

Sealed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO 09-MD-02106-CIV-GOLD/GOODMAN

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to all actions.

FILED by _____ D.C.
NOV 14 2011
STEVEN M. LARMORE
CLERK U.S. DIST. CT.
S. D. of FLA. - MIAMI

**PLAINTIFFS' NOTICE OF SUBMISSION OF RECENTLY PRODUCED DOCUMENTS
IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
AND IN OPPOSITION TO BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY
JUDGMENT**

Plaintiffs hereby give notice of their submission of additional documents, which were produced only recently by Bank of America, N.A. ("BofA"), in support of Plaintiffs' Motion for Partial Summary Judgment and in opposition to BofA's Motion for Summary Judgment. Plaintiffs' submission is a result of two supplemental productions made by BofA after the summary judgment motions were fully briefed.¹

The additional evidence is attached to Plaintiffs' Second Supplemental Appendix of Exhibits filed concurrently herewith. To take account of this additional evidence, Plaintiffs have revised their: (i) Statement of Undisputed Material Facts in support of Plaintiffs' Motion for Partial Summary Judgment; (ii) Reply to Defendant Bank of America, N.A.'s Response to Plaintiffs' Statement of Undisputed Material Facts and Term Lender Plaintiffs' Response to

¹ BofA's productions were made on October 28 and November 4, 2011 and received by Plaintiffs' counsel on October 31 and November 7, 2011, respectively. Mockler Decl. ¶ 2. BofA's counsel has notified Plaintiffs' counsel that BofA made another production on November 11, 2011 which substantially completed BofA's supplemental productions. *Id.* at ¶ 3. BofA did not confirm that the November 11 production was its final production. *Id.* Plaintiffs have not yet received the final production. *Id.*

Bank of America, N.A.'s Statement of Additional Facts re Plaintiffs' Motion for Partial Summary Judgment, and (iii) Response to Defendant Bank of America, N.A.'s Statement of Undisputed Material Facts and Statement of Additional Material Facts in Opposition to BofA's Motion for Summary Judgment (collectively, the "Revised Statements"). Redlined versions of the Revised Statements are being filed concurrently herewith.

The following documents are being submitted and are relevant to Plaintiffs' Motion for Partial Summary Judgment and their Opposition to BofA's Motion for Summary Judgment:

1. Exhibit 1512.

[REDACTED]

The document has been included in support of the following separate statements of fact:

- Plaintiffs' Statement of Undisputed Material Facts in Support of Plaintiffs' Motion for Partial Summary Judgment No. 45.
- Plaintiffs' Response to BofA's Statement of Additional Undisputed Facts re Plaintiffs' Motion for Partial Summary Judgment No. 111.

- Plaintiffs' Response to BofA's Statement of Undisputed Facts in Opposition to BofA's Motion for Summary Judgment No. 115.
- Plaintiffs' Statement of Additional Material Facts in Opposition to BofA's Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment Nos. 28-29, 38, 76, and 78.

2. Exhibit 1513

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The document has been included in support of the following separate statements of fact:

- Plaintiffs' Statement of Undisputed Material Facts in Support of Plaintiffs' Motion for Partial Summary Judgment Nos. 36, 43, 45, 65, and 74.
- Plaintiffs' Response to BofA's Statement of Additional Undisputed Facts re Plaintiffs' Motion for Partial Summary Judgment No. 98.
- Plaintiffs' Response to BofA's Statement of Undisputed Facts in Opposition to BofA's Motion for Summary Judgment No. 103.

- Plaintiffs' Statement of Additional Material Facts in Opposition to BofA's Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment Nos. 27, 29, 55, 61, 63, 113, and 134.

