

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

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WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - COMPLIANCE PART

THIRD FEDERAL SAVINGS & LOAN ASSOCIATION
OF CLEVELAND,

Plaintiff,

DECISION & ORDER

-against-

Index No. 12599/11
Motion Date: Sept. 22, 2014

RICHARD J. MAKOUJY, JR., MICHAEL LABRIOLA
III A/K/A MICHAEL LABRIOLA, III, KATRINA
LABRIOLA, CITIMORTGAGE, INC., CITIBANK, N.A.,
"JOHN DOE # 1-5" and "JANE DOE # 1-5" said names any
and all being fictitious, it being the intention of Plaintiff to
designate any and all occupants, tenants, persons or
corporations, if any, having or claiming an interest in or lien
upon the premises being foreclosed herein,

Seq. No. 4

Defendants.

LEFKOWITZ, J.

The following papers numbered 1-19 were read on this motion by defendant CitiMortgage, Inc. (hereinafter "CitiMortgage") for an order (a) compelling plaintiff to comply with CitiMortgage's discovery demand; (b) directing that, in the event that plaintiff fails to comply with the outstanding discovery demands within 10 days, the complaint shall be stricken pursuant to CPLR 3126(3) upon CitiMortgage's emailing of a letter of noncompliance to the Compliance Part; (c) in the alternative, precluding plaintiff from producing evidence related to the subject matter of discovery not responded to and precluding plaintiff from supporting or defending claims and defenses relating to the discovery demanded but not produced pursuant to CPLR 3126(2); and (d) awarding CitiMortgage costs, disbursements, and attorney fees pursuant to CPLR 3126.

Order to Show Cause - Affirmation in Support - Exhibits A-I	1-11
Affirmation in Opposition - Exhibit A-E	12-17
Affidavits of Service	18-19

Upon the foregoing papers and the proceedings held on September 22, 2014, this motion is determined as follows:

Procedural and Factual Background

In this foreclosure action, plaintiff seeks to foreclose on property located in South Salem, New York, which was used as security for a home equity line of credit (hereinafter "the HELOC") obtained by defendant Richard J. Makoujy, Jr. (hereinafter "Makoujy") from plaintiff's predecessor, DeepGreen Bank¹ in 2000. In 2002, Makoujy sold the property to defendants Michael Labriolla (a/k/a Michael Labriola) and Katrina Labriola (hereinafter "the Labriola defendants"). The Labriola defendants obtained a mortgage from defendant CitiMortgage to purchase the subject property. At the time of the sale, it is alleged that the title company sent a check to plaintiff's predecessor, DeepGreen Bank, pursuant to a payoff letter from DeepGreen Bank to pay off the balance on the HELOC and obtain a satisfaction of mortgage. DeepGreen Bank accepted and deposited the check, but did not close the HELOC or issue a satisfaction of the mortgage. It is alleged that the HELOC was not closed since a balance of \$19.54 remained owing. Thereafter, in 2003, Makoujy withdrew funds from the HELOC in the amount of \$194,500.00. Makoujy alleges that he believed that the HELOC had been satisfied and that DeepGreen Bank was providing him funds on an unsecured basis. After Makoujy failed to make timely payments on the HELOC, plaintiff commenced the present foreclosure action.

After plaintiff produced Michael Morris, a Legal Analyst employed by plaintiff, for a deposition, CitiMortgage served plaintiff with a Notice to Produce dated June 24, 2014, which sought documents referenced by Mr. Morris during his deposition. CitiMortgage sought, inter alia, the following documents: (1) documents, including communications, policies, procedures and guidelines, relating to the transfer, retention and destruction of loan related files transferred from DeepGreen Bank to plaintiff (Demands no. 1-3); (2) documents relating to the denial of the Labriola defendants' Request for Admissions that plaintiff was aware that the \$185,926.20 check was tendered in connection with the sale of the subject property (Demand no. 4); (3) documents supporting interrogatory response that payoff was not properly submitted as required by loan documents to cause the account to be closed and that specific documents are required to be signed by the borrowers to request closure and satisfaction of a secured line of credit (Demand no. 6-7); (4) documents supporting interrogatory response that plaintiff has not closed or frozen a home equity line of credit based on a nonstandard form or under other circumstances (Demand no. 8); (5) listing of all current employees formerly employed by DeepGreen Bank (Demand no. 9); (6) "Smart Report" records or files for the Makoujy loan and "SOS Reports" or "SOS Bulletins" referencing DeepGreen Bank as testified to by Michael Morris (Demand no. 11-12); and (7) emails referencing DeepGreen Bank and HELOCs received by certain named employees of plaintiff (Demand no. 15).

