply.

The Bureau incorporates the attached brief and submits the Declaration of Nicholas Lee in support of this motion.

Pursuant to Local Rule 7.1(a), the Bureau conferred with the National Asset Companies about this motion on April 26, 2017, explained its legal basis, and sought the Companies' concurrence. They did not concur.

Dated: May 19, 2017

Respectfully submitted,

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**CONSUMER FINANCIAL PROTECTION BUREAU'S
BRIEF IN SUPPORT OF MOTION TO HOLD NATIONAL ASSET
ADVISORS, LLC AND NATIONAL ASSET MORTGAGE, LLC IN
CONTEMPT**

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ISSUE PRESENTED

Should the Court hold National Asset Advisors, LLC, and National Asset Mortgage, LLC, in civil contempt for failing to obey this Court's Order to respond to the Bureau's CIDs by March 27, 2017, where they produced nothing until April 13, 2017, where they have since provided only limited, incomplete responses that are qualified by frivolous "general objections" (some of which were previously rejected by the Court), and where they have yet to produce any documents in response to some requests?

INTRODUCTION

The Consumer Financial Protection Bureau seeks the imposition of daily monetary fines to compel Respondents National Asset Advisors, LLC and National Asset Mortgage, LLC (collectively, the National Asset Companies) to comply with the Court's February 16, 2017 Order, as amended by the Court's March 14, 2017 Order.

In its February 16, 2017 Order, the Court ordered the National Asset Companies to comply with the Bureau's September 8, 2016 CIDs within 30 days. The National Asset Companies moved to stay that Order pending appeal. On March 14, 2017, the Court denied their motion to stay, ordered the National Asset Companies to comply with the CIDs, and gave them an additional seven days beyond the original 30-day deadline to comply. Accordingly, the Court gave the National Asset Companies 37 days (until March 27, 2017) to respond to CIDs that they have had for more than eight months.

But 53 days after the deadline, 92 days after the Court's first Order, and 253 days after the Bureau issued the CIDs, the National Asset Companies have produced only a fraction of what is required, failing to respond, in whole or in part, to multiple Requests for Documents and Interrogatories.

STATEMENT OF FACTS

On November 29, 2016, the Bureau petitioned this Court to enforce the CIDs it issued to the National Asset Companies.¹ This Court enforced those CIDs in their entirety in a February 16, 2017 Order, directing the National Asset Companies to comply with the CIDs within 30 days.² In doing so, it rejected challenges to the Bureau's authority to issue the CIDs, the scope of the CIDs, and the notice provided to the National Asset Companies.³ The Court extended the deadline by seven days to March 27, 2017, after the National Asset Companies unsuccessfully sought a stay of the February 16 Order.⁴

The National Asset Companies have failed to comply with a number of CID requests.⁵ For example, they have failed to produce any audio recordings with purchasers and prospective purchasers, as required by Request for Documents 7.⁶ They apparently possess more than 14,000 audio recordings, down from an initial estimate of approximately 1,000,000 audio recordings, and have indicated that they

¹ Petition to Enforce Civil Investigative Demands (November 29, 2016) (Doc. 1).

² Opinion and Order Granting Petition to Enforce Civil Investigative Demands (Order Enforcing CIDs) at 12 (Feb. 16, 2017) (Doc. 19).

³ *Id.* at 5, 12.

⁴ Opinion and Order Denying Respondents' Motion to Stay (Order Denying Stay) at 7 (Mar. 14, 2017) (Doc. 27). The 37 days expired on March 25, 2017, which is a Saturday. Thus, the formal date for compliance with the Order is Monday March 27, 2017.

⁵ The attached Declaration of Nicholas Lee details the variety of ways in which the National Asset Companies have failed to comply with the CIDs.

