

1 MICHAEL F. BOHN, ESQ.  
Nevada Bar No.: 1641  
2 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
LAW OFFICES OF  
3 MICHAEL F. BOHN, ESQ., LTD.  
2260 Corporate Circle, Suite 140  
4 Henderson, Nevada 89074  
(702) 642-3113 / (702) 642-9766 FAX  
5 Attorney for appellant

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7  
8 SUPREME COURT  
9 STATE OF NEVADA

10 SATICOY BAY LLC SERIES 133  
11 MCLAREN,

CASE NO.: 78661

12 Appellant,

13 vs.

14 GREEN TREE SERVICING LLC; THE  
BANK OF NEW YORK MELLON  
15 FKA THE BANK OF NEW YORK, AS  
SUCCESSOR TRUSTEE TO  
16 JPMORGAN CHASE BANK, N.A., AS  
TRUSTEE FOR THE  
17 CERTIFICATEHOLDERS OF CWABS  
MASTER TRUST, REVOLVING  
18 HOME EQUITY LOAN ASSET  
BACKED NOTES, SERIES 2004-T,

19 Respondent.  
20

21 **JOINT APPENDIX 2**  
22

23  
24 Michael F. Bohn, Esq.  
Law Office of Michael F. Bohn, Esq., Ltd.  
2260 Corporate Circle, Suite 140  
25 Henderson, Nevada 89074  
(702) 642-3113 / (702) 642-9766 FAX

26 Attorney for Appellant  
27

Darren T. Brenner, Esq.  
Jared M. Sechrist, Esq.  
AKERMAN LLP  
1635 Village Center Circle, Ste 200  
Las Vegas, NV 89134

28 Attorney for Respondent

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1 assessments?

2 A. How much was owing for HOA assessments?

3 Q. I'm just trying to get an idea how much the  
4 HOA assessments were per quarter or month.

5 A. \$92.25 a quarter. That's how much the  
6 assessments are for this community.

7 Q. And how much were the late fees?

8 A. \$125 total.

9 Q. And how were those calculated?

10 A. \$25 after the 30th day of each month.

11 Q. Okay. So an assessment is due every three  
12 months. And then if it's not received within 30 days  
13 of the end of that third month, there's a \$25 late fee?

14 A. No. At the end of 30 days. So, in other  
15 words, if a payment is due on the 1st, it's late by the  
16 31st. And that's when you would have a \$25 late fee.

17 Q. What was the HOA's position with respect to  
18 payment plans if the homeowner wanted to come current?

19 A. The homeowner would -- once it was turned  
20 over to collections, they would speak with the  
21 collection company typically. They would then let us  
22 know that the owner wanted a payment plan. It would be  
23 presented to the board, and then they could approve it.

24 Q. All right. So I'd like to turn to a  
25 different exhibit binder. And it's going to be volume

1 I, Exhibit 19. Within Exhibit 19, I'd like to turn  
2 your attention to page 176.

3 I'm going to read the first sentence of  
4 section 4.07 entitled Priority of Assessment Lien.

5 "The lien of the assessments, including  
6 interest and costs, including attorneys' fees provided  
7 for herein, shall be subordinate to the lien of any  
8 first mortgage upon any lot."

9 Did I read that correctly?

10 A. Yes.

11 Q. Do you know whether the HOA intended to  
12 comply with this provision of its CC&Rs when it  
13 conducted the foreclosure in this case?

14 A. We just complied with the law, period. It  
15 wasn't up to us to determine that, I don't think.

16 Q. Do you know whether the HOA intended to  
17 extinguish a first deed of trust recorded against the  
18 property when it proceeded to foreclose?

19 **MR. BOHN:** Objection. Irrelevant. Intent is  
20 not an issue in these.

21 **THE WITNESS:** We didn't have any intent --

22 **THE COURT:** Hold on. I think he's right.

23 **MS. MORGAN:** That's fine. I kind of agree.

24 **THE COURT:** Sustained.

25 **MS. MORGAN:** I actually agree.

1           So that means you don't have to answer.

2   **BY MS. MORGAN:**

3           Q.   Now, I'll turn your attention to that same  
4   Exhibit 19 on page 191. The first sentence says in  
5   part of Section 10.05 entitled Mortgage Protection, "A  
6   breach by any owner of any of the covenants,  
7   conditions, and restrictions contained herein shall not  
8   affect, impair, defeat or render invalid the lien,  
9   charges or encumbrance of any first mortgage made for  
10   value which may then exist on any lot."

11           Then it goes on to talk about what would  
12   happen if there was a foreclosure under a first deed of  
13   trust.

14           Did I read that first portion of that  
15   sentence correctly up through the word "provided?"

16           A.   Yes.

17           Q.   Did the HOA intend to comply with this  
18   provision of the CC&Rs with respect to its foreclosure  
19   activities?

20           **MR. BOHN:** Same objection. It is not  
21   relevant.

22           **MS. MORGAN:** Okay. I'll withdraw the  
23   question.

24   **BY MS. MORGAN:**

25           Q.   Do you know whether the homeowner in this

1 case entered into a payment plan after becoming  
2 delinquent?

3 A. Yes.

4 Q. We're going to look at these different  
5 partial payments that the homeowner made. Do you know  
6 whether there was an agreement between NAS and the HOA  
7 on how partial payments from the homeowner would be  
8 distributed?

9 A. I'm not positive that it was actually written  
10 down that you'll get this much and we'll get that much.  
11 I don't remember seeing anything like that.

12 Q. If we look again at Exhibit 30 on page 649.

13 A. I didn't see a 30.

14 Q. Volume II. It's that really big exhibit.

15 A. Oh. Volume II?

16 Q. Right. We should be finished with volume I.

17 A. All right. Okay. 634.

18 Q. Do you know whether you have seen this  
19 communication from Tara White before?

20 A. I believe I have.

21 Q. And, just generally, what do you understand  
22 this communication to be?

23 A. She's stating that she's not able to make --  
24 that she's able to make a payment of \$50 a month and  
25 that would be the maximum, she says.

1 Q. And is it correct that she indicates some  
2 hardship she's gone through, like a divorce, and things  
3 like that?

4 A. Yes.

5 Q. And then we won't go over every one of these  
6 because there's 10 examples in here, but I just want to  
7 go over one so we can get an idea how the communication  
8 would kind of go.

9 Is 635 a document that you've seen before, an  
10 email?

11 A. Yes.

12 Q. And who was that email from and to?

13 A. It was from someone at NAS to a person at our  
14 company, at Nevada Community.

15 Q. So am I correct to understand that if the  
16 homeowner contacted NAS about a payment plan, NAS would  
17 let the management company know about that?

18 A. Yes.

19 Q. And then the management company would let the  
20 HOA know about that?

21 A. Yes.

22 Q. Because the HOA is the one that makes a  
23 decision about whether to agree to a payment plan?

24 A. No.

25 Q. Who makes that decision?



1           A.    The board would make the decision.  We would  
2   pass it on.

3           Q.    Got it.  All right.

4                    So NAS would communicate to the management  
5   company, who would communicate it to the board and see  
6   if the board wants to approve or deny the request for a  
7   payment plan?

8           A.    Correct.

9           Q.    And then, so is page Bates No. 636, is that  
10   the communication from the management company letting  
11   NAS know that the board approved a 12-month payment  
12   plan of \$50 a month?

13          A.    Yes.

14          Q.    And then if we turn to page 648.  Is this a  
15   document you've seen before?

16          A.    Yes.

17          Q.    What do you understand this document to be?

18          A.    It looks to me like it is something from NAS  
19   letting the HOA and, hence -- well, Nevada Community  
20   and then, of course, the HOA -- how they're going to  
21   split that payment.

22          Q.    So it looks like out of a payment of \$100  
23   from the homeowner, they gave 50 to the HOA and NAS  
24   kept 50 for its own costs?

25          A.    Yes.

1 Q. And fees or whatever.

2 And then are Bates 649 and 650 just a  
3 transmission of the portion going to the HOA from NAS?

4 A. Yes.

5 Q. So when the HOA would receive a partial  
6 payment like the one we've seen in these last few  
7 documents, how would the HOA apply it to the assessment  
8 account?

9 A. They would apply it -- I'm not in accounting,  
10 but I believe they would apply it to the first payment  
11 missing.

12 Q. Okay. So, in other words, they would pay it  
13 to the oldest assessment that hadn't been paid at that  
14 time?

15 A. Correct.

16 Q. And then if a subsequent payment came in,  
17 they would apply it to what then was the oldest, and  
18 then it just goes on forward like that?

19 A. Correct.

20 Q. I'm going to try to make this as painless as  
21 possible, but if you would please turn to page 655.  
22 What is this document?

23 A. Another disbursement.

24 Q. And so am I correct to understand that the  
25 homeowner made another payment of \$100?

1 A. Correct.

2 Q. And how much of that went to the HOA?

3 A. \$50.

4 Q. And then if we turn to page 662. What is  
5 this document?

6 A. Another disbursement.

7 Q. And how much went to the HOA?

8 A. \$45.

9 Q. And if you would turn, please, to 759. Does  
10 this reflect another payment made on or about  
11 October 15th, 2011?

12 A. Yes.

13 Q. And how much of the homeowner's payment went  
14 to the HOA?

15 A. \$50.

16 Q. If you would please turn to 768. Does this  
17 768 reflect another partial payment made by the  
18 homeowner on or around December 22nd, 2011?

19 A. Yes.

20 Q. How much went to the HOA?

21 A. \$50.

22 Q. And then if you turn to page 786. This is in  
23 a little bit of a different form. What do you  
24 understand this document to be?

25 A. A disbursement.

1 Q. Is it a disbursement as a result of a partial  
2 payment made by the homeowner on or around  
3 February 20th, 2012?

4 A. Yes.

5 Q. How much money was disbursed to the HOA?

6 A. \$25.

7 Q. And then if you turn, please, to page 793.  
8 Do you recognize this document?

9 A. Yes.

10 Q. Is it a disbursement of a payment made by the  
11 homeowner on or around March of 2012?

12 A. Yes.

13 Q. How much was disbursed to the HOA?

14 A. \$25.

15 Q. If you'd please turn to page 803. What is  
16 this document?

17 A. It's a disbursement.

18 Q. Does this reflect a \$25 payment to the HOA  
19 made by the borrower on or about April 25th, 2012?

20 A. Yes.

21 Q. All of these that we're going over, were  
22 these all applied to the assessment account?

23 A. Yes.

24 Q. Please turn to 818. What is this document?

25 A. A disbursement.

1 Q. Does this reflect a \$25 payment to the HOA  
2 made by the homeowner on or about May 21st, 2012?

3 A. Yes.

4 Q. Please turn to 825. Are you familiar with  
5 the document that's Bates stamped 825?

6 A. Yes.

7 Q. What do you recognize it to be?

8 A. A disbursement.

9 Q. Does it reflect a disbursement of \$25 to the  
10 HOA as a result of a partial payment on or about  
11 June 19th, 2012?

12 A. Yes.

13 Q. Then page 851. Have you seen this document  
14 before?

15 A. Yes.

16 Q. What do you recognize it to be?

17 A. A disbursement.

18 Q. Does it reflect a disbursement of \$120 to the  
19 HOA as a partial payment from the homeowner made on or  
20 about September 15th, 2012?

21 A. Yes.

22 Q. We're getting to the end. Would you please  
23 turn to 858. Do you recognize this document on 858 as  
24 a disbursement of a \$91 partial payment to the HOA made  
25 by the homeowner on or about November 28th, 2012?

1           A.    Yes.

2           Q.    And then the last one I have is 866. Do you  
3 recognize this as a disbursement of \$100.25 to the HOA  
4 as a partial payment from the homeowner made on or  
5 about April 26, 2013?

6           A.    Yes.

7           Q.    Are all of the disbursements that we looked  
8 at just now, are they consistent with the accounting  
9 records for this account?

10          A.    I believe so.

11          Q.    So, as I understand it, this HOA's  
12 assessments were \$92.25 on a quarterly basis?

13          A.    Yes.

14          Q.    And if we divide that by three, that comes  
15 out to \$30.75 a month? I won't ask you to do math on  
16 the stand, but does that sound right to you?

17          A.    Sounds, yeah.

18          Q.    Nine months times \$30.75 a month would put us  
19 at \$276.75. Does that sound about right for nine  
20 months' worth?

21          A.    Okay. Yeah, it does.

22          Q.    Are you ever aware of an instance where NAS  
23 was presented with a partial payment and didn't  
24 communicate that fact to the HOA or its management  
25 company?

1           A.    I've heard that happen.

2           Q.    Okay.  Do you know whether that happened in  
3 this case?

4           A.    I don't know.

5           Q.    Do you have -- in your review of the account,  
6 did you see any indication or any communications from  
7 NAS that a law firm named Miles Bauer had attempted to  
8 make a payment towards the account?

9           A.    No.

10          Q.    Do you know why NAS would inform the  
11 management company about every single time the borrower  
12 made a partial payment, but not inform the management  
13 company about the attempted payment by Miles Bauer?

14               **MR. BOHN:**  Objection.  Calls for speculation.

15               **MS. MORGAN:**  I asked if she knows.

16               **THE COURT:**  I'll allow her to testify if she  
17 knows.

18               **THE WITNESS:**  No, I couldn't speculate as to  
19 why they wouldn't tell us.

20               **BY MS. MORGAN:**

21          Q.    Would you expect NAS -- since its job was to  
22 collect money on the account, would you expect that NAS  
23 would inform the management company when a payment was  
24 attempted towards the account?

25               **MR. BOHN:**  Objection.  Calls for speculation

1 as to what NAS might do.

2 **MS. MORGAN:** I'm just asking do they have an  
3 expectation that their collection agency would tell  
4 them.

5 **THE COURT:** I'll allow it.

6 **THE WITNESS:** Honestly, I don't know. I  
7 guess I would expect it, but I don't --

8 **MS. MORGAN:** Well, I mean, the whole point --

9 **THE WITNESS:** I don't know the whole  
10 circumstance as to why they wouldn't. I don't know  
11 what their thinking was.

12 **BY MS. MORGAN:**

13 Q. Right. And I understand you can't look into  
14 their brains and know what they were thinking, but  
15 wasn't the point of hiring NAS, essentially when you  
16 boil it down, to get paid?

17 A. Yeah, to follow the law whatever -- however  
18 that would be applied. And I don't know all the ins  
19 and outs of a Miles Bauer letter and why they would not  
20 have accepted or told us.

21 **MS. MORGAN:** I think I'm finished. I'm just  
22 making sure. That's all I have.

23 **THE COURT:** Mr. Bohn?

24 **MR. BOHN:** I have no questions.

25 **THE COURT:** Thank you, ma'am. Have a good



1 day. Thanks for being here.

2 **MS. MORGAN:** Thank you.

3 *(Witness excused.)*

4 **MR. SECHRIST:** Defendants call Diane Deloney.  
5 I think she's out in the hall.

6 **THE COURT:** Is this one going to be a while?

7 **MR. SECHRIST:** I don't think as long as the  
8 last witness. Did you want to take a break?

9 **THE COURT:** I don't know if this is the time  
10 or do you want to wait until after this one? Do you  
11 have more witnesses after this?

12 **MR. SECHRIST:** We do.

13 **MS. MORGAN:** We could take a break now.

14 **THE COURT:** That's all right. Come on up,  
15 ma'am. Going to have you stand all the way up on the  
16 witness stand. Once you get up there, please remain  
17 standing, raise your right hand to be sworn.

18 *(Witness sworn.)*

19 **THE CLERK:** Please be seated and state and  
20 spell your first and last name for the record.

21 **THE WITNESS:** It's Diane, DIANE, Deloney,  
22 D-E-L-O-N-E-Y.

23 **THE COURT:** Thank you, ma'am. Go ahead,  
24 counsel.

25

1 DIRECT EXAMINATION OF DIANE DELONEY

2 **BY MR. SECHRIST:**

3 Q. Good afternoon, Ms. Deloney, I represent the  
4 bank in this case, the defendant.

5 Can you please introduce yourself to the  
6 Court, and tell us where you're employed.

7 A. My name is Diane Deloney. I'm an assistant  
8 vice president at Bank of America.

9 Q. How long have you been with Bank of America?

10 A. About 10 years.

11 Q. What are your current job duties?

12 A. I handle a portfolio of loans in litigation.  
13 I also testify on behalf of the bank at trials,  
14 mediations, and depositions.

15 Q. And for how long have you been functioning in  
16 that capacity?

17 A. For Bank of America, about eight years.

18 Q. And have you testified previously in Nevada  
19 HOA lien foreclosure litigation?

20 A. I have.

21 Q. Approximately how many times?

22 A. Between depositions and trials, probably  
23 around 50 times.

24 Q. In performing those responsibilities, in  
25 those instances in which you participated in our

1 litigation, have you had to review Bank of America's  
2 business records?

3 A. Yes.

4 Q. Okay. Can you describe for me the type of  
5 business records to which you have access?

6 A. I have access to what we call our AS400  
7 servicing notes, which are the day-to-day notations of  
8 the activity on a loan. I have access to our what we  
9 call document management portal, which is the image  
10 documents, any other sort of database that would  
11 include the day-to-day servicing of a loan.

12 Q. How often do you access AS400?

13 A. Every day.

14 Q. How often do you access the data management  
15 portal?

16 A. Just about every day.

17 Q. Does Bank of America perform loan servicing?

18 A. Yes.

19 Q. Can you describe for me what that entails?

20 A. Loan servicing is generally we're the face of  
21 the mortgage company to the customer. We talk to the  
22 customers for various reasons. We pay taxes,  
23 insurance, collect the payments, apply the payments.  
24 We do collections and foreclosure if necessary.

25 Q. Does that involve -- what does that involve,

1 if anything, when a borrower is behind on their  
2 payments?

3 A. We would send letters to the borrower trying  
4 to collect the debt, any sort of repayment or loss  
5 mitigation plans, and foreclosure if it doesn't work  
6 out.

7 Q. Does Bank of America service loans that it  
8 does not own?

9 A. Yes.

10 Q. And are you familiar with the loan we're  
11 talking about in this case today?

12 A. I am.

13 Q. How did you become familiar with that?

14 A. Being assigned to appear at trial, I also --  
15 I prepared, reviewed our servicing records and our  
16 imaging system to review the history of the loan.

17 Q. So you looked at AS400 with respect to the  
18 133 McClaren loan?

19 A. I did.

20 Q. And when was the last time you looked at  
21 AS400 for this loan?

22 A. Today.

23 Q. Are you confident that the information  
24 reflected on the AS400 is accurate?

25 A. Yes.

1 Q. And in your experience, is AS400 a reliable  
2 system?

3 A. Yes, it is.

4 Q. Is it important that the data inputted in  
5 AS400 be accurate to Bank of America's business?

6 A. Absolutely.

7 Q. What measures does Bank of America undertake  
8 to ensure the accuracy of that information?

9 A. Well, it first starts off with the training  
10 of employees. I mean, that's part of everybody's daily  
11 job duty is to input information into AS400 and to  
12 ensure that the information is correct. There's  
13 various QA or quality assurances in place to ensure the  
14 information is correct.

15 Q. I'm going to look quickly at the deed of  
16 trust, which is in Exhibit 1. It should be volume I of  
17 the binders in front of you.

18 A. Okay.

19 Q. Have you seen this deed of trust before?

20 A. Yes.

21 Q. Okay. Who is the lender identified in this  
22 deed of trust?

23 A. The lender on page 2 is Countrywide Home  
24 Loans, Inc.

25 Q. I just wanted to ask you to quickly let the

1 Court know what's the relationship between Countrywide  
2 Home Loans and Bank of America?

3 A. The two merged about 10 -- 9, 10 years ago.

4 Q. Now I'd like to turn and look at Exhibit 15.

5 A. Okay.

6 Q. Have you seen this before?

7 A. I have.

8 Q. Can you tell me what Exhibit 15 is?

9 A. Exhibit 15 are various screenshots from our  
10 AS400 servicing system.

11 Q. When was the last time you looked at these  
12 screens?

13 A. This particular screen series, maybe Friday.

14 **MR. SECHRIST:** Your Honor, at this time, I'd  
15 like to move to admit the AS400 screenshots into  
16 evidence.

17 **THE COURT:** 15?

18 **MR. SECHRIST:** Yes.

19 **THE COURT:** Mr. Bohn?

20 **MR. BOHN:** No objection.

21 **THE COURT:** 15 is admitted.

22 (Exhibit 15 was admitted into evidence.)

23 **BY MR. SECHRIST:**

24 Q. Okay. In looking at Exhibit 15 -- well,  
25 harkening back to Exhibit 1, the deed of trust, does

1 BANA still own or Bank of America still own this loan?

2 A. No.

3 Q. In looking at Exhibit 15, can you tell me who  
4 does own the loan?

5 A. Yes. The ownership of the loan transferred  
6 to Fannie Mae back in December of 2004.

7 Q. Can you please describe for the Court -- I  
8 see that you're referencing Exhibit 15. Can you please  
9 describe for the Court the line and information in  
10 Exhibit 15 that tells you that.

11 A. Well, it is on the second page. The  
12 screenshot is entitled Loan Transfer Displace Screen.  
13 And in kind of the middle of the page there is a series  
14 of numbers starting 2001512, which, if you turn to the  
15 third page, it corresponds to the investor number being  
16 a Fannie Mae. And that transaction date back on the  
17 second page was 12/8/04.

18 Q. And after Bank of America sold the loan to  
19 Fannie Mae, did Bank of America have any relationship  
20 with respect to this loan?

21 A. We were servicing the loan for Fannie Mae.

22 Q. And how do we know that?

23 A. Based on our AS400 servicing records.

24 Q. And when did Bank of America begin servicing  
25 the loan?

1           A.   Immediately after the loan originated.

2           Q.   Does it still service the loan?

3           A.   Well, let me clarify.  First it was serviced  
4 by Countrywide, and then at the time of the merger,  
5 became Bank of America.  And, no, Bank of America no  
6 longer services the loan.

7           Q.   When did Bank of America stop servicing the  
8 loan?

9           A.   It was November 2011.

10          Q.   And how do you know that?

11          A.   Again, based on my review of the business  
12 records and the copy of the good-bye -- what we refer  
13 to as the good-bye letter in the imaging system.

14          Q.   So during the time that Bank of America  
15 serviced the loan, which was pretty well from  
16 origination through November of 2011; right --

17          A.   Right.

18          Q.   -- did anyone other than Fannie Mae own the  
19 loan?

20          A.   Yes.

21          Q.   Can you please describe who else owned the  
22 loan?

23          A.   Just at the very beginning, right after the  
24 loan originated, the loan was owned by -- again, prior  
25 to being sold to Fannie Mae, it was owned by



1 Bank of America or maybe a Countrywide entity. But it  
2 was just only for a couple weeks.

3 Q. So from 2004 to 2011, who owned the loan?

4 A. Fannie Mae.

5 Q. And Fannie Mae owned the loan when  
6 Bank of America servicing stopped; is that correct?

7 A. Yes.

8 Q. If you look at Exhibit 6, please.

9 A. Okay.

10 Q. It says Corporate Assignment of Deed of  
11 Trust. Do you see that?

12 A. I do.

13 Q. Have you seen this before?

14 A. Yes.

15 Q. Can you tell me what this is?

16 A. This is an assignment assigning the loan from  
17 MERS as nominee for Countrywide Home Loans to Green  
18 Tree Servicing.

19 Q. And you see the date of recordation on this  
20 is May 28th, 2013; right?

21 A. Yes.

22 Q. Who owned the loan immediately prior to this  
23 assignment?

24 A. Well, we weren't servicing it at the time,  
25 but when we released servicing in 2011, it was

1 Fannie Mae, who was servicing the loan maybe prior to  
2 the assignment.

3 Q. Bank of America was not servicing prior to  
4 these. Servicing had transferred in November 2011;  
5 right?

6 A. Correct.

7 Q. And in practical business terms, this  
8 assignment from MERS on behalf of Countrywide to the  
9 new -- to the assignee, which is identified as Green  
10 Tree Servicing; right --

11 A. Right.

12 Q. -- in practical business terms, how did this  
13 assignment affect ownership of the loan?

14 **MR. BOHN:** Objection. Calls for a legal  
15 conclusion.

16 **THE COURT:** I'll let her testify to her  
17 understanding.

18 **THE WITNESS:** It didn't affect the ownership.

19 **BY MR. SECHRIST:**

20 Q. When Bank of America was servicing, what did  
21 it do with the money the borrower paid on the loan that  
22 it received?

23 A. The monthly payments?

24 Q. Yes.

25 A. They were applied to the loan, and a portion

1 would be forwarded over to the investor or Fannie Mae.

2 Q. Are you familiar with the FHFA? Do you know  
3 what the FHFA is?

4 A. Yes, I'm familiar.

5 Q. While you reviewed the records for this loan,  
6 did you see any indication that FHFA had been requested  
7 to give consent to the HOA's extinguishment of the deed  
8 of trust?

