

  
CLERK OF THE COURT

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12 **EIGHTH JUDICIAL DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 CATHERINE RODRIGUEZ,

15 Petitioner,

16 vs.

17 NATIONSTAR MORTGAGE LLC; METLIFE  
18 HOME LOANS; and THE BANK OF NEW  
19 YORK MELLON F/K/A THE BANK OF NEW  
20 YORK AS TRUSTEE FOR THE HOLDERS  
21 OF THE CERTIFICATES, FIRST HORIZON  
22 MORTGAGE PASS-THROUGH  
23 CERTIFICATES SERIES FHAMS 2005-AA5,  
24 BY FIRST HORIZON HOME LOANS, A  
25 DIVISION OF FIRST TENNESSEE BANK  
26 NATIONAL MASTER SERVICER, IN ITS  
27 CAPACITY AS AGENT FOR THE TRUSTEE  
28 UNDER THE POOLING AND SERVICING  
AGREEMENT,

Respondents.

Case No. A-13-685616-J  
Dept No. XXV

25 **OPPOSITION TO RESPONDENTS' MOTION FOR SUPPLEMENTAL BRIEFING**

26 Petitioner, CATHERINE RODRIGUEZ (hereinafter "PETITIONER"), by and through  
27 her attorneys, Venicia G. Considine, Esq., of the LEGAL AID CENTER OF SOUTHERN  
28 NEVADA, INC., and Tara D. Newberry of CONNAGHAN NEWBERRY LAW FIRM, hereby

1 oppose Respondents' request for supplemental briefing following the Order to Show Cause  
2 hearing on September 5, 2013 and the evidentiary hearing that took place on November 1, 2013  
3 and December 13, 2013.

## 4 MEMORANDUM OF POINTS AND AUTHORITIES

### 5 I. INTRODUCTION

6 Petitioner filed a Petition for Judicial Review in July 2013. An Order to Show Cause  
7 hearing was held on September 5, 2013. An evidentiary hearing was held on November 1, 2013  
8 for half a day and continued on December 13, 2013. Prior to each of these hearings, parties on  
9 both sides had the opportunity to, and did, file motions, responses, replies, supplements,  
10 disclosures, exhibits, and reports with the court, including an exchange of documents and  
11 witnesses pursuant to NRC 16.1 with multiple supplements by each side. At the close of the  
12 evidentiary hearing on December 13, 2013, Respondent Bank of New York Mellon, through its  
13 attorney Kristin Schuler-Hintz, Esq., requested the opportunity to file supplemental briefs and  
14 the court instructed that a request by motion would need to be filed.

15 The parties had ample opportunity to make arguments over the four months between the  
16 filing of the Petition and the conclusion of the evidentiary hearing. Respondents were given  
17 Petitioner's Initial Disclosure of Documents and Witnesses, along with multiple supplements, as  
18 well as Petitioner's Request for Judicial Notice in October of 2013. Respondents did not file an  
19 objection to Petitioner's Request for Judicial Notice. Respondents never requested an  
20 opportunity to supplement their response to the Petition during the pendency of the case. The  
21 court has heard the arguments, read the pleadings, and has a complete set of exhibits to make a  
22 decision and no further briefing is necessary.

### 23 II. LEGAL ARGUMENT

24 Supplemental briefs are intended to allow arguments on transactions or occurrences or  
25 events which arise after the initial pleading. NRC 15(d), Szilagyi v. Testa, 99 Nev. 834, 673  
26 P.2d 495 (1983). Respondents claim there has not been sufficient opportunity to brief factual  
27 issues or legal points and request this court to give time to brief it now. However, failure to file a  
28 thorough response or brief throughout this case does not mean there was no opportunity to bring

1 up their arguments or claims. The OSC hearing on the Petition for Judicial Review occurred in  
2 early September. Initial disclosures were provided by Petitioner on October 10, 2013.  
3 Supplemental disclosures were provided by Petitioner on October 30, 2013, as well as a formal  
4 written request for judicial notice with thirty two (32) exhibits attached. A second supplement  
5 was provided by Petitioner on October 31, 2013. Respondents' provided initial disclosures on  
6 October 25, 2013 and supplemented their own disclosures several times, even on the day of the  
7 evidentiary hearing on December 13, 2013. Respondents did not argue at the evidentiary hearing  
8 that any of the proposed exhibits were new or never disclosed. Thus, there was ample  
9 opportunity to review the exhibits and prepare witnesses necessary to present Respondents'  
10 position on those exhibits.

11 Respondents admit in their motion that their response to the Petition for Judicial Review  
12 only addressed the issue of timing. See Motion pg 3 lines 23-24. Respondents claim "the parties  
13 have not briefed the factual issues covered in the evidentiary hearing" which is simply not true.  
14 Respondents failed to address the factual issues alleged in the Petition in their response, and  
15 chose to only address the issue of timeliness. The Petition on file in this matter thoroughly  
16 alleges the misconduct, fraud and egregious conduct of Respondents that was the focus of the  
17 evidentiary hearing. The failure to address any other issue in their response does not become an  
18 opportunity for multiple bites at the apple. Respondents had ample time to review the claims  
19 asserted in the Petition and the proposed exhibits, and submit briefing to the court. Furthermore,  
20 the Respondents had ample opportunity to identify and present witnesses at the evidentiary  
21 hearing to testify and/or rebut the allegations asserted in the Petition and make arguments on the  
22 evidence presented.

23 Respondents claim supplemental briefing is necessary on the legal standard for sanctions.  
24 However, the applicable statute allowing sanctions to be awarded in this matter, NRS  
25 107.0865(5) and the case law interpreting the statute (See Leyva v. National Default Servicing  
26 Corp., 127 Nev. Adv. Op. No. 40, 255 P.3d 1275, 1278 (Nev. 2011) (citing Pasillas v. HSBC  
27 Bank, USA, 127 Nev. Adv. Op. 39, 255 P.3d 1281 (Nev. 2011)) clearly state the imposition of  
28 sanctions lies squarely upon the discretion of the district court. In the Petition, Petitioner

1 specifically alleges that sanctions should be imposed based on the factors set forth in Pasillas,  
2 and that Respondents should be heavily sanctioned. One of the factors identified in Pasillas and  
3 in the Petition, is the egregiousness of the conduct by the Respondent as a measure for  
4 appropriateness of sanctions. Respondents' failure to address the legal standard set forth in the  
5 Petition or to rebut Petitioner's request for Respondents to be heavily sanctioned in their  
6 Response to the Petition, does not warrant supplemental briefing.

7         Petitioner's analogy between sanctions and punitive damages in her closing argument at  
8 the evidentiary hearing was simply that... an analogy. At present, there is no specific formula  
9 for monetary sanctions for the court to impose in a Petition for Judicial Review related to the  
10 State of Nevada Foreclosure Mediation Program. This court is well aware of the legal standard  
11 for the imposition of sanctions based on the district court's own discretion, and additional  
12 briefing is not necessary. Petitioner made her argument for the court to consider with regard to  
13 the appropriateness of sanctions, Respondents were given the same opportunity, and in fact, had  
14 two separate attorneys make arguments on their behalf at the conclusion of the evidentiary  
15 hearing. Sanctions are up to the discretion of the court. The opportunity to aid the court in  
16 determining the weight of the evidence was presented to both parties prior to and during the  
17 hearing. Respondents produced a Nationstar employee to testify and failed to utilize the  
18 opportunity to argue the weight of the exhibits while she was on the stand. Respondents failed to  
19 ask their own witness to rebut the exhibits, especially those that were public records filed with  
20 the Securities Exchange Commission by the Respondents and admitted by judicial notice.

21         With regard to the allegation that Petitioner's counsel was extrapolating information from  
22 exhibits, counsel is permitted to take excerpts from exhibits in summary to illustrate points of  
23 argument. The court has the ability to review the documents cited in their entirety when  
24 determining the weight of evidence. Respondents had the same opportunity to review the  
25 documents in their entirety as they were provided prior to the hearing, starting back in early  
26 October, and address those exhibits in their summary argument.

27         This request for a "do-over" after the hearing is concluded is not contemplated by NCRP  
28 15. Supplemental briefing may be reasonably allowed upon such terms as are just. NCRP 15,

1 Madsen Constr. Corp. v. Riverside County Mtg. & Loan Co., 71 Nev. 356, 291 P. 2d 1056  
2 (1955). It is not "just" to allow Respondents an opportunity to add to the record and provide a  
3 free-pass for failure to prepare properly. This court should not award Respondents with  
4 additional time to brief arguments that should have been made during the pendency of the case.

5 **II. CONCLUSION**

6 Based on the foregoing, Petitioner respectfully requests this Court to deny the  
7 Respondents' request for supplemental briefing.

8 DATED this 10<sup>th</sup> day of January, 2014.

9 Respectfully submitted by:

10  
11 **LEGAL AID CENTER OF  
SOUTHERN NEVADA**

12 /s/ Venicia Considine

13 Venicia Considine, Esq.

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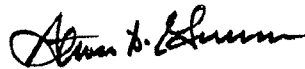
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10<sup>th</sup> day of January, 2014, I placed a true and correct copy of the foregoing **PETITIONER'S OPPOSITION TO RESPONDENTS MOTION FOR SUPPLEMENTAL BRIEFING** in the United States Mail in Las Vegas, Nevada with first-class postage prepaid, and via email addressed to the following:

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/s/ Susan J. Moen  
An employee of Legal Aid Center  
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CLERK OF THE COURT

1 **ORDER**

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20 **EIGHTH JUDICIAL DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 CATHERINE RODRIGUEZ,

23  
24 Petitioner,

25 vs.

26 NATIONSTAR MORTGAGE, LLC; METLIFE  
27 HOME LOANS; and THE BANK OF NEW  
28 YORK MELLON F/K/A THE BANK OF NEW  
YORK AS TRUSTEE FOR THE HOLDERS  
OF THE CERTIFICATES, FIRST HORIZON  
MORTGAGE PASS-THROUGH  
CERTIFICATES SERIES FHAMS 2005-AA5,  
BY FIRST HORIZON HOME LOANS, A  
DIVISION OF FIRST TENNESSEE BANK  
NATIONAL MASTER SERVICER, IN ITS  
CAPACITY AS AGENT FOR THE TRUSTEE  
UNDER THE POOLING AND SERVICING  
AGREEMENT,

Respondents.

Case No. A-13-685616-J

Dept No. XXV

FEB 07 2014

## SUPPLEMENTAL BRIEFING

The Motion is DENIED.


DATED this 10<sup>th</sup> day of February, 2014.

Honorable Kathleen E. Delaney  
District Court Judge




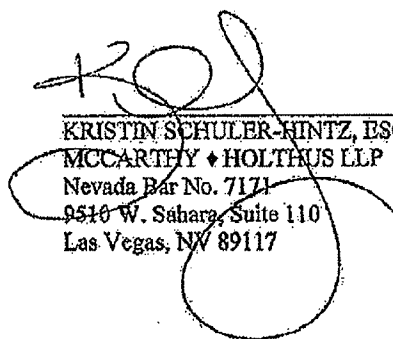
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3 **EIGHTH JUDICIAL DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5 CATHERINE RODRIGUEZ,

6 Petitioner,

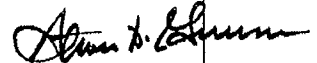
7 vs.

8 THE BANK OF NEW YORK MELLON F/K/A  
9 THE BANK OF NEW YORK AS TRUSTEE  
10 FOR THE HOLDERS OF THE  
11 CERTIFICATES, FIRST HORIZON  
12 MORTGAGE PASS-THROUGH  
13 CERTIFICATES SERIES FHAMS 2005-AA5,  
14 BY FIRST HORIZON HOME LOANS, A  
15 DIVISION OF FIRST TENNESSEE BANK  
16 NATIONAL MASTER SERVICER, IN ITS  
17 CAPACITY AS AGENT FOR THE TRUSTEE  
18 UNDER THE POOLING AND SERVICING  
19 AGREEMENT,

20 Respondents.

Case No.: A-13-685616-J Electronically Filed  
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Dept No.: XXV



CLERK OF THE COURT

17 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

18 THIS COURT, having conducted a hearing on September 5, 2013, and evidentiary  
19 hearings on November 1, 2013 and December 13, 2013, as provided by NRS Chapter 107  
20 and the Foreclosure Mediation Rules ("FMR") adopted by the Nevada Supreme Court for  
21 the Nevada Foreclosure Mediation Program (the "Program"), for the limited purposes of  
22 determining the compliance by the owner of the loan and beneficiary of the deed of trust,  
23 in attending the mediation, having authority or access to a person with authority, bringing  
24 to mediation each document required, and participating in the mediation in good faith,  
25 compliance with the rules of the Program, enforcing agreements made between parties  
26 within the Program, including temporary agreements, and determining appropriate  
27 sanctions, pursuant to FMR and the Court's Order to Show Cause dated July 23, 2013, and  
28 good cause appearing; the Court hereby finds, concludes and orders as follows:

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

1 **FINDINGS OF FACT**

2 1. On or about October 21, 2013, the parties stipulated that Nationstar  
3 Mortgage LLC, as servicer, was acting as the agent of The Bank of New York Mellon at  
4 the October 6, 2011, foreclosure mediation and that this court has jurisdiction over both  
5 Nationstar Mortgage LLC and The Bank of New York Mellon, pursuant to NRS  
6 107.086(5).

7 2. Respondent Nationstar Mortgage LLC attended Mediation on October 6,  
8 2011, overseen by Mediator, Steve E. Wenzel, and that this was the third mediation  
9 attended by Petitioner, Petitioner's attorney Tara D. Newberry, Esq. and McCarthy  
10 Holthus, LLP as attorney for entities claiming authority over Petitioner's mortgage.

11 3. Petitioner filed a Chapter 7 Bankruptcy on May 20, 2008 and was  
12 discharged on December 1, 2008. Case #08-15209-lbr.

13 4. An Assignment of Deed of Trust was recorded with the Clark County  
14 Recorder's office on June, 16, 2010, assigning Petitioner's mortgage to The Bank of New  
15 York Mellon f/k/a The Bank of New York as Trustee.

16 5. Respondent MetLife Home Loans appeared at mediation on July 19, 2010,  
17 as an agent on behalf of The Bank of New York Mellon.

18 6. Respondent The Bank of New York Mellon, by and through its servicing  
19 agent, Respondent MetLife Home Loans, filed a Petition for Judicial Review on  
20 August 11, 2010, after the first mediation, which resulted in a finding by the Honorable  
21 Donald M. Moseley that the beneficiary failed to bring all required documents and lacked  
22 authority, thereby ordering a letter of certification to not be issued by the Foreclosure  
23 Mediation Program.

24 7. Respondent MetLife Home Loans appeared at the December 10, 2010,  
25 mediation which resulted in a finding by the mediator that the beneficiary failed to provide  
26 proper documentation according to the Foreclosure Mediation Rules.

27 8. Respondent The Bank of New York Mellon, by and through its servicing  
28 agent, Respondent MetLife Home Loans, provided certifications for the Promissory Note

1 and Deed of Trust on or about November 16, 2010, indicating that MetLife was in actual  
2 possession of the original note, and that the copy of the note attached to the certification  
3 was a true and correct copy of the original.

4 9. Respondent Nationstar Mortgage, LLC, appeared at the October 6, 2011  
5 mediation and presented a Promissory Note, consisting of a copy of the Note with an  
6 endorsement to Nationstar Mortgage, LLC. (*Dec. 13<sup>th</sup> hearing, page 74, lines 23-25.*)

7 10. Respondent Nationstar Mortgage, LLC held themselves out as the new  
8 owner of Petitioner's loan at the mediation by presenting the Promissory Note, and by  
9 stating during mediation that Nationstar Mortgage, LLC was both the servicer and owner  
10 of the loan. (*Nov 1<sup>st</sup> hearing, page 31, line 23 through page 35, line 2; Dec. 13<sup>th</sup> hearing,*  
11 *page 165, lines 5-10.*)

12 11. The October 6, 2011, mediation resulted in a finding by the mediator that  
13 Respondents failed to provide all required documents required by the Foreclosure  
14 Mediation Rules.

15 12. Respondent The Bank of New York Mellon filed a Verified Complaint for  
16 Judicial Foreclosure and Deficiency Judgment of Deed of Trust against Petitioner on May  
17 3, 2012, which included a copy of Petitioner's Promissory Note payable to First Horizon  
18 Home Loan Corporation with no endorsements.

19 13. Petitioner filed a Motion to Cancel Lis Pendens and Dismiss Complaint on  
20 December 7, 2012.

21 14. Respondent The Bank of New York Mellon filed a Verified Amended  
22 Complaint for Judicial Foreclosure and Deficiency Judgment of Deed of Trust against  
23 Petitioner on December 14, 2012, with a copy of Petitioner's Promissory Note payable to  
24 First Horizon Home Loan Corporation, but included a blank endorsement with a  
25 rectangular block to the right of the blank space.

26 15. Respondent The Bank of New York Mellon filed a Motion for Summary  
27 Judgment against Petitioner on April 29, 2013.

28

1           16. A hearing was held on the Motion for Summary Judgment on June 18,  
2 2013, resulting in a denial of summary judgment without prejudice.

3           17. The mediations held previous to the October 6, 2011 mediation, and the  
4 subsequent judicial foreclosure, along with all of the documents provided by Respondents  
5 in those cases, are relevant as they illustrate a pattern of practice by Respondents and give  
6 a full picture of this loan and the circumstances surrounding the loan as it relates to the  
7 foreclosure mediation on October 6, 2011. (*Dec. 13<sup>th</sup> hearing, page 138, lines 15 – 19.*)

8           18. The original Promissory Note includes an endorsement in blank surrounded  
9 by a clear and distinct red circle, and there are no hole punches in the original note. (*Nov.*  
10 *1<sup>st</sup> hearing, page 70, lines 4 – 7.*)

11           19. Upon inspection of the Original Note, the Collateral File, testimony  
12 provided by Faye Janati, and statements made by Respondents' counsel, the Certification  
13 executed on November 16, 2010 by Respondent The Bank of New York Mellon, by and  
14 through its agent, MetLife Home Loans, was made falsely, as the copy attached to the  
15 certification was not a true and correct copy of the original, and the affiant was not in  
16 possession of the original note. (*Dec 13<sup>th</sup> hearing, page 9 line 18-2, page 10 lines 12-1,*  
17 *page 12 lines 2-8, page 54 line 8-11, page 137 line 18 through page 138 line 5, page 140*  
18 *line 25 through page 177 line 16, page 195 lines 5-10.*)

19           20. The endorsement provided in the Amended Complaint overlays the  
20 endorsement provided in the October 6, 2011, mediation exactly, except the visible  
21 rectangular white text box block in the Amended Complaint endorsement exactly blocks  
22 out the "Nationstar Mortgage, LLC" wording on the endorsement provided at the 2011  
23 mediation.

24           21. Respondent Nationstar Mortgage, LLC was aware of the altered  
25 endorsements between the documents, as referenced above, as were its attorneys,  
26 McCarthy & Holthus LLP, who concurrently represented Respondent The Bank of New  
27 York Mellon prior to the mediation on October 6, 2011. (*Dec. 13<sup>th</sup> hearing page 162 line*  
28 *18 through page 163 line 2.*)

1           22. Respondents, by and through Nationstar Mortgage, LLC, did not  
2 investigate how the altered endorsement was created. (*Dec. 13<sup>th</sup> hearing, page 39 lines 6-*  
3 *21, pages 66-67 lines 5-25 & 1-19, page 68 lines 3-9.*)

4           23. Respondents, by and through Nationstar Mortgage, LLC, disregarded  
5 issues of bad faith in the handling of Petitioner's loan, evidenced by the altered  
6 Promissory Note's creation and use, and failed to correct the misrepresentation near the  
7 time of the October 6, 2011, mediation.

8           24. Since the October 6, 2011, mediation, Respondents have continued to fail  
9 to investigate how the altered Promissory Note was created, who created it, and to create a  
10 process to ensure that such bad faith would not be repeated. (*Dec. 13<sup>th</sup> hearing, page 39*  
11 *lines 6-21, page 58 lines 12-16, pages 66-67 lines 5-25 & 1-19, page 68 lines 3-9.*)

12           25. The only evidence of movement of the Collateral File from the Custodian  
13 after August 29, 2005 is the Bailee Letter dated June 5, 2013, showing that the Collateral  
14 File was transferred to McCarthy & Holthus LLP. (*Dec. 13<sup>th</sup> hearing, pages 149 – 150,*  
15 *page 152, lines 6-13.*)

16           26. Respondents attorney did not have the Collateral File prior to or during the  
17 October 6, 2011 mediation. (*Dec. 13<sup>th</sup> hearing, page 171.*)

18           27. The pattern and practice of Respondents is to have their attorneys obtain  
19 copies of notes from an imaging file when preparing documents for mediation and exhibits  
20 for filing in court, rather than making actual copies of the original for such use. (*Nov. 1<sup>st</sup>*  
21 *hearing, page 64, lines 20-22; Dec 13<sup>th</sup> hearing, page 9, line 18-22, page 10 lines 12-17,*  
22 *page 12 lines 2-8, page 54, line 8-11, page 137, line 18, through page 138, line 5, page*  
23 *140, line 25, though page 177, line 16, page 195 lines 5-10.)*

24           28. The Collateral File holding the original Promissory Note with endorsement  
25 and Deed of Trust was not used to create any of the copies Respondents sent to  
26 Respondent's counsel in preparation for any of Petitioner's mediations or the filing of the  
27 Judicial Foreclosure. (*Nov. 1<sup>st</sup> hearing, page 64, lines 20 – 22; Dec 13<sup>th</sup> hearing, page 9*  
28

1 line 18-2, page 10 lines 12-1, page 12 lines 2-8, page 54 line 8-11, page 137 line 18  
2 through page 138 line 5, page 140 line 25 though page 177 line 16, page 195 lines 5-10.)

3 29. The documents presented by Respondents in Petitioner's multiple  
4 mediations and judicial foreclosure were various versions of copies taken from an imaging  
5 system and were never verified against the original documents in the Collateral File.  
6 (Nov. 1 hearing, page 64 lines 9 – 12, 15 – 17, page 65 lines 3-10, pages 66-67 lines 21 –  
7 25 & 1, Dec. 13<sup>th</sup> hearing, page 159, lines 3 – 14, Dec. 13<sup>th</sup> hearing, page 161, lines 20-  
8 24, page 162, lines 15 – 17.)

9 30. Respondents failed to provide a qualified witness to testify as to  
10 Petitioner's specific account history. (Dec. 13<sup>th</sup> hearing, page 20–23, pages 42-43,  
11 lines 11-25 & 1- 18, page 47 lines 23-25, page 50 lines 8-14, page 51 lines 6-7.)

12 31. Respondents failed to produce Daniel Marks as a witness at any of the  
13 evidentiary hearing dates in this matter. Daniel Marks, who appeared at the October 6,  
14 2011, mediation as representative of Respondents, is still currently employed by  
15 Respondent Nationstar Mortgage LLC. (Dec. 13<sup>th</sup> hearing pg. 58 line 1-5.)

16 32. Respondent The Bank of New York Mellon is the owner of the Note, as  
17 Fay Janati testified on two different occasions. (Nov. 1<sup>st</sup> hearing, page 62 lines 21- 23;  
18 Dec. 13<sup>th</sup> hearing, page 13, lines 7- 11.)

