

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PENNSYLVANIA PUBLIC SCHOOL  
EMPLOYEES' RETIREMENT SYSTEM,  
individually and on behalf of all others  
similarly situated,

Plaintiff,

v.

BANK OF AMERICA CORPORATION,  
et al.,

Defendant.

CIVIL ACTION NO.  
11-CV-00733-WHP

CLASS ACTION

DECLARATION OF YVONNE F. MIZUSAWA IN SUPPORT OF THE BOARD OF  
GOVERNORS OF THE FEDERAL RESERVE SYSTEM'S OPPOSITION TO PLAINTIFF'S  
MOTION TO COMPEL

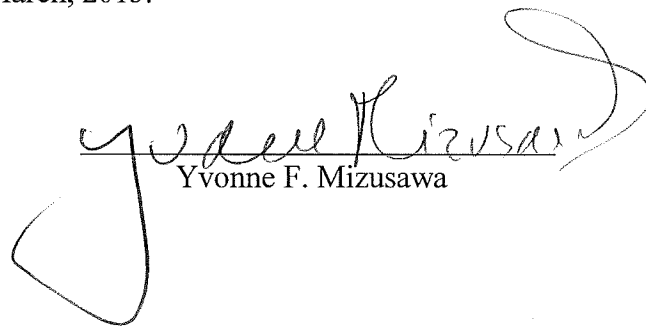
YVONNE F. MIZUSAWA declares as follows:

1. I am a member in good standing of the bar of District of Columbia. I am Senior Counsel for the Board of Governors of the Federal Reserve System ("Board"), a non-party to this action. I have personal knowledge of the facts herein.
2. I submit this declaration in support of the Board's Opposition to lead Plaintiff Pennsylvania Public School Employees' Retirement System's ("plaintiff's") Motion to Compel Discovery Withheld Based Upon the Bank Examination Privilege ("Motion to Compel").
3. In response to the Board's request following notification that the parties had designated exemplars pertaining to the Board in response to this Court's January 22, 2015 Order, BofA provided the Board with unredacted copies of six exemplars (the "FRB

Exemplars”), designated PE18, DE14, DE16, DE17, DE19 and DE23 on BofA’s March 9, 2015 BEP exemplar log.

4. As of the date of this declaration, plaintiff had not filed with the Board’s general counsel an administrative request for access to the FRB Exemplars, or any other confidential supervisory information of the Board in BofA’s possession for use in this litigation, as required by the Board’s regulations, 12 C.F.R. § 261.22(b).
5. Attached hereto as Exhibit 1 is a true and correct copy of the district court’s June 13, 2012 Order in *Local 703, I.B. of T. Grocery and Food Employees Welfare Fund v. Regions Financial Corp.*, Case No. CV 10-J2847-S (N.D. Ala.).

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. on this 23<sup>rd</sup> day of March, 2015.

  
Yvonne F. Mizusawa

# Exhibit 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

LOCAL 703, I.B. OF T. GROCERY  
AND FOOD EMPLOYEES WELFARE  
FUND, et al.,

PLAINTIFFS,

vs.

CASE NO. CV 10-J-2847-S

REGIONS FINANCIAL CORPORATION,  
et al.,

DEFENDANTS.

**ORDER**

Pending before the court is plaintiffs' motion to compel the production of documents from Regions Financial Corporation (doc. 109), a memorandum of law and a declaration in support of said motion (docs. 110 and 111), defendant Regions Financial Corporation's opposition to said motion (doc. 119), Alabama State Banking Department's motion to deny motion to compel (doc. 121) and non-party Board of Governors of the Federal Reserve System's memorandum of law in opposition to the plaintiffs' motion to compel (doc. 127). The court heard argument on the pending motions on May 9, 2012, and ordered that documents responsive to the motion to compel be produced *in camera* (doc. 132).

The court reviewed *in camera* the 3,189 pages of documents responsive to the motion to compel, as provided to the court by defendant Regions Financial

Corporation. At issue is whether the production of these documents is prohibited by the federal bank examination privilege, 12 C.F.R. §§ 261.2(c), 261.23 and §§ 5-3A-3 and 5-3A-11, *Alabama Code 1975*, as amended.

12 CFR § 261.23 (b) mandates that

Unless the Board [of Governors of the Federal Reserve Bank] has authorized disclosure of the information requested, any person who has Board information that may not be disclosed, and who is required to respond to a subpoena or other legal process, shall attend at the time and place required and decline to disclose or to give any testimony with respect to the information, basing such refusal upon the provisions of this regulation. If the court or other body orders the disclosure of the information or the giving of testimony, the person having the information shall continue to decline to disclose the information and shall promptly report the facts to the Board for such action as the Board may deem appropriate.

Similarly, the Alabama Code directs that

All reports of examination, records reflecting action of a bank or bank holding company taken pursuant thereto, and records and minutes of meetings of the Banking Board relating to a bank or several banks or a bank holding company shall be confidential and shall not be subject to subpoena or inspection except by subpoena from a grand jury served on the superintendent.

Ala.Code 1975 § 5-3A-11.

In an attempt to fall outside the parameters of the above Code provisions, the plaintiffs argue that they do not seek privileged documents. Rather, the plaintiffs seek to carve out purely factual documents contained within the documents submitted

*in camera*.

Based on consideration of the *in camera* inspection, the court concludes that the majority of the documents in question are privileged for the reasons set forth by the Alabama State Banking Department and the Board of Governors of the Federal Reserve System. The court further finds that the remaining documents in the *in camera* submission, even if directly not within the disclosure prohibitions set forth above, are entirely irrelevant to the plaintiffs' claims before this court.

Having considered the foregoing, and being of the opinion the plaintiffs' motion to compel is due to be denied,

It is therefore **ORDERED** by the court that said motion be and hereby is **DENIED**. The Alabama State Banking Department's motion to deny motion to compel (doc. 121) is **GRANTED**.

**DONE** and **ORDERED** this the 13<sup>th</sup> day of June, 2012.



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INGE PRYTZ JOHNSON  
U.S. DISTRICT JUDGE