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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 FEDERAL HOUSING FINANCE  
4 AGENCY,

5 Plaintiff,

6 v.

11-CV-5201 (DLC)  
11-CV-6188 (DLC)  
11-CV-6193 (DLC)  
11-CV-6203 (DLC)  
11-CV-7010 (DLC)

8 JPMORGAN CHASE & CO., INC., et  
9 al.,,

10 Defendants;

11 And other FHFA cases.

Telephone Conference

New York, N.Y.  
July 24, 2012  
3:07 p.m.

12 Before:

13 HON. DENISE COTE,

District Judge

14 APPEARANCES  
15 (Via Telephone)

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1 (In chambers)

2 THE COURT: Good afternoon, counsel. I have you on  
3 the speakerphone because my law clerk and a court reporter are  
4 with me.

5 We'll take appearances for the record. For the  
6 plaintiff?

7 MS. SHETH: For the plaintiff you have Manisha Sheth,  
8 Christine Chung, and Julia Guaragna from Quinn Emanuel.

9 MS. LEUNG: And Kanchana Leung from Kasowitz Benson  
10 Torres & Friedman.

11 THE COURT: For UBS?

12 MR. SACCA: Joseph Sacca, Scott Musoff, and Robert  
13 Fumerton from Skadden Arps.

14 THE COURT: For JP Morgan Chase?

15 MS. SHANE: Good afternoon, your Honor. Penny Shane,  
16 Sharon Nelles, and Jonathan Sedlak from Sullivan & Cromwell.

17 THE COURT: For Goldman Sachs?

18 MR. EDELMAN: Good afternoon, your Honor. Theodore  
19 Edelman, Sullivan & Cromwell, LLP.

20 THE COURT: For Barclays?

21 MR. SCOTT: You have Jeff Scott and Josh Fritsch from  
22 Sullivan & Cromwell.

23 THE COURT: For First horizon and Nomura?

24 MR. CLARK: Your Honor, Bruce Clark and Amanda  
25 Davidoff, also from Sullivan & Cromwell.

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1 THE COURT: For Citigroup? For Citigroup?

2 MS. BUERGEL: Susanna Buerger and Caitlin Grusauskas  
3 from Paul Weiss.

4 THE COURT: For Credit Suisse?

5 MR. REYNOLDS: Michael Reynolds and Lauren Moskowitz  
6 from Cravath, Swaine & Moore.

7 THE COURT: For RBS?

8 MR. TURNER: Alan Turner from Simpson Thacher &  
9 Bartlett.

10 THE COURT: For HSBC?

11 MR. WARE: Michael Ware, Mayer Brown.

12 MR. MICHAELSON: Andrew Michaelson from Boies  
13 Schiller.

14 THE COURT: For defendants Ally Financial and GMAC?

15 MR. GOEKE: Reginald Goeke and Michael Ware of Mayer  
16 Brown.

17 THE COURT: For Ally Securities?

18 MS. LARGIO: Devon Largio, Kirkland & Ellis.

19 THE COURT: For Bank of America and Merrill Lynch?

20 MR. McNICHOLS: Good afternoon, your Honor. John  
21 McNichols and Ted Bennett from Williams Connolly.

22 THE COURT: For Morgan Stanley?

23 MR. WEINSTEIN: Brian Weinstein and Nick George from  
24 Davis Polk.

25 THE COURT: For General Electric?

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1 MR. DANILOW: Greg Danilow, Weil Gotshal.

2 THE COURT: For various individual defendants,  
3 including George Carp?

4 MR. BINDER: Neil binder, Richards Kibbe & Orbe, for  
5 the Merrill Lynch and Bank of America individuals.

6 THE COURT: For Mr. Molinaro?

7 MS. CHEPIGA: Pam Chepiga and Josephine Cheatham from  
8 Allen & Overy.

9 THE COURT: For Mr. Marano and Mr. Nierenberg?

10 MR. HAIMS: Joel Haims and David Ziegler from Morrison  
11 & Foerster.

12 THE COURT: For Mr. Perkins?

13 MR. FITZMAURICE: Patrick Fitzmaurice, SNR Denton.

14 THE COURT: For Mr. Verschleiser?

15 MS. BURNS: Jade Burns from Kramer Levin.

16 THE COURT: Is there anyone participating in this call  
17 whose name I have not mentioned?

18 Thank you, counsel, for making yourselves available  
19 today. I'm just going to review briefly the procedures we will  
20 follow. I'll make sure before the call is ended that anyone  
21 participating on this call has an opportunity to be heard.

