

IN THE SUPREME COURT OF THE STATE OF NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL
LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-
BACKED CERTIFICATES, SERIES 2005-A8, Appellant, Elizabeth A. Brown
Docket of Supreme Court

vs.

SFR INVESTMENTS POOL 1, LLC, Respondent.

CASE NO.: 79235

District Court Case No.: A739867C

Appeal from the Eighth Judicial District Court In and For the County of Clark
The Honorable Joanna A. Kishner, District Court Judge

JOINT APPENDIX – VOLUME XI

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Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series
2005-A8*

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DATED this 15th day of June, 2020.

WRIGHT, FINLAY & ZAK, LLP

/s/ Christina V. Miller, Esq.
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 Las Vegas, Nevada 89117
*Attorney for Appellant, U.S. Bank, National
 Association As Trustee For Merrill Lynch
 Mortgage Investors Trust, Mortgage Loan
 Asset-Backed Certificates, Series 2005-A8*

CERTIFICATE OF SERVICE

I certify that I electronically filed on the 15th day of June, 2020, the foregoing **JOINT APPENDIX – VOLUME XI** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

- [X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

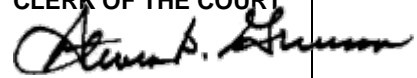
Service via electronic notification will be sent to the following:

Jacqueline Gilbert
Karen Hanks

- [X] (Nevada) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Faith Harris

An Employee of WRIGHT, FINLAY & ZAK, LLP



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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 U.S. BANK, NATIONAL
9 ASSOCIATION AS TRUSTEE FOR
10 MERRILL LYNCH MORTGAGE
11 INVESTORS TRUST, MORTGAGE
12 LOAN ASSET-BACKED
13 CERTIFICATES SERIES 2005-A8,

11 Plaintiff,

12 vs.

13 SFR INVESTMENTS POOL 1, LLC,
14 ET AL.,

14 Defendants.

15
16 BEFORE THE HONORABLE JOANNA S. KISHNER
17 DISTRICT COURT JUDGE
TUESDAY, APRIL 23, 2019

18 **RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 4**

19 APPEARANCES:

20 For the Plaintiff:

DANA J. NITZ, ESQ.
NATALIE C. LEHMAN, ESQ.

22 For the Defendant:

KAREN HANKS, ESQ.
JASON G. MARTINEZ, ESQ.

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25 RECORDED BY: SANDRA HARRELL, COURT RECORDER

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None

<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
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None

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Las Vegas, Nevada, Tuesday, April 23, 2019

[Case called at 1:07 p.m.]

THE COURT: Let's go on the record. On the record in case --
COURT RECORDER: On the record.

THE COURT: Oh, thank you, Madam Court Recorder. So,
we're now on the record in Case 739867, U.S. Bank National Association
v. SFR and related claims.

So, I've got -- do you all want to make appearances, or
should I just say same counsel, same clients?

MR. NITZ: I can make an appearance.

THE COURT: Sure, go ahead.

MR. NITZ: Dana Nitz and Natalie Lehman on behalf of U.S.
Bank.

MS. HANKS: Karen Hanks and Jason Martinez on behalf of
SFR.

THE COURT: Okay. So, today is the continuation. You were
here last Thursday. Today is the continuation of your bench trial, so we
are in Plaintiff's case-in-chief. So, Plaintiff's counsel, would you -- what
would like to do?

MR. NITZ: Call my next witness, Your Honor.

THE COURT: And that would be?

MR. NITZ: The custodian of records of Antelope
Homeowners Association.

THE COURT: Okay. Would you like the Marshal -- you just

1 did a peek out in the hallway. Do we think they're running late by
2 chance? Or Marshal, can you check out in the hallway and see if we
3 have anyone?

4 MR. NITZ: She just walked in the restroom when I came in.

5 THE COURT: Oh, no worries, then we'll wait a moment.

6 MS. HANKS: Do you want to hear my objection, Your Honor,
7 before the witness comes in?

8 THE COURT: You have an objection?

9 MS. HANKS: I know. Shocking.

10 THE COURT: Okay. Let's -- then Marshal, can you just let the
11 witness know that it'll just be a moment when you see him or her --

12 THE MARSHAL: Yes.

13 THE COURT: -- out in the hallway, and I will hear Defendant
14 counter -- you really just still haven't -- so we're treating this as Plaintiff
15 and Defendant's case until somebody tells me something differently.

16 MS. HANKS: Correct.

17 THE COURT: So, at this juncture, just to give you all a heads
18 up just in case you weren't aware, because it only came up today. Today
19 was filed a stipulation -- today at 9:09 a.m. I'm not sure if you all
20 happened to look on your systems. I was on the bench in other matters.
21 The stipulation and order for the dismissal without prejudice as to the
22 claims between Antelope Homeowners Association and U.S. Bank
23 National Association was filed today. Just the stipulation and order, so
24 that's the FYI, in case you all hadn't seen that.

25 But counsel for SFR, feel free. What is your objection? And

1 are we going to referencing these, the same documents as last week?

2 MS. HANKS: I don't know if it's a document reference, Your
3 Honor. I just -- there's been no name of the custodian of records. I don't
4 even know who is being called right now. It was just generically
5 disclosed as custodian of records for Antelope, and I'm not aware of any
6 custodian of records' affidavit with any records that were produced in
7 this case from Antelope Homeowners Association.