19 33. Respondent Nationstar Mortgage, LLC has a Document Execution  
20 department whose purpose is to provide documents to foreclosure attorneys. (Dec. 13<sup>th</sup>  
21 hearing, page 23, lines 18- 25.)

22 34. Respondents, by and through Nationstar Mortgage, LLC, admitted to  
23 creating the altered endorsement. (Dec. 13<sup>th</sup> hearing, page 40 lines 6-7.)

24 35. The certifications presented at Petitioner's Mediation on December 10,  
25 2010, were printed off an imaging system and did not contain the endorsement in blank  
26 from First Horizon, yet the original Promissory Note, with an endorsement in blank, had  
27 been received by the Custodian in possession of the Collateral File on August 29, 2005,  
28 according to the First Horizon Document Header contained in the Collateral File and as



1 supported by testimony during the evidentiary hearing. (*Dec. 13<sup>th</sup> hearing, page 145,*  
2 *lines 6-7.*)

3 36. Respondents admit Petitioner's loan was not treated any differently than  
4 other loans serviced by Nationstar Mortgage, LLC (*Nov. 1 hearing, page 64, lines 1-2.*)

5 37. Respondent Nationstar Mortgage, LLC does not pay additional fees to the  
6 law firms processing the foreclosure even in cases where additional documents or work is  
7 necessary. (*Dec. 13<sup>th</sup> hearing, page 52 lines 8-18.*)

8 38. Respondents knew original documents were not going to be provided for  
9 the October 6, 2011 mediation and, instead, created their own set of documents and  
10 certifications to lead Petitioner and the Foreclosure Mediation Program to believe that the  
11 documents were compliant with the Foreclosure Mediation Program Rules. (*Dec. 13<sup>th</sup>*  
12 *hearing, pages 76, lines 16-25, page 77, lines 1-8, page 79, lines 24-25, page 80, lines 1-*  
13 *6, page 83, lines 2-4 & 22-25, page 84, line 1, page 91 lines 8-16, page 94, lines 17-25,*  
14 *page 95, lines 1-2, page 121 lines 19-25, page 122, lines 1-16.*)

15 39. Respondents were prepared to execute certifications stating possession of  
16 original documents when in fact, neither Nationstar Mortgage, LLC nor their attorneys  
17 were in possession of the originals and had already stated they would not be in possession  
18 of the originals by the October 6, 2011 mediation. (*Dec. 13<sup>th</sup> hearing, page 100 lines 11-*  
19 *24, pages 101-102 lines 20-25 & 1-25.*)

20 40. The law firm for Respondents prepared and generated the documents and  
21 certifications for the purposes of foreclosure mediation. (*Dec. 13<sup>th</sup> hearing, page 139,*  
22 *lines 13 – 25, page 140, lines 1-4.*)

23 41. Respondents practice is to alter certifications to state "the attached is a  
24 copy of the original, a certified copy of which is in the possession of the undersigned"  
25 when they are unable to meet the requirements of the Foreclosure Mediation Program  
26 Rules, and unable to aver they are in possession of the original as required by the rules, in  
27 order to obtain a foreclosure certificate. (*Dec. 13<sup>th</sup> hearing, page 102, lines 17-25, page*  
28 *104, lines 23-25, page 105, lines 1-8, page 122, line 25, page 123, lines 1-6.*)

1           42. Respondents presented documents at the October 6, 2011 mediation which  
2 Respondents knew were inconsistent with prior versions. (*Dec. 13<sup>th</sup> hearing, page 107-*  
3 *109 lines 24-25, 1-25, & 1-4, page 111-113 lines 25, 1-25 & 1-2*)

4           43. Respondent The Bank of New York Mellon knew that Respondent  
5 Nationstar Mortgage LLC was acting on its behalf, as evidenced by the Pooling and  
6 Servicing Agreement, Master Servicing Agreement and Sub-Servicing Agreement it  
7 contractually entered and thereby delegated authority to Nationstar Mortgage LLC, as  
8 agent of The Bank of New York Mellon.

9           44. There is a significant difference between the original Promissory Note and  
10 the alleged certified copies in this case; since the Custodian was in possession of the  
11 original Promissory Note with an endorsement on August 29, 2005 according to the First  
12 Horizon Document Header contained in the Collateral File, and as supported by testimony  
13 during the evidentiary hearing, all other versions of the note that were produced thereafter  
14 should have contained the endorsement in blank. (*Dec. 13<sup>th</sup> hearing, page 39, lines 19-21,*  
15 *page 145, lines 6-7, page 151 lines 4-11, page 94 lines 10-13.*)

16           45. As of June 18, 2013, the original Promissory Note had an endorsement in  
17 blank with a distinct red circle around it, and, while there is no evidence of when the red  
18 circle was drawn around the endorsement, the Promissory Note was presented at the  
19 Motion for Summary Judgment Hearing on that date and contained the red circle and all  
20 copies of the original Promissory Note after June 18, 2013, should reflect the distinct red  
21 circle around the endorsement.

22           46. Respondent The Bank of New York Mellon, in its response to the Petition  
23 in this case, included altered documents regarding the Promissory Note in this matter.  
24 McCarthy & Holthus LLP filed a response on behalf of The Bank of New York Mellon on  
25 August 13, 2013, with an exhibit containing a copy of the Promissory Note with the stamp  
26 from Old Republic Title on the first page and with an endorsement in blank that did not  
27 contain the red circle, nor did it have the "Nationstar Mortgage LLC" stamp. As testified  
28 to by attorney Kristin Schuler-Hintz, the Old Republic stamp indicates that it was a copy

1 made at the time of closing in April of 2005, and is the version obtained from an imaging  
2 file. Despite being in possession of the original Promissory Note at some point before  
3 June 18, 2013, at which time the Promissory Note had a distinct red circle around the  
4 endorsement in blank, Respondent The Bank of New York Mellon's response to the  
5 Petition did not contain a copy of the Promissory Note as it existed on August 13, 2013.  
6 The version of the Note presented at the October 6, 2011, mediation was in fact Exhibit 1  
7 in this matter, which contains the Nationstar Mortgage LLC stamp as Petitioner, and  
8 counsel for Respondents, Lindsey Bennett-Morales, testified, and therefore Respondents  
9 failed to include in their response the actual document it presented at mediation. (*Dec*  
10 *13th hearing, page 9 line 18-2, page 10 lines 12-1, page 12 lines 2-8, page 54 line 8-11,*  
11 *page 137 line 18 through page 138 line 5, page 140 line 25 through page 177 line 16, page*  
12 *195 lines 5-10.*)

13 47. The exhibit attached to Respondent The Bank of New York Mellon's  
14 response in this matter, as well as Respondent The Bank of New York Mellon's Motion to  
15 Amend the Complaint filed in the Judicial Foreclosure case on September 5, 2013,  
16 containing the same inaccurate copy of the Promissory Note demonstrates a pattern and  
17 practice by Respondent and its counsel to utilize inaccurate and untrustworthy copies of  
18 documents.

19 48. Respondents had a financial interest and financial incentive throughout  
20 Petitioner's foreclosure process to complete the foreclosure sale. Respondents were  
21 contractually required to make advances for the payment of principal and interest, taxes  
22 and insurance and legal fees, as well as ancillary costs of foreclosure, but earned interest  
23 on these advances as amounts deposited in collection accounts referred to as float money.  
24 Respondents were in first priority for reimbursement from liquidation proceeds, also  
25 known as foreclose sale proceeds, as stated in the Prospectus dated February 25, 2005, the  
26 Pooling and Servicing Agreement dated May 1, 2005, Nationstar Mortgage LLC's  
27 Registration Statement filed with the SEC on August 11, 2011, and the Subservicing  
28 Agreement effective June 21, 2011, filed by Nationstar Mortgage LLC with the SEC.

49. Respondents had a financial interest and financial incentive throughout Petitioner's foreclosure process to complete the foreclosure sale, as it was contractually permitted to impose late payment charges and servicing fees for each month the loan remained past due, and Respondents were in first priority for recovery of those fees from liquidation proceeds, also known as foreclose sale proceeds, as stated in The Pooling and Servicing Agreement dated May 1, 2005; Nationstar Mortgage LLC's Registration Statement filed with the SEC on August 11, 2011, and such charges were assessed against Petitioner's loan as evidenced by Nationstar Mortgage LLC's Servicing records.

50. Respondents would have collected all of the monies advanced by Respondents with interest, in addition to late payment fees and servicing fees, once a foreclosure was completed and the liquidation proceeds realized.

51. Respondents' intentional use of altered documents to avoid good faith participation in the Foreclosure Mediation Program is egregious conduct.

52. Agents of Respondent The Bank New York of Mellon attended Petitioner's Mediations without proof of authority.

53. Respondents failed to provide the required documents at each of Petitioner's Mediations and refused to offer a loan modification depriving Petitioner of an opportunity to keep her home.

54. Respondents repeated violations of FMR were intentional and repetitive and caused harm to the Petitioner and to the integrity of the Foreclosure Mediation Program.

## CONCLUSIONS OF LAW

1. NRS 107.086(8)(d) requires the Supreme Court to adopt rules to establish procedures to protect the mediation process from abuse and to ensure that each party to the mediation acts in good faith.

2. NRS 107.086(4) and the Foreclosure Mediation Rules ("FMR") require the original or certified copy of the Promissory Note to be produced at mediation. At the time of the mediation on October 6, 2011, FMR 11(4) requirement that a certified copy of the

1 original note, and each endorsement of the note, could only be satisfied when the mediator  
2 received a statement under oath signed before a notary public that specifically states that  
3 the person making the certification is in actual possession of the original mortgage note,  
4 that the attached copy of the mortgage note is a true and correct copy of the original  
5 mortgage note, which is in the possession of the person making the certification.  
6 Respondents failed to comply with FMR 11.

7         3. A compliant certified copy is a copy made of the original document at the  
8 time it is being certified by an affiant. As indicated throughout the Court's finding of  
9 facts, the Respondents in this case never made an actual copy of the original for use as an  
10 exhibit in any court filing or for the purposes of certification in accordance with the FMR  
11 11. In its response to the Petition, Respondent used a copy from its imaging file rather  
12 than making a copy of the original Promissory Note and, furthermore, failed to include the  
13 version of the Promissory Note that it presented at mediation. A copy of a copy of the  
14 Promissory Note, Deed of Trust and/or any Assignments is prima facie noncompliance  
15 with NRS 107.086(4) and FMR 11.

16         4. Respondents were required to mediate in good faith, provide required  
17 documents, and provide a person with authority to modify the loan or have "access at all  
18 times during the mediation to a person with such authority." NRS 107.086(4), (5); FMR  
19 5(7)(a). Respondents failed to mediate in good faith, failed to provide all required  
20 documents, and failed to present a person with authority.

21         5. The Court may issue an order imposing sanctions against the beneficiary of  
22 the Deed of Trust or the representative as the Court determines appropriate. See FMR  
23 5(7)(f).<sup>8</sup> See NRS 107.086(2)(c)(2), (3), (6), (7). *Pasillas v. Hsbc Bank U.S.*, 2011 WL  
24 2671894, 255 P.3d 1281, 127 Nev. Adv. Op. 39 (Nev., 2011) If the Court finds  
25 noncompliance with the requirements, the bare minimum sanction is that an FMP  
26 certificate must not issue. *Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. \_\_\_, 266 P.3d 602, 607  
27 (2011).

28

1           6.       The nature of the sanctions imposed on the beneficiary or its representative  
2 is within the discretion of the Court. *Pasillas v. HSBC Bank USA*, 127 Nev. \_\_, \_\_, 255  
3 P.3d 1281, 1287 (2011). The Nevada Supreme Court previously listed factors to aid  
4 district courts when considering sanctions as punishment for litigation abuses, violations  
5 of Foreclosure Mediation Rules or NRS 107.080 et al, including but not limited to, the  
6 degree of willfulness of the offending party, the severity of the sanction relative to the  
7 severity of the abuse, the financial condition of the party being sanctioned and the need to  
8 deter both the parties and future litigants from similar abuses. See *Young v. Johnny*  
9 *Ribeiro Building*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990); see also *Bahena v.*  
10 *Goodyear Tire & Rubber Co.*, 126 Nev. \_\_, \_\_, 235 P.3d 592, 598–99 (2010);  
11 *Arnold*, 123 Nev. at 415–16, 168 P.3d at 1053 *Pasillas v. Hsbc Bank U.S.*, 2011 WL  
12 2671894, 255 P.3d 1281, 127 Nev. Adv. Op. 39 (Nev., 2011).

13           7.       In *Pasillas*, the Nevada Supreme Court set forth a nonexhaustive list of  
14 factors for the district court to consider in weighing the appropriate sanctions to impose  
15 when a party has violated the FMP requirements. 127 Nev. at \_\_, 255 P.3d at 1287. In  
16 light of Respondents violations of the FMR, repeated use of inaccurate copies of required  
17 documents including in its responses filed in this matter, sanctions are necessary to  
18 demonstrate to Respondents that they are not free to act with wayward disregard of  
19 Nevada law, the FMR, or the judicial system. See *Foster v. Dingwall*, 227 P.3d 1042  
20 (Nev., 2010).

21           8.       The conduct exhibited in relation to Petitioner's loan and the mediation at  
22 issue was egregious and in the consideration of imposition of sanctions, this Court finds  
23 that under NRS 107.080, FMR, and the case law of this state, that substantial sanctions are  
24 appropriate.

25           9.       The Court concludes that since Petitioner received a discharge of liability  
26 for the Promissory Note at issue in this matter by decree of the United States Bankruptcy  
27 Court District of Nevada issued on December 1, 2008 in case #08-15209 by the Honorable  
28

1 Linda B. Riegle, there can be no offset with regard to sanctions imposed by this Court as  
2 this would be in violation of the discharge injunction.

3 **ORDER**

4 **NOW THEREFORE:**

5 THE COURT ORDERS a sanction of \$50,000.00 dollars to be imposed against  
6 Respondent The Bank of New York Mellon, payable to Petitioner within 30 days of entry  
7 of this order. Respondents shall be sanctioned an additional \$5,000 per day for failure to  
8 do so within 30 days of the entry of this order.

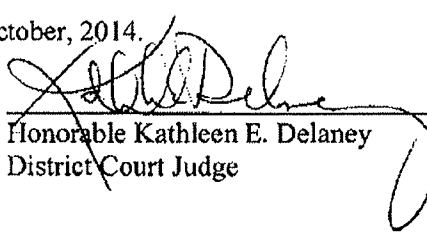
9 THE COURT FURTHER ORDERS a sanction of \$50,000.00 dollars against  
10 Respondent Nationstar Mortgage LLC payable to Petitioner within 30 days of entry of this  
11 order. Respondent shall be sanctioned an additional \$5,000 per day for failure to do so  
12 within 30 days of the entry of this order.

13 THE COURT FURTHER ORDERS that Respondents are jointly and severally  
14 liable for Petitioner's reasonable attorney fees and costs as an additional sanction in this  
15 matter.

16 THE COURT FURTHER ORDERS Petitioner's counsel to file a Memorandum of  
17 Costs and Fees including all costs and fees accrued from the election of mediation in 2011  
18 to the date of this order, such memorandum must be filed with the Court within 14 days of  
19 entry of this order. The Court shall issue a separate order regarding the total amount of  
20 fees and costs to be awarded.

21 THE COURT FURTHER ORDERS that a Certificate shall not issue regarding the  
22 October, 2011 mediation.

23 DATED this 3<sup>rd</sup> day of October, 2014.

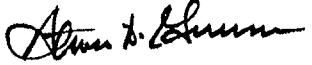
24   
25 Honorable Kathleen E. Delaney  
26 District Court Judge  
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Kristin A. Schuler-Hintz, Esq. – McCarthy & Holthus  
Allison R. Schmidt, Esq. – Akerman LLP  
Venicia Considine, Esq. – Legal Aid Center of Southern Nevada  
Tara D. Newberry, Esq. – Connaghan Newberry Law Firm

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CLERK OF THE COURT

**MRTX**  
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Nationstar Mortgage LLC and  
The Bank of New York Mellon*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CATHERINE RODRIGUEZ, a Nevada limited  
liability company,

Petitioner,

vs.

NATIONSTAR MORTGAGE LLC; METLIFE  
HOME LOANS; and THE BANK OF NEW  
YORK MELLON F/K/A THE BANK OF NEW  
YORK AS TRUSTEE FOR THE HOLDERS OF  
THE CERTIFICATES, FIRST HORIZON  
MORTGAGE PASS-THROUGH  
CERTIFICATES SERIES FHAMS 2005-AA5,  
BY FIRST HORIZON HOME LOANS, A  
DIVISION OF FIRST TENNESSEE BANK  
NATIONAL MASTER SERVICER, IN ITS  
CAPACITY AS AGENT FOR THE TRUSTEE  
UNDER THE POOLING AND SERVICING  
AGREEMENT,

Respondents.

Case No.: A-13-685616-J

Dept. No.: XXV

**MOTION TO RETAX COSTS AND  
OBJECTION TO UNREASONABLE  
ATTORNEYS' FEES**

**Date of Hearing:**

**Time of Hearing:**

COME NOW Respondents Nationstar Mortgage LLC ("Nationstar") and The Bank of  
New York Mellon f/k/a The Bank of New York as Trustee for the Holders of the Certificates,  
First Horizon Mortgage Pass-Through Certificates Series FHAMS 2005-AA5, by First Horizon  
Home Loans, a Division of First Tennessee Bank National Master Servicer, in its Capacity as

KRAVITZ, SCHNITZER & JOHNSON, CHTD.  
8985 S. Eastern Ave., Ste. 200  
Las Vegas, Nevada 89123  
(702) 362-6666

1 Agent for the Trustee Under the Pooling and Servicing Agreement ("BNY Mellon") by and  
2 through its attorneys of record, the law firm of Kravitz, Schnitzer & Johnson, Chtd., and hereby  
3 submit this Motion to Retax Costs and Objection to Unreasonable Attorneys' Fees.

4 This Motion is based and made upon the Memorandum of Points and Authorities  
5 submitted herewith and all arguments and evidence permitted at the hearing on this Motion.  
6

7 DATED this 23<sup>rd</sup> day of October, 2014.

8  
9 KRAVITZ, SCHNITZER & JOHNSON, CHTD.

10  
11 

12 GARY E. SCHNITZER, ESQ.

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22 *Attorneys for Respondents,*

23 *Nationstar Mortgage LLC and*

24 *The Bank of New York Mellon*

25 ///

26 ///

27 ///

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Las Vegas, Nevada 89123  
(702) 362-6666

**NOTICE OF MOTION**

IT IS HEREBY ORDERED that the foregoing MOTION TO RETAX COSTS AND  
OBJECTION TO UNREASONABLE ATTORNEYS' FEES shall be on for hearing before the  
Court in Department XXV, on the 4 day of Dec., 2014, at the hour of 9:00 am  
a.m./p.m., or as soon thereafter as counsel for Respondents can be heard.

DATED this 23rd day of October, 2014.

KRAVITZ, SCHNITZER & JOHNSON, CHTD.

  
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*Attorneys for Respondents,  
Nationstar Mortgage LLC and  
The Bank of New York Mellon*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On October 3, 2014, this Court issued a Findings of Fact, Conclusions of Law and Order  
whereby it ordered Petitioner's counsel to file a Memorandum of Costs and Fees including all  
costs and fees accrued from the election of mediation in 2011 to the date of the Order. On  
October 17, 2014, Petitioner's Counsel filed the attached Memorandum of Costs and Fees  
claiming \$87,095 in fees and \$3,214.11 in costs.

1 As explained herein, the amount of attorneys' fees claimed by Petitioner is patently  
2 unreasonable under the factors set forth by the Nevada Supreme Court in *Brunzell v. Golden*  
3 *Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). In addition, the Memorandum of Costs  
4 includes cost items not recoverable pursuant to NRS 18.005, and none of the costs claimed are  
5 substantiated by supportive documents.

## 6 **II. LEGAL ARGUMENT**

### 7 **Objection to Unreasonable Attorneys' Fees**

#### 8 **A. The Amount of Petitioner's Attorneys' Fees is Unreasonable.**

9 Respondents recognize that "district courts have great discretion to award attorney fees,  
10 and this discretion is tempered only by reason and fairness." *Shuette v. Beazer Homes Holdings*  
11 *Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005). "[I]n determining the amount of fees  
12 to award, the court is not limited to one specific approach; its analysis may begin with any  
13 method rationally designed to calculate a reasonable amount," so long as the requested amount  
14 is reviewed in light of the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev.  
15 345, 249, 455 P.2d 31, 33 (1969). *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837,  
16 864-65 (2005). The *Brunzell* factors are: (1) *the qualities of the advocate*: his ability, his  
17 training, education, experience, professional standing and skill; (2) *the character of the work to*  
18 *be done*: its difficulty, its intricacy, its importance, time and skill required, the responsibility  
19 imposed and the prominence and character of the parties where they affect the importance of the  
20 litigation; (3) *the work actually performed by the lawyer*: the skill, time and attention given to  
21 the work; (4) *the result*: whether the attorney was successful and what benefits were derived.

22 Here, Respondents do not dispute the training and skill of Petitioner's counsel.  
23 Respondents also recognize that this Petition is more complex than the average petition for  
24 judicial review following a foreclosure mediation. However, due to the nature of the  
25

1 proceedings, there was no discovery conducted in relation to the Petition. As for the concurrent  
2 judicial foreclosure action, discovery activity was minimal with little, if any, discovery  
3 completed after the initial document and witness exchange. There were no depositions, no  
4 expert witnesses, and no jury. While the motion work exceeded that of a typical petition for  
5 judicial review, it cannot be considered excessive or even notably significant in the context of a  
6 typical civil lawsuit. While the importance of the work itself is certainly recognized by  
7 Respondents, such importance cannot provide justification for unreasonably excessive fees.  
8

9 Petitioner's billing records reveal that her two lawyers would bill for the same task, and  
10 then bill for a lengthy in-person meeting to discuss those tasks among themselves. The billing  
11 entries themselves are vague, and are billed in large block-increments.

12 This type of vague block-billing is not consistent with the ethical guidelines propounded  
13 by the American Bar Association or by the Nevada State Bar. "Block billing" is considered an  
14 unethical billing practice where an attorney provides no description or an inadequate description  
15 of the work performed. Clients recognize block billing as a strategy to disguise inefficiency.  
16 Moreover, many courts do not permit block billing because it hinders effective reimbursement  
17 of attorneys' fees following a judgment. The Ninth Circuit Court of Appeals emphatically  
18 disapproves of "block billing." *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9<sup>th</sup> Cir. 2007);  
19 *Reyna v. Comm'r of Soc. Sec.*, 548 Fed. Appx. 404 (9<sup>th</sup> Cir. Cal. 2013); *Orloff v. UPS*, 2013  
20 U.S. App. LEXIS 26029 (9<sup>th</sup> Cir. Idaho July 11, 2013).  
21

22 It is appropriate for the court to reduce the total fee amount in account of impermissible  
23 block billing and excessive work. *Innospan Corp. v. Shasta Ventures GP LLC*, 2014 U.S. App.  
24 LEXIS 12959(9<sup>th</sup> Cir. Cal. July 9, 2014). In *Lahiri v. Universal Music & Video Distrib. Corp.*,  
25 a Ninth Circuit Court of Appeals found it appropriate to reduce any block-billed entries by 30%  
26 and to make an across-the-board reduction of 10% for excessive and redundant work. *Lahiri v.*  
27  
28

1 *Universal Music & Video Distrib. Corp.* 606 F.3d 1216, 1223 (9<sup>th</sup> Cir. Cal. 2010) citing *Welch*  
2 *v. Metro. Live Ins. Co.*, 480 F.3d 942, 948 (9<sup>th</sup> Cir. 2007) (citing California State Bar's  
3 Committee on Mandatory Fee Arbitration's report that block billing may increase time by 10 to  
4 30%); *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9<sup>th</sup> Cir. 2008). Petitioner's fees  
5 should be reduced substantially to reflect a reasonable sum.