Plaintiff served a response to the demand dated July 8, 2014. Therein, plaintiff objected to all of the demands on the grounds that the demands were vague, overly broad, unduly burdensome, not reasonably calculated to lead to discovery of admissible evidence or sought

¹ DeepGreen Bank merged with and into Third Federal Savings and Loan Association of Cleveland.

privileged information. In response to Demand no. 2, which sought all documents, including communications, written policies, procedures and guidelines relating to the retention of the subject HELOC originally owned or held by DeepGreen Bank, plaintiff served an Affidavit of Diligent Inquiry sworn to by Mr. Morris on March 11, 2014, three months prior to the service of CitiMortgage's Notice to Produce. The Affidavit of Diligent Inquiry avers that after a diligent search, plaintiff was unable to locate documents demanded by the Labriola defendants, including records relating to plaintiff's servicing of the HELOC, and all internal handbooks, memorandum, manuals regarding the procedures of issuing a payoff statement or home equity line of credit/home equity loans as it relates to DeepGreen Bank. The only documents produced by plaintiff in response to CitiMortgage's Notice to Produce were the HELOC Agreement/Note and the Mortgage.

By letter dated July 10, 2014, counsel for CitiMortgage objected to plaintiff's response as inadequate and objected to plaintiff's failure to object to the demands with specificity. CitiMortgage's counsel also objected to the Affidavit of Diligent Inquiry as it was sworn to five weeks prior to the service of CitiMortgage's Notice to Produce. Counsel also noted that Mr. Morris had testified that there had to be mountains of communications between people regarding how to effectuate the transfer of assets and the servicing of loans, and had brought with him a "Smart Report" or "Smart Collector" regarding the present action, but counsel prevented him from producing it. Finally, counsel for CitiMortgage noted that Mr. Morris had testified that email communications would be stored on plaintiff's server and likely pertain to the litigation.

On July 10, 2014, the parties appeared for a compliance conference. According to CitiMortgage's counsel, the Court Attorney-Referee determined that plaintiff's response was inadequate and directed plaintiff to serve a proper response by July 24, 2014. No formal order, however, was issued.

Plaintiff failed to serve a further response by July 24, 2014. In response to an e-mail from CitiMortgage's counsel, plaintiff's counsel responded that no additional documents would be produced at that time.

On July 29, 2014, the parties again appeared for a conference. Due to an impasse with respect to plaintiff's further response to CitiMortgage's Notice to Produce, a briefing schedule for the present motion was issued.

Parties' Contentions

Defendant CitiMortgage now seeks an order compelling plaintiff to comply with CitiMortgage's Notice to Produce or precluding plaintiff as to the demanded discovery which was not produced. CitiMortgage relies on the deposition testimony of Mr. Morris, who was produced for a deposition on behalf of plaintiff. Although Mr. Morris testified that he had no knowledge of DeepGreen Bank, merger practices or loan origination at plaintiff, he testified that there had to be "mountains of communication" regarding the transfer of the assets of DeepGreen

Bank and the servicing of the transferred loans. Mr. Morris also testified that emails pertaining to the present litigation may be stored on plaintiff's electronic servers. Mr. Morris further testified that he had brought with him to the deposition a "Smart Report" or "Smart Collector" business record, which memorialized all incoming and outgoing correspondence for delinquent loans, but plaintiff's counsel prevented him from producing it at the deposition on the grounds of attorney-client privilege. CitiMortgage contends that plaintiff has failed to sincerely engage in discovery or state its objections to the discovery demands with particularity. CitiMortgage further contends that plaintiff's failure to produce the discovery will materially prejudice its preparation for trial.

Plaintiff opposes the motion. Plaintiff contends that the subject HELOC was of record at the time the Labriola defendants took title to the subject premises via deed dated May 14, 2002, and that the Labriola defendants did not close on the purchase of the subject property until July 19, 2002. Plaintiff relies upon the Labriola defendants' mortgage dated July 18, 2002 and recorded on September 20, 2002. Plaintiff further contends that it has produced all documents in its possession regarding the subject HELOC, and has answered the over-reaching, ambiguous and unduly document demands of CitiMortgage and the Labriola defendants. Plaintiff further notes that it has produced a witness for a deposition, namely Mr. Morris, and is unable to produce Marlo Blackman, who was sought by defendants after Mr. Morris' deposition, since she is no longer employed by plaintiff.

