

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

CONSUMER FINANCIAL  
PROTECTION BUREAU,

Petitioner,

V.

Case No. 12:16-CV-14183

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

HARBOUR PORTFOLIO  
ADVISORS, LLC, ET AL.,

Respondents.

**NATIONAL ASSET ADVISORS LLC AND**  
**NATIONAL ASSET MORTGAGE LLC’S COMBINED**  
**MEMORANDUM IN OPPOSITION TO THE CONSUMER FINANCIAL**  
**PROTECTION BUREAU’S MOTION FOR CONTEMPT**

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## **BRIEF IN SUPPORT OF RESPONSE**

### **I. ISSUES PRESENTED**

1. Can technical issues involved in a document production form the basis of contempt?
2. Can the Bureau show by clear and convincing evidence that NAA and NAM have failed to follow an order of this Court where NAA and NAM have responded to the Bureau's CIDs and have addressed any deficiencies identified by the Bureau?
3. Did NAA and NAM take all reasonable steps to comply with the Court's orders and the Bureau's CIDs where they have provided multiple productions, provided multiple written responses, agreed to provide all responsive materials, not withheld any documents, and addressed any deficiencies identified by the Bureau?

## **II. CONTROLLING AND MOST APPROPRIATE AUTHORITY**

Respondents rely upon *Coupled Prods., LLC v. Nobel Auto. Mex. LLC*, 2010 U.S. Dist. LEXIS 100520, 6-7 (E.D. Mich. 2010), *Elec. Workers Pension Trust Fund of Local Union #58 v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 379 (6th Cir. 2003), and the additional authorities cited in its Brief in Support of Response.

## **III. INTRODUCTION**

[The alleged contemnors] have continued to resolve technical issues reasonably associated with a large document review. [The alleged contemnors] represent that they have worked in good faith to resolve and explain the cause of their technical problems, and this Court has no reason to impute bad faith on [the alleged contemnors].

*Coupled Prods., LLC v. Nobel Auto. Mex. LLC*, 2010 U.S. Dist. LEXIS 100520, 6-7 (E.D. Mich. 2010).

That is what the Eastern District of Michigan said when denying a motion for contempt. It applies equally here. NAA and NAM (collectively, the “Respondents”) are not withholding any documents. They have encountered technical issues typical of all massive document productions, but have corrected them immediately on their own and when identified by the Bureau.

While the Respondents did challenge the Bureau’s jurisdiction, once that issue was decided and became final, they have gone above and beyond to cooperate at every step of the way by producing information and correcting any deficiencies identified by the Bureau.

The only substantive outstanding issue is the review and production of *1,000,000 audio voice recordings*, which contain significant amounts of information that is either privileged or not responsive to the CIDs. *But that issue has now been tentatively resolved.*

The Bureau only just modified its CIDs on Thursday, June 8, 2017 (after filing its Motion) to remove the remaining impediment to production. The Respondents are in the process of complying with the modified CIDs and expect to produce all responsive audio recordings by June 16, 2017.

The other remaining issues are technical in nature. None of them involve the Respondents' refusal to produce any information—just how best to do it in a manner acceptable to the Bureau. According to Sixth Circuit and Eastern District of Michigan precedent, this does not rise to the level of contempt.

#### **IV. BACKGROUND**

##### **A. The CIDs**

The CIDs have 29 requests to NAA and 34 requests to NAM with multiple subparts.<sup>1</sup> For example, one interrogatory has 15 subparts alone.<sup>2</sup> One document request has 36 data fields that require Respondents to populate data from multiple data platforms, some of which are no longer in active use.

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<sup>1</sup> CID to NAA (Doc. 1-8); CID to NAM (1-9).

<sup>2</sup> CID to NAA (Doc. 1-8, PageID # 148); CID to NAM (Doc 1-9, PageID # 199).

These are no ordinary requests found in everyday litigation under the Civil Rules. They require creating and populating data fields with information that does not necessarily exist in the native electronic documents.<sup>3</sup> The Respondents have gone to great lengths to provide this information, even going so far as locating hard copy documents and information in previously unknown locations, and populating responses within a data field as deemed acceptable by the Bureau.

In other instances, the Bureau has asked Respondents to write code for documents and recreate documents to get the information it wants:

If no existing document summarizes that information NAA/NAM will have to do the necessary research and create one.<sup>4</sup>

\* \* \* \*

NAA-NAM have an obligation to import the responsive information into their response to data request 2. As we jointly discussed with our respective information technology staff just now, it should not be difficult for NAA-NAM to identify the fields within the spreadsheets that contain responsive information, and ***write a coding-script that aggregates that data for importation into the companies' response to data request 2.*** Accordingly, the Bureau is not willing to accept electronic copies of the scorecards.<sup>5</sup>

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<sup>3</sup> CID to NAA (Doc. 1-8, PageID # 152, 153); CID to NAM (Doc 1-9, PageID # 203, 204).

<sup>4</sup> Declaration of D. Stein attached hereto as **Exhibit A**, ¶ 22, attaching as Ex. 16 April 26, 2017 Email from J. Meade.

<sup>5</sup> Declaration of D. Stein, ¶ 28, attaching as Ex. 17, June 9, 2017 Email from N. Lee.



But here is the key point: Respondents have agreed to do everything the Bureau has asked, but has experienced technical problems typical with such requests and has faced constraints of resource allocation and technical ability.

### **B. The Respondents' Compliance**

To assist the Court, below is a table showing the issues identified by the Bureau and the steps taken by the Respondents to comply.

<b>Issues Identified by CFPB</b>	<b>The Respondents' Compliance</b>
<b><u>Audio Recordings:</u></b> The Respondents had not produced 1,000,000 recordings, which include recordings that may be privileged and/or unrelated to Harbour in response to CID Request No. 7. <sup>6</sup>	The Bureau updated its CIDs on June 8, 2017 to include all non-Harbour entities, allowing Respondents to provide recordings that it would not have previously been able to produce. The Respondents are excluding certain phone numbers and producing every remaining recording to the Bureau by June 16, 2017.
<b><u>Document Requests (Emails):</u></b> The Respondents failed to produce all communications with Harbour and only a handful of emails were provided. <sup>7</sup>	<i>Before</i> the Bureau even filed the Motion for Contempt, the Respondents had produced several thousand pages of documents. To date, Respondents have produced over 2,500 documents totaling over 8,000 pages.
<b><u>Document Requests (Data):</u></b> The Respondents produced incomplete data fields with several errors and omissions. It implies that NAA specifically withheld responsive data. <sup>8</sup>	The Respondents have not withheld any documents. The Respondents were required not just to produce existing documents—they had to generate and format the data. To accomplish this, they had to pull, aggregate, convert, and transmit data of diverse native formats

<sup>6</sup> Affidavit of N. Lee, ¶ 10 (Doc. 32-2, PageID # 668).

<sup>7</sup> Bureau's Motion for Contempt, 3 (Doc. 32-1, PageID # 653).

<sup>8</sup> *Id.* at 3-4 (Doc. 32-1, PageID #653-54).

	<p>from four separate databases. This process created corrupted files and formatting errors. Some of the databases possessed files that were corrupted years ago. Respondents corrected all errors practicable resulting to conversion and extraction, including recreating data that did not previously exist.</p> <p>At great expense and time, Respondents manually extracted available data from paper documentation and supplemented its early response on June 8, 2017. Respondents have made further supplements to this information, and produced those to the Bureau on June 12, 2017.</p>
<p><b>Interrogatories:</b> The Respondents preserved certain objections when responding to the interrogatories, which raises concerns about whether The Respondents provided all information.</p>	<p>The Respondents interposed objections for the sole purpose of preserving them—not to justify the withholding of documents or information. The Respondents provided all responsive information requested. On May 24, 2017, it provided updated responses and removed all objections from the actual responsive language in order to clarify its answers.</p>

## C. Overview of Key Events

### 1. *Sixth Circuit Declines A Stay Pending Appeal.*

After the Sixth Circuit declined the Respondents' request to stay compliance with the CIDs pending appeal, James Meade from the Bureau

contacted the Respondents on March 31 to discuss any technical issues associated with the responses to the CIDs:

Now that we have a ruling from the Sixth Circuit, we'd be happy to schedule a call for Monday to address any technical issues you may have with the production. Let me know when you can be available and I'll send an Outlook invitation.<sup>9</sup>

## ***2. March 31, 2017 Meet And Confer.***

Per the Bureau's request, the parties held a telephonic meet and confer. The parties discussed the production of audio recordings, the database structure, and the document production generally.<sup>10</sup>

The Respondents raised the issue of how to determine what may be responsive when there are approximately 1,000,000 audio recordings.<sup>11</sup>

The Bureau requested information concerning these issues, and the parties agree to conduct a "sizing exercise" to figure out how to produce the recordings.<sup>12</sup>

On April 3, following up on the conversation, the Respondents explained the emerging technical difficulties associated with the audio recordings, explained that given the volume of call recordings, Respondents would not have the resources to identify responsive audio recordings. Respondents offered ways to

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<sup>9</sup> Declaration of D. Stein, ¶ 3, attaching as Ex. 1 March 31, 2017 Email from J. Meade.

<sup>10</sup> Declaration of D. Stein, ¶ 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

limit the scope of their production for consideration by the Bureau.<sup>13</sup>

On April 10, in response to and consistent with the sizing exercise discussed between the parties, the Bureau asked for more information about the length of the audio recordings to better understand the technical issues associated with their production.<sup>14</sup>

### **3. *First and Second Productions.***

On April 13, the Respondents provided their first production.<sup>15</sup> On April 21, Mr. Meade from the Bureau sent an email indicating how it believed the Respondents' responses were deficient and threatened a motion for contempt.<sup>16</sup> The Bureau made no mention of the audio recordings.

The same day, counsel for the Respondents explained that it had received no notice of the deficiencies, and that they were a "small company, devoting as many resources as possible to comply with the CID. There is no gamesmanship taking place."<sup>17</sup> The Respondents also offered four possible solutions to the deficiencies identified.<sup>18</sup>

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<sup>13</sup> *Id.* at ¶ 5, April 3, 2017 Email from D. Stein, attached as Ex. 2 thereto.

<sup>14</sup> *Id.* at ¶ 6, April 3, 2017 Email from J. Meade, attached as Ex. 3 thereto.

<sup>15</sup> *Id.* at ¶ 7.

<sup>16</sup> Declaration of D. Stein, ¶ 8, April 21, 2017 Email from J. Meade, attached as Ex. 4 thereto.

<sup>17</sup> *Id.* at ¶ 9, April 21, 2017 Email from D. Stein, attached as Ex. 5 thereto.

<sup>18</sup> *Id.*

Later on April 21, the Respondents sent out a supplemental production.<sup>19</sup>

#### **4. Confusion Regarding The Audio Recordings.**

On April 24 and 25, the Respondents communicated with the Bureau about the vast number of audio recordings they had, their difficulty in sorting them, reviewing them, and what steps the Respondents could take to limit the scope of the recordings.<sup>20</sup> The Respondents provided spreadsheets containing some details for the Bureau to consider and reiterated their prior proposal to the Bureau:

*As we discussed*, you are considering whether to provide us with search terms, so we may size and review these files. I have suggested that you randomly select 100 calls for the first round of review. Either way, we would like to be able to review any document or data for responsiveness and privilege prior to production. Given the very substantial cost to review and analyze these files, we are unable to efficiently determine which of these calls might be responsive to the CFPB's demand without pairing down the list in some manner.