9 A. No.

10 Q. If that had happened, would you have expected  
11 to see that within the files?

12 A. Yes.

13 Q. But there was no indication that consent was  
14 either requested or given; right?

15 A. Right.

16 **MR. SECHRIST:** One second, Your Honor.

17 **BY MR. SECHRIST:**

18 Q. In the 2011-2013 time frame, did  
19 Bank of America have a practice and procedure for  
20 responding to notice that a Nevada HOA had asserted a  
21 lien on a property for which Bank of America was  
22 serving or owned a loan -- servicing or owned a loan?

23 A. Yes.

24 Q. What was that practice and policy?

25 A. It was our practice that whenever we received

1 either the notice of default or the notice of sale, we  
2 would hire local counsel, who would then reach out to  
3 the HOA for the super priority portion so that we could  
4 cut a check to pay that portion.

5 Q. And in your review of the records for this  
6 case, did you see anything indicating that  
7 Bank of America had retained counsel to do that?

8 A. Yes, we did.

9 Q. I'd like you to look at Exhibit 20, please.

10 A. I'm sorry. 20?

11 Q. 2-0. Yes, 20. Should be in binder I.

12 A. Yes.

13 Q. Have you seen this document before?

14 A. I have.

15 Q. Can you tell me what it is, please?

16 A. This is a Bank of America document. It is an  
17 internal request to have funds processed and sent to a  
18 certain location.

19 Q. Okay. And where does this indicate that the  
20 wire -- wired funds were to go?

21 A. The wired funds were to go to Miles Bauer  
22 Bergstrom and Winters, LLC.

23 Q. And where did you see this document, by the  
24 way?

25 A. In our imaging system.

1 Q. And when did you last see it there?

2 A. Either Friday or this morning.

3 **MR. SECHRIST:** At this time, Your Honor, I'd  
4 like to move to admit Exhibit 20.

5 **THE COURT:** Mr. Bohn?

6 **MR. BOHN:** No objection.

7 **THE COURT:** 20 will be admitted.

8 (Exhibit 20 was admitted into evidence.)

9 **BY MR. SECHRIST:**

10 Q. This indicates a payment; correct?

11 A. Well, yes, it indicates that internally we  
12 requested funds to be remitted to counsel's trust  
13 account for the HOA delinquency.

14 Q. And how do you know that it was for the HOA  
15 delinquency?

16 A. Well, the reason for payment, right there in  
17 the middle of the page.

18 Q. Okay. And would that payment for an HOA  
19 delinquency in December of 2011 have been consistent  
20 with the policies and procedures of Bank of America for  
21 responding to notice of HOA liens in Nevada in that  
22 time frame?

23 A. Yes.

24 Q. If we look at Exhibit 21, please. This is a  
25 series of pages. Do you know what these are, what

1 we're looking at here?

2 A. It is a copy of the loan payment history for  
3 the property.

4 Q. And I'd like to -- where have you seen this  
5 before?

6 A. I've seen it on the AS400 and in imaging.

7 Q. When did you last review this document?

8 A. Last week.

9 **MR. SECHRIST:** And, Your Honor, I'd like to  
10 move to admit Exhibit 21, please.

11 **MR. BOHN:** Objection. There's nothing to it.  
12 Everything is blanked out.

13 **MR. SECHRIST:** We can look at page 218.

14 **BY MR. SECHRIST:**

15 Q. Do you see on page 218, a number of entries  
16 on the bottom of the page?

17 A. I do.

18 Q. Can you tell me what those entries signify?

19 A. They are the cutting of the check to cure the  
20 HOA delinquency.

21 Q. Okay. And if we reference -- what's the  
22 amount shown on page 218?

23 A. \$276.75.

24 Q. And if we reference Exhibit 20, is that the  
25 same amount shown for the amount of the payment in

1 Exhibit 20?

2 A. Yes. And the pay date is the same on 20 and  
3 on 21.

4 Q. And what is the fee description on page 218  
5 of Exhibit 21?

6 A. HOA special assessment.

7 Q. And what does that mean to you?

8 A. The HOA dues that were delinquent.

9 **MR. SECHRIST:** Your Honor, I'd like to renew  
10 the request to admit Exhibit 21.

11 **THE COURT:** How come all these pages are  
12 blocked out?

13 **THE WITNESS:** It shows the mortgage payments  
14 made by the homeowner.

15 **THE COURT:** They're secret? I usually see  
16 them. I just don't know why the big mystery here.

17 **MS. MORGAN:** It's not a huge mystery. Out of  
18 an abundance of caution, unless we have a protective  
19 order in place, we redact the information related to  
20 the specific homeowner because we don't want to be  
21 found in violation of the Gramm-Leach-Bliley Act. In  
22 this case there was a protective order so that would  
23 explain why we -- it's nothing scandalous. We can  
24 print out an unredacted version tomorrow to bring to  
25 the Court if you'd like to withhold ruling on the

1 admission until then.

2 **THE COURT:** How about I just admit it for  
3 purposes of what it shows on page 218.

4 **MR. SECHRIST:** That's certainly acceptable.

5 **MR. BOHN:** I was going to make that  
6 qualification. I have no objection to that.

7 **THE COURT:** That's fine.

8 (Exhibit 21 was admitted into evidence with  
9 qualifications as noted above.)

10 **MR. BOHN:** Thank you.

11 **MR. SECHRIST:** I pass the witness.

12 **THE COURT:** Mr. Bohn?

13 **MR. BOHN:** Thank you, Your Honor.

14

15 CROSS-EXAMINATION OF DIANE DELONEY

16 **BY MR. BOHN:**

17 Q. Ms. Deloney, did I get that right?

18 A. Yes.

19 Q. My name is Michael Bohn. I'm the attorney  
20 for the plaintiff in this matter.

21 Turning to Exhibit 15, it consists of three  
22 pages; correct?

23 A. Yes.

24 Q. I didn't understand your testimony when you  
25 were explaining on the documents how you determined



1 when the loan was sold to Fannie Mae. What document  
2 shows that?

3 A. Well, the second page of Exhibit 15 --

4 Q. That would be Bates 148?

5 A. Yes.

6 Q. Okay.

7 A. Just briefly, this shows the -- you have to  
8 look at the investor codes, which is the middle column.  
9 So when the investor code changes, that's when the  
10 ownership changes. So the very last field or the very  
11 last code change is 2001512, that investor number. And  
12 when you turn to page 3, that investor number pulls up  
13 the investor name of Fannie Mae.

14 Q. So that's the bottom entry, 2001512 on  
15 12/1/04?

16 A. Well, you have to look at -- that's the  
17 paid-to date of 12/1/04. You have to look at the date  
18 above that, the 12/8/04. I know it's a little  
19 confusing, but the top in the bold green, it says  
20 TRNDTE/PTD, transaction date and paid-to date. So the  
21 top, you kind of have to look at two rows at a time.

22 Again, on 12/8/04 was the transaction date.  
23 12/1/04 was the paid-to date on the loan. On that day,  
24 12/8/04, the investor number changed from 43 to  
25 2001512. Did that help?

1 Q. Confuses me more, but you're saying that's  
2 what you look at to determine the date of the transfer?

3 A. Yes.

4 Q. Okay. On page 149 --

5 A. Yes.

6 Q. -- it shows investor name, FNMASCH. What are  
7 those initials? Do you see where I am?

8 A. Yes.

9 Q. What does SCH/SCHMBS ARM mean?

10 A. SCH stands for scheduled. It's a type of  
11 accounting for Fannie Mae.

12 Q. And it says "Title in the name of" halfway  
13 down. Above that it says, "Foreclosure in the name of  
14 Bank of America."

15 Did Bank of America ever foreclose on this  
16 property?

17 A. No.

18 Q. Why does it say "Foreclosure in the name of?"

19 A. This screen is specific to let foreclosure  
20 know that if -- if foreclosure begins, that we're  
21 foreclosing on behalf of Bank of America, but then  
22 title will revert to Fannie Mae. It's just -- the  
23 information is just stored in the system for reference.

24 Q. So I was going to ask the next one. The  
25 "Title in the name of Fannie Mae" would mean that if a

1 foreclosure happened, it would be titled in the name of  
2 Fannie Mae?

3 A. We'd foreclose on behalf of Bank of America,  
4 but then the Sheriff's deed, for example, would be to  
5 Fannie Mae.

6 Q. Do you know if this loan, while  
7 Bank of America was servicing it, was ever -- if  
8 foreclosure proceedings had begun on the trust deed?

9 A. Not that I recall, no.

10 Q. You keep saying that Fannie Mae owns the  
11 loan. When you say that, can you explain what does  
12 Fannie Mae own?

13 **MR. SECHRIST:** Objection. Calls for a legal  
14 conclusion.

15 **THE COURT:** Overruled. Just asking her to  
16 explain what she's already said.

17 **THE WITNESS:** Well, Fannie Mae, being the  
18 owner, we service the loan on behalf of their  
19 guidelines.

20 **BY MR. BOHN:**

21 Q. Okay. What is it that they own?

22 A. They own the loan.

23 Q. When you say "the loan," the loan consists of  
24 what?

25 A. The principal balance, the interest.

1 Q. They own the money coming in from the loan?

2 A. Well, the money that comes in on the loan is  
3 forwarded to Fannie Mae.

4 Q. Okay. Let me cut to the chase. The loan is  
5 evidenced by a promissory note secured by a deed of  
6 trust; is that correct?

7 A. Yes.

8 Q. Okay. Are you familiar with the form Deed of  
9 Trust, Exhibit 1?

10 A. What do you mean?

11 Q. Exhibit 1, it's the deed of trust you  
12 testified to earlier.

13 A. Okay. I'm sorry. The question?

14 Q. You're familiar with this particular form of  
15 deed of trust?

16 A. I've seen many deeds of trust. This is one  
17 of the versions, yes.

18 Q. And does this deed of trust anywhere  
19 disclose -- use the term "owner" anywhere?

20 A. No.

21 Q. Exhibit 6 you testified to --

22 A. Yes.

23 Q. -- was assigned -- this was recorded  
24 May 28th, 2013. It doesn't mention Fannie Mae anywhere  
25 on this document, does it?

1           A.     With the exception of the code along the  
2 bottom, no.

3           Q.     Okay. In fact, it says it's being assigned  
4 to Green Tree Servicing, LLC; correct?

5           A.     Yes.

6           Q.     And it says that MERS was acting -- MERS as  
7 nominee for Countrywide Home Loans; correct?

8           A.     Yes.

9           Q.     Okay. Do you know why the deed of trust was  
10 assigned to Green Tree in 2013?

11          A.     Well, typically, they're assigned to the  
12 servicer.

13          Q.     Your Exhibit 15, does it indicate here when  
14 Bank of America stopped servicing the loan?

15          A.     No.

16          Q.     In your review of the file, did you find any  
17 documents that were recorded stating that Fannie Mae  
18 was the beneficiary of the deed of trust?

19          A.     No.

20          Q.     And, in fact, the deed of trust says that  
21 MERS, as nominee for Countrywide, is the beneficiary;  
22 correct?

23          A.     Yes.

24          Q.     And Exhibit 6 notes that Green Tree is being  
25 assigned the deed of trust; correct?

1           A.     Yes.

2           **MR. BOHN:**   Thank you.   I have no further  
3 questions.

4           **THE COURT:**   Any more?

5           **MR. SECHRIST:**   Just a few follow-up.

6

7                       REDIRECT EXAMINATION OF DIANE DELONEY

8           **BY MR. SECHRIST:**

9           Q.     Ms. Deloney, looking at Exhibit 1, the deed  
10 of trust, the specific language that MERS was acting as  
11 nominee for lender, it also says lender's successors  
12 and assigns; correct?

13          A.     Where exactly are you looking?

14          Q.     That would be on paragraph E on page 2.

15          A.     Yes.

16          Q.     And one thing I wanted to address, just for  
17 point of clarification, if we turn to Exhibit 15, you  
18 have testified that Bank of America stopped servicing  
19 in November of 2011; right?

20          A.     Right.

21          Q.     What's the run date on Exhibit 15?

22          A.     This was the screenshot was done March 14th,  
23 2016. And just to clarify, this is also the second  
24 page of a prior screen. The prior screen does have the  
25 service release information on it.

1           Q.    Why would this be dated -- why would  
2 Bank of America have these records in its file after  
3 servicing had ended?

4           A.    We keep the servicing records for a certain  
5 amount of time.

6           **MR. SECHRIST:** That's all I have.

7           **THE COURT:** Mr. Bohn?

8           **MR. BOHN:** Nothing further, Your Honor.

9           **THE COURT:** Thank you, ma'am. Appreciate  
10 your time.

11           *(Witness excused.)*

12           **THE COURT:** Let's go ahead and take a break  
13 before we call the next witness up.

14           *(Whereupon, a recess was taken.)*

15           **THE COURT:** We ready? One more witness.

16           **MR. SECHRIST:** Defendant calls Christy  
17 Christensen.

18           **THE COURT:** Good afternoon, ma'am. Come all  
19 the way up on the witness stand. Raise your right hand  
20 to be sworn.

21           *(Witness sworn.)*

22           **THE CLERK:** Please be seated and state and  
23 spell your name for the record.

24           **THE WITNESS:** Christy Christensen,  
25 C-H-R-I-S-T-Y, C-H-R-I-S-T-E-N-S-E-N.

1 DIRECT EXAMINATION OF CHRISTY CHRISTENSEN

2 **BY MR. SECHRIST:**

3 Q. Good afternoon, Ms. Christensen. I represent  
4 the bank, the defendant. Can you please introduce  
5 yourself to the Court and tell us where you're  
6 employed.

7 A. My name is Christy Christensen. I'm a  
8 corporate representative for Ditech Financial, LLC.

9 Q. How many years have you been with Ditech?

10 A. 19 years.

11 Q. How long have you been in your current  
12 position?

13 A. Three years.

14 Q. Can you describe your job duties.

15 A. I appear on behalf of Ditech in trials, small  
16 claims, depositions. I also attend settlement  
17 conferences and mediations.

18 Q. And have you testified previously for -- just  
19 one quick point of clarification for the Court. Can  
20 you describe for me the relationship between Ditech and  
21 Green Tree Servicing?

22 A. Ditech and Green Tree, we changed our name in  
23 2015.

24 Q. Was there any other change other than just a  
25 name change?



1           A.    No.

2           Q.    How many times have you testified for Ditech  
3 in Nevada HOA lien foreclosure litigation in depositions and  
4 trials?

5           A.    Anywhere from 20 to 25 times.

6           Q.    In preparation for the fulfillment of those  
7 assignments, have you had access to Ditech's business  
8 records?

9           A.    Yes.

10          Q.    Can you describe for me the type of business  
11 records to which you have access?

12          A.    I have access to our servicing system, our  
13 system of record, and our imaging system, which is also  
14 online based.

15          Q.    What's the system of record?

16          A.    Our GTA and MSP systems.

17          Q.    What sort of information is contained in  
18 there?

19          A.    The loan information, borrower information,  
20 property information, payment history.

21          Q.    Would it identify the owner of the loan?

22          A.    Yes.

23          Q.    You're aware that we're here talking about a  
24 loan that relates to 133 McClaren; right?

25          A.    Correct.

1 Q. And did you review Ditech's files with  
2 respect to that loan?

3 A. Yes, I did.

4 Q. Can you tell us generally what you reviewed  
5 with respect to that loan to prepare for your testimony  
6 today?

7 A. I reviewed our system of record. I also  
8 reviewed documents within our imaging system, the  
9 collateral documents, any notices and correspondence  
10 sent or received from the borrower.

11 Q. Did you review any recorded documents?

12 A. Yes, I did.

13 Q. Can you describe for me what Ditech does as a  
14 loan servicer?

15 A. We are the face of the company for the  
16 borrower on behalf of the owner. We talk to the  
17 customer regarding their payments, their loan, any  
18 questions that they have. We also pay property taxes  
19 and insurance, property preservation, foreclose if  
20 necessary, and appear in defense in litigation.

21 Q. As part of those services, does it ever  
22 become necessary for Ditech to become the beneficiary  
23 of record under a deed of trust?

24 A. Yes, in the event of a foreclosure.

25 Q. Is Ditech a bank?

1 A. No.

2 Q. Does Ditech service loans that it does not  
3 own?

4 A. Yes.

5 Q. And when was the last time you looked at  
6 Ditech's records concerning this loan?

7 A. Last night.

8 Q. And in your experience with the system of  
9 record and the data management tools that you  
10 identified, are you confident that the information in  
11 Ditech's databases is correct?

12 A. Yes.

13 Q. And that it's accurate?

14 A. Yes.

15 Q. Is it important to Ditech's business that  
16 information be accurate?

17 A. Yes.

18 Q. I'd like to look at Exhibit 43, please.  
19 That's going to be in binder IV.

20 A. Binder IV.

21 Q. Volume IV. Probably behind you on the  
22 counter.

23 **MR. BOHN:** Which exhibit number?

24 **MR. SECHRIST:** It will be 43.

25 **THE WITNESS:** Okay.

1 **BY MR. SECHRIST:**

2 Q. This is entitled Notice of Assignment, Sale  
3 or Transfer of Servicing Rights. Do you see that?

4 A. Yes.

5 Q. Okay. And have you seen this document  
6 before?

7 A. Yes, I have.

8 Q. Can you tell me what it is?

9 A. This is a copy of a letter that was sent to  
10 the borrower in October of 2011, notifying them of the  
11 servicing transfer from the previous servicer to Green  
12 Tree Servicing.

13 Q. And this letter is from Green Tree/Ditech;  
14 right?

15 A. Correct.

16 Q. And they sent it to Charles White?

17 A. Correct.

18 Q. All right. And it's your understanding  
19 Charles White was the borrower?

20 A. Yes.

21 Q. When was this letter sent?

22 A. October 21st, 2011.

23 Q. And directing your attention to the first  
24 paragraph underneath -- that starts, "You are hereby  
25 notified."

1 Do you see that paragraph?

2 A. Yes.

3 Q. When was Green Tree -- when did Green Tree  
4 Servicing become effective?

5 A. November 1st, 2011.

6 Q. And who was the servicer -- if I can direct  
7 your attention to the fourth paragraph, who was the  
8 servicer immediately prior to Green Tree?

9 A. Bank of America.

10 Q. And what's the purpose of this letter?

11 A. To notify the borrower of the servicing  
12 change and who to contact if they have questions  
13 regarding their mortgage and where to send payments to.

14 Q. Does Green Tree still service the loan?

15 A. Yes.

16 Q. Who owned this loan when Green Tree began  
17 servicing it?

18 A. Fannie Mae.

19 Q. Who owns it now?

20 A. Fannie Mae.

21 Q. During the entirety of the time -- during the  
22 entire duration of Ditech's servicing of this loan, has  
23 anyone other than Fannie Mae owned it?

24 A. No.

25 Q. How do you know that this loan is owned by

1 Fannie Mae?

2 A. In my review of the records and our servicing  
3 system, I show that Fannie Mae is the owner of the  
4 loan.

5 Q. Let's look at Exhibit 6, which is going to be  
6 in volume I.

7 **MR. BOHN:** Are you moving to admit 43?

8 **MR. SECHRIST:** At this time, Your Honor, I'd  
9 like to move to admit Exhibit 43.

10 **MR. BOHN:** No objection.

11 **THE COURT:** 43 will be admitted.

12 (Exhibit 43 was admitted into evidence.)

13 **MR. SECHRIST:** We're going to look at Exhibit  
14 6.

15 **BY MR. SECHRIST:**

16 Q. Do you recognize Exhibit 6 as an assignment  
17 of the deed of trust to Ditech?

18 A. To Green Tree, yes.

19 Q. I'm sorry. I shouldn't use those  
20 interchangeably.

21 And when did you see this before?

22 A. In my preparation for this trial a week or so  
23 ago.

24 Q. And this has already been admitted.

25 This is dated 5/28/13; right?

1           A.     Correct.

2           Q.     And who owned the loan immediately prior to  
3 the execution of this assignment?

4           A.     Fannie Mae.

5           Q.     And by virtue of this assignment, did  
6 Green Tree understand that it acquired an ownership  
7 interest in the loan?

8           A.     No.

9           Q.     And what did Green Tree, when it was  
10 servicing -- as it serviced the loan, what did  
11 Green Tree do with any money the borrower paid on the  
12 loan after this assignment?

13          A.     The payments were applied to the loan, and  
14 then a portion would be forwarded to Fannie Mae.

15          Q.     Would that have been the same prior to the  
16 assignment?

17          A.     Yes.

18          Q.     I'd like to look at Exhibit 44.  So we're  
19 going to jump back to volume IV.

20                 Do you recognize Exhibit 44?

21          A.     Yes.

22          Q.     Can you tell me what it is?

23          A.     This is a copy of the note.

24          Q.     Okay.  And if we look pretty close to the top  
25 of the first page, you see 133 McClaren Street.  You

1 understand that this is a copy of the note that  
2 pertains to the loan we've been discussing in this  
3 litigation?

4 A. Correct.

5 Q. Where did you see this copy prior to today?

6 A. In my imaging system.

7 Q. Okay. And do you know where the actual  
8 physical copy of the note is located?

9 A. With our document custodian.

10 Q. And is that pursuant to a custodial  
11 agreement?

12 A. Yes, it is.

13 Q. Do you recognize this as a true and correct  
14 copy of the note?

15 A. Yes.

16 **MR. SECHRIST:** At this time, I'd like to move  
17 to admit Exhibit 44, Your Honor.

18 **THE COURT:** Mr. Bohn?

19 **MR. BOHN:** No objection.

20 **THE COURT:** 44 will be admitted.

21 (Exhibit 44 was admitted into evidence.)

22 **BY MR. SECHRIST:**

23 Q. Looking at Exhibit 44, does the note identify  
24 who the lender is?

25 A. Sorry. Yes. Countrywide Home Loans,



1 Incorporated.

2 Q. And does it identify the interest rate?

3 A. Yes, on no. 2.

4 Q. Okay. Paragraph 2 on the first page?

5 A. Correct.

6 Q. And does it also indicate the maturity date  
7 for the note?

8 A. Yes.

9 Q. When is that?

10 A. December 1st, 2034.

11 Q. And did the borrower pay off this note?

12 A. No.

13 Q. Let's look at the last page of the note. Do  
14 you see that it has a stamp on the left side that says  
15 "Pay to the order of?" Do you see that?

16 A. Yes.

17 Q. Can you tell me what that is?

18 A. This is a blank endorsement from the prior  
19 servicer.

20 Q. What does that mean, a blank endorsement?

21 A. Means that anyone in possession of the note  
22 has the power.

23 Q. And why would that be done?

24 A. The endorsement is required by Fannie Mae's  
25 servicing guide.

1 Q. And this note, who owned the note when Ditech  
2 began servicing?

3 A. Fannie Mae.

4 Q. Who owns it now?

5 A. Fannie Mae.

6 Q. Are you familiar with the FHFA?

7 A. Yes.

8 Q. And in your review of the file, of  
9 Green Tree's records, did you see any indication that  
10 FHFA had been requested to give or gave consent to the  
11 HOA's extinguishment of Fannie Mae's deed of trust?

12 A. No.

13 Q. If that had happened, would you expect to see  
14 it in the file?

15 A. Yes, I would.

16 Q. But there was no indication that it occurred;  
17 right?

18 A. No.

19 Q. Did anyone assert an ownership interest in  
20 the loan?

21 A. No.

22 Q. Are you aware that there was a second deed of  
23 trust on this property?

24 A. Yes.

25 Q. And did Ditech ever service with respect to

1 the second deed of trust?

2 A. Yes, we did service it for a time.

3 Q. Does Ditech service that now?

4 A. No, we do not.

5 **MR. SECHRIST:** I'll pass the witness.

6 **THE COURT:** Cross?

7

8 CROSS-EXAMINATION OF CHRISTY CHRISTENSEN

9 **BY MR. BOHN:**

10 Q. Good afternoon. I feel like I know you.  
11 You've testified on a trial I was on before; isn't that  
12 correct?

13 A. Correct.

14 Q. I'm Michael Bohn. I'm the attorney for  
15 plaintiff Saticoy Bay in this matter.

16 You testified that Fannie Mae is the owner of  
17 the loan, and you also testified that you looked at the  
18 servicing records maintained by Ditech; is that  
19 correct?

20 A. Correct.

21 Q. What records are those? I mean, where are  
22 those records?

23 A. It was a -- our servicing system?

24 Q. Yes.

25 A. MSP. It was within one of our screens that I

1 viewed that information.

2 Q. So you looked at computer screens?

3 A. Correct.

4 Q. Okay. And you reviewed a copy of the note  
5 before you testified today?

6 A. Correct.

7 Q. And you said it's held by a document  
8 custodian?

9 A. Correct.

10 Q. Have you seen the original of the note?

11 A. Only a copy within our imaging system.

12 Q. How do you know where the original is?

13 A. Again, from our servicing system, it notified  
14 me that the document custodian is Bank of New York in  
15 Texas, and that's the location of the original  
16 collateral documents.