With respect to the "Smart Collector" notes, plaintiff's counsel asserts that he has reviewed them and they are subject to attorney/client privilege since they consist of requests for legal fees, procedural updates from counsel as to the status of the litigation, discussions as to witness availability, the time for furnishing documents and discussion of counsel's legal advice and strategy.

As to the Affidavit of Diligent Inquiry, plaintiff's counsel contends that although it was executed on March 11, 2014 by Mr. Morris, Mr. Morris testified at his deposition that he went into the file room, examined the file contents and ascertained that the documents demanded were not in the file. Plaintiff further contends that there is no evidence that documents, other than the loan documents, which were produced, are in plaintiff's possession.

With respect to emails between Mr. Morris and Ms. Blackman regarding the merger of plaintiff and DeepGreen Bank, plaintiff contends that CitiMortgage failed to make any assertions as to why the emails are relevant to the present action. Plaintiff notes that CitiMortgage has not challenged the merger as a defense to the action. Accordingly, plaintiff contends that the demanded emails are not material to the action. Finally, plaintiff contends that the demands are either fatally vague or irrelevant and, therefore, are palpably improper.

Plaintiff annexed, inter alia, the following as exhibits to its opposition papers: (1) Transcript of the deposition of Michael Morris; (2) Payoff letter dated May 31, 2002 and addressed to Makoujy, which stated that the payoff amount owed on the HELOC through June

13, 2002 was \$185,769.85, with a per diem rate thereafter of \$19.53; and (3) an Settlement Statement which is illegible.

At oral argument, counsel for CitiMortgage and the Labriola defendants asserted that they had only received the note, mortgage and payment history as to the subject HELOC from plaintiff. These defendants further argued that they are entitled to discovery on the issue of the subject HELOC in light of the denial of summary judgment motions based upon a finding of issues of fact by the court, including whether the HELOC was open at the time Makoujy made withdrawals after he sold the subject property to the Labriola defendants. The defendants further contend that plaintiff has not demonstrated that they do not have the demanded documents insofar as Mr. Morris, who was produced for a deposition on behalf of plaintiff, only testified that he "pulled the file" and testified that there were probably other documents. Additionally, defendants argue that Mr. Morris failed to speak to any employees of plaintiff, who were former employees of DeepGreen Bank, prior to his deposition. Defendants also note that Marlo Blackman, who Mr. Morris testified worked in his department and formerly worked for DeepGreen Bank, is now no longer employed by plaintiff. As to emails between Mr. Morris and Ms. Blackman, defendants contend that they are entitled to emails regarding the policy as to closing HELOCs.

In response, at oral argument, plaintiff's counsel again asserted that plaintiff did not receive written instructions to close the subject HELOC and had only received a letter transmitting the check issued when Makoujy sold the subject premises to the Labriola defendants. Plaintiff's counsel further contends that all the boxes received by plaintiff from DeepGreen Bank at the time of the merger were searched by Mr. Morris in connection with the demand for documents in this action and none of the demanded documents were found other than the note and mortgage, which were produced.

Analysis

CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403, 406 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, "a party does not have the right to uncontrolled and unfettered disclosure" (*Foster*, 74 AD3d at 1140; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). The party seeking disclosure has the burden to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims (*Foster*, 74 AD3d at 1140). The court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the

issues in the matter (*Mironer v City of New York*, 79 AD3d 1106, 1108 [2d Dept 2010]; *Auerbach v Klein*, 30 AD3d 451, 452 [2d Dept 2006]).

This court agrees with defendant CitiMortgage that plaintiff's response to its Notice to Produce was inadequate. Plaintiff's general objections to each document demand as vague, overly broad, unduly burdensome, not reasonably calculated to lead to discovery of admissible evidence or seeking privileged information were improper. Plaintiff is required to set forth any objections with specificity and, if claiming privilege, is required to serve a privilege log. Moreover, with respect to demanded documents which plaintiff claims is not in its possession, the Affidavit of Diligent Inquiry sworn to by Michael Morris, a Legal Analyst for plaintiff, was insufficient since it (1) pre-dates CitiMortgage's document demand since it was a response to the Labriola defendants' earlier document demand, which is not annexed to the motion; (2) failed to specifically set forth the details of the search undertaken for the demanded documents; and (3) failed to state that a search for the documents demanded by CitiMortgage was conducted.