22 I'd ask that we not interrupt each other. It's  
23 difficult when there is a telephone conference call. And I'd  
24 ask you please to identify yourself by name when speaking so  
25 that the record is clear.

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1           We're holding this conference call today because I  
2 have submissions from counsel concerning the use of predictive  
3 coding for at least JPMorgan Chase. The issue was brought to  
4 my attention through a letter from Ms. Shane dated July 20<sup>th</sup>.  
5 Plaintiffs responded with a letter of July 23<sup>rd</sup>.

6           I will be frank with you. This is my opportunity to  
7 learn about predictive coding. I very much appreciated the  
8 materials that counsel have shared with me. I've read all of  
9 them, and I've read Magistrate Judge Peck's opinion, the brief  
10 opinion and order by Judge Carter in that same matter, and  
11 Judge Scheindlin's opinion.

12           And so I thought -- I'm hoping this will save time --  
13 that I would just begin by sharing some reactions that I have  
14 to this. And again, I want you to understand that I am new to  
15 this topic of predictive coding. It seems to me that  
16 predictive coding should be given careful consideration in a  
17 case like this, and I am absolutely happy to endorse the use of  
18 predictive coding and to require that it be used as part of the  
19 discovery tools available to the parties. But it seems to me  
20 that the reliability and utility of predictive coding depends  
21 upon the process that takes place in the initial phases in  
22 which there is a pool of materials identified to run tests  
23 against, and I think that some of the documents refer to this  
24 as the seed -- S-E-E-D -- set of documents, and then there are  
25 various rounds of further testing to make sure that the code



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1 becomes smart with respect to the issues in this case and is  
2 sufficiently focused on what needs to be defined as a  
3 responsive document. And for this entire process to work, I  
4 think it needs transparency and cooperation of counsel.

5 It's unclear to me what the defendant JPMorgan Chase  
6 intends in this regard. It's unclear to me whether they expect  
7 to give plaintiff access to their vendor or the plaintiff's  
8 expert access to their vendor, whether or not they intend to  
9 let the plaintiff see all of the documents in the seed set, and  
10 in particular those marked as nonresponsive, and similarly, if  
11 they intend to let the plaintiffs look at the results of the  
12 iterative rounds that are conducted before the algorithm is  
13 approved such that people can have confidence that the  
14 predictive coding system will work.

15 I think ultimately the use of predictive coding is a  
16 benefit to both the plaintiff and the defendants in this case.  
17 I think there's every reason to believe that, if it's done  
18 correctly, it may be more reliable -- not just as reliable but  
19 more reliable than manual review, and certainly more cost  
20 effective -- cost effective for the plaintiff and the  
21 defendants.

22 And so why don't I turn to you, Ms. Shane,  
23 figuratively, and ask precisely what you intend here in terms  
24 of allowing the plaintiffs to participate in this process.

25 MS. SHANE: Thank you, your Honor. This is Penny

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1 Shane. We certainly intend to try to achieve the benefits that  
2 your Honor outlined and to do so with a high degree of  
3 transparency and collaboration with the plaintiffs. The  
4 stipulation that we had proffered to the plaintiff some weeks  
5 ago and have tried to regenerate into the form of an order  
6 provides for that kind of collaboration and exchange in several  
7 stages.

8 First, as your Honor notes, is the stage that happens  
9 largely by the defendant or the party proposing to use the  
10 process, in consultation with technical experts, but the senior  
11 lawyers on the team would work with those experts in order to  
12 develop a coding process or protocol and to test it through  
13 multiple rounds in order to make sure it is achieving and  
14 approaching the achievement of reliability and utility. That  
15 process would involve the creation of a seed set, the testing  
16 of that set, the testing of the initial sort into responsive  
17 and nonresponsive materials in order to see how it's  
18 performing, and to approve its performance in order to get the  
19 system to be smart. The stipulation has proposed and we  
20 continue to propose in the order that there be a full report of  
21 that process provided to the plaintiff, that we do it as  
22 quickly as we can, and that it is not until plaintiff receives  
23 that report that it is in any sense called upon to, you know,  
24 approve, agree, or otherwise express comfort with what has been  
25 proposed.