⁶ Ex. A, Decl. of Nicholas Lee dated May 19, 2017 (Lee Decl.) ¶ 10.

would need to retain a third-party vendor to assist in the production.⁷ As of April 26, 2017, they had not procured such a vendor.⁸ The Bureau sought an update on May 15, 2017.⁹ It appears that the National Asset Companies may have identified an available vendor, but it remains unclear whether the companies have secured the vendor or provided it with the relevant audio files.¹⁰ As another example, the National Asset Companies have failed to produce required communications between themselves and Harbour Portfolio.¹¹ To date, they have produced just a single email,¹² while stating that they still need to review several thousand email communications.¹³

The National Asset Companies' responses to Requests for Documents 1, 2, and 3 have errors and omissions. For example, in response to Document Request 2 the National Asset Companies have omitted several required fields, such as purchasers' phone numbers.¹⁴ Where they did populate data fields, those fields

⁷ *Id.* ¶ 7.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* ¶ 11.

¹² *Id.* ¶ 13.

¹³ *Id.* ¶ 8.

¹⁴ *Id.* ¶ 15(a), (c).

often have errors or are partially complete.¹⁵ For instance, they list “0000-00-00” as the date of purchase for 583 properties in response to Document Request 2.¹⁶

The National Asset Companies’ limited production is accompanied by objections to every Interrogatory and Request for Documents, notwithstanding the Court’s explicit rejection of these objections in its February 16, 2017 Order.¹⁷ For example, the National Asset Companies objected that the CIDs are outside the Bureau’s jurisdiction, overly broad, or unduly burdensome.¹⁸ They objected that the CIDs’ Notification of Purpose does not provide them sufficient notice.¹⁹ And they objected that the CIDs provided insufficient time to produce the material, apparently challenging the Court’s authority to compel production by a date certain.²⁰ The Court previously rejected “all three arguments[.]”²¹

And the Bureau recently learned that the National Asset Companies failed to provide relevant information during ongoing discussions about their ability to

¹⁵ *Id.* ¶¶ 12-17.

¹⁶ *Id.* ¶ 15(b).

¹⁷ Order Enforcing CIDs at 5, 12 (Doc. 19) (“First, Respondents argue that the Bureau exceeded its statutory authority in issuing the CIDs. Second, Respondents argue that they did not receive fair notice that AFDs are covered by federal consumer financial laws. Third, Harbour individually argues that, if the Bureau does have the authority to issue the CIDs, the CID issued to Harbour should be modified because it is unduly burdensome. For the following reasons, the Court rejects all three arguments and grants the Bureau’s petition to enforce the CIDs.”).

¹⁸ *Compare* Lee Decl. ¶ 4 *with* Ordering Enforcing CIDs at 5-12 (Doc. 19).

¹⁹ Lee Decl. ¶ 4.

²⁰ *Id.*

²¹ Order Enforcing CIDs at 5 (Doc. 19).

produce audio recordings under Request for Documents 7.²² They have claimed that there are no reasonable means for identifying responsive audio recordings for production,²³ and in support of that claim, created a list showing the metadata contained in the companies' audio-recording system.²⁴ Missing from that list was any information about a caller's name with respect to outgoing calls.²⁵ Weeks later, they provided the Bureau with actual metadata from a sample of incoming and outgoing calls.²⁶ That metadata included multiple fields not included in the initial list, including fields that could potentially identify a caller by name. For instance, the metadata relating to outgoing calls included fields for "SenderFullName," "CallerIDName," "ToFullName," "AnsweredByFullName," and "PlacedByFullName."²⁷ They failed to provide this information for three weeks while attempting to convince the Bureau that it should agree to a small random sampling of audio files.²⁸

²² Lee Decl. ¶¶ 18-21.

²³ *Id.* ¶ 18.

²⁴ *Id.* ¶ 19.

²⁵ *Id.*

²⁶ *Id.* ¶ 20.

²⁷ *Id.*

²⁸ *Id.* ¶ 18-21.

ARGUMENT

I. A contempt order is appropriate.

A party must comply with all orders and judgments of courts.²⁹ The judiciary's contempt power is "one weapon in its arsenal" that may be deployed to enforce its orders.³⁰ Where a litigant violates a definite and specific order requiring it to perform a particular act with knowledge of the order, contempt findings are appropriate.³¹ To establish contempt, the moving party must prove, by clear and convincing evidence, the existence of a court order and show that the respondent's conduct violated its terms.³²

Here, the Court ordered "Respondents to comply with the CIDs within 30 days."³³ The Court extended the deadline by seven days to March 27, 2017.³⁴

Instead of complying with the deadline, the National Asset Companies engaged in conduct that raises concerns about whether they are proceeding in good faith and about the completeness and accuracy of their limited production. They have stated multiple objections to each and every Request for Documents and

²⁹ *Maness v. Meyers*, 419 U.S. 449, 458 (1975).