With respect to the specific responses to CitiMortgage's Notice to Produce the court finds as follows with respect to the specific document demands:

(1) Demands no. 1 through 3, which seek documents, including communications, written policies, procedures and guidelines regarding the transfer, retention by plaintiff and destruction by plaintiff of loan related files transferred from DeepGreen Bank to plaintiff, seek relevant evidence to the claims in this action insofar as plaintiff has asserted that it does not possess documents relating to the Makoujy HELOC other than the note and mortgage. In light of plaintiff's contention that it has no other documents referencing the Makoujy HELOC, defendant CitiMortgage is entitled to documents regarding the policies, procedures and guidelines as set forth in written documents and communications with respect to the transfer of loan documents from DeepGreen Bank to plaintiff, as well as plaintiff's retention and destruction of loan documents transferred to it by DeepGreen Bank. Accordingly, plaintiff shall conduct a search for the foregoing documents and produce them in response to demands 1 through 3. If after a search of its records, plaintiff cannot locate the demanded documents, plaintiff shall serve an affidavit of the individual who conducted the search setting forth the details of the search undertaken, the identity of any third-party who may possess the demanded documents, and averring that the demanded documents are not in plaintiff's possession. To the extent that plaintiff claims that certain documents responsive to the demands are privileged, plaintiff shall serve a privilege log and submit the documents to the court for an in camera inspection with a copy of the privilege log.

(2) Plaintiff improperly objected to response to demand no. 4, which seeks documents supporting plaintiff's response to the Labriola defendant's Request for Admissions no. 8, wherein plaintiff denied it or its predecessors or acquisitions were aware that the \$185,926.20 check attached to the Request for Admissions was tendered in connection with the sale of the subject property. Plaintiff responded that the demand was not reasonably calculated to lead to the discovery of admissible evidence. If in its possession, documents supporting plaintiff's denial that it or DeepGreen Bank were aware that the check was tendered in connection with the sale of the

subject property would be clearly relevant since the acceptance of the check and DeepGreen's understanding as to the purpose of the check are issues at the heart of this action. Plaintiff, therefore, shall conduct a search for the demanded documents and provide a further response. To the extent that a search is undertaken by plaintiff and no such documents are in its possession, then plaintiff shall serve an affidavit of the person who conducted the search to that effect that the documents are not in plaintiff's possession and set forth the details of the search undertaken.

(3) Demand 5 seeks documents supporting plaintiff's denial to the Labriola's Request for Admissions no. 12 that DeepGreen or its representative received a letter from First American which was attached to the Request for Admissions. Plaintiff again improperly objected to the demand on the ground that it was not reasonably calculated to lead to the discovery of admissible evidence. The letter, which defendants contend accompanied the submission of the check to DeepGreen Bank to payoff defendant Makoujy's HELOC, was shown to Mr. Morris at his deposition and read into the record by Mr. Morris (Defendant Citimortgage's Ex. D, Transcript of Morris Deposition at 138-139). According to the deposition testimony, Mr. Morris had not seen the letter which was dated July 14, 2002, addressed to DeepGreen Bank, contained the loan number for the Makoujy HELOC, referenced the address for the subject property and stated that the enclosed check in the amount of \$185,926.10 was being submitted "in full payment of the mortgage held by you ... in accordance with the information provided by you" and requested the mailing of a satisfaction (*Id.* at 139-141). In view of the contents of the letter, the issue of whether it was received by DeepGreen Bank is clearly relevant to the issues in this action, contrary to plaintiff's response. Plaintiff, therefore, shall conduct a search for the demanded documents and provide a further response to demand no. 5. To the extent that a search is undertaken by plaintiff and no such documents are in its possession, then plaintiff shall serve an affidavit of the person who conducted the search to that effect that the documents are not in plaintiff's possession and set forth the details of the search undertaken.