6  
7 Although Respondents object to all block-billed and duplicative work, the below four  
8 categories of bills provide the Court with insight of the excessive nature on Petitioner's fees:

- 9
- 10 • Between August 9, 2013 and October 15, 2013, Petitioner's counsel billed **22.8 hours**  
11 exclusively for in-person meetings with one another. This does not include hours of  
12 telephone calls and e-mail exchanges. This also does not include meetings with  
13 opposing counsel for document/evidentiary purposes. There is no explanation in either  
14 the affidavits submitted or in the billing entries themselves explaining why such  
15 extensive face-to-face meetings among counsel were required. Respondents submit that  
16 22.8 hours for in-person meetings among counsel is excessive and request that this  
17 amount be reduced significantly. (**Exhibit A, Table 1**).

- 18 • After billing 19 hours for preparation for the first evidentiary hearing (this does not  
19 include numerous hours billed for research), Petitioner's counsel billed another 34.4  
20 hours on preparation for the continued evidentiary hearing. Importantly, nothing about  
21 the case changed from the first hearing to the second. The hearing was continued  
22 because the Court had a bench trial scheduled for the afternoon of November 1, 2013,  
23 and could not complete the evidentiary hearing in one day.

24 Respondents submit that **53.4 hours** for preparation alone is unreasonable and  
25 excessive. When added to the 22.8 hours for meetings, Petitioner's counsel billed a  
26 staggering **79.8 hours for nothing other than preparation and in-person meetings**.  
27 Again, this does not include drafting of briefs or research. (**Exhibit A, Table 2**).

- 28 • On January 3, 2014, Respondents' counsel filed a four-page Motion for Supplemental  
Briefing. Thereafter, Petitioner's counsel billed 5 hours simply for an in-person meeting  
to discuss their Opposition. This does not include time for research, time for drafting  
the Opposition or time for appearance at the hearing. A bill for **5 hours** for a meeting to  
discuss a four-page motion is excessive. (**Exhibit A, Table 3**).

- Finally, Petitioner's counsel billed 28.5 hours for preparation of the proposed Findings  
of Fact and Conclusions of Law. Importantly, this does not include 4.9 hours spent  
reviewing the transcript. Respondents submit that 28.5 hours is unreasonable and  
excessive. (**Exhibit A, Table 4**).

Motion to Retax Costs

NRS 18.005 sets out the definition of recoverable costs. The determination of allowable costs is within the sound discretion of the trial court, and all costs must be reasonable. The Nevada Supreme Court has held that costs must be "actual and reasonable, 'rather than a reasonable estimate or calculation of such costs.'" *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385-86 (1998) (quoting *Gibellini v. Klindt*, 110 Nev. 1201, 1206, 885 P.2d 540, 543 (1994)).

"Demonstrating that a cost was actually incurred often requires documentation." See *Village Builders 96 V. U.S. Laboratories*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005). "[D]ocumentation is precisely what is required under Nevada law to ensure that the costs awarded are only those costs actually incurred." *Gibellini*, 110 Nev. at 1205-6, 885 P.2d at 543 (reversing part of an order awarding costs not documented to be actual and remanding of actual costs incurred.) However, the court has discretion to determine if an actually incurred cost was reasonable. *Village Builders*, 112 Nev. at 278, 112 P.3d at 1093. That being said, determining necessity and reasonableness may require detailed documents such as itemizations. See *Berosini*, 114 Nev. at 1353, 971 P.2d at 386 (determining that a prevailing party was not entitled to costs for photocopies, long distance phone calls, and juror fees where the party failed to give documentation or itemizations necessary to determine reasonableness and necessity.)

Here, none of the costs are supported by documentation or invoices. Moreover, certain costs are not recoverable under NRS 18.005. Respondents dispute the following charges:

- There is no back up documentation for the \$72.11 in postage and shipping charges.
- Petitioner claims a \$200 charge for documents produced on disks. There is no indication of how many disks were produced or how much each disk cost. A simple search of Office Max shows that disks are less than \$1.00 each. (Exhibit B, Office Max printout). As such, a charge of \$100 for disks in this case is unreasonably excessive and without proper supportive documentation.

1 • Petitioner claims charges of \$267.77 for "Binders for Evidence/Exhibits". Again, there is  
2 no reference to how many binders were purchased, or any documentation evidencing the  
3 cost of each binder.

4 • Petitioner claims \$88.60 for "10 reams of paper, monitor cables for court display for  
5 evidentiary hearing." First, Petitioner already claimed \$1,323.60 for "4x Evidentiary  
6 Exhibits", so it is unclear why Petitioner is also charging for 10 reams of paper. In  
7 addition, office supplies are not a recoverable cost pursuant to NRS 18.005. Finally,  
8 there is no documentation to support that the cost was actually incurred.

9 Accordingly, Respondents request that the above-listed items, totaling \$628.48, be  
10 omitted from the costs recoverable by Petitioner.

11 ///

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18 ///

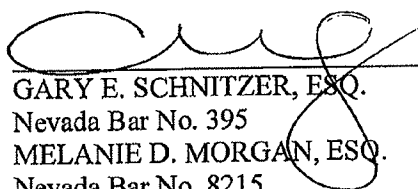


III. CONCLUSION

Based upon the foregoing, Nationstar and BNY Mellon respectfully request that this Honorable Court issue an order retaxing costs and reducing the attorneys' fees recoverable as set forth above.

DATED this 23<sup>rd</sup> day of October, 2014.

KRAVITZ, SCHNITZER & JOHNSON, CHTD.



GARY E. SCHNITZER, ESQ.  
Nevada Bar No. 395  
MELANIE D. MORGAN, ESQ.  
Nevada Bar No. 8215  
8985 S. Eastern Ave., Ste. 200  
Las Vegas, NV 89123  
Tele: (702) 362-6666  
Fax: (702) 362-2203  
[gschnitzer@ksjattorneys.com](mailto:gschnitzer@ksjattorneys.com)  
[mmorgan@ksjattorneys.com](mailto:mmorgan@ksjattorneys.com)  
*Attorneys for Respondents,  
Nationstar Mortgage LLC and  
The Bank of New York Mellon*

KRAVITZ, SCHNITZER & JOHNSON, CHTD.  
8985 S. Eastern Ave., Ste. 200  
Las Vegas, Nevada 89123  
(702) 362-6666

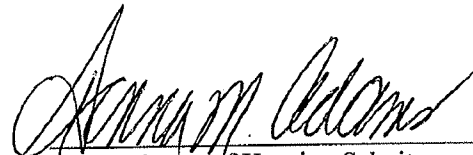
**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of October, 2014, I served a true and correct copy of the foregoing **MOTION TO RETAX COSTS AND OBJECTION TO UNREASONABLE ATTORNEYS' FEES** as follows:

X            Electronically pursuant to Rule 9 of the N.E.F.C.R.:  
  
                Venicia G. Considine, Esq.  
                LEGAL AID CENTER OF SOUTHERN NEVADA, INC.  
                aberlin@lacsns.org  
                vconsidine@lacsns.org

X            By United States Postal Service, first class mail, postage prepaid:  
  
                Kristin A. Schuler-Hintz, Esq.  
                MCCARTHY & HOLTHUS, LLP  
                9510 W. Sahara Ave., #200  
                Las Vegas, NV 89117  
  
                Tara D. Newberry, Esq.  
                CONNAGHAN NEWBERRY LAW FIRM  
                7854 W. Sahara Ave.  
                Las Vegas, NV 89117

Via Facsimile:

  
An employee of Kravitz, Schnitzer  
& Johnson, Chtd.

## EXHIBIT A

**Table 1: In-Person Meetings**

Attorney	Date	Description	Time	Fee
VC	8/9/13	Meet with Tara at her office and discussed case – discovery – ECC, JCCR, etc...Call Jan to schedule ECC	3	\$750
VC	9/17/13	Meeting with Tara on settlement discussions	1	\$250
VC	10/1/13	Meeting with Tara on evidentiary hearing	3.4	\$850
VC	10/15/13	Meeting with Tara to strategize for Evidentiary Hearing on 11/1/13	3	\$750
TN	8/9/13	Meeting with co-counsel and client re: Judicial Foreclosure case and PJR	3	\$900
TN	9/17/13	Meeting with co-counsel re: settlement discussions	1	\$300
TN	10/1/13	Meeting with co-counsel to review documents	2	\$600
TN	10/1/13	Meeting: with co-counsel to discuss & strategize evidentiary hearing	3.4	\$1,020
TN	10/15/13	Meeting with co-counsel to review evidence and strategy for hearing	3	\$900
			<b>22.8</b>	<b>\$6,320</b>

**Table 2: Preparation for Evidentiary Hearing**

Attorney	Date	Description	Time	Fee
VC	10/31/13	Prep for Evidentiary Hearing	5	\$1,250
VC	10/31/13	Copy, tab exhibits, go through exhibits, prep for hearing	5	\$1,250
VC	12/11/13	Prepare for hearing on Friday	4	\$1,000
VC	12/12/13	Prepare for evidentiary hearing on the 13 <sup>th</sup>	7	\$1,750
TN	10/31/13	Prepare: for Evidentiary hearing including: review of all evidence, pleadings, research and preparation of exhibits	9	\$2,700
TN	12/5/13	Review: and organize evidence for hearing	1.4	\$420
TN	12/8/13	Prepare: for evidentiary hearing	3	\$900
TN	12/10/13	Prepare: for evidentiary hearing	4	\$1,200
TN	12/11/13	Prepare: for evidentiary hearing; finalizing cross-examination	6	\$1,800
TN	12/12/13	Prepare: for evidentiary hearing including finalizing exhibits and document excerpts for closing	9	\$2,700
			<b>53.4</b>	<b>\$14,970</b>

**Table 3: In-Person Meetings to Discuss Opposition to 4-page Motion for Supplemental Briefing**

Attorney	Date	Description	Time	Fee
VC	1/9/14	Meeting with Tara to plan opposition to Motion for sup briefing	2.5	\$625
TN	1/9/14	Meeting: with co-counsel re: opposition to supplemental briefing	2.5	\$750
			<b>5</b>	<b>\$1,375</b>

**Table 4: Preparation of Proposed Findings of Fact and Conclusions of Law**

Attorney	Date	Description	Time	Fee
VC	1/16/14	Prep for FOFCOL	7.5	\$1,875
VC	2/1/14	Drafting FOFCOL	2.8	\$700
VC	2/2/14	Drafted sent to Tara for review	3.5	\$875
VC	2/3/14	Discussed filing and strategy	1.1	\$275
TN	1/16/14	Meeting w/ co-counsel to review record and begin drafting FFCL	3	\$900
TN	2/2/14	Review: and revise FFCL	4	\$1,200
TN	2/3/14	Telephone Conference: with co-counsel re: FFCL	1.1	\$330
TN	2/5/14	Finalize FFCL including verifying citations to record	2.5	\$750
			<b>28.5</b>	<b>\$6,905</b>

## EXHIBIT B

**Office DEPOT**  
**OfficeMax**  
NOW ONE COMPANY

## CD-R Printable Discs

3 Results  
Items 1 to 3  
24 Per Page  
Sort By:  
Best Match  
up to 4 items

Grid  
List



Memorex® CD-R Media Spindle, Inkjet Printable, 700MB/80 Minutes, Pack Of 30  
Memorex® CD-R Media Spindle, Inkjet Printable, 700MB/80 Minutes, Pack Of 30  
★★★★★ 1 Review Item # 880318

\$ 19 99

/ pack

Qty



- ✓ Sold Online
- ✓ Sold in stores
- ✓ Free In Store Pick Up ⓘ
- ☐ Compare



Verbatim® CD-R Printable Disc Spindle, White, Pack Of 100  
Write a review Verbatim® CD-R Printable Disc Spindle, White, Pack Of 100  
Item # 283564

\$ 34 99  
/ pack

Qty



- ✓ Sold in stores
- ✓ Free In Store Pick Up ⓘ
- ☐ Compare



Verbatim® CD-R Printable Disc Spindle, White, Pack Of 50

Verbatim® CD-R Printable Disc Spindle, White, Pack Of 50  
Item # 283861

[Write a review](#)

\$ 29 99  
/ pack

Qty



Sold in stores



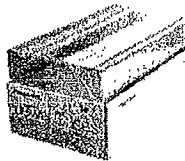
Free In Store Pick Up ⓘ



Compare

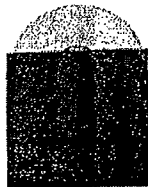
### Category Top Sellers

★★★★★ 1 Reviews

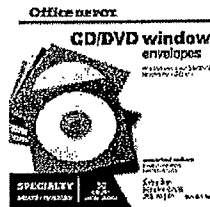


Memorex® Slim CD Jewel Cases, Clear, Pack Of 50  
\$2299 / pack

★★★★★ 1 Reviews



ReBinder™ ReSleeve 100% Recycled Cardboard CD Sleeves ...  
\$769 / each



Office Depot® Brand Color CD/DVD Envelopes, Assorted Col...  
\$759 / box





5 Reviews



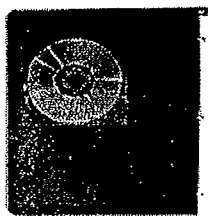
Memorex® Slim CD Jewel Cases, Clear, Pack Of 100  
\$3399 / pack



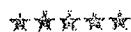
Verbatim® Life Series DVD+R Spindle, Pack Of 100  
\$4499 / pack



2 Reviews



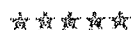
Fellowes® Self-Adhesive CD Holder, Pack Of 5  
\$499 / pack



1 Reviews



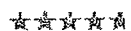
Fellowes NEATO Thin CD Jewel Case-Clear, 25 pack  
\$895 / pack



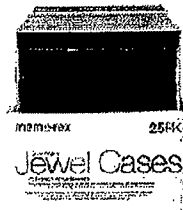
3 Reviews



Vaultz™ CD File Folders, Pack Of 100  
\$1399 / pack

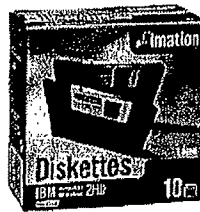


5 Reviews



Memorex® Standard Jewel Cases, Black, Pack Of 25  
\$849 / pack

☆☆☆☆ 3 Reviews



Imation™ 3.5" Diskettes, IBM Format, DS/HD, Black...  
\$895 / box

☆☆☆☆ 32 Reviews



TDK DVD-R Recordable Media Spindle, 4.7GB/120 Minutes, Pack Of 100  
\$4499 / pack

☆☆☆☆ 2 Reviews



Office Depot® Brand 2-Sided CD Sleeves, 200 Capacity, Pack Of 100  
\$859 / pack



Verbatim DataLifePlus 95079 DVD Recordable Media - DVD-R - 1...  
\$1595 / pack

☆☆ 2 Reviews

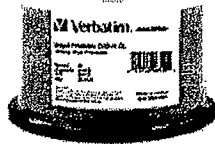


Memorex® DVD+R Double Layer Recordable Media Spindle, 8....  
\$5799 / each



Verbatim® Inkjet Hub Printable DVD+R DL Spindle, White, ...  
\$4999 / pack

★★★★☆ 2 Reviews

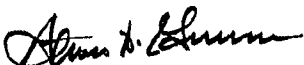


Verbatim DataLifePlus DVD Recordable Media - DVD+R DL - 8x - ...  
\$6795 / each

★★★★☆ 3 Reviews



Verbatim® DVD-R Recordable Media, 4.7GB/120 Minutes, Pack Of 10  
\$459 / each

  
CLERK OF THE COURT

1 NPP  
2 GARY E. SCHNITZER, ESQ.  
3 Nevada Bar No. 395  
4 MELANIE D. MORGAN, ESQ.  
5 Nevada Bar No. 8215  
6 KRAVITZ, SCHNITZER  
7 & JOHNSON, CHTD.  
8 8985 S. Eastern Ave., Ste. 200  
9 Las Vegas, NV 89123  
10 Tele: (702) 362-6666  
11 Fax: (702) 362-2203  
12 [mmorgan@ksjattorneys.com](mailto:mmorgan@ksjattorneys.com)  
13 Attorneys for Respondents,  
14 Nationstar Mortgage LLC and  
15 The Bank of New York Mellon

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

11 CATHERINE RODRIGUEZ, a Nevada limited  
12 liability company,

13 Petitioner,

14 vs.

15 NATIONSTAR MORTGAGE LLC; METLIFE  
16 HOME LOANS; and THE BANK OF NEW  
17 YORK MELLON F/K/A THE BANK OF NEW  
18 YORK AS TRUSTEE FOR THE HOLDERS OF  
19 THE CERTIFICATES, FIRST HORIZON  
20 MORTGAGE PASS-THROUGH  
21 CERTIFICATES SERIES FHAMS 2005-AA5,  
22 BY FIRST HORIZON HOME LOANS, A  
23 DIVISION OF FIRST TENNESSEE BANK  
24 NATIONAL MASTER SERVICER, IN ITS  
25 CAPACITY AS AGENT FOR THE TRUSTEE  
26 UNDER THE POOLING AND SERVICING  
27 AGREEMENT,

28 Respondents.

Case No.: A-13-685616-J

Dept. No.: XXV

**NOTICE OF POSTING SUPERSEDEAS BOND FOR NATIONSTAR MORTGAGE LLC  
AND THE BANK OF NEW YORK MELLON**

PLEASE TAKE NOTICE that, pursuant to Nevada Rule of Civil Procedure 65(d), this  
Court's October 29, 2014 Order on Respondents Nationstar Mortgage LLC and The Bank of  
New York Mellon's Motion for Stay of Payment of Sanctions Pending Appeal, and this Court's

KRAVITZ, SCHNITZER & JOHNSON, CHTD.  
8985 S. Eastern Ave., Ste. 200  
Las Vegas, Nevada 89123  
(702) 362-6666

1 November 4, 2014 Order setting November 10, 2014 as the deadline for Respondents to post this  
2 bond without incurring additional daily sanctions, Respondents Nationstar Mortgage LLC and  
3 The Bank of New York Mellon deposited security with the Clark County Clerk in the amount of  
4 \$190,310.11 plus interest at the rate of 5.25% per annum from October 3, 2014 through the date  
5 of the posting of this bond on November 10, 2014. A copy of the Supersedeas Bond is attached  
6 hereto.  
7

8 DATED this 10<sup>th</sup> day of November, 2014.

9 KRAVITZ, SCHNITZER  
10 & JOHNSON, CHTD.

11   
12 GARY E. SCHNITZER, ESQ.  
13 Nevada Bar No. 396  
14 MELANIE D. MORGAN, ESQ.  
15 Nevada Bar No. 8215  
16 8985 S. Eastern Ave., Ste. 200  
17 Las Vegas, NV 89123  
18 Tele: (702) 362-6666  
19 Fax: (702) 362-2203  
20 [gschnitzer@ksjattorneys.com](mailto:gschnitzer@ksjattorneys.com)  
21 [mmorgan@ksjattorneys.com](mailto:mmorgan@ksjattorneys.com)  
22 Attorneys for Respondents,  
23 Nationstar Mortgage LLC and  
24 The Bank of New York Mellon  
25  
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KRAVITZ, SCHNITZER & JOHNSON, CHTD.  
8985 S. Eastern Ave., Ste. 200  
Las Vegas, Nevada 89123  
(702) 362-6666

CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of November, 2014, I served a true and correct copy of the foregoing NOTICE OF POSTING SUPERSEDEAS BOND FOR NATIONSTAR MORTGAGE LLC AND THE BANK OF NEW YORK MELLON as follows:

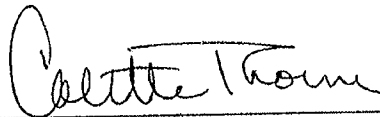
X Electronically pursuant to Rule 9 of the N.E.F.C.R.:

Venicia G. Considine, Esq.  
LEGAL AID CENTER OF SOUTHERN  
NEVADA, INC.  
725 East Charleston Blvd.  
Las Vegas, NV 89104

X By United States Postal Service, first class mail, postage prepaid:

TARA D. NEWBERRY, ESQ.  
CONNAGHAN NEWBERRY LAW FIRM  
7854 W. Sahara Ave.  
Las Vegas, NV 89117

\_\_\_\_ Via Facsimile:



An employee of Kravitz, Schnitzer  
& Johnson, Chtd.

Bond Number: SUR0027005

DISTRICT COURT OF THE STATE OF NEVADA  
FOR THE COUNTY OF CLARK

Petitioner, **CATHERINE RODRIGUEZ**

Case Number #: A-13-685616-J

Respondents, **NATIONSTAR MORTGAGE, LLC**  
and **THE BANK OF NEW YORK MELLON et al**

**SUPERSEDEAS BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, NATIONSTAR MORTGAGE, LLC and THE BANK OF NEW YORK MELLON, as Principals, and, ARGONAUT INSURANCE COMPANY, a corporation organized under the laws of the State of ILLINOIS, and duly authorized to transact business in the State of NEVADA, as Surety, are held and firmly bound unto DISTRICT COURT OF THE STATE OF NEVADA, CLARK COUNTY, in the penal sum of ONE HUNDRED NINETY THOUSAND THREE HUNDRED TEN AND 11/100 DOLLARS (US\$190,310.11), lawful money of the United States, to the payment of which well and truly to be made we hereby bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, judgment was signed in this case in favor of **CATHERINE RODRIGUEZ**, Petitioner, and against **NATIONSTAR MORTGAGE, LLC** and **THE BANK OF NEW YORK MELLON**, Respondents, for damages in the sum of \$50,000.00 per Respondent, attorney's fees and costs in the sum of \$90,310.11 and interest (at the rate of 5.25% per annum from 10/3/14 until the date the bond is posted).

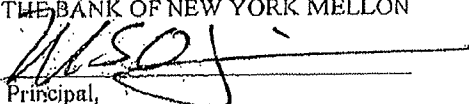
WHEREAS, **NATIONSTAR MORTGAGE, LLC** and **THE BANK OF NEW YORK MELLON**, Respondents, desire to suspend enforcement of the judgment pending determination of the appeal:

NOW, THEREFORE, the condition of this obligation is such that, if the above named Respondents, **NATIONSTAR MORTGAGE, LLC** and **THE BANK OF NEW YORK MELLON** as Principals, shall prosecute this appeal with effect and shall, if the judgement of the Court be against them, perform such judgement or decree of said court, and pay all such damages, interest and costs as may be awarded against them on such appeal, then this obligation shall be void, otherwise to remain in full force and effect.


PROVIDED, HOWEVER, that in no event shall the surety's liability exceed the penal sum of this bond.

SIGNED this 4<sup>th</sup> day of November, 2014.

