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10 **IN THE UNITED STATES DISTRICT COURT**
 11 **IN AND FOR THE STATE OF ARIZONA**

12 Cathleen Channel,)
 13 Theresa Wharry,)
 14 Stacie Hanson,)
 15 Monique Nichols,)
 16 Plaintiffs,)
 17 vs.)
 18 Home Mortgage, Inc., an)
 19 Arizona corporation conducting)
 20 business in Arizona,)
 21 Carl Brown;)
 22 Molly Brown;)
 23 Greg Brown;)
 24 Jane Doe Brown;)
 25 Defendants.)

Case No. CIV 2003-0100 PHX ROS

PLAINTIFFS' REPLY BRIEF RE:
(1) ORDER COMPELLING DISCOVERY;
(2) DISCOVERY-RELATED SANCTIONS;
AND (3) PERMISSION TO SUBMIT
SUPPLEMENTAL BRIEF RE PENDING
MOTIONS FOR SUMMARY JUDGMENT

26 Plaintiffs, by and through counsel undersigned, hereby reply to the response brief
 27 filed by Defendants regarding (1) Plaintiffs' request for an order compelling discovery,
 28 (2) Plaintiffs' request for discovery sanctions and (3) Plaintiffs' request for permission to
 submit a supplemental brief regarding Plaintiffs' pending motion for summary judgment.

It is somewhat difficult to reply to Defendants' response brief as Defendants' counsel
 makes a variety of strange, ridiculous assertions as he has in recent correspondence.
 Plaintiffs will try to reply to the points raised in Defendants' brief in the order they are
 presented.

1 already agreed to make Mr. Brown available for this deposition. The entire discussion
2 spanned approximately two minutes and, at no time, did undersigned counsel “physically
3 or verbally threaten” Mr. McGee or the other members of his party. Mr. McGee’s
4 allegations in this regard amount to lunacy.

5 **DISCOVERY ISSUE**

6 At the risk of redundancy, as clearly explained in Plaintiffs’ initial brief in regards
7 to these three matters, the bank records at issue were not provided prior to Mr. Brown’s first
8 and only substantive deposition in this case. When that miscommunication was realized,
9 Mr. Karow, Mr. Brown’s then attorney, agreed to make him available for follow-up
10 questioning in regards to these particular records. Mr. Karow’s agreement in that regard is
11 clearly reflected in two documents he filed with the Court, both of which were attached to
12 Plaintiffs’ initial brief regarding these matters – the parties’ joint report and a subsequent
13 motion to continue discovery filed by Mr. Brown.

14 Mr. Brown has apparently contended that he is able to testify that these bank records
15 establish that, despite the fact \$700,000 of HMI money was placed in his personal account,
16 that money all went to pay creditors. This purported knowledge flies completely in the face
17 with Mr. Brown’s previous testimony to the effect that (1) he had no knowledge of the
18 business of HMI, (2) had absolutely no involvement in its day-to-day operations and (3) had
19 never even reviewed a bank statement. The bottom line is that Plaintiffs are seeking
20 discoverable information and that Mr. Brown’s former attorney, in acknowledgment that the
21 bank records were not produced prior to Mr. Brown’s deposition, agreed to make him
22 available for questioning concerning these records. Plaintiffs are simply holding Mr. Brown
23 to his previous commitment.

24 **MOTION FOR SANCTIONS**

25 It is difficult to address and reply to the crazy allegations in Defendants’ response
26 brief beneath the heading “Motion for Sanctions for Abuse of Discovery.” First, there is no
27 question whatsoever that the parties are currently engaged in a discovery dispute. It is
28 simply incontrovertible that, in regards to this dispute, the following has occurred:

1 1. After the parties' second settlement conference failed, Plaintiffs' counsel
2 requested of Defendants' counsel that he make Mr. Brown available for follow-up
3 questioning in regards to the bank records issue, completely consistent with Mr. Brown's
4 commitment to do so. Mr. Brown's counsel refused.

5 2. Promptly thereafter, undersigned counsel left a telephonic message for Mr.
6 McGee, Mr. Brown's new counsel, to facilitate a joint call to the Court in regards to this
7 discovery matter. Undersigned counsel never heard back from Mr. McGee.

8 3. On May 7, 2007, undersigned counsel mailed and faxed to Mr. McGee a letter,
9 which was attached as Exhibit C to Plaintiffs' May 11th brief. In that letter, undersigned
10 counsel requested that Mr. McGee contact him to arrange for a joint call to the Court. In
11 that letter, undersigned counsel emphasized that he desired to fully adhere to the Court's
12 Order in regards to discovery disputes. Mr. McGee never communicated with undersigned
13 counsel for the purpose of placing such a joint call to the Court, either in response to his
14 initial telephone message or May 7th letter.

15 4. On May 10, 2007, Mr. McGee sent to undersigned counsel a six page letter
16 ranting and raving about various issues. A copy of this letter is attached as Exhibit "A" to
17 this brief. The letter was full of insane allegations and accusations which were all untrue
18 and most of which were objectively disprovable by documents which had already been filed
19 in this case. Perhaps the only thing which is clear in Mr. McGee's letter is the statement on
20 page 3 where Mr. McGee states "**Mr. Brown will not be available for a deposition under**
21 **your terms, under any circumstance, absent a court order.**"

22 5. On May 14, 2007, undersigned counsel responded to Mr. McGee's May 10th
23 letter. A copy of that correspondence is attached as Exhibit "B". In this correspondence,
24 undersigned counsel attempted to disabuse Mr. McGee of many of his misunderstandings
25 and reminded Mr. McGee of the basis for Mr. Brown's obligation to appear for his
26 deposition in regards to the bank records issue.

27 Mr. McGee, thus, has made it crystal clear that he will not be making Mr. Brown
28 available for a deposition in regards to the bank records issue, despite the previous

1 commitments on Mr. Brown's behalf to do so. It would be a complete waste of time and
2 money to do as Mr. McGee implies and send out a notice of deposition, prepare for the
3 deposition, and have a court reporter attend merely for the purpose of reconfirming Mr.
4 Brown's refusal to participate.

5 **CONCLUSION**

6 For the foregoing reasons, as well as those stated in Plaintiffs' May 11th brief,
7 Plaintiffs respectfully request that the Court enter an order (1) compelling Mr. Brown to
8 attend his deposition in regards to the bank records issue, (2) sanctions related to having to
9 bring this motion and (3) permission to submit a supplemental brief regarding Plaintiffs'
10 pending motion for summary judgment, thirty (30) days after Mr. Brown's deposition.

11 RESPECTFULLY SUBMITTED this 25th day of May, 2007.

12 LAW OFFICE OF JAMES BURR SHIELDS

13
14 s/ James Burr Shields

15 James Burr Shields

16 Blake Simms

17 Attorneys for Plaintiffs

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on the 25th day of May, 2007, I electronically submitted the
20 attached document to the Clerk's Office using the CM/ECF System for filing and transmittal
21 of a Notice of Electronic Filing to the following CM/ECF registrants:

22 James M. McGee, Esq.

23 P.O. Box 460

24 Cottonwood, Arizona 86326

25 jimandtina2006@msn.com

26 Attorney for Defendants

27 s/ Gail Ivey