8 THE COURT: Okay.

9 MS. HANKS: And I'm not aware of any --

10 THE COURT: Sure. Well, let's find out. Are there proposed
11 exhibits that are in our exhibit binder for the custodian of records that I
12 should be referencing? Counsel for Plaintiff, what the custodian of
13 records she's going to be discussing? Proposed exhibits blank to blank.

14 Can I have the exhibit binder, Madam Clerk? Thank you so
15 much. Exhibit binders, I guess.

16 MR. NITZ: I would direct the Court to Exhibit 44.

17 THE COURT: Sure. Just one second, please.

18 MR. NITZ: It's in proposed binder two.

19 THE COURT: Can I have one of my orange sheets, too,
20 counsel -- I mean, Marshal? So, I have proposed Exhibit 44. Thank you
21 so much, counsel. Bylaws of Antelope Homeowners; I got it. Thank you
22 so much. Is that the document you're asking the Court to look at?

23 MR. NITZ: Well, that's part of the --

24 THE COURT: That's part of the --

25 MR. NITZ: -- proposed exhibit.

1 THE COURT: Okay. I just was seeing the very first page.
2 That's why I was making sure I was on the right exhibit. Is that proposed
3 44 -- beginning of proposed 44? Okay. So, counsel, please -- so is this
4 the exhibits -- is proposed Exhibit 44 the exhibit by which this custodian
5 of records is going to testify to; is that correct?

6 MR. NITZ: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. NITZ: ANT 1 through 117.

9 THE COURT: Sorry.

10 MS. HANKS: I'm sorry?

11 THE COURT: ANT 1 through 117.

12 MS. HANKS: Oh, you're using the Bates stamp. Okay.

13 THE COURT: Okay. That's -- thank you. Okay. Anything
14 else, or is that it? Is that the only proposed exhibit that they're going to
15 testify to, this custodian of record?

16 MR. NITZ: Yes, Your Honor.

17 THE COURT: Okay. So, counsel for Defense, hearing that,
18 what's the basis of your objection, please?

19 MS. HANKS: Your Honor, we objected to these proposed
20 exhibits as lacking authenticity, lacking foundation, and hearsay, because
21 I believe they do include records that aren't Antelope's record, weren't
22 prepared by Antelope Homeowners Association. I don't know who the
23 witness is, so I'm not sure if they're employed with Antelope.

24 So, there's going to be a further objection depending on the
25 witness, other than just a generic disclosure of custodian of records for

1 Antelope. I don't see an affidavit from a custodian of records. So, I'm
2 not sure who the witness is or who they're employed with, so there
3 might be further objections. Without knowing that, I'm just kind of going
4 from a --

5 THE COURT: Okay.

6 MS. HANKS: -- generic standpoint that I objected to the
7 exhibits themselves, because I didn't have that affidavit. And there was
8 no deposition, Your Honor, in this case. Not that I'm aware of. I don't
9 have a transcript of Antelope Homeowners Association either.

10 THE COURT: Did you seek to take their deposition?

11 MS. HANKS: Oh, I didn't. I'm just saying I'm not aware of
12 any transcript that also -- because I know sometimes, you can have a
13 deposition -- have a custodian of records show up and authenticate
14 records on a record. So, I just wanted to make sure you were aware
15 that --

16 THE COURT: Okay.

17 MS. HANKS: -- I'm not aware of anything like that, and I'm
18 not aware of any custodian of records' affidavit either.

19 THE COURT: Okay.

20 MS. HANKS: But we do object to these records.

21 THE COURT: But Antelope was a party, correct?

22 MS. HANKS: They were at one point, yes.

23 THE COURT: Do we know if these -- well, do we know if
24 proposed Exhibit 44 came in from Antelope when they were a party in
25 this case, which humorously enough, they seemed to have only filed

1 their stipulation this morning, right? So, is that where these records
2 came from, Counsel? Do you know, by chance?

3 MR. NITZ: Yes, they did, Your Honor. In fact, the cover of
4 the Exhibit 44 shows that it's Defendant, Antelope Homeowners
5 Association's initial disclosure of witnesses and documents pursuant to
6 NRCP 16.1.

7 THE COURT: I'm sorry. When you say cover, I don't see --

8 MS. HANKS: I don't have that.

9 THE COURT: -- a cover.

10 MS. HANKS: Yeah.

11 THE COURT: Under proposed Exhibit 44, there is no cover. I
12 don't know what you're talking about. Proposed Exhibit 44, the reason
13 why the Court mentioned the first page of the document in the exhibit
14 binder that was provided, just so that you all had a clear reference of
15 what the first page of the exhibit that the Court had, and the first page
16 that the Court has under proposed Exhibit 44, it says, bylaws of Antelope
17 Homeowners Association. That's the reason why the Court mentioned
18 that, to make sure that we were at the first page.

19 So, I'm not sure what you're talking about cover, because in
20 the exhibit binder submitted to the Court, the first page, ANT -- I'm just
21 going to say 01 to make my life easy -- it says, bylaws of Antelope
22 Homeowner's Association.

23 The last page under that proposed exhibit, ANT 117, is some
24 document that has a -- well, it says acknowledgement -- let's see. It's a
25 multi-page -- it's a two-page document that says, retainer agreement on

1 Bates stamp 116 and 117. It appears to be the second page. The Court is
2 not saying that for any judicial notice standpoint. I'm just saying it for
3 merely identification purposes. So, Counsel, when you're saying cover,
4 you mean what, please?