**NATIONSTAR MORTGAGE, LLC**  
On behalf of itself and as agent for  
**THE BANK OF NEW YORK MELLON**

  
Principal,

**ARGONAUT INSURANCE COMPANY**

  
Surety: **Annette M. Leuschner**, Nevada Non-  
resident Licensed Agent and Attorney-in-fact

I have approved and filed this bond on the       day of       , 20       .

\_\_\_\_\_  
Signature of Court Clerk

\_\_\_\_\_  
Typed name



**Argonaut Insurance Company**  
**Deliveries Only: 225 W. Washington, 24th Floor**  
**Chicago, IL 60606**

**United States Postal Service: P.O. Box 469011, San Antonio, TX 78246**

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the Argonaut Insurance Company, a Corporation duly organized and existing under the laws of the State of Illinois and having its principal office in the County of Cook, Illinois does hereby nominate, constitute and appoint:

Cynthia Farrell, Sandra Diaz, Evangelina L. Dominick, Vivian Carti, Annette M. Leuschner, Debra A. Deming, Andrea E. Gorbett, Anne Potter, Jessica Iannotta, Kelly O'Malley, Edward J. Reilly, Kevin T. Walsh, Jr.

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all bonds, contracts, agreements of indemnity and other undertakings in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

\$40,000,000.00

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolution adopted by the Board of Directors of Argonaut Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the Company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the Argonaut Insurance Company, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Argonaut Insurance Company has caused its official seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the 18th day of July, 2013.

Argonaut Insurance Company



by:

*[Signature]*

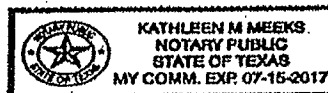
Joshua C. Betz, Senior Vice President

STATE OF TEXAS

COUNTY OF HARRIS SS:

On this 18th day of July, 2013 A.D. before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICER OF THE COMPANY, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of same, and being by me duly sworn, deposed and said that he is the officer of the said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation, and that Resolution adopted by the Board of Directors of said Company referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.



*Kathleen M. Meeks*

I, the undersigned Officer of the Argonaut Insurance Company, Illinois Corporation, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the Seal of said Company, on the \_\_\_\_\_ day of **NOV - 4 2014**



*Sarah Heineman*

Sarah Heineman, VP-Underwriting Surety

THIS DOCUMENT IS NOT VALID UNLESS PRINTED ON SHADED BACKGROUND WITH BLUE SERIAL NUMBER IN THE UPPER RIGHT HAND CORNER. IF YOU HAVE QUESTIONS ON AUTHENTICITY OF THIS DOCUMENT CALL (210) 321 - 8400.

Financial Statement  
ARGONAUT INSURANCE COMPANY  
Statutory Basis as of 12/31/13

<u>ASSETS</u>		<u>LIABILITIES AND SURPLUS</u>	
CASH & INVESTED CASH	168,301,489	UNEARNED PREMIUMS	136,284,478
BONDS	632,979,114	LOSSES	435,189,164
STOCKS	380,649,160	LOSS ADJUSTMENT EXPENSES	100,360,949
INVESTMENT INCOME DUE AND ACCRUED	5,824,995	COMMISSIONS	(4,359,857)
PREMIUM BALANCES	58,821,649	TAXES, LICENSES AND FEES	23,085,868
NET DEFERRED TAX ASSET	30,035,891	OTHER EXPENSES	4,145,395
REINSURANCE RECOVERABLE	23,484,148	FUNDS HELD UNDER REINSURANCE TREATIES	147,749,658
OTHER ASSETS	18,792,204	CURRENT FEDERAL AND FOREIGN INCOME TAXES	1,052,000
<b>TOTAL ASSETS</b>	<b><u>\$ 1,308,888,648</u></b>	REMITTANCES AND ITEMS NOT ALLOCATED	499,824
		AMOUNTS WITHHELD/RETAINED BY COMPANY FOR OTHERS	13,065,428
		PAYABLE TO PARENT, SUBSIDIARIES & AFFILIATES	1,557,369
		PAYABLE FOR SECURITIES	10,086,009
		POLICYHOLDER DIVIDENDS	41,827
		PROVISIONS FOR REINSURANCE	23,216,199
		CEDED REINSURANCE PREMIUMS PAYABLE	5,880,278
		OTHER ACCRUED EXPENSES AND LIABILITIES	1,711,418
		<b>TOTAL LIABILITIES</b>	<b><u>\$ 899,625,893</u></b>
		COMMON CAPITAL STOCK	4,500,000
		GROSS PAID IN AND CONTRIBUTED SURPLUS	183,407,124
		UNASSIGNED SURPLUS	221,465,631
		<b>TOTAL SURPLUS TO POLICYHOLDERS</b>	<b><u>\$ 409,382,755</u></b>
		<b>TOTAL LIABILITIES &amp; SURPLUS</b>	<b><u>\$ 1,308,888,648</u></b>

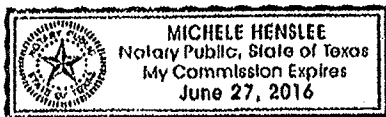
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Janice W. Zwinggi, being duly sworn, says that she is Vice President, CFO & Treasurer of Argonaut Insurance Company and that to the best of her knowledge and belief, the foregoing statement is a true and correct statement of the financial condition of said Company as of the 31st of December, 2013.

Subscribed and sworn to before me this 21 day of March, 2014

Michele Henslee  
Notary Public

Janice W. Zwinggi  
Janice W. Zwinggi, Vice President, CFO & Treasurer



3/20/2014



Scott J. Kipper, Commissioner of Insurance

**Non-Resident Producer**  
Casualty , Property , Surety

**ANNETTE M LEUSCHNER**  
77 WHALERS CV  
BABYLON , NY 11702-2920

**is authorized to transact business as described above**

License No: 611036

Issue Date: 08-15-2008

Expiration Date: 09-01-2017

Generated by Sircon 98498902

**Nevada Division of  
Insurance**

THIS IS TO CERTIFY THAT

**ANNETTE M LEUSCHNER**  
77 WHALERS CV , BABYLON , NY 11702-2920

LICENSE NUMBER: 611036



IS HEREBY AUTHORIZED TO TRANSACT BUSINESS  
IN ACCORDANCE TO THE LICENSE DESCRIPTION  
SHOWN BELOW:

**Non-Resident Producer**  
Casualty , Property , Surety

Issue Date: 08-15-2008

Expiration Date: 09-01-2017

Generated by Sircon 98498902

STATE OF NEVADA  
FORECLOSURE MEDIATION PROGRAM  
MEDIATOR STATEMENT

PART 1: SIGN-IN SHEET		APN: 125-20-212-037
<b>Mediator:</b>	<div style="display: flex; justify-content: space-between;"> <div>Name: <u>Steve F. Wenzel, Esq.</u> Print</div> <div>Signature _____</div> </div> <div style="display: flex; justify-content: space-between;"> <div>Contact Info: <u>ADR Nevada@gmail.com</u> Email</div> <div><u>(775) 560-9596</u> Telephone #</div> </div>	
<b>Homeowner(s) (Grantor):</b>	<div style="display: flex; justify-content: space-between;"> <div>Name: <u>Catherine Rodriguez</u> Print</div> <div>Signature <u>Catherine Rodriguez</u></div> </div> <div style="display: flex; justify-content: space-between;"> <div>Contact Info: <u>SEBCEB@YAHOO.COM</u> Email</div> <div><u>702-378-2838</u> Telephone #</div> </div> <div>Participated: <input checked="" type="checkbox"/> In Person <input type="checkbox"/> By Telephone</div>	
<b>Homeowner(s) (Grantor):</b>	<div style="display: flex; justify-content: space-between;"> <div>Name: _____ Print</div> <div>Signature _____</div> </div> <div style="display: flex; justify-content: space-between;"> <div>Contact Info: _____ Email</div> <div>_____  Telephone #</div> </div> <div>Participated: <input type="checkbox"/> In Person <input type="checkbox"/> By Telephone</div>	
<b>Homeowner Atty or Rep:</b>  <u>10696</u> NV Bar/NRS 645F License #	<div style="display: flex; justify-content: space-between;"> <div>Name: <u>Tera D. Newberry</u> Print</div> <div>Signature <u>Tera D. Newberry</u></div> </div> <div style="display: flex; justify-content: space-between;"> <div>Contact Info: <u>tnewberry@cnlawlv.com</u> Email</div> <div><u>702-608-4232</u> Telephone #</div> </div> <div>Participated: <input checked="" type="checkbox"/> In Person <input type="checkbox"/> By Telephone</div>	
<b>Lender (Beneficiary):</b>	<div style="display: flex; justify-content: space-between;"> <div>Name: <u>Daniel Marks</u> Print</div> <div>Signature <u>DOB for NationsStar</u></div> </div> <div style="display: flex; justify-content: space-between;"> <div>Contact Info: _____ Email</div> <div>_____  Telephone #</div> </div> <div>Participated: <input type="checkbox"/> In Person <input checked="" type="checkbox"/> By Telephone</div>	
<b>Lender Atty or Rep:</b>  <u>11519</u> NV Bar/NRS 645F License #	<div style="display: flex; justify-content: space-between;"> <div>Name: <u>Lindsey Bennett Morales</u> Print</div> <div>Signature <u>LB Morales</u></div> </div> <div style="display: flex; justify-content: space-between;"> <div>Contact Info: <u>lbennett@mccan-haydenlaw.com</u> Email</div> <div><u>685-0320</u> Telephone #</div> </div> <div>Participated: <input checked="" type="checkbox"/> In Person <input type="checkbox"/> By Telephone</div>	
<b>Other:</b>	<div style="display: flex; justify-content: space-between;"> <div>Name: _____ Print</div> <div>Signature _____</div> </div> <div style="display: flex; justify-content: space-between;"> <div>Contact Info: _____ Email</div> <div>_____  Telephone #</div> </div> <div>Participated: <input type="checkbox"/> In Person <input type="checkbox"/> By Telephone</div>	

If needed, a separate sheet may be utilized for additional attendees.

The attending parties are signing this sheet only to memorialize their presence at the mediation. If an agreement is reached, the parties will be requested by the mediator to execute the agreement section of this Mediator Statement, which will outline the basic terms agreed upon at mediation. Neither the mediator nor the mediation administrator may be compelled to testify in any subsequent proceedings regarding the contents of an agreement.

STATE OF NEVADA  
FORECLOSURE MEDIATION PROGRAM  
MEDIATOR STATEMENT

<b>HOMEOWNER'S NAME:</b> Catherine Rodriguez <b>CO-OWNER'S NAME:</b> _____	<b>BENEFICIARY:</b> MelLife Home Loans <b>TRUSTEE:</b> Quality Loan Services Corp.
<b>ASSESSOR PARCEL NUMBER (APN)</b> 125-20-212-037 <b>PROPERTY ADDRESS</b> 6845 Sweet Pecan Street Las Vegas, NV 89149	<b>TS #</b> NV-10-3513560NF <b>Loan #</b> _____ <b>DoT Doc #</b> 4/21/2005 <b>Book #:</b> 20050427 <b>Page #</b> 0003843 <b>Inst #</b> _____

- **If no mediation is held:** Please ensure the Mediation Summary, Mediation Certification and Mailing Certification (Parts 2, 2A & 4) are completed.
- **If no agreement is reached:** please ensure the Attending Parties, Mediation Summary, Mediator Certification and Mailing Certification (Parts 1, 2, 2A & 4) are completed.
- **If an agreement is reached by the parties:** please ensure all applicable parts of this form are attached.

**PART 2: MEDIATION SUMMARY (Please check all that apply)**

- ☒ A Foreclosure Mediation was held on: October 6, 2011
- ☐ A Foreclosure Mediation was **not** held (Explain): \_\_\_\_\_
- ☐ Parties came to an agreement prior to mediation (Explain): \_\_\_\_\_

**The Mediator files the following report of the mediation (please check all that apply):**

- ☐ The parties resolved this matter. If this box is marked, please complete **PART 3: MEDIATION AGREEMENT**.
- ☒ The parties participated but were unable to agree to a loan modification or make other arrangements.
- ☐ Lender (Beneficiary or designated representative) failed to attend the mediation.
- ☒ Lender (Beneficiary or designated representative) failed to bring to the mediation each document required. Please specify which document(s) were not provided: Lender failed to produce certified copies of Note, Deed of Trust, Assignments and Transfers. (Lender indicated original documents have not been located after recent transfer to new servicer-Nationstar). Lender also failed to provide NRS 645.2515 compliant BPO (initial BPO was dated "9/30/2006" and second BPO dated 9/2/2011 carried no signature).
- ☐ Lender (Beneficiary or designated representative) did not have the authority to fully negotiate and modify the loan.
- ☐ Lender (Beneficiary or designated representative) failed to participate in good faith. Please explain: \_\_\_\_\_
- ☐ Homeowner (grantor or person who holds the title of record) failed to attend the mediation.
- ☐ Homeowner (grantor or person who holds the title of record) failed to bring to the mediation each document required. Please specify which document(s) were not provided: \_\_\_\_\_
- ☐ Homeowner (grantor or person who holds the title of record) failed to participate in good faith. Please explain: \_\_\_\_\_
- ☒ Other: Homeowner attorney stated this was FMP third mediation with Lender unable to produce proper loan documents each time.

STATE OF NEVADA  
FORECLOSURE MEDIATION PROGRAM  
MEDIATOR STATEMENT

**PART 2A: MEDIATOR CERTIFICATION**

The Mediator hereby certifies, under the penalty of perjury, that the foregoing is true and accurate of the proceedings as required by NRS Chapter 107.

DATED this 11th day of October, 2011.

Mediator Signature: \_\_\_\_\_

Print Name: Steve E. Wenzel, Esq.

STATE OF NEVADA  
FORECLOSURE MEDIATION PROGRAM  
MEDIATOR STATEMENT

All documents and discussions presented during the mediation are confidential except in an action for Judicial Review as set forth in the applicable State of Nevada Foreclosure Mediation Rules and NRS Chapter 107.

**PART 3: MEDIATION AGREEMENT (Sections A-G)**

**THE PARTIES AGREED TO THE FOLLOWING (Please Check all that apply):**

**A. RETAIN THE HOME**

- ☐ 1. Reinstatement
- ☐ 2. Repayment Plan
- ☐ 3. Extension
- ☐ 4. ARM to Fixed Rate
- ☐ 5. Amortization Extended
- ☐ 6. Interest Rate Reduction
- ☐ 7. Principal Forbearance
- ☐ 8. Other Forbearance
- ☐ 9. Principal Reduction
- ☐ 10. Refinance
- ☐ 11. Temporary Modification  
Expiration Date : \_\_\_\_\_
- ☐ 12. Permanent Modification
- ☐ 13. Short payoff: \$ \_\_\_\_\_  
When: \_\_\_\_\_  
Conditions: \_\_\_\_\_
- ☐ 14. Gov't. Program: \_\_\_\_\_
- ☐ 15. Other: \_\_\_\_\_

**B. RELINQUISH THE HOME**

- ☐ 1. Deed In Lieu of Foreclosure
- ☐ 2. Short Sale
- ☐ 3. Voluntary Surrender
- ☐ 4. Cash for Keys \$ \_\_\_\_\_  
When: \_\_\_\_\_  
Conditions: \_\_\_\_\_
- ☐ 5. Gov't. Program: \_\_\_\_\_
- ☐ 6. Other: \_\_\_\_\_

**C. DETAILS**

- ☐ Lender/Beneficiary will report the loan as paid in current status effective as of: \_\_\_\_\_
- ☐ Treatment of arrearages: \_\_\_\_\_
- ☐ Waiver of Fees and Penalties: \_\_\_\_\_
- ☐ Other treatment of fees/costs (list and outline details): \_\_\_\_\_
- ☐ Rescind Notice of Default: \_\_\_\_\_

**D. THE FOLLOWING TERMS REMAIN UNCHANGED (Please check all that apply.)**

- ☐ The balance due as shown on beneficiary's books, which is \_\_\_\_\_
- ☐ The interest rate stated in the original Note, which is \_\_\_\_\_
- ☐ The loan term stated in the original Note, which is \_\_\_\_\_

STATE OF NEVADA  
FORECLOSURE MEDIATION PROGRAM  
MEDIATOR STATEMENT

**E. LOAN MODIFICATION (Please complete all that apply)**

	Temporary Modification	Permanent Modification												
<b>1. Loan Balance</b>	Total loan balance shall be modified to \$ _____ Effective date: _____	Total loan balance shall be modified to: \$ _____ Effective date: _____												
<b>2. Interest Rate</b>	<b>Period 1</b> a. Interest rate will be temporarily modified to ____% b. Effective as of _____ c. For the Period of _____ months  <b>Period 2</b> a. Interest rate will be temporarily modified to ____% b. Effective as of _____ c. For the Period of _____ months *	<b>Period 1</b> a. Interest rate will be temporarily modified to ____% b. Effective as of _____ c. For the Period of _____ months  <b>Period 2</b> a. Interest rate will be temporarily modified to ____% b. Effective as of _____ c. For the Period of _____ months*												
<b>3. Loan Term</b>	There are _____ monthly payments remaining as of _____ Begin Date: _____ End Date: _____	There are _____ monthly payments remaining as of _____ Begin Date: _____ End Date: _____												
<b>4. Payment</b>	Resulting initial payment: \$ _____ Principal & Interest: \$ _____ Escrow: \$ _____ Total: _____	Resulting initial payment: \$ _____ Principal & Interest: \$ _____ Escrow: \$ _____ Total: _____												
<b>5. Fees &amp; Costs</b>	<div style="border: 1px solid black; padding: 5px;">           The aforementioned loan balance includes fees &amp; costs for temporary and permanent modifications as follows:         </div> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: center;">Incurred</th> <th style="width: 50%; text-align: center;">Waived</th> </tr> </thead> <tbody> <tr> <td>Interest \$ _____</td> <td>Interest \$ _____</td> </tr> <tr> <td>Costs \$ _____</td> <td>Costs \$ _____</td> </tr> <tr> <td>Fees \$ _____</td> <td>Fees \$ _____</td> </tr> <tr> <td>Other \$ _____</td> <td>Other \$ _____</td> </tr> <tr> <td><b>TOTAL: \$ _____</b></td> <td><b>TOTAL: \$ _____</b></td> </tr> </tbody> </table>		Incurred	Waived	Interest \$ _____	Interest \$ _____	Costs \$ _____	Costs \$ _____	Fees \$ _____	Fees \$ _____	Other \$ _____	Other \$ _____	<b>TOTAL: \$ _____</b>	<b>TOTAL: \$ _____</b>
Incurred	Waived													
Interest \$ _____	Interest \$ _____													
Costs \$ _____	Costs \$ _____													
Fees \$ _____	Fees \$ _____													
Other \$ _____	Other \$ _____													
<b>TOTAL: \$ _____</b>	<b>TOTAL: \$ _____</b>													

Other: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\*If additional Periods agreed upon by the parties, please indicate on a separate sheet and attached hereto.



STATE OF NEVADA  
FORECLOSURE MEDIATION PROGRAM  
MEDIATOR STATEMENT

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**F. DEFICIENCY & TAX LIABILITY**

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Please be advised that the mediator is not permitted to provide any legal or tax advice to the parties on any issues related to the mediation or the terms of any potential settlement agreement. It is suggested that the parties contact a licensed professional of their choice for legal or tax advice related to this mediation and any potential settlement.

**1. Deficiency:**

- ☐ The settlement agreement will include a provision waiving any deficiency resulting from recovery by the Trustee/Beneficiary of less than the full amount the Trustee/Beneficiary claims now to be due on the loan.

☐ Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2. Other deficiency and/or tax liability terms not mentioned above:**

☐ Additional terms, details are as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3. Is this agreement contingent upon the signing of other documents and/or forms (i.e. updated financial information; tax returns, divorce decree, etc.)?**

☐ If yes, please provide a detailed list and/or attach: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF NEVADA  
FORECLOSURE MEDIATION PROGRAM  
MEDIATOR STATEMENT

**G. SIGNATURE OF PARTIES**

**IN WITNESS WHEREOF**, each of the participants in this mediation has executed this mediation agreement on the date set forth. The parties agree to separately prepare and execute the documents necessary to accomplish the terms of this agreement.

Date _____	_____
	Homeowner (Grantor)
Date _____	_____
	Homeowner (Grantor)
Date _____	_____
	Homeowner's Attorney/Representative
Date _____	_____
	Lender (Beneficiary)
Date _____	_____
	Lender's Attorney/Representative
Date _____	_____
	Other (Please specify relationship to Lender or Homeowner)
Date _____	_____
	Other (Please specify relationship to Lender or Homeowner)

STATE OF NEVADA  
FORECLOSURE MEDIATION PROGRAM  
MEDIATOR STATEMENT

**PART 4: MAILING CERTIFICATION**

I hereby certify that I served the foregoing Mediator Statement on the 11th day of October, 2011, by placing true and correct copies thereof in the U.S. mail, postage prepaid, addressed to the following:

**Homeowner (Grantor):**

Catherine Rodriguez  
6845 Sweet Pecan Street  
Las Vegas, NV 89149

**Homeowner's Attorney/Representative:**

Tara D. Newberry  
Connaghan Newberry  
7854 W. Sahara Avenue  
Las Vegas, NV 89117

**Trustee:**

Quality Loan Service Corp.  
2141 5th Avenue  
San Diego, CA 92101

**Trustee's Attorney/ Representative:**

**Lender (Beneficiary):**

**Lender's Attorney/Representative:**

Lindsey Bennet Morales, Esq.  
McCarthy and Holthus  
9510 West Sahara Avenue, Suite 110  
Las Vegas, NV 89117

**Other:**

**Other:**

Signature:

Print Name:

Title:

Steva E. Wenzel

Mediator

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

NATIONSTAR MORTGAGE, LLC;  
AND THE BANK OF NEW YORK  
MELLON F/K/A THE BANK OF  
NEW YORK AS TRUSTEE FOR  
THE HOLDERS OF THE  
CERTIFICATES, FIRST HORIZON  
MORTGAGE PASS-THROUGH  
CERTIFICATES SERIES PHAMS  
2005-AA5, BY FIRST HORIZON  
HOME LOANS, A DIVISION OF  
FIRST TENNESSEE BANK  
NATIONAL MASTER SERVICER,  
IN ITS CAPACITY AS AGENT FOR  
THE TRUSTEE UNDER THE  
POOLING AND SERVICING  
AGREEMENT,

Appellants,

vs.

CATHERINE RODRIGUEZ,

Respondent.

Supreme Court Case No. 66761

Electronically Filed  
May 14 2015 02:47 p.m.  
District Court Case No. A-13-68561-J  
Tracie K. Lindeman  
Clerk of Supreme Court

Appeal from the Eighth Judicial District Court of the State of Nevada, in and for the  
County of Clark, The Honorable Kathleen Delaney, District Judge District Court Case  
No. A-13-685616-J

**APPELLANTS APPENDIX – VOLUME XIII**

Gary E. Schnitzer, Esq., Bar No. 395  
Tyler J. Watson, Esq., Bar No. 11735  
Kravitz, Schnitzer & Johnson, Chtd.  
8985 S. Eastern Ave., Ste. 200  
Las Vegas, NV 89123  
Tele: (702) 362-6666  
Attorneys for Appellants

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XIII.	Motion for Supplemental Briefing	2806 - 2811
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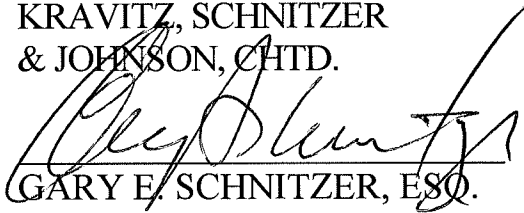
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XIII.	Order Denying Motion for Supplemental Briefing	2818 - 2821
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DATED: May 13, 2015

KRAVITZ, SCHNITZER  
& JOHNSON, CHTD.



