

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

DAVID MCCRAE AND BARBARA MCCRAE,]	
PLAINTIFFS, qui tam]	
CONSUMER FINANCIAL PROTECTION BUREAU]	
vs.]	
LENDER PHH MORTGAGE, LLC., and]	CIVIL ACTION NO.
SUBSTITUTE TRUSTEE BARRETT BURKE DAFFIN]	1:14-cv-00733-LY
FRAPPIER TURNER AND ENGEL, LLP,]	
and VARIOUS ACTORS AND EMPLOYEES]	
OF DEFENDANTS JOHN DOE 1-100]	

Motion for Discovery and Temporary Stay Order

Judge -

1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiffs intend to conduct discovery in this case under Level 3.
2. Records of further Defendants' actions and productions and including identification of other adverse parties are recorded in electronically stored information in the possession of Defendants.
3. Plaintiffs have concern over spoliation of such records and hereby move for production of such electronically stored information for discovery and preservation.

As a Plaintiff in the above-captioned matter, I respectfully ask the Court for Warrant for Seizure and Examination of Electronically Stored Information and Identification of John Doe.

Our trial exhibits P-1 through P-11 disclose to all the complete foreclosure records of the property of the Plaintiffs at 350 Cee Run, Burnet County, Bertram, Texas.

This knowledge forms the basis of our belief that PHH Mortgage Company, directly or through their agents, have unlawfully seized or attempted seizure of more than four properties in the 46 States (excluding Hawaii, Nebraska, Colorado, and Illinois), alleging mortgage default. They maintain in their business database the owners of the properties, the circumstances or irregularities of default and sale, the locations, the actors and affiants in the attempts, and the dispositions of the resulting lender owned real estate. Examination and analysis of this information will aid in the determination of the degree of scientia in the corporate actions, the corporate earnings or loss on each property, the motivations and roles, if any, of active or passive investors, and the benefits or disadvantages to the surrounding community in Texas or elsewhere.

Through examination of this readily available business data, members of Plaintiff class will be identified in Texas and 45 other states, and afforded opportunity to offer deposition and join this suit, or independently pursue their own remedy. We believe this population comprises approximately 60,000 members.

Through examination of this data Defendants John Doe 1-100 will also be identified in Texas and 45 other states, and be provided opportunity of deposition and defense.

In the case of the Plaintiffs, PHH Mortgage was enabled, aided, and abetted in Texas and California by an association, Barrett, Burke, Daffin, Frappier, Turner, and Engel, LLP, whose practice is focused primarily and almost exclusively on seizure and public sale of real estate property. This company's general operation is disclosed by their patented process, whose purpose is to mechanize success while minimizing necessary human oversight of process. Lacking the necessary human oversight, the process was of inestimable harm in the experience of the Plaintiffs. We would like all records of the operations in their business database, the clients, the owners of the properties, the circumstances or irregularities of default and sale, the locations, the actors, and the dispositions of the resulting lender owned real estate.

We would like all records entailing constructive receipt of funds for mortgage service for owned or managed portfolio, for past, ongoing, or future commitments, going back four years from date of this filing, 11 August 2014. Fraud committed prior to 11 August 2010 is protected by statute of limitations and irrelevant to our inquiry.

We would like a Temporary Stay Order, EFFECTIVE IMMEDIATELY, stopping all property seizure or sale, except that currently under direction of any US Bankruptcy Trustee, by either Defendant parties or their agents, in Texas or any other State, until this information is collected, authenticated and thoroughly examined.

Neither of these companies are judged too big to fail, which has up to this date been of some concern in adjudication or enforcement actions among their kind, and we anticipate no consequent disruption to the community of any serious concern. In fact, we anticipate benefits to all concerned while this situation is clarified, and defendants will be able to continue in business in their other endeavors with minimal disruption. The property in question will probably consist of less than ½% of business assets. Historically, these assets are under the best care and community benefit when proprietorship is left to the current owner, rather than a lender owned real estate caretaker firm with little pride or inclination to maintain property as occasionally required. Property will eventually be dispositioned by the jury in the course of their deliberations.

Due to the nature of the data and the nature of current electronic storage systems, Plaintiffs will employ specialized data professionals to independently collect and make forensic copies of disk drives and network images in Defendants various specific rackspace locations, on or off defendant premises, with minimal disruption to daily affairs. Extracted data and programs can then be parsed, examined, verified, and analyzed off site, more completely than in a complex operating business environment, enabling more correct and complete presentation to and understanding by the jury. Inadmissible data will be removed. Deponents of interest and admissibility will be easily identified and subpoenaed for testimony.

Date: 18 August 2014

Signature: /s/ David McCrae

Case Number: 1:14-cv-00733

[PROPOSED] ORDER GRANTING

Motion for Discovery and Temporary Stay Order

DATE:

TIME:

COURTROOM:

JUDGE: Lee Yeakel

The Court has considered the Motion for Discovery and Temporary Stay Order.

Finding that good cause exists, the Motion is GRANTED/DENIED.

MAKE IT SO.

DATED:

United States District/Magistrate Judge

SERVICE

I have served this Motion for Discovery and Temporary Stay Order

To

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Sworn to on 18 August 2014 by /s/David McCrae

Pro se