A simple review of 100 files might give us the comfort we need with these concerns. Or, a review by search term might pair down the list to a manageable number.

*I will await your reply.* I am available the remainder of the week if you would like to discuss further.<sup>21</sup> (Emphasis added.)

Mr. Meade responded that he would review the spreadsheets and see if they can “come up with any ideas.”<sup>22</sup>

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<sup>19</sup> *Id.* at ¶ 10, April 21, 2017 Email from D. Stein, attached as Ex. 6 thereto.

<sup>20</sup> *Id.* at ¶ 11-12, April 24, 2017 Email from D. Stein, attached as Ex. 7 thereto & April 25, 2017 Email from D. Stein, attached as Ex. 8 thereto.

<sup>21</sup> *Id.* at ¶ 13, April 26, 2017 Email from D. Stein, attached as Ex. 9 thereto (emphasis added).

The Respondents also sent supplemental productions on April 24 and May 8. On May 10, Mr. Meade noted that certain data fields were missing and demanded that they be updated immediately.<sup>23</sup>

The parties continued to work through technical issues related to the Respondents' responses, but the Bureau made no mention whether it would limit the scope of its request for the audio recordings.

Nicholas Lee from the Bureau then contacted counsel for the Respondents on May 15 to ask when the audio recordings would be produced, but never explained the Bureau's position on the Respondents' requests to find ways to limit the scope of the audio recordings to produce.<sup>24</sup>

On May 18, counsel for the Respondents expressed confusion about the Bureau's position and explained what the parties had discussed in April.<sup>25</sup>

The Bureau replied that the Respondents "can simply provide Bureau with all the files," ignoring the privilege and responsiveness issues.<sup>26</sup>

Importantly, the Bureau did not reject the Respondents' prior proposals.

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<sup>22</sup> Declaration of D. Stein, ¶ 14, April 26, 2017 Email from J. Meade, attached as Ex. 10 thereto.

<sup>23</sup> *Id.* at ¶ 16, May 10, 2017 Email from J. Meade, attached as Ex. 11 thereto.

<sup>24</sup> *Id.* at ¶ 17, May 15, 2017 Email from N. Lee, attached as Ex. 12 thereto.

<sup>25</sup> *Id.* at ¶ 18, May 18, 2017 Email from D. Stein, attached as Ex. 13 thereto.

<sup>26</sup> *Id.* at ¶ 19, May 18, 2017 Email from N. Lee, attached as Ex. 4 thereto.

### **5. *Motion for Contempt Filed.***

Instead of continuing to work with the Respondents, or at least recognizing the confusion regarding how to handle the audio recordings, the Bureau filed this Motion for Contempt on May 19. On May 26, counsel for the Respondents again reaffirmed their willingness to work with the Bureau:

Although we have proposed less burdensome means to achieve compliance with the CID, the Bureau has yet to respond to the ideas that have been proposed, nor has it rejected any of these proposals. We are ready, willing and able to further discuss and confer on the matter, and would like to do so as soon as possible.

\* \* \* \*

In the meantime, I would like to determine whether you feel there are any issues outstanding, other than the voice recordings. If so, then we desire to get them resolved immediately. And, we would like to resolve the matter of the voice recordings without the need for court involvement or further delay. There is no reason to defer this until the mid-July hearing. We remain willing to engage in good faith dialogue. If your message below is indicative of a proposal, related to search terms, then lets discuss how this will be accomplished. I am sure you would agree that these matters are better discussed and worked through verbally, and not through emails.<sup>27</sup>

### **6. *The Parties Reach An Understanding Regarding The Audio Recordings***

After further discussions and proposals by the Respondents, the parties have tentatively resolved the audio recording issue. The Respondents will produce all audio recordings which might relate to parties it contracts with (Harbour or otherwise), but will exclude known telephone numbers associated non-Harbour

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<sup>27</sup> *Id.* at ¶ 20, May 26, 2017 Emails Between D. Stein and N. Lee, attached as Ex. 15 thereto.

properties and calls with lawyers or intra-office calls.<sup>28</sup>

In fact, pursuant to the agreement reached between the parties, the Bureau issued a modified CID on June 8, 2017 to encompass all calls that would have previously been non-responsive.<sup>29</sup> The Respondents expect to produce all responsive calls to the Bureau by June 16, 2017.

### **7. *Continued Cooperation And Compliance***

Even after the Bureau filed its Motion for Contempt, the Respondents have worked diligently to respond to the Bureau's demands. They modified their interrogatory responses to remove/clarify objections, provided updated data with the data fields requested, explained any missing data, and continued to keep the Bureau apprised of any technical issues they have encountered. The Respondents expect to have fully responded to everything the Bureau has demanded well before the scheduled hearing related to this matter.

The Respondents are small companies with one IT employee, who has spent approximately 150 hours working on responding to the CIDs.<sup>30</sup> Despite their limited resources, the Respondents have fully cooperated and not withheld any non-privileged documents.<sup>31</sup>

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<sup>28</sup> Declaration of D. Stein, ¶ 21.

<sup>29</sup> June 8, 2017 Modified CID, attached hereto as **Exhibit B**.

<sup>30</sup> Declaration of Edward Henderson, ¶ 4, attached hereto as **Exhibit C**.

<sup>31</sup> C. Cobbs Declaration, ¶ 4, attached hereto as **Exhibit D**; M. Richards Declaration, ¶ 4, attached hereto as **Exhibit E**.



## V. STANDARD OF REVIEW

“In order to hold a litigant in contempt, the movant must produce clear and convincing evidence that shows that he violated a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court’s order.” *Elec. Workers Pension Trust Fund of Local Union #58 v. Gary’s Elec. Serv. Co.*, 340 F.3d 373, 379 (6th Cir. 2003) (internal citations and quotations omitted).

“Clear and convincing evidence is a not a light burden and should not be confused with the less stringent, proof by a preponderance of the evidence.” *Id.* (citing *Consol. Coal Co. v. Local Union No. 1784, United Mine Workers of Am.*, 514 F.2d 763, 766 (6th Cir. 1975)).

“Once the movant establishes his prima facie case, the burden shifts to the contemnor who may defend by coming forward with evidence showing that he is presently unable to comply with the court’s order.” *Id.* (citing *United States v. Rylander*, 460 U.S. 752, 757, 75 L. Ed. 2d 521, 103 S. Ct. 1548 (1983) (“where compliance is impossible, neither the moving party nor the court has any reason to proceed with the civil contempt action. It is settled, however, that in raising this defense, the defendant has a burden of production.”)).

The non-moving party must then show in detail why he or she is unable to comply with the court’s order. *Id.*

When evaluating a non-moving party's failure to comply with a court order, a court considers whether the defendant "took all reasonable steps within [his] power to comply with the court's order." *Id.* (Internal citations omitted).

Here, the Respondents have taken all reasonable steps to comply with the Court's order requiring them to respond to the CIDs.

## **VI. LAW AND ARGUMENT**

### **A. Any Alleged Past Noncompliance Cannot Be The Basis Of Contempt.**

The Bureau seeks monetary fines and a contempt of court finding to compel compliance by the Respondents, not to punish Respondents.<sup>32</sup>

Its Motion cannot be the basis to impose fines for alleged past noncompliance. *See Wheeler v. Collier (In re Wheeler)*, 596 Fed. Appx. 323, 325-326 (5th Cir. 2015) (civil contempt does not punish past conduct, and instead seeks to coerce compliance).

This distinction is important for two reasons.

First, the Bureau discusses various events occurring long before it filed its Motion for Contempt, including matters that the Bureau itself acknowledges were resolved before it filed its Motion.<sup>33</sup>

Second, the Respondents have continued to work to fully comply with the

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<sup>32</sup> Bureau's Motion for Contempt, 1 (Doc. 32-1, PageID # 651).

<sup>33</sup> *See* Affidavit of N. Lee, ¶ 6.

Bureau's requests, even after the Motion for Contempt was filed. This is especially the case with the audio recording issue raised by the Bureau. The Bureau has issued a modified CID on June 8, 2017, and the Respondents expect to fully comply by June 16, 2017.

When considering this Motion, any past issues related to compliance that have been resolved cannot be the basis of a contempt finding.

**B. The Bureau Cannot Meet Its High Burden For Contempt.**

The Bureau seeks to create a precedent for its investigations that respondents must fully comply according to the *Bureau's* subjective standards or else risk contempt. There is no legal support for such a standard.

The Bureau has the high burden of showing by "clear and convincing evidence" that the Respondents have violated a "*definite and specific* order of the" Court. *Elec. Workers Pension Trust Fund of Local Union #58*, 340 F.3d at 379 (emphasis added). It simply cannot meet that burden.

Here, after deciding the jurisdictional issues, the Court ordered the Respondents to "comply with the CIDs."<sup>34</sup> The Respondents have done just that.

But there are practical challenges with massive document productions like the one at issue here. And the CIDs specifically acknowledge such issues:

If you believe that the scope of the search or response required by this CID can be narrowed consistent with the Bureau's need for

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<sup>34</sup> Court's February 16, 2017 Order, 12 (Doc. 19, PageID # 477).

documents or information, you are encouraged to discuss such possible modifications, including modifications of the requirements of these instructions, with [the Bureau].<sup>35</sup>

Going further, the “Certificate of Compliance” that the Bureau asks parties to sign only requires a “diligent search” and only based on that search do parties have to certify that they have provided all responsive information and documents.<sup>36</sup>

The Respondents have conducted a diligent search and provided all responsive information and then discussed any technical issues and ways to narrow the scope of the CIDs where appropriate—just as the CIDs state.<sup>37</sup>

It is important to note that the Respondents have not refused to provide any information or documents and are not even arguing here that the CIDs are overly burdensome.<sup>38</sup> They have agreed to fully cooperate and provide every piece of information they can. But they have asked to work with the Bureau to ensure they are providing the information in a form and manner the Bureau prefers.

As discussed above, the Bureau has issued a modified CID with respect to the audio recordings, and Respondents have provided updated responses and documents to the interrogatories and document requests.

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<sup>35</sup> CID to NAA (Doc. 1-8, PageID # 158); CID to NAM (Doc 1-9, PageID # 209).

<sup>36</sup> CID to NAA (Doc. 1-8, PageID # 162-163); CID to NAM (Doc 1-9, PageID # 212-213).

<sup>37</sup> C. Cobbs Declaration, ¶ 5; M. Richards Declaration, ¶ 5.

<sup>38</sup> C. Cobbs Declaration, ¶ 6; M. Richards Declaration, ¶ 6.

In fact, it remains unclear why the Bureau even filed this Motion given all of the efforts that the Respondents have made to comply and all of their assurances that they would not withhold anything from the Bureau. The Bureau's Motion only adds to the burden on the Respondents' limited resources.

Although the trial court's order indicated a March 27, 2017 response date, even the Bureau acknowledged that it was only after the Sixth Circuit declined to stay compliance pending appeal on *March 31, 2017* that the parties could truly begin working on responding to the CIDs.<sup>39</sup>

The Bureau also acknowledged the technical issues associated with responding to the CIDs and how time-intensive responding would be.<sup>40</sup>

The Respondents have—and continue—to respond in good faith.