³⁰ *Elec. Workers Pension Trust Fund of Local Union #58, IBEW v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 378 (6th Cir. 2003).

³¹ *Nat'l Labor Relations Bd. v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 591 (6th Cir. 1987) (citations omitted).

³² *Rolex Watch U.S.A., Inc. v. Crowley*, 74 F.3d 716, 720 (6th Cir. 1996) (citations omitted).

³³ Order Enforcing CIDs at 12 (Doc. 19).

³⁴ Order Denying Stay at 7 (Doc. 27).

Interrogatory,³⁵ including objections that the Court previously rejected, such as whether the Bureau has authority to issue the CIDs, whether the CIDs impose undue burdens, and whether the CIDs provide adequate notice.³⁶ Where the companies state multiple objections to each and every request,³⁷ it creates ambiguity about the completeness of the response. As another example of their objections, the National Asset Companies object to producing any publicly available information.³⁸ The fact that the companies possess publicly available information, such as materials concerning how to defraud consumers, could be relevant, making production of it necessary. The National Asset Companies have also sought to limit the production of audio recordings to random samplings while failing to provide relevant information about the true extent of what metadata exists in their audio recording system.³⁹

Setting aside the National Asset Companies' frivolous objections and attempts to minimize the scope of the CIDs, what little they have produced falls far short of complying with the Court's Orders. As of the March 27, 2017 deadline, the National Asset Companies had produced no responsive information.⁴⁰ In fact, the National Asset Companies failed to produce anything until April 13, 2017,

³⁵ Lee Decl. ¶ 4.

³⁶ Order Enforcing CIDs at 5, 12 (Doc. 19).

³⁷ Lee Decl. ¶ 4.

³⁸ *Id.*

³⁹ *See id.* ¶¶ 18-21.

⁴⁰ *Id.* ¶ 3.

seventeen days after the deadline.⁴¹ By May 7, 2017, more than a month after the Court's deadline, their production totaled just 206 documents.⁴² The National Asset Companies' latest production occurred 42 days after the deadline, on May 8, 2017, bringing the number of produced documents to just 1,314.⁴³

Juxtaposed against the trickle of documents produced to date is the volume of outstanding information. Requests for Documents 7 and 14 are outstanding.⁴⁴ The companies have not produced any audio recordings and just recently began reviewing several thousand communications that are required under Requests for Documents 7 and 14, respectively.⁴⁵

The National Asset Companies' noncompliance extends to Requests for Documents 1, 2, and 3. Each of these is either partially incomplete or replete with errors.⁴⁶

II. Monetary fines are an appropriate sanction.

Any sanction imposed for civil contempt must have as its goal coercing compliance with the Court's orders or compensating for losses sustained because of the contempt.⁴⁷ “[A] per diem fine imposed for each day a contemnor fails to

⁴¹ *Id.*

⁴² *Id.* ¶ 6.

⁴³ *Id.*

⁴⁴ *Id.* ¶ 10-11.

⁴⁵ *Id.*

⁴⁶ *Id.* ¶¶ 12-17.

⁴⁷ *Glover v. Johnson*, 199 F.3d 310, 313 (6th Cir. 1999).

comply with an affirmative court order” is an appropriate sanction.⁴⁸ In *Glover*, the Sixth Circuit affirmed civil sanctions of \$5,000 per day against a party who partially complied with a district court order.⁴⁹ Fines accrue only as long as the contemnor refuses to comply with the Court’s order.⁵⁰ Thus, the contemnor is in control.