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1           We also provided or proposed to provide, by  
2 stipulation and now by order, that the report would be  
3 accompanied by appropriate materials, appropriate support, and  
4 that would tend to include, as I understand it, the materials  
5 that had been used to generate the report, so that it could be  
6 as extensive as every document that was used or it could be a  
7 subset of that, which the parties could discuss and make sure  
8 everybody gets comfortable with. If there were objections, for  
9 example, that not enough information had been provided,  
10 obviously that would be the kind of objection that we would all  
11 have every interest in meeting by providing the information.  
12 So that what would be the next step then, by defendant having  
13 been provided with sufficient information and ultimately, if  
14 necessary, the court having been provided with sufficient  
15 information, objections hopefully that are less in the way of  
16 worries about missing information and more in the way of  
17 anything substantive, if any, would be capable of being  
18 resolved by the court on a complete record with a trail or on a  
19 trail that reflects exactly what has been done, where its  
20 pitfalls have lied, what the remedies might be for any of  
21 those, and a good plan for going forward.

22           So we have proposed that kind of transparency and that  
23 kind of process.

24           I think that the thing that distinguishes what we've  
25 proposed, your Honor, from what you've seen in the caselaw and

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1 very well articulated by other judges and approved for use is  
2 that we are on a faster track here by necessity so that there  
3 would be a certain amount of compression and necessary  
4 deadlines that aren't quite as leisurely as some of the  
5 processes that Judge Peck was able to outline and fully expound  
6 upon. We would be working extra hard ourselves, as we've been  
7 working extra hard ourselves, to expedite and make sure that  
8 that compression of time does not cost either our adversary or  
9 the court the necessary information to be able to make an  
10 informed decision on the subject and to participate with us in  
11 coming up with a high-quality process. But the main goal at  
12 this stage was to set forth a series of time frames for moving  
13 along that path that would permit us to do it well and to do it  
14 in a timely way so that we could go ahead and use this  
15 potentially very, very helpful process and innovative tool in  
16 order to meet the deadline the court has outlined.

17 THE COURT: So I'm not quite sure I understand,  
18 Ms. Shane, at what stage in this process this report comes. Is  
19 this after you have conducted what the cases refer to as the  
20 iterative rounds, and so you're basically at the point where  
21 you think you have a predictive code that can then be run  
22 against the entire database?

23 MS. SHANE: Yes, your Honor, that is what we're  
24 proposing.

25 THE COURT: And you think it will take you about three

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1 weeks to get to that point.

2 MS. SHANE: Yes, your Honor, that's what we're  
3 informed.

4 THE COURT: And so why can't you involve the  
5 plaintiffs from day one so they're marching alongside you  
6 during that three-week period and you're able to adjust and  
7 speak with each other about the issues in sort of realtime?

8 MS. SHANE: Your Honor, I believe we have tried to  
9 involve the plaintiffs from day one so that they'd be marching  
10 alongside of us and giving real input in realtime. The first  
11 and most important way in which we set out to do that goes back  
12 several weeks in asking them to engage with us in this process  
13 and also working with them on their extensive list of search  
14 terms which they told us they would like us to use in any  
15 predictive coding setting. So we have been working with them  
16 to move along that path.

17 What caused us to turn to your Honor instead of only  
18 continuing to work with the plaintiff, though we hope to  
19 continue to work with them, is that it was taking too long,  
20 frankly, to get them to respond and to march along with us. If  
21 it takes too long, as their own letter points out, we end up  
22 being in a situation in which the delay has cost us the ability  
23 to project completion using this tool or, frankly, potentially  
24 any tool.

25 THE COURT: And so you're perfectly happy to have the

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1 plaintiff's experts speak with your own programmers or vendors  
2 who are going to be working with counsel to develop this  
3 process.