5 MR. NITZ: The way it was described and the way I
6 understood it, it was Defendant Antelope Homeowners Association's
7 initial disclosures of witnesses and documents pursuant to NR 16.1,
8 which was electronically served on November 26th, 2018.

9 THE COURT: It -- I'm sorry. Are you happening to say that
10 document in your hand, the initial disclosures, the attachments,
11 happened to be Bates stamped ANT 1 through 117?

12 MR. NITZ: Yes, Your Honor.

13 THE COURT: That the proposed exhibit just doesn't have the
14 pleading portion of it; is that what you're telling the Court?

15 MR. NITZ: Yes, Your Honor.

16 THE COURT: Okay. So, at least I -- I'm just trying to get an
17 understanding of what you're saying, because I can't see from here
18 what's in your hand, and I can only know what's done with the exhibit.

19 So, Counsel, do you have an disagreement that that's the
20 representation?

21 MS. HANKS: That they were disclosed by Antelope in the
22 course of discovery?

23 THE COURT: Right.

24 MS. HANKS: No, and that's what I have here. I'm just cross-
25 checking. I have that here that they did it as part of their initial

1 disclosures.

2 THE COURT: Okay. So, if they were a party, and they did
3 this as part of their initial disclosures, and provided it as part of a
4 proposed exhibit, right. So, where would be the prejudice to Defendant
5 to at least have the custodian get on the stand, and at least describe
6 what they are, and then deal with this by an objection -- by objection
7 basis versus precluding the individual from testifying, because they were
8 a party at the time, right? And now they've come out of the case. Why
9 would they otherwise have to be disclosed in another manner?

10 MS. HANKS: Well, I'm not objecting to the records in terms
11 that they weren't disclosed. What I'm objecting to is I don't know who
12 this witness is. And the reason why I say that is I'm more familiar with
13 this property than I normally would be other properties, because we had
14 a companion case against the association with respect to this case.
15 Completely different, not dealing with NRS 116. So, I know that CAMCO
16 is a company that's involved with a lot of the record keeping.

17 THE COURT: Uh-huh.

18 MS. HANKS: And when I look at the exhibit, I see some of
19 CAMCO's records. So, my concern is, I objected to the records on that
20 basis, that they contained records that weren't Antelope's records. I
21 objected to hearsay, lack of authenticity and lack of foundation. What I
22 don't want to happen is to have to do it in front of -- I want to know who
23 the witness is, and if the witness is not from Antelope Homeowners
24 Association, then I want to deal with -- it's kind of the same way we dealt
25 with Alessi's records. Let's parse out the records that aren't theirs.

1 THE COURT: Okay.

2 MS. HANKS: If it's CAMCO, then I have a complete objection
3 to the witness all together because CAMCO was never disclosed.

4 THE COURT: Well --

5 MS. HANKS: So, that's why I'm kind of --

6 THE COURT: -- the witness that was called was custodian of
7 records for Antelope Homeowners Association. That is a legal term.
8 That would be the custodian of records for Antelope Homeowners
9 Association. That is a legal term. So, who is the custodian of records
10 that is on behalf of Antelope? They're employed by Antelope or are we
11 having a CAMCO person. Let's just cut to the case, so the Court can
12 address the issues, please.

13 MR. NITZ: The witness is Yvette Saucedo -- or Saucedo, S-A-
14 U-C-E-D-A. I would point out to the Court that not --

15 THE COURT: And she's employed by whom?

16 MR. NITZ: She's employed by CAMCO. I would point out to
17 the Court that we designated custodian of records for Antelope
18 Homeowners Association, and we designated custodian of records for
19 CAMCO, Complete Association Management Company, and we also
20 specifically listed Yvette Saucedo as a witness in that category.

21 THE COURT: Can we please point out what you -- where?
22 What document are you referencing, counsel?

23 MS. HANKS: I'm sorry? Were you talking to me, Your
24 Honor?

25 THE COURT: No, counsel --

1 MR. NITZ: The amended joint pretrial memorandum, Your
2 Honor.

3 THE COURT: Sure. No worries.

4 MR. NITZ: Page 15.

5 THE COURT: I appreciate it. Give me two seconds to scroll
6 to it. Okay. So, let's look at page 15. All right. One sec. Oh, there it is.
7 I see it. Number 12. So, are you --

8 MR. NITZ: Numbers 10 and 12.

9 THE COURT: Pardon?

10 MR. NITZ: Numbers 10 and 12, to be specific, Your Honor.

11 THE COURT: Ten and 12, okay. So, for clarity, are you
12 calling Ms. Saucedo as a -- are you calling the custodian of records of
13 Antelope? Are you calling the custodian of records of CAMCO? Are you
14 calling Ms. Saucedo as a custodian of records of one of the two? Are
15 you calling her in an individual capacity, because I need to address -- you
16 heard the objections I have, so I need to know in which category I'm
17 addressing the objections.

18 MR. NITZ: She wears two hats, Your Honor. She wears the
19 hat of CAMCO custodian of records. She wears the hat of Antelope
20 Homeowners Association.

21 THE COURT: Okay. So, here's what the Court is going to do,
22 Counsel. So, you called her as custodian of records of Antelope; is that
23 correct? Is that your designation?