17 Q. But you didn't go to that location to visibly  
18 see that the document was there; is that correct?

19 A. Correct.

20 Q. Now, the promissory note you just testified  
21 to, that identifies a borrower and a lender; correct?

22 A. Correct.

23 Q. Does it identify any owner?

24 A. No.

25 Q. You're familiar with the various forms of the

1 deeds of trust. Did you review the deed of trust to  
2 prepare for the trial in this case?

3 A. Yes, I did.

4 Q. Exhibit No. 1, is there any person or entity  
5 in the deed of trust identified as the owner?

6 A. No.

7 Q. You testified that the servicing was  
8 transferred November of 2011; correct?

9 A. Correct.

10 Q. But the assignment wasn't made to Green Tree  
11 until May of 2013; correct?

12 A. Correct.

13 Q. And will you tell the Court why there was  
14 almost a two-year delay in the assignment?

15 A. The assignment was recorded in conjunction  
16 with default and the referral to our foreclosure  
17 department.

18 Q. Did Ditech ever initiate foreclosure on this  
19 property under the deed of trust?

20 A. I know that it was referred to our  
21 foreclosure department. I don't recall if notice of  
22 default was recorded or not.

23 **MR. BOHN:** I have no further questions.

24 **THE COURT:** Any more?

25 **MR. SECHRIST:** One moment, please. No

1 further questions, Your Honor.

2 **THE COURT:** All right. I always have  
3 questions for witnesses like you. Sorry.

4 You talked about this note, which is marked  
5 as Exhibit 44. This was endorsed in blank by  
6 Countrywide Home Loans; right?

7 **THE WITNESS:** Correct.

8 **THE COURT:** Which makes it bearer paper, so  
9 whoever bears it has the right to enforce the note.  
10 You said it's held by your custodian. Who is the  
11 custodian?

12 **THE WITNESS:** With this Bank of New York in  
13 Texas?

14 **THE COURT:** My understanding from many of  
15 these other cases is there a tri-party custodial  
16 agreement between Ditech or Green Tree, Fannie Mae, and  
17 the custodian?

18 **THE WITNESS:** Correct.

19 **THE COURT:** Have you ever seen that?

20 **THE WITNESS:** No.

21 **THE COURT:** Do you know who has that  
22 custodial agreement or if anyone has ever seen it?

23 **THE WITNESS:** It would be an agreement that  
24 is initiated by Ditech/Green Tree and the custodian.  
25 But Fannie Mae requires it through their servicing

1 guide to set up that relationship. I don't know if the  
2 guide would be -- excuse me -- the agreement would be  
3 held by Ditech or the custodian. I'm not sure, but it  
4 should be able to be obtained.

5 **THE COURT:** If there was such an agreement  
6 that showed that Fannie Mae had an interest in this  
7 loan, it would be helpful for us to have that to show  
8 that Fannie Mae has an interest in the loan, but I  
9 haven't ever seen that.

10 **THE WITNESS:** Understood.

11 **THE COURT:** Is there a servicing agreement  
12 with Fannie Mae other than the online servicing guide?

13 **THE WITNESS:** Specific to this loan, I have  
14 not seen a servicing agreement. I know there are  
15 servicing agreements, but I have not seen it specific  
16 to this loan.

17 **THE COURT:** When you say you have seen it,  
18 does that mean that they do exist with regard to some  
19 loans?

20 **THE WITNESS:** I have seen servicing  
21 agreements in regards to Fannie Mae loans in the past.  
22 I have not seen it to this specific loan.

23 **THE COURT:** Okay. The other thing I  
24 sometimes ask for is are you aware of any financial  
25 documents that show that when a payment has come in to

1 Ditech or Green Tree, that a portion has been retained  
2 for the servicing part of the agreement and the  
3 remainder is sent to Fannie Mae? Do you have any  
4 documents that show that process?

5 **THE WITNESS:** I'm aware that there is a --  
6 our investor reporting handles all of the forwarding of  
7 the payments to Fannie Mae. I have not seen the  
8 reporting; however, I could possibly get it. That's  
9 something I'd have to ask for.

10 **THE COURT:** I don't know if it's in here. My  
11 question may prompt additional questions. If it's in  
12 there, we'll find out.

13 You had a welcome letter, I think it's marked  
14 as Exhibit 43, that says -- that was sent to the  
15 customer; correct?

16 **THE WITNESS:** Yes.

17 **THE COURT:** I have seen other welcome letters  
18 from other servicers that say, Welcome. We are now  
19 your servicer on behalf of Fannie Mae, who is the -- I  
20 don't know what they call them -- the owner or the  
21 something. I didn't see that in your welcome letter.  
22 Is there anything in your welcome letter that indicates  
23 that Fannie Mae has an interest in this loan?

24 **THE WITNESS:** No, there is not.

25 **THE COURT:** Other than the screenshots that



1 you talked about, are you aware of any document that  
2 we've talked about that indicates Fannie Mae has an  
3 interest in the loan?

4 **THE WITNESS:** The only information in regards  
5 to Fannie Mae that I saw in my preparation was  
6 reference to the Fannie Mae and the MERS MIN number on  
7 the bottom of the assignment, which is Exhibit 6.

8 **THE COURT:** Okay. That's not real clear what  
9 that means.

10 **THE WITNESS:** Other than the MIN numbers  
11 matching up.

12 **THE COURT:** Okay. All right. Thank you.

13 Does that raise any additional questions for  
14 the defense?

15 **MS. MORGAN:** Court's indulgence, if you don't  
16 mind.

17 **THE COURT:** They're the same questions I  
18 always ask.

19 **MS. MORGAN:** It's been a while for me.

20 **MR. SECHRIST:** Just for clarification, Your  
21 Honor.

22

23 REDIRECT EXAMINATION OF CHRISTY CHRISTENSEN

24 **BY MR. SECHRIST:**

25 Q. Can you please -- just because the Court had

1 asked concerning the syntax of the welcome letter and  
2 specifically with respect to Fannie Mae and the  
3 identification of Fannie Mae's interest or the lack of  
4 that identification within that letter, can you please  
5 explain how the -- how Ditech's or Green Tree's records  
6 reflect Fannie Mae ownership?

7 A. It's referenced within both of our system of  
8 record and also our user-friendly servicing system in  
9 which our front line employees use to have  
10 conversations with the borrower and so forth. It's  
11 referenced in our screen as the owner of the loan.

12 Q. While the welcome letter might not indicate  
13 it, the documents that you reviewed prior to coming  
14 here today within the system indicate Fannie Mae's  
15 ownership?

16 A. Yes, our system of record, yes.

17 Q. And indicate Fannie Mae's ownership from the  
18 time Ditech began servicing continuously through today?

19 A. Correct.

20 **MR. SECHRIST:** That's all I have, Your Honor.

21 **THE COURT:** Let me ask one more. It may  
22 prompt another question from you.

23 I try to stay consistent. Assuming that  
24 AS400 servicer, you have access to the original note;  
25 is that a fair assumption?

1           **THE WITNESS:** Yes.

2           **THE COURT:** So you could get that original  
3 note from whoever the custodian is?

4           **THE WITNESS:** Correct.

5           **THE COURT:** The deed of trust shows  
6 Green Tree as the entity with an interest in the deed  
7 of trust. What would prevent -- other than the guide,  
8 the online servicing guide, what would prevent  
9 Green Tree or Ditech from selling this loan to someone  
10 else? And I guess a follow-up is you could provide  
11 them with the original note that's signed over in  
12 blank?

13           **THE WITNESS:** Endorsed in blank, yes.

14           **THE COURT:** And the deed doesn't show anybody  
15 other than Green Tree as having an interest. So the  
16 question I have, is there anything other than the guide  
17 that would prevent you from selling that loan?

18           **THE WITNESS:** Not that I know of. I don't  
19 know.

20           **THE COURT:** Okay. Does that raise any  
21 additional questions?

22

23           FURTHER REDIRECT EXAMINATION OF CHRISTY CHRISTENSEN

24           **BY MR. SECHRIST:**

25           Q. As you sit here today, being a seasoned and

1 experienced employee with Ditech and this not being the  
2 first time that you've seen these documents and this  
3 set of facts, do you have any doubt at all that  
4 Fannie Mae is the owner and Ditech considers Fannie Mae  
5 to be the owner of the note and deed of trust?

6 **MR. BOHN:** Objection. Calls for a legal  
7 conclusion regarding ownership.

8 **THE COURT:** I'm going to let her testify what  
9 her understanding is.

10 **THE WITNESS:** Yes, we understand that  
11 Fannie Mae is the owner of the loan.

12 **BY MR. SECHRIST:**

13 Q. Does Ditech feel that it currently has the  
14 right to sell the loan without Fannie Mae's advice and  
15 consent?

16 A. No.

17 Q. And that would also be true on 11/22/13,  
18 November 22nd, 2013; is that correct?

19 A. Correct.

20 **THE COURT:** Any more, Mr. Bohn?

21  
22 RE-CROSS-EXAMINATION OF CHRISTY CHRISTENSEN

23 **BY MR. BOHN:**

24 Q. To clarify, you base your testimony regarding  
25 Fannie Mae's alleged ownership on your business

1 records; correct?

2 A. Our system of record, yes.

3 Q. And that's computer screens; correct?

4 A. Correct.

5 Q. Do you review any paper documents to prepare  
6 for court?

7 A. Only what's been produced here.

8 Q. Okay. You haven't seen a paper, a piece of  
9 paper, assigning or transferring the note or the deed  
10 of trust to Fannie Mae, have you?

11 A. No, I have not.

12 **MR. BOHN:** No further questions.

13 **THE COURT:** Any more?

14 **MR. SECHRIST:** Nothing further, Your Honor.

15 **THE COURT:** Thank you, Ms. Christensen.

16 **THE WITNESS:** Thank you.

17 **THE COURT:** I like the way you spell your  
18 name, by the way. I like the "E-N" and not the "O-N."

19 **THE WITNESS:** Thank my husband.

20 *(Witness excused.)*

21 **THE COURT:** Anyone else today?

22 **MR. SECHRIST:** We have no one else today.

23 **THE COURT:** That's fine. Let's plan on 10:30  
24 tomorrow.

25 **MS. MORGAN:** I recognize I need to make a

1 decision about Ms. Moses sooner or later because the  
2 Blue Jeans feed, I don't know if it's active as of when  
3 court starts at 10:30.

4 **THE COURT:** Did you communicate with Tatyana  
5 with the information? We were anticipating that  
6 witness after -- probably the first witness after  
7 lunch. If you haven't communicated with Tatyana, she  
8 may already be gone for the day. Then you may be out  
9 of luck because it may not happen before tomorrow and  
10 it may be too late.

11 **MS. MORGAN:** That's what I was worried about.

12 **THE COURT:** You're welcome to go back and see  
13 if she's there and talk to her right now.

14 **MR. BOHN:** I just wanted to let the Court  
15 know I've got a number of motions scheduled for 8:30 in  
16 the morning. I have associates to cover some, but a  
17 couple I have to. I may or may not be here by 10:30.

18 **THE COURT:** We'll wait a few minutes for you.  
19 Off the record.

20 (Proceedings adjourned at 3:24 p.m.)

21 -o0o-

22 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
23 PROCEEDINGS.

24  
25   
/s/ Kimberly A. Farkas, RPR, CRR

<p><b>MR. ANTHONY: [2]</b> 58/9 58/12</p> <p><b>MR. BOHN: [42]</b> 6/6 6/18 6/20 8/4 8/6 8/14 9/6 14/25 20/3 24/8 28/9 33/7 33/15 33/23 34/1 45/7 50/5 56/15 57/14 61/6 67/18 68/19 77/13 77/24 78/23 84/19 88/13 91/5 92/10 94/4 94/9 94/12 100/1 101/7 105/22 108/6 108/9 110/18 115/22 122/5 123/11 124/13</p> <p><b>MR. HADDAD: [1]</b> 8/3</p> <p><b>MR. SECHRIST: [28]</b> 6/11 6/21 79/3 79/6 79/11 84/13 84/17 89/15 91/2 92/8 92/12 93/8 94/3 94/10 97/12 100/4 101/5 101/15 105/23 108/7 108/12 110/15 113/4 115/24 119/19 120/19 123/13 123/21</p> <p><b>MS. MORGAN: [29]</b> 6/9 6/13 8/19 9/3 9/11 9/16 14/22 33/5 33/20 34/4 45/1 50/3 57/12 57/21 61/2 67/22 67/24 68/21 77/14 78/1 78/7 78/20 79/1 79/12 93/16 119/14 119/18 123/24 124/10</p> <p><b>THE CLERK: [5]</b> 8/11 34/13 58/4 79/18 101/21</p> <p><b>THE COURT: [100]</b> 6/3 6/16 6/19 7/25 8/5 8/7 8/18 8/25 9/5 9/10 9/12 9/21 15/3 15/7 20/5 33/6 33/8 33/18 33/22 33/24 34/3 34/5 34/8 34/10 34/16 45/6 45/12 50/4 56/17 57/13 57/15 57/20 57/23 58/8 58/11 61/1 61/7 67/21 67/23 77/15 78/4 78/22 78/24 79/5 79/8 79/13 79/22 84/16 84/18 84/20 88/15 91/4 91/6 93/10 93/14 94/1 94/6 94/11 97/14 100/3 101/6 101/8 101/11 101/14 101/17 108/10 110/17 110/19 113/5 115/23 116/1 116/7 116/13 116/18 116/20 117/4 117/10 117/16</p>	<p>117/22 118/9 118/16 118/24 119/7 119/11 119/16 120/20 121/1 121/4 121/13 121/19 122/7 122/19 123/12 123/14 123/16 123/20 123/22 124/3 124/11 124/17</p> <p><b>THE WITNESS: [40]</b> 8/13 15/5 24/10 34/7 34/9 34/15 56/16 57/17 58/6 60/25 67/20 77/17 78/5 78/8 79/20 88/17 93/12 97/16 101/23 105/24 116/6 116/11 116/17 116/19 116/22 117/9 117/12 117/19 118/4 118/15 118/23 119/3 119/9 120/25 121/3 121/12 121/17 122/9 123/15 123/18</p> <p><b>\$</b></p> <p><b>\$10,200 [1]</b> 11/22 <b>\$100 [2]</b> 71/22 72/25 <b>\$100.25 [1]</b> 76/3 <b>\$120 [1]</b> 75/18 <b>\$125 [1]</b> 66/8 <b>\$25 [8]</b> 66/10 66/13 66/16 74/6 74/14 74/18 75/1 75/9 <b>\$276.75 [2]</b> 76/19 92/23 <b>\$3 [2]</b> 23/7 23/10 <b>\$3 million [2]</b> 23/7 23/10 <b>\$30.75 [2]</b> 76/15 76/18 <b>\$45 [1]</b> 73/8 <b>\$50 [5]</b> 69/24 71/12 73/3 73/15 73/21 <b>\$91 [1]</b> 75/24 <b>\$92.25 [2]</b> 66/5 76/12</p> <p><b>-</b></p> <p><b>-oo [1]</b> 124/21</p> <p><b>/</b></p> <p><b>/S [1]</b> 124/25</p> <p><b>0</b></p> <p><b>04 [7]</b> 85/17 95/15 95/17 95/18 95/22 95/23 95/24</p> <p><b>1</b></p> <p><b>10 [9]</b> 4/4 4/25 11/13 12/3 29/18 70/6 80/10 84/3 84/3 <b>10.05 [1]</b> 68/5 <b>100 [1]</b> 4/9 <b>100 percent [1]</b> 14/2</p>	<p><b>101 [1]</b> 3/18 <b>102 [1]</b> 4/11 <b>107 [6]</b> 12/5 12/19 16/8 16/17 16/24 16/25 <b>108 [1]</b> 5/11 <b>10:30 [3]</b> 123/23 124/3 124/17 <b>11 [1]</b> 5/4 <b>11-H1752 [1]</b> 50/24 <b>11/22/13 [1]</b> 122/17 <b>11/30/2011 [1]</b> 52/11 <b>110 [1]</b> 5/12 <b>113 [1]</b> 4/11 <b>116 [18]</b> 12/5 12/17 14/2 16/7 16/23 17/4 17/6 17/8 17/11 17/23 21/16 21/19 21/20 21/23 32/3 32/8 32/24 33/2 <b>116.3102 [1]</b> 47/7 <b>119 [1]</b> 4/11 <b>11:00 or [1]</b> 33/13 <b>12 [6]</b> 5/5 8/18 9/2 9/11 9/13 9/15 <b>12-month [1]</b> 71/11 <b>12/1/04 [3]</b> 95/15 95/17 95/23 <b>12/16 [4]</b> 50/19 50/22 51/3 51/3 <b>12/16/2011 [1]</b> 51/2 <b>12/28 [3]</b> 51/4 51/8 51/9 <b>12/28/2011 [1]</b> 56/12 <b>12/8/04 [4]</b> 85/17 95/18 95/22 95/24 <b>122 [1]</b> 4/11 <b>12:30 [3]</b> 33/19 33/21 33/25 <b>13 [5]</b> 30/23 30/23 30/23 108/25 122/17 <b>132 [3]</b> 39/1 46/8 48/19 <b>133 [9]</b> 1/5 11/15 39/1 46/9 48/20 50/25 82/18 103/24 109/25 <b>135 [1]</b> 40/25 <b>136 [1]</b> 41/2 <b>138 [2]</b> 41/15 48/25 <b>139 [1]</b> 54/15 <b>14 [12]</b> 5/6 38/23 38/25 40/13 40/24 43/14 45/3 45/14 45/16 46/8 48/3 50/13 <b>140 [3]</b> 41/16 42/11 54/24 <b>142 [1]</b> 42/14 <b>144 [1]</b> 43/14 <b>146 [4]</b> 44/2 50/13 56/10 56/11 <b>148 [1]</b> 95/4</p>	<p><b>149 [1]</b> 96/4 <b>14th [1]</b> 100/22 <b>15 [16]</b> 5/7 84/4 84/8 84/9 84/17 84/21 84/22 84/24 85/3 85/8 85/10 94/21 95/3 99/13 100/17 100/21 <b>15th [2]</b> 73/11 75/20 <b>16 [4]</b> 50/19 50/22 51/3 51/3 <b>16.1 [1]</b> 8/25 <b>1635 [1]</b> 3/13 <b>16th [2]</b> 42/23 49/23 <b>176 [1]</b> 67/2 <b>19 [4]</b> 67/1 67/1 68/4 102/10 <b>191 [1]</b> 68/4 <b>19th [1]</b> 75/11 <b>1:00 o'clock [1]</b> 33/20 <b>1st [4]</b> 59/2 66/15 107/5 111/10</p> <p><b>2</b></p> <p><b>2-0 [1]</b> 90/11 <b>2.67 [1]</b> 8/24 <b>20 [16]</b> 4/4 5/8 10/9 27/7 27/12 30/23 90/9 90/10 90/11 91/4 91/7 91/8 92/24 93/1 93/2 103/5 <b>200 [1]</b> 3/13 <b>2001512 [4]</b> 85/14 95/11 95/14 95/25 <b>2004 [2]</b> 85/6 87/3 <b>2004-T [1]</b> 1/14 <b>2008 [1]</b> 35/3 <b>2010 [3]</b> 59/2 65/16 65/19 <b>2011 [40]</b> 35/7 36/13 39/19 40/1 40/16 40/19 42/3 42/23 43/7 43/8 43/9 43/11 43/24 44/18 46/15 49/23 51/2 52/11 52/15 56/12 59/8 59/17 59/22 59/24 60/5 60/16 65/2 73/11 73/18 86/9 86/16 87/3 87/25 88/4 91/19 100/19 106/10 106/22 107/5 115/8 <b>2011-2013 [1]</b> 89/18 <b>2012 [10]</b> 18/12 43/25 51/12 74/3 74/11 74/19 75/2 75/11 75/20 75/25 <b>2013 [19]</b> 11/20 13/11 20/13 23/16 25/6 27/8 27/14 27/19 27/21 30/14 44/19 59/17 76/5 87/20 89/18 98/24 99/10</p>	<p>115/11 122/18 <b>2014 [4]</b> 22/3 55/22 59/15 60/1 <b>2015 [2]</b> 32/13 102/23 <b>2016 [2]</b> 31/10 100/23 <b>2019 [2]</b> 1/21 6/1 <b>2034 [1]</b> 111/10 <b>20th [1]</b> 74/3 <b>21 [7]</b> 5/9 91/24 92/10 93/3 93/5 93/10 94/8 <b>218 [5]</b> 92/13 92/15 92/22 93/4 94/3 <b>21st [2]</b> 75/2 106/22 <b>2260 [1]</b> 3/6 <b>22nd [3]</b> 11/20 73/18 122/18 <b>24 [1]</b> 23/13 <b>25 [1]</b> 103/5 <b>25th [3]</b> 40/1 40/18 74/19 <b>26 [1]</b> 76/5 <b>26 percent [1]</b> 23/14 <b>28 [5]</b> 1/21 6/1 51/4 51/8 51/9 <b>28th [4]</b> 51/5 75/25 87/20 98/24 <b>2B 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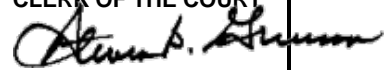
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DISTRICT COURT  
CLARK COUNTY, NEVADA

SATICOY BAY LLC )  
SERIES 133 McCLAREN, )  
Plaintiff, ) CASE NO. A693882  
vs. ) DEPT. NO. XXX  
GREEN TREE SERVICING, )  
LLC; THE BANK OF NEW )  
YORK MELLON FKA THE )  
BANK OF NEW YORK, as )  
SUCCESSOR TRUSTEE TO )  
JPMORGAN CHASE BANK, )  
N.A., AS TRUSTEE FOR )  
THE CERTIFICATEHOLDERS )  
OF CWABS MASTER TRUST, )  
REVOLVING HOME EQUITY )  
LOAN ASSET BACKED NOTES )  
SERIES 2004-T, )  
Defendant. )

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
*BENCH TRIAL - DAY 2 OF 2*  
BEFORE THE HONORABLE JERRY A. WIESE, II  
TUESDAY, JANUARY 29, 2019  
AT 10:33 A.M.  
LAS VEGAS, NEVADA

REPORTED BY: KIMBERLY A. FARKAS, NV CCR No. 741

Kimberly A. Farkas, RPR, CRR  
(702) 671-3633 • realtimetrialslv@gmail.com

1 APPEARANCES:

2  
3 For the Plaintiff:

4  
5 MICHAEL F. BOHN, ESQ.  
6 Bohn Law Offices  
7 2260 Corporate Circle #480  
8 Henderson, NV 89074  
9 (702) 642-3113  
10 mbohn@bohnlawfirm.com

11  
12 For the Defendants:

13 JARED M. SECHRIST, ESQ.  
14 MELANIE D. MORGAN, ESQ.  
15 Akerman, LLP  
16 1635 Village Center Circle, Ste. 200  
17 Las Vegas, Nevada 89134  
18 (702) 634-5022  
19 jared.sechrist@akerman.com  
20 melanie.morgan@akerman.com

21  
22 CHRISTOPHER B. ANTHONY, ESQ.  
23 Boyack Orme & Anthony  
24 7432 W. Sahara Ave. #101  
25 Las Vegas, Nevada 89117  
(702) 562-3415  
canthony@boyacklaw.com

**I N D E X**

Witness:	Direct:	Cross:	Redirect:	Recross:
Claudette Carr	5	64		

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1 LAS VEGAS, NEVADA, TUESDAY, JANUARY 29, 2019

2  
3 P R O C E E D I N G S

4 \* \* \* \* \*

5 **THE COURT:** We're back on the record, Case  
6 No. A693882, *Saticoy v. Green Tree*. We are in  
7 defendants' case.

8 Your next witness is on video. Who is this?

9 **MR. SECHRIST:** Defendants call Claudette  
10 Carr.

11 **THE COURT:** Ms. Carr, if you could please  
12 raise your right hand and be sworn.

13 *(Witness sworn.)*

14 **THE CLERK:** Can you please state and spell  
15 your name for the record.

16 **THE WITNESS:** My name is Claudette Carr. It  
17 is C-L-A-U-D-E-T-T-E. My last name is C-A-R-R.

18 **THE COURT:** Great. Thank you, ma'am. Go  
19 ahead and be seated.

20 **THE WITNESS:** Thank you.

21  
22 DIRECT EXAMINATION OF CLAUDETTE CARR

23 **BY MR. SECHRIST:**

24 Q. Good morning, Ms. Carr. I'm Jared Sechrist,  
25 and I represent Green Tree in this litigation.

1 Can you please introduce yourself to the  
2 Court, and let the Court know where you work.

3 A. Okay. I should say good morning to you.  
4 It's good afternoon for us. My name is Claudette Carr.  
5 I'm employed with Fannie Mae. I've worked with the  
6 organization for over 30 years. I am a mortgage  
7 operations manager. That's my current position that  
8 I've been in for at least 15 years.

9 Q. Can you describe the duties and  
10 responsibilities you have as a mortgage operations  
11 manager?

12 A. So, my role entails I manage anywhere from 12  
13 to 15 individuals whose responsibility is to ensure  
14 that the loans that are being reported by our servicers  
15 are being reported and reconciled in accordance with  
16 our guidelines.

17 Q. As part of the fulfillment of those job  
18 responsibilities, have you been engaged in Nevada HOA  
19 lien foreclosure litigation before?

20 A. Yes, I have.

21 Q. Have you testified in that sort of litigation  
22 before?

23 A. I have testified in several litigations last  
24 year.

25 Q. And in performing those -- in preparation for

1 your testimony in those instances of litigation, what  
2 did you have to do to prepare?

3 A. Well, my job responsibility preparing for  
4 this was to get the associated documents for this  
5 particular loan. I had to take those documents and go  
6 ahead and confirm that it's the information that we  
7 have in our servicer reporting system, that that  
8 information is representative of what's stipulated to  
9 the Court.

10 Q. Thank you. Can you please describe for the  
11 Court or provide an overview of Fannie Mae's business.

12 A. All right. Well, Fannie Mae is one of the  
13 two largest government-sponsored entities that provides  
14 liquidity into the secondary market. Fannie Mae  
15 actually over a course of years provides liquidity by  
16 purchasing loans. We have two different channels that  
17 we purchase loans -- in which we purchase loans  
18 through, a mortgage-backed security or in a cash  
19 portfolio.

20 Q. Does Fannie Mae originate loans?

21 A. Fannie Mae does not originate loans. Our  
22 charter does not allow that.

23 Q. What kind of loans does Fannie Mae acquire?

24 A. Mortgage loans.

25 Q. Any kind?

1           A.    No.   Mortgage loans.

2           Q.    And in what geographic markets does  
3 Fannie Mae operate?

4           A.    It's across the United States and its  
5 territories.

6           Q.    In every state?

7           A.    Every state in the U.S.

8           Q.    And how often does Fannie Mae purchase  
9 mortgage loans?

10          A.    Fannie Mae purchases loans on a daily basis.  
11 We purchase hundreds of thousands of loans daily over  
12 the year.

13          Q.    And can you give us a rough estimate or sense  
14 of scale as to how many loans Fannie Mae owns?

15          A.    Approximately, we have 17.5 million loans on  
16 our books at this current time.

17          Q.    What does Fannie Mae do with the loans it  
18 acquires?

19          A.    Well, you have two things that you would do.  
20 You would either put the loans into a mortgage-backed  
21 security. We pool the loans so we securitize them. So  
22 we have them sitting in a mortgage-backed security or  
23 we have them sitting in the cash portfolio.

24          Q.    And with respect to the loans in the cash  
25 portfolio, how does Fannie Mae earn a return on those

1 loans?

2 A. We earn that return based on the interest  
3 that's paid to us.

4 Q. What about the loans that are securitized?

5 A. The loans that are securitized, we have a  
6 guarantee fee that we receive.

7 Q. When an investor -- what does an investor  
8 actually purchase upon buying a certificate to a  
9 mortgage-backed security?

10 A. When the investor gets a loan into the  
11 mortgage-backed security, what they get is scheduled  
12 principal and interest. As long as that loan remains  
13 in the pool, they have guaranteed scheduled principal  
14 and interest for that loan.

15 Q. Who bears the financial risk if a borrower  
16 defaults on payments due on one of the loans in a cash  
17 portfolio?

18 A. Fannie Mae does.

19 Q. And who bears the financial risk if the  
20 borrower defaults on one of the loans in an MBS?

21 A. Fannie Mae does.

22 Q. And how is that? What form of responsibility  
23 does Fannie Mae have for loans that are defaulted that  
24 are pooled?

25 A. Okay. So what happens is Fannie Mae has the



1 guarantee that that certificate holder receives that  
2 scheduled principal and interest regardless if it's  
3 received from the borrower. So each month that the  
4 borrower does not pay, that scheduled principal and  
5 interest Fannie Mae has to pass that on out of their  
6 corporate funds on to the security holder or the  
7 certificate holder.

8 Q. Let's talk about some basic loan documents.  
9 Can you describe your understanding of the difference  
10 between a note and a deed of trust as they relate to  
11 mortgage loans on property in Nevada?

12 A. Well, what I do know is the note is a promise  
13 to pay. And then you have a deed that provides the  
14 collateral, which provides a lien interest in that real  
15 property that's described in the loan.

16 Q. And when you talk about Fannie Mae owning a  
17 loan, which of those documents do you mean Fannie Mae  
18 owns?

19 A. Fannie Mae owns both the note and the deed of  
20 trust.

21 Q. Is that true of all loans that Fannie Mae  
22 owns?

23 A. All the Fannie Mae loans. We purchase note  
24 and deed of trust.

25 Q. And how important is it for Fannie Mae to

1 acquire and maintain ownership of the security interest  
2 in loans it purchases?

3 A. Well, that's very important. That protects  
4 Fannie Mae's interest. In the event that that loan  
5 goes into default, that deed of trust provides the  
6 interest lien in that property.

7 Q. And what part of Fannie Mae's business  
8 involves acquiring loans that are not secured by real  
9 property?

10 A. We don't have that within the business.

11 Q. Would it be accurate to say that Fannie Mae  
12 never owns a note without also owning a security  
13 interest, meaning the associated deed of trust?

14 A. That is accurate.

15 Q. I'd like to talk about the loan at issue in  
16 this case, which is a loan secured by property at 133  
17 McClaren Street in Henderson, Nevada.

18 Are you familiar with that loan?

19 A. Yes, in preparation for the trial, I have  
20 seen this.

21 Q. Okay. And if we could, could you please turn  
22 to volume IV of the exhibit binders, and we're going to  
23 look at Exhibit 44.

24 A. I have it.

25 Q. Can you tell me, do you recognize Exhibit 44?

1 A. Yes, I do.

2 Q. And have you ever seen Exhibit 44 before?

3 A. Yes, I have, in preparation for this trial.

4 Q. Okay. What is Exhibit 44?

5 A. This is an exhibit which is a written promise  
6 to repay \$220,000. And it is signed by Charles Wight  
7 and Tara Wight, and they're obligated to repay this  
8 \$220,000 based on the different interest that's noted  
9 in this loan, the interest amount and the payment.

10 Q. When you had spoken previously about notes  
11 and deeds of trust, is this an example of a note?

12 A. It is.

13 Q. Let's look at some details on the repayment  
14 terms on this. In reference to Exhibit 44, what does  
15 this document tell you about the maturity date or when  
16 the loan should be paid in full?

17 A. It tells us that this loan should be paid in  
18 full December 1st, 2034.

19 Q. Has this loan been paid in full?

20 A. No, it has not been paid in full.

21 Q. And if we turn to Bates stamp GTS WIGHT 2150,  
22 that should be the last page of the exhibit. You see a  
23 stamp that starts with --

24 A. I see it.

25 Q. Do you see the "Pay to the order" stamp on

1 the left side?

2 A. Yes, I do.

3 Q. Can you tell me what that stamp is?

4 A. All right. This is a blank endorsement for  
5 Countrywide for this particular note.

6 Q. Okay. And what does that do? What does that  
7 blank endorsement do?

8 A. The blank endorsement is the holder of the --  
9 of this -- the ability to perform certain officering  
10 responsibilities or obligations that may come up with  
11 this particular loan.

12 Q. And when Fannie Mae acquires loans, does it  
13 sometimes ask that the notes be endorsed in blank?

14 A. That is Fannie Mae's business practice.

15 Q. Why does it do that?

16 A. It's an ease of doing business. Because  
17 Fannie Mae does not work directly with the borrowers.  
18 Fannie Mae has a group of approved servicers that works  
19 on their behalf.

20 Q. Let's look at Exhibit 1. So we're going to  
21 turn to volume I of the exhibit binders.

22 Do you recognize this deed of trust?

23 A. Yes, I do.

24 Q. Do you recognize this as the deed of trust  
25 that pertains to the property we're talking about today

1 or the loan that we're talking about, rather?

2 A. Yes, I do.

3 Q. In practical terms, what does it mean for  
4 Charles and Tara Wight to grant a security interest in  
5 the property?

6 A. Well, what it means is this is the lien  
7 interest for that -- for the property. And if they  
8 don't repay, whoever owns this has the ability to have  
9 that interest within that loan.

10 Q. Near the bottom of the page, we see a line  
11 that says, "Nevada single-family Fannie Mae/Freddie Mac  
12 uniform instrument with MERS."

13 Do you see that?

14 A. I do.

15 Q. Do you know what that means?

16 A. In my words, this is basically somewhat of a  
17 pre-approval. That it's on Fannie Mae/Freddie Mac  
18 standard paper. So maybe at some point in time this  
19 loan may be sold to Fannie Mae, and if it is, it's  
20 pre-approved.

21 Q. And who's identified as the beneficiary of  
22 this deed of trust?

23 A. So, basically, in the document it states that  
24 MERS is the beneficiary under the security instrument.

25 Q. What is MERS?

1           A.    MERS is an electronic registry system that  
2 tracks entities and the documents.

3           Q.    At paragraph E, does Fannie Mae subscribe to  
4 MERS?

5           A.    Fannie Mae is a member of MERS.

6           Q.    Was Fannie Mae a member of MERS in 2013?

7           A.    Yes, they were.

8           Q.    If we look at paragraph E of Exhibit 1, do  
9 you see the statement that says, quote, "MERS is a  
10 separate corporation. It's acting solely as nominee  
11 for lender and lender's successors and assigns. MERS  
12 is the beneficiary under this security instrument,"  
13 closed quote.

14                   Did I read that correctly?

15           A.    Yes, you did.

16           Q.    What do you understand "lender and lender's  
17 successors and assigns" to mean?

18           A.    So Fannie Mae's business practice is  
19 basically Fannie Mae has lenders. They have servicers  
20 that acts on behalf of them. So, again, it's still  
21 somebody that's acting on behalf of Fannie Mae.

22           Q.    Does this deed of trust list who will become  
23 the successor to the original lender, Countrywide?

24           A.    Well, it's stating the lender and lender's  
25 successors. And if Fannie Mae bought the loan, then

1 they become the successor from Countrywide.

2 Q. Right. But there's nothing in the deed of  
3 trust that specifically identifies who the  
4 subsequent -- who the successor lender would be, is  
5 there?

6 A. No, there is not.

7 Q. Now, if we look at Bates page 13 of Exhibit  
8 1, and looking at paragraph 20. Do you see where it  
9 says the title of the paragraph is "Sale of Note/Change  
10 of Loan Servicer/Notice of Grievance;" right?

11 A. I do.

12 Q. And that paragraph states, "The note or a  
13 partial interest in the note, together with this  
14 security instrument, can be sold one or more times  
15 without prior notice to borrower."

16 Did I read that correctly?

17 A. You did.

18 Q. And what does that mean?

19 A. It means that it can be sold. It can be  
20 transferred. It can be sold without notice to the  
21 borrower.

22 Q. And when MERS serves as a beneficiary on  
23 behalf of others as a nominee, what rights, if any, did  
24 MERS have to the borrower's incoming statements on the  
25 loan?

1 A. They do not have any rights to any income.

2 Q. To whom does that income belong?

3 A. The income is to the owner.

4 Q. This deed of trust, if we look at the first  
5 page of it, was recorded November 23rd, 2004. What was  
6 Fannie Mae's relationship with MERS when the deed of  
7 trust was recorded?

8 A. Fannie Mae was a member of MERS.

9 Q. You already told us they were a member in  
10 2013. Have they been a member of MERS from 2004 until  
11 the present?

12 A. They are.

13 Q. Does Fannie Mae typically buy loans that have  
14 MERS serving as the record beneficiary of the deed of  
15 trust in a nominee capacity?

16 A. It can happen.

17 Q. Would you describe that as common?

18 A. It is common.

19 Q. And when Fannie Mae buys such loans, does it  
20 require there be any change made to who appears as  
21 record beneficiary of the deed of trust?

22 A. They do not.

23 Q. And why is that?

24 A. With Fannie Mae being a member of MERS, when  
25 Fannie Mae purchases the loan, and purchase the note,



1 it also tells, if that lender is a member of MERS, that  
2 Fannie Mae still has that ownership. And there is a  
3 paragraph that says that it's also assigned over to the  
4 lender and its successors. So Fannie Mae becomes the  
5 successor. Meaning, that they would not have to  
6 immediately change the document out of MERS into  
7 another name.

8 Q. Now, who owns this note and deed of trust  
9 today?

10 A. Fannie Mae does.

11 Q. And at a very general level, how did  
12 Fannie Mae come to own this note and deed of trust?

13 A. As we go on to some of the documents, it will  
14 be evident where Fannie Mae purchased this loan and  
15 placed it into the mortgage-backed security. I have to  
16 see the document. I want to say December 2004, but  
17 I'll need to see that document.

18 Q. We'll look at it.

19 After Fannie Mae purchased the loan until  
20 today, has anyone else ever owned the note and deed of  
21 trust?

22 A. Not to my knowledge.

23 Q. What is an authorized seller?

24 A. An authorized seller is an individual that  
25 will, orientation and different guidelines to be able

1 to perform business with Fannie Mae.

2 Q. Does Fannie Mae purchase loans only from  
3 authorized sellers?

4 A. Yes.

5 Q. And at what point in the life of a loan does  
6 Fannie Mae typically acquire it?

7 A. It's typically within a month or two after  
8 its origination.

9 Q. And why does Fannie Mae acquire loans  
10 originated by others instead of originating its own?

11 A. Fannie Mae's charter does not allow us to  
12 originate loans.

13 Q. Does Fannie Mae have any infrastructure in  
14 place to originate loans?

15 A. No, we do not.

16 Q. Does Fannie Mae usually purchase loans  
17 singularly or as a group?

18 A. Fannie Mae purchases loans on a daily basis  
19 in bulk.

20 Q. And after they make that purchase, that  
21 acquisition, what's the next step for Fannie Mae with  
22 respect to the loan ownership?

23 A. Well, once a loan is purchased, it either  
24 goes into the mortgage-backed security or it goes into  
25 a cash position. That information is now stored into

1 our acquisition system from the delivery, and then  
2 moves into the servicer investor reporting system for  
3 ongoing management of the loans.

4 Q. So that information is input  
5 contemporaneously with Fannie Mae's acquisition of an  
6 ownership interest?

7 A. That is correct.

8 Q. What sort of information does the seller  
9 convey to Fannie Mae when Fannie Mae acquires an  
10 ownership interest?

11 A. The seller has a group of attributes that  
12 will pretty much be the unpaid principal balance, the  
13 interest rate, the property address, the principal and  
14 interest payment. And there are a couple of others,  
15 but those are the most important.

16 Q. And that information goes into the Fannie Mae  
17 database; right?

18 A. It goes into Fannie Mae's delivery system in  
19 terms of getting that loan ready to determine if it's  
20 eligible to be purchased.

21 Q. What are the main information systems  
22 Fannie Mae uses to keep track of loans?

23 A. For an active loan, so you start out with an  
24 acquisition delivery system. And then we have the  
25 ongoing operational electronic system, which is

1 servicer investor reporting platform.

2 Q. If I refer to SIR, is that a fair way to  
3 refer to that one?

4 A. That is correct.

5 Q. And can you describe for me how Fannie Mae  
6 utilizes SIR, what sort of information is stored there  
7 and how Fannie Mae's business practices rely upon it?

8 A. So business practice is, basically, once a  
9 loan is purchased, there is ongoing management of that  
10 loan, collections of principal and interest payments,  
11 any officering responsibilities may happen. So that  
12 information is sent in from the servicers into our  
13 electronic system, which denotes the events that will  
14 take place on the loan throughout the life of the loan.

15 Q. When a particular event impacts a loan, when  
16 in time is the information regarding that event entered  
17 into SIR?

18 A. It's pretty much real time, as it occurs.

19 Q. Who's responsible for the inputting of that  
20 information?

21 A. The servicers are.

22 Q. How important is it to Fannie Mae's business  
23 that the information reflected in SIR is accurate and  
24 reliable?

25 A. It is very important, as this information is

1 used by a whole network of individuals that can make  
2 decisions on these different loans.

3 Q. Does Fannie Mae undertake any effort to  
4 ensure the accuracy of that information?

5 A. Yes, they do.

6 Q. Can you describe for me what those actions  
7 are?

8 A. On a monthly basis there is a reconciling  
9 process, where the servicers are expected to reconcile  
10 their portfolios. They're expected to ensure that what  
11 they've sent in to us represents what they have -- they  
12 have collected or received. On top of that, over  
13 annual process, some servicers are selected to have an  
14 annual review, which is done by a separate department.  
15 That's review comparing information that's been  
16 reported versus what's expected and what the servicers  
17 have within their systems.

18 Q. And does Fannie Mae have any restrictions in  
19 place for who can change information within SIR?

20 A. Certainly. If there's information that needs  
21 to be changed, there is a specific department of  
22 adjustment that can change information based on  
23 documentation that would have been received.

24 Q. Is it easy for anybody to do that or is that  
25 limited to specific persons?

1           A.    It's limited.  It's not -- it's an entire  
2 process to have any changes made.

3           Q.    How frequently do you use SIR in your work?

4           A.    Well, basically, I have to go into SIR -- I  
5 would say I go into SIR on a daily basis because  
6 there's information that I need to retrieve on a daily  
7 basis for loans.

8           Q.    And, in your experience, how accurate and  
9 reliable is SIR?

10          A.    It is -- it is accurate.  It's reliable.  
11 It's accurate.  It has to be accurate.

12          Q.    Did you look at SIR with respect to the loan  
13 we're talking about today to prepare for your  
14 testimony?

15          A.    I did.

16          Q.    If we can look at Exhibit 25, please.  And  
17 specifically in Exhibit 25, I want to turn to page 249.

18          A.    I do have it.

19          Q.    Okay.  This is entitled Fannie Mae Investor  
20 Reporting at the top with the words Loan Detail just  
21 below that.  And it identifies, I believe, a property  
22 tab selected; right?

23          A.    That is correct.

24          Q.    What is this document?

25          A.    This is a document that is retrieved from our

1 electronic system. It's a document that provides  
2 evidence for the particular loan that we'll be talking  
3 about today that ends in 833. It's evidence with the  
4 property address of 133 McClaren Street.

5 Q. Okay. And are you referencing something on  
6 this document that helps you know that this is 133  
7 McClaren?

8 A. Okay. So I do apologize. If you look at the  
9 second block, the second half of the document, the  
10 first line, it says, "property street address." And it  
11 gives you the 133 McClaren Street.

12 Q. And just for clarification, is this a view of  
13 a SIR page?

14 A. Yes. This is a document that was retrieved  
15 from SIR. And it gives you acquisition information.

16 Q. Can you explain what data we're seeing here  
17 that came from Fannie Mae from the seller and the  
18 servicer?

19 A. When I take a look at this information, if  
20 you take a look at the second -- well, the information  
21 at the top of the document is basically information  
22 that's current information. The information that we  
23 would have received would be the servicer name,  
24 servicer number. The Fannie Mae loan number is  
25 Fannie Mae's identifier.

1 Q. And that's the number -- that's the number in  
2 the top middle ending in 0833?

3 A. That is correct. The number below that is  
4 the servicer loan number. That information would have  
5 come from the servicer, ending in 2904. Information on  
6 the second half of the document that's on this  
7 document, on the property address, the city, the  
8 postal, that information below comes from the servicer.  
9 Excuse me. This would have come from the seller.

10 Q. Does this document identify the servicer by  
11 name?

12 A. It does.

13 Q. And who's the servicer?

14 A. The servicer is -- in the upper left-hand you  
15 will see servicer name, Fannie Mae, Ditech Financial,  
16 LLC sub-servicer.

17 Q. And it says "Fannie Mae/Ditech Financial,  
18 LLC, sub-servicer." What does that signify? Why are  
19 Fannie Mae and Ditech both identified there?

20 A. Well, Ditech is the sub-servicer on behalf of  
21 Fannie Mae. So it's just a little extension as to this  
22 is a Fannie Mae loan serviced by Ditech on behalf of  
23 Fannie Mae.

24 Q. Okay. If we look on the same panel over to  
25 the right in the lower row, there's an entry -- I'm



1 looking for the entry that says "pool number comments."

2 A. The entry that will say "pool number" will be  
3 in your upper portion of this document. It's in your  
4 third -- it's in your third column over, your second  
5 line. And it says "pool number," which is blank.

6 Q. Right. And it just says "comments;" right?  
7 Just to the right of that is "comments?"

8 A. That's correct.

9 Q. What does that signify?

10 A. Well, there's no pool number. So it tells me  
11 that this loan is not in a pool.

12 Q. Okay. As of when?

13 A. Basically, on this document I cannot tell,  
14 but as of this date right now, 3/20/18, it was in a  
15 pool.

16 Q. Is this loan currently in a pool?

17 A. This loan is not currently in a pool.

18 Q. Okay. If we look at --

19 **MR. SECHRIST:** Your Honor, I would move --  
20 Exhibit 25 is a declaration to which several -- several  
21 exhibits were appended. And we're going to use those  
22 exhibits separately with Ms. Carr today. And I'd like  
23 to have those admitted independently rather than as the  
24 entire exhibit. At this time, I would move to admit  
25 the page we were just referencing, which is GTS WIGHT

1 249.

2 **MR. BOHN:** No objection.

3 **THE COURT:** So page 249 of Exhibit 25 will be  
4 admitted.

5 (Page 249 of Exhibit 25 was admitted into  
6 evidence.)

7 **BY MR. SECHRIST:**

8 Q. Now, let's look at Bates page 248 of Exhibit  
9 25. Do you see that page?

10 A. Yes, I do. I have it.

11 Q. Okay. And is this also a screen from the SIR  
12 system?

13 A. Yes. This is information that's sitting in  
14 the SIR system. And it's providing information that  
15 pertains to the acquisition of this particular loan  
16 that ends in 0833.

17 Q. Okay. So we see the same loan number, and we  
18 also -- and that signifies that we're talking about the  
19 same loan; right?

20 A. That is correct.

21 Q. And what, if anything, does this record  
22 indicate about Fannie Mae's acquisition of the loan?

23 A. So if you look at the second half of this  
24 document, the second line, it gives you an acquisition  
25 date of 12/1/2004. That's the date that it was

1 acquired.

2 Q. And further down the table, we see some  
3 financial information, such as interest rate, maturity  
4 date. How do those dates compare to the terms of the  
5 note that we looked at as Exhibit 43? You can  
6 cross-reference if you need.

7 A. So this information that is on the note is  
8 cross-referenced with the information at acquisition,  
9 which gives us -- it gives us a PMI amount of  
10 \$1,181.01. And it also gives us -- the other page gave  
11 us the property address.

12 Q. And with reference to this page and the note,  
13 do they reflect the same maturity date?

14 A. Yes. We have -- yes. December 1, 2034.

15 Q. And do they reflect the same interest rate?

16 A. We have our interest rate of 2.25. Yes. The  
17 amount that would be charged will be 5 percent. Yes, I  
18 do have that.

19 Q. And going back to page 248, are there any  
20 data fields on this screen that do not change over  
21 time?

22 A. The information on this, however, the seller  
23 name, if there's a change of that seller name itself,  
24 that can be changed.

25 Q. What about the -- I'm sorry. Go ahead and

1 finish, please?

2 A. In this particular case where Countrywide  
3 changed its name from Countrywide to Bank of America,  
4 you will see here that we have seller name,  
5 Bank of America.

6 Q. What about the acquisition date, would that  
7 change?

8 A. The acquisition date, the reason all that  
9 information comes from delivery and will not change.

10 Q. According to Fannie Mae's records --

11 **MR. SECHRIST:** Actually, Your Honor, I'd like  
12 to move to admit page GTS WIGHT 248.

13 **THE COURT:** Mr. Bohn?

14 **MR. BOHN:** No objection.

15 **THE COURT:** Page 248 of Exhibit 25 will be  
16 admitted.

17 (Page 248 of Exhibit 25 was admitted into  
18 evidence.)

19 **BY MR. SECHRIST:**

20 Q. And according to Fannie Mae's records, who  
21 owned the loan immediately before the December 4th or  
22 the December 2004 acquisition date shown in SIR?

23 A. That would have been  
24 Countrywide/Bank of America.

25 Q. Okay. And is there something you're

1     referencing on page 248 that tells you that?

2             A.     On 248, I'm referencing the seller name, but  
3     because I've worked with this and I saw the schedule of  
4     mortgages, which is another document, you will see  
5     Countrywide on that.

6             Q.     Following Fannie Mae's acquisition, who owned  
7     the loan?

8             A.     Fannie Mae owns the loan.

9             Q.     Now, with the same exhibit, let's look at  
10    Exhibit 25, but let's turn to page 250.  Actually, it  
11    would be 250 through 260.

12            This is another series of SIR pages; correct?

13            A.     That is correct.

14            Q.     And we see at the top of these, it says, Loan  
15    Transaction History, Loan Activity History; right?