(4) With respect to demand no. 6, which seeks documents supporting plaintiff's response to Interrogatory no. 30 that the claim payoff was not properly submitted as required by loan documents to cause the account to be closed, plaintiff responded that the demand was vague and overbroad, but did produce the HELOC note and mortgage. Insofar as Mr. Morris testified on behalf of plaintiff that he did not see any requirements regarding the submission of a payoff or the closing of the HELOC in the note and mortgage (*Id.* at 110) and plaintiff failed to annex legible copies of the note and mortgage, plaintiff has failed to demonstrate that the production of the note and mortgage was a proper response to demand no. 6. Accordingly, plaintiff shall conduct a search for responsive documents and provide any documents referring to the Makoujy HELOC and the improper submission of the payoff. To the extent that a search is undertaken by plaintiff and no such documents are in its possession, then plaintiff shall serve an affidavit of the person who conducted the search to that effect that the documents are not in plaintiff's possession, setting forth the details of the search undertaken and whether the documents are in the possession of a third-party.

(5) Demand no. 7 seeks specific forms used by DeepGreen Bank to request closure and satisfaction of a line of credit, including any form or document requiring use of a specific form

by Makoujy, as well as all policies, procedures and guidelines in place in July 2002 governing DeepGreen's conduct if a payoff received without the proper form. Plaintiff's response that the demand was vague, overbroad and not likely to lead to the discovery of admissible evidence was improper since defendants allege that the HELOC should have been closed upon receipt of the payoff check. DeepGreen's requirements regarding forms to request closure and satisfaction of a line of credit, as well as DeepGreen's policies, procedures and guidelines as to payoffs submitted without the proper form, therefore, are relevant to the claims in this action. Plaintiff shall provide a further response to demand no. 7 after conducting a search for the demanded documents, including documents setting forth the requirements of DeepGreen Bank with respect to the submission of a payoff and the closing of a HELOC and the policy, procedures and guidelines regarding the submission of a payoff without a proper form. To the extent that a search is undertaken by plaintiff and no such documents are in its possession, then plaintiff shall serve an affidavit of the person who conducted the search to that effect that the documents are not in plaintiff's possession, setting forth the details of the search undertaken and whether the documents are in the possession of a third-party.

(6) Demand no. 8 seeks documents supporting plaintiff's response to Interrogatory no. 57 that it or DeepGreen Bank never froze or closed a HELOC based on a nonstandard form or other circumstances, including policies and procedures so stating. Insofar as it is the claim of plaintiff that the payoff of the Makoujy HELOC was not submitted with the proper form, the policies and procedures of DeepGreen Bank regarding the freezing or closing of a HELOC based upon a nonstandard form or under other circumstances is relevant to the issues in the action. Accordingly, plaintiff's objection to the demand as vague, overbroad and not likely to lead to the discovery of admissible evidence was improper. The demand, however, is overbroad since plaintiff's policies and procedures regarding the freezing or closing of a HELOC are not relevant since the payoff check was sent to DeepGreen who held the note and mortgage at that time. The demand is proper to the extent it seeks the policies and procedures of DeepGreen Bank regarding the freezing or closing of HELOCs based on a nonstandard form or other circumstances. Plaintiff shall provide a further response to demand no. 8 after it conducts a search for documents with respect to the foregoing policies and procedures of DeepGreen Bank. To the extent that a search is undertaken by plaintiff and no such documents are in its possession, then plaintiff shall serve an affidavit of the person who conducted the search to that effect that the documents are not in plaintiff's possession, setting forth the details of the search undertaken and whether the documents are in the possession of a third-party.

(7) Demand no. 9, which seeks a list of employees of plaintiff who were previously employed by DeepGreen Bank, including their job title and responsibilities is proper. To the extent that plaintiff has claimed that it does not have in its possession the relevant written policies and procedures of DeepGreen Bank, the identification of plaintiff's employees who were previously employed by DeepGreen Bank and, therefore, may have knowledge of DeepGreen Bank's policies is relevant. Plaintiff shall produce a further response to demand no. 9 identifying any of its employees who were previously employed by DeepGreen Bank and include their job title and responsibilities. To the extent that none of plaintiff's employees were previously employed by DeepGreen Bank, plaintiff shall provide an affidavit of the person who reviewed plaintiff's

personnel files and made such determination setting forth the search undertaken to determine whether any of plaintiff's employees were previously employees of DeepGreen Bank.

(8) Demand no. 10, which seeks resumes and applications for all of plaintiff's employees, is overbroad and plaintiff is not required to provide a further response to the demand. Notably, plaintiff's inquiry to provide a further response to demand no. 9 should include a review of the resumes and applications of plaintiff's employees.