The CFPB cannot show by “clear and convincing evidence” that the Respondents have violated a “definite and specific order of the” Court. Accordingly, the Bureau's Motion for Contempt should be denied.

**C. The Respondents Took All Reasonable Steps To Comply With The Bureau's Expansive CIDs.**

Assuming that the Bureau can meet its high burden to show contempt, which it cannot, the Respondents can still avoid contempt by showing that they

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<sup>39</sup> Bureau's Motion for Contempt, 2, n.5 (Doc. 32-1, PageID 652); Declaration of D. Stein, ¶ 3, March 31, 2017 Email from J. Meade, attached as Ex. 1 thereto.

<sup>40</sup> *Id.*

are presently unable to comply with the Court's order. *Elec. Workers Pension Trust Fund of Local Union #58*, 340 F.3d at 379.

Importantly, in analyzing Respondents' ability to currently comply, the Sixth Circuit has held that no contempt exists where respondent "took all reasonable steps within [his] power to comply with the court's order." *Id.*

The Eastern District has previously found no contempt of an order requiring a document production where the responding party ran into ordinary "technical issues reasonably associated with a large document review" and where they "worked in good faith to resolve and explain the cause of their technical problems." *Coupled Prods., LLC*, 2010 U.S. Dist. LEXIS 100520, 6-7.

Here, the Respondents have taken all reasonable steps to comply with the Court's Order. It has provided all information it can within its possession, but has run into technical issues that it continues to work on with the Bureau. That is not a basis for contempt.

The Respondents have provided details above about how they complied, but below is a brief overview of some of the key issues raised by the Bureau and how the Respondents have taken reasonable steps to comply.

- 1. The Bureau demanded production of more than 1,000,000 voice recordings without prior review for privilege or responsiveness.**

The Bureau's Motion spends a significant time discussing the lack of audio

recordings.<sup>41</sup> This is a moot issue given that the Bureau issued a modified CID on June 8, 2017 (after it filed its Motion) and the parties have worked out a way for the Respondents to produce the recordings without devoting thousands of hours to review them. The Respondents expect to have produced the audio recordings by June 16, 2017. Significantly, as discussed above, Respondents took all reasonable steps to comply with the Bureau's requests regarding the audio recordings.

The Respondents made the Bureau aware of their concerns regarding the high volume of calls (close to 1,000,000 calls) and asked the Bureau to "consider reducing the scope of this request, so we can focus on substantive communications having to do with sales, pricing and marketing of Harbour properties[.]"<sup>42</sup>

According to the CIDs, this is exactly what the Bureau encouraged the Respondents to do:

If you believe that the scope of the search or response required by this CID can be narrowed consistent with the Bureau's need for documents or information, you are encouraged to discuss such possible modifications, including modifications of the requirements of these instructions, with [the Bureau].<sup>43</sup>

Ultimately, the parties conferred and came to an understanding, including the Bureau modifying its CIDs on June 8, 2017 to include non-Harbour calls.

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<sup>41</sup> Bureau's Motion for Contempt, 2-3, 5 (Doc. 32-1, PageID # 652, 653, 655).

<sup>42</sup> Declaration of D. Stein, ¶ 5, April 3, 2017 Email from D. Stein, attached as Ex. 2 thereto.

<sup>43</sup> CID to NAA (Doc. 1-8, PageID # 158); CID to NAM (Doc 1-9, PageID # 209).

This is precisely the procedure outlined by the Bureau and shows that Respondents took all reasonable steps to comply.

**2. *The Bureau Wanted Respondents To Withdraw Their Objections To The Interrogatories, and They Did.***

The Bureau appears to take issue with the Interrogatories only because the Respondents preserved certain objections.<sup>44</sup> To alleviate the Bureau's concerns, the Respondents withdrew their objections in updated responses on May 24, 2017.

Notably, the Respondents have always agreed to provide all of the information requested in the interrogatories. Again, these are no ordinary interrogatories found in typical litigation. They include such requests as *creating* a diagram for data flow and system architecture and *creating* a spreadsheet explaining how certain databases work by including *15 different types of information*.<sup>45</sup>

Despite these expansive requests, the Respondents have agreed to provide every piece of information available to it. Thus, no basis for contempt exists with respect to the interrogatories.

**3. *The Bureau demanded production of information and documents that did not exist.***

The Respondents have provided over 2,500 documents totaling over 8,000

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<sup>44</sup> Bureau's Motion for Contempt, 4 (Doc. 32-1, PageID # 654).

<sup>45</sup> CID to NAA (Doc. 1-8, PageID # 148-149); CID to NAM (Doc 1-9, PageID # 198-199).



pages, which include both emails and data compilations.

Other than the audio recordings, which are now a moot issue, the Bureau does not appear to have any remaining issues with the documents or information provided. Rather, the Bureau appears to take issue with certain data fields contained within some documents that the Respondents had to populate.

As with the other requests, these are not typical document requests found in litigation where parties have to produce information kept in the ordinary course of business. Here, the Bureau's CIDs require the Respondents to generate information and in some cases to write code into a spreadsheet in order for it to populate with the information the Bureau seeks. Where certain information does not exist electronically or in one place, the Bureau asked the Respondents to go find it and create it.<sup>46</sup>

When the Respondents had responsive information to produce, the Bureau required it to be formatted and for certain data fields to exist in a given document.

For example, in one request, the Bureau requested 36 data fields, including information such as front-end debt-to-income ratio, back-end debt-to-income ratio, down payment exceptions.<sup>47</sup>

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<sup>46</sup> Declaration of D. Stein, ¶ 22, April 26, 2017 Email from J. Meade attached thereto as Ex. 16.

<sup>47</sup> CID to NAA (Doc. 1-8, PageID # 152-153); CID to NAM (Doc 1-9, PageID # 203-204).

One of the deficiencies identified by the Bureau here is that certain data fields appear not to be populated. But the Respondents have explained to the Bureau that data errors occurred as a result of aggregation, conversion and transmission of the data. Some data was corrupted years ago.<sup>48</sup> But the Respondents have corrected all errors that it could.<sup>49</sup>

Some of the other missing data was never entered into the electronic databases in the first place, so it could not be populated by electronic means.

After incurring great time and expense, the Respondents pulled hard copy documents, reviewed them, extracted available information from them, and proffered them to the Bureau on June 8, 2017.<sup>50</sup> It is also noteworthy that Respondents identified several distinct data platforms for the Bureau, and discussed the fact that the reports from these systems would not easily be merged.<sup>51</sup> The Bureau then indicated its willingness to accept distinct reports from these different systems, so long as the reports were prepared in their native formats.<sup>52</sup> The Respondents have complied.<sup>53</sup>

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<sup>48</sup> Declaration of D. Stein, ¶ 23.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at ¶ 24.

<sup>51</sup> *Id.* at ¶ 25.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

The Respondents also identified those instances in which they did not have any data to populate.<sup>54</sup>

The only issue remaining with respect to the data involves up to 30,000 worksheets that include a “score,” which the Respondents have offered to produce in full.<sup>55</sup> But the Bureau wants the Respondents to write a script to extract the score on those worksheets and then populate them into an existing worksheet.<sup>56</sup> Regardless, Respondents have offered to find a way to produce the information.<sup>57</sup>

Accordingly, Respondents have taken all reasonable steps to comply with the Bureau’s CIDs related to documents and data.

#### **4. *Technical Deficiencies Insufficient To Warrant Contempt***

Everything discussed above shows all the extraordinary steps taken by the Respondents to comply with the Bureau’s demands. But it also highlights why the Eastern District of Michigan has previously held that technical deficiencies in a document production should not be a basis for contempt.

Ordinary document productions can present their own challenges, but this is no ordinary document production. It involves a massive amount of information across four different databases and required the Respondents to create and populate certain information.

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<sup>54</sup> Declaration of D. Stein, ¶ 26.

<sup>55</sup> *Id.* at ¶ 27.

<sup>56</sup> *Id.* at ¶ 27.

<sup>57</sup> *Id.* at, ¶ 29.

Here, the Respondents “have continued to resolve technical issues reasonably associated with a large document review. The Respondents represent that they have worked in good faith to resolve and explain the cause of their technical problems,” so “this Court has no reason to impute bad faith on [the Respondents].” *Coupled Prods., LLC*, 2010 U.S. Dist. LEXIS 100520, at \*6-7. Accordingly, the Court should deny the Bureau’s Motion for Contempt.

## **VII. CONCLUSION**

The only substantive issue remaining involved the production of audio recordings. The Bureau just issued a modified CID on June 8, 2017, which the Respondents expect to comply with by June 16, 2017. That is no longer an issue.

The other remaining issues are technical in nature and typical in document productions of this size and do not form the basis of contempt. These issues are not the result of a refusal to provide information to the Bureau.

The Bureau cannot satisfy by clear and convincing evidence that the Respondents violated an order of this Court. Even if it could, the Respondents have taken all reasonable steps to comply with the Court’s orders and the Bureau’s CIDs.

For these reasons and the reasons stated above, NAA and NAM respectfully request that the Court deny the Bureau’s Motion for Contempt.

Respectfully submitted,

/s/ David K. Stein

Drew H. Campbell (Ohio # 0047197)

dcampbell@bricker.com

David K. Stein (Ohio # 0042290)

dstein@bricker.com

Ali I. Haque (Ohio # 0087860)

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Troy, MI 48084

(248) 433-7286

agottlieb@dickinsonwright.com

*Counsel for Respondents National Asset*

*Advisors LLC and National Asset*

*Mortgage LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing document was filed with the Clerk of Courts using the ECF system, which will send notification of such filing to all attorneys of record on this 12th day of June, 2017.

/s/ David K. Stein  
David K. Stein (Ohio # 0042290)

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

**INDEX OF EXHIBITS**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
A	Declaration of David K. Stein
B	June 8, 2017 Modified CID
C	Declaration of Edward Henderson
D	Chris Cobbs Declaration
E	Matt Richards Declaration

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

CONSUMER FINANCIAL  
PROTECTION BUREAU,

Petitioner,

V.

HARBOUR PORTFOLIO  
ADVISORS, LLC, ET AL.,

Respondents.

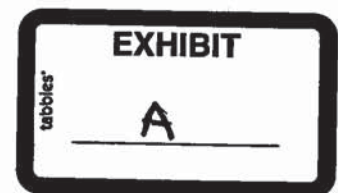
Case No. 12:16-CV-14183

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

### DECLARATION OF DAVID K. STEIN

I, David Stein, declare as follows:

1. I am counsel for National Asset Advisors (“NAA”) and National Asset Mortgage (“NAM”) (collectively, “Respondents”).
2. This declaration is provided in support of Respondents’ Memorandum in Opposition to the Consumer Financial Protection Bureau’s (the “Bureau”) Motion for Contempt.
3. Attached as Exhibit 1 is a true and accurate copy of an email I received from James Meade at the Bureau on March 31, 2017.
4. The parties had a telephonic meet and confer on March 31, 2017. The parties discussed the production of audio recordings, Respondents’ database structures, and document production generally. Respondents raised the issue of how to determine what may be responsive when there are almost 1,000,000 audio recordings. The Bureau requested to receive information





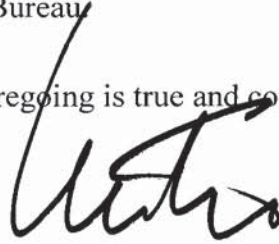
concerning that issue, and the parties agreed to conduct a “sizing exercise” to determine how to respond to the recordings.