Here, monetary sanctions are necessary to make the National Asset Companies stand up and take notice of the Court’s Orders. Not only have they taken more than twice as long as the Court allowed and produced just over 1,300 documents, they have also failed to take reasonable steps to comply with the Orders. As of April 26, 2017, they had not procured a vendor to assist with the production,⁵¹ despite repeatedly pointing to the volume of information and their inadequate staffing as causes for delay.⁵² And, as of May 18, 2017, it remained unclear whether they had secured an available vendor or provided it with the audio files for processing.⁵³

The companies’ failure to move expeditiously, similar to their asserting objections that the Court previously rejected and failure to provide relevant

⁴⁸ *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 829 (1994); *see also United States v. Bayshore Assocs., Inc.*, 934 F.2d 1391, 1400 (6th Cir. 1991).

⁴⁹ *Glover*, 199 F.3d at 312-14.

⁵⁰ *Bagwell*, 512 U.S. at 829; *Bayshore*, 934 F.2d at 1400.

⁵¹ Lee Decl. ¶ 7.

⁵² *See id.* ¶ 9, 18.

⁵³ *Id.* ¶ 7.

information in discussions with the Bureau, suggests that compliance with this Court's Orders is not a priority and that they will respond at a pace and at a scope of their choosing, without regard to the Court's Orders or the terms of the validly-issued CIDs.

Daily monetary fines in the amount of \$5,000 issued to each of the companies until the National Asset Companies comply with the Court's Orders would provide them with a strong incentive to comply as soon as possible.

DATED: May 19, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2017, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing via email to all counsel of record.

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EXHIBIT A

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HON. Elizabeth A. Stafford

**DECLARATION OF NICHOLAS LEE IN SUPPORT OF
MOTION TO HOLD NATIONAL ASSET ADVISORS AND
NATIONAL ASSET MORTGAGE IN CONTEMPT**

Pursuant to 28 U.S.C. § 1746, I, Nicholas C. Lee, declare as follows:

1. I am an Enforcement Attorney in the Consumer Financial Protection Bureau (Bureau), Office of Fair Lending and Equal Opportunity. I am one of the attorneys representing the Bureau in this matter.
2. In my capacity as an Enforcement Attorney, I have reviewed the documents and responses submitted by Respondents National Asset Advisors, LLC

(NAA) and National Asset Mortgage, LLC (NAM) (collectively, the National Asset Companies) in connection with the Bureau's September 8, 2016 Civil Investigative Demand to NAA (NAA CID) (Doc. 1-8) and the Bureau's September 8, 2016 Civil Investigative Demand to NAM (NAM CID) (Doc. 1-9).

The National Asset Companies' Productions

3. As of March 27, 2017, the National Asset Companies had produced no responsive information. The National Asset Companies submitted a joint, partial production to the Bureau on April 13, 2017. The initial production included written responses to interrogatories and fewer than 200 documents totaling 324 MB of data.
4. The initial production included a document labeled "Combined Response to Civil Investigative Demands Issued to National Asset Advisors LLC and National Asset Mortgage LLC" (NAA-NAM Combined Response). Therein, the National Asset Companies stated multiple general and specific objections. Among other things, the National Asset Companies objected that the CIDs are outside the Bureau's jurisdiction, overly broad, and unduly burdensome. They objected that the CIDs' Notification of Purpose does not provide the National Asset Companies sufficient notice. And they objected that the CIDs provided insufficient time to produce the material. They also

objected to the production of publicly available information that is in their possession.

5. Many responses in the initial production did not provide responsive information. Instead, the National Asset Companies stated that they would provide information at an unspecified later date. For example, the National Asset Companies stated that they “will produce any responsive documents it may possess or control” in response to Request for Documents 11. The National Asset Companies did not produce responsive information until May 8, 2017. Similarly, the production purported to respond to Request for Documents 14, but the National Asset Companies produced no information.
6. The National Asset Companies submitted a second, partial production to the Bureau on April 21, 2017. The cover letter did not specify the requests to which it was responsive. The production included four additional documents with a total size of 24 MB. The National Asset Companies have also sent a limited number of documents via email. By May 7, 2017, the National Asset Companies had produced only 206 documents. On May 8, 2017, the National Asset Companies produced 1,108 additional documents, bringing the total to 1,314 documents.
7. On April 3, 2017, the National Asset Companies’ counsel informed the Bureau by email that more than 1,000,000 audio recordings may exist on the