GARY E. SCHNITZER, ESQ.

Nevada Bar No. 395

TYLER J. WATSON, ESQ.

Nevada Bar No. 11735

8985 S. Eastern Ave., Ste. 200

Las Vegas, NV 89123

*Attorneys for Appellants*

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DISTRICT COURT  
CLARK COUNTY, NEVADA

  
CLERK OF THE COURT

**Original**

CATHERINE RODRIGUEZ, )  
Petitioner, ) Case No. A-13-685616-J  
vs. ) Dept No. XXV  
NATIONSTAR MORTGAGE LLC, )  
Respondent. )

BEFORE THE HONORABLE KATHLEEN DELANEY

NOVEMBER 1, 2013, 9:00 A.M.

REPORTER'S TRANSCRIPT  
OF  
EVIDENTIARY HEARING

APPEARANCES:  
(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867



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WITNESS: Catherine Rodriguez

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<p>1 LAS VEGAS, CLARK COUNTY, NEVADA</p> <p>2 NOVEMBER 1, 2013, 9:00 A.M.</p> <p>3 PROCEEDINGS</p> <p>4 * * *</p> <p>5</p> <p>6 THE COURT: This is the date and time set for</p> <p>7 the evidentiary hearing in the matter of Catherine</p> <p>8 Rodriguez versus Nationstar Mortgage.</p> <p>9 Let's get the appearances for the record.</p> <p>10 MS. NEWBERRY: Tara Newberry on behalf of</p> <p>11 Catherine Rodriguez. Your Honor, my client is here she</p> <p>12 just stepped out for a minute.</p> <p>13 THE COURT: Oh, I do see Ms. Rodriguez.</p> <p>14 MR. STERN: Good morning, Your Honor. Ariel</p> <p>15 Stern on behalf BNY -- I should say "BONY" -- and</p> <p>16 Nationstar Mortgage LLC. With me is Allison Schmidt.</p> <p>17 And we also have the client, who will be our witness,</p> <p>18 Fay Janati.</p> <p>19 THE COURT: Thank you so much.</p> <p>20 MS. SCHULER-HINTZ: Good morning, Your Honor.</p> <p>21 Kristin Schuler-Hintz on behalf of BONY.</p> <p>22 THE COURT: We had set this evidentiary hearing.</p> <p>23 I do want to talk quickly about the fact that the Court</p> <p>24 did receive from the parties the stip and order with</p> <p>25 regard to the agency of Nationstar as the agent for BONY,</p> <p>and so obviously that was one of the issues we had asked</p>	<p>1 do it. It is just a matter of making sure we have all</p> <p>2 the pleadings. We've had some discussions about the</p> <p>3 issues already here and we wanted to get the evidence in</p> <p>4 the record because of disputes of facts and we needed to</p> <p>5 do that.</p> <p>6 Did you want to make any opening remarks,</p> <p>7 Ms. Newberry?</p> <p>8 MS. NEWBERRY: Your Honor, I would like to</p> <p>9 reserve time for closing remarks. I will simply state</p> <p>10 the evidence is going to show you the cost benefit of why</p> <p>11 the documents were presented in the way they were and why</p> <p>12 the conduct of the beneficiary through their agent,</p> <p>13 Nationstar, has transpired to where we are today.</p> <p>14 And I believe at the end of our presentation of</p> <p>15 evidence and our closing remarks we'll argue what that</p> <p>16 means with regard to sanctions for the bad faith conduct.</p> <p>17 THE COURT: Thank you.</p> <p>18 Mr. Stern.</p> <p>19 MR. STERN: Thank you, Your Honor. We would</p> <p>20 also like to reserve time for a more detailed closing</p> <p>21 argument. In opening, we would like to preview for the</p> <p>22 court that we will present evidence that Nationstar</p> <p>23 Mortgage received, as I think we already briefed in the</p> <p>24 papers, that the service transfer of this loan very</p> <p>25 shortly before this mediation took place, the mediation</p>
<p>1 for additional information on. We now have that. So I</p> <p>2 am prepared today to see if there is anything further</p> <p>3 that anybody has to say on that point, and then otherwise</p> <p>4 to proceed with whatever additional evidence the parties</p> <p>5 would like to put before the court today.</p> <p>6 Ms. Newberry, is there anything to add with</p> <p>7 regard to the stipulation?</p> <p>8 MS. NEWBERRY: Nothing, Your Honor. I believe</p> <p>9 the agency issues are going to be flushed out in the</p> <p>10 evidence you hear today.</p> <p>11 MR. STERN: We have nothing to add, Your Honor.</p> <p>12 We believe we have established that Nationstar is the</p> <p>13 agent per the beneficiary, the deed of trust, which is an</p> <p>14 important factor for you to consider.</p> <p>15 THE COURT: All right. Well, we will then</p> <p>16 proceed with -- there's really no set way from my</p> <p>17 perspective to manage these matters. What I typically do</p> <p>18 is I advise counsel if they have any kind of remarks that</p> <p>19 they want to make about what evidence they intend to put</p> <p>20 on and what they believe it will show, or if they just</p> <p>21 want to wait and do some concluding remarks at the end.</p> <p>22 Either way is fine.</p> <p>23 We'll take the testimony and sort of pull it all</p> <p>24 together. But I have no specific way that I think it</p> <p>25 needs to be done, or that there's a right or wrong way to</p>	<p>1 at issue. As part of that service transfer, obviously,</p> <p>2 Nationstar was given the responsibility to appear at</p> <p>3 mediation and appear in good faith. We will present</p> <p>4 evidence to show that the document deficiencies that the</p> <p>5 plaintiffs have complained of were either in the case of</p> <p>6 being lack of certification, McCarthy &amp; Holthus as</p> <p>7 counsel for BONY, had informed plaintiffs and their</p> <p>8 counsel about this.</p> <p>9 This morning, Your Honor, we will show that none</p> <p>10 of these document deficiencies impacted the mediation in</p> <p>11 any significant way or really in any manner.</p> <p>12 And, finally, as we know, there are questions</p> <p>13 about various versions of the endorsement on the note.</p> <p>14 And our witness, Ms. Janati, is going to explain to the</p> <p>15 Court that Nationstar has policies and procedures in</p> <p>16 place to address verification that those policies and</p> <p>17 procedures are important to avoid issues such as the one</p> <p>18 the plaintiff is trying to make here. We will show why</p> <p>19 these various endorsements were presented.</p> <p>20 And in conclusion, Your Honor, explain that</p> <p>21 there was absolutely no wrongdoing on the part of</p> <p>22 Nationstar. To the contrary. The evidence will show</p> <p>23 that Nationstar was the right party at the mediation and</p> <p>24 it mediated in good faith with all of the documents that</p> <p>25 were necessary. While not presented, certainly,</p>

1 Nationstar had custody of them. That is the last thing  
 2 Ms. Janati will explain, the procedures in place for  
 3 insuring integrity and custody of original documents.  
 4 But we do have the original collateral file here for the  
 5 court so you will be able to see the original note. And  
 6 we will be offering that among other documents.  
 7 THE COURT: Okay. Thank you.  
 8 Ms. Newberry.  
 9 MS. NEWBERRY: We would like to call Catherine  
 10 Rodriguez to the stand, Your Honor.  
 11 THE COURT: If you will come up to the witness  
 12 stand to be sworn.  
 13  
 14 Whereupon,  
 15 CATHERINE RODRIGUEZ,  
 16 was administered the following oath by the court clerk.  
 17 THE CLERK: You do solemnly swear that the  
 18 testimony you give in this action shall be the truth, the  
 19 whole truth, and nothing but the truth so help you God.  
 20 THE WITNESS: I do.  
 21 THE CLERK: Please state and spell your full  
 22 name for the record.  
 23 THE WITNESS: Catherine Rodriguez.  
 24 C-a-t-h-e-r-i-n-e, R-o-d-r-i-g-u-e-z.  
 25 THE COURT: Thank you.

8

1 You may proceed.  
 2  
 3 DIRECT EXAMINATION  
 4 Q Good morning, Ms. Rodriguez.  
 5 A Good morning.  
 6 Q What do you do for a living?  
 7 A I'm a massage therapist.  
 8 Q How long have you done that?  
 9 A For — since 2002.  
 10 Q Did you go to school for that?  
 11 A Yes, I did.  
 12 Q Where did you go to school?  
 13 A Nevada School of Massage.  
 14 Q How did you pay for the school?  
 15 A Loans.  
 16 Q Student loans?  
 17 A Yes.  
 18 Q And where do you work now?  
 19 A At the Mirage.  
 20 Q Have you always worked at the Mirage?  
 21 A No.  
 22 Q How long have you worked there?  
 23 A Since 2007, somewhere around there 2006-7.  
 24 Q Where did you work before then?  
 25 A I worked at Venetian or Canyon Ranch, 2007, and

9

1 my private practice, a Healing Touch, 2002, and Circuit  
 2 City, I did sales there.  
 3 Q That was not related to massage?  
 4 A No, I sold. I sold big screens and audio.  
 5 Q Have you ever been married?  
 6 A Yes.  
 7 Q When did you get married?  
 8 A In 1984.  
 9 Q Are you still married?  
 10 A No.  
 11 Q What happened?  
 12 A I divorced in 2003.  
 13 Q When was the divorce final?  
 14 A That is when it was final.  
 15 Q After you were divorced did you still have —  
 16 did you have any children with your husband?  
 17 A Yes, I did.  
 18 Q How many?  
 19 A One. I had one son and he lived with me.  
 20 Q After the divorce?  
 21 A After the divorce.  
 22 Q And how old was he when you divorced your  
 23 husband?  
 24 A He was a teenager in high school.  
 25 Q After your divorce from your husband, what

10

1 happened with your living arrangements?  
 2 A Right after the — the divorce was not final.  
 3 Our house was sold and then I rented another home into my  
 4 son's school district trying to keep him in the same  
 5 school and lifestyle. And proceeded to look for a home  
 6 in that area so he could still maintain his friends and  
 7 lifestyle.  
 8 Q When did you start looking for that house?  
 9 A Right after my home sold.  
 10 Q And when was that?  
 11 A I believe it was 2001. I'm not real sure.  
 12 Q Did you buy another house?  
 13 A Yes, I did.  
 14 Q When?  
 15 A 2005.  
 16 Q What is the address of that house?  
 17 A 6845 Sweet Pecan Street, Las Vegas, Nevada  
 18 81949.  
 19 Q Did you pay cash for that house?  
 20 A No.  
 21 Q How did you buy the house?  
 22 A The money I got out of my house with my husband.  
 23 I used it to put a down on it.  
 24 Q Do you remember how much money you put down?  
 25 A I am not real sure. It would have been in the

11

1 ballpark between 15,000 and 20.  
 2 Q So you financed the rest?  
 3 A Yes, I did.  
 4 Q How did you get financing?  
 5 A Through the lender that the track was going  
 6 through.  
 7 Q Who was the builder?  
 8 A The builder was — I don't know who the builder  
 9 was. Arbor Glen is the name of — but I do not remember  
 10 who the builder was.  
 11 Q So you went to purchase the home. Was it a new  
 12 home?  
 13 A Yes.  
 14 Q And the finance that you received, do you  
 15 remember the company that loaned you the money?  
 16 A Well, I don't remember because there was two  
 17 different entities. I did paperwork in the sale's office  
 18 and then they sent you to their entity, and then that is  
 19 when they were discussing this new way of doing a loan.  
 20 I was just old-school. My ex-husband and I did a 30-year  
 21 to begin with and then we refinanced our home into a 15  
 22 year and that's all I was accustomed to.  
 23 Q So what's this new loan that you were presented  
 24 with?  
 25 A They were saying that it is interest free and

12

1 you could be in your home 30 years, 40 years. Why not  
 2 take advantage of it. It's the new way. They are going  
 3 out with the old and in with the new. And I was foolish  
 4 to look into the FHA way.  
 5 Q When did this happen, what year?  
 6 A Around 2003 — end of 2003, 2004.  
 7 Q When did you actually purchase the home?  
 8 A 2005.  
 9 Q After you purchased the home, you started making  
 10 payments on it?  
 11 A Yes.  
 12 Q Who did you make the payments to?  
 13 A Right in the beginning it was Country Wide and  
 14 then it switched to First Horizon. I want to say it was  
 15 six months or maybe a year after. It wasn't that much  
 16 longer.  
 17 Q First Horizon?  
 18 A To First Horizon.  
 19 Q How long did you make payments to First Horizon?  
 20 A I want to say until 2008 or 2009. Somewhere  
 21 around there.  
 22 Q How much did you pay for the house?  
 23 A 269.  
 24 Q Do you know how much you financed when you  
 25 purchased the home?

13

1 A 269.  
 2 Q So the 15 to \$25,000 that you put down, what did  
 3 that go towards?  
 4 A Put it towards upgrades and I had a pool put in.  
 5 So that was all part of it.  
 6 Q When you purchased the home, could you afford  
 7 it?  
 8 A Yes.  
 9 Q Did something change for you financially after  
 10 you purchased the house?  
 11 A Several things. My work situation changed. I  
 12 was doing private clients and I worked on primarily  
 13 construction workers, and when the market started falling  
 14 and they were losing their jobs, well, I am the first  
 15 thing that's going to go.  
 16 Q You said you worked on them. Are you talking  
 17 about massage therapy?  
 18 A Yes. And then sales at Circuit City. I worked  
 19 there from '03 to '07, I believe is when they closed  
 20 their doors. And then I had my twin move in with me  
 21 because their business started going down.  
 22 Q So your income decreased because of your  
 23 construction-worker clients no longer using massage  
 24 services and Circuit City closed and you lost your job?  
 25 A Yes.

14

1 Q Did you stop making your mortgage payment when  
 2 that happened?  
 3 A No.  
 4 Q What did you do?  
 5 A I had my sister and their family move in so we  
 6 could help each other.  
 7 Q And did that make it possible for you to keep  
 8 making the mortgage payment?  
 9 A Yes.  
 10 Q That was 2007?  
 11 A Around 2007 — maybe the end of 2007, beginning  
 12 of '08.  
 13 Q Then what happened financially for you in 2008?  
 14 A Again, the business was not coming in and I  
 15 tried seeking other employment and sales because I had a  
 16 sales background and other massage places. And the  
 17 massage was not going anywhere, and you barely make it.  
 18 And there was no sales jobs.  
 19 Q So what did you do with the reduction in income?  
 20 A What did I do — what?  
 21 Q What did you do with this reduction in income in  
 22 2008?  
 23 A I contacted First Horizon and I begged them to  
 24 help me because I was going down fast. And they turned  
 25 around and said because I worked at FX You Salon I had my

15

1 private clientele, and so the FX You Salon is -- I'm a  
2 subcontractor, so when someone walked into that salon,  
3 they would call me and I would go there. So it wasn't  
4 like a permanent thing. You never knew when you were  
5 going to get a client. So I would submit to them the  
6 paycheck stubs of getting paid to them and they said that  
7 that was nothing -- First Horizon said that it was not  
8 the way they looked at things. And I said, Well, if it's  
9 messing it up it's not that much. It's only \$40, \$60, so  
10 let's just take it off so I can get help. They turned  
11 around and said it was on the underwriter's desk and she  
12 would have to contact me.

13 Q Were you still current on your mortgage payment  
14 when you communicated with First Horizon about your  
15 reduction of income?

16 A Yes.

17 Q Did you have any other debts besides your  
18 mortgage in 2008?

19 A I claimed bankruptcy in 2008.

20 Q Why?

21 A I was trying to eliminate debt that I had to try  
22 to continue making my mortgage and stuff.

23 Q What debts did you have that made you file  
24 bankruptcy?

25 A My student loans, which I thought you could

16

1 claim and you can't claim them.

2 Q So you filed bankruptcy to discharge your  
3 student loan and then after filing found out that you  
4 were still going to have to pay them?

5 A Yes.

6 Q How much were your student loans?

7 A They are around 12, 13,000.

8 Q Do you have any credit card debt?

9 A I had very little credit card debt. I don't  
10 remember the exact amount, but it was extremely low.

11 Q More than a thousand, less than a thousand?

12 A I think it was more than thousand.

13 Q More than 2,000?

14 A It was probably altogether -- I don't know -- I  
15 would be guessing. I don't know how much it was.

16 Q So you filed bankruptcy in 2008. Did you stop  
17 making your mortgage payment then?

18 A No.

19 Q Why not?

20 A Because I wanted to keep my home.

21 Q Do you remember when your bankruptcy case was  
22 discharged?

23 A Around 2010, somewhere around there.

24 Q After you filed your bankruptcy case, how long  
25 did you continue to make your mortgage payment?

17

1 A I don't know the exact month. But I continued  
2 because I was in constant contact with -- not because  
3 they were calling me, I was calling them. First Horizon  
4 never contacted me. They turned around and instructed me  
5 to stop making my payment, and that's the reason the file  
6 was sitting on the underwriter's desk and not getting  
7 looked at.

8 Q When did that happen?

9 A Probably the end of 2008, 9.

10 Q End of 2009?

11 A Somewhere around there.

12 Q So you were trying to get your mortgage payment,  
13 the monthly payment, changed with First Horizon. You had  
14 submitted documents to them and it was sitting on the  
15 underwriter's desk?

16 A That is what they kept telling me.

17 Q And then eventually someone told you to stop  
18 making the mortgage payment.

19 A The reason they weren't looking at me is because  
20 I was current. And the only way that they would look at  
21 me and do a loan mod is if I was late. And I said, I  
22 don't feel comfortable doing that. I am a good debtor,  
23 why can't I get a loan mod. And they said it's because  
24 that's not how it works. You have to be late.

25 Q How did that make you feel?

18

1 A Extremely uncomfortable.

2 Q Why?

3 A I have never done that. I believe in paying my  
4 bills. That is not me.

5 Q So after they told you to stop making your  
6 mortgage payment, did you?

7 A Not the first month. The second month I did.

8 Q Why?

9 A Because I wanted to get help and it was getting  
10 closer to when my sister was moving out and that money  
11 was going to be gone and I didn't have any other income  
12 to count on. I didn't have any family members. Nothing.

13 Q Do you remember how much money you were making  
14 in 2009?

15 A Roughly around 37 a year.

16 Q 37,000 a year?

17 A Yes.

18 Q How much per month did that average for you?

19 A I would say around 25 to 3,000.

20 Q 2,500 to 3,000 a month?

21 A Yes.

22 Q So after you missed your mortgage payment, at  
23 some point in 2009 what happened?

24 A I contacted the bank again and I said, Okay, I  
25 missed a payment. And they said it takes more than one

19

1 payment. And then I let it go for, I want to say six  
2 months. And then I just started getting scared that I  
3 wasn't going to get out of this circle that I was forced  
4 into, so I sent a payment and they sent it back to me  
5 saying that now I was in default and they could not  
6 accept payment. Then I sent another payment in saying I  
7 wanted to show good faith. I am tired of waiting. How  
8 do I hurry this up. I have done what they've asked me.  
9 I sent in every document, everything, every letter.  
10 Whatever they asked of me, I sent it.  
11 Q So after you missed a payment you continued to  
12 submit loan modification requests and documents and  
13 paperwork and communicate with First Horizon?  
14 A Yes.  
15 Q And then after it took too long, in your  
16 opinion, you started to make payments to them while you  
17 were still waiting to hear back on the loan mod?  
18 A Yes.  
19 Q And they refused the payment?  
20 A Yes. I tried to make two different payments.  
21 Q What happened after they refused your payments?  
22 A Then I got scared and nervous again and I'm like  
23 I am going to lose my home because they are not working  
24 with me. I don't understand. I was good up to date and  
25 they would not work with me, and then I get behind and

20

1 now they say I'm in default and can't work with me.  
2 Q So then what happened?  
3 A I got a letter on my door saying they were going  
4 to foreclose on me. And I went to a wine party that my  
5 girlfriend was having and I was talking to my girlfriend  
6 and telling her how frustrated I was and how come  
7 everybody else seems to be getting these loan mods and it  
8 doesn't take any time to get them. And an attorney was  
9 present there overheard me and came up and introduced  
10 herself and explained what was going on because she was  
11 familiar with it.  
12 And so then I told her that I didn't have any  
13 money to pay for counsel and she turned around and took  
14 me on pro bono.  
15 Q And what happened with the foreclosure that was  
16 filed?  
17 A I elected for mediation and then I went to  
18 mediation.  
19 Q And when you elected mediation, who did you  
20 think you were supposed to be communicating with about  
21 your loan?  
22 A First Horizon.  
23 Q Who showed up at mediation?  
24 A Met Life.  
25 Q Do you remember when that happened?

21

1 A Around July 2010.  
2 Q Who was present at that mediation?  
3 A For the bank it was this African American  
4 attorney. She brought a partner that was Hispanic. She  
5 was showing her how it worked. The mediator, Sarah, my  
6 attorney, my mother and myself.  
7 Q What happened during that mediation?  
8 A She had come in and introduced herself and then  
9 she turned around and was looking at my financials that  
10 you have to disclose, and she told me that I lived over  
11 my means.  
12 Q Did she explain that to you?  
13 A I had a Starbucks coffee and that was excessive  
14 having Starbucks coffee. And because I owned a car and I  
15 should use public transportation, but in my area they did  
16 not have public transportation. My grocery bill, I  
17 believe I put like \$400 down a month, but that was me and  
18 my two grand-boys that I helped with. I had them four  
19 days a week back then.  
20 Q Your grandchildren were with you four days a  
21 week?  
22 A Yes.  
23 Q What else happened during the mediation?  
24 A The gentleman on the phone turned around and had  
25 given some numbers out and it ended up being more than

22

1 what I paid in my current mortgage and then she told me  
2 to try to go and eliminate things that were unnecessary  
3 and to get my food costs down.  
4 Q Do you remember how much money you were actually  
5 bringing home, not your gross, but your net at that point  
6 in time?  
7 A Around 21, 22, I think.  
8 Q Do you remember the mortgage payment  
9 approximately that they were offering you at that  
10 mediation to pay?  
11 A It was 15 something.  
12 Q Do you remember the name of the person who was  
13 on the phone at the mediation?  
14 A No.  
15 Q Do you know who he said he worked for?  
16 A He said he worked for — I'm not sure. I don't  
17 remember him saying who he worked for.  
18 Q I know it was a few years ago.  
19 A The first one I don't remember.  
20 Q Do you know whether he worked for First Horizon  
21 or not?  
22 A No. He didn't say he worked for First Horizon.  
23 First Horizon was never mentioned. I was the only one  
24 that mentioned First Horizon.  
25 Q What happened at the end of the mediation?