5. Attached as Exhibit 2 is a true and accurate copy of the email I sent to the Bureau on April 3, 2017.
6. Attached as Exhibit 3 is a true and accurate copy of the email sent by James Meade at the Bureau on April 10, 2017.
7. On April 13, Respondents provided their first production.
8. Attached as Exhibit 4 is a true and accurate copy of the email sent by James Meade at the Bureau on April 21, 2017.
9. Attached as Exhibit 5 is a true and accurate copy of the email I sent to James Meade at the Bureau on April 21, 2017.
10. Attached as Exhibit 6 is a true and accurate copy of another email I sent to James Meade at the Bureau on April 21, 2017.
11. Attached as Exhibit 7 is a true and accurate copy of an email I sent to James Meade at the Bureau on April 24, 2017.
12. Attached as Exhibit 8 is a true and accurate copy of an email I sent to James Meade at the Bureau on April 25, 2017.
13. Attached as Exhibit 9 is a true and accurate copy of an email I sent to James Meade at the Bureau on April 26, 2017.
14. Attached as Exhibit 10 is a true and accurate copy of an email sent by James Meade at the Bureau on April 26, 2017.

15. Respondents sent supplemental productions on April 24 and May 8.
16. Attached as Exhibit 11 is a true and accurate copy of an email sent by James Meade at the Bureau on May 10, 2017.
17. Attached as Exhibit 12 is a true and accurate copy of an email sent by Nicholas Lee at the Bureau on May 15, 2017.
18. Attached as Exhibit 13 is a true and accurate copy of an email I sent to Nicholas Lee and other attorneys at the Bureau on May 18, 2017.
19. Attached as Exhibit 14 is a true and accurate copy of an email sent by Nicholas Lee at the Bureau on May 18, 2017.
20. Attached as Exhibit 15 is a true and accurate copy of three email exchanges between me and Nicholas Lee on May 26, 2017.
21. After further discussions and proposals by Respondents, the parties agreed to the following:  
Respondents will produce all audio recordings which might relate to other parties it contracts with (Harbour or otherwise), but will exclude telephone numbers associated with non-Harbour properties and calls with lawyers or intra-office calls.
22. Attached as Exhibit 16 is a true and accurate copy of an email sent by James Meade on April 26, 2017.
23. Respondents have explained to the Bureau that data errors occurred as a result of aggregation, conversion and transmission of the data. Some data was corrupted years ago. Respondents have corrected all errors it could that resulted from conversion and extraction.

24. After incurring great time and expense, Respondents pulled hard copy documents, reviewed them, extracted available information from them, and proffered them to the Bureau on June 8, 2017.
25. Respondents previously identified several distinct data platforms to the Bureau, and discussed the fact that the reports from these systems would not easily be merged. The Bureau then indicated its willingness to accept the distinct reports from these different systems, so long as they reports were prepared in their native formats, which the Respondents have complied with.
26. Respondents have explained to the CFPB that some areas of the data requests did not have any responsive data to populate.
27. Respondents offered to produce to the Bureau over 30,000 documents related to scorecard worksheets that might include a "score". The Bureau wants Respondents to write a script to extract the score and populate it into an existing worksheet and does not want the actual worksheets to be produced.
28. Attached as Exhibit 17 is a true and accurate copy of an email sent by Nicholas Lee at the Bureau on June 9, 2017.
29. It is unclear if these scores are responsive to any CID. The Respondents have offered to work to find a way to produce the information to the Bureau.

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



Executed on June 12, 2017

---

David K. Stein

---

**From:** Meade, James (CFPB) <James.Meade@cfpb.gov>  
**Sent:** Friday, March 31, 2017 3:53 PM  
**To:** Stein, David; Morris, Lucy (lmorris@hudco.com)  
**Cc:** Jung, Je Yon (CFPB); Mason, Zach (CFPB); Lee, Nicholas (CFPB)  
**Subject:** RE: CFPB - Harbour - NAA - NAM [BRICKER-WS.FID1229234]

Lucy and David,

Now that we have a ruling from the Sixth Circuit, we'd be happy to schedule a call for Monday to address any technical issues you may have with the production. Let me know when you can be available and I'll send an Outlook invitation.

FYI, the address for document production listed in the CID instructions (page 14, Section III. K.) has changed slightly in the intervening six months – the room number is now 4064 instead of 4083A. Everything else is the same.

And, as discussed earlier today, we look forward to receiving documents and information from you first thing next week.

Thanks,

Jim Meade  
Enforcement Attorney  
(415) 645-6616

Confidentiality Notice: If you received this email by mistake, you should notify the sender of the mistake and delete the email and any attachments. An inadvertent disclosure is not intended to waive any privileges.

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**From:** Stein, David [<mailto:DStein@bricker.com>]  
**Sent:** Thursday, March 30, 2017 2:15 PM  
**To:** Meade, James (CFPB); Morris, Lucy (lmorris@hudco.com)  
**Cc:** Jung, Je Yon (CFPB); Mason, Zach (CFPB); Lee, Nicholas (CFPB)  
**Subject:** RE: CFPB - Harbour - NAA - NAM [BRICKER-WS.FID1229234]

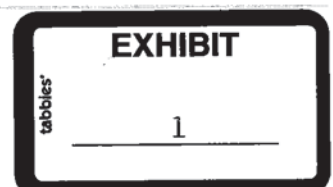
I received the 1 pm meeting, and have accepted. Unless I hear otherwise, I'll assume we are going with that time. I need to leave my office in the next 15 minutes.

Thanks,

David

---

**From:** Meade, James (CFPB) [<mailto:James.Meade@cfpb.gov>]  
**Sent:** Thursday, March 30, 2017 4:37 PM  
**To:** Stein, David; Morris, Lucy (lmorris@hudco.com)





**Cc:** Jung, Je Yon (CFPB); Mason, Zach (CFPB); Lee, Nicholas (CFPB)  
**Subject:** RE: CFPB - Harbour - NAA - NAM [BRICKER-WS.FID1229234]

Yes, I'll send an Outlook invitation as well. We could do 8 am Pacific, 11 am Eastern if that's better for you. Let me know.

Call in: 877-702-1705; Password:82424446

---

**From:** Stein, David [mailto:DStein@bricker.com]  
**Sent:** Thursday, March 30, 2017 1:33 PM  
**To:** Meade, James (CFPB); Morris, Lucy (lmorris@hudco.com)  
**Cc:** Jung, Je Yon (CFPB); Mason, Zach (CFPB); Lee, Nicholas (CFPB)  
**Subject:** RE: CFPB - Harbour - NAA - NAM [BRICKER-WS.FID1229234]

Jim – if Lucy does not respond soon, let's assume she is tied up today.

I can be available at 1 pm EST tomorrow. (I will be sitting in my car, as I have a 1:30 pm commitment.) Do you want to send a call-in number?

Thanks,

David

---

**From:** Meade, James (CFPB) [mailto:James.Meade@cfpb.gov]  
**Sent:** Thursday, March 30, 2017 4:30 PM  
**To:** Stein, David; Morris, Lucy (lmorris@hudco.com)  
**Cc:** Jung, Je Yon (CFPB); Mason, Zach (CFPB); Lee, Nicholas (CFPB)  
**Subject:** RE: CFPB - Harbour - NAA - NAM [BRICKER-WS.FID1229234]

Okay, thanks. If Lucy is available let's talk today, if not, shall we shoot for 10 a.m Pacific time 1 pm Eastern tomorrow?

---

**From:** Stein, David [mailto:DStein@bricker.com]  
**Sent:** Thursday, March 30, 2017 1:26 PM  
**To:** Meade, James (CFPB); Morris, Lucy (lmorris@hudco.com)  
**Cc:** Jung, Je Yon (CFPB); Mason, Zach (CFPB); Lee, Nicholas (CFPB)  
**Subject:** RE: CFPB - Harbour - NAA - NAM [BRICKER-WS.FID1229234]

Jim – I am generally available. However, it is 4:25 pm in Ohio, and I have a commitment at 6:15 tonight. If Lucy is available over the next hour, I can be available. If not, I am generally available all morning tomorrow, or can make myself available. Let me know what works.

Thanks,

David

---

**From:** Meade, James (CFPB) [mailto:James.Meade@cfpb.gov]  
**Sent:** Thursday, March 30, 2017 4:19 PM  
**To:** Stein, David; Morris, Lucy (lmorris@hudco.com)  
**Cc:** Jung, Je Yon (CFPB); Mason, Zach (CFPB); Lee, Nicholas (CFPB)  
**Subject:** CFPB - Harbour - NAA - NAM

Lucy and David,

Do you have time later today to discuss a motion we're considering filing in district court?

Jim Meade  
Enforcement Attorney  
(415) 645-6616

Confidentiality Notice: If you received this email by mistake, you should notify the sender of the mistake and delete the email and any attachments. An inadvertent disclosure is not intended to waive any privileges.

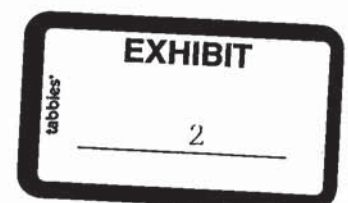
**From:** Stein, David <DStein@bricker.com>  
**Sent:** Monday, April 03, 2017 4:54 PM  
**To:** james.meade@cfpb.gov  
**Cc:** Morris, Lucy  
**Subject:** Follow up information [BRICKER-WS.FID1176385]

Jim – in follow up to our call today, I was able to obtain some technical information. I also have a few follow up questions and concerns.

1. NAA/NAM has never used a CRM database. The AMX system has CRM capabilities. These capabilities are only just now being planned and developed, and will be no use to us with respect to historical call recordings.
2. AMX is not a special database for this industry. However, the AMX instance being used is customized and programmed for NAA/NAM. I will be happy to facilitate a call with your technical personnel if necessary.
3. The audio recordings are not indexed in any manner, other than date. The inbound phone numbers are not managed in any way as to identify property, MSA or other specifics.
4. Calls recording span the time from late 2012 or early 2013 to the present (this ability accompanied the installation of a new phone system).
5. There is no reasonable means to determine whether any particular call recording relates to any specific Harbour property.
6. The recordings account for approximately 1.3 terabytes and may exceed more than 1 million individual recordings.
7. Based on the volume of information, I would ask that the CFPB consider whether to limit this request in some manner. Perhaps choosing a few random dates and times might be a good start. Please advise.
8. Emails – we should be able to identify emails from the Exchange server that would have gone to a Harbour email extension. However, given the volume of emails, we expect that the review of this information will take some time.
9. Communications – the nature of your request is very expansive and may lead to incomplete responses. For instances, text messages have been requested. Because many people may have communicated with Harbour for various issues and reasons, it may be impossible to identify all texts. Changes in personnel and phone numbers, as well as device updates, may mean that some text messages will be missing. It would be a significant hurdle to identify all phones that might have been in contact with Harbour, and then request historical records from the phone providers. Please provide me with additional specific direction so that NAA/NAM may demonstrate reasonable compliance for this request.
10. I expect that the paper files of properties may have transmittal letters or other forms of communications. Would you consider reducing the scope of this request, so that we can focus on substantive communications having to do with the sales, pricing and marketing of Harbour properties?