National Asset Companies' audio recording system. The National Asset Companies' counsel stated during a phone call that as of April 26, 2017, the National Asset Companies had not engaged a vendor to assist with production of those recordings. On May 15, 2017, the Bureau asked counsel for the National Asset Companies via email if they had engaged a vendor to assist with production of the audio recordings. On May 18, 2017, counsel for the National Asset Companies responded to that email but did not indicate whether the companies had retained a vendor. Instead, their counsel stated that the companies "possess over 14,000 recordings," not the 1,000,000 recordings that they originally estimated. The companies' counsel reiterated an assertion that there is no reasonable way to identify responsive information, and he provided a cost estimate for transcribing and reviewing the audio files but did not indicate that the companies had secured a vendor. Later that day, the National Asset Companies' counsel stated via email to the Bureau that the companies had "selected" a vendor that is "ready" to begin assisting them. It is unclear to the Bureau whether the vendor has received any audio files from the National Asset Companies or whether it has begun to process the information.

8. On April 28, 2017, the National Asset Companies' counsel informed the Bureau by email that the National Asset Companies need to review several

thousand emails for responsiveness and privilege. As of April 28, 2017, the National Asset Companies had not begun that review.

Local Rule 7.1 Conferral

9. On April 21, 2017, the Bureau notified the National Asset Companies pursuant to Local Rule 7.1 of its intent to file for contempt as a result of the National Asset Companies' failure to comply with the CIDs, as ordered by this Court. The parties conferred on April 26, 2017. The Bureau explained its bases for moving for contempt and sought a speedy production of outstanding documents and information. During that call, the National Asset Companies' counsel indicated that the National Asset Companies had not engaged a vendor to assist with the production, and that the bulk of the technical aspects of the production were being handled by the National Asset Companies' sole information technology staff member. The parties did not reach agreement on the timing of production for outstanding items, and the National Asset Companies' counsel stated that they did not concur with the proposed motion for contempt.

Incomplete Requests for Documents

10. The National Asset Companies have provided no responsive information in response to both CIDs' Request for Documents 7. Those requests require the National Asset Companies to produce copies of all audio recordings between

their or Harbour's employees, agents, or independent contractors and purchasers or prospective purchasers. NAA CID at 9 (Doc. 1-8); NAM CID at 10 (Doc 1-9).

11. The National Asset Companies have provided practically no responsive information in response to the NAA CID's Request for Documents 14 and the NAM CID's Request for Documents 13. Those requests require the National Asset Companies to produce "copies of all communications (including but not limited to text messages, audio recordings, notes, letters, and e-mails) between the Company and Harbour or National Asset Mortgage related to the approval, disapproval, terms of sale, marketing, or advertising of Harbour's residential properties to persons under an Agreement for Deed." NAA CID at 10 (Doc. 1-8); NAM CID at 11 (Doc. 1-9). The National Asset Companies have not complied with this request.
12. The National Asset Companies' responses to multiple Requests for Documents have provided incomplete or what appears to be erroneous information.
13. Multiple Requests for Documents require the production of responsive email communications; both CIDs define "document" in section II(J) to include emails. NAA CID at 11, § II(J) (Doc. 1-8); NAM CID at 12, § II(J) (Doc. 1-9). For example, the CIDs require email communications regarding

policies and procedures for the sale or marketing of residential properties, underwriting and pricing, and servicing of loans. To date, the National Asset Companies have only produced a single email in their entire production.

14. Data Request 1 requires 22 specific data fields concerning each property Harbour obtained between January 1, 2010 and August 31, 2016. NAA CID at 4-5 (Doc. 1-8); NAM CID at 6-7, (Doc. 1-9). The National Asset Companies identified four spreadsheets (bates-stamped NAA-NAM_CFPB003521, NAA-NAM_CFPB003522, NAA-NAM_CFPB003525, and NAA-NAM_CFPB003526) as responsive to Data Request 1—two of which are identical.