24 MR. NITZ: I did.

25 THE COURT: I just need to know. Okay. So, is that what you

1 want to stick with? I can phrase it more judge-like. I just wanted to
2 ensure, is that the witness that you're calling, the custodian of records of
3 Antelope Homeowners Association, or are you calling a different
4 witness? Whoever you're calling is going to be -- I'm just -- for purposes
5 of -- I'm just going to say that's the witness you're calling and ask the
6 Marshal to go get that witness, and then the witness is going to come on
7 the stand. I'm going to let you start your examination, and we'll hear
8 whatever objections are coming forward.

9 And then if there is any objections -- maybe there won't be
10 any, but if there are, then I will deal with each of the objections on a case
11 by case basis, and I will have to rule with whatever comes down the pike,
12 but I just want to make sure what rubric the individual who will be sitting
13 on the stand, under what titling that person is sitting on the stand, so I
14 can make well-reasoned rulings based on knowing what titling that
15 person is.

16 MR. NITZ: I called her as custodian of records for Antelope
17 Homeowners Association.

18 THE COURT: Okay. Marshal, can you please go get the next
19 witness out in the hallway? Thank you so much.

20 So, counsel for Defense, you understand that I'm going to
21 hear what the person has to say, and you can reserve whatever
22 objections, and the Court will address whatever you need to address, but
23 to the extent that you are asking the Court to preclude the witness
24 upfront, the Court doesn't see that there's a basis yet, because I need to
25 hear what the individual has to say to have an understanding because a

1 custodian of records, unlike -- well first off here, I've got Ms. Saucedo
2 specifically named. B, I have a custodian of records. C, I've got
3 documents, who was a party, and I need to hear a little bit more to make
4 a determination. So, we're going to need to address what we need to
5 address.

6 MS. HANKS: Just to clarify, she was not named in the
7 pretrial disclosures or in the pretrial memo, but I just doublechecked the
8 original pretrial disclosures. So, I just wanted to clarify that as a point.

9 THE COURT: I wasn't aware of that until you just said it
10 because once again, the pretrial disclosures aren't filed. I was --

11 MS. HANKS: Right.

12 THE COURT: -- given a copy --

13 MS. HANKS: So, I wanted to make that point for the record,
14 Your Honor.

15 THE COURT: Okay.

16 YVETTE SAUCEDA, PLAINTIFF'S WITNESS, SWORN

17 THE CLERK: Thank you. You can be seated.

18 THE WITNESS: Thank you.

19 THE CLERK: Please state your full name, spelling your first
20 and last name for the record.

21 THE WITNESS: Okay. Yvette Saucedo, Y-V-E-T-T-E, last
22 name is S-A-U-C-E-D-A.

23 THE COURT: Counsel, feel free to proceed on your
24 questions.

25 MR. NITZ: Thank you, Your Honor. Ms. Lehman will

1 question the witness.

2 THE COURT: Oh, I'm sorry. Whichever counsel who will be
3 questioning the witness, feel free to proceed on your questions.

4 And there's water, and then if -- you sound like you're
5 speaking loud enough, but if, for any reason, you need the microphone
6 close, you're also welcome to bring it closer --

7 THE WITNESS: Okay.

8 THE COURT: -- to you. And the two witness binders, if you
9 get referenced, are behind you, okay?

10 THE WITNESS: Okay. Thank you.

11 THE COURT: Thank you so much.

12 DIRECT EXAMINATION

13 BY MS. LEHMAN:

14 Q Good afternoon, Ms. Saucedo.

15 A Hi.

16 Q So, my name is Natalie Lehman, and I'm one of the attorneys
17 for the Plaintiff, U.S. Bank, in this matter. Before appearing today, did
18 you review any documents?

19 A I did.

20 Q And what did you review?

21 A I had a file from, I believe, a previous deposition that I had
22 given that pretty much had the homeowner file in it, the account ledger,
23 any documents that were sent out, as well as the association documents,
24 including the CC&Rs and the collection policy.

25 Q And would this be -- oh, and were you asked to bring any

1 documents with you here today?

2 A No.

3 Q And when you're referring to the homeowner file, were you
4 referring to the property at 7868 Marbledoe Street, Las Vegas, Nevada?

5 A That's correct.

6 Q And for the homeowners with the last name of Ivy?

7 A I believe so, yes.

8 MS. LEHMAN: Do we have a copy of the exhibit binders for
9 the witness?

10 THE WITNESS: They're right here.

11 THE COURT: Sure.

12 MS. LEHMAN: Oh, okay. She's hiding right behind them.

13 THE COURT: That's why I mentioned it to the witness. Are
14 you going to go into volume II by chance?

15 MS. LEHMAN: Yes, volume II. If you would, take a look at
16 Exhibit 44.

17 THE COURT: Proposed. Proposed.

18 MS. LEHMAN: Proposed Exhibit 44.

19 THE COURT: Appreciate it. Counsel, are you going to need
20 the screens at all? Madam Court Recorder will turn them on. Are you
21 going to put anything on the Elmo?