**David K. Stein**  
Of Counsel  
Bricker & Eckler LLP | 100 South Third Street | Columbus, OH 43215





---

**From:** Meade, James (CFPB) <James.Meade@cfpb.gov>  
**Sent:** Monday, April 10, 2017 5:02 PM  
**To:** Stein, David  
**Subject:** RE: Production [BRICKER-WS.FID1176385]

David,

A flash drive is fine, and a spreadsheet would be good for the data.

WRT the audio files, our data team thinks it would be helpful (and fairly easy) for you to provide a decile breakdown of the length of calls, something along these lines:

10% < 15 sec  
20% < 45 sec  
30% < 1 min 3 sec  
40% < 2 min 12 sec  
50% < 3 min 11 sec  
60% < 6 min 38 sec  
70% < 10 min 12 sec  
80% < 16 min 15 sec  
90 % < 32 min 49 sec  
Max = 128 min 52 sec

Let us know if you have any questions.

Thanks,

Jim Meade  
Enforcement Attorney  
(415) 645-6616

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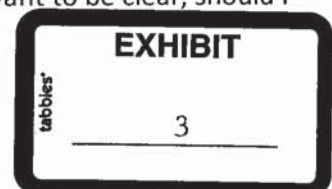
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**From:** Stein, David [mailto:DStein@bricker.com]  
**Sent:** Monday, April 10, 2017 12:31 PM  
**To:** Meade, James (CFPB)  
**Subject:** Production [BRICKER-WS.FID1176385]

Jim – a quick status update. We are in the process of final review, bates stamping.

Two housekeeping issues:

- Production of Documents – do you want this via a thumb drive or an FTP link up?
- Data requests – I know you told me that you want these reports from native format. I want to be clear, should I deliver you a spreadsheet of the data in question?





I will be out of the office all day tomorrow. My paralegal will have this finished up, and I should be in touch on Wednesday.

Finally, attached is an information sheet, which will be cited to in some of the Interrogatories. NAA-NAM CFPB00001-00004.

Please let me know if you have any questions or concerns.



**Bricker & Eckler**  
ATTORNEYS AT LAW

**David K. Stein**

Of Counsel

**Bricker & Eckler LLP** | 100 South Third Street | Columbus, OH 43215

**Direct Dial 614.227.7740** | [dstein@bricker.com](mailto:dstein@bricker.com) | v-card | [www.bricker.com](http://www.bricker.com)

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**From:** Meade, James (CFPB) <James.Meade@cfpb.gov>  
**Sent:** Friday, April 21, 2017 12:42 PM  
**To:** Stein, David  
**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB)  
**Subject:** National Asset Advisors, LLC and National Asset Mortgage, LLC

David,

Your clients NAA and NAM have not complied with the September 8, 2016 CIDs issued to them, despite the district court's order requiring them to do so. After reviewing your limited, partial response to the CIDs, we have serious concerns about your clients' good faith.

- Fewer than 200 documents have been produced, none in the format specified in our Document Submission Standards.
- The Combined Response raised frivolous general and specific objections to the CIDs, none of which are permitted by the Bureau's investigative rules but which raise doubts about the completeness of the companies' responses. We note that your repeated objection that the CIDs are overbroad and unduly burdensome was specifically addressed – and rejected – by the District Court.
- You personally signed the response, while the Bureau's investigative rules require a sworn certificate in the form that was provided with the CIDs, signed under penalty of perjury by a person with knowledge on behalf of the companies.
- Your response included one reference to a non-existent Bates number and referred to exhibits without identifying them by Bates number.
- In 20 out of the 28 individual responses you provided no information but stated that you would do so at some unspecified future date.
- The combined response addressed the NAA CID but not the NAM CID, which was not identical.

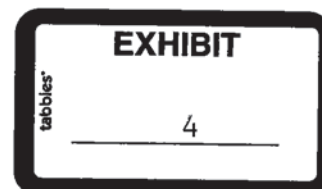
As you know, the District Court ordered your clients to comply with the CIDs by March 24, 2017. In light of the above we are preparing to file a contempt motion.

Please let me know if you are available sometime Monday afternoon to discuss our proposed motion, in accordance local rule 7.1.

Thank you,

Jim Meade  
Enforcement Attorney  
(415) 645-6616

Confidentiality Notice: If you received this email by mistake, you should notify the sender of the mistake and delete the email and any attachments. An inadvertent disclosure is not intended to waive any privileges.



**From:** Stein, David  
**Sent:** Friday, April 21, 2017 2:47 PM  
**To:** 'Meade, James (CFPB)'  
**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB); Hasman, David  
**Subject:** RE: National Asset Advisors, LLC and National Asset Mortgage, LLC [BRICKER-WS.FID1176385]

Jim – I believe these issues can easily be resolved, and the threat of a contempt motion is neither necessary or appropriate. Until I received your email, I had no notice of these deficiencies. We intend to fully cooperate with the CFPB so that this entire matter can be put to rest. In other words, we do not believe a motion will be necessary.

Likewise, we do not feel it necessary for NAA/NAM to seek a protective order at this time, as you have represented that you would work with NAA/NAM to size the voice data and evaluate the burden of production. If this is not accurate, then we will also need to discuss an appropriate resolution, in compliance with Local Rule 7.1. We now have ample detail to inform the Court as to the nature of burden created by some of your requests. NAA/NAM is a very small company, and is devoting as many resources as possible to comply with the CID. There is no gamesmanship taking place. My clients are doing their best.

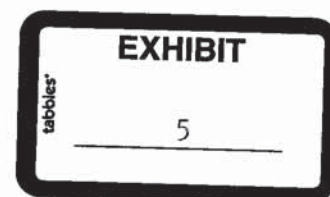
I am travelling on Monday and Tuesday. I would like to be in my office for our call, so I can have my data team and my records available. Would you be willing to set up a call for Wednesday morning?

I have a few points to make:

- The production of documents in the deficient format was an error on our part. **I am copying David Hasman on this email. David runs our litigation support group, and he will personally coordinate the redelivery of the files in the desired format. David's direct dial is 614-227-8865. If your technical crew could call him to confirm the format specifics, we will make it happen very quickly.**
- NAA/NAM has had some significant issues related to the access of and export of responsive data, which have now been resolved. I expect to be supplementing the production yet today. In addition, we discovered yesterday that some additional documents were delivered to our firm on a previously unknown FTP site. Those additional documents are now being reviewed for responsiveness and privilege, and will be produced early next week. This is a relatively small set of documents.
- The certifications for NAA and NAM are pending, as you and I need to discuss the voice recordings before my client can certify the production as being complete. Do you disagree with that statement?
- I will be reviewing the issue of the NAA v. NAM responses. This is an error on our part, and will be corrected. It would help me if you could identify what you feel is missing for the NAM response, given the nature of the joint response.

Jim – I am available for a quick chat today, if you would like to call me. If not, let me know whether we can make Wednesday morning work.

Thanks,





David

**From:** Meade, James (CFPB) [<mailto:James.Meade@cfpb.gov>]

**Sent:** Friday, April 21, 2017 12:42 PM

**To:** Stein, David

**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB)

**Subject:** National Asset Advisors, LLC and National Asset Mortgage, LLC

David,

Your clients NAA and NAM have not complied with the September 8, 2016 CIDs issued to them, despite the district court's order requiring them to do so. After reviewing your limited, partial response to the CIDs, we have serious concerns about your clients' good faith.

- Fewer than 200 documents have been produced, none in the format specified in our Document Submission Standards.
- The Combined Response raised frivolous general and specific objections to the CIDs, none of which are permitted by the Bureau's investigative rules but which raise doubts about the completeness of the companies' responses. We note that your repeated objection that the CIDs are overbroad and unduly burdensome was specifically addressed – and rejected – by the District Court.
- You personally signed the response, while the Bureau's investigative rules require a sworn certificate in the form that was provided with the CIDs, signed under penalty of perjury by a person with knowledge on behalf of the companies.
- Your response included one reference to a non-existent Bates number and referred to exhibits without identifying them by Bates number.
- In 20 out of the 28 individual responses you provided no information but stated that you would do so at some unspecified future date.
- The combined response addressed the NAA CID but not the NAM CID, which was not identical.

As you know, the District Court ordered your clients to comply with the CIDs by March 24, 2017. In light of the above we are preparing to file a contempt motion.

Please let me know if you are available sometime Monday afternoon to discuss our proposed motion, in accordance local rule 7.1.

Thank you,

Jim Meade  
Enforcement Attorney  
(415) 645-6616

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**From:** Stein, David <DStein@bricker.com>  
**Sent:** Friday, April 21, 2017 5:17 PM  
**To:** 'Meade, James (CFPB)'  
**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB); Hasman, David; Van Atta, Tracy (CFPB)  
**Subject:** RE: National Asset Advisors, LLC and National Asset Mortgage, LLC [BRICKER-WS.FID1176385]

Jim – David Hasman advises that Tracy provided very useful assistance in understanding the formatting issues. The documents are in our Relativity system, and it will just be a matter of getting them exported in the correct format. He will be working on this on Monday.

I just put out a fedex with the data spreadsheets. I suspect this will be a formatting issue, again. David will be addressing that data as well next week.

I do appreciate your assistance. I am confident we will get everything to you and that we can work through any issues that may exist.

Thanks,

David

**From:** Meade, James (CFPB) [mailto:James.Meade@cfpb.gov]  
**Sent:** Friday, April 21, 2017 4:15 PM  
**To:** Stein, David  
**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB); Hasman, David; Van Atta, Tracy (CFPB)  
**Subject:** RE: National Asset Advisors, LLC and National Asset Mortgage, LLC [BRICKER-WS.FID1176385]

Tracy Van Atta (cc'd) is available. If Dave sends her a number she'll give him a call.

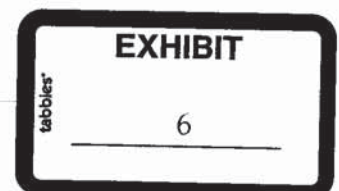
**From:** Stein, David [mailto:DStein@bricker.com]  
**Sent:** Friday, April 21, 2017 12:37 PM  
**To:** Meade, James (CFPB)  
**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB); Hasman, David  
**Subject:** RE: National Asset Advisors, LLC and National Asset Mortgage, LLC [BRICKER-WS.FID1176385]

Jim – we are finalizing several data request spreadsheets so they can be delivered today. However, Dave Hasman has some technical questions about format. Can someone assist us today with a quick call on tech issues?

Thanks,

David

**From:** Meade, James (CFPB) [mailto:James.Meade@cfpb.gov]  
**Sent:** Friday, April 21, 2017 3:35 PM  
**To:** Stein, David  
**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB); Hasman, David  
**Subject:** RE: National Asset Advisors, LLC and National Asset Mortgage, LLC [BRICKER-WS.FID1176385]



David,

I'll see if our team is available on Wednesday and will get back to you.