(9) Demand no. 11 seeks "Smart Report" records or notes for the Makoujy HELOC about which Mr. Morris testified. Plaintiff's response that the demand was vague, overbroad and not likely to lead to the discovery of admissible evidence was improper. Additionally, the objection of plaintiff's counsel at Mr. Morris' deposition and in support of the present motion that the records contain privileged information is also insufficient. The court, not counsel, is charged with determining whether demanded documents are subject to a privilege and exempt from disclosure. Accordingly, plaintiff shall provide a further response to demand no. 11. To the extent that plaintiff claims that any of the "Smart Report" records or notes referencing the Makoujy HELOC are privileged from disclosure, plaintiff shall serve a privilege log and submit the "Smart Report" records and notes with a copy of the privilege log to the court for in camera review.

(10) Demand no. 12 seeks "SOS Reports" or "SOS Bulletins" as testified to by Mr. Morris referencing Deep Green from January 1, 2002 to the present. Plaintiff properly objected to the demand as overbroad since it is not limited to the Makoujy HELOC. Plaintiff, therefore, shall provide a further response to demand no. 12 only with respect to any "SOS Reports" or "SOS Bulletins" referencing the Makoujy HELOC. To the extent that plaintiff claims that any of the "SOS Reports" or "SOS Bulletins" referencing the Makoujy HELOC are privileged from disclosure, plaintiff shall serve a privilege log and submit the "SOS Reports" or "SOS Bulletins" with a copy of the privilege log to the court for in camera review.

(11) Plaintiff correctly objected to demand no. 13 as overbroad and burdensome. Demand no. 13 seeks emails regarding the DeepGreen merger sent or received by four named employees of plaintiff, including Mr. Morris and Marlo Blackman, who Mr. Morris testified had previously been employed by DeepGreen Bank. Plaintiff correctly contends that defendant CitiMortgage has failed to demonstrate the relevance of the merger to the claims in the present action. The motion is, therefore, denied with respect to demand no. 13 and plaintiff does not have to provide a further response as to the demand.

(12) Demand no. 14 seeks emails containing any reference to DeepGreen Bank and the Makoujy loan (HELOC) sent or received by four named employees of plaintiff. To the extent that the demand seeks emails referencing both DeepGreen Bank and the Makoujy HELOC or the Makoujy HELOC, the demand seeks discovery which may lead to relevant evidence. To the extent the demand seeks emails containing references only to DeepGreen Bank, the demand is limited to emails referencing the transfer and retention of loan documents from DeepGreen Bank and DeepGreen Banks policies and procedures regarding the closing of HELOCs and the

retention of loan documents. Notably, the demand is not overbroad to the extent that it is limited to the emails of plaintiff's employees who Mr. Morris testified may have knowledge regarding the Makoujy loan and the transfer of loans from DeepGreen Bank. Plaintiff, therefore, shall conduct a search of its electronic server for emails containing references to the foregoing.

(13) Demand no. 15, however, is improper as overbroad and the motion is denied with respect to demand no. 15. Demand no. 15 seeks emails referencing DeepGreen Bank and HELOCs or credit line mortgages received by the same four named employees as the prior demands. The demand, however, is not limited to the Makoujy HELOC and is, therefore, overbroad.

In view of the foregoing, it is

ORDERED that the motion is granted to the extent that plaintiff shall provide further responses to demands no. 1-9, 11-12 and 14 of defendant CitiMortgage's Notice to Produce as set forth herein on or before January 15, 2015; and it is further

ORDERED to the extent that plaintiff's further responses include an objection that the demanded documents are privileged, plaintiff shall serve a privilege log and submit the demanded documents claimed to be privileged, with a copy of the privilege log, to the court for in camera review on or before January 15, 2015; and it is further

ORDERED that the motion is denied with respect to demands no. 10, 13 and 15 of defendant CitiMortgage's Notice to Produce and plaintiff is not required to serve a further response as to those demands; and it is further

ORDERED that the branch of the motion seeking costs, disbursements and attorney's fees is granted to the extent that plaintiff shall pay movant motion costs in the sum of \$250.00 on or before January 15, 2015; and it is further

ORDERED that the remaining branches of the motion are denied; and it is further

ORDERED that all parties are directed to appear for a conference in the Compliance Part, Courtroom 800, on January 23, 2015 at 9:30 a.m.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York
December 8, 2014


HON. JOAN B. LEFKOWITZ, J.S.C.

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