22 MS. LEHMAN: No.

23 THE COURT: Okay. Thank you. No worries. She's
24 wonderfully intuitive, but thank you.

25 THE WITNESS: Okay.

1 BY MS. LEHMAN:

2 Q If you could just look briefly at this proposed Exhibit 44.

3 A Okay.

4 Q And could you tell us whether these were the documents that
5 you reviewed in preparation for your testimony today?

6 A Yes, they were.

7 Q Okay. Now, Ms. Saucedo, where are you currently
8 employed?

9 A I am the accounting director for Complete Association
10 Management Company, also known as CAMCO.

11 Q And is CAMCO the management company for Antelope
12 HOA?

13 A Yes, we are.

14 Q And is Antelope the HOA for the subject property we just
15 talked about, 7868 Marbledoe Street?

16 A Yes.

17 Q Did Antelope retain CAMCO to manage the assessment
18 account for this property?

19 A We do. Yes, we do all of the management for the HOA,
20 including accounting.

21 Q And can you please describe what all the management
22 means?

23 A So, we are the ones who have contact with the homeowners
24 in the community regarding any violation issues or accounting issues.
25 We also deal with the vendors for the community. We schedule the

1 board meetings, and we also keep all the records for the association.

2 Q Do you know when CAMCO was retained by Antelope?

3 A I do not, but we have managed them for a long time. I know
4 as far back as at least 2009.

5 Q Does CAMCO serve as the custodian of records for Antelope
6 HOA?

7 A Yes.

8 Q And are you the custodian of records for Antelope HOA?

9 A I am one of them, yes.

10 Q Are you the custodian of records for CAMCO?

11 A Yes.

12 Q If you could take a look at page -- let's see, proposed Exhibit
13 44, and it's Bates stamped ANT 100 through 105.

14 A Okay.

15 Q Do you recognize this document?

16 A I do.

17 Q And what is it?

18 A This is the accounting ledger for the property, and it looks
19 like it's from 2005 through 2012.

20 Q Do you know if CAMCO created this ledger in the course of
21 its duties as the management company for Antelope?

22 A Yes.

23 Q Do you know if the ledger was created by someone with
24 knowledge of the information in the ledger?

25 A Yes, it was.

1 Q And could you explain how the account ledger was created?

2 A Yes. So, the charges on the ledger, which are the monthly
3 assessments, get billed to all homeowners within the community when
4 we send out their monthly statements, and then any payments that are
5 posted on the ledger would, most of the time, come from the lockbox
6 data file from our bank. If a homeowner were to walk in a payment, then
7 that payment would be hand-posted to the account, and that's all done
8 by employees within the accounting department.

9 Q And then when you say accounting department, would that
10 be the accounting department of CAMCO?

11 A Correct.

12 Q And is this a true and correct copy of the ledger for this
13 property created by CAMCO?

14 A Yes.

15 Q Between 2009 and 2011, did CAMCO have a policy or
16 procedure to store a copy of the account ledger or to keep a copy of it?

17 A There's not a policy and procedure, but it is part of our
18 operating system that we use every day. So, it would never -- it never
19 goes away.

20 Q So, you're saying it's part of your operating system. Does
21 that mean that the information in the account ledger is stored
22 electronically?

23 A That's correct.

24 Q Okay, but you don't -- but CAMCO doesn't print a copy and
25 keep it -- keep a printed copy somewhere else?

1 A No, we only print it as needed.

2 Q Okay. If information was input into the ledger, let's say in
3 2011, would that information still be there today? If you were to recall it
4 -- go into the database and look for the account entries in 2011, could
5 you see that today?

6 A Yes.

7 Q Okay. Can you explain what types of items are included in
8 this ledger?

9 MS. HANKS: Your Honor, I have to object. I think we're
10 beyond the COR with the questions. I know you said my objections were
11 reserved, so I was waiting to hear the foundational questions, but now I
12 think we're going around it.

13 THE COURT: What's the basis of your objection, please?

14 MS. HANKS: That the witness was only called as a custodian
15 of records for Antelope Homeowners Association, and you said you
16 wanted to wait to hear from her with my objection being reserved. So
17 now, my objection would be, I believe that counsel is trying to take this
18 witness outside of the custodian records for Antelope Homeowners
19 Association. My understanding is all they can do as the custodian of
20 records is say this is a true and correct copy, and that's it. Now we're
21 getting into foundational testimony about the records.

22 THE COURT: Okay. Would you like to respond counsel for
23 Plaintiff?

24 MS. LEHMAN: I am asking Ms. Saucedo to explain to us
25 what the ledger means. There's some -- she is custodian of records, she

1 keeps the records, she testified that CAMCO compiles these records. So,
2 I'm asking her about what the records mean.

3 THE COURT: Counsel for Defense, do you want to maybe
4 explain your objection? I think you all are not on the same page on what
5 you're objecting to. I don't want the Court to interpret what I think you're
6 objecting to. I'd rather you please explain what you're objecting to so
7 that Plaintiffs can respond to your objection, if you wish to, so then the
8 Court can make a ruling.

9 MS. HANKS: Yes.

10 THE COURT: Because I hear your answers being very
11 different.

12 MS. HANKS: So, my understanding was I objected before
13 Ms. Saucedo took the stand, and the Court said, my objection will be
14 reserved, but you wanted to hear from her before --and maybe go on a
15 case by case. I understood from counsel, I think you clarified, that Ms.
16 Saucedo was being called purely as a custodian of records for Antelope
17 Homeowners Association.

18 Now, the question -- I've allowed the question to go forward
19 without standing up with my objection on the custodian of records for
20 Antelope, because now the question went into a different territory
21 beyond the custodian of records for Antelope Homeowners Association.

22 What I hear the question being, is the foundation, what the
23 documents mean, what they say, and that's beyond what my
24 understanding is of this witness is being called. So, that's why I stood
25 up and objected at that point in time.