Regards,

Jim

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---

**From:** Stein, David [mailto:DStein@bricker.com]

**Sent:** Friday, April 21, 2017 11:47 AM

**To:** Meade, James (CFPB)

**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB); Hasman, David

**Subject:** RE: National Asset Advisors, LLC and National Asset Mortgage, LLC [BRICKER-WS.FID1176385]

Jim – I believe these issues can easily be resolved, and the threat of a contempt motion is neither necessary or appropriate. Until I received your email, I had no notice of these deficiencies. We intend to fully cooperate with the CFPB so that this entire matter can be put to rest. In other words, we do not believe a motion will be necessary.

Likewise, we do not feel it necessary for NAA/NAM to seek a protective order at this time, as you have represented that you would work with NAA/NAM to size the voice data and evaluate the burden of production. If this is not accurate, then we will also need to discuss an appropriate resolution, in compliance with Local Rule 7.1. We now have ample detail to inform the Court as to the nature of burden created by some of your requests. NAA/NAM is a very small company, and is devoting as many resources as possible to comply with the CID. There is no gamesmanship taking place. My clients are doing their best.

I am travelling on Monday and Tuesday. I would like to be in my office for our call, so I can have my data team and my records available. Would you be willing to set up a call for Wednesday morning?

I have a few points to make:

- The production of documents in the deficient format was an error on our part. **I am copying David Hasman on this email. David runs our litigation support group, and he will personally coordinate the redelivery of the files in the desired format. David's direct dial is 614-227-8865. If your technical crew could call him to confirm the format specifics, we will make it happen very quickly.**
- NAA/NAM has had some significant issues related to the access of and export of responsive data, which have now been resolved. I expect to be supplementing the production yet today. In addition, we discovered yesterday that some additional documents were delivered to our firm on a previously unknown FTP site. Those additional documents are now being reviewed for responsiveness and privilege, and will be produced early next week. This is a relatively small set of documents.
- The certifications for NAA and NAM are pending, as you and I need to discuss the voice recordings before my client can certify the production as being complete. Do you disagree with that statement?



- I will be reviewing the issue of the NAA v. NAM responses. This is an error on our part, and will be corrected. It would help me if you could identify what you feel is missing for the NAM response, given the nature of the joint response.

Jim – I am available for a quick chat today, if you would like to call me. If not, let me know whether we can make Wednesday morning work.

Thanks,

David

---

**From:** Meade, James (CFPB) [<mailto:James.Meade@cfpb.gov>]  
**Sent:** Friday, April 21, 2017 12:42 PM  
**To:** Stein, David  
**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB)  
**Subject:** National Asset Advisors, LLC and National Asset Mortgage, LLC

David,

Your clients NAA and NAM have not complied with the September 8, 2016 CIDs issued to them, despite the district court's order requiring them to do so. After reviewing your limited, partial response to the CIDs, we have serious concerns about your clients' good faith.

- Fewer than 200 documents have been produced, none in the format specified in our Document Submission Standards.
- The Combined Response raised frivolous general and specific objections to the CIDs, none of which are permitted by the Bureau's investigative rules but which raise doubts about the completeness of the companies' responses. We note that your repeated objection that the CIDs are overbroad and unduly burdensome was specifically addressed – and rejected – by the District Court.
- You personally signed the response, while the Bureau's investigative rules require a sworn certificate in the form that was provided with the CIDs, signed under penalty of perjury by a person with knowledge on behalf of the companies.
- Your response included one reference to a non-existent Bates number and referred to exhibits without identifying them by Bates number.
- In 20 out of the 28 individual responses you provided no information but stated that you would do so at some unspecified future date.
- The combined response addressed the NAA CID but not the NAM CID, which was not identical.

As you know, the District Court ordered your clients to comply with the CIDs by March 24, 2017. In light of the above we are preparing to file a contempt motion.

Please let me know if you are available sometime Monday afternoon to discuss our proposed motion, in accordance local rule 7.1.

Thank you,

Jim Meade  
Enforcement Attorney  
(415) 645-6616

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**From:** Stein, David <DStein@bricker.com>  
**Sent:** Monday, April 24, 2017 4:01 PM  
**To:** james.meade@cfpb.gov  
**Subject:** Voice Recordings [BRICKER-WS.FID1176385]

I am writing to follow up on the sizing exercise with respect to the voice recordings. The process of obtaining the recordings was very difficult to maneuver and took much longer than expected. The reporting interface did not function as planned, and it was necessary for my client to create special coding in order to pull out the recording and details.

That said, we were able to identify certain phone extensions that would have been used by the sales team, and then identify calls that might have related to the requested information. We have determined that all calls exceeding one minute for these extensions would equate to 991 Hours of recordings; 3 minutes or more would have a total of 828 Hour; 5 minutes or more would total 619 Hours. We have not determined how many of these calls may be responsive to the CID, as many could involve other investors, unrelated issues or personal/confidential matters.

We are able to list these calls chronologically.

The cost to review this data is extreme. The review is needed, so as to ensure that any material being produced is responsive.

I would like to suggest that we provide a chronological listing of the calls that are 3 minutes or more. The CFPB can then randomly select calls for review/production, and then we all can review this sample to determine the next steps. I suggest that the CFPB select every 50<sup>th</sup> call from the list, as a starting point.

Please let me know your thoughts, and we can discuss further on our call on Wednesday.

Thanks.



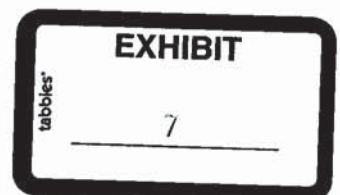
**David K. Stein**

Of Counsel

**Bricker & Eckler LLP** | 100 South Third Street | Columbus, OH 43215

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**From:** Stein, David <DStein@bricker.com>  
**Sent:** Tuesday, April 25, 2017 6:10 PM  
**To:** james.meade@cfpb.gov  
**Subject:** Call recording data [BRICKER-WS.FID1176385]

Jim – here is the updated sizing data on the call recordings. I was not able to obtain the GBs for the 3 and 5 calls minute only. 21 GBs for all calls exceeding one minute.

	Calls - Total	GBs	Calls - 3 min or more	Calls - 5 min or more
Incoming	12,719	21	7,711	4,524
Hours	991		829	620
Outgoing	2,002	3	568	331
Hours	92		68	52



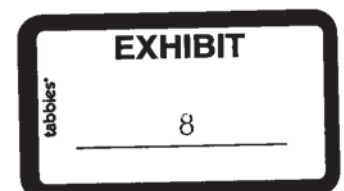
**David K. Stein**

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**From:** Stein, David  
**Sent:** Wednesday, April 26, 2017 5:48 PM  
**To:** james.meade@cfpb.gov  
**Cc:** Jung, Je Yon (CFPB) (Je.Jung@cfpb.gov); Lee, Nicholas (CFPB) (Nicholas.Lee@cfpb.gov); Mason, Zach (CFPB) (Zachary.Mason@cfpb.gov); Polzien, Darcie (CFPB) (Darcie.Polzien@cfpb.gov); Haque, Ali; Hasman, David  
**Subject:** Voice data [BRICKER-WS.FID1176385]  
**Attachments:** Call Recordings-In.xlsx; Call Recordings-out.xlsx

Jim – I am sending you two excel spreadsheets, which outline the call specifics.

As we discussed, you are considering whether to provide us with search terms, so we may size and review these files. I have suggested that you randomly select 100 calls for the first round of review. Either way, we would like to be able to review any document or data for responsiveness and privilege prior to production. Given the very substantial cost to review and analyze these files, we are unable to efficiently determine which of these calls might be responsive to the CFPB's demand without pairing down the list in some manner.

A simple review of 100 files might give us the comfort we need with these concerns. Or, a review by search term might pair down the list to a manageable number.

I will await your reply. I am available the remainder of the week if you would like to discuss further.

Finally, despite the contentious nature of these types of issues, I do very much appreciate the CFPB's continued patience and willingness to work with us on these topics.

David



**Bricker & Eckler**  
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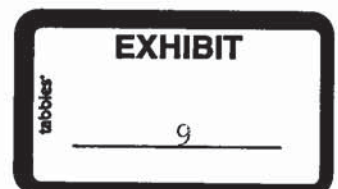
**David K. Stein**

Of Counsel

**Bricker & Eckler LLP** | 100 South Third Street | Columbus, OH 43215

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**From:** Meade, James (CFPB) <James.Meade@cfpb.gov>  
**Sent:** Wednesday, April 26, 2017 6:38 PM  
**To:** Stein, David  
**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB); Haque, Ali; Hasman, David  
**Subject:** Re: Voice data [BRICKER-WS.FID1176385]

Thanks David. We'll look this over and see if we can come up with any ideas.

---

**From:** Stein, David [mailto:DStein@bricker.com]  
**Sent:** Wednesday, April 26, 2017 05:47 PM Eastern Standard Time  
**To:** Meade, James (CFPB)  
**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB); Haque, Ali ; Hasman, David  
**Subject:** Voice data [BRICKER-WS.FID1176385]

Jim – I am sending you two excel spreadsheets, which outline the call specifics.

As we discussed, you are considering whether to provide us with search terms, so we may size and review these files. I have suggested that you randomly select 100 calls for the first round of review. Either way, we would like to be able to review any document or data for responsiveness and privilege prior to production. Given the very substantial cost to review and analyze these files, we are unable to efficiently determine which of these calls might be responsive to the CFPB's demand without pairing down the list in some manner.

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Finally, despite the contentious nature of these types of issues, I do very much appreciate the CFPB's continued patience and willingness to work with us on these topics.

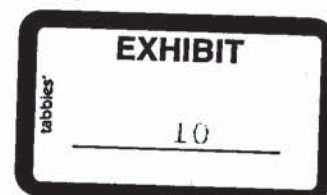
David



**Bricker & Eckler**  
ATTORNEYS AT LAW

David K. Stein  
Of Counsel

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---

**From:** Meade, James (CFPB) <James.Meade@cfpb.gov>  
**Sent:** Wednesday, May 10, 2017 5:37 PM  
**To:** Stein, David  
**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB); Ardike, Maria (CFPB); Haque, Ali; Taylor, Carol  
**Subject:** RE: NAA/CFPB - Letter to CFPB

David,

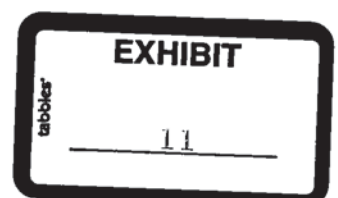
The NAA/NAM production we received on 5/8/17 does not include many of the data fields required by our Document Submission Standards, including several important email fields. You will need to provide an updated .dat file as soon as possible. Please contact Tracy Van Atta (copied) if you need additional information.

Also, please note that the production included 4 identical discs - it is not necessary to include extra copies of the same disc.

Thanks,

Jim Meade  
Enforcement Attorney  
(415) 645-6616

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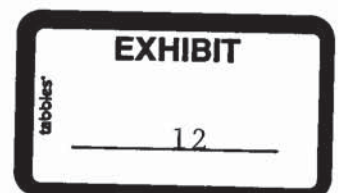
**From:** Lee, Nicholas (CFPB) <Nicholas.Lee@cfpb.gov>  
**Sent:** Monday, May 15, 2017 8:17 PM  
**To:** Stein, David  
**Cc:** Mason, Zach (CFPB); Jung, Je Yon (CFPB); Meade, James (CFPB)  
**Subject:** NAA-NAM CIDs

David:

To follow up on items we discussed previously, have NAA-NAM procured a vendor to assist with the review and production of audio files? If yes, when did this occur and what is the companies' estimate for when the production of audio files will be complete?