23

1 A We didn't accept the offer because it was higher  
2 than what my current mortgage was, and I was asking to  
3 get it reduced and they upped it on me and it wasn't a  
4 fixed. It was a trial or something like that. And then  
5 they would reevaluate it or some kind of thing like that.  
6 Q So what happened after the mediation in 2010?  
7 A After that I did what she had suggested; I got a  
8 different car. I stopped drinking Starbucks and I  
9 couldn't lower my food bill. And then got served with or  
10 it came in the mail, a PJR, Judge Mosley. It was from  
11 Judge Mosley.  
12 Q So you went in front of Judge Mosley?  
13 A Yes.  
14 Q Do you know what that was about?  
15 A She was claiming, the attorney was claiming that  
16 I was not -- how did she put it.  
17 Q You said she, who are you referring to?  
18 A The attorney from the other side. The one that  
19 was in mediation. She showed up at Judge Mosley's. She  
20 was trying to get a foreclosure.  
21 Q So you understood you went in front of Judge  
22 Mosley because she requested it so she could foreclose on  
23 the house?  
24 A Yes.  
25 Q What happened at that hearing?

24

1 A She tried to say that she did give something  
2 fair and doable. And then Judge Mosley asked her to lay  
3 out the guidelines that she had laid out in mediation.  
4 He stated that that is not fair. You are not in good  
5 faith. Go back to the drawing board. Go back to your  
6 client and tell them this is not in good faith when you  
7 are going higher. It is showing not good faith.  
8 Q So what happened after the hearing in front of  
9 Judge Mosley?  
10 A I thought we were going to hear from the  
11 attorney and we didn't. I got another card in the mail  
12 to elect for mediation, so I elected for mediation. And  
13 then I went to mediation again. The mediator at that  
14 time was Carlos. And representing from the bank was  
15 Chris and another intern that was learning. A young  
16 lady.  
17 And so we met in the waiting area and he goes,  
18 Ms. Rodriguez, today is going to be a good day. We are  
19 all going to have a great Christmas. You are going to  
20 walk out with a loan mod. And I was like, awesome. That  
21 would be great news. We can all get our lives back in  
22 order. And he turned around and goes, Yeah, it is a done  
23 deal. It's easy. So you can start celebrating  
24 Christmas. So it was like, thank God. Finally.  
25 And we go into the mediation. He gets the

25

1 person on the phone, and then he gets on his phone and  
2 steps outside. And he walks in and he just looked like  
3 the life had just been taken out of him. And he just  
4 kept saying, I'm sorry. I really thought we could walk  
5 out with a loan mod today.  
6 Q Who was the person on the phone at the second  
7 mediation?  
8 A The guy said he was Nationstar. I don't  
9 remember his name.  
10 Q The mediation where the attorney, Chris,  
11 appeared for the bank, do you remember when that  
12 happened?  
13 A Yes, in December.  
14 Q Of what year?  
15 A 2010.  
16 Q And at that time who was servicing your loan?  
17 A Nationstar.  
18 Q And after that mediation did you get a loan  
19 modification?  
20 A No.  
21 Q What happened next?  
22 A After that mediation because nothing came of it  
23 I went to another mediation and that was my third  
24 mediation. It was on the other side of town by the  
25 airport and Ms. Lindsey -- Hi -- came in. Well, first,

26

1 it was Steve and I, the mediator. He came from Arizona.  
2 And we were sitting there talking. We were waiting for  
3 my attorney and their attorney from the bank. And I had  
4 told him that traffic is bad and they are probably stuck  
5 in it, so we were just talking before they got there.  
6 Q When was that third mediation?  
7 A 2011, I believe.  
8 Q Do you know what month?  
9 A I am drawing a blank on the month.  
10 Q You said hi to someone in the courtroom today.  
11 Who were you saying hi to?  
12 A Lindsey.  
13 Q Can you describe what she is wearing?  
14 A She has a white shirt on, brown jacket -- black  
15 jacket with a glasses and reddish blonde hair.  
16 Q How do you recognize her?  
17 A She was the attorney from the bank.  
18 Q And once --  
19 A All the attorneys from the other side were  
20 extremely nice but the first one.  
21 Q And when the third mediation took place in 2011,  
22 take us through how the mediation started and what  
23 happened.  
24 A Lindsey came and introduced herself. And we all  
25 signed the paper. And she handed me a stack of papers.

27



1 It was copies of my loan. And she turned around and said  
2 this is what they gave me. It's not a complete file, so  
3 we can't really proceed.  
4 MS. NEWBERRY: I am going to approach the  
5 witness with what has been previously marked as  
6 Exhibit 10 to the Petition, Your Honor. Counsel, would  
7 you like to review the original before I present it to  
8 the witness?  
9 MR. STERN: Sure.  
10 MS. NEWBERRY: May I approach the witness, Your  
11 Honor?  
12 THE COURT: You may.  
13 BY MS. NEWBERRY:  
14 Q Take a moment and look through that document.  
15 Do you recognize it?  
16 A Yes.  
17 Q How do you recognize it?  
18 A This is a copy of my loan. And Lindsey handed  
19 me this. My attorney had pointed out. I had seen it too  
20 but it is stamped on this side right here (indicating)  
21 Nationstar Mortgage, and none of my other documents had  
22 that. I received this through the mail or on my  
23 doorstep.  
24 Q Prior to that mediation?  
25 A Prior to that mediation.

28

1 Q And how do you know that's the document Lindsey  
2 handed you at the mediation?  
3 A It is the only one like it. If you line  
4 everything up, it lines up.  
5 MS. NEWBERRY: Your Honor, I would like to offer  
6 this original document into evidence. It has previously  
7 been introduced.  
8 THE COURT: You want to put in the original,  
9 Counsel?  
10 MS. NEWBERRY: If he will stipulate to a copy,  
11 that is sufficient for us.  
12 THE COURT: Typically, the Court would not take  
13 the original, but would compare the original to the copy,  
14 unless there is some objection to the copy.  
15 MR. STERN: We have no objection to the copy,  
16 Your Honor. This original itself is a copy. So we are  
17 fine going forward. We have the original here.  
18 THE COURT: I understand. Let me just see what  
19 the witness is seeing. We have an Exhibit 10 here. And  
20 there is no dispute is there, that this is a true and  
21 correct copy?  
22 MS. NEWBERRY: That is the copy that we received  
23 at the mediation, Your Honor.  
24 THE COURT: Is there any objection to the  
25 admission of this document?

29

1 MR. STERN: No, Your Honor.  
2 THE COURT: All right. And, again, this is  
3 Plaintiff's proposed --  
4 MS. NEWBERRY: Petition for Judicial Review  
5 Exhibit 10.  
6 THE COURT: Just wanted to make sure that is  
7 admitted. I will hand this back to the witness.  
8 MS. NEWBERRY: Thank you, Your Honor.  
9 MR. STERN: So for our purposes, Your Honor, is  
10 this Exhibit 10, or are we working --  
11 THE COURT: Well, again, until I know exactly  
12 how you all have put the proffered ones, I am not quite  
13 sure how I want to mark them. Like you said, you have  
14 PJR exhibits, and then you have a different reference.  
15 We could actually do it a different way entirely,  
16 although, think it would be too complicated with the  
17 number of exhibits that you have, which is just as they  
18 come into evidence mark them 1, 2, and so on. But I'm  
19 really not comfortable doing that because you have so  
20 many.  
21 MR. STERN: I would suggest that we go with the  
22 exhibit numbers that are already with them, if that works  
23 for Ms. Newberry.  
24 THE COURT: Okay. But we don't have duplicate  
25 numbers in terms of different sets in what we're calling

30

1 them?  
2 MS. NEWBERRY: No. No. The Petition for  
3 Judicial Review exhibits are 1 through 16, and judicial  
4 notice Exhibits are 1 through 32.  
5 THE COURT: But that's what I'm saying. So the  
6 numbers overlap, just different titles on them. So  
7 that's the only tricky part, but if we call it Petition  
8 for Judicial Review, Exhibit 10, I guess we can make that  
9 work.  
10 Do you have your own set? I'm assuming you do.  
11 MR. STERN: We have a few documents that have  
12 not been marked. And what I was thinking we could do is  
13 give them numbers like 200 and 201 so we could keep them  
14 pretty far apart.  
15 THE COURT: Has anything been marked here with  
16 my clerk?  
17 MR. STERN: No.  
18 THE COURT: Okay. Let's just bring out Petition  
19 for Judicial Review 10.  
20 MR. STERN: Okay.  
21 MS. NEWBERRY: Thank you, Your Honor.  
22 BY MS. NEWBERRY:  
23 Q Looking at the note that you just described to  
24 the Court and the stamp of Nationstar, what was your  
25 understanding of who owned your note at the mediation?

31

1 A Nationstar.  
 2 Q Why did you think that?  
 3 A It was stamped on here and the gentleman on the  
 4 phone also identified that he was a representative of  
 5 Nationstar.  
 6 Q Do you remember that person's name?  
 7 A No.  
 8 Q What the person on the phone at the third  
 9 mediation in 2011 say?  
 10 A He said that he is confined in a box and he  
 11 can't step out of the that box and basically his hands  
 12 are tied.  
 13 Q And was that in reference to a loan  
 14 modification?  
 15 A Yes.  
 16 Q Did he say anything about who he worked for?  
 17 A When he identified himself he said that he was  
 18 representing Nationstar.  
 19 Q Did he indicate that anybody else owned that  
 20 note?  
 21 A No. Just Nationstar.  
 22 Q Do you remember the mediator asking the person  
 23 on the phone any questions?  
 24 A He asked him if he had the copies that we were  
 25 looking at in his possession and he said he didn't have

32

1 them right then. And I don't know what he was looking at  
 2 but he didn't have what we were looking at.  
 3 Q Do you remember anything else that was said  
 4 during the mediation between the mediator and the  
 5 gentleman on the phone from Nationstar?  
 6 A No.  
 7 Q Did Lindsey say anything during the mediation  
 8 that you remember?  
 9 A She apologized for everybody's time and said  
 10 this is what they gave me. It's not a complete document,  
 11 complete package.  
 12 Q Were there any other documents beside that  
 13 Exhibit 10, the note that you are looking at right now?  
 14 Were there any other documents that were in the pile that  
 15 were handed to you?  
 16 A From Lindsey, no. I was only handed this and  
 17 the sign-in sheet.  
 18 Q What did you want to happen at mediation?  
 19 A Again, I was hoping for that loan modification.  
 20 Q So at the end of this mediation in October of  
 21 2011, did you get a loan modification?  
 22 A No.  
 23 Q Did they offer you anything that was affordable  
 24 for you?  
 25 A I don't think they offered anything. I think

33

1 that my attorney made the statement that the offering of  
 2 where it was affordable was broke down.  
 3 Q So you made an offer to Nationstar for an  
 4 affordable payment?  
 5 A Yes.  
 6 Q Do you remember approximately what that was?  
 7 A My payment would have been like a thousand  
 8 dollars. But it was broke down one or two percent over  
 9 so many years and then it was like a 40-year loan. And  
 10 then he turned around and said, No, we can't do that. We  
 11 have guidelines and we have to stay within those  
 12 guidelines.  
 13 Q Did he explain what the guidelines were?  
 14 A He did but they weren't, they couldn't work with  
 15 me. They were still bringing that payment up past what  
 16 the — and the interest rate was up.  
 17 Q So at the end of the mediation what happened  
 18 next?  
 19 A Oh, in the mediation my attorney asked the  
 20 gentleman on the phone if they were owners of the note  
 21 and he said, Yes. And she goes, Are you the servicer and  
 22 the person that owns the note? And he stated, Yes. And  
 23 then she asked, So if you are the owner of the note,  
 24 you're telling me that you don't have the authority to  
 25 lower the interest rate and the payment, so it's

34

1 affordable for Ms. Rodriguez. He stated, No. He  
 2 couldn't do that.  
 3 Q So after mediation ended what was your  
 4 understanding of what would happen with your home?  
 5 A I didn't know what was going on. Every time I  
 6 went into a mediation I was all — but Chris, he turned  
 7 around and said I would have a modification. I was lost.  
 8 Don't know. Didn't know what to expect.  
 9 Q So what did you do after the mediation in  
 10 October of 2011?  
 11 A I got a thing taped to my door and I was  
 12 driving, and I go in through the garage. I never use my  
 13 front door. But the porch light had shimmered off the  
 14 tape and that's what caught my eye. And just one single  
 15 piece of paper was on my door. And I was like, that's  
 16 odd. So I went in and got it and it said that they were  
 17 going to foreclose on me. How come they won't work with  
 18 me. Why won't they give me a loan mod. Why won't they  
 19 let me stay in my home.  
 20 Q You said this document was taped to your door.  
 21 Was it the same as any of the prior documents you had  
 22 received from the bank with regard to foreclosure?  
 23 A No. This one was different. Most of the things  
 24 that are taped to the door are copies of the loan. This  
 25 one was saying it was foreclosing on me.

35

1 Q What did you understand that document to be?  
2 A The one that was taped to my door?  
3 Q Yes.  
4 A That they were going to take my house.  
5 Q What did you do with that information?  
6 A I contacted my attorney that evening and she  
7 asked me to bring the document into her office. And she  
8 asked was there any other papers attached to that  
9 document. And I said, No, it's just this single one.  
10 And she goes, That's odd. And she goes, They didn't hand  
11 deliver it. They taped it to your door? And I said,  
12 Yeah, they taped it to my door.  
13 Q Did you bring that document to court today?  
14 A Yes, I did.  
15 Q Is this your stack in the envelope.  
16 A Yes.  
17 Q That's the document?  
18 A Yes.  
19 MS. NEWBERRY: Your Honor, if I may approach the  
20 bench.  
21 THE COURT: You may.  
22 Is there a copy of this?  
23 MS. NEWBERRY: There is a copy of this in the  
24 Petition for Judicial Review, Your Honor.  
25 THE COURT: Okay.

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1 MS. NEWBERRY: This is the first complaint filed  
2 with regards to judicial foreclosure.  
3 THE COURT: All right. Thank you.  
4 BY MS. NEWBERRY:  
5 Q So this document was taped to your door. Your  
6 understanding was that there was a lawsuit?  
7 A Yes.  
8 Q To take your house?  
9 A Yes.  
10 Q Who was suing you?  
11 A Well, it came from MetLife, and - well, there  
12 is a whole bunch of ones listed up there; MetLife,  
13 Nationstar.  
14 Q On the judicial foreclosure document that you  
15 received, do you remember who it was that was suing you  
16 to take your house?  
17 A This one is the Bank of New York Melon. On the  
18 certificate First Horizon, First Horizon Tennessee.  
19 Q Had you ever received any communications from  
20 Bank of New York Melon before?  
21 A No. This was my first with New York and I asked  
22 him when did that happen.  
23 Q Approximately when did you receive that  
24 document, if you remember?  
25 A I don't remember. It was taped to my door. In

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1 that time frame of the last mediation and this was taped  
2 to the door. And up until then Melon was never  
3 mentioned. To this day I still get information from  
4 Nationstar stating that I owe them money and they are the  
5 holder of the note.  
6 Q So you got this lawsuit after mediation where  
7 Nationstar said they owned it. And now Bank of New York  
8 Melon say they owned it. Who were you supposed to pay  
9 your mortgage to?  
10 A I have no clue.  
11 Q What happened with the judicial foreclosure  
12 case?  
13 A I went and spoke to my attorney and that was  
14 going to cost quite a bit of money and I didn't have it  
15 so I went to family members seeing if I could borrow it,  
16 and no one had extra cash to come up with to proceed this  
17 law case. My attorney contacted the attorney one more  
18 time on that.  
19 Q Your attorney talked to the attorney for who?  
20 A For the bank, New York Melon.  
21 Q Okay.  
22 A And she stated that she said that they will not  
23 give me a loan mod so I might as well short sell my house  
24 and just be done with it. They will never work with me.  
25 Q Did you want to short sale your house?

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1 A I did not want to lose my house. It's my home.  
2 It's my kids' home. My grand-kids, the grew up there.  
3 It has been devastating on everybody involved.  
4 Q Since 2009, when you were told to default on the  
5 mortgage, did you spend any money on the house itself?  
6 A Yes. I keep it up. I do landscaping. My drip  
7 system, air conditioning, pull pump, water heater,  
8 garage, the door like a yearly thing. I think it has a  
9 contract on it because it always goes out at the same  
10 time. Just painting and keeping it up.  
11 Q If you're in foreclosure, why would you do that?  
12 A Because it's my home.  
13 Q Are you in an HOA?  
14 A Yes.  
15 Q Are you current on your HOA payment?  
16 A Yes, I am.  
17 Q Going back to the judicial foreclosure, so after  
18 you were told short sale was your only resolution, what  
19 happened next?  
20 A So I went to the U-Haul place and got some boxes  
21 and started packing my house and my grand-kids were  
22 crying, asking, Grandma why are they taking our home?  
23 And I said, I don't know, but the attorney said there is  
24 nothing more we can do. We fought a good fight. For  
25 some reason the house must be gold or something because

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1 everybody else is getting loan mods and I'm not asking  
2 any different than anybody else. I have always been a  
3 good debtor. I'm sorry. I don't get emotional unless I  
4 talk about my kids. They were so hurt and distraught and  
5 so I stopped packing to comfort them.

6 And about two days later I got a phone call from  
7 my attorney and she said I just talked to a young lady,  
8 her name is Venicia down at Legal Aid, and they might be  
9 able to help you. Go down there and see.

10 So I went down there the day after our  
11 conversation I went straight over there. And they turned  
12 around and I met with her and I met with her associate  
13 and I had brought all my documents because I carry them  
14 in my car it was like part of life at this point. And  
15 they turned around and said, Well, I don't understand why  
16 they are not giving you a loan mod.

17 And I said, I can't understand it either. It  
18 bogs my mind how -- and I am watching my colleagues all  
19 get loan mods. They started in three months and they are  
20 done. I'm years on this rocky -- it's not a good place  
21 to be where I am. There is no stability. And then to  
22 get this and basically told that there is nothing you can  
23 do. They turned around and said that they would review  
24 my case. They had to take it up to their partners and  
25 that they were having one at the end of that week.

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1 Q You said "they" are you talking about Venicia?

2 A Legal Aid.

3 Q Legal Aid Center. Okay.

4 A And so then Legal Aid contacted me and said that  
5 they were going to take my case, that it had enough merit  
6 in there to pursue it. And so --

7 Q After the judicial foreclosure case, you  
8 obtained counsel to represent you. What is the next  
9 thing that you were involved in with regards to the case?

10 A Just giving documentation, handing whatever I  
11 could over. But basically my attorney had everything and  
12 we went in front of Judge Bonaventure -- I think that is  
13 how you pronounce his name.

14 Q Why did you go in front of Judge Bonaventure?

15 A I guess to look at the case. And he turned  
16 around he looked at the documents that both sides had  
17 handed and told us to go. I forget how he said it, but  
18 it is to continue on, or -- I don't know how you put it.

19 Q What was your understanding of why you were in  
20 court in front of Judge Bonaventure?

21 A I thought he was going to overrule all the  
22 things and make the bank come to a modification.

23 Q And after that hearing, what happened?

24 A After that hearing we came here.

25 Q What is your understanding of why a Petition for

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1 Judicial Review that we are here today for was filed?

2 A It's saying something about a timely thing. I'm  
3 not sure what it is.

4 Q Why did you want to come before Judge Delaney  
5 today?

6 A I wanted to appear to beg to have some  
7 modification done like everybody else. I am not asking  
8 any different. I am not trying to elude anybody or  
9 deceive anybody, that has never been my intention. So I  
10 am just asking the court to make them, if they can, come  
11 to some modification so I can keep my home where my kids  
12 know.

13 MS. NEWBERRY: I have nothing further, Your  
14 Honor. Pass the witness.

15 THE COURT: Mr. Stern.

16

17 CROSS-EXAMINATION

18 BY MR. STERN:

19 Q Good morning Ms. Rodriguez.

20 A Good morning.

21 Q My name is Ariel Stern. I represent Nationstar  
22 Mortgage, as well BONY Melon. Ms. Schuler-Hintz also  
23 represents BONY Melon. I have a few questions for you.  
24 I promise I will be shorter, and by shorter, I mean  
25 duration of time than your attorney was with you. So

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1 this will not take too long, but I do have some  
2 questions, okay?

3 A Okay.

4 Q In your testimony you mentioned that you have  
5 been dealing with First Horizon; do you recall that?

6 A Yes.

7 Q You said that First Horizon instructed you to  
8 stop making payments?

9 A Yes, they did.

10 Q Are we correct in understanding that Nationstar  
11 never instructed you to stop making payments?

12 A No. They did not tell me that.

13 Q What about BNY, BONY, did BONY ever instruct you  
14 to stop making payments?

15 A I don't know who BONY is.

16 Q BNY Melon.

17 A Oh, they never.

18 Q Okay. What about the first Petition for  
19 Judicial Review when you were before Judge Mosley, did  
20 you have an opportunity to defend yourself in that case?