4 MS. SHANE: Your Honor, I'm unaware that the plaintiff  
5 has experts or has any proposal in which there would be their  
6 vendors talking to our vendors, and there hasn't been a request  
7 for them to do that. I don't see that there would be a  
8 conceptual problem or principled problem associated with having  
9 that kind of direct communication. The only problem, as I say,  
10 is the one of limited time, and so we would hate to see time  
11 spent on discussions where what really needs to happen is that  
12 the vendors or the technologists, together with lawyers, go  
13 about applying their tools and yielding results that will give  
14 us all something concrete to talk about. Having spent several  
15 weeks in the abstract, we strongly feel that we can't spend  
16 more of that time that way.

17 THE COURT: So in terms of this process, this  
18 three-week process in which you're developing the seed set and  
19 then running it through rounds of testing, do you have any  
20 problem including plaintiff's counsel in that process so that  
21 it's a joint consultation of plaintiff's counsel and defense  
22 counsel with your vendor?

23 MS. SHANE: No, I don't, so long as it isn't slowing  
24 it down and also that we make some provision, your Honor, which  
25 I think would be necessary, to deal with the problem that

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1 privileged documents could be part of the seed set, and when  
2 you don't have plaintiff's counsel in the picture, you don't  
3 have to worry about maintaining the privilege, but once you do  
4 have them in the picture, you'd have to take a step or two to  
5 make sure that that wasn't going to be an issue.

6 THE COURT: Thank you. I absolutely agree. And  
7 Ms. Shane, do you have any objection then to plaintiff's  
8 counsel having access to each of the documents in the seed set  
9 other than, of course, the privileged documents?

10 MS. SHANE: Except with the proviso that it not end up  
11 building in an awful lot of additional delay, we do not, your  
12 Honor, but again, our concern is the time frame.

13 THE COURT: Thank you. And then just two more  
14 questions and then I'll turn to plaintiff's counsel.

15 Their letter asks for some further information, if you  
16 have it available, of the quantity of documents that you think  
17 would ultimately be subject to this predictive coding, you  
18 know, that the predictive coding would be applied against. Is  
19 it your best estimate now in the range of two and a half  
20 million documents or is your best estimate right now in the  
21 range of half a million documents?

22 MS. SHANE: Our best estimate is well north of 200 --  
23 of 2.5 million documents. We gave plaintiff the most  
24 conservative possible estimate, based on our experience and on  
25 the evolving, ever-growing number of custodians and search

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1 terms that plaintiff has requested that we look for. At the  
2 time that we gave the 2.5 million, it was and remains a  
3 good-faith, highly conservative estimate. We would not be  
4 surprised in the least to see the number go up by orders of  
5 magnitude of millions of documents, again, based in part on the  
6 ever-increasing demands that we are receiving from the  
7 plaintiff.

8 The 450,000 document number that seems to have  
9 confused plaintiff -- I would hate to have it confuse the  
10 court -- that is the number of documents that already have been  
11 identified, not from doing any work with the custodian list and  
12 pulling their e-mail accounts and other electronic material but  
13 instead from pulling the documents from shared drives. Shared  
14 drive documents are also a large volume of materials here, and  
15 in the event that predictive coding will prove to be workable  
16 and approved for use, we would hope to be able to plow our way  
17 through the shared drive documents as well using this device.  
18 However, that is a different universe of documents, and the  
19 reason we supplied it to the plaintiff and think it's worth the  
20 court's keeping in mind as well is that that -- that's a half a  
21 million documents even before you've begun with custodians.

22 There's also, of course, the separate and even more  
23 enormous quantity of loan file materials that we're going to be  
24 producing, so that it was provided as an illustration of the  
25 enormous resources already being spent and that will have to be



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1 spent and required to be spent alongside of this predictive  
2 coding effort.

3 THE COURT: Thank you.

4 And my last question concerns part of the proposed  
5 order, and that is, in paragraph 7 in which you seek to  
6 maintain the right to discontinue use of predictive coding as a  
7 method of producing materials here, can you explain to me why  
8 you want that option.

9 MS. SHANE: Yes, your Honor. We hope not to find  
10 ourselves in the position where it proves to be the case that  
11 predictive coding cannot satisfactorily or reliably accomplish  
12 what we're hoping it can accomplish, but as Judge Peck  
13 explained at some length in his decision, you really don't know  
14 until you get under way and do the testing that we've all been  
15 discussing. We would hate to find ourselves or to have created  
16 a situation in which everybody is obligated to pursue something  
17 that we would all otherwise agree or you might agree is not  
18 going to serve a valuable purpose.