Also, is it the companies' position that all audio files must be reviewed prior to producing them?

Thanks,  
Nick



**From:** Stein, David  
**Sent:** Thursday, May 18, 2017 2:13 PM  
**To:** Lee, Nicholas (CFPB) (Nicholas.Lee@cfpb.gov); Mason, Zach (CFPB) (Zachary.Mason@cfpb.gov); Polzien, Darcie (CFPB) (Darcie.Polzien@cfpb.gov); Jung, Je Yon (CFPB) (Je.Jung@cfpb.gov)  
**Cc:** Hasman, David; Taylor, Carol  
**Subject:** FW: Voice data [BRICKER-WS.FID1176385]  
**Attachments:** Call Recordings-In.xlsx; Call Recordings-out.xlsx

All – I am following up on Nick’s email from Monday evening concerning voice recordings. My recollection is that we spoke on April 26 to brainstorm as to how to conduct a search of our data and produce an limited subset for your review, which might allow us to pair back to enormity of the data. I had suggested that you choose a random set of 100 calls for us to listen to and then provide to the CFPB, which might help the CFPB narrow the scope of its request. In turn, the CFPB suggested during the call that your group would consider some search terms for us to use to narrow the scope of the request. I was told, at that time, that you would be following up with me with those terms. To date, I have heard no further word until Nick’s email this week. (See email below, which might refresh your recollections.)

We possess over 14,000 recordings. We have no reasonable way to parse through these records to determine what might be responsive. The cost to have the 14,000 recordings transcribed and then reviewed will easily exceed \$100,000.00. We do not feel it is a reasonable outcome to simply allow the CFPB to review the recordings, as we have no way of knowing whether that review would exceed the stated purpose and authority of the Bureau.

Are you able to provide us with some key words, as discussed, so that we can attempt to refine the production?

Thanks,

David

---

**From:** Stein, David  
**Sent:** Wednesday, April 26, 2017 5:48 PM  
**To:** [james.meade@cfpb.gov](mailto:james.meade@cfpb.gov)  
**Cc:** Jung, Je Yon (CFPB) (Je.Jung@cfpb.gov); Lee, Nicholas (CFPB) (Nicholas.Lee@cfpb.gov); Mason, Zach (CFPB) (Zachary.Mason@cfpb.gov); Polzien, Darcie (CFPB) (Darcie.Polzien@cfpb.gov); Haque, Ali; Hasman, David  
**Subject:** Voice data [BRICKER-WS.FID1176385]

Jim – I am sending you two excel spreadsheets, which outline the call specifics.

As we discussed, you are considering whether to provide us with search terms, so we may size and review these files. I have suggested that you randomly select 100 calls for the first round of review. Either way, we would like to be able to review any document or data for responsiveness and privilege prior to production. Given the very substantial cost to review and analyze these files, we are unable to efficiently determine which of these calls might be responsive to the CFPB’s demand without pairing down the list in some manner.

A simple review of 100 files might give us the comfort we need with these concerns. Or, a review by search term might pair down the list to a manageable number.

I will await your reply. I am available the remainder of the week if you would like to discuss further.

**EXHIBIT**

tabbles

13



Finally, despite the contentious nature of these types of issues, I do very much appreciate the CFPB's continued patience and willingness to work with us on these topics.

David



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ATTORNEYS AT LAW

**David K. Stein**

Of Counsel

**Bricker & Eckler LLP** | 100 South Third Street | Columbus, OH 43215

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**From:** Lee, Nicholas (CFPB) <Nicholas.Lee@cfpb.gov>  
**Sent:** Thursday, May 18, 2017 4:51 PM  
**To:** Stein, David  
**Cc:** Hasman, David; Taylor, Carol; Meade, James (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB); Jung, Je Yon (CFPB)  
**Subject:** RE: Voice data [BRICKER-WS.FID1176385]

David:

As you point out, the Bureau did not agree to provide search terms. Given that NAA and NAM have not retained a vendor capable of searching the audio files, any discussion of search terms is moot.

In any event, should the use of search terms be warranted—we do not believe that it is necessary since NAA and NAM can simply provide the Bureau with all files—NAA and NAM are required to produce all responsive information, and as the entities most familiar with the companies' terminology, they are best suited to proposing search terms that identify all responsive material.

Regards,  
 Nick

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**From:** Stein, David [mailto:DStein@bricker.com]  
**Sent:** Thursday, May 18, 2017 2:13 PM  
**To:** Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB); Jung, Je Yon (CFPB)  
**Cc:** Hasman, David; Taylor, Carol  
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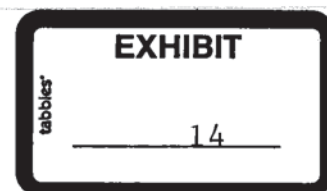
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David

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**Sent:** Wednesday, April 26, 2017 5:48 PM  
**To:** [james.meade@cfpb.gov](mailto:james.meade@cfpb.gov)



**Cc:** Jung, Je Yon (CFPB) ([Je.Jung@cfpb.gov](mailto:Je.Jung@cfpb.gov)); Lee, Nicholas (CFPB) ([Nicholas.Lee@cfpb.gov](mailto:Nicholas.Lee@cfpb.gov)); Mason, Zach (CFPB) ([Zachary.Mason@cfpb.gov](mailto:Zachary.Mason@cfpb.gov)); Polzien, Darcie (CFPB) ([Darcie.Polzien@cfpb.gov](mailto:Darcie.Polzien@cfpb.gov)); Haque, Ali; Hasman, David  
**Subject:** Voice data [BRICKER-WS.FID1176385]

Jim – I am sending you two excel spreadsheets, which outline the call specifics.

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Finally, despite the contentious nature of these types of issues, I do very much appreciate the CFPB's continued patience and willingness to work with us on these topics.

David



**Bricker & Eckler**  
ATTORNEYS AT LAW

**David K. Stein**

Of Counsel

**Bricker & Eckler LLP | 100 South Third Street | Columbus, OH 43215**

**Direct Dial 614.227.7740 | [dstein@bricker.com](mailto:dstein@bricker.com) | v-card | [www.bricker.com](http://www.bricker.com)**

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**From:** Stein, David <DStein@bricker.com>  
**Sent:** Friday, May 26, 2017 5:35 PM  
**To:** 'Lee, Nicholas (CFPB)'; Meade, James (CFPB); Mason, Zach (CFPB); Jung, Je Yon (CFPB)  
**Cc:** Amy Sabbota Gottlieb (AGottlieb@dickinson-wright.com); Campbell, Drew  
**Subject:** RE: Phone call [BRICKER-WS.FID1176385]

Nick – I was able to locate your number, and *did* leave you a voice mail. Do you have access to the message?

Given the holiday weekend, and the fact that I will be out of the office two additional days next week for the Jewish Holiday of Shavuot, I request that the CFPB allow for an additional two weeks to respond to your motion.

In the meantime, I would like to determine whether you feel there are any issues outstanding, other than the voice recordings. If so, then we desire to get them resolved immediately. And, we would like to resolve the matter of the voice recordings without the need for court involvement or further delay. There is no reason to defer this until the mid-July hearing. We remain willing to engage in good faith dialogue. If your message below is indicative of a proposal, related to search terms, then let's discuss how this will be accomplished. I am sure you would agree that these matters are better discussed and worked through verbally, and not through emails.

I will be available to discuss this case with you at 9:00 am. I will send you an appointment and call-in number.

Thanks,

David

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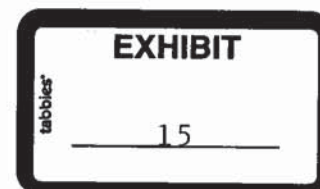
**From:** Lee, Nicholas (CFPB) [mailto:Nicholas.Lee@cfpb.gov]  
**Sent:** Friday, May 26, 2017 5:23 PM  
**To:** Stein, David; Meade, James (CFPB); Mason, Zach (CFPB); jessica.powell@cincinnati-oh.gov; Jung, Je Yon (CFPB)  
**Cc:** Amy Sabbota Gottlieb (AGottlieb@dickinson-wright.com); Campbell, Drew  
**Subject:** RE: Phone call [BRICKER-WS.FID1176385]

David:

The Bureau and the National Asset Companies have had multiple calls and exchanged multiple emails on the topic of NAA's and NAM's obligations to produce audio files. Throughout this process, the Bureau has made clear our expectation that the National Asset Companies must comply fully with the CIDs, as ordered by the Court. And throughout the process, the National Asset Companies have asserted frivolous claims of burden, among other things. The Bureau has offered to receive all audio files, thereby eliminating any alleged burden. But the National Asset Companies have chosen not to accept this offer.

Regarding your most recent request that the Bureau advise you of whether it will be providing the National Asset Companies with search terms, my May 18 email to you states, in part:

[S]hould the use of search terms be warranted—we do not believe that it is necessary since NAA and NAM can simply provide the Bureau with all files—NAA and NAM are required to produce all responsive information, and as the entities most familiar with the companies' terminology, they are best suited to proposing search terms that identify all responsive material.





The Bureau's motion for contempt is necessary, in part, because the National Asset Companies have not taken all reasonable steps to comply with the CIDs. We doubt that further discussion on the topic of audio files would be productive.

Regarding the voicemails that you state you left with the Bureau's attorneys, I received an email from you requesting my phone number just 17 minutes prior to receiving your email below. It would appear that you did not have my phone number and could not have left me a voicemail. In any event, my office line is 202.305.7059. I am currently out of the office given the Memorial Day weekend. If you would like to speak with the Bureau regarding audio files on Tuesday, please send us your availability.

Regards,  
Nick

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**From:** Stein, David [<mailto:DStein@bricker.com>]  
**Sent:** Friday, May 26, 2017 4:12 PM  
**To:** Meade, James (CFPB); Mason, Zach (CFPB); Lee, Nicholas (CFPB); [jessica.powell@cincinnati-oh.gov](mailto:jessica.powell@cincinnati-oh.gov)  
**Cc:** Amy Sabbota Gottlieb ([AGottlieb@dickinson-wright.com](mailto:AGottlieb@dickinson-wright.com)); Campbell, Drew  
**Subject:** Phone call [BRICKER-WS.FID1176385]

Good afternoon – I am following up on telephone voice mails that I have left for each of you this afternoon. I am following up on my correspondence from earlier in the week. We would like to continue our discussions related to voice recordings at issue in this matter. Due to the pending motion, time is of the essence.

Although we have proposed less burdensome means to achieve compliance with the CID, the Bureau has yet to respond to the ideas that have been proposed, nor has it rejected any of these proposals. We are ready, willing and able to further discuss and confer on the matter, and would like to do so as soon as possible.

Would you please return my call as soon as possible? I can be reached at 614-227-7740. My cell is 614-270-6217. Feel free to call me in the evening or over the weekend.