1 THE COURT: Okay. I Understand.

2 MS. HANKS: Does that make it clearer?

3 THE COURT: Well, I understood that was your objection.

4 MS. HANKS: That's my objection.

5 THE COURT: But I'm not -- counsel for Plaintiff, do you wish
6 to respond with that clarification on what the basis of the objection is?
7 The difference between a custodian of records testimony versus a
8 substantive witness' testimony, is that a correct way to phrase what your
9 objection is, counsel for Defense?

10 MS. HANKS: Yes.

11 THE COURT: If you need to check with counsel, feel free.

12 [Plaintiff's counsel confer]

13 MS. LEHMAN: Okay. I'll ask a different question.

14 THE COURT: Okay. So, this is withdrawn, and the Court not
15 rule. And just since part of your Defense's objection was based on the
16 predicate of saying that the Court -- well, let's be clear. To the extent that
17 the request was to strike the witness as not being named, the Court,
18 actually, needed to hear what this witness' background was, to see if she
19 could qualify as a custodian. Now ,that I have heard that, the Court
20 would find it's appropriate that she could testify as the custodian.

21 Well, a) there was -- you had a right to reserve your objection
22 if you felt that she couldn't testify as a custodian, so -- and here, you
23 make an objection again about her being a custodian. Even if you felt
24 that the Court, by saying it's reserving, it's ruling now and needs to make
25 a ruling. The Court finds it appropriate to take into account her

1 testimony as the custodian, because she has set forth that she is the
2 custodian, and there's not been anything so far that's been presented
3 that she's not the custodian for Antelope.

4 So, the Court took into account the custodian type testimony.
5 I now have an objection, but you're withdrawing the question, so the
6 Court need not rule on that last question. Go ahead.

7 MS. LEHMAN: Okay.

8 BY MS. LEHMAN:

9 Q Ms. Saucedo, in the account ledgers that CAMCO holds as
10 custodian of record for Antelope, what type of information is recorded in
11 those ledgers?

12 A Any charges or credits to the home --

13 MS. HANKS: I'm sorry, Your Honor. I'm going to have to
14 renew my objection. I don't mean to interrupt you, Ms. Saucedo.

15 THE WITNESS: It's okay.

16 MS. HANKS: I'm sorry. That's a question about the contents
17 of the document. If the Court is finding that she's a custodian of records,
18 and I think the only -- the question has already been answered, these are
19 true and correct copies. What more can this witness testify to? Unless
20 counsel is going to try to shift her as a different type of witness.

21 THE COURT: Okay. The Court's ruling was only as to the
22 objection raised by Defendant initially --

23 MS. HANKS: Right.

24 THE COURT: -- as to the designation of this witness, so the
25 Court's ruling didn't expand or narrow what this witness could or could

1 not testify to, or what this witness was called for or not called for. It
2 might be a very narrow ruling on the custodian objection.

3 Now, that she's stated she was a custodian, no one has
4 provided anything. No one has offered anything out for proof for any
5 reason to object to that. So, that is what it is. Now, I'm being asked a
6 new question. I have an objection -- there's an objection raised that that
7 question would take her outside of custodian designation. Counsel for
8 Plaintiff, do you wish to respond?

9 MS. LEHMAN: Yes. I'm inquiring as to what type of records
10 were kept by CAMCO for Antelope, as custodian of records, which
11 includes what type of information has been input -- maybe I need to state
12 it differently. What type of information is input by a person with
13 knowledge into the records being held by CAMCO.

14 THE COURT: Okay. The Court is going to sustain the
15 objection on the way that you phrased the question to this witness,
16 based on how you called this witness, okay? Not to the contextual idea.
17 We're not there yet, but for that specific question, the way you phrased
18 it, and how you called this witness, Defense counsel's objections were all
19 taken, so it's sustained.

20 BY MS. LEHMAN:

21 Q Ms. Saucedo, what type of records are maintained by
22 CAMCO, as the custodian of records for Antelope?

23 A Basically all records of the Association. So, any
24 correspondence, any accounting records, financial records, meeting
25 minutes.

Q In the accounting records, does CAMCO maintain a record of the assessments charge to the homeowner?

A Yes.

Q Does CAMCO maintain a record of fines for violations?

A Yes.

Q Does CAMCO maintain a record of nuisance and abatement charges?

A Yes.

Q Does CAMCO maintain a record of maintenance charges?

A Yes.

[Counsel confer]

BY MS. LEHMAN:

Q Does CAMCO have a, I guess like an abbreviation system that they use when recording these events, such as when an assessment is charged to an account?

MS. HANKS: Objection, Your Honor. This takes the witness outside of a COR.

THE COURT: Explain?

MS. HANKS: She's asking, again, about the content of the documents, as opposed to what records you maintain.

THE COURT: The Court's going to rule, because of the way the question was phrased. Do they have a coding system, not the document specifics, but how they use their coding system.

MS. HANKS: Your Honor, still it's getting into the operations of CAMCO, which this witness wasn't called for. She was a COR of

1 Antelope Associations, not what's the operation of CAMCO and how do
2 they do things.

3 THE COURT: The Court's hearing that, but the Court's going
4 to overrule the objection as long as some foundational aspect with
5 regards how this witness is a designation custodian, but this may answer
6 that specific question?