19 THE COURT: Well, would you have any objection if the  
20 order acknowledged that parties would have a right to apply to  
21 the court to abandon the predictive coding process?

22 MS. SHANE: Certainly, your Honor. We would not mind.  
23 It would be subject to your Honor's review. In the event that  
24 we were to abandon that, we would expect to be able to explain  
25 exactly why.

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1 THE COURT: Okay. And I said that was my second and  
2 last question, but I have one more. And that is, assuming that  
3 you can begin the process within days of today's telephone  
4 conference, I take it you don't see any problem with meeting  
5 the September 30<sup>th</sup> production date, which is the date by  
6 which document production must be substantially complete.

7 MS. SHANE: Your Honor, we think that it would be an  
8 overstatement to say we see no problem with it, but we believe  
9 that getting under way with this, as your Honor has outlined,  
10 would be our only realistic chance to do it, and we think it is  
11 a realistic chance that we could do it with the aid of this  
12 process.

13 THE COURT: Thank you.

14 Ms. Sheth?

15 MS. SHETH: Yes. Thank you, your Honor. I do -- we  
16 do have several concerns with regard to the proposal put in by  
17 JPMorgan.

18 The first was the lack of detail regarding the  
19 proposal, which made it very hard for us to assess whether we  
20 could agree to the proposal. Our letter of yesterday outlined  
21 several of the questions that we still have regarding  
22 JPMorgan's proposal.

23 In addition, I would note that in the *Da Silva* opinion  
24 by Judge Peck, there are several other questions and factors  
25 that the courts considered in determining whether or not the

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1 predictive coding tool is useful and reliable. And some of the  
2 information that -- in addition to our letter that the  
3 defendants have failed to provide us with is: What is the  
4 methodology for creating the seed set? How will that seed set  
5 be pulled together? What will be the number of documents in  
6 the seed set? Who will conduct the review of the seed set  
7 documents? Will it be senior attorneys or will it be junior  
8 attorneys? Whether the relevant determination is a binary  
9 determination, a yes or no for relevance, or if there's a  
10 relevance score or scale in terms of 1 to 100. And the number  
11 of rounds, as your Honor noted, in terms of determining whether  
12 the system is well trained and stable.

13 So that was our first concern with regard to the  
14 proposal. But I understand that the court has encouraged  
15 plaintiff to participate in that, the development of that  
16 proposal, and we look forward to that, and that was also one of  
17 our concerns was the lack of plaintiff's involvement at the  
18 beginning stages of the creation of the proposal, which was  
19 another factor that was considered by the court also in the  
20 *Da Silva* case, where the court noted that the plaintiffs must  
21 have input in how the protocol is developed.

22 The second concern we have with defendant's proposal  
23 is that it appears that they are trying to apply predictive  
24 coding on top of the use of search terms, and that really  
25 causes us to have concern that responsive documents will be --

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1 will be potentially eliminated, and in the article that we cite  
2 at footnote 1 of our letter, the Edelman article, the author  
3 noted that predictive coding is an effective e-discovery tool.  
4 However, one of the concerns the author had was that it is  
5 commonly performed in a manner that may be severely  
6 underinclusive, and the parenthetical in our footnote notes  
7 that you generally use predictive coding on the entire  
8 collection of documents in a particular document custodian's  
9 inbox, and what I -- what I understand is -- that defendants  
10 are proposing here is to use the search terms to cull a set of  
11 documents from the document custodian's inbox and then use  
12 predictive coding on top of that. And we have concerns that  
13 that approach will significantly further narrow the set of  
14 documents and could potentially remove responsive documents.  
15 And we have not been able to find any case where both search  
16 terms and predictive coding was applied together. Rather, in  
17 the *Da Silva* case, the *Da Silva Moore* case by Judge Peck, the  
18 keywords or the search terms were used only afterwards to train  
19 the predictive coding tool. And the court definitely did a  
20 comparison between predictive coding and search terms and found  
21 that predictive coding, at least in that case, was more  
22 appropriate than keyword searching. But generally the two are  
23 not used on top of each other to narrow an already narrowed set  
24 of documents.

25 So those are our primary concerns with the defendant's

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1 proposal.

2 We also have concerns about the timing and meeting the  
3 September 30<sup>th</sup> deadline. The courts have been very clear  
4 that predictive coding generally requires testing and retesting  
5 to ensure that responsive documents are being captured, and  
6 again, the court in *Da Silva Moore* recognized that predictive  
7 coding may require extensions of the discovery period because  
8 it's impossible to predict when the program will be  
9 sufficiently trained. And the way the current proposal that  
10 JPMorgan has submitted is set forth, we wouldn't have a chance  
11 to even get the proposal until August 15<sup>th</sup>, which is just a  
12 mere six weeks before the discovery cutoff. And given that the  
13 parties have already invested a substantial amount of time  
14 negotiating search terms and custodians and we're already at  
15 close to the end of July, we do have concerns that this --  
16 there's just not enough time in the schedule to allow for this  
17 iterative process.

18 THE COURT: Ms. Sheth, I want to make sure that I  
19 understand one point that you made. You want the predictive  
20 coding algorithm to be applied to the entire contents of a  
21 custodian's e-mail account, is that your concern, or your  
22 request?

23 MS. SHETH: Yes, that's correct, your Honor. And that  
24 would apply not only to individual document custodians but also  
25 to shared drives to the extent that there are not subfolders

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1 within a folder of -- in a shared drive that specifically  
2 further narrow the universe of documents.

3 THE COURT: And your concern is that the defendant may  
4 be intending to create a subset of documents from a custodian's  
5 e-mail set that are responsive to search terms and then run the  
6 predictive coding algorithm against that subset; is that your  
7 concern?

8 MS. SHETH: Yes, that's exactly right, your Honor.

9 THE COURT: And who did you address that inquiry to?

10 MS. SHETH: In terms of -- well, I think that was one  
11 of just the general questions we had about not understanding  
12 what the proposal was by defendants, how they intended to use  
13 predictive coding, and as we read the caselaw, we discovered  
14 that search terms could be used to train a program, but we  
15 hadn't seen any cases that run the predictive coding on top of  
16 a set of documents that's already been narrowed by search  
17 terms.

18 THE COURT: So you didn't actually sit down and have a  
19 conversation with counsel for JPMorgan Chase and ask that  
20 question.

21 MS. SHETH: That's correct, your Honor, and that was  
22 also a point made in our letter where we thought that this  
23 request to the court was premature, given that we were still  
24 asking for additional information about their proposal.

25 THE COURT: Thank you.

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1           And Ms. Sheth, based on the commitments that Ms. Shane  
2 has made on the record today about JPMorgan Chase's willingness  
3 to have plaintiff's counsel participate in every phase of this  
4 process that would create what we would hope would be a  
5 reliable algorithm to be applied against a universe of  
6 documents, do you now have any objection to using predictive  
7 coding methodology?

8           MS. SHETH: Provided that the necessary -- the  
9 predictive coding is used on the full set of the document  
10 custodian's inbox without a prior culling to search terms and  
11 provided we are given the details or the answers to the  
12 questions raised in our letter and the questions I raised on  
13 today's call, I think that we would be happy to participate in  
14 the initial stages of helping the defendants formulate this  
15 proposal.

16           THE COURT: Ms. Shane, I want to thank you for your  
17 willingness to have plaintiff's counsel participate. I  
18 understood that you were hesitant, however, out of a concern  
19 that participation may hold up the process and delay the  
20 development of a reliable predictive coding algorithm. Am I  
21 correct that you're concerned about that?

22           MS. SHANE: Yes, your Honor, that's correct.

23           THE COURT: Okay. So let me share some information  
24 that is normally among state secrets. I will be unavailable  
25 August 13<sup>th</sup> to August 24<sup>th</sup>. And I mention this because you

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1 have August 15<sup>th</sup> as a critical report date. I'm going to be  
2 available to counsel up until that time.