21 A My attorney spoke for me.

22 Q So you had an attorney?

23 A Yes.

24 Q You said in your testimony that you believe in  
25 paying your bills and it is something you have done all

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1 your life; do you recall that?  
2 **A Yes.**  
3 **Q** I have a couple follow-up questions, and I  
4 apologize in advance, but it is important for us to get  
5 all of this information out.  
6 **A No, that's fine.**  
7 **Q** As per your testimony, you stopped paying on  
8 your mortgage in 2009, correct?  
9 **A Correct.**  
10 **Q** And since — I believe you said in your  
11 testimony that you said you started paying again at some  
12 point?  
13 **A I tried paying.**  
14 **Q** When was the last time you tried to make a  
15 payment?  
16 **A The latter part of, I would say 2009, 2010. In**  
17 **that area.**  
18 **Q** So since that part of 2009 and 2010, all the way  
19 up today in November of 2013, have you made any payments  
20 on this mortgage?  
21 **A No.**  
22 **Q** During that time period you mentioned you are  
23 current on your HOA. Just so that we're clear, are you  
24 paying your HOA?  
25 **A Yes.**

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1 **Q** The bank is not paying that?  
2 **A No.**  
3 **Q** What about insurance and escrow payments?  
4 **A No.**  
5 **Q** The bank is making those payments?  
6 **A The bank is making those. To my knowledge they**  
7 **are. I don't know who really is.**  
8 **Q** But as far as you know —  
9 **A I just know I'm not making them.**  
10 **Q** I think that is enough.  
11 If we understand your testimony correctly, you  
12 would like to be paying about 1,000 a month; is that  
13 correct?  
14 **A Yes.**  
15 **Q** Your mortgage terms before you started the  
16 process with First Horizon was about \$1,500 a month; is  
17 that correct?  
18 **A Correct.**  
19 **Q** So since you are not making those payments now  
20 can you tell us how you are using those funds that you  
21 are not paying for this mortgage, whether it's the 1,500  
22 or the \$1,000?  
23 **A What I am doing with it?**  
24 **Q Yes.**  
25 **A I was living on it. I had two grandsons that I**

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1 was helping raise. My son took a loss in his job and we  
2 all tried to stick together on these hard times.  
3 **Q** So as I understand it, the money that you are  
4 not paying for the mortgage you are using for your family  
5 and for living expenses, that sort of thing?  
6 **A In that time frame. But in the last, I want to**  
7 **say probably since April, I have been putting \$600 in an**  
8 **escrow account, or not an escrow account — I don't know**  
9 **what it is called. An account I set up with my attorney.**  
10 **Q** Are you talking about your attorney's trust  
11 account?  
12 **A That's it.**  
13 **Q** Now, we all understand that you want to keep  
14 this home?  
15 **A Yes.**  
16 **Q** If you aren't able to afford the home, do you  
17 believe you should nevertheless keep it?  
18 **A If I can't?**  
19 MS. NEWBERRY: Objection. Argumentive.  
20 THE COURT: Overruled.  
21 BY MR. STERN:  
22 **Q** If you can't afford the home, do you believe you  
23 should nevertheless be allowed to keep it?  
24 **A I do not think I am understanding your question.**  
25 **If I got a loan mod then I could afford it because it**

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1 would be in —  
2 **Q** I understand that.  
3 **A I am confused.**  
4 **Q** Let me remove the confusion. What I am asking  
5 is for you to make an assumption. Assume that you cannot  
6 afford the home. That assumption carries with it that  
7 you weren't able to get a loan modification; do you  
8 understand that?  
9 **A Okay.**  
10 MS. NEWBERRY: Objection, Your Honor. It's an  
11 incomplete hypothetical and assumes facts not in  
12 evidence.  
13 THE COURT: Overruled.  
14 MR. STERN: Thank you.  
15 BY MR. STERN:  
16 **Q** So you understand the hypothetical. If you are  
17 not able to afford the loan and you have not been able to  
18 get a loan modification, if you assume that, do you  
19 believe you should be able to keep the home anyway?  
20 **A Should I be able to keep the home anyway without**  
21 **paying; is that what you're asking?**  
22 **Q** I am asking if you can't afford the home because  
23 of your financial circumstances and you were unable to  
24 get a loan modification.  
25 **A I guess I would have to move out because that**

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1 would be --  
 2 MR. STERN: Okay. Ms. Rodriguez, I do not have  
 3 any more questions for you.  
 4 MS. SCHULER-HINTZ: I just have a couple quick  
 5 questions.  
 6 BY MS. SCHULER-HINTZ:  
 7 Q You stated you were paying bills on the  
 8 property. Have you paid your water bill?  
 9 A Yes.  
 10 Q Was there a lien on the property placed by the  
 11 Water District for an unpaid bill?  
 12 A I don't believe -- no. My water is current.  
 13 Q Do you know if there was a lien for unpaid water  
 14 dues?  
 15 A Not to my knowledge. There shouldn't be no lien  
 16 on the home.  
 17 Q How about for the sewer; are you paying the  
 18 sewer regularly?  
 19 A Sewer is with trash. No.  
 20 Q You're not paying those?  
 21 A No.  
 22 Q So those are some of the bills you're not  
 23 paying?  
 24 A Those are the two. But everything else is two  
 25 and three months ahead, that's why water, I should not

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1 have no lien on me.  
 2 Q You stated that you were unaware that Bank of  
 3 New York Mellon had an interest in the property until you  
 4 received the complaint for judicial foreclosure; is that  
 5 correct?  
 6 A Correct.  
 7 Q Did you participate in a Petition for Judicial  
 8 Review after the first mediation? Is that correct?  
 9 A The PJR?  
 10 Q Yes.  
 11 A Yes.  
 12 Q Did you sign a declaration in connection with  
 13 that Petition for Judicial Review?  
 14 A I'm not sure.  
 15 Q You did.  
 16 A Okay.  
 17 MS. SCHULER-HINTZ: May I approach?  
 18 MS. NEWBERRY: May I see it.  
 19 THE COURT: You are going to try to refresh her  
 20 recollection first?  
 21 MS. SCHULER-HINTZ: Yes.  
 22 THE COURT: Okay.  
 23 MS. SCHULER-HINTZ: Go ahead and take a look at  
 24 that.  
 25 MS. NEWBERRY: Your Honor, if I may review this

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1 document?  
 2 THE COURT: I'm sorry?  
 3 MS. NEWBERRY: Have you reviewed that document?  
 4 THE COURT: I have not seen this document, no.  
 5 MS. NEWBERRY: It's dated May 16th of 2013.  
 6 MS. SCHULER-HINTZ: I'm sorry. That must be the  
 7 wrong --  
 8 THE COURT: We were assuming you were using that  
 9 to refresh your recollection, but if that is not the  
 10 document that Ms. Schuler-Hintz was inquiring about,  
 11 then, obviously that's not the correct document.  
 12 MS. SCHULER-HINTZ: I'm sorry, Your Honor. It  
 13 is the wrong one. My apologies. I thought it was  
 14 attached to a different one.  
 15 THE COURT: You can come and take this back.  
 16 MS. SCHULER-HINTZ: My apologies on that one.  
 17 BY MS. SCHULER-HINTZ:  
 18 Q At the first mediation did your attorney receive  
 19 a document, or did you receive documents at the  
 20 mediation?  
 21 A (No audible response.)  
 22 Q A copy of the deed of trust, copy of the  
 23 assignment?  
 24 A I don't remember. I remember signing in. The  
 25 only reason I remember this is because it was thicker.

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1 Most of the things that I had in front of me was only a  
 2 thin paper.  
 3 THE COURT: Ms. Schuler-Hintz, if you want to  
 4 cut to the chase, if you know there is information out  
 5 there that indicates that this witness would have been  
 6 aware of. I have no problem if you just say what it is  
 7 and ask her.  
 8 MS. SCHULER-HINTZ: I will cut to the chase,  
 9 Your Honor.  
 10 BY MS. SCHULER-HINTZ:  
 11 Q Ms. Rodriguez, there were two prior mediations.  
 12 At one of those mediations an assignment was produced to  
 13 Bank of New York Mellon. It was in fact produced at the  
 14 last mediation which was attended by Ms. Bennett-Morales.  
 15 It was produced by Ms. Bennett-Morales at the prior  
 16 mediation and it was produced to your attorney prior to  
 17 the mediation.  
 18 So out of the last mediation you had a recorded  
 19 assignment to Bank of New York Mellon, and in fact, it was  
 20 a certified copy from the County Recorder; do you recall  
 21 receiving that?  
 22 A No, I don't recall.  
 23 Q Do you recall receiving a certified copy of the  
 24 deed of trust from the County Recorder at that mediation?  
 25 A The mediation with Lindsey?

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1 Q Yes.  
2 A This is what I received at the mediation with  
3 Lindsey (indicating). That's all I received.  
4 THE COURT: And just to be clear for the record,  
5 what is "this."  
6 THE WITNESS: Oh, I'm sorry. The loan --  
7 MS. SCHULER-HINTZ: A copy of the note?  
8 THE WITNESS: Yes.  
9 BY MS. SCHULER-HINTZ:  
10 Q It is your contention that Ms. Bennett-Morales  
11 did not produce the certified copy of the -- the  
12 certified certified copy of the deed of trust or the  
13 certified certified assignment at that mediation?  
14 A She only handed me this (indicating). I don't  
15 know if she handed my attorney that, but I know that what  
16 was handed to me, the note was the only thing that was  
17 handed to me.  
18 MS. SCHULER-HINTZ: Thank you.  
19 THE COURT: Anything further?  
20 MS. SCHULER-HINTZ: No. Thank you, Your Honor.  
21 THE COURT: Ms. Newberry.  
22 MS. NEWBERRY: Just to clarify that last  
23 exchange.  
24 ///  
25 ///

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1 REDIRECT EXAMINATION  
2 BY MS. NEWBERRY:  
3 Q Your recollection at the mediation when you were  
4 handed the note that you testified today was given to you  
5 by Lindsey from Bank of New York Mellon/Nationstar, the  
6 note that they are representing, that's the only document  
7 that you recall receiving?  
8 A Yes.  
9 Q And you indicated that with your current  
10 judicial foreclosure case you have been paying \$600 a  
11 month to your attorney's trust account. What was the  
12 purpose of those funds?  
13 A It was for any depositions, travel, getting me  
14 used to paying payments again for a house, like if I had  
15 a house now.  
16 Q So it is your understanding that the litigation  
17 for the judicial foreclosure there were going to be costs  
18 involved with that and you were responsible for paying  
19 those costs?  
20 A Yes.  
21 MS. NEWBERRY: Okay. Nothing further, Your  
22 Honor.  
23 THE COURT: Anything further?  
24 MR. STERN: I have one quick follow-up question,  
25 Your Honor.

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1 RECROSS-EXAMINATION  
2 BY MR. STERN:  
3 Q So if I understand it, the \$600, the purpose is,  
4 as you testified, litigation costs, as well as, in your  
5 words, getting used to paying for a home again?  
6 A Yes.  
7 Q Are you able to pay more than \$600 for both of  
8 those purposes per month?  
9 A I could, yes.  
10 Q How much could you pay?  
11 A I could probably pay another 400.  
12 Q But you are not doing that?  
13 A No.  
14 MR. STERN: That's all I have, Your Honor.  
15 THE COURT: Are we complete, Ms. Newberry?  
16 MS. NEWBERRY: Yes.  
17 THE COURT: Ms. Rodriguez, you may step down.  
18 Thank you.  
19 We will take a five-minute break, and then I am  
20 going to ask counsel to come into chambers so I can talk  
21 to you about scheduling matters. But a five-minute break  
22 for now.  
23 (Whereupon, a recess was taken.)  
24 THE COURT: So we are back on the record. Based  
25 on the discussion that we had in chambers in terms of the

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1 scheduling conflict, it was inadvertent, and again, my  
2 apologies for the scheduling conflict that we have with  
3 my bench trial returning this afternoon. We are going to  
4 go ahead and take a witness out of order to accommodate  
5 an out of state travel schedule, and then we will look at  
6 rescheduling the remainder of the proceedings.  
7 MS. NEWBERRY: Your Honor, if I may. I just  
8 wanted to address the request for judicial notice that we  
9 filed, as well as the exhibit attached to the Petition  
10 for Judicial Review prior to this witness testifying in  
11 order to determine what has been admitted with regard to  
12 exhibits to the court.  
13 THE COURT: Oh, actually that was something that  
14 I was discussing with my staff at the break because my  
15 clerk is also trying to figure out how to handle it.  
16 What we can see has been submitted technically in  
17 Odyssey, and there may have to be an adjustment to that,  
18 is basically everything that is being proffered as  
19 exhibits as what we identified earlier as the PJR  
20 exhibits, as well as the judicial notice exhibits.  
21 Obviously, if there is no objection from  
22 counsel, as to the judicial notice exhibits, for  
23 instance, we can consider those admitted and we can  
24 proceed. I am assuming if you haven't had a chance  
25 before today to come up with any other stipulation as to

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1 the PJR exhibits then we may still have to go through  
2 some formalities.  
3 But, again, if there is no objection to those  
4 and having everything before the court, you know,  
5 obviously that makes things a lot more efficient, a lot  
6 quicker and a lot easier, but it's not required.  
7 Mr. Stern or Ms. Schuler-Hintz, where do you all  
8 stand?  
9 MR. STERN: Your Honor, we do not object to the  
10 request for judicial notice because they are public  
11 documents. With respect to the other exhibits, maybe  
12 overall exhibit handling since we are going to have a  
13 continuance obviously before we reconvene perhaps the  
14 attorneys need to meet and confer and just mark the  
15 exhibits sequentially so that we don't have any  
16 confusion.  
17 THE COURT: If something like that is  
18 inadvertently but happily presented by the fact that we  
19 have to continue this, that would certainly make things  
20 easier. What my clerk has been doing at this point  
21 because of what has been submitted through the Odyssey  
22 and my regular clerk is not here today, her confusion  
23 yesterday in terms of whether or not anybody actually  
24 wanted hard copies to be marked and admitted, we've  
25 already had a hard copy now that we've looked at it and

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1 discussed it. And what I told my clerk who is covering  
2 for the rest of the day was just to simply make notes and  
3 before we put any stickers on anything we want to see how  
4 we were going to proceed.  
5 I think if ultimately we can figure out and have  
6 some stipulation that would be fantastic. If we cannot,  
7 then, obviously, folks will have to go through the  
8 motions to put them in.  
9 MR. STERN: I am sure we will be able to  
10 stipulate on at least the majority of the documents.  
11 THE COURT: Is there any of the PJR identified  
12 documents, Ms. Newberry, that you need to have addressed  
13 before this witness testifies?  
14 MS. NEWBERRY: No, Your Honor.  
15 THE COURT: Okay. So we'll take care of that  
16 and we'll talk about the process of that when we set the  
17 new continuation date.  
18 Why don't we go ahead and call the out-of-state  
19 witness.  
20 MR. STERN: Our witness, Your Honor, is Ms. Fay  
21 Janati.  
22 THE COURT: Come up to the witness stand and  
23 when you reach the chair remain standing and my clerk  
24 will swear you in.

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1 Whereupon,  
2 FAY JANATI,  
3 was administered the following oath by the court clerk.  
4 THE CLERK: You do solemnly swear that the  
5 testimony you give in this action shall be the truth, the  
6 whole truth, and nothing but the truth so help you God.  
7 THE WITNESS: I do.  
8 THE CLERK: Please state and spell your full  
9 name for the record.  
10 THE WITNESS: First name is Fay, F-a-y. Last  
11 name Janati, J-a-n-a-t-i.  
12 THE CLERK: Thank you.

# DIRECT EXAMINATION

15 BY MR. STERN:  
16 Q Good morning, Ms. Janati. Could you tell us  
17 what's your employment?  
18 A I work for Nationstar Mortgage.  
19 Q What is your position?  
20 A My current position is litigation resolution  
21 analyst.  
22 Q How long have you had that position?  
23 A Since May of 2013.  
24 Q What are your responsibilities in that position?  
25 A As a resolution analyst, first of all, we try to

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1 come up with resolution with everybody who is in  
2 foreclosure, or if it's litigated, contested  
3 foreclosures. So our first main goal is to come up with  
4 a resolution to keep homeowners in their property and  
5 avoid foreclosure. I also travel as a corporate witness  
6 for the company.  
7 Q As we know from your appearance here today,  
8 correct?  
9 A Yes.  
10 Q You mentioned you started in this role in May of  
11 this year; is that correct?  
12 A Yes.  
13 Q How long have you been at Nationstar?  
14 A I have been with Nationstar as of today,  
15 November 1st, for 15 years.  
16 Q Can you give us a sense of what you were doing  
17 before you had this role?  
18 A From 1998 until 2007 I was a loan officer,  
19 operation manager, branch manager. All those positions  
20 all in origination. 2008 to 2010 I was audio assets  
21 manager. 2010 to 2013 quality control director.  
22 THE COURT: All for the same company?  
23 THE WITNESS: All for the same company.  
24 BY MR. STERN:  
25 Q Prior to your employment with Nationstar, where

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1 were you employed?  
2 **A** I was working for United Lending, also called UC  
3 Lending, as a loan officer.  
4 **Q** How long did you do that?  
5 **A** Three years for UC Lending as a loan officer.  
6 **Q** So about 18 years or so experience in these two  
7 companies?  
8 **A** Yes.  
9 **Q** Have you become familiar with the types of  
10 documents used in residential mortgage lending?  
11 **A** I'm very.  
12 **Q** Okay. So how familiar are you with promissory  
13 notes?  
14 **A** Every time I went to a closing for a loan  
15 closing I had to look at it and put it in front of the  
16 borrower to sign.  
17 **Q** Can you tell us how familiar you are with  
18 Nationstar's policies and procedures for keeping custody  
19 of promissory notes?  
20 **A** At Nationstar Mortgage we do use custodian of  
21 the note and the procedure at Nationstar and most other  
22 lenders, which is known in the mortgage industry since I  
23 have been in the industry, over 20 years, after  
24 origination happens the original note itself it goes to  
25 the custodian to be kept there. It stays there until

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1 either the borrower takes offers on and the loan is  
2 released of duties, or for, unfortunately, a foreclosure  
3 if you do need to produce the original note.  
4 **Q** Are you familiar with a custodial loan  
5 arrangement for the loan we're here for today,  
6 Ms. Rodriguez' loan?  
7 **A** Yes, sir. It looks like from the date that we  
8 boarded this account in our system, which was 8 of 2011,  
9 the custodian of the note was US Bank.  
10 **Q** You mentioned a term there that I would like for  
11 you to explain. You said "we." Who do you mean by we?  
12 **A** Nationstar Mortgage.  
13 **Q** And you also said "boarded" this account. Can  
14 you tell us what you mean by that.  
15 **A** Nationstar, First Horizon Loan Mortgage gave us  
16 thousands of loans to do the servicing on. First Horizon  
17 has always been the master servicer of the account and  
18 they transferred the servicing to us. Now Nationstar is  
19 subservicer of this account since 8 of 2011.  
20 **Q** Okay. Explain what, as a subservicer,  
21 Nationstar Mortgage does.  
22 **A** As a subservicer everything that relates to the  
23 servicing of the loan; taking payments, talking to the  
24 borrower. The minute the loan is boarded, we are live,  
25 we are calling the borrower. We do send them a welcome

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1 letter. The borrower is well aware who is Nationstar.  
2 The homeowner receives goodbye letter from First Horizon  
3 and welcome letter from Nationstar.  
4 **Q** What role, if any, does the servicer have when  
5 you strike their foreclosure?  
6 **A** If the borrower is delinquent, generally  
7 speaking depending on the state, the servicer, when the  
8 loan can go to delinquency, the timeline starts, the  
9 demand letter goes out. And, again, depending on the  
10 state law and regulation, depending on delinquency, first  
11 a demand letter goes out, then it is referred to  
12 foreclosure attorney and then while you are still talking  
13 to the customer foreclosure starts according to  
14 delinquency.  
15 **Q** Okay. And can you tell us which party handles  
16 all of those steps that you identified.  
17 **A** Our subservicer, Nationstar Mortgage.  
18 **Q** We heard testimony earlier today that  
19 Ms. Rodriguez, in her testimony, that Nationstar owns the  
20 loan. Can you tell us who owns this loan?  
21 **A** The owner of the note is Bank of New Your Melon,  
22 BONY, and they are the investor of the loan. First  
23 Horizon was the master servicer and now we are the  
24 subservicer.  
25 **Q** And by we, again, you mean Nationstar?

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1 **A** Nationstar.  
2 **Q** So what ownership interest, if any, does  
3 Nationstar have in the loan?  
4 **A** We have power of attorney to continue  
5 foreclosure and service the loan.  
6 **Q** Okay. But in terms of economic ownership of the  
7 loan how much, if any, does Nationstar have?  
8 **A** None.  
9 **Q** You mentioned that the loan was boarded in  
10 August of 2011?  
11 **A** Yes.  
12 **Q** What was Nationstar's relationship or role in  
13 Ms. Rodriguez' loan before August of 2011?  
14 **A** Nothing.  
15 **Q** Okay. Now, do you know who had the service of  
16 subservicing responsibility before Nationstar acquired  
17 it?  
18 **A** Met Life.  
19 **Q** And in 2011 can you tell us approximately how  
20 many loans, other than Ms. Rodriguez' loan, were service  
21 transferred from MetLife to Nationstar?  
22 **A** I don't know how many. But it was a big  
23 servicing job to transfer. Thousands of loans were  
24 transferred to us.  
25 **Q** What I am trying to get at is whether

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1 Ms. Rodriguez' loan was treated uniquely?  
2 **A** No, not at all. It was worded correctly. The  
3 amounts are right. The UPB is right. We didn't have any  
4 issues.  
5 **Q** Okay. So what documents when MetLife did the  
6 service transfer of Ms. Rodriguez' loan along with, as  
7 you said, thousands of others, what documents were  
8 transferred to Nationstar as part of that?  
9 **A** Usually when the transfer of loan happens all  
10 the previous servicer documents are electronically  
11 transferred to us and we do keep it in an electronic  
12 filing imaging system.  
13 **Q** Can you tell us what those electronic documents  
14 consist of?  
15 **A** The payment history, loan origination documents,  
16 whatever they had they transferred to us and we keep it  
17 in an imaging system.  
18 **Q** How about documents like the promissory note;  
19 what is done with those?  
20 **A** The promissory note stays with the custodian.  
21 It does not move around. It stays with the original  
22 note.  
23 **Q** And is that what happened in this case?  
24 **A** Yes, sir.  
25 **Q** You mentioned an image file. Can you tell us

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1 whether that image file includes copies of the promissory  
2 note?  
3 **A** Yes, sir. Copies of the note, copies of deed of  
4 trust, copies of loan origination package.  
5 **Q** Are there any documents that the borrower signed  
6 that are not part of that image file?  
7 **A** I don't know. Most likely no. We get all the  
8 documents from the previous servicer, but I did not look  
9 at every document at loan origination, but I trust  
10 they're there.  
11 **Q** Can you explain to us, you mentioned foreclosure  
12 as one of the servicing functions. Can you explain to us  
13 what Nationstar does -- before I ask you that, I am going  
14 to withdraw and ask another question.  
15 Can you tell us what the status of  
16 Ms. Rodriguez' loan was when Nationstar acquired it in  
17 August of 2011?  
18 **A** Yes, sir. The loan was due for 2009 and it was  
19 already in foreclosure. So we picked up the servicing  
20 transfer from MetLife, loan was already in foreclosure  
21 status.  
22 **Q** Can you tell us what Nationstar does as a  
23 servicer in performing said foreclosure to verify that it  
24 follows the proper steps in the foreclosure process.  
25 **A** Foreclosure Department, first of all, the

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1 policies and procedures are in place for the Foreclosure  
2 Department to follow the steps and they do get audited  
3 very often and the accounting is watched.  
4 What happens is if the loan is already in  
5 foreclosure we contact our foreclosure attorney. We talk  
6 about where are you, what do you need, what documents do  
7 you need, and we just proceed with foreclosure with our  
8 foreclosure attorneys.  
9 **Q** Was that a process since this loan was already  
10 in foreclosure can you tell us what Nationstar did  
11 specifically with its handling of Ms. Rodriguez' loan  
12 when it acquired the transfer?  
13 **A** I do not know the details. But I can tell you  
14 the foreclosure rep contacted the foreclosure attorney to  
15 proceed with foreclosure.  
16 **Q** More generally speaking, Ms. Janati, can you  
17 tell us what policy procedures Nationstar follows to  
18 verify standing and move forward with foreclosure.  
19 **A** To verify standing, first of all, every time a  
20 servicing is transferred, all the information is  
21 communicated with Foreclosure Department. We do have a  
22 spreadsheet that is very reliable once the transfer is  
23 done they know who is the owner of the note, who was the  
24 previous servicer, what is the relationship with this  
25 transfer and they know who is the owner of the note by

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1 looking at their document that is provided to them.  
2 **Q** Okay. Have you had a chance to review the copy  
3 of the promissory note that Ms. Rodriguez signed?  
4 **A** The copy of the note that you showed me, yes.  
5 **Q** And I will counsel you to remember not to  
6 discuss what you and I have discussed.  
7 **A** Okay.  
8 **Q** But you have seen a copy of the note?  
9 **A** Yes.  
10 **Q** What I would like to do now is present to you a  
11 copy of the note that Ms. Rodriguez testified about  
12 earlier.  
13 **A** Okay.  
14 THE COURT: Well, Ms. Rodriguez had it at the  
15 bench and I'm not sure where it went. We have the one --  
16 we made a note that we were doing it but I think we  
17 should use the copy Ms. Janati is looking at.  
18 MR. STERN: Thank you, Your Honor.  
19 BY MR. STERN:  
20 **Q** Ms. Janati, can you -- I didn't make a mental  
21 note of which page it was, but do you recall from  
22 Ms. Rodriguez' testimony that there was a stamp?  
23 **A** Yes, sir.  
24 **Q** Can you turn to that page.  
25 **A** I am looking at it.