3. Exhibit 1514

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The document has been included in support of the following separate statements of fact:

- Plaintiffs' Statement of Undisputed Material Facts in Support of Plaintiffs' Motion for Partial Summary Judgment Nos. 43, 45, 74, 80, and 81.
- Plaintiffs' Response to BofA's Statement of Additional Undisputed Facts re Plaintiffs' Motion for Partial Summary Judgment No. 98.
- Plaintiffs' Response to BofA's Statement of Undisputed Facts in Opposition to BofA's Motion for Summary Judgment No. 103.
- Plaintiffs' Statement of Additional Material Facts in Opposition to BofA's Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment Nos. 55, 61, 63, 113, 144, and 145.

4. Exhibit 1515

[REDACTED]

The document has been included in support of the following separate statements of fact:

- Plaintiffs' Statement of Undisputed Material Facts in Support of Plaintiffs' Motion for Partial Summary Judgment Nos. 36, 43, 45, 65, 74, 74(a), and 80.
- Plaintiffs' Response to BofA's Statement of Additional Undisputed Facts re Plaintiffs' Motion for Partial Summary Judgment No. 98.
- Plaintiffs' Response to BofA's Statement of Undisputed Facts in Opposition to BofA's Motion for Summary Judgment No. 103.
- Plaintiffs' Statement of Additional Material Facts in Opposition to BofA's Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment Nos. 29, 38, 55, 61, 63, 67(a), 113, 134, and 144.

5. Exhibit 1516

[REDACTED]

[REDACTED]

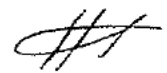
[REDACTED]

The document has been included in support of the following separate statements of fact:

- Plaintiffs' Statement of Undisputed Material Facts in Support of Plaintiffs' Motion for Partial Summary Judgment No. 80.
- Plaintiffs' Statement of Additional Material Facts in Opposition to BofA's Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment No. 144.

Dated: November 14, 2011

Respectfully submitted,



David A. Rothstein, Esq.
Fla. Bar No.: 056881
d.Rothstein@dkrpa.com
Lorenz M. Prüss, Esq.
Fla Bar No.: 581305
LPruss@dkrpa.com
DIMOND KAPLAN & ROTHSTEIN, P.A.
2665 South Bayshore Drive, PH-2B
Miami, FL 33133
Telephone: (305) 374-1920
Facsimile: (305) 374-1961

Local Counsel for Plaintiff Term Lenders

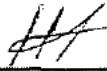
Of counsel:
J. Michael Hennigan
Kirk D. Dillman
Robert W. Mockler
Rebecca T. Pilch
Caroline M. Walters
MCKOOL SMITH, P.C.
865 South Figueroa Street, Suite 2900
Los Angeles, California 90017
Telephone: (213) 694-1200
Facsimile: (213) 694-1234

Email: hennigan@mckoolsmithhennigan.com
kdillman@mckoolsmithhennigan.com
rmockler@mckoolsmithhennigan.com
rpilch@mckoolsmithhennigan.com
cwalters@mckoolsmithhennigan.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PLAINTIFFS' NOTICE OF SUBMISSION OF RECENTLY PRODUCED DOCUMENTS IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN OPPOSITION TO BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT** was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

Dated: November 14, 2011.



Lorenz M. Prüss, Esq.

SERVICE LIST

Attorneys:	Representing:
Bradley J. Butwin, Esq. Daniel L. Cantor, Esq. Jonathan Rosenberg, Esq. William J. Sushon, Esq. Ken Murata, Esq. Asher Rivner, Esq. O'MELVENY & MYERS LLP Times Square Tower 7 Times Square New York, NY 10036 Tele: (212) 326-2000 Fax: (212) 326-2061	Defendants Bank of America, N.A.
Kevin Michael Eckhardt, Esq. Jamie Zysk Isani, Esq. HUNTON & WILLIAMS 1111 Brickell Avenue Suite 2500 Miami, FL 33131 Tele: (305) 810-2579 Fax: (305) 810-2460	Defendants Bank of America, N.A.