3 Ms. Shane, I would like you to begin with your  
4 predictive coding process full steam ahead. I rely on you, as  
5 I know I can, to give full access to plaintiff's counsel,  
6 Ms. Sheth or whoever from the plaintiff's team wishes to  
7 participate in this process. If there are problems, I expect  
8 them to be discussed face to face in a meet-and-confer process,  
9 people asking questions and answering questions. I expect,  
10 other than documents which may be privileged, that the  
11 plaintiff will be given full access to documents which the  
12 process has deemed unresponsive or nonresponsive, that is,  
13 documents within the seed set, so that if there is a  
14 disagreement about that, you have a chance to confer and, if  
15 necessary, bring those disputes to my attention. So I'm going  
16 to count on you each day, if you have a problem, just calling  
17 Ms. Rojas or Mr. Hartman, and I'll be immediately available to  
18 you if you've exhausted the meet-and-confer process, but  
19 Ms. Shane, I don't want you to hold up the process at all  
20 because plaintiff's counsel doesn't have someone to participate  
21 or is unavailable.

22 Do you have any problem with what I've just outlined,  
23 Ms. Shane?

24 MS. SHANE: No, your Honor, and I'm grateful both for  
25 the confidence and for the access to your Honor in order to get



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1 this going. I am concerned that we may already have a  
2 misunderstanding about how we're going to get going full steam  
3 ahead. What I heard Ms. Sheth say is that she's fine to  
4 proceed, so long as all of her outstanding questions as she'd  
5 expressed in her letter get answered. Those outstanding  
6 questions -- first of all, they have been answered. They are  
7 requests for estimates on volumes of documents and the basis  
8 for the estimates of volumes of documents, questioning whether  
9 in fact, it seems, there's any need to go forward on this  
10 basis. Others have been answered on this call, but to the  
11 extent that Ms. Sheth believes that her questions from her  
12 letters remain initial steps that have to be taken before we  
13 can go full steam ahead, I remain concerned that we won't be  
14 able to go full steam ahead; we will be continuing to be  
15 discussing, as we have been discussing for many weeks, the  
16 document quantity estimates and similar questions that require  
17 answers only once we've gotten to get under way.

18 THE COURT: Well, I think I put to you all the  
19 critical questions in this conference call to satisfy myself  
20 that this process should be used, and Ms. Sheth, I think I can  
21 trust you to participate fully or to find a colleague who will  
22 participate fully in this process. After all, it's in the  
23 plaintiff's interest that these documents be produced in a  
24 reliable way but also as speedily as possible. Am I right I  
25 can count on your cooperation, Ms. Sheth?

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1 MS. SHETH: Absolutely, your Honor.

2 One question I still have, which I don't believe  
3 Ms. Shane answered, is with regard to the search terms and  
4 whether they are going to be used to cull the set of documents  
5 first or whether the predictive coding will be run on the  
6 entire set of the custodian's documents prior to running use of  
7 search terms.

8 THE COURT: Okay. Well, I will let you talk about  
9 those matters directly.

10 Ms. Shane, are you going to run this process or are  
11 you having someone else in the defense team run this process  
12 for JPMorgan Chase?

13 MS. SHANE: I will be aided by many, but I expect to  
14 be responsible for it myself.

15 THE COURT: Okay. And Ms. Sheth, are you the person  
16 who's going to be in charge of this for FHFA?

17 MS. SHETH: Yes, your Honor, and again, I also will be  
18 aided by many on my team as well.

19 THE COURT: Okay. Good. So, Ms. Sheth, I urge you  
20 to, as soon as this conference call is over, arrange a time  
21 later today to meet with Ms. Shane and ask all the questions  
22 that you have. I'm available later today if you need me. I'm  
23 available first thing in the morning. But I'm going to assume  
24 that if I don't hear from counsel that this process is  
25 proceeding apace and that at each step of the way it looks like

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1 it's headed in the right direction to produce a reliable way of  
2 searching this large document pool.

3 So I'm about to end this call. Let me ask if anyone  
4 has anything further they need to say.

5 Ms. Sheth?

6 MS. SHETH: No, thank you, your Honor, and thank you  
7 for your willingness to be so available for us.

8 THE COURT: Yes.

9 Ms. Shane, anything further?

10 MS. SHANE: No, your Honor. Thank you as well.

11 THE COURT: Yes.

12 And I just want to ask, is there any other attorney on  
13 this call who wishes to be heard at this moment?

14 Hearing no one, thank you so much.

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