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1 Q Can you see on that stamp Nationstar's name on  
2 it?

3 A Yes.

4 Q I have a couple questions about that. First of  
5 all, can you tell us what, if anything, that stamp  
6 indicates about who owns this note?

7 A The stamp is not correct. It was done wrong.  
8 The first part of the page without record to First  
9 Horizon Mortgage, that part is correct. It needs to be  
10 there because once the loan is originated the lender puts  
11 that stamp to open the note for further securitization  
12 and this loan, First Horizon loan, was later securitized  
13 with BONY.

14 The stamp of Nationstar Mortgage is incorrect  
15 and it should not be on this document. This is a copy of  
16 the note and nobody should have stamped a copy of the  
17 note with Nationstar Mortgage.

18 MR. STERN: If I may approach, Your Honor?

19 THE COURT: You may.

20 MR. STERN: This is the original note.

21 BY MR. STERN:

22 Q Ms. Janati, I handed you a document. Can you  
23 take a minute to look through that.

24 A Sure. I did.

25 Q Can you tell us what document this is?

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1 A This is the original loan that Ms. Rodriguez at  
2 the time she took the loan with First Horizon Mortgage.

3 Q If you would, Ms. Janati, would you flip the  
4 note to the last page.

5 A Okay.

6 Q And do you see that endorsement?

7 A Yes, sir.

8 Q Does the endorsement have the Nationstar stamp  
9 on it?

10 A No.

11 MR. STERN: Your Honor, we would like to --

12 THE WITNESS: The original note is correct, and  
13 it does not have any stamps or -- so this is the original  
14 note. It was never touched.

15 THE COURT: Counsel, this was kind of  
16 blind-sighted, but did you want take a minute to look at  
17 what it is we're talking about here?

18 MS. NEWBERRY: Your Honor, I inspected that in  
19 counsel's office earlier this week and we understand that  
20 the original note had a red circle around the blank  
21 endorsement.

22 THE COURT: And I am now looking at what has  
23 been provided by counsel as the original note. And can I  
24 just see the copy --

25 THE WITNESS: Sure.

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1 THE COURT: -- so I'm looking at what we're  
2 talking about. Okay. I guess the thing that I am trying  
3 to figure out, and maybe this is the follow-up question,  
4 but the one that I am at this time holding in my left  
5 hand, which is the original note, which shows the red pen  
6 circle around the paid to the order of without recourse  
7 First Horizon Home Loan Corporation language. And then  
8 we have a copy, which doesn't contain that at all but  
9 does contain what has just been testified to as I believe  
10 the witness said made the mistake of the stamp to the  
11 right of that Nationstar LLC.

12 So I am just trying to distinguish between the  
13 two. So there is one affixed additional stamp to the  
14 original. Is that sort of what we are getting at?

15 MR. STERN: I think there is two differences,  
16 Your Honor. First of all, the original comes from the  
17 custodial file, because we are doing this witness out of  
18 order, the full foundation for where the custodial file  
19 came from is going to come from I believe McCarthy and  
20 Holthus since the custodian delivers the collateral  
21 directly to them.

22 THE COURT: Okay.

23 MR. STERN: But what we're doing is what you've  
24 just seen is the original as it appears in a custodial  
25 file, where the original signature would be with the

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1 correct endorsement. What was introduced and what was  
2 admitted at the PJR Exhibit 10 earlier this morning is  
3 what was produced in the mediation that is at issue in  
4 our case today.

5 So what we would like to do is offer into  
6 evidence a copy of the original, which we have here so  
7 that we can keep the original in the custodial file.

8 THE COURT: And we talked before about not  
9 wanting to put the originals into the record. Is there  
10 any objection to this copy that has been testified to by  
11 the witness as a copy going into the record?

12 The point I was actually just making, sorry it  
13 was more confusing than it needed to be is that there are  
14 two distinctions between the documents which you are now  
15 offering which would be a copy that the court could  
16 review, the original and the copy to ensure they are the  
17 same of what is the original note in the custodial file  
18 which bears a red circle around it but no Nationstar  
19 stamp.

20 MR. STERN: Correct.

21 THE COURT: And the copy that Ms. Rodriguez  
22 testified that she had been provided at mediation that  
23 the witness is also looking at, had no red circle but  
24 does have the Nationstar stamp. So there's two  
25 distinctions.

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1 MR. STERN: There is essentially a third  
2 distinction, Your Honor, the source.  
3 THE COURT: Talking about the physical document  
4 right now.  
5 MR. STERN: In terms of the physical documents  
6 there are two distinctions.  
7 THE COURT: Okay.  
8 MR. STERN: There is actually another  
9 distinction, Your Honor, because the original is endorsed  
10 on the back of the page, the image file had an additional  
11 page bearing only the endorsement stamp, but that's just  
12 a copy of the back side of one of the pages.  
13 MS. NEWBERRY: Your Honor, if I may have the  
14 original to do an exact comparison.  
15 THE COURT: Please, approach the witness so you  
16 can just do it right now.  
17 MS. NEWBERRY: I will just take it back to my  
18 table.  
19 THE COURT: Would it be quicker to take the  
20 original and just make another copy right now? I'm not  
21 sure what the hold up is right now.  
22 I appreciate and I could overhear Ms. Newberry  
23 indicating and I think she is absolutely correct, if you  
24 are going to offer a copy of the original in lieu of the  
25 original, which I'm perfectly fine with, it has to be an

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1 exact copy exactly the way the witness is looking at it,  
2 exactly the way I'm looking at it to go into the record.  
3 MR. STERN: We agree, Your Honor. And I think  
4 what happened is that our office mixed the order of a  
5 couple of pages when we made the copy.  
6 THE COURT: Is that something we can straighten  
7 out quickly or is that something that it would just be  
8 easier to take the original and go run another copy right  
9 now?  
10 MR. STERN: I think it is something we can  
11 straighten out, but the plaintiff's counsel has to be on  
12 board with it. So what we would like to do is present  
13 this is how it came. So just in full disclosure, Your  
14 Honor, what happened here is we obtained the collateral  
15 file; we photocopied it so that we could offer this note  
16 and in doing that we put an interest and rate addendum,  
17 couple of pages in front so the endorsement was on the  
18 last page and that is how we presented to the witness.  
19 The correct order is with the endorsement on the third to  
20 last page with the addendum in front.  
21 THE COURT: So the copy that the Court looked at  
22 is actually the correctly made copy --  
23 MR. STERN: Right.  
24 THE COURT: -- from the way you received the  
25 original, but then when you put the original back

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1 together, for whatever reason, you switched out the  
2 order.  
3 MR. STERN: Right. And I didn't actually do it,  
4 Ms. Schmidt did it, so she can confirm if I'm wrong.  
5 MS. SCHMIDT: Yes. What happened is since the  
6 endorsement is on the back that was the last page our  
7 office copied and so when we put it back together it just  
8 got stuck at the last page as opposed to with the  
9 original.  
10 THE COURT: Well, it looks like, Mr. Stern, you  
11 have reordered them in your hand right now with the  
12 original so that it matches what the copy is.  
13 MR. STERN: Right.  
14 THE COURT: Ms. Newberry, are you okay with that  
15 at this point?  
16 MS. NEWBERRY: Your Honor, I would just point  
17 out that a note with endorsement, especially permanently  
18 affixed in order for it to be compliant with the UCC,  
19 they are out of order. They are attaching things. I  
20 don't know if this is a true and correct copy of the  
21 original.  
22 MR. STERN: Your Honor, I am happy to put  
23 Ms. Schmidt on the stand if we need to go there. But it  
24 is actually an incorrect statement to say that it has to  
25 be permanently affixed under the UCC. To the contrary.

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1 It can be detached with copying. You can even have  
2 allonges that aren't part of that are detached and  
3 reattached for copying. It needs to be with the  
4 intension of permanently remaining on the document. But  
5 the fact that we separated it for making a copy does not  
6 violate the UCC.  
7 THE COURT: I don't believe it does either. The  
8 concern I believe Ms. Newberry has, I'm not trying to put  
9 words in your mouth, but I did get to the extent that a  
10 huge aspect of this matter is what is the original and  
11 what does it look like. Like you said, you have a  
12 witness, and obviously you do, who is going to testify to  
13 what was in the custodial file and what it looked like.  
14 At this point we've unclipped and reordered and done  
15 things and at the end of the day what I want is whoever  
16 is going to testify to what the original version looked  
17 like, and it looks like we had a couple of counsel who  
18 obviously have to provide candor to the tribunal, with  
19 what it looked like, let's get it back to what it looked  
20 like when you originally received it, which I think what  
21 you have done now, Mr. Stern, and let's make sure the  
22 copy matches that and then we'll move on. We will admit  
23 the copy.  
24 MR. STERN: I think we're there, Your Honor. I  
25 think there is an objection.

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<p>1 THE COURT: We have the objection and I noted 2 the objection, but we're still going to proceed. 3 MR. STERN: Okay. 4 THE COURT: I am not going to -- I don't think 5 it is an objection that requires any sustaining or 6 overruling. I think it is a fair objection to make to 7 say what are we doing monkeying around with these 8 documents here today and prior, potentially, to today. 9 But the Court, again, has received and heard the 10 testimony of counsel as to what occurred when they took 11 the file out and copied it. I don't believe that that 12 violates anything, let alone that it means that we cannot 13 proceed here today. 14 I just want the original to be in the same order 15 that the Court is going to admit and then you tell me 16 what we're admitting it as. You mentioned something 17 about calling it Number 200 or something. But how do we 18 admit it? 19 MR. STERN: That is what we have now, Your 20 Honor. And if you want to take another look. 21 MS. NEWBERRY: Okay. This is the copy. The 22 only thing I would point out, the copy is in page wise in 23 greater number than the original because there is an 24 additional page, so it is not an exact copy, Your Honor. 25 THE COURT: Understood. And the only way we</p> <p style="text-align: right;">76</p>	<p>1 minutes. 2 THE COURT: Well, and I don't doubt that, and I 3 don't think counsel is done here, so I don't know what to 4 tell you guys. 5 THE WITNESS: I can come back. That's my job. 6 Set a date. I have my calendar. I can continue or come 7 back. 8 THE COURT: Before we do that, conservatively, 9 just to make sure, again, nothing here is about 10 shortcutting anybody. It's about getting all the 11 evidence that we need. How much time do you think you 12 need, Counsel? In fairness, not trying to shortcut you 13 or not trying to rush you; how much more time do you 14 have? 15 MR. STERN: Honestly, Your Honor, about 15 or 16 20 minutes. 17 THE COURT: Okay. Fair enough. 18 MR. STERN: I don't know how much time 19 Ms. Schuler-Hintz needs. 20 THE COURT: Ms. Schuler-Hintz, how much time do 21 you think you would have with this witness? 22 MS. SCHULER-HINTZ: Minimal, Your Honor. Five 23 minutes. 24 THE COURT: Okay. Ms. Newberry. 25 MS. NEWBERRY: Your Honor, I would estimate at</p> <p style="text-align: right;">78</p>
<p>1 could have one is because it would then have to be a 2 two-sided copy. 3 MS. NEWBERRY: Just want to make sure the record 4 reflects that. 5 THE COURT: But that backside copy, which is 6 now, because it is a one-sided document, the following 7 page is in the order in which it would appear if we were 8 doing it as a two-sided; is that correct? 9 MS. NEWBERRY: I just want to make sure that 10 that is the difference between their exhibit they are 11 producing and the original. 12 THE COURT: All right. Thank you. We will 13 admit that. Did you say what number you -- 14 MR. STERN: Why don't we start with 200. This 15 is our original. 16 THE COURT: We'll call that Nationstar's 200. 17 MR. STERN: Just a brief query on time, Your 18 Honor. 19 THE COURT: Well, I don't know what to tell you, 20 counsel. I got trial coming at 1:00, and I have staff 21 that needs to take a lunch. But I want to finish with 22 this witness who is from out of state, so whatever we can 23 do to finish with this witness, we'll do it, right. 24 MS. NEWBERRY: Your Honor, I am going to have 25 cross-examination that's going to last longer than five</p> <p style="text-align: right;">77</p>	<p>1 least an hour. 2 THE COURT: And fair enough. This is a key 3 witness. So the reality is, even though we tried our 4 best to kind of anticipate how we might be able to do it 5 the reality is answers take longer, review of the 6 documents, getting documents squared away take longer. 7 So we could potentially finish with this witness and then 8 go straight into our trial, but that is going to be a 9 tricky thing for all of us to have to do. 10 MR. STERN: And we are trying to be considerate 11 to you and your staff as well. 12 THE COURT: As am I. So what perhaps might be 13 in our best interest is to figure out the reconvening 14 time and just make sure at that point that we give you 15 the day that we make sure that there is no, again, it was 16 really unanticipated that we could have the time conflict 17 that we have today and something I could not avoid to 18 have my trial from earlier this week to carry over to 19 this afternoon. 20 MR. STERN: And I think this is a natural 21 breaking point -- 22 THE COURT: I agree as well. So why don't I 23 have the witness go ahead and step down and we'll figure 24 it out. And everyone is here. Rather than me try to 25 guess at it, right now, I do I have hearings on the 15th</p> <p style="text-align: right;">79</p>

<p>1 and 22nd, and for some reason it looks like the 8th. But</p> <p>2 any Friday in November, if any of those could work for</p> <p>3 you, I will bump whatever I have and give this a priority</p> <p>4 because I believe I can do that.</p> <p>5 (Discussion continued off the record.)</p> <p>6 THE COURT: Okay. Friday, December the 13th,</p> <p>7 the whole day. I don't care what trial is going on, I</p> <p>8 don't care what else is happening, we will ensure that we</p> <p>9 get this completed.</p> <p>10 MR. STERN: Thank you, Your Honor.</p> <p>11 THE COURT: If you have a chance to work out the</p> <p>12 exhibits and whatnot before then and whatever</p> <p>13 stipulations we can do, again, these things are always</p> <p>14 tricky because the way these evidentiary hearings go, we</p> <p>15 have certain anticipation and I think each side here</p> <p>16 rightfully is, look, this is the case. So lets get it</p> <p>17 all. Let's hear from everybody and get through it all.</p> <p>18 I don't fault anybody for that. And, again, I don't</p> <p>19 fault myself for bringing the trial back today, because I</p> <p>20 didn't have a choice, so we'll work it out. We'll get</p> <p>21 this evidentiary hearing completed on 13th.</p> <p>22 And to the extent that you ultimately agree on</p> <p>23 and whatever the set exhibits are we're going to have</p> <p>24 hard copies for the clerk and then we'll just need a</p> <p>25 couple copy sets of that because we'll have the one to</p> <p style="text-align: right;">80</p>	<p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 STATE OF NEVADA )</p> <p>4 ) ss.</p> <p>4 COUNTY OF CLARK )</p> <p>5</p> <p>6 I, BRENDA SCHROEDER, a certified court reporter</p> <p>7 in and for the State of Nevada, do hereby certify that</p> <p>8 the foregoing and attached pages 1-91, inclusive,</p> <p>9 comprise a true, and accurate transcript of the</p> <p>10 proceedings reported by me in the matter of CATHERINE</p> <p>11 RODRIGUEZ, Petitioner, versus NATIONSTAR MORTGAGE LLC,</p> <p>12 Respondent, Case No. A685616, on November 1, 2013.</p> <p>13</p> <p>14</p> <p>15</p> <p>16 Dated this 12th day of November, 2013.</p> <p>17 <i>Brenda Schroeder</i></p> <p>18 BRENDA SCHROEDER, CCR NO. 867</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">82</p>
<p>1 stamp and put the stickers on and then I will have a set</p> <p>2 to look at. Right now we just basically have what's in</p> <p>3 Odyssey. So if we can work that out that would be great.</p> <p>4 Anything else before we break?</p> <p>5 MS. NEWBERRY: No, Your Honor.</p> <p>6 THE COURT: All right. Everybody. Have a good</p> <p>7 day.</p> <p>8 MR. STERN: Thank you, Your Honor.</p> <p>9 MS. SCHULER-HINTZ: Thank you, Your Honor.</p> <p>10 (Proceedings were adjourned.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">81</p>	

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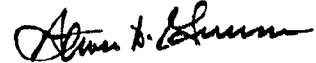
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CLERK OF THE COURT

1 MOTN

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13 *Attorneys for Nationstar Mortgage LLC*  
14 *and Bank of New York Mellon*

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 CATHERINE RODRIGUEZ,

18 Petitioner,

19 v.

20 NATIONSTAR MORTGAGE LLC.; METLIFE  
21 HOME LOANS; and THE BANK OF NEW  
22 YORK MELLON F/K/A THE BANK OF NEW  
23 YORK AS TRUSTEE FOR THE HOLDERS OF  
24 THE CERTIFICATES, FIRST HORIZON  
25 MORTGAGE PASS-THROUGH  
26 CERTIFICATES SERIES FHAMS 2005-AA5,  
27 BY FIRST HORIZON HOME LOANS, A  
28 DIVISION OF FIRST TENNESSEE BANK  
NATIONAL MASTER SERVICER, IN ITS  
CAPACITY AS AGENT FOR THE TRUSTEE  
UNDER THE POOLING AND SERVICING  
AGREEMENT,

Defendants.

Case No.: A-13-685616-J

Dept.: XXV

**MOTION FOR SUPPLEMENTAL  
BRIEFING ON ORDER SHORTENING  
TIME**

DEPARTMENT XXV

NOTICE OF HEARING

DATE 1-14-14 TIME 9am

FILED BY [Signature]

Nationstar Mortgage, LLC and Bank of New York Mellon, as trustee (BNY-Mellon, and together with Nationstar, collectively Respondents) move for supplemental briefing following the evidentiary hearing that took place on November 1, 2013 and December 13, 2013.



**DECLARATION OF ALLISON R. SCHMIDT**

ALLISON R. SCHMIDT declares as follows:

1. I am a duly licensed attorney admitted to practice in the State and District of Nevada. I am the attorney of record for Defendants Nationstar Mortgage, LLC and The Bank of New York-Mellon. I make this declaration upon personal knowledge and, if called as a witness, I could and would competently testify to the facts contained in this declaration.

2. All of the facts contained in this motion are, to the best of my knowledge, true and correct.

3. I spoke with counsel for petitioner, Tara Newberry, on December 20, 2013, who indicated to me that she did not intend to oppose this motion for additional briefing.

4. An order shortening time is necessary as the proposed briefing submission date, January 31, 2014, would pass before this motion could be heard in the ordinary course.

5. The estimated time for the hearing on respondents' Motion to for Additional Briefing would be ten (10) minutes.

6. Respondents' Motion to for Additional Briefing is made in good faith and not for the purposes of delay.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 31<sup>st</sup> day of December, 2013.

  
ALLISON R. SCHMIDT

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{27661823;2}

**ORDER SHORTENING TIME**

Based on the request for an Order Shortening Time and the supporting Affidavit of Allison R. Schmidt, Esq., and good cause appearing,

IT IS HEREBY ORDERED that the Motion to for Additional Briefing will be heard on the 14<sup>th</sup> day of January, 2014, at 9am before the undersigned Judge. Petitioner's response, if any is due on January \_\_, 2014.

DATED this 2<sup>nd</sup> day of January, 2014.

  
DISTRICT COURT JUDGE  
AV

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

Following closing arguments on December 13, 2013, this Court invited the parties to file a motion for supplemental briefing, if any party felt that additional briefing would aid the Court in resolving this matter. Respondents believe additional briefing, submitted by the parties simultaneously, would aid the court in its review of the extensive factual evidence and legal arguments advanced by both petitioner and respondents during the two-day evidentiary hearing<sup>1</sup>.

**II.**

**LEGAL ARGUMENT**

E.D.C.R. 2.20(i) allows for supplemental briefing by order of the Court. Supplemental briefing will aid the court in the resolution of this matter. There has been no briefing submitted thus far, other than briefing on the original petition for judicial review, which dealt primarily with the timeliness of the petition. The parties have not briefed the factual issues covered in the evidentiary hearing, nor have they briefed the legal points relevant to petitioner's claims.

<sup>1</sup> Counsel for respondents contacted Tara Newberry, Esq. on December 20, 2013 regarding their intent to file this motion. In that telephone conversation, Ms. Newberry said she would not oppose this motion.

1 Respondents request this court order supplemental briefing. **First**, supplemental briefing is  
2 necessary on the legal standard for sanctions in a petition for judicial review of a foreclosure  
3 mediation. Petitioner conflates sanctions in a judicial review with punitive damages in a civil action.  
4 These are separate remedies, subject to differing legal standards. **Second**, the Court overruled many  
5 of respondents' objections but reserved judgment on the weight of the evidence. Supplemental  
6 briefing would aid the Court in determining the weight to be given to the substantial amount of  
7 evidence that was presented by both parties over the two-day hearing. **Third**, petitioner made  
8 numerous statements that (1) misstated the contents of the pooling and servicing agreement, (2)  
9 misstated Nationstar and BNY-Mellon's sources of income<sup>2</sup>, and (3) extrapolated the facts of this  
10 case to all other foreclosure mediations involving Nationstar or BNY-Mellon. None of the evidence  
11 supports these statements, and supplemental briefing would assist the Court to determine which of  
12 petitioner's claims actually have evidentiary support.

13 **Finally**, petitioner's closing remarks included a lengthy testimony from her counsel regarding  
14 the facts and history of this case, and the previous servicing of this loan. Petitioner, through her  
15 counsel, presented these facts in the form of a closing argument, not through admissible evidence.  
16 Respondents are entitled to rebut this attempt to offer evidence in the guise of a closing argument.

17 The court clerk has informed counsel for respondents that the transcript of this matter will  
18 likely not be available until the first or second week of January. Since the transcript will be integral  
19 to the parties' supplemental briefing, respondents believe that a submission deadline of 3:00 p.m. on  
20 Friday, January 31, 2014 would give the parties sufficient time to review the transcript and submit  
21 their briefs simultaneously.

### 22 III.

### 23 CONCLUSION

24 Based on the foregoing, respondents respectfully request this Court order supplemental  
25 briefing on this matter, to be submitted no later than January 31, 2014 at 3:00 p.m. and that no  
26

27 <sup>2</sup> While it is respondents' position that the financial circumstances of both Nationstar and BNY-Mellon are irrelevant,  
28 BNY-Mellon's financials are additionally irrelevant because BNY-Mellon is not the owner of the loan, it is the trustee of  
the loan pool which owns Ms. Rodriguez's loan.

1 findings of fact or conclusions of law issue in this matter until the Court has had the opportunity to  
2 review the supplemental briefs submitted by the parties.

3 DATED this 31st day of December, 2013.

4 AKERMAN LLP

5 /s/ Allison R. Schmidt, Esq.

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12 *Attorneys for Nationstar Mortgage LLC*  
13 *and Bank of New York Mellon*

**CERTIFICATE OF SERVICE**

HEREBY CERTIFY that on the 3<sup>rd</sup> day of January, 2014 and pursuant to NRCP 5(b), I served and deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **MOTION FOR SUPPLEMENTAL BRIEFING ON ORDER SHORTENING TIME**, postage prepaid and addressed to:

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*f/k/a The Bank of New York*

/s/ Adam Crawford  
An employee of AKERMAN LLP