- a. Document NAA-NAM_CFPB003521 provided no information for multiple data fields. For example, it provides no information relating to the following data fields: DR 1.7 Date of Acquisition; DR 1.9 – DR 1.14, covering the initial seller’s name and address; DR 1.16 Bulk Sale Identifier; DR 1.17 Purchase Price; DR 1.18 Type of Other Property Disposition; DR 1.19 Date of Other Property Disposition; DR 1.20 Sales Price of Other Disposition; DR 1.21 Name of Purchaser for Other Disposition; and DR 1.22 Address of Purchaser for Other Disposition.

- b. Document NAA-NAM_CFPB003522 provided no information for the vast majority of properties relating to multiple data fields, including the following: DR 1.9 Initial Seller's Last Name; DR 1.10 Initial Seller's First Name; DR 1.11 Initial Sellers' Street Address; DR 1.12 Initial Seller's City; DR 1.13 Initial Sellers's State; DR 1.14 Initial Seller's Zip Code + 4; and DR 1.16 Bulk Sale Identifier.
- c. Document NAA-NAM_CFPB003522 lists "0000-00-00" for three properties in response to the Date of Acquisition field (DR 1.7). Its Purchase Price field (DR 1.17) is blank for twenty properties. Eight properties list "0000-00-00" in the Date of Other Property Disposition field (DR 1.19). Thirty-nine properties have no information in the Name of Purchaser for Other Disposition field (DR 1.21). Forty-one properties have no information in the Address of Purchaser for Other Disposition field (DR 1.22).
- d. Document NAA-NAM_CFPB003525 provided no information for multiple data fields. For example, it provided no information for the following data fields: DR 1.7 Date of Acquisition; DR 1.9 – DR 1.14, covering the initial seller's name and address; DR 1.16 Bulk Sale Identifier; DR 1.17 Purchase Price; DR 1.18 Type of Other Property Disposition; DR 1.19 Date of Other Property Disposition; DR 1.20

Sales Price of Other Disposition; DR 1.21 Name of Purchaser for Other Disposition; and DR 1.22 Address of Purchaser for Other Disposition.

- e. Document NAA-NAM_CFPB003526 includes multiple errors and missing information. For 43 properties, it lists zip codes in response to DR 1.4 State. For 58 properties, it lists city names or 4-digit zip codes in response to DR 1.5 Zip Code + 4. The initial seller's name and address (covering DR 1.9 – DR 1.14) is missing for 63 properties. It lists “-” for seven properties in response to DR 1.17 Purchase Price. 407 properties are listed as sold but do not list the buyer's information in response to DR 1.21 Name of Purchaser for Other Disposition and DR 1.22 Address of Purchaser for Other Disposition.
15. Data Request 2 requires 36 specific data fields concerning each applicant for an Agreement for Deed between January 1, 2010 and August 31, 2016. NAA CID at 7-8 (Doc. 1-8); NAM CID at 8-9 (Doc. 1-9). The National Asset Companies identified two spreadsheets (bates-stamped NAA-NAM_CFPB003523 and NAA-NAM_CFPB_003529) as responsive.
- a. Document NAA-NAM_CFPB003523 provided no information for the following data fields: DR 2.7 Applicant Ethnicity; DR 2.8 Applicant Race; DR 2.9 Applicant Sex; DR 2.11 Appraised Value; DR 2.15

Application Fee; DR 2.16 Other Fees; DR 2.18 Amortization Period; DR 2.20 FICO Score Used; DR 2.21 No FICO Score Flag; DR 2.22 Other Scores Used (and their respective values); DR 2.23 LTV; DR 2.24 CLTV; DR 2.25 Front-End DTI; DR 2.26 Back-End DTI; DR 2.28 Manual Underwriting Flag; DR 2.29 Underwriting Override/Exception Reason(s); DR2.30 Override/Exception for down payment; DR2.31 Action Taken; DR2.32 Date of Action Taken; DR2.33 Denial Reason; DR 2.35 Date of Eviction; DR 2.36 Recent Contact Information telephone.