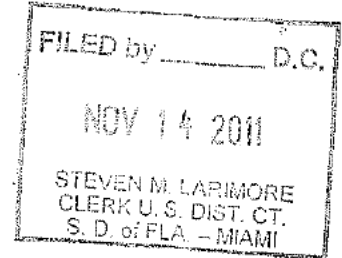
Sealed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO 09-MD-02106-CIV-GOLD/GOODMAN

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to all actions.



**DECLARATION OF ROBERT W. MOCKLER IN SUPPORT OF PLAINTIFFS'
NOTICE OF SUBMISSION OF RECENTLY PRODUCED DOCUMENTS IN SUPPORT
OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO
BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT**

I, Robert W. Mockler, declare as follows:

1. I am a principal with the firm McKool Smith, P.C., counsel for Plaintiffs in the above-captioned action. Except where otherwise indicated, I have personal knowledge of the facts stated herein and, if called as a witness, could and would competently testify thereto. I submit this declaration in support of Plaintiffs' Notice of Submission of Recently Produced Documents in Support of Plaintiffs' Motion for Summary Judgment and in Opposition to Bank of America, N.A.'s Motion for Summary Judgment.

2. On October 28 and November 4, 2011, Bank of America, N.A. ("BofA") made two supplemental document productions, which were received by Plaintiffs' counsel on October 31 and November 7, 2011, respectively.

3. BofA's counsel has notified Plaintiffs' counsel that BofA made a supplemental production on November 11, 2011 which substantially completed BofA's supplemental productions, but BofA did not confirm that the November 11 production was its final production. Plaintiffs have not yet received and reviewed the final production.

4. A true and correct copy of [REDACTED]

[REDACTED]
[REDACTED]
which was produced by BofA in this action on November 4, 2011, is attached as Exhibit 1512 to the Second Supplemental Appendix of Exhibits in Support of Plaintiffs' Motion for Partial Summary Judgment and in Opposition to BofA's Motion for Summary Judgment ("Second Supplemental Appendix").

5. A true and correct copy of [REDACTED]

[REDACTED] which was produced by BofA in this action on November 4, 2011, is attached as Exhibit 1513 to the Second Supplemental Appendix.

6. A true and correct copy of [REDACTED]

[REDACTED] which was produced by BofA in this action on October 28, 2011, is attached as Exhibit 1514 to the Second Supplemental Appendix.

7. A true and correct copy of [REDACTED]

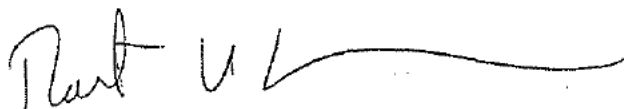
[REDACTED] which was produced by BofA in this action on November 4, 2011, is attached as Exhibit 1515 to the Second Supplemental Appendix.

8. A true and correct copy of [REDACTED]

[REDACTED] which was produced by BofA in this action on October 28, 2011, is attached as Exhibit 1516 to the Second Supplemental Appendix.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: November 14, 2011



ROBERT W. MOCKLER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **DECLARATION OF ROBERT W. MOCKLER IN SUPPORT OF PLAINTIFFS' NOTICE OF SUBMISSION OF RECENTLY PRODUCED DOCUMENTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT** was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

Dated: November 14, 2011



Lorenz M. Prüss, Esq.

SERVICE LIST

Attorneys:	Representing:
<p>Bradley J. Butwin, Esq. Daniel L. Cantor, Esq. Jonathan Rosenberg, Esq. William J. Sushon, Esq. Ken Murata, Esq. Asher Rivner, Esq. O'MELVENY & MYERS LLP Times Square Tower 7 Times Square New York, NY 10036 Tele: (212) 326-2000 Fax: (212) 326-2061</p>	<p>Defendants Bank of America, N.A.</p>
<p>Kevin Michael Eckhardt, Esq. Jamie Zysk Isani, Esq. HUNTON & WILLIAMS 1111 Brickell Avenue Suite 2500 Miami, FL 33131 Tele: (305) 810-2579 Fax: (305) 810-2460</p>	<p>Defendants Bank of America, N.A.</p>