**David K. Stein**  
Bricker & Eckler LLP | 100 South Third Street | Columbus, OH 43215  
Direct Dial 614.227.7740 | [dstein@bricker.com](mailto:dstein@bricker.com) | v-card | [www.bricker.com](http://www.bricker.com)

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**From:** Meade, James (CFPB) <James.Meade@cfpb.gov>  
**Sent:** Wednesday, April 26, 2017 7:36 PM  
**To:** Stein, David  
**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB)  
**Subject:** RE: Additional Document [BRICKER-WS.FID1176385]

Thanks David,

This is somewhat helpful, but does not respond adequately to the CID and doesn't tell us anything about the specific documents that have been produced. For each exemplar you have provided (loan package, closing package, etc., for multiple states) you need to identify the exemplar by Bates numbers and state the time period it was in use. This would probably be most useful if done state by state. Based on what Harbour has told us, we believe at least two versions of the loan and application packages were used (you may recall that Harbour told the district court they stopped using promissory notes at some point). If no existing document summarizes that information NAA/NAM will have to do the necessary research and create one.

Please let me know if you have any questions.

Regards,

Jim

---

**From:** Stein, David [<mailto:DStein@bricker.com>]  
**Sent:** Wednesday, April 26, 2017 2:32 PM  
**To:** Meade, James (CFPB)  
**Cc:** Jung, Je Yon (CFPB); Lee, Nicholas (CFPB); Mason, Zach (CFPB); Polzien, Darcie (CFPB)  
**Subject:** Additional Document [BRICKER-WS.FID1176385]

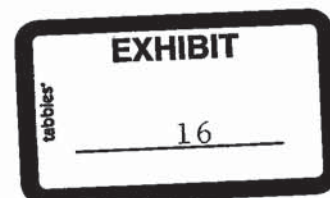
Jim – I am attaching a document which outlines when various agreements were updated/drafted. We will also produce this through normal channels, with meta data, etc... However, given your statement during our call, I assume you would like to have this quickly for your own work purposes. This version has removed some footer info that was put on by my firm and/or by internal counsel. The version to come to you through normal production will have all data available.

With respect to the substance of this information, here is what I can share at this time:

- This was originally prepared in January 2016 and then updated mid-2016.
- To my knowledge it is the only document that might outline when agreements were updated/changed (although we will continue to search.)
- NAA/NAM has no other records outlining the change process and key dates.

Please let me know if you have any questions or concerns.

Thanks.





**David K. Stein**

Of Counsel

**Bricker & Eckler LLP** | 100 South Third Street | Columbus, OH 43215

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**From:** Lee, Nicholas (CFPB) <Nicholas.Lee@cfpb.gov>  
**Sent:** Friday, June 09, 2017 6:11 PM  
**To:** Stein, David  
**Cc:** Meade, James (CFPB); Mason, Zach (CFPB); Jung, Je Yon (CFPB)  
**Subject:** RE: Data Request - two issues [BRICKER-WS.FID1176385]

David:

As we've discussed and as the CID states, when data is available from some records and not others, leave the unavailable data items blank. Additionally, you should describe the omissions due to unavailability in a narrative that accompanies the production.

The relevant language of the CID that describes your obligation is below:

Provide the following data for all Harbour Portfolio Advisors, LLC, properties, purchasers, and applicants for the period from January 1, 2010 to August 31, 2016. The data should be provided in tab delimited text files, using double-quote escaped text fields when necessary. Where data derives from separate tables or dimensions, use a separate text file for data elements along each separate dimension. Include both unique identifiers and foreign keys in each file expressing the relationship between these files. When data is available for some records and not others, leave the unavailable data items blank (omissions due to unavailability should be described in narrative with the production). Individual records should never be of varying lengths.

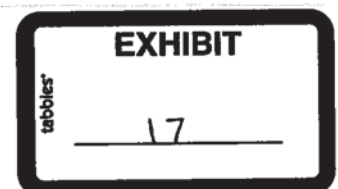
Some data items will require more than one data field. For example, if Harbour uses multiple internal scores as part of its underwriting process, include the number of fields for the maximum number of scores Harbour uses (e.g., 3) and leave one or more of them blank in cases when the application did not use all 3. Similarly, if there is a co-applicant, separate information should be provided for the applicant and each co-applicant. In general, please produce additional data fields if doing so would provide clarity.

Regarding the form of this new information, you may provide it separately, but otherwise consistent with the CIDs' requirements. Your email raises the question of whether the Mortgage Servicer platform had been previously searched and whether other responsive information that is outstanding is captured in it and should be included with the phone numbers. Please advise.

Regarding our discussion at 4:00 p.m. today regarding responsive information contained in Excel spreadsheets of "scorecards," NAA-NAM have an obligation to import the responsive information into their response to data request 2. As we jointly discussed with our respective information technology staff just now, it should not be difficult for NAA-NAM to identify the fields within the spreadsheets that contain responsive information, and write a coding-script that aggregates that data for importation into the companies' response to data request 2. Accordingly, the Bureau is not willing to accept electronic copies of the scorecards.

Regards,  
 Nick

**From:** Stein, David [mailto:DStein@bricker.com]  
**Sent:** Friday, June 09, 2017 3:34 PM  
**To:** Lee, Nicholas (CFPB); Meade, James (CFPB); Mason, Zach (CFPB); Jung, Je Yon (CFPB)  
**Subject:** Data Request - two issues [BRICKER-WS.FID1176385]



I am in receipt of my client's supplement for the data request. I would like to confirm how you would like to have empty cells handled. Should we leave them empty, with an explanation that the requested information is not available. Or, should each empty box have a N/A?

The list of telephone numbers for Data Request No. 2 is being obtained through a separate software platform (Mortgage Servicer platform.) I would like to confirm that providing a native report of name, address, property ID and phone number will be acceptable. I am attaching that report for your review. We will have this bate stamped and produced through formal channels as well.

Thanks.



**Bricker & Eckler**  
ATTORNEYS AT LAW

**David K. Stein**

**Bricker & Eckler LLP** | 100 South Third Street | Columbus, OH 43215

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Consumer Financial  
Protection Bureau

1700 G Street NW, Washington, DC 20552

**June 8, 2017**

**Via Email: [dstein@bricker.com](mailto:dstein@bricker.com)**

David K. Stein  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215

Re: Civil Investigative Demands served on National Asset Advisors LLC and National Asset Mortgage LLC dated September 8, 2016

Dear Mr. Stein:

This letter modifies the terms for compliance with the civil investigative demands (CID) issued to National Asset Advisors LLC (NAA) and National Asset Mortgage LLC (NAM) (collectively, the Companies) by the Consumer Financial Protection Bureau (Bureau), as permitted by 12 C.F.R. § 1080.6(d). This letter sets forth the full extent of any modifications to the CIDs the Bureau has approved. The Bureau's willingness to approve these modifications is based, in part, on the Companies' representations described or referred to below. The production of information and documents in accordance with the modifications described below constitutes compliance with the CID.

### **Modifications to Document Requests**

You have represented that because of the nature of NAA's and NAM's audio recording storage, it would be unduly burdensome for them to exclude all audio files unrelated to Harbour Portfolio Advisors, LLC. Accordingly, document request 7 in the CIDs issued to NAA and to NAM is modified to read as follows:

Provide copies of all audio recordings between your or Harbour's employees, agents, or independent contractors and purchasers or prospective purchasers, and copies of all other audio recordings in your possession related to the sale, servicing, or marketing of residential properties.

If the Companies withhold information responsive to the CIDs based on privilege, they must produce a privilege log in accordance with the procedures set forth in the Rules Relating to Investigations § 1080.8 (Withholding Requested Material). *See* 12 C.F.R. § 1080.8. If required, a privilege log is due by the final CID production date.

### **Nature of the Modifications**

To assist in construing any terms of this letter, the definitions set forth in the CID are incorporated by reference. This letter does not change the Companies'



responsibilities described in the Document Retention instruction in the CID. Further, nothing in this letter precludes the Bureau from issuing additional CIDs to or seeking discovery from the Companies.

If you have any questions regarding the terms outlined above, contact Enforcement Attorney James Meade at (415) 645-6616.

Sincerely,

Jeffrey Paul Ehrlich

Digitally signed by Jeffrey Paul  
Ehrlich  
Date: 2017.06.08 17:09:22 -04'00'

Jeffrey Paul Ehrlich  
Deputy Enforcement Director

*Revised [DATE]*

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

CONSUMER FINANCIAL  
PROTECTION BUREAU,

Petitioner,

v.

HARBOUR PORTFOLIO  
ADVISORS, LLC, ET AL.,

Respondents.

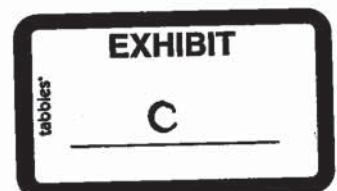
Case No. 12:16-CV-14183

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

**DECLARATION OF EDWARD HENDERSON**

I, Edward Henderson, declare as follows:

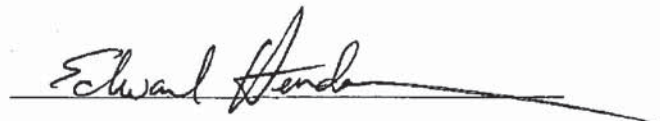
1. I am the IT Manager for National Asset Advisors, LLC ("NAA").
2. In my role, I prepared the audio call recordings and associated metadata for submission to the Bureau.
3. We possess over 1,000,000 recorded calls and preparing the calls and metadata for submission to the Bureau has been extremely time-consuming.
4. I have spent approximately 150 hours preparing the audio call recordings for submission.
5. On more than one occasion, I spent over 20 hours a day working on this submission to the Bureau.
6. I have needed to investigate and use programming language to interact with the database of metadata associated with the audio call recordings.



7. At first, I used PHP programming language to interact with the metadata database. This proved too slow.
8. I determined that I would need to use the Python programming language to create new code, which has proven to be more expedient.

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

Executed on June 12, 2017

A handwritten signature in black ink, appearing to read "Edward Henderson", is written over a horizontal line.

Edward Henderson





6. NAA has not refused to provide any information or documents responsive to the CID issued to NAA by the Bureau.

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

Executed on June 12, 2017

A handwritten signature in black ink, appearing to read "Chris Cobbs", is written over a horizontal line.

Chris Cobbs

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

CONSUMER FINANCIAL  
PROTECTION BUREAU,

Petitioner,

V.

HARBOUR PORTFOLIO  
ADVISORS, LLC, ET AL.,

Respondents.

Case No. 12:16-CV-14183

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

## DECLARATION OF MATT RICHARDS

I, Matt Richards, declare as follows:

1. I am Matt Richards, Chief Operating Office & Chief Compliance Officer of National Asset Mortgage (“NAM”).
2. I have personal knowledge of the facts contained herein or have been informed of the necessary facts contained herein.
3. This declaration is provided in support of Respondents’ Memorandum in Opposition to the Consumer Financial Protection Bureau’s (the “Bureau”) Motion for Contempt.
4. Despite its limited resources, NAM has fully cooperated and not withheld any non-privileged documents.





5. NAM has conducted a diligent search and provided all responsive information and then discussed with the Bureau any technical issues and ways to narrow the scope of the CIDs where appropriate.
6. NAM has not refused to provide any information or documents responsive to the CID issued to NAM by the Bureau.

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

Executed on June 12, 2017

A handwritten signature in black ink, appearing to read "Matt Richards", is written over a horizontal line.

Matt Richards