- b. Document NAA-NAM_CFPB003523's Date of Application or Inquiry field (DR 2.3) lists "0000-00-00" for 583 properties. One-hundred properties have no information in the Advertised Purchase Price field (DR 2.10). Another 201 properties list "0" or "0000" for that field. The Final Purchase Price field (DR 2.12) lists "0" for 76 properties that otherwise include responsive information in the APR (DR 2.27) and Term of Agreement for Deed (DR 2.17) fields. The Advertised Down Payment field (DR 2.13) is blank for 23 properties, while other properties list "NA," which suggests that a down payment was not advertised for those properties. Fifty properties list "-1" in the Final Down Payment field (DR 2.14). The Date Agreement for Deed

Executed by Purchaser field lists “0000-00-00” for 583 properties.

The Date Agreement for Deed Terminated field lists 0000-00-00 for 3,948 properties.

- c. Document NAA-NAM_CFPB_003529 provided no information for the following data fields: DR 2.1 Unique Property Identifier; DR 2.10 Advertised Purchase Price; DR 2.11 Appraised Value; DR 2.13 Advertised Down Payment; DR 2.19 Date Agreement for Deed Executed by Purchaser; DR 2.21 No FICO Score Flag; DR 2.22 Other Scores Used (and their respective values); DR 2.28 Manual Underwriting Flag; DR 2.29 Underwriting Override/Exception Reason(s); DR 2.30 Override/Exception for down payment; DR 2.31 Action Taken; DR 2.32 Date of Action Taken; DR 2.33 Denial Reason; DR 2.34 Date Agreement for Deed Terminated; DR 2.35 Date of Eviction; DR 2.36 Recent Contact Information Telephone.
- d. Document NAA-NAM_CFPB_003529 provides incomplete information. It only lists 740 applicants. For 39 applicants, it lists the ethnicity as either “Not applicable” or leaves it blank in response to DR 2.7 Applicant Ethnicity. DR 2.8 Applicant Race is incomplete. DR 2.9 Applicant Sex is incomplete for 24 entries. No credit scores are listed for 88 applicants. *See* DR 2.20-2.21.

16. Data Request 3.8 requires the National Asset Companies to provide the type and amount of any other fees charged in connection with Agreements for Deeds. NAA CID at 9 (Doc. 1-8); NAM CID at 10 (Doc. 1-9). The National Asset Companies fail to identify the type of fee charged other than to categorize it as “misc_fee_amount[.]”
17. Data Request 3.9 requires the National Asset Companies to provide any Refund Amount on Agreements for Deeds. NAA CID at 9 (Doc. 1-8); NAM CID at 10 (Doc. 1-9). The National Asset Companies provided no information.

Omissions of Relevant Metadata

18. On April 3, 2017, the National Asset Companies stated in an email to the Bureau that there are “no reasonable means” for identifying responsive audio recordings for production under Request for Documents 7. They estimated that more than 1,000,000 audio recordings might exist. They proposed drawing a small random sample of audio recordings for production.
19. In response to a Bureau request for what metadata the National Asset Companies’ audio recording system stores, the National Asset Companies’ counsel informed the Bureau via an April 6, 2017 email that:

Metadata fields accessible through the call recording interface are:

- Time Received
- Call Length
- Number -- this is the number calling. For internally originated calls, it is the extension number; For externally originated calls it is the external phone number and caller ID information, if available;
- Called Number -- for internal calls, this is the extension and for externally originated calls, this is the last 4 digits of the DID. If it is an internally originated call to an external number, it is the external number dialed;
- Notes -- this has (mostly) backend information, such as the trunk lines in use, etc. It also has the station ID of the person that answered the call.

20. On April 26, 2017, the National Asset Companies produced two spreadsheets that showed the metadata from the National Asset Companies' audio recording system. The metadata related to a sample of incoming and outgoing calls. It included multiple columns of metadata that the National Asset Companies failed to provide in their April 6, 2017 email. In particular, the metadata for outgoing calls included information related to individuals' names, such as fields for "SenderFullName," "CallerIDName,"

“ToFullName,” “AnsweredByFullName,” and “PlacedByFullName.” Many entries include information in these fields.

21. Prior to April 26, 2017, the Bureau was unaware that the National Asset Companies had omitted this information from the parties’ discussions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 19, 2017

s/Nicholas C. Lee
Nicholas C. Lee