7 THE WITNESS: There was at one time, yes.

8 BY MS. LEHMAN:

9 Q And can you explain that coding system?

10 A On the ledger PMT stands for payment.

11 MS. HANKS: Objection, Your Honor. I'm going to interrupt
12 the witness if she's going to testify to a document that hasn't been
13 admitted, and then I also think this is going outside the COR designation.

14 THE COURT: So, the first objection the Court's going to
15 sustain it, that's what she said, as it states on the ledger. So, the Court
16 has to sustain it and disregard, at the beginning of those words, as it
17 states on the ledger. Go ahead.

18 BY MS. LEHMAN:

19 Q Without looking at the ledger in front of you do you recall the
20 coding system, and for the different activities that would be reflected on
21 the account ledger?

22 A No. It was a long time ago, so I would need to look at the
23 ledger.

24 MS. LEHMAN: All right. Your Honor, I'd move for admission
25 of Exhibit 44.

1 MS. HANKS: Well, Your Honor, I have an objection. While
2 this witness might be able to testify it's true and correct, now that you've
3 found that she qualifies as a COR I still objected to foundation. There
4 are records in this cassette, this proposed Exhibit 44, that go beyond just
5 true and correct copies.

6 So, I would object to it be admitted for all purposes, just that
7 their true and correct. But I think it has -- the second hurdle is missing.

8 THE COURT: Counsel, would you like to respond with an
9 offer of proof?

10 MS. LEHMAN: Yes. So, I think we established by Ms.
11 Saucedo's testimony that these, like proposed Exhibit 44, are the records
12 that are kept by CAMCO as the COR for Antelope, and that they are
13 business records, they are --

14 THE COURT: How do you establish that they're business
15 records?

16 MS. LEHMAN: They're used in their ordinary course of their
17 management, of the HOA, when they're dealing with the homeowner.
18 They were --

19 THE COURT: Has she testified to that?

20 MS. LEHMAN: Yes. But they manage --

21 THE COURT: You've gone over all the documents in 44, and
22 she's testified to that? That's the challenge, that's why I'm inclined to
23 sustain your objection, she hasn't. We've referenced her to five pages of
24 117, haven't you?

25 MS. LEHMAN: Yes. She said she did review those prior --

1 THE COURT: She reviewed them for --

2 MS. LEHMAN: -- for her testimony.

3 THE COURT: She said she reviewed them for testimony here
4 today, right?

5 MS. LEHMAN: Yes.

6 THE COURT: And they're a true and accurate copy. It's what
7 they maintain, but where did she that they made the business record's
8 exception.

9 MS. LEHMAN: So, as an alternative, I would request that the
10 pages we've discussed ANT100 through 105 be admitted, which is the
11 account ledger.

12 MS. HANKS: Do you want to hear from me, Your Honor, I'm
13 sorry?

14 THE COURT: You're standing up. I was just making sure --

15 MS. HANKS: I will wait --

16 THE COURT: -- Plaintiff's counsel was finished.

17 MS. HANKS: I wait until I'm told to talk.

18 THE COURT: Good for you, Counsel.

19 MS. HANKS: Your Honor, my objection is still the hearsay.

20 This is one of the pages that I marked as hearsay, that I would have
21 objected to. This -- my objection is, this goes beyond a COR. She can
22 say this is true and correct copies of the file, or part of the file I looked at,
23 but this witness wasn't designated as someone who could lay the
24 foundation for each of the records getting past the hearsay exception.

25 So, I still renew that objection. I don't dispute they're true

1 and correct copies, because I think you've already qualified her as COR,
2 but that's where my objection lies.

3 THE COURT: Counsel, would you like to respond --

4 MS. LEHMAN: Yes.

5 THE COURT: -- to the additional objection raised by Defense
6 counsel, feel free to do so.

7 MS. LEHMAN: Yes. So, we established through Ms.
8 Saucedo's testimony that these account ledgers are a recordation of
9 CAMCO's business of managing the HOA, that they record the
10 assessments, and violations, or fines, et cetera in this account ledger,
11 and that their job was to manage the HOA, and to deal with the
12 homeowner, and that they keep a copy of it, and it's store, and that it's a
13 true and correct copy. But it would qualify under the business record
14 exception.

15 THE COURT: Where do you have, though, anything that's
16 the substance of the underlying document from this witness. In the
17 question you asked her, she said she doesn't recall, because it's been so
18 long ago.

19 So, you have it in a hypothetical sense, but how do you have
20 any testimony from this witness as to the document itself? You have the
21 procedures right, but have you have you asked for the testimony that
22 gets you to the substance and the accuracy of the document itself?

23 MS. LEHMAN: I asked her whether she reviewed the
24 documents that were -- I asked her to look through proposed Exhibit 44
25 and she said that they are true and accurate copies.

1 I asked her to look at this ledger, she said she had reviewed,
2 and as a true and accurate copy of what they have at CAMCO.

3 THE COURT: Right. Okay. Counsel, do you want to talk
4 with your co-counsel for a quick second, I'm not sure you're -- I may not
5 be being clear in my question. You have a hearsay objection, giving me
6 a foundational answer.

7 MS. LEHMAN: And I did previously ask her whether the
8 entries were made with -- by a person with knowledge of that entry, and
9 she testified they did.

10 THE COURT: The Court's going to have to sustain the
11 objection as to hearsay, without prejudice. The Court is in no way saying
12 that you can't lay more foundation, et cetera. The Court takes no
13 position one way or another, but you don't have anything that
14 overcomes the objection raised by Defense counsel, at this juncture,
15 based on this witness' testimony.