16            A.     That is correct.

17            Q.     Can you tell me generally what these pages  
18    are?

19            A.     Basically, this information is information  
20    that's giving you the monthly history since -- based on  
21    the document we have on page 260, it's giving you the  
22    information for the processing date.  Says 2/03/2009.  
23    You have a process date that's in the fifth column, the  
24    last line.  That's the first processing date that's on  
25    this particular record.  And if you bring it all the

1 way forward to page 250, the last processing date for  
2 this particular information that's on this was  
3 1/20/2018. This is information that's being submitted  
4 from the servicer pertaining to this loan, giving us an  
5 unpaid principal balance denoting that this loan is a  
6 Fannie Mae-owned loan.

7 Q. And, again, we see the same Fannie Mae loan  
8 number at the top of these pages; right?

9 A. Yes, you do.

10 Q. Now, can you just go column by column and  
11 identify for the Court what each of those columns  
12 includes?

13 A. All right. So we're on page 250. Your first  
14 column is blank. The second column would be a  
15 transaction ID. That transaction ID identifies the  
16 information that's submitted by the servicer into  
17 Fannie Mae's system. You have the third column, which  
18 talks about reversals. If there was some type of  
19 reversal on the loan, it will be seen in this column.

20 And all of this information is information  
21 that's being submitted by the servicer.

22 You have your column 4, which is stated  
23 Effective Date. That is the date the information that  
24 is sent to us, that it's effective. You have another  
25 column right next to that gives you the process date.

1 The process date is the date that Fannie Mae is  
2 processing the information in the SIR system.

3 Then you have the activity period, which  
4 associates the period that you're processing this  
5 information for.

6 Next column gives you the reported unpaid  
7 principal balance, which is the amount, the  
8 \$184,373.80. That's the amount that was recorded as of  
9 the 1/31/2018 activity period. And then you have if  
10 there was an interest difference.

11 Your next column it, will have an action code  
12 and an action description. And basically what you  
13 would expect to see here is, as you're seeing, it's  
14 zero, but there are additional action codes that will  
15 tell you this loan has been removed, if it has been  
16 paid off, it has been foreclosed.

17 Then you have the action date that's  
18 associated with whatever this particular action code or  
19 action date is reported.

20 Q. Where does this information primarily come  
21 from? Who provides it?

22 A. This information is submitted from the  
23 servicers.

24 Q. And how often do Fannie Mae's servicers  
25 provide information like we see in these pages?

1           A.    It's real time, and they must submit at least  
2   once a month.

3               **MR. SECHRIST:**   Your Honor, I'd like to move  
4   to admit Bates pages GTS WIGHT 250 to 260 of Exhibit  
5   25.

6               **MR. BOHN:**    No objections.

7               **THE COURT:**   Exhibit 25, pages 250 to 260,  
8   will be admitted.

9               (Pages 250-260 of Exhibit 25 were admitted  
10  into evidence.)

11   **BY MR. SECHRIST:**

12           Q.    And when the servicers report this  
13  information, I think you've told us before it gets put  
14  in fairly contemporaneously; right?

15           A.    This information comes from a file.  It's a  
16  file submission that comes into the SIR system.

17           Q.    And once it's submitted, is that information  
18  locked in time?

19           A.    It is.  Basically, it identifies here the  
20  date that it's processed.

21           Q.    So if I were to go look back at November of  
22  2013, after the HOA sale, the information that the  
23  servicer reported in November of 2013 would be the same  
24  that we see reflected in these pages; right?

25           A.    It will be.



1 Q. And here that would be Ditech; correct? They  
2 are the servicer that will be sending this information?

3 A. Yes. Ditech is the current servicer. Yes,  
4 they would have sent that information.

5 Q. Would Ditech send information and payments to  
6 Fannie Mae if it wasn't the servicer?

7 A. No. It's the servicer's responsibility to --  
8 on a monthly basis they have to send us any principal  
9 and interest. Actually, if they don't have principal  
10 and interest collected, they must report the unpaid  
11 principal balance to acknowledge that the loan is a  
12 Fannie Mae loan that they're servicing on Fannie Mae's  
13 behalf.

14 **MR. SECHRIST:** I'll just point out briefly  
15 for the Court, Your Honor, we do have stipulated fact  
16 20, that Ditech was the servicer at the time of the  
17 sale.

18 **THE COURT:** Okay.

19 **BY MR. SECHRIST:**

20 Q. What, if anything, does this report tell you  
21 about whether Fannie Mae presently owns the loan?

22 A. Well, basically, Fannie Mae owns the loan.  
23 Ditech is reporting the loan. They have not reported  
24 to us action code that the loan has been removed from  
25 the portfolio.

1 Q. And is there something you can point to on  
2 pages 250 to 260 that indicates Fannie Mae's ownership?

3 A. If you take a look to your far right, you  
4 have an action code and an action description and an  
5 action date. And, basically, if this loan was  
6 foreclosed, repurchased, or paid off, I would expect to  
7 see that information denoted in these two columns. And  
8 I do not see that.

9 Q. And if Fannie Mae did not own the loan, would  
10 the servicer report information like we see on pages  
11 250 to 260?

12 A. No, they would not.

13 Q. Did you encounter anything in SIR or anywhere  
14 else in Fannie Mae's record-keeping systems indicating  
15 that Fannie Mae ever conveyed its interest in the  
16 McClaren Street property?

17 A. No, I did not.

18 Q. What does that tell you?

19 A. That Fannie Mae owned the loan at acquisition  
20 and they continue to own the loan as of today.

21 Q. And that would include November 2013; right?

22 A. That is correct.

23 Q. You spoke earlier about Fannie Mae sometimes  
24 buying loans and pooling them in a mortgage-backed  
25 security. When Fannie Mae purchases loans for

1 inclusion in an MBS pool, what sort of documentation is  
2 created?

3 A. The return evidence of that would be the  
4 schedule of mortgages when a loan is purchased and  
5 placed into a mortgage-backed security.

6 Q. And what's the function of a schedule of  
7 mortgages?

8 A. The schedule of mortgages serves as evidence  
9 for the purchase of the particular loan.

10 Q. Can you turn, please, to Exhibit 26. It will  
11 be in volume I. Do you recognize Exhibit 26?

12 A. Yes, I do.

13 Q. Can you please identify that for the Court.

14 A. So Exhibit 26 is the schedule of mortgages  
15 that's associated with the loan that we are referencing  
16 today. And that is -- I have three pages. If you go  
17 to page 3, Exhibit GPS WIGHT 0426, you will see, four  
18 lines down you will see the loan number and then an  
19 0833, which we saw on the note. Then you will see  
20 above that, the very first line you will see the  
21 property address of 133 McClaren Street. Information  
22 that's here, it will take us back to page 349, which is  
23 the first page, general information, that provides to  
24 you that the seller of this loan was Countrywide Home  
25 Loans. If you look at your right-hand side, you will

1 see the second line down there is an issue date of  
2 12/1/2004.

3 Q. I'm sorry, which page are you on right now?

4 A. I am on GTS 0349.

5 Q. And when you said "second line," you mean  
6 second line below the small break at the top of the  
7 page?

8 A. Yes. Do excuse me. Yes. The second portion  
9 of the document.

10 Q. Okay. And that line, just for clarity, would  
11 begin with, "Pass-through date 4.6 plan no. 737." Then  
12 we see issue date, 12/1/04; right?

13 A. That's correct, your far right-hand side.  
14 Correct.

15 If you look just below that, you will see a  
16 settlement date. That particular line is 1.6, but I'm  
17 referencing the settlement date of 12/06/04.

18 Q. What does that mean?

19 A. So the issue date, Fannie Mae's practice is  
20 that everything is moved back to the beginning of the  
21 month. The settlement date is the date that this is  
22 approved, it's settled. The information now moves out  
23 to the Feds. It's now pooled, and the Feds would be  
24 the ones that are responsible now for maintaining  
25 payout that's coming from Fannie Mae to them.

1           If you also take a look -- again, just to  
2     associate this loan, we spoke about it previously, a  
3     little earlier. If you take a look at, again, in that  
4     same block, the second block down, your left-hand side,  
5     there is a pool number. It's LB804602. This  
6     identifies that this loan was pooled in a  
7     mortgage-backed security. And this is a schedule of  
8     mortgages that identifies this particular loan within  
9     this pool, which is a receipt and evidence of purchase  
10    of this loan.

11       Q.    And where have you seen this schedule of  
12    mortgages before?

13       A.    As I was preparing for this trial.

14       Q.    Did you see this within Fannie Mae's records?

15       A.    Yes. It's in the schedule of mortgages  
16    information that we have in the SIR system.

17       **MR. SECHRIST:** At this time, Your Honor, I'd  
18    like to move to admit Exhibit 26.

19       **MR. BOHN:** Your Honor, it's about 100 pages  
20    long. There's only three pages that have any  
21    information on them. The rest of it is black.

22       **MR. SECHRIST:** We can address the redactions,  
23    if you'd like, Your Honor.

24       **MR. BOHN:** Those three pages, no objection.  
25    The black pages, they're completely unnecessary.

1           **THE COURT:** Is there a reason to do the black  
2 pages?

3           **MR. SECHRIST:** I don't need to have them in.  
4 We just have them for completeness.

5 **BY MR. SECHRIST:**

6           Q. Ms. Carr, we have a number of pages that have  
7 been fully redacted. Can you explain why those pages  
8 are redacted?

9           A. So when you have a pool of mortgage-backed  
10 securities, you have several loans that's pooled  
11 together. The information that's in this schedule of  
12 mortgages will give you information for each loan. So  
13 everything that's redacted would be information that's  
14 associated with other loans that's in this pool 804602.

15           **MR. SECHRIST:** We can do it separately, but  
16 it's going to take me a minute to find the individual  
17 pages.

18           **THE COURT:** Let's just admit 26. It doesn't  
19 matter.

20           **THE WITNESS:** If it helps you any, I think I  
21 saw it on page 78.

22           **MS. MORGAN:** 349 and 350.

23           **THE COURT:** It's fine.

24           **MR. SECHRIST:** We'll move on. So 26 is  
25 admitted?

1           **THE COURT:**   Yep.

2           (Exhibit 26 was admitted into evidence.)

3   **BY MR. SECHRIST:**

4           Q.   What, if anything, does this report tell you  
5 about whether Fannie Mae owns the McClaren Street loan?

6           A.   Well, this is a schedule of mortgages that  
7 identified that this was purchased and put into a pool.  
8 And Fannie Mae owned that information as this loan was  
9 purchased.

10          Q.   And after the loan was placed in the  
11 securitization pool, who owned it?

12          A.   Fannie Mae owned the loan in its trustee  
13 capacity.

14          Q.   After it was securitized, who bore the  
15 financial risk of the borrower defaulting on its  
16 obligation to make payments?

17          A.   That would be Fannie Mae.

18          Q.   Can you explain how that works, when a  
19 borrower defaults on a securitized loan?

20          A.   If a borrower defaults on a securitized loan,  
21 the certificate holder must get the guaranteed payment.  
22 And in order for them to get their guaranteed payments,  
23 if the borrower does not make those payments,  
24 Fannie Mae has to make those payments to the  
25 certificate holder. So Fannie Mae will be out of money

1 because the borrower has defaulted.

2 Q. And once a loan is associated with a  
3 securitized pool, does it stay securitized until  
4 maturity?

5 A. It does not necessarily stay securitized. If  
6 it meets one of the conditions that's within the trust,  
7 then it may be removed from the trust.

8 Q. Is one of those conditions default?

9 A. That is correct. If a loan becomes four plus  
10 months delinquent, and we have the process that we will  
11 have that loan re-classified from the pool, moving it  
12 from the pooled structure into a cash structure.

13 Q. What happens to the loans once they're --  
14 they go into the cash portfolio? Who has the risk for  
15 them? Who bears the risk for a borrower's default when  
16 a loan has been re-classified into a cash portfolio?

17 A. Fannie Mae continues to bear that risk.

18 Q. And can you tell if this loan with reference  
19 to Exhibit 26 was ever re-classified after it was  
20 securitized?

21 A. When you say 26, is that all of the  
22 Fannie Mae documents?

23 Q. I'm sorry. I misspoke. We're going to look  
24 at another one.

25 Let's turn to Exhibit 27, please.



1           A.    Okay.  I do have Exhibit GTS 502.  I have it.

2           Q.    Is this another -- this is four pages.  Are  
3 these four pages printouts from SIR?

4           A.    Yes.  This is a SIR document.  It's the SIR  
5 documents that actually evidence that this loan that  
6 ends in 0833 was removed from the pool basically using  
7 the consideration that this loan was four plus months  
8 delinquent.  And the ability to remove that loan  
9 through the reclassification process was triggered.  
10 And this is the information that denotes that the loan  
11 has been removed from the pool to its  
12 re-classification.

13          Q.    Can you walk the Court through these  
14 documents and how they permit you to understand that  
15 the loan was re-classified?

16          A.    Okay.  So, basically, you would take a look  
17 at the first page ending in 0502.  This is a loan  
18 management transaction.  Tell me when you have it.

19               **MR. BOHN:**  I'm good.

20               **MR. SECHRIST:**  Okay.  We're good.

21               **THE WITNESS:**  So we have four pages that I'm  
22 going to walk through.  This first page is somewhat of  
23 a summary that this is the loan reclassification.  It  
24 gives you the MIN number, which is your first line  
25 ending in 833.  It gives you the servicer number that's

1 associated with this Fannie Mae number. And then it  
2 tells you the activity type. This is the third line  
3 stating this is the event, which is the loan  
4 re-classification.

5 It goes on to give you some information  
6 stating that it was completed. If you go to your  
7 second column, you have the servicer name. You have  
8 the servicer loan number. Important information is  
9 submitted date. This was submitted for  
10 re-classification on 7/11/2013, which is that third  
11 line. It's giving you the effective date, which is the  
12 fourth line, telling you effective 7/1/13, this loan is  
13 re-classified.

14 If you go to the third column, the next  
15 significance here, you will see Pool Number. That  
16 second line pool number is blank. So that's evidence  
17 that this loan no longer is associated with that pool  
18 number that I identified earlier when I looked at the  
19 schedule of mortgages.

20 If you go to the lower half of this document,  
21 again, it's just giving you the date of submission, the  
22 effective date. It's giving you the status, stating  
23 that it's completed.

24 So this is a summary. If I take you to the  
25 second page, which is GTS WIGHT 0503 -- do you have it?

1                   **MR. SECHRIST:** I have it.

2                   **THE WITNESS:** Okay. The loan transaction  
3 details at the top of this page, again, it's pretty  
4 much the same information that was on the first page  
5 that I talked about; however, you now have some  
6 attribute names. And, basically, what this is doing is  
7 it's just moving the loan from a pool structure to a  
8 cash structure.

9                   You take a look at it. I'm not going to go  
10 line by line, but I just would like to show you the  
11 fourth line that says "Remittance Type." You see that  
12 there is a line, and if you go straight across on  
13 that -- hold on one second. Let me make sure. The  
14 remittance type was previously sitting at a 3. And  
15 that's associated with pool. It's now sitting at a 1,  
16 telling me that that's a cash loan. It gives you  
17 information about principal and interest, effective  
18 date.

19                  But the next important thing that I'd like to  
20 lead you to would be if you take a look at the block on  
21 your right-hand side, it's talking about transaction  
22 reimbursements and drafts. You have a principal  
23 reimbursed. That principal reimbursed denotes the  
24 outstanding principal balance that's due on this loan.  
25 That is the money that the certificate holder will

1 receive because this loan is no longer in that pool.  
2 And so there would be no longer a schedule of monthly  
3 payments. They're getting paid the entire outstanding  
4 balance of \$184,373.80.

5 **MR. SECHRIST:** I'd like to move to admit  
6 Exhibit 27.

7 **THE COURT:** Any objection?

8 **MR. BOHN:** My objection on 27, Your Honor,  
9 says it was issued after the sale, so it's irrelevant.

10 **THE COURT:** I'll admit it and consider it  
11 based on the weight.

12 (Exhibit 27 was admitted into evidence.)

13 **BY MR. SECHRIST:**

14 Q. Okay. I'd like to turn to talk a little bit  
15 about how Fannie Mae manages mortgages after it  
16 acquires them.

17 From Fannie Mae's perspective, what is  
18 mortgage servicing?

19 A. So once a loan is acquired, a loan has a  
20 maturity date, that you saw earlier. And within that  
21 period, from the time of delivery, which is  
22 acquisition, to the life of that ending, there is a set  
23 of responsibilities that must occur on this loan.  
24 There is responsibilities of collecting principal,  
25 interest, if that loan has a transfer, if that loan has

1 a foreclosure. So there's a host of responsibilities  
2 that must be managed on a loan after its delivery to  
3 Fannie Mae, after its acquisition to Fannie Mae.

4 Q. And Fannie Mae hires servicers to handle that  
5 rather than do it themselves; right?

6 A. Well, that's correct. Fannie Mae does not  
7 have enough individuals to manage 17.5 million loans.  
8 So we have approved servicers that work on our behalf.

9 Q. And when Fannie Mae contracts with a  
10 servicer, what right would the servicer have to keep  
11 for itself the payments due under the loan?

12 A. The servicer does not have any right to keep  
13 the payment.

14 Q. And can you explain how Fannie Mae's  
15 servicers are typically compensated?

16 A. So, basically, the servicers are given a  
17 servicing fee. So they're given -- from the interest  
18 that's being collected from that borrower, they're  
19 given a percentage of that as their compensation for  
20 servicing on behalf of Fannie Mae.

21 Q. What happens to the remainder of the payment?

22 A. The remainder of the payment comes to  
23 Fannie Mae. It's remitted by -- excuse me.

24 Q. When a loan Fannie Mae owns is defaulted to  
25 the point that foreclosure is necessary, who typically

1 conducts the foreclosure?

2 A. That is one of the servicers'  
3 responsibilities. So they will conduct that.

4 Q. And what authority, if any, does Fannie Mae  
5 give its servicers to foreclose on Fannie Mae's behalf?

6 A. They give them all the authority to work in  
7 their servicing responsibilities.

8 Q. Is that how most foreclosures happen on  
9 Fannie Mae loans?

10 A. That's how the foreclosures happen, because  
11 the servicers work on Fannie Mae's behalf.

12 Q. What documents govern Fannie Mae's  
13 relationships with its servicers?

14 A. You have a servicing guide.

15 Q. Where could I find that servicing guide?

16 A. The servicing guide is public on  
17 FannieMae.com.

18 Q. And anyone can access that?

19 A. That's correct.

20 Q. Are historical versions of the guide also  
21 available?

22 A. Yes, they are.

23 **MR. SECHRIST:** Your Honor, I'm going to talk  
24 about the guide. And we have separate portions.  
25 Rather than attempt to admit thousands of pages, I'm

1 going to do as I had done with the screenshots and talk  
2 about the sections that are germane to our discussion  
3 today and seek to have those admitted separately.

4 **BY MR. SECHRIST:**

5 Q. If we turn to Exhibit 25. And starting on  
6 page GTS WIGHT 263. I'd like you to look through that  
7 exhibit to GTS WIGHT 348, so about 80 pages or so.

8 A. So I have that information.

9 Q. I'm sorry?

10 A. I have that information.

11 Q. Okay. And at the top left there's a date on  
12 page 263 of March 14th, 2012; right?

13 A. That is correct.

14 Q. Can you tell me what these documents are, the  
15 page 263 to page 348 of Exhibit 25?

16 A. This is a servicing guide that was in effect  
17 at the time, March 14th, 2012. Again, the servicing  
18 guide, it just denotes the relationship between  
19 Fannie Mae and its servicer and what they're  
20 responsible and obligated to do.

21 **MR. SECHRIST:** I'd like to move to admit  
22 these pages, Your Honor, pages 263 through 348 of  
23 Exhibit 25, as an excerpt of the servicing guide.

24 **MR. BOHN:** Here's my problem with that, Your  
25 Honor. Pages 263 through 296 are from 2012. The

1 remaining pages, 297 through the end of the exhibit,  
2 are dated 2017, which, again, is after the foreclosure  
3 sale. I don't know what the differences are over the  
4 years between what's there and now, what counsel is  
5 going to --

6 **MR. SECHRIST:** I'm certainly okay to limit  
7 that then -- I do have one document I want to talk  
8 about in the second portion of that. We can discuss  
9 that separately.

10 **MR. BOHN:** Okay. That's fine.

11 **MR. SECHRIST:** If you have no objection to  
12 263 to 296?

13 **MR. BOHN:** No objection to that section.

14 **THE COURT:** 263 to 296 of Exhibit 25 will be  
15 admitted.

16 (Pages 263 to 296 of Exhibit 25 were admitted  
17 into evidence.)

18 **BY MR. SECHRIST:**

19 Q. Under the servicing contract, when  
20 foreclosure becomes necessary on a loan Fannie Mae  
21 owns, does Fannie Mae authorize its loan servicer to  
22 foreclose on Fannie Mae's behalf?

23 A. Yes, they do.

24 Q. And what governs those efforts? How does the  
25 servicer know how to administer that?



1           A.    The servicing guide gives them directions,  
2 instructions.

3           Q.    So if we turn to Section 401 of the guide,  
4 which we're going to find on page 286.

5           A.    I have that.

6           Q.    And we see that this section is titled  
7 Ownership of Mortgage Loan Files and Records. And then  
8 we see, I'll read this, "All records pertaining to  
9 mortgage loans sold to Fannie Mae, including, but not  
10 limited to, the following, are at all times the  
11 property of Fannie Mae and any other owner of a  
12 participation interest in the mortgage loan."

13                   And the bullet points, the first two, state,  
14 notes, and the second is security interests -- its  
15 security instruments.

16                   Did I read that correctly?

17           A.    You did.

18           Q.    Can you explain what that passage means.

19           A.    So, basically, these are two documents that  
20 we talked about earlier, the note and the deed of  
21 trust. We purchase both. We keep them together. The  
22 note is the written promise. The deed is the lien  
23 interest for Fannie Mae.

24           Q.    And under the servicing contract, when  
25 foreclosure becomes necessary on a loan Fannie Mae

1 owns, does Fannie Mae authorize its loan servicer to  
2 foreclose on Fannie Mae's behalf? I think you already  
3 answered that. I think you already answered that.

4 A. Yes.

5 Q. Why do Fannie Mae's servicers appear as the  
6 record beneficiary of deeds of trust corresponding to  
7 loans Fannie Mae owns?

8 A. Well, it's Fannie Mae's business practice.  
9 It provides an ease of doing that business. And it  
10 also, as Fannie Mae has authorized the servicers to  
11 work on their behalf, then it will be needed for the  
12 servicers name to be on that document because the  
13 servicer is who has the relationship with the borrower  
14 and will be sending information to the borrower. So on  
15 behalf of Fannie Mae, the servicer name is there to  
16 make it easy to continue the business obligations if  
17 needed.

18 Q. So as part of the servicing contract, a  
19 servicer collects payments; right?

20 A. That is correct.

21 Q. And they have interactions with the borrower;  
22 right?

23 A. That is correct.

24 Q. And from the borrower's perspective, would it  
25 be easier to deal with mortgage issues if Fannie Mae

1 showed up as the record beneficiary of the deed of  
2 trust?

3 **MR. BOHN:** Objection. Calls for speculation  
4 as to what's easier than unnamed third parties.

5 **THE COURT:** Sustained. Rephrase it.

6 **MR. SECHRIST:** I'll strike the question, Your  
7 Honor.

8 **BY MR. SECHRIST:**

9 Q. If a Fannie Mae loan were sold to a third  
10 party, who would make that decision and authorize that  
11 sale?

12 A. It has to be Fannie Mae.

13 Q. And that would be true of the note as well as  
14 the deed of trust; right?

15 A. They go along, note and deed of trust, yes.

16 Q. Okay. Now, let's look back briefly at  
17 Exhibit 1, the deed of trust.

18 A. I have that document.

19 Q. Okay. And we saw earlier that MERS was the  
20 original beneficiary of record. Do you recall that?

21 A. I do.

22 Q. And just remind us, what does it mean for  
23 MERS to be the beneficiary solely as nominee for the  
24 lender and the lender's successors and assigns?

25 A. They are the one -- that's the registry that

1 they document when the entity that's servicing, that's  
2 allowed to perform servicing obligations.

3 Q. Does it mean that MERS owned the loan when it  
4 was the record beneficiary of the deed of trust?

5 A. To my knowledge, no, it does not.

6 Q. And then if we look at Exhibit 6, which is  
7 titled Corporate Assignment of Deed of Trust, what is  
8 this document?

9 A. Well, I'm looking at a document where MERS is  
10 actually assigning this over to Green Tree Servicing,  
11 LLC.

12 Q. And this is recorded on May 28th, 2013. Who  
13 owned the loan at that point in time?

14 A. Fannie Mae did.

15 Q. You've testified that MERS was acting solely  
16 as nominee beneficiary on behalf of Fannie Mae. And  
17 that it had no ownership interest in the loan. So what  
18 was MERS assigning to Green Tree Servicing by this  
19 May 2013 assignment?

20 A. Assigning -- they were signing over this deed  
21 of trust document to the servicer that's performing  
22 servicing business on behalf of Fannie Mae, who is  
23 Green Tree Servicing, LLC.

24 Q. And what interest was MERS assigning? What  
25 was MERS's interest to be assigned?

1           A.    MERS was assigning a document.  They don't  
2 have any interest in it.

3           Q.    But they were the nominee beneficiary; right?

4           A.    They were Fannie Mae's nominee.

5           Q.    And that's the interest that they were  
6 conveying to Green Tree; is that right?

7                   **MR. BOHN:**  Objection.  Leading.

8                   **THE COURT:**  Sustained.

9           **BY MR. SECHRIST:**

10          Q.    What interest, if any, were they conveying to  
11 Green Tree?

12          A.    Can you repeat that, please.

13          Q.    By this assignment, what was MERS conveying,  
14 if anything?

15          A.    MERS was conveying that Green Tree now gets  
16 to perform any servicing obligations on behalf of  
17 Fannie Mae because Fannie Mae -- this is Fannie Mae's  
18 interest.

19          Q.    How, if at all, does the May 13 assignment  
20 from MERS to Green Tree affect your testimony that  
21 Fannie Mae owned the loan as of November of 2013, the  
22 date of the HOA sale?

23          A.    It does not change.  Because Fannie Mae  
24 continues to own the loan.

25          Q.    Why wasn't an assignment recorded when

1 Fannie Mae acquired the loan in 2004?

2 A. In 2004, Fannie Mae, as a nominee --  
3 Fannie Mae was a member of MERS. They were a nominee  
4 for Fannie Mae. Countrywide had this document in MERS.  
5 Countrywide sold this to Fannie Mae. Fannie Mae was  
6 the successor of Countrywide. So there was really no  
7 need to have this document put into another name at  
8 that point in time.

9 Q. Why not just assign the deed of trust to  
10 Fannie Mae instead of the servicer?

11 A. So Fannie Mae's business practice is to allow  
12 the servicer to work on their behalf. And so giving  
13 the servicer the assignment allows the servicer to work  
14 on Fannie Mae's behalf. Fannie Mae will not be doing a  
15 foreclosure if it became necessary.

16 Q. Can you tell me who had been assigned the  
17 deed of trust of the HOA sale in November of 2013?

18 A. I think I saw that on -- say that again. In  
19 November of 2013?

20 Q. Correct. Who had been assigned the deed of  
21 trust at that time?

22 A. Oh, that would have been Green Tree  
23 Servicing, LLC.

24 Q. Let's go back to Exhibit 25. And this time I  
25 want to look at page 261.

1 A. Okay. I have it.

2 Q. And this is another SIR screen?

3 A. That is correct.

4 Q. And can you tell me what we're looking at on  
5 page 261?

6 A. This is a SIR document that actually  
7 represents that there was a servicing transfer that  
8 happened between Bank of America and Fannie Mae Ditech  
9 Financial, LLC, servicer, effective 10/31/2011. Which  
10 you can see that on the fifth line in the middle of the  
11 page, it gives you an effective date of 10/31/2011. If  
12 I would take you to that second column, you have the  
13 transferor, which is Bank of America. And if I take  
14 you to the third column, the transferee, which is  
15 Fannie Mae Ditech Financial, LLC. So this is  
16 documentation stating that this portfolio was  
17 transferred from Bank of America to Fannie Mae Ditech,  
18 LLC.

19 Q. And what, if anything, in this record  
20 indicates that MERS or Green Tree had any ownership  
21 interest in the deed of trust or the corresponding note  
22 after Fannie Mae acquired the loan in 2004?

23 A. There's nothing in this record that will  
24 state that or imply that.

25 Q. Did you see anything in your review of

1 Fannie Mae's records to suggest anyone other than  
2 Fannie Mae owned the note or deed of trust after  
3 Fannie Mae acquired it in 2004?

4 A. No, I did not.

5 Q. And if that had been the case, if anyone had  
6 acquired such an interest, would you have expected to  
7 see that in Fannie Mae's records?

8 A. I would expect to see that, basically, that  
9 the loan would no longer be reported by  
10 Fannie Mae/Ditech.

11 Q. I'd like to go back --

12 **MR. SECHRIST:** I'd like to move to admit  
13 Exhibit 261.

14 **THE COURT:** Page 261 of Exhibit 25?

15 **MR. SECHRIST:** That's correct.

16 **MR. BOHN:** No objection.

17 **THE COURT:** Page 261 will be admitted.

18 (Page 261 of Exhibit 25 was admitted into  
19 evidence.)

20 **THE COURT:** How much more do you have,  
21 counsel?

22 **MR. SECHRIST:** About three minutes.

23 **BY MR. SECHRIST:**

24 Q. If we go back to the guide, which is in  
25 Exhibit 25, and this time I'd like to go to page --



1 starting on page 297 through page 348. This is the  
2 section that is dated 2017 that we discussed earlier.  
3 Can you take a look at that and let me know if you  
4 recognize it, please, Ms. Carr.

5 A. Yes, I do.

6 Q. Can you tell me what that is?

7 A. Yeah, this is the guide for sellers and  
8 servicers. It's the contractual responsibilities,  
9 obligations that must be performed by our approved  
10 sellers and servicers. It's the contract between  
11 Fannie Mae and the sellers and servicers.

12 Q. And what's the date of this edition -- what's  
13 the date of this edition?

14 A. 12/19/2017.

15 Q. And is this available online?

16 A. It is.

17 Q. And I'd like to look at page 315, Bates No.  
18 315. Do you see the section -- do you see the section  
19 entitled Physical Possession of the Note by the  
20 Servicer?

21 A. Yes, I do.

22 Q. And it reads, "In most cases, the servicer  
23 will have a copy of the mortgage note. If the servicer  
24 determines that it needs physical possession of the  
25 original mortgage note to represent the interests of

1 Fannie Mae in a foreclosure, bankruptcy, probate or  
2 other legal proceeding, the servicer may obtain  
3 physical possession of the original mortgage note by  
4 submitting a request directly to the document  
5 custodian."

6 Did I read that correctly?

7 A. You did.

8 Q. What do you understand that to mean?

9 A. Well, if a servicer needs a note, they will  
10 have to go to whoever that document custodian is to get  
11 that actual note in hand.

12 Q. And does the servicer have the right to sell  
13 that note without Fannie Mae's consent?

14 A. No, they don't.

15 Q. Regardless of the fact that it's endorsed in  
16 blank?

17 A. Endorsed in blank is allowing them to perform  
18 certain servicing obligations, and selling it is not  
19 one.

20 Q. Lastly --

21 **MR. SECHRIST:** Well, at this time, Your  
22 Honor, I'd like to move to admit pages 297 through 348,  
23 which include the page that we looked at, of Exhibit  
24 25.

25 **THE COURT:** The objection was that it's a

1 later edition. It doesn't apply to the sale in this  
2 case.

3 **MR. SECHRIST:** Yes. Your Honor, yesterday  
4 during questioning, you raised the issue about the  
5 alienability of the note because of being endorsed in  
6 blank. And you inquired of the witness about what  
7 prevented Ditech from being able to sell or transfer  
8 bearer paper. And --

9 **THE COURT:** I think if you listened to my  
10 question, I said with the exception of the guide.

11 **MR. SECHRIST:** Okay.

12 **THE COURT:** Because I know the guide prevents  
13 it in more than one place.

14 **MR. SECHRIST:** We would proffer this to --  
15 the Court is aware of that, but this is the evidence to  
16 support that, in addition to your awareness.

17 **THE COURT:** I don't know that this later  
18 edition of the guide is relevant. I'm not going to  
19 admit this. But I've heard the testimony. That's what  
20 you wanted in anyway.

21 **BY MR. SECHRIST:**

22 Q. The last thing I want to address is the  
23 FHFA -- are you familiar with the FHFA, Ms. Carr?

24 A. Yes, I am.

25 Q. And what is Fannie Mae's current relationship

1 with the Federal Housing Finance Agency?

2 A. FHFA is our conservator. We're in  
3 conservatorship.

4 Q. Did Fannie Mae ever release its lien on the  
5 133 McClaren Street property we've discussed today?

6 A. Not to my knowledge.

7 Q. To your knowledge, did anyone ever approach  
8 Fannie Mae about securing FHFA's consent to the  
9 extinguishment of Fannie Mae's lien on the McClaren  
10 Street property?

11 A. Not to my knowledge.

12 Q. And, to your knowledge, did anyone ever  
13 approach Fannie Mae about securing FHFA's consent to  
14 the extinguishment of Fannie Mae's lien on the McClaren  
15 Street property?

16 A. No.

17 Q. Did FHFA ever communicate to Fannie Mae that  
18 FHFA would consent to the extinguishment of  
19 Fannie Mae's lien on the property?

20 A. No, they did not.

21 Q. If FHFA had communicated that, would you  
22 expect to see it reflected in Fannie Mae's records?

23 A. I would expect to see it.

24 Q. If we can turn to Exhibit 28, please.

25 Do you recognize Exhibit 28?

1 A. Is this the FHFA letter?

2 Q. It is. Correct.

3 A. Yes, I do.

4 Q. Okay. Where have you seen this before?

5 A. In preparation for this testimony for this  
6 trial.

7 Q. Okay. And this is dated September 16th,  
8 2015; right?

9 A. That is correct.

10 Q. Can you tell me what this is?

11 A. The letter from FHFA. They're not releasing  
12 any lien assigning this interest.

13 Q. And this was a letter Fannie Mae sent to  
14 whom?

15 A. This letter went to all single-family  
16 servicers.

17 Q. If we look in the first paragraph, it says,  
18 "In response, the FHFA, Fannie Mae, Freddie Mac and  
19 various GSE servicers have asserted in litigation that  
20 the HERA of 2008, prohibits the extinguishment of GSE  
21 liens absent FHFA's consent as conservator of the  
22 GSEs."

23 Right?

24 A. Correct.

25 Q. What do you understand that to mean?

1           A.    That they are not consenting to extinguishing  
2 the lien.

3           Q.    Did you ever see anything in this file  
4 indicating that Fannie Mae had consented to the  
5 extinguishment of the lien or that FHFA had consented  
6 to the extinguishment of the lien?

7           A.    No, I have not.

8           **MR. SECHRIST:** I'd like to move to admit  
9 Exhibit 28.

10          **THE COURT:** Objection to 28?

11          **MR. BOHN:** Yeah. It's dated two years after  
12 the foreclosure sale so it's not really relevant.

13          **MR. SECHRIST:** This letter also references  
14 existing litigation that predates the foreclosure sale  
15 and would speak to the policies that were in place  
16 prior to foreclosure sale. Specifically, it references  
17 a 2014 SFR opinion that was in litigation prior to the  
18 foreclosure sale in November of 2013.

19          **THE COURT:** Nobody would have had this in  
20 '13.

21          **MR. SECHRIST:** But the policies would have  
22 remained, and this is an articulation of those  
23 policies.

24          **THE COURT:** I think it's too late. I'm not  
25 going to admit it this time.

1           **MR. SECHRIST:** I'll pass the witness. I'm  
2 sorry. One more question.

3 **BY MR. SECHRIST:**

4           Q. Ms. Carr, was the loan securitized in a pool  
5 on the date of the foreclosure sale, which was  
6 November 22nd, 2013?

7           A. If I remember, we classed that loan in July.  
8 The loan was removed from the pool on July 11, 2013, so  
9 it was no longer in the pool at the time of sale.

10           **MR. SECHRIST:** I pass the witness, Your  
11 Honor.

12           **THE COURT:** Ms. Carr, I apologize to have to  
13 do this to you. We're going to have to bring you back  
14 in a little bit. I've got another hearing that was  
15 supposed to start 10 minutes ago. Counsel said he had  
16 3 minutes about 15 minutes ago. I'm going to have you  
17 come back at about 1:30 our time, so that's about an  
18 hour and 20 minutes from now.

19           **THE WITNESS:** Okay.

20           **THE COURT:** Is that 4:30 your time?

21           **THE WITNESS:** Probably. Sounds right.

22           **THE COURT:** Sorry. We'll bring you back  
23 then. Thank you, ma'am.

24           **THE WITNESS:** Thank you.

25           **THE COURT:** Off the record. Thanks, guys.

1 (Whereupon, a recess was taken.)

2 **THE COURT:** We're back on the record, Case  
3 No. A693882.

4 Ms. Carr, just be reminded you're still under  
5 oath; okay?

6 **THE WITNESS:** Yes, sir.

7 **THE COURT:** You guys got done. So, Mr. Bohn,  
8 you can do cross-examination.

9 **MR. BOHN:** I can? All right.

10

11 CROSS-EXAMINATION OF CLAUDETTE CARR

12 **BY MR. BOHN:**

13 Q. Good afternoon, Ms. Carr. My name is Michael  
14 Bohn. I'm the attorney for the plaintiff in this  
15 matter. Can you see me?

16 A. Yes, I can. Good afternoon.

17 Q. We did this a couple weeks ago in another  
18 case. I'm going to ask some similar questions.

19 A. Okay.

20 Q. When it comes to -- how does a servicer  
21 become a servicer with Fannie Mae?

22 A. So there is a source that has to be approved.  
23 So they go through a process where there's an  
24 application. And they're working with the items that  
25 they have to produce. And that's all done in a



1 different space.

2 Q. Once a servicer is approved, don't the  
3 regulations or the servicing guide require a contract?

4 A. Well, there is a general contract between a  
5 servicer and Fannie Mae.

6 Q. Okay. Have you seen the contract that  
7 Fannie Mae has with Ditech or Green Tree?

8 A. The contract that I would look for all  
9 business processes would be the servicing guide.

10 Q. Have you seen the initial lender's contract  
11 that's referred to in the servicing guide?

12 A. No.

13 Q. All right. Thank you for that.

14 Now, you testified that Fannie Mae is the  
15 owner of the loan; is that correct?

16 A. That is correct.

17 Q. Okay. And you earlier reviewed the deed of  
18 trust; is that correct?

19 A. I did.

20 Q. Okay. And the deed of trust identifies the  
21 trustor, which is the homeowner, the trustee, which is  
22 the trustee, it identifies the lender, and the  
23 beneficiary; correct?

24 A. Correct.

25 Q. Okay. Does the deed of trust anywhere

1 identify the owner of the deed of trust?

2 A. The deed of trust that I've reviewed, it  
3 states about the lender and its successors.

4 Q. Is the word "owner" used anywhere in the deed  
5 of trust?

6 A. Not to my knowledge.

7 Q. Okay. The promissory note we reviewed,  
8 that's a much smaller document, that refers to lender  
9 and borrower; correct? Feel free to take a look. It's  
10 Exhibit 44, if you need to review it.

11 A. Yes. Thank you. Yes, it's lender.

12 Q. Lender and borrower. There's no designation  
13 as owner of the note, is there?

14 A. You're correct.

15 Q. Okay. And the assignment of the deed of  
16 trust, which I believe is Exhibit 6 --

17 A. I have it.

18 Q. -- no one in this document is identified as  
19 owner, are they?

20 A. On quick reference, I don't see owner.

21 Q. Okay. Now, the servicing guideline, it's a  
22 large document. Are you familiar with the servicing  
23 guidelines generally?

24 A. Generally, yes, I am.

25 Q. Okay. The servicing guidelines require the

1 servicer to keep liens off their property, especially  
2 liens that could gain priority over the security for  
3 the loan; isn't that correct?

4 A. Can you repeat that statement, please.

5 Q. The servicing guidelines do provide that the  
6 servicer is to keep the property free from liens and  
7 encumbrances that may become superior to the mortgage  
8 or the deed of trust; isn't that correct?

9 A. So that would probably be one of the general  
10 responsibilities of a servicer.

11 Q. If something happens with a property because  
12 the servicer did not perform its duties properly,  
13 Fannie Mae has contractual remedies against a servicer,  
14 don't they?

15 A. I am not -- I would not -- Fannie Mae has a  
16 relationship with the servicer. And they have  
17 different obligations that the servicer should follow.  
18 Without pulling that particular piece of it, I can't  
19 answer that.

20 Q. If a servicer does something wrong and the  
21 property gets lost, for whatever reason, because of the  
22 servicer's negligence, who's responsible, the servicer  
23 or the Fannie Mae?

24 A. Fannie Mae is going to be bearing the risk in  
25 everything on a loan because they own that loan. So

1 Fannie Mae is going to be responsible.

2 Q. But isn't the servicer's job to service the  
3 loan?

4 A. It is the servicer's job to service the loan  
5 on behalf of Fannie Mae. You are correct with that.

6 Q. And the contract provides that Fannie Mae can  
7 terminate the servicer if the servicer doesn't do their  
8 job; isn't that correct?

9 A. Fannie Mae can. Yes, they can.

10 Q. And Fannie Mae can get damages from a  
11 servicer if the servicer doesn't do their job  
12 correctly; isn't that correct?

13 A. I am not sure if it's implied or stated  
14 directly in the contract, but with Fannie Mae being the  
15 owner, they make decisions, so I imagine they can.

16 Q. You keep saying Fannie Mae is the owner.  
17 What document says that Fannie Mae is the owner?

18 A. Fannie Mae acquired the loan. And that  
19 document for this particular loan would have been the  
20 schedule of mortgages. That was the evidence of when  
21 they acquired the loan back in, I think it's 2004,  
22 December 2004.

23 Q. That's Exhibit 26 with all the black pages on  
24 it?

25 A. That is the schedule of mortgages, yes.

1 Q. Okay. And I'm looking at that again. It's  
2 Exhibit 26. And there's some non-black pages on page  
3 425 and 426.

4 A. Yes, that's what I have in front of me.

5 Q. Where does it say owner on here?

6 A. Fannie Mae's business practice when they  
7 purchase a loan or they acquire a loan, they have two  
8 ways that they will show evidence of that. The  
9 schedule of mortgages is one if that loan is in a  
10 mortgage-backed security or there is a purchase advice  
11 if that loan is a cash loan.

12 Q. What was the second part?

13 A. The second one is if the loan is purchased  
14 for cash, it's a purchase advice.

15 Q. If the loan is purchased for cash, it's a  
16 purchase advice; is that your testimony?

17 A. The evidence of a purchase loan in the cash  
18 portfolio, you will find a document that's stated it's  
19 a purchase advice pertaining to that particular loan  
20 with similar information that we have on the schedule  
21 of mortgages.

22 Q. And in this particular case, we have the MBS  
23 schedule, not the purchase advice; correct?

24 A. We will have the schedule of mortgages for  
25 this particular loan because it was purchased as a loan

1 that was placed into the MBS security in December 2004.

2 Q. Okay. So we have the schedule, but we don't  
3 have the purchase advice; correct?

4 A. You would not have a purchase advice because  
5 this loan was originally boarded into the MBS security.

6 Q. And those are the only two methods by which  
7 Fannie Mae evidences its what you call ownership of the  
8 loan; correct?

9 A. Schedule of mortgages and a purchase advice,  
10 yes.

11 Q. Those are the only two ways they document  
12 their acquisition of the loan; is that correct?

13 A. The acquisition of a loan, yes.

14 **MR. BOHN:** Thank you. I have no further  
15 questions.

16 **THE COURT:** Any more?

17 **THE WITNESS:** Thank you.

18 **THE COURT:** Hold on.

19 **MR. SECHRIST:** Nothing from us, Your Honor.

20 **THE COURT:** All right, Ms. Carr. I don't  
21 know that we've had a chance to meet before, but I'm  
22 Judge Wiese. I always have a couple questions for  
23 Fannie Mae. Felicia Miller might have told you.

24 **THE WITNESS:** Can you say that again, please,  
25 Judge Wiese.

1           **MR. BOHN:** Felicia Miller might have told you  
2 that I have a lot of questions. Do you know who she  
3 is?

4           **THE WITNESS:** I know Felicia, yes. Felicia  
5 works with me.

6           **THE COURT:** So my understanding is that the  
7 holder of the original note is a custodian; right?

8           **THE WITNESS:** The holder of the original note  
9 is the custodian, yes.

10          **THE COURT:** And my understanding is that  
11 there is a tri-party agreement between Fannie Mae and  
12 the servicer and the custodian, whereby the custodian  
13 holds the note; is that correct?

14          **THE WITNESS:** It's an agreement with  
15 Fannie Mae that they will be holding the documents on  
16 behalf of Fannie Mae, yes.

17          **THE COURT:** Do you have that agreement?

18          **THE WITNESS:** If I have that agreement?

19          **THE COURT:** I am told that there is a  
20 custodial agreement that exists, a piece of paper by  
21 which it documents that the custodian is holding the  
22 note for Fannie Mae.

23          **THE WITNESS:** I do not have that -- I do not  
24 have that document.

25          **THE COURT:** Have you ever seen it?

1           **THE WITNESS:** In my area, I would not have  
2 seen that. I can find it, if we need to get it, by  
3 going into that particular area that can retrieve with  
4 that document custodian and get information from them.  
5 But in my specific area, I would not see that document.

6           **THE COURT:** Okay. Is there a written  
7 servicing agreement other than the guide between  
8 Fannie Mae and your servicers?

9           **THE WITNESS:** So, from my knowledge in  
10 servicing, the servicing guide is that contractual  
11 responsibility between the approved servicer and  
12 Fannie Mae. If there is -- I mean, there's no special  
13 contract that's going to be for a particular servicer.

14           **THE COURT:** Okay. So let me ask you this.  
15 Because my understanding is that your servicer has  
16 access to your custodian and the documents that are  
17 held by the custodian. So if your servicer was to  
18 acquire the original note from the custodian, the note  
19 is endorsed in blank, so it's bearer paper; it can be  
20 used by whoever holds it or bears it. So if your  
21 servicer had acquired the possession of that original  
22 note, and then they used the deed of trust that shows  
23 the servicer as the only entity that has an interest in  
24 the deed of trust, other than the guide, the servicing  
25 guide that's online, is there anything that's going to



1 prohibit your servicer from selling this loan to  
2 somebody else?

3 **THE WITNESS:** I would say the servicing guide  
4 has that information, if you raise specific things that  
5 can and cannot happen.

6 **THE COURT:** Other than the guide?

7 **THE WITNESS:** Not -- not other than the  
8 guide. I mean the business practice that I know of  
9 it's understood that anything that's happened on these  
10 loans that Fannie Mae acquire, the servicer has  
11 responsibility to perform a certain set of obligations  
12 on their behalf, on Fannie Mae's behalf.

13 **THE COURT:** Okay. Are you aware of any  
14 document that's been put forth in this case that shows  
15 that Fannie Mae is the owner or has any interest in  
16 this loan other than the screenshots?

17 **THE WITNESS:** No. The document that I am  
18 aware of will be a schedule of mortgages within the  
19 screenshots from SIR.

20 **THE COURT:** My understanding is that if  
21 Fannie Mae is using a servicer, that the servicer  
22 collects rents. The servicer will keep a portion of  
23 that as their servicing fee. And the remainder is  
24 transmitted to Fannie Mae if they're the owner of the  
25 loan; is that correct?

1           **THE WITNESS:** If Fannie Mae is the owner of  
2 the loan, yes, they will receive the principal and  
3 interest collected less any servicing fee that was  
4 contracted for at final purchase.

5           **THE COURT:** Are you aware of any documents  
6 that are in front of you there that have been submitted  
7 in this case that show a servicer keeping a portion of  
8 a payment and transmitting the remainder of the payment  
9 to Fannie Mae?

10          **THE WITNESS:** So the document that I have in  
11 front of me, which is my schedule of mortgages, it has  
12 a pass-through rate of 4.6. That pass-through rate  
13 identifies what the servicer will be passing on to  
14 Fannie Mae. If you go to the note, the note is going  
15 to have them collecting, I think we looked at a little  
16 earlier, 5 percent, which is the interest rate. So, to  
17 me, this is a document that will show the difference  
18 between what they've collected and what they are  
19 allowed to for their servicing fee.

20          **THE COURT:** So that's something that allows  
21 for that to happen. I guess I'm wondering if there's  
22 any document that shows it actually happening?

23          **THE WITNESS:** When that principal and  
24 interest is sent in to Fannie Mae, it will denote the  
25 calculations incorporated, that pass-through

1 information, the interest and pass-through rate, that  
2 we receive.

3 **THE COURT:** All right. Thank you, ma'am.

4 My questions raise any additional from you?

5 **THE WITNESS:** Can you say that again, please?

6 **THE COURT:** I'm asking the attorneys if my  
7 questions raised any additional questions from them.

8 **MR. SECHRIST:** Just one second, Your Honor.  
9 I don't believe so, but I want to check one document.  
10 It will take a second. Nothing further, Your Honor.

11 **THE COURT:** Any additional, Mr. Bohn?

12 **MR. BOHN:** No, Your Honor.

13 **THE COURT:** Thank you, Ms. Carr. Appreciate  
14 your time.

15 **THE WITNESS:** Thank you, Judge Wiese. And,  
16 thank you, Mr. Bohn. Thank you again, everyone.

17 **THE COURT:** Have a good night.

18 **MR. BOHN:** Until next time.

19 *(Witness excused.)*

20 **THE COURT:** All right. Any additional  
21 witnesses?

22 **MS. MORGAN:** We have no additional witnesses.  
23 We rest.

24 **THE COURT:** Any rebuttals, Mr. Bohn?

25 **MR. BOHN:** Nothing other than closing

1 argument.

2 **THE COURT:** Go ahead.

3 **MR. BOHN:** I lied to your clerk earlier. I  
4 said I wasn't going to use the ELMO.

5 **THE COURT:** Now you want to use the ELMO?

6 **MR. BOHN:** Yeah. Just wanted to pull a  
7 couple interesting pages out of the servicing guide.

8 Before I highlight my pretrial memo, I just  
9 wanted to go through a couple of pages here. First  
10 one, Chapter 2, Contractual Relationships, says right  
11 here, "Once Fannie Mae approves a servicer to do  
12 business with it, both parties execute the lender  
13 contract to establish the terms and conditions of their  
14 contractual relationship."

15 No such contract has been produced in this  
16 case. The Nationstar case that the Supreme Court said  
17 that servicer does have standing to act on behalf of  
18 the mortgage company was remanded to the District Court  
19 to determine if it was, in fact, the servicer. Best  
20 evidence rule. Here's a contract that says, you are  
21 our servicer. It has not been produced. More on that  
22 later.

23 Just generally, events that cause a breach of  
24 contract. I won't go through all of them, but when I  
25 was asking the witness, "The following events

1 constitute breach of a servicer's contractual  
2 obligations."

3 Flipping through, I couldn't find the actual  
4 page, but there are specific regulations or guidelines  
5 in the regulations that require any liens that may  
6 become superior to the mortgage lien to be paid or  
7 otherwise taken care of.

8 I'll get to it in a few minutes, but Nevada  
9 law requires that if you are acting on behalf of  
10 another party in regards to a transaction involving  
11 real property, you have to have a power of attorney.  
12 There's no power of attorney here. And Fannie Mae has  
13 their own regulations -- here we go.

14 "When Fannie Mae is the owner of record of a  
15 mortgage loan, it permits a servicer that has  
16 Fannie Mae's limited power of attorney to execute these  
17 types of documents on Fannie Mae's behalf."

18 No power of attorney.

19 Oh, here it is. It's a form. The  
20 regulations say you can modify it. This is just the  
21 first page just to demonstrate that such a form exists.

22 One last page I wanted to pull out. They  
23 have a glossary of terms and acronyms. They even have  
24 a definition for what "owner of record" is.

25 "The entity that appears in the public

1 records as the owner of a mortgage, usually the  
2 mortgage originator, unless the mortgage is  
3 subsequently assigned to someone else and that  
4 assignment is recorded."

5 I've said this before, and I'll say it again.  
6 Oh, there's also regulations in there -- I think  
7 counsel went through them briefly -- that provide that  
8 if there's any non-routine litigation, the matter must  
9 be referred over to Fannie Mae so they can deal with it  
10 in the way that they choose to deal with it.

11 There are three issues presented in the case.  
12 I'm going to go with my strong one first. That's  
13 Fannie Mae and the fact that they need to comply with  
14 the statute of frauds.

15 The purpose of recording statutes is to  
16 provide notice of subsequent purchasers. We got a 2018  
17 case that says that. And that's the very purpose I  
18 like to point out.

19 If you'll look at the statutes, the recording  
20 statutes, they were all passed in 1861 when Nevada  
21 became a territory. They were based on the California  
22 statutes. I got it from the Legislative Council  
23 Bureau. California adopted theirs from New York and  
24 Virginia, who, in turn, adopted theirs from Britain.  
25 It's the ancient British common law that recording

1 statutes are based upon.

2 And we have a couple of statutes about  
3 conveyances. One, that a recorded conveyance is notice  
4 to the world of whatever is contained in the  
5 conveyance. And there's another one that says, any  
6 unrecorded conveyance is void as to a subsequent bona  
7 fide purchaser. And a conveyance is broadly defined  
8 under 111.010 for a transfer of any interest in real  
9 property.

10 There's been a couple cases come down from  
11 the Supreme Court unpublished that I've gotten involved  
12 in as an amicus. And I've reviewed their briefs. And  
13 the *SFR* attorneys are very good attorneys. They and I  
14 show up in your courtroom a lot with the other  
15 attorneys.

16 They don't raise the statute of frauds when  
17 it comes to Fannie Mae. I don't know why they don't.  
18 I think it's a very strong argument. I think it's  
19 absolutely critical. But they don't.

20 The certainty of the recording statutes is  
21 what the world relies upon in order to make their  
22 decision in regards to real property. And when you  
23 have unrecorded interests, people jumping up and  
24 saying, oh, I have an unrecorded interest, it throws  
25 everything off, and it's a very dangerous precedent.

1           In *Edelstein*, the Supreme Court said, "To  
2 permit an entity that is really not the beneficiary to  
3 record itself as beneficiary would defeat the purpose  
4 of the recording statute and encourage a lack of  
5 transparency."

6           That is exactly Fannie Mae's business model,  
7 is to usurp the recording statutes of the State of  
8 Nevada.

9           I showed you the servicing guideline requires  
10 a servicer's contract. I've never seen one in this  
11 case or any other case. I don't know why. I'd really  
12 love to see one. I'm going to start filing motions to  
13 compel.

14           We have a couple disputable presumptions  
15 under NRS 47.250. One is that, "If evidence willfully  
16 suppressed would be adverse if produced or that higher  
17 evidence would be adverse from inferior being  
18 produced."

19           Your Honor, under the statute, has the right  
20 to find that the failure to produce these documents  
21 would give an adverse inference to the defendant's  
22 position.

23           Now, I've said before and I'll say again and  
24 I'll continue to say the term owner is a weasel word.  
25 It really is meaningless. You don't have an owner of a



1 deed of trust. You have a trustor or a trustee  
2 beneficiary. They'll talk about holders. That's the  
3 same thing as beneficiary. But you don't have an  
4 owner.

5 A loan is a note and a deed of trust. And  
6 the case law says the note is what entitles you to  
7 payment. The deed of trust is security for that  
8 payment. 116 provides that the deed of trust, the  
9 security, gets extinguished once an HOA forecloses.

10 I don't care about the note. I only care  
11 about the deed of trust. Because the note survives a  
12 foreclosure sale and is enforceable even if the  
13 security is gone.

14 So the federal statute says, "No property of  
15 the agency shall be subject to levy, attachment,  
16 garnishment, foreclosure or sale without the consent of  
17 the agency, nor shall any involuntary lien attach to  
18 the property of the agency."

19 Ironically, no one complains about the lien  
20 being attached. And, in fact, Fannie Mae's own  
21 regulation says if such a lien gets recorded, you have  
22 to take care of it. And they haven't and they don't.

23 When you're talking about property, you're  
24 talking about the deed of trust. And the deed of trust  
25 is an interest in real property. Since I've seen you

1 last, I did find a case. It's a divorce case, but it's  
2 a case 97 Nev. 143, *Occhiuto v. Occhiuto*, Supreme Court  
3 said simply, "The law of this state specifically  
4 precludes the creation of any interest in land except  
5 by properly-executed written instrument." Citing NRS  
6 111.205(1).

7 The *Leyva* case, citing an older case of *Ray*  
8 *v. Hawkins* from 1960 said, yes, specifically a deed of  
9 trust is an interest in real property. That's first  
10 year of law school.

11 So if you're going to have an interest in the  
12 deed of trust, which is the security instrument that  
13 gets extinguished, in order to have that interest you  
14 have to comply with the statute of frauds. That's what  
15 the *Leyva* case is. The *Leyva* case cites the statute  
16 for NRS 111.205, "No interest in lands nor any trust,  
17 power, or concerning lands in any manner thereto shall  
18 be created, granted, assigned, surrendered or declared  
19 unless by deed or conveyance in writing subscribed by  
20 the party creating, granting, assigning, surrendering,  
21 or declaring the same or by the parties' lawful agent  
22 there unto authorized in writing."

23 Now, we also have the *Edelstein* case that  
24 went through the language of the deed of trust. And  
25 that was a bankruptcy case that was certified to the

1 Nevada Supreme Court that didn't have to deal with  
2 evidence because it's a nonjudicial foreclosure they  
3 were dealing with. And that's an important distinction  
4 because once they walk into the doors of your courtroom  
5 or any other court in the state, you have to comply  
6 with the rules of evidence.

7 But *Edelstein* says -- and there's a split of  
8 authority around the country -- you assign the note or  
9 you can assign the deed of trust. Sometimes you can  
10 split them. That's what happens with MERS. MERS  
11 becomes the beneficiary of the deed of trust, but the  
12 lender continues to be the lender under the promissory  
13 note. *Edelstein* said you can join the two; you can do  
14 it through agents. And once you have control of the  
15 two, then you go ahead and foreclose.

16 *Leyva* said -- and *Edelstein* says, if you  
17 assign one, you assign the other. So if you assign the  
18 deed of trust, the promissory note goes with it. If  
19 you assign the promissory note, the deed of trust goes  
20 with it.

21 Now, normally, when you assign a deed of  
22 trust, it gets recorded. And, in fact, the statutes  
23 require an assignment to be recorded. And the statutes  
24 also prohibit the exercise of the power of sale until  
25 it's recorded.

1           If you assign through transfer of the  
2 promissory note, this is the *Leyva* case, that also  
3 assigns a deed of trust. You assign one, you assign  
4 the other. The *Leyva* case says you have to show more  
5 than mere possession to show that you are entitled to  
6 enforce the note. You need some other writing.

7           If the note gets transferred, the deed of  
8 trust also gets transferred. That is a conveyance  
9 under 111.010. It's an unrecorded conveyance, which is  
10 void as to bona fide purchasers.

11          The purpose of the statute of frauds is  
12 evidentiary. It's to prevent arguments over what is  
13 and isn't going on.

14          Counsel likes to cite the *Montierth* case,  
15 which gets cited by the *Berezovsky* case. But there's  
16 three holdings in *Montierth*. The first one is an  
17 unrecorded deed is valid immediately between the maker  
18 and the grantor, but it's only valid as to third  
19 persons once it's recorded.

20          What Fannie Mae has is not an interest in  
21 real property. They have a contractual right to  
22 payments received on the note secured by the deed of  
23 trust. It is not put in their name. They are not the  
24 beneficiary. They have the contractual right to demand  
25 payment. They have contractual right to demand

1 possession of the note. They have the contractual  
2 right to demand possession of the deed of trust or to  
3 have the deed of trust assigned to them.

4 Now, they do use document custodians. I was  
5 reading the regulations earlier. And the regulations  
6 say -- there's a lot of them to pull out -- it's in the  
7 hands of the document custodian, but it needs to be in  
8 Fannie Mae's name. We just say it's in our name and  
9 it's deemed to be in our name. Which you can do, but,  
10 again, there's no recording involved.

11 Another strong point that nobody really  
12 brings up is you have conclusive presumptions under the  
13 statutes. 47.240 creates the conclusive presumptions.  
14 And these are conclusive. Conclusive presumption no.  
15 2, "The truth of the fact recited from the recital in a  
16 written instrument between the parties thereto where  
17 they're successors in interest by subsequent title, but  
18 this rule does not apply to re-assignment of  
19 consideration.

20 So when you have a document like a deed of  
21 trust or an assignment of the deed of trust and the  
22 deed of trust says that MERS is the beneficiary,  
23 they're the beneficiary. The beneficiary is the party  
24 that gets to enforce the terms of the deed of trust.  
25 That's the most important of the three. That's what

1 you want when you're the lender.

2 When you have an assignment that says MERS  
3 transfers from MERS to Green Tree, the Court has to  
4 find, because of the conclusive presumption, that Green  
5 Tree, not Fannie Mae, is the beneficiary.

6 Conclusive presumption no. 3. "Whenever a  
7 party has, by his or her own declaration, act, or  
8 omission, intentionally and deliberately led another to  
9 believe a particular thing true and to act upon such  
10 belief, the party cannot in any litigation arising out  
11 of such declaration, act, or omission be permitted to  
12 falsify it."

13 So when you record a deed of trust that says  
14 MERS is the beneficiary, and the public and a bona fide  
15 purchaser relies upon it, you can't come into court and  
16 say, Oh, no, I'm really not the beneficiary.

17 Same thing with Green Tree. When you have an  
18 assignment that's recorded and the public records for  
19 the purpose for imparting notice to third parties, you  
20 can't come into court and say, No, we're really not the  
21 beneficiary. Because they have a contractual  
22 agreement. They don't have a right in real property.

23 Also, the *Edelstein* case talked about whether  
24 or not MERS was an actual beneficiary. And the Supreme  
25 Court, in evaluating it and talking about some other

1   treatises says, Well, it's not repugnant to the terms  
2   of the contract, and the contract does say that MERS is  
3   the beneficiary so we have to get meaning to the words  
4   in the contract and find that MERS is the beneficiary  
5   under the deed of trust.

6           Fannie Mae's own guidelines require a power  
7   of attorney to execute documents. I showed you that.  
8   We have a statute, 162A.480 subsection 2. It says, if  
9   you're acting on behalf of someone in regards to real  
10   property, you need a power of attorney. Fannie Mae  
11   never granted Green Tree or Ditech that power of  
12   attorney. They are acting contrary to the laws of the  
13   State of Nevada.

14           As I stated, both *Edelstein* and *Montierth*  
15   case aren't really applicable because both of those  
16   cases were bankruptcy cases certified in Nevada Supreme  
17   Court that dealt with nonjudicial foreclosures. We  
18   know from the *Facklam* case, which talked about the  
19   statute of limitations, that a foreclosure sale is a  
20   nonjudicial proceeding. And because it's a nonjudicial  
21   proceeding, they're not bound by the rules of evidence,  
22   but they are here.

23           There's the case, *In Re: MERS, Mortgage*  
24   Electronic Registration System, from 2014. The Ninth  
25   Circuit talked about the practices of MERS, and cited a

1 number of cases and treatises which essentially  
2 land-basts MERS. Because MERS was specifically  
3 established to avoid having to record all the  
4 assignments, which, again, defeats the purpose of the  
5 recording statutes. It also deprives every county in  
6 the country, not just Clark County or Nevada, of  
7 recording fees that these people should be paying. And  
8 up until this year, it was \$17 to record a one-page  
9 document. And they have these firms on their computer.  
10 They can crank them out in a minute. They're easy to  
11 do. But to save a couple nickels, they don't do that.

12 And if you're going to disobey the recording  
13 laws and hide your interests, contrary to the public  
14 policy as stated in *Edelstein*, you play those games and  
15 you get caught, you should lose.

16 I'll point out the *Christine View* case. That  
17 the Supreme Court said Federal Foreclosure Bar does  
18 apply is not applicable here because the *Christine View*  
19 case, the deed of trust was assigned to Fannie Mae  
20 prior to the HOA's foreclosure sale.

21 Another issue that gets raised whenever I  
22 talk about the statute of frauds is there's a couple  
23 Nevada cases that talk about standing to raise the  
24 statute of frauds. However, there are multiple  
25 statutes of frauds in regards to the real property,



1 marriage, answering to the debt of another, and  
2 contracts that can't be enforced within one year. The  
3 cases that are cited, I don't know if they have or not,  
4 but those cases talk about the other statutes, not  
5 111.205.

6 111.210 talks about contracts for sale or  
7 lease of land for a period in excess of a year.  
8 111.220 talks about contracts not in writing, one year,  
9 answering the debt of another, marriage, commitment to  
10 loan money, or pay a fee for being a money broker.

11 The cases that say you have to have  
12 standing -- you have to be a party to the contract to  
13 have standing, don't talk about 111.205. They talk  
14 about 111.210 and 220.

15 This 727 brief that I got filed this  
16 morning -- I realized yesterday as I was in trial -- we  
17 were supposed to go to trial last October. I drafted  
18 the brief then. Got it filed yesterday. I forgot to  
19 include some of the authorities in regards to the  
20 owner's payments.

21 The *Golden Hill* case I will tell you because  
22 that was my case. That case specifically notes that  
23 there the HOA specifically allotted the homeowner's  
24 payments towards the super priority lien. The court  
25 specifically found that in the order.

1           There is nothing here showing the HOA  
2 allotted that money towards payment of the super  
3 priority lien. And before the *SFR* decision, I'm sure  
4 you remember, nobody knew what was going on. Nobody  
5 knew how the super priority lien worked. The HOA's  
6 never did that.

7           I'll also point out that *SFR* and *Shadow Wood*  
8 talks about what banks can do to preserve their  
9 interest. They say things like, pay the whole lien;  
10 sue for a refund; find out what the super priority  
11 amount is and pay it; file an arbitration; get a TRO;  
12 record a lis pendens. Doesn't say sit back, cross your  
13 finger, and hope the owner pays. It doesn't say that.

14           The intent of UCIOA, the intent of the Nevada  
15 statute, is that the bank is supposed to be responsible  
16 for at least a portion of the dues or the assessments.  
17 The commentary to the UCIOA says that it was always  
18 assumed that once the bank got notice of the lien, they  
19 would pay the thing and start their own foreclosure  
20 procedures to get the house into the hands of another  
21 homeowner who will start making the assessments because  
22 HOAs are nonprofit and need the money and that's how  
23 they operate.

24           So the homeowner payment -- and the *Golden*  
25 *Hill* case was not published. And there's a reason why

1 they're not published. The published decisions are  
2 oftentimes conflicting, or not oftentimes, but  
3 sometimes conflicting with each other, depending which  
4 panel the Supreme Court issues it. Even the same  
5 panels will issue conflicting decisions.

6 I've got a case with Judge Crockett before  
7 *Diamond Spur* came out where they said, you didn't raise  
8 bona fide purchaser or the subrogation issue in the  
9 lower court. Well, then *Diamond Spur* comes out a few  
10 months later and says bona fide purchaser doesn't  
11 matter.

12 The subrogation issue, I'll go over it  
13 briefly. If you have a junior lien and you pay a  
14 senior lien to save your interest, you're equitably  
15 subrogated to that person's position. Because of that,  
16 it's an assignment by law. And when you have an  
17 assignment, it's a conveyance under 111.010, which  
18 needs to be recorded. If it's not recorded, it is a --  
19 it's void as to a subsequent bona fide purchaser.  
20 That's one of the few issues the Supreme Court did not  
21 reach in the *Diamond Spur* case.

22 There's also two other conditions -- I'll be  
23 real fast talking about this part -- two other  
24 conditions in the Miles Bauer letter not discussed by  
25 *Diamond Spur*. Number one, their definition of super

1 priority lien does not include nuisance abatement  
2 charges, and also says payment of this will satisfy our  
3 obligations in full. When we know that now the super  
4 priority lien is an ongoing, annual thing. So they  
5 cannot say we don't owe you any more money when they do  
6 owe more money. And they cannot provide an incorrect  
7 definition of the super priority lien and say, if you  
8 cash this check, you are agreeing to all the facts  
9 stated in our letter. Those are impermissible  
10 conditions. I'm making the record for the appeal.

11 Now, the interesting part. I think it's  
12 interesting. The *Shadow Wood* case says the Court  
13 always retains the equitable power to set aside a  
14 foreclosure sale or modify the terms. The *Diamond Spur*  
15 case didn't say the sale is void. It said, as to the  
16 super priority portion, it's void. So no matter what  
17 you rule today, the former owner is not here to contest  
18 the sale. *Saticoy Bay* was, is, and will be the owner  
19 of this property until they foreclose and take it away.

20 *Shadow Wood* says you have recitals in the  
21 deed that are conclusive in absence of equitable  
22 relief. One of the recitals is the default. The  
23 default is the super priority portion. The Court has  
24 to exercise its equitable power to set that deed aside  
25 as far as the super priority portion of the lien.

1           First, we have the availability of equitable  
2 relief. It's used oftentimes when talking about  
3 injunctions, which are an equitable form of relief.  
4 But the *Shadow Wood* case says you cannot have notice of  
5 something, let it happen, wait for the property to fall  
6 into the hands of the third party, and then come to  
7 court and ask for relief. You can't do that. So, A, I  
8 respectfully submit they are not entitled to equitable  
9 relief because they didn't do anything.

10           Now, the *Shadow Wood* case talks about falls  
11 into the hands of innocent third parties. It doesn't  
12 talk about bona fide purchasers. So I respectfully  
13 submit, Your Honor, that their failure to put my client  
14 on notice by that §17 recording precludes equitable  
15 relief on their part.

16           If you are inclined to grant equitable  
17 relief, you're supposed to balance all the equities.  
18 And Your Honor has broad discretion to fashion  
19 equitable relief. The *Diamond Spur* case and every case  
20 since it's come out, the courts have said deed of trust  
21 survives. Sorry, *Saticoy Bay*, sorry *SFR*, you lose. I  
22 respectfully submit you can modify that a little bit.

23           What's interesting in this case, the sale  
24 happened 2013. We filed this lawsuit -- I have the  
25 dates in here. Interestingly enough, tender is just

1 generally alleged in their answer and counterclaim.  
2 Federal Foreclosure Bar is not alleged. I let it go  
3 this far. I can't complain they're barred because they  
4 didn't allege it because it's been tried with the  
5 consent of all the parties.

6 But I think you have to look at the tender  
7 was in December 2011. The foreclosure sale was almost  
8 two years later. And it was in June 2015, they file  
9 their answer and counterclaim. They took no steps  
10 whatsoever until four years after the tender, until two  
11 years after the sale, to come forward and let the world  
12 know, hey, we paid something. And then we had to get  
13 the *Diamond Spur* decision for the Court to say that's  
14 enough.

15 We stipulated to the findings that the  
16 property was worth \$140,000 at the time of the  
17 foreclosure sale. If you are to allow them to enforce  
18 the deed of trust, I would respectfully submit  
19 Your Honor has the authority and should limit them to  
20 the \$140,000 at the time of the foreclosure sale.

21 Unless you have any questions for me, thank  
22 you.

23 **THE COURT:** Thank you, Mr. Bohn.

24 **MS. MORGAN:** I had to make a handwritten  
25 chart because my printer ran out of ink last night.

1           So in this case there are three separate and  
2 distinct reasons why Ditech's deed of trust was not  
3 extinguished by the HOA's foreclosure sale. For one  
4 thing, we have the typical Miles Bauer tender. Nothing  
5 unusual about it in this case. But what we also have  
6 is homeowner tender. And then we have the preemptive  
7 effect of the Federal Foreclosure Bar.

8           And I'll start with how we calculate the  
9 super priority portion of the lien. In this case  
10 Ms. Bourland from the HOA testified that the  
11 assessments were \$92.25 quarterly. And that makes them  
12 \$30.75 a month. So the super priority portion is  
13 \$276.75. We didn't hear any testimony from anyone else  
14 disputing that that is the proper amount of the super  
15 priority lien.

16           Next is what is the period of time we're  
17 looking at when calculating the super priority lien.  
18 Ms. Bourland testified that the HOA retained NAS to  
19 engage in collection activities December of 2010. At  
20 that time Ms. Bourland and I looked at Exhibit 30 at  
21 page 583. That is the document that showed us the  
22 account status at the time that it was sent over to  
23 NAS. At that time the account was about a year  
24 delinquent. The last time there was a zero balance was  
25 in November of 2009, and the statement of account was

1 December of 2010. So at that time there was a little  
2 bit more than the super priority amount owed, but not  
3 much more. A year of assessments is \$369, so within  
4 \$100 of the super priority portion.

5 So at the time at which we start calculating  
6 the super priority amount is from the time of the  
7 initiation of an action to enforce the lien. And I  
8 believe it's *Property Plus* and *Golden Hill* also says  
9 that the time is when the HOA gave notice of its lien.

10 In this case the HOA, and I'm looking again  
11 at Exhibit 30, which was admitted in its entirety  
12 through NAS, sent the pre-lien letter to the homeowners  
13 on December 10th, 2010. That is Exhibit 30 Bates 858.  
14 So if we go backwards from December of 2010, that puts  
15 us at April of 2010. So April to December 2010 is our  
16 super priority window. \$276.75 is our super priority  
17 amount. Even if we go from the date the lien was  
18 recorded, that was in January. So it doesn't make a  
19 meaningful difference about which date we use. I think  
20 the proper date is the December date because that's  
21 when the homeowner got notice.

22 So what happens then is the homeowner starts  
23 trying to come current. And the *Golden Hill* case tells  
24 us that, yes, the homeowner can certainly satisfy the  
25 super priority portion of the lien. So we start out



1 with a super priority portion of \$276.75. The  
2 homeowner makes a payment, makes a few more payments,  
3 few more payments. And this is how much the super  
4 priority portion is going down.

5 And so at the time that Miles Bauer sent its  
6 letter with a check in December of 2011, the super  
7 priority portion was \$31.75. So after that I went  
8 ahead and added the Miles Bauer as if it had been  
9 accepted because that is the legal effect of a tender  
10 under *Diamond Spur*.

11 The homeowner makes more payments, more  
12 payments, more payments, more payments. So by the time  
13 we get to the November 2013 foreclosure, the super  
14 priority portion has been paid, not only paid, but the  
15 HOA has received \$706.25 over the super priority  
16 portion. Importantly, this does not include amounts  
17 that were provided to NAS because the homeowner paid  
18 more than what's in this chart. This just reflects the  
19 amounts that went to the HOA.

20 So as of the date of the foreclosure, the HOA  
21 had actually received funds in excess of the super  
22 priority portion -- in excess of the super priority  
23 portion of about \$700. Now, it rejected 276 of that  
24 amount, but it still puts us well above the super  
25 priority portion even if you take into account that

1 they rejected that.

2 Now, under *Golden Hill*, the second question  
3 is how were those funds made by the homeowner? How  
4 were they applied? Ms. Bourland testified that the  
5 money received is applied to the oldest assessment  
6 owed.

7 So, again, if we look at the amounts that  
8 were due at the time that the homeowner was notified of  
9 the action to enforce the lien, there was total \$411.75  
10 owed. That includes late fees and everything else. So  
11 certainly by the time of the foreclosure sale, all  
12 amounts that were due at the initiation of action to  
13 enforce the lien had been satisfied and not only  
14 satisfied but satisfied well over \$300 above that.

15 So we have both homeowner tender under *Golden*  
16 *Hill* that, independently, even if Miles Bauer wasn't in  
17 the picture, extinguishes super priority portion of the  
18 lien. And *Golden Hill* tells us that it doesn't matter  
19 whether the purchaser at the HOA foreclosure was a bona  
20 fide purchaser. The Supreme Court says, "Appellant has  
21 not explained how its punitive BFP status could have  
22 revived the already satisfied super priority component  
23 of the HOA's lien."

24 And that's consistent with how the Court has  
25 looked at tender in the Miles Bauer context in the

1 *Diamond Spur* case. That bona fide purchaser has no  
2 legal relevance to that. Once a lien is discharged, it  
3 can't come back. It's discharged as a matter of law.

4           While I'm at that footnote in *Golden Hill*, it  
5 goes on to talk about the deed recitals and the  
6 conclusive presumption in those. It says that, "To the  
7 extent that NRS 116.311(6) affords conclusive proof to  
8 certain matters recited in appellant's deed, that  
9 statute is silent on the type of property interest that  
10 was conveyed at the sale."

11           Even though Mr. Haddad testified that the  
12 statute says that it's always supposed to be a super  
13 priority foreclosure unless indicated otherwise, the  
14 Nevada Supreme Court appears to either disagree or at  
15 least disagree to the extent that the recitals give  
16 some kind of presumption that it was a super priority  
17 sale.

18           So then if we turn from homeowner tender,  
19 which is its own independent basis for finding the deed  
20 of trust survived, and go to Miles Bauer tender. In  
21 that case, in *Diamond Spur*, I have the letter, the  
22 Miles Bauer letter, that the Nevada Supreme Court  
23 looked at in *Diamond Spur*. If you don't look at the  
24 property address and look at the substance of it, and  
25 it includes that paragraph that everyone seems to take

1 issue with about a portion of the HOA lien being  
2 arguably senior, specifically nine months of  
3 assessments for common expenses incurred before the  
4 date of your notice of delinquent assessment. Has the  
5 same language that is in Exhibit 14 that was admitted  
6 in this trial.

7           And this letter does not talk about nuisance,  
8 maintenance and nuisance abatement charges. Neither  
9 does the letter in this file. Nevertheless, the Nevada  
10 Supreme Court found that while the language was  
11 conditional, it was a condition that Miles Bauer on  
12 behalf of Bank of America absolutely had a right to  
13 insist upon because it was trying to fulfill its  
14 obligation as holder of the first deed of trust. And  
15 everyone reasonably understands that that obligation is  
16 the nine months immediately proceeding an action to  
17 enforce the deed of trust -- or to enforce the HOA's  
18 lien.

19           Had there been evidence of maintenance or  
20 nuisance abatement charges, this might be a different  
21 story. There's an opinion that came out, I think, two  
22 weeks ago, an unpublished opinion, that had a footnote  
23 that indicated if there's going to be maintenance and  
24 nuisance abatement charges claimed, there needs to be a  
25 new lien saying so under the old statute.

1           It's really neither here nor there in this  
2 case. We have no evidence of maintenance or nuisance  
3 abatement charges. This case is on all fours with  
4 *Diamond Spur*. There's nothing different that takes  
5 this out of the *Diamond Spur* realm.

6           The Nevada Supreme Court, after issuing  
7 *Diamond Spur*, came out with a slew of orders on summary  
8 judgment either affirming or remanning because they  
9 made their decision on this issue. It's over. There's  
10 a tender, and it doesn't matter whether -- the reason  
11 NAS rejected it. It's legally irrelevant. Again, once  
12 it's discharged, once that obligation is discharged as  
13 a matter of law, it doesn't matter what the HOA  
14 trustee's mindset was in refusing to accept the tender.

15           And we didn't hear evidence from -- presented  
16 as to why they rejected it. Mr. Jung testified that he  
17 knew at that time that NAS and many other HOA trustee's  
18 in town required costs and fees to be included in the  
19 amount. But they didn't send anything in writing.  
20 There was nothing in their file indicating the reason  
21 for rejection. And at the end of the day, in *Diamond*  
22 *Spur* it doesn't matter.

23           As to the recording statutes, again, *Diamond*  
24 *Spur* says that the holder of the first deed of trust is  
25 under no obligation to record anything evidencing the

1 tender, under no obligation to keep the tender good.  
2 *Diamond Spur* doesn't say this, but when I was  
3 questioning Mr. Haddad, I pointed out the language in  
4 many of the recorded documents that did say that the  
5 HOA sale is without covenant or warranty, expressed or  
6 implied, as to title, possession, encumbrances.

7           Mr. Bohn seemed to take issue with the fact  
8 that we waited too long, in his opinion, to file our  
9 answer wherein we set forth some facts about the  
10 tender. I would submit that if any party benefited  
11 from that delay, it would be Mr. Haddad. He's had  
12 possession of that property and the benefits that come  
13 along with possession since 2013. He testified that he  
14 had to make all these improvements. I hear that  
15 testimony a lot, but I rarely see documents to support  
16 that and I didn't see documents in this case.

17           That kind of goes hand in hand into weighing  
18 of the equities. Here we don't need to go to equity.  
19 And since we have a discharge of the tender as a matter  
20 of law -- I'm sorry -- discharge of the super priority  
21 portion of the lien, as a result of the tender as a  
22 matter of law, we don't even need to reach equity.

23           I'll just briefly say that there is evidence  
24 of unfairness when the party that stands to lose its  
25 security has a servicer that reaches out to try and

1 satisfy its obligation, and it's met with resistance.  
2 That is evidence of unfairness.

3 And the low sales price in this case, \$10,200  
4 when the fair market value at the time was \$140,000.  
5 Mr. Haddad is not an innocent purchaser for value. He  
6 wasn't someone who wasn't savvy in real estate, savvy  
7 in the law, who was buying this for themselves or their  
8 grandmother or something.

9 He was an investor. And he knew it was a  
10 risk. He testified truthfully that he knew it was a  
11 risk. He had knowledge that there was a deed of trust  
12 against the property. And I would submit that he had  
13 knowledge that Fannie Mae may have a hand in the -- in  
14 this transaction, too. Because the recorded document,  
15 the assignment, did show FNMA with the specific MIN  
16 number that matches the deed of trust.

17 Mr. Haddad tried to say, and I think he  
18 struggles with the truth here when he says he didn't  
19 know FNMA meant Fannie Mae. That was his testimony. I  
20 would say someone with that level of sophistication and  
21 knowledge, it's a struggle to believe that he didn't  
22 know what FNMA meant. I think it's more realistic that  
23 he didn't look as closely to the assignment as he would  
24 have us believe.

25 All right. So since I brought up Fannie Mae.

1 In this case we showed that in -- at the time of the  
2 foreclosure sale in 2013, Fannie Mae was under the  
3 conservatorship of FHFA and had been since 2008. And  
4 the reason that they were placed under conservatorship  
5 is because Congress passed legislation, including the  
6 Federal Foreclosure Bar, to protect those assets from  
7 sale, levy, attachment or -- I forget what all the  
8 language is, but foreclosure was one of them. The  
9 whole goal was to protect that interest.

10 Was there a recorded assignment to  
11 Fannie Mae? No. Did there have to be? No. Under  
12 *Montierth*, under *Guberland*, there does not need to be a  
13 recorded assignment to Fannie Mae under Nevada law.  
14 And on, I think it was the 18th of January, the Nevada  
15 Supreme Court issued an opinion, albeit unpublished,  
16 stating that the testimony from the servicer about  
17 Fannie Mae's ownership, coupled with presentation of  
18 the guide, was enough to find that -- let me get my  
19 case so I'm precise. So first the Nevada Supreme Court  
20 found that the servicer was not required to introduce  
21 the actual servicing contract it entered into with  
22 Fannie Mae. The Nevada Supreme Court goes on to say  
23 that, rather, "The evidence that appellant, which was  
24 the servicer, was Fannie Mae's loan servicer, combined  
25 with the authorizations in the Fannie Mae servicing



1 guide that are generally applicable to Fannie Mae's  
2 servicers was sufficient to show that appellant was  
3 authorized to argue that 12 usc 4617(j)(3), the Federal  
4 Foreclosure Bar, preempts NRS 116.311(6)."

5 In a footnote, the Nevada Supreme Court says  
6 that "The servicer's 30(b)(6) witness contested that  
7 Fannie Mae continually owned the loan after the January  
8 2010 transfer, which she presumably confirmed based on  
9 her review of the relied-upon business records and  
10 absence of subsequent transfer in those records."

11 **THE COURT:** What's the cite on that case?

12 **MS. MORGAN:** It is unpublished. It is Case  
13 No. 70237, *CitiMortgage v. SFR*.

14 In this case, during this trial, we went  
15 above and beyond what we needed to do because we had a  
16 Bank of America representative here anyway to prove up  
17 the tender. We also elicited testimony that Fannie Mae  
18 owned the loan continuously at the time Bank of America  
19 serviced except for at the very, very beginning, at  
20 origination. So in December of 2004 is when Fannie Mae  
21 purchased the loan. So in this case we were lucky  
22 enough to have testimony from both servicers spanning a  
23 time frame of 15 years almost, 14 years, from  
24 December 2004 to today, that Fannie Mae continually  
25 owned the loan for that span of time, about 14 years.

1           That's pretty darn good evidence and that's  
2 reliable. And it comes from not only Bank of America,  
3 but it comes from Ditech. It comes from Fannie Mae  
4 itself.

5           There are certain terms of art that can  
6 easily be confused. For example, beneficiary, owner,  
7 not the same thing. The owner doesn't have to be the  
8 record beneficiary under *Montierth*. The owner can  
9 certainly have a relationship with another entity that  
10 is operating on its behalf as the record beneficiary.  
11 Happens all the time.

12           The holder of the note is not the same thing  
13 as the owner. The holder is holding the note on behalf  
14 of the owner. And it all goes to right to enforce.  
15 The beneficiary and the holder have to be the same  
16 person under *Edelstein*. And that gives them the right  
17 to enforce, but none of that equals ownership.

18           Mr. Bohn spoke about *Leyva*, about how a deed  
19 of trust is an interest in the property. Certainly, it  
20 is. It's a recorded interest. And it provides that  
21 authority to foreclose, but it doesn't mean you own  
22 what you foreclose. You just have that authority.  
23 *Leyva* is, I think, a foreclosure mediation case.

24           *Edelstein*, again, is not specific to 116.  
25 That's a case about standing to foreclose, talking

1 about the record beneficiary and the holder needing to  
2 be united at the time of the foreclosure.

3 *Christine View*, though, is a case involving  
4 Chapter 116 sales. And it is a Nevada Supreme Court  
5 opinion saying that the Federal Foreclosure Bar  
6 preempts. And not only that, but that the servicer has  
7 standing to assert the Federal Foreclosure Bar. And  
8 that's what we have in this case.

9 Bona fide purchaser misses the point of  
10 preemption. It doesn't matter if Mr. Haddad was a bona  
11 fide purchaser because preemption. Bona fide purchaser  
12 is a creature of state law. For the same reason that  
13 the Federal Foreclosure Bar preempts the effect of 116  
14 relating to a first deed of trust, for that same reason  
15 the Federal Foreclosure Bar preempts utilization of the  
16 BFP state law doctrine. It has no place in the Federal  
17 Foreclosure Bar. There's no carve-out for it and it's  
18 preempted.

19 The Court seemed to have questions about if  
20 the servicer is the record beneficiary and the holder  
21 of the note, what would prevent them from just -- and I  
22 don't want to misstate what your question was, but  
23 prevent them from just doing what they want, basically,  
24 foreclosing and cutting Fannie Mae out of the picture,  
25 if there's no specific contract in evidence phenomenon

1 Fannie Mae and that servicer, you only have the guide.  
2 What are the teeth that Fannie Mae could use if the  
3 servicer was to go rogue or make a mistake? Well, for  
4 one thing, the Federal Foreclosure Bar itself. Because  
5 if a servicer did that, that would be a sale of the  
6 loan that is under conservatorship. And just like the  
7 Federal Foreclosure Bar protects the deed of trust and  
8 the property interest from foreclosure, it would  
9 protect it from an unauthorized sale. That's one way  
10 that the Federal Foreclosure Bar has teeth in a  
11 different context.

12 **THE COURT:** That's only assuming that there's  
13 evidence of an ownership interest on the part of  
14 Fannie Mae.

15 **MS. MORGAN:** Right. It's a little circular.  
16 I see that. I just came up with it a little while ago.

17 But if that were to happen, we were under the  
18 unfortunate circumstance of having to litigate that,  
19 and it was determined to be Fannie Mae ownership and a  
20 servicer did go rogue or did make a mistake, whether it  
21 be intentional or not, the Federal Foreclosure Bar  
22 would protect Fannie Mae's interest.

23 The standard of proof in a civil case, of  
24 course, is preponderance of the evidence. Is it more  
25 likely than not that Fannie Mae owned this loan. And I

1 would have a hard time up here if there was some other  
2 entity that came in and said, we own this loan; we've  
3 owned this loan since X date; we owned the loan at the  
4 time of sale. But in this case, given that we have a  
5 continuation of 14 years covered by testimony by people  
6 with knowledge, based upon their business records, 14  
7 years of business records. When really all we have to  
8 prove is Fannie Mae ownership on one day,  
9 November 22nd, 2013. We went above and beyond that and  
10 provided evidence of ownership for four years.

11 And no one else can come in here and say that  
12 they owned the loan. No one else has said it.  
13 Mr. Bohn hasn't presented anyone else who is claiming  
14 to own the loan. So if you're weighing is it more  
15 likely than not, in this case, given the evidence that  
16 we've provided and given the guidance from the Nevada  
17 Supreme Court, it's more likely than not that  
18 Fannie Mae owned this loan.

19 The only other parties involved are MERS.  
20 They assigned away their interest prior to the  
21 foreclosure sale. The document custodian who is  
22 holding it on behalf of Ditech, who is able to have the  
23 custodial agreement with Bank of New York Mellon in  
24 Texas, because it's provided, they never came in here  
25 saying they're trying to say they own the note. We did

1 not produce in the case the custodial agreement with  
2 Bank of New York Mellon, but I don't think we need to  
3 in order to meet our burden in this case.

4 We had the testimony of Ms. Christensen, who  
5 testified that the note is being held on Ditech's  
6 behalf in Texas by the custodian, Bank of New York  
7 Mellon. And then the testimony from Ms. Carr saying  
8 that is the type of arrangement that is anticipated and  
9 allowed in the guide. So at the end of the day, three  
10 different ways, three different reasons why the deed of  
11 trust survives.

12 We also have the second deed of trust. And  
13 the only reason we kept them in from our end is if the  
14 sale is found to be completely void, which isn't even  
15 necessarily what we want, if it's found to be  
16 completely void, the second would still be on title.  
17 If the Court finds under *Diamond Spur* or really under  
18 any of the three scenarios that the sale was void as to  
19 the super priority portion only, meaning that Saticoy  
20 Bay took its interest subject to the deed of trust,  
21 then we recognize that the second deed of trust would  
22 have been extinguished by virtue of the 116 sale.

23 That's it. Thank you.

24 **THE COURT:** Thanks. Last word, Mr. Bohn?

25 **MR. BOHN:** Thank you. And I will be brief.

1 I may get a little bit wordy.

2 Since *Diamond Spur* came out, I think this  
3 litigation is viewed by a number of judges, this is my  
4 observation, as like a plague of locusts on the court.  
5 And now that we have *Diamond Spur* everyone, including  
6 Your Honor, just wants to get these cases done and over  
7 with. I'm going to be sad in a year when they are over  
8 with because I have to go out and do PI work or  
9 whatever commercial litigation, and I have to make sure  
10 I'm on time with all my deadlines. I'm not going to  
11 get courtesy extensions like I do all the time.

12 The Akerman firm and both counsel at the  
13 table here have always been a pleasure to work with.  
14 The state bar frequently emphasizes civility amongst  
15 attorneys, and I just have to compliment not just  
16 Akerman firm but a number of the other firms  
17 representing the banks that are easy to work with  
18 trying to get these cases through the courts, present  
19 the cases as efficiently as possible.

20 **THE COURT:** That's good to hear --

21 **MR. BOHN:** And especially when counsel  
22 reminds the Court what I forgot to mention is, oh,  
23 yeah, there's a second deed of trust on the property  
24 also.

25 For clarification, Brooks Hubley filed the

1 original answer on behalf of Green Tree/Ditech, and it  
2 hasn't been amended. The Akerman firm did file on  
3 behalf of whoever the second deed of trust holder is.  
4 There really is no defense as far as the second deed of  
5 trust holder is concerned. The Court should find the  
6 second deed of trust is extinguished.

7 About the recording statutes. Well, counsel  
8 said we haven't proven that Fannie Mae doesn't own the  
9 loan. I'm not talking about ownership of the loan.  
10 I'm talking about an interest in the deed of trust.  
11 Statute of frauds requires, in order to have an  
12 interest in the deed of trust you have to have a  
13 written agreement, and that makes it a conveyance so it  
14 has to be recorded.

15 I acknowledged in my closing argument that  
16 they have contractual rights to payments. They have  
17 contractual rights to their servicers, and they're  
18 entitled to receive money on the note and the deed of  
19 trust. That doesn't mean they have an interest in the  
20 deed of trust. And because they don't have an interest  
21 in the deed of trust, that deed of trust gets  
22 extinguished.

23 Counsel mentioned BFP gets wiped out by the  
24 Federal Foreclosure Bar. She's overreading *Berezovsky*  
25 much too broadly. *Berezovsky* decided two issues, one



1 federal, one state law. The federal law was whether or  
2 not an HOA foreclosure sale is the type of sale that  
3 would be prohibited by the Federal Foreclosure Bar.  
4 And they determined it was.

5 The second issue was whether or not an  
6 unrecorded interest was enough of an interest in the  
7 deed of trust. And in that instance, they said  
8 specifically, because it's a federal court, they have  
9 to look to the law of the State of Nevada. And they  
10 have *Butner v. United States*, United States Supreme  
11 Court case. Property rights are determined by state  
12 law. And one of the property issues is bona fide  
13 purchaser. So bona fide purchaser doesn't go by the  
14 wayside because of the Foreclosure Bar. The  
15 foreclosure of the interest is what is barred. You  
16 still look at all other applicable state laws,  
17 including bona fide purchaser.

18 It's talking about interest in real property.  
19 If you look at, for instance, 107.090, request for  
20 notices -- I was going to say as far as *Berezovsky* is  
21 determined, we know what the Ninth Circuit did with  
22 *Bourne Valley*. And we know what the Ninth Circuit said  
23 when they had a chance to publish a decision on that  
24 issue.

25 107.090 was discussed in great length in both

1 the *Bourne Valley* decision and the certified question  
2 case. The definition of a person with an interest, the  
3 statute says, specifically subsection 1, "A person of  
4 interest means any person who has or claims any right,  
5 title, interest in, or lien, or charge upon the real  
6 property described in the deed of trust as evidenced by  
7 any document or instrument recorded in the Office of  
8 the County Recorder of the county in which any part of  
9 the real property is situated."

10 Again, recorded.

11 In regards to the *Golden Hill* matter, the  
12 Nevada Supreme Court issued an unpublished decision  
13 December 13th, 2018, *SFR v. Wells Fargo Bank*. As a  
14 footnote -- the body of the case says, "Assuming a  
15 homeowner can satisfy the default that's the super  
16 priority portion of the lien, the record does not  
17 establish the HOA in this case allocated or had an  
18 obligation to allocate the former homeowner's payment  
19 in that manner."

20 They put a footnote to there they say, "This  
21 Court's disposition of *Saticoy Bay v. JP Morgan* was  
22 premised on this assumption, but the decision was  
23 undeveloped in that it had not been timely and  
24 coherently briefed."

25 They just don't want to listen to me.

1           My point is *Golden Hill* is pretty much on the  
2 way out. I guess they didn't raise it enough in the  
3 lower court. This morning, as I'm eating breakfast, I  
4 realize I didn't brief the *Golden Hill* portion. I  
5 think that the *Diamond Spur* portion is what's going to  
6 be dispositive in this case. So I didn't want to run  
7 to the office and get something else written to the  
8 Court, but I would request that you consider limiting  
9 what they're entitled to under the Deeds of trust by  
10 exercising your equitable powers in this matter.

11           I have nothing further, and thank you again  
12 for your time.

13           **THE COURT:** Thanks, guys. Can I get you both  
14 to submit proposed findings and conclusions for me?  
15 Submit it in Word so I can cut and paste.

16           **MR. BOHN:** I did those back in October when  
17 we were supposed to go to trial on this.

18           **THE COURT:** I think I caught up on everything  
19 up until the end of the year. Now I'm behind again  
20 about another three bench trials.

21           **MR. BOHN:** Understood.

22           **THE COURT:** I'm trying to catch up again.

23           **MR. BOHN:** Can I ask you a dumb --

24           **THE COURT:** We're off the record.

25           (Proceedings concluded at 2:57 P.M.)

-o0o-

ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF  
PROCEEDINGS.

  
/S/ Kimberly A. Farkas, RPR, CRR

<b>MR. BOHN: [27]</b> 26/1 28/13 32/5 37/18 37/23 41/18 44/7 47/23 48/9 48/12 51/2 53/6 56/15 62/10 64/8 70/13 70/25 75/11 75/17 75/24 76/2 76/5 110/24 111/20 115/15 115/20 115/22 <b>MR. SECHRIST: [32]</b> 4/8 25/18 28/10 32/2 33/13 37/16 37/21 38/2 38/14 38/23 41/19 42/25 44/4 46/22 47/20 48/5 48/10 51/5 56/11 56/14 56/21 58/20 59/2 59/10 59/13 62/7 62/12 62/20 62/25 63/9 70/18 75/7 <b>MS. MORGAN: [5]</b> 38/21 75/21 94/23 105/11 108/14 <b>THE CLERK: [1]</b> 4/13 <b>THE COURT: [66]</b> 4/3 4/10 4/17 26/2 28/12 28/14 32/6 33/17 37/25 38/17 38/22 38/25 44/6 44/9 48/13 51/4 53/7 56/13 56/16 56/19 58/24 59/8 59/11 59/16 62/9 62/18 62/23 63/11 63/19 63/21 63/24 64/1 64/6 70/15 70/17 70/19 71/5 71/9 71/16 71/18 71/24 72/5 72/13 73/5 73/12 73/19 74/4 74/19 75/2 75/5 75/10 75/12 75/16 75/19 75/23 76/1 76/4 94/22 105/10 108/11 110/23 111/19 115/12 115/17 115/21 115/23 <b>THE WITNESS: [26]</b> 4/15 4/19 38/19 41/20 43/1 63/18 63/20 63/23 64/5 70/16 70/23 71/3 71/7 71/13 71/17 71/22 71/25 72/8 73/2 73/6 73/16 73/25 74/9 74/22 75/4 75/14  <b>\$</b> <b>\$1,181.01 [1]</b> 27/10 <b>\$10,200 [1]</b> 103/3 <b>\$100 [1]</b> 96/4 <b>\$140,000 [3]</b> 94/16 94/20 103/4 <b>\$17 [2]</b> 88/8 93/14	<b>\$184,373.80 [2]</b> 31/8 44/4 <b>\$220,000 [2]</b> 11/6 11/8 <b>\$276.75 [3]</b> 95/13 96/16 97/1 <b>\$30.75 [1]</b> 95/12 <b>\$300 [1]</b> 98/14 <b>\$31.75 [1]</b> 97/7 <b>\$369 [1]</b> 96/3 <b>\$411.75 [1]</b> 98/9 <b>\$700 [1]</b> 97/23 <b>\$706.25 [1]</b> 97/15 <b>\$92.25 [1]</b> 95/11  ' ' <b>13 [1]</b> 62/20  - 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