

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

JOSHUA SITZER, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 19-CV-00332-SRB
)	
THE NATIONAL ASSOCIATION OF)	
REALTORS, et al.,)	
)	
Defendants.)	

**NOTICE OF INTENT TO ISSUE
SUBPOENA TO PRODUCE DOCUMENTS**

Pursuant to Fed. R. Civ. P. 45, Plaintiffs will request non-party witness Federal Home Loan Mortgage Corp. to produce at Henderson Legal Service; 1560 Wilson Blvd., Suite 750; Arlington, VA 22209 on or before February 24, 2020 at 9:00 a.m., all documents and things in its possession, custody or control as specified in Exhibit A to the Subpoena. The Subpoena is attached hereto and incorporated herein as Exhibit 1.

DATE: February 10, 2020

WILLIAMS DIRKS DAMERON LLC

/s/ Matthew L. Dameron

Matthew L. Dameron	MO # 52093
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Brandon J.B. Boulware	MO # 54150
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Exhibit 1

UNITED STATES DISTRICT COURT

for the

Western District of Missouri

Joshua Sitzler et al.

Plaintiff

v.

The National Association of Realtors et al.

Defendant

Civil Action No. 4:19-cv-00332

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Federal Home Loan Mortgage Corp., 8200 Jones Branch Drive, McLean, VA 22101

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: Exhibit A

Place: Henderson Legal Services, 1560 Wilson Blvd., Suite 750, Arlington, VA 22209; Date and Time: 02/24/2020 9:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: ; Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/10/2020

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Matthew Dameron, Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiff, Joshua Sitzler, who issues or requests this subpoena, are: Matthew L. Dameron, 1100 Main St., Ste. 2600, Kansas City, MO 64105, matt@williamsdirks.com, 816-945-7110

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 4:19-cv-00332

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party’s officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney’s fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

EXHIBIT A

The following definitions shall apply to these document requests:

1. “And” and “or” are to be read interchangeably so as to give the broadest possible meaning to a particular request in which either or both is used.

2. “Broker” is defined as any company, organization, entity or person who represents buyers or sellers of residential real estate, including its present and former directors, officers, employees, agents, attorneys, representatives, independent contractors, or any persons acting or purporting to act on its behalf.

3. “Challenged Restraints” refer to: (i) the requirement in NAR’s Handbook on Multiple Listing Policy (2019) that “In filing a property with the multiple listing service of an association of REALTORS®, the participant of the service is making blanket unilateral offers of compensation to the other MLS participants, and shall therefore specify on each listing filed with the service, the compensation being offered to the other MLS participants”; (ii) the requirement in NAR’s Handbook on Multiple Listing Policy (2019) that “Multiple listing services shall not publish listings that do not include an offer of compensation expressed as a percentage of the gross selling price or as a definite dollar amount, nor shall they include general invitations by listing brokers to other participants to discuss terms and conditions of possible cooperative relationships”; (iii) NAR Standards of Practice 3-2, 12-2, and 16-16; and (iv) NAR Case Interpretation #16-15, and the predecessors and successors of each.

4. “Communication” or “Communicated” means, without limitation, any oral, written, or other exchange of thoughts, messages, or information, as by speech, signals, writing, or behavior, including but not limited to, any advice, advisement, announcement, articulation, assertion, contact, conversation, written or electronic correspondence, declaration, discussion, dissemination, elucidation, expression, interchange, memoranda, notes, publication, reception,

revelation, talk, transfer, transmission, or utterance. The phrase “communication between” is defined to include instances where one party addresses the other party but the other party does not necessarily respond.

5. “Complaint” means the First Amended Class Action Complaint (Doc. # 38) or any superseding complaint filed in this Action. A copy of the Complaint is attached to this Subpoena, as Exhibit 1.

6. “Defendant” means any company, organization, entity or person presently or subsequently named as a Defendant in the Complaint, including its predecessors, wholly-owned or controlled subsidiaries or affiliates, successors, parents, other subsidiaries, departments, divisions, joint ventures, other affiliates and any organization or entity managed or controlled by a named Defendant, including those merged with or acquired, together with all present and former directors, officers, employees, agents, attorneys, representatives or any persons acting or purporting to act on behalf of a Defendant.

7. “Document” shall have the same meaning as used in Rule 34 of the Federal Rules of Civil Procedure, and shall be construed in its broadest sense to include, without limitation, the final form and all drafts and revisions of any paper or other substance or thing, original or reproduced, and all copies thereof that are different in any way from the original, on which any words, letters, numbers, symbols, pictures, graphics, or any other form of information is written, typed, printed, inscribed, or otherwise visibly shown, and also every other form of stored or recorded information, whether on film, tape, disks, cards, computer memories, or any other medium and/or device whereby stored information can, by any means whatsoever, be printed or otherwise recovered, generated or displayed in the form of visible, audible, or otherwise perceptible words, letters, numbers, symbols, pictures, or graphics. To illustrate (and not to limit) the breadth of this

definition, “document” in this sense papers or objects bearing handwritten notes, material written in Braille, contracts, letters, bills, telegrams, notes, e-mail, voice mail, books, desk calendars, memoranda, envelopes, drafts or partial copies of anything, signs, photographic negatives and prints, video and audio recordings of all kinds and the contents of storage media used in data-processing systems. Each and every draft of a document is a separate document for purposes of these document requests.

8. “Electronically Stored Information” or “ESI” means and refers to computer generated information or data of any kind, stored in or on any storage media located on computers, file servers, disks, the cloud, tape, or other real or virtualized devices or media. Non-limiting examples of ESI include:

- Digital communications (e.g., e-mail, phone calls and logs of phone calls, voice mail, text messaging, instant messaging, and ephemeral messaging (SnapChat, etc.));
- E-Mail Server Stores (e.g., Lotus Domino .NSF or Microsoft Exchange .EDB)
- Word processed documents (e.g., MS Word or WordPerfect files and drafts);
- Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data);
- Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images);
- Sound Recordings (e.g., .WAV and .MP3 files);
- Video and Animation (e.g., .AVI and .MOV files);
- Unstructured Data;
- Structured Databases (e.g., Access, Oracle, SQL Server data, SAP);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);

- Calendar and Diary Application Data (e.g., Outlook PST, blog entries);
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations)
- Network Access and Server Activity Logs;
- Project Management Application Data;
- Backup and Archival Files (e.g., Veritas, Zip, .GHO, iTunes archives of iPhone content); and
- Cloud based or other virtualized ESI, including application, infrastructure and data.

9. “Employee” means, without limitation, any current or former officer, director, employee, independent contractor, or agent.

10. “Franchisee” means any Broker or direct or indirect owner of Brokers licensing intellectual property, a business model, a brand, or other rights.

11. “Including” is used to emphasize certain types of Documents requested and should not be construed as limiting the request in any way. Including therefore means “including, but not limited to,” or “including without limitation.”

12. “Local Realtor Boards” refers to members associations of REALTORS.

13. “Management” shall be construed broadly and means without limitation, Employees or other Persons with executive, management, supervisory or policy-setting responsibilities, both individually and collectively, and, depending upon context, includes their administrative assistants, secretaries, or other support staff.

14. “Meeting” means, without limitation, any assembly, convocation, encounter, communication or contemporaneous presence (whether in person or via any electronic, computer-

assisted, digital, analog, video, or telephonic method of communication) of two or more persons for any purpose, whether planned or arranged, scheduled or not.

15. “MLS” is defined according to Section 1 of the National Association of Realtors’ Handbook on Multiple Listing Policy (2019).

16. “Named Plaintiffs” means those individuals listed as plaintiffs in the Complaint, and any persons or entities subsequently added as named plaintiffs in this matter.

17. “NAR” means The National Association of Realtors.

18. “Person” means, without limitation, any individual, corporation, partnership or any variation thereof (e.g., limited partnership, limited liability partnership), limited liability company, proprietorship, joint venture, association, group or other form of legal entity or business existing under the laws of the United States, any state or any foreign country.

19. “Policy” or “Procedure” means any rule, practice or course of conduct, guidelines or business methods or traditions whether formal or informal, written or unwritten, recorded or unrecorded, which was recognized or followed, explicitly or implicitly, by You.

20. “Real Estate Services” means the bundle of services provided to homebuyers and sellers by residential real estate Brokers or Realtors with MLS access.

21. “Relating to,” “referring to,” “regarding,” “with respect to” or “concerning” mean without limitation the following concepts: concerning, constituting, discussing, describing, reflecting, dealing with, pertaining to, analyzing, evaluating, estimating, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting, or otherwise involving, in whole or in part, directly or indirectly. Documents are considered relating to the subject matter whether they are viewed alone or in combination with other Documents.

22. “Representative” shall mean any and all agents, employees, servants, independent contractors, consultants, officers, directors, associates, or other persons acting or purporting to act on Your behalf or on behalf of the person in question.

23. “Structured Data” or “Structured Database” refers to any data that resides in a fixed field within a record or file, such as data stored in Oracle, SQL, or files that are in Columns/Rows or a fixed field with a predefined format.

24. “Studies” or “Analyses” include all reports, memoranda, statistical compilations, reviews, audits and other types of written, printed, or electronic submissions of information.

25. “Subject MLSs” is defined as those MLSs identified on page 10, ¶29 of the Complaint.

26. “Trade Association” means any group, committee, subcommittee, or association, formal or informal, relating to the market for Real Estate Services, including but not limited to the National Association of Realtors, Missouri REALTORS, Kansas Association of Realtors, Illinois REALTORS, Kansas City Regional Association of Realtors, Columbia Board of Realtors, St. Louis Realtors, Greater Springfield Board of Realtors, Local Realtor Associations, and the Council on Multiple Listing Services.

27. “You” and “Your” means Federal Home Loan Mortgage Corporation, also known as “Freddie Mac,” including its predecessors, wholly-owned or controlled subsidiaries or affiliates, successors, parents, other subsidiaries, departments, divisions, joint ventures, other affiliates and any organization or entity that the responding party manages or controls, including those merged with or acquired, together with all present and former directors, officers, employees, agents, attorneys, representatives or any persons acting or purporting to act on their behalf.

28. If you contend that you are entitled to withhold from production any documents requested herein on the basis of attorney/client privilege, work-product protection, or other legally recognized grounds, identify the nature of the document(s), the date for same, the author, and the person to whom the document was addressed; identify each individual who has seen the document, each individual who has received a copy of the document and from whom the document was received; and state the basis upon which you contend you are entitled to withhold the document from production. Accordingly, please provide a formal written privilege log of all claimed privileged documents and information.

DOCUMENTS

The relevant time period for these requests is from January 1, 2007 to the present, unless otherwise noted.

1. Documents sufficient to show the policies, procedures, and/or methods You employ to gather, retain, and store data concerning residential real estate Broker and/or agent commissions in the United States.

2. Documents sufficient to show the types and format of data You retain concerning Broker and/or agent commissions relating to sales of residential properties in the United States.

3. Data sufficient to show, for each purchase or sale of residential real estate and each actual transaction of Real Estate Services in the United States, at the most disaggregated level available, the categories of information listed below:

- i. all terms of each transaction;
- ii. the location of the property associated with each transaction;
- iii. all pricing information concerning the property purchase or sale, including sale price, rebates, closing costs, fees, taxes, and financing type and terms;
- iv. all information concerning Broker and/or agent compensation type, terms, source, and amount, including the amount offered in any listing and the amount actually paid, as well as any rebates, discounts, or incentives;
- v. the currency in which the sale and Broker and/or agent compensation was billed and paid;
- vi. whether the seller, buyer, and any other offerors was self-represented; and

vii. the type and amount of any expenses or costs associated with the transaction (whether fixed or variable), and who paid those expenses, regardless of whether they were paid by a Broker, agent, or the buyer or seller.

4. All Documents and data reflecting broker and agent commissions and fees in residential real estate transactions, including but not limited to data compiled in the Uniform Closing Dataset (“UCD”), Closing Disclosures, Uniform Loan Delivery Dataset (“ULDD”), or otherwise stored as a result of the Uniform Mortgage Data Program (“UMDP”) or any other program.