16 [Counsel confer]

17 BY MS. LEHMAN:

18 Q Ms. Saucedo, did -- in 2009 to 2012, did CAMCO have a policy
19 and procedure of timely inputting information into account ledgers?

20 A Yes.

21 Q And in the account ledgers that CAMCO maintained as the
22 custodian record for Antelope, specifically the ones in proposed Exhibit
23 44, which is ANT100 through 105, were those entries input by a person
24 with knowledge of the information?

25 A Yes.

1 Q And were those entries input at or around the time that those
2 events occurred, such as if an assessment was being charged for April,
3 were those entries input for April?

4 A Yes.

5 Q And in CAMCO's duties as the management company for
6 Antelope HOA, was it CAMCO's -- was it their duty to maintain account
7 ledgers for Antelope?

8 A Yes.

9 Q And did CAMCO use the account ledgers in the ordinary
10 course of its duties as the management company for Antelope?

11 A Yes.

12 Q And how would CAMCO use the account ledgers?

13 MS. HANKS: Your Honor, I have to object. This is beyond
14 the COR -- the witness now referring to CAMCO's policies and
15 procedures.

16 THE COURT: The Court's going to overrule that for the
17 limited scope for -- you've got the interplay here between the two
18 entities and acting as a dual custodian. As this witness has testified the
19 Court's going to allow a little bit of leniency, to kind of -- because of that
20 overlap in these type of cases.

21 THE WITNESS: Can you repeat the question, please?

22 BY MS. LEHMAN:

23 Q Yes. So, I had asked you whether CAMCO uses these ledgers
24 in its duties, as the custodian of record for Antelope, and you had said,
25 yes. And so, I was following-up and asking you how are these ledgers

1 used by CAMCO?

2 A The data that's on the ledger is what goes on the statement
3 sent out to the homeowner, with like a three-month snapshot of their
4 account history. And they're also used any time a homeowner calls for
5 their balance, or if they have questions about a late fee, or a payment
6 being posted. And then when the account's in collections we also use
7 the ledger to send to the collection agency, when they request it.

8 MS. LEHMAN: Okay. Your Honor, I'd move for admission of
9 proposed Exhibit 44, specifically ANT100 through 105, the account
10 ledger.

11 MS. HANKS: Your Honor, sorry, I renew my objection on
12 hearsay. And I want to highlight -- well, two points. My understanding
13 of the Court's allowing this witness to testify was limited to a COR. This
14 would go beyond a COR designation.

15 The second point I want to make, is that I believe I
16 understood from Ms. Saucedo's testimony, that at least as to pages 100
17 through 105, is that these are computerized; that in order words you
18 have to actually print the page out, it's not stored in a hard format.
19 I think counsel asked that.

20 So, it's done somewhere in the computer system and you
21 print it out. And we've -- I want to just draw the attention of the Court to
22 the case of *In re: Vee Vinhnee*, it's a bankruptcy case, 336 BR 437. And
23 that case discusses how you get the business exception rule for
24 computerized records, and they highlighted the fact that the inquiry is
25 not really about the procedures in which the record was created.

1 Really, when you're dealing with computerized records to overcome the
2 hearsay exception under the business exception rule you have to have
3 testimony as to how the database in the computer system was
4 maintained to ensure no tampering, because computerized records,
5 unlike a hard copy record can be altered.

6 So, the Court in that case, just to give you some backup, is
7 that they declined to allow credit card statements. Records from a credit
8 card company in a bankruptcy action, where oddly enough the debtor
9 wasn't even there to oppose the evidentiary hearing, and the Court
10 declined to admit the business records of the credit card company
11 showing credit card charges, because it was computerized, and the
12 witness could not lay the foundation for the business exception rule.

13 And they said how access to the pertinent database is
14 controlled, and separately how access to specific programs can shoulder
15 important questions, how changes in the database are logged and
16 recorded, as well as the structured implementation of backup systems
17 and audit procedures for assuring the continuing integrity of the
18 database are pertinent to the question of whether records have been
19 changed since their creation.

20 So, computerized records kind of offer a unique situation
21 under the business exception rule, and we haven't heard any of that
22 testimony. But getting back to my first objection, I would object to that --
23 this witness even testifying to that, because she was designated as a
24 COR, and not someone who is going to come and testify as to policies
25 and procedures of CAMCO.

1 THE COURT: Okay. Counsel, would you like to respond to
2 Plaintiff?

3 MS. LEHMAN: Yes. So, I can certainly lay some more
4 foundation, however these -- this account ledger was provided in the
5 HOA's initial disclosure. So that would be -- I mean, they included what
6 would have been a snapshot in time, and there's no reason to, or any
7 evidence that would show that they're not trustworthy and accurate;
8 they've been testified to that they're accurate.

9 And then further, as far as Ms. Saucedo testifying regarding
10 how the records were kept in the database, that surely falls within the
11 realm of a custodian of record, because how the records are kept, would
12 be relevant for her to testify to you.

13 THE COURT: Okay. Well, I'm hearing a lot of great
14 arguments, I'm not really hearing a lot of testimony from this witness
15 regarding the substance of these pages. In the absence of the testimony
16 from this witness, supporting the admission is -- I have to sustain part of
17 the objection. This Court did not limit this witness to be the custodian of
18 records, that's how this witness was called.

19 This Court didn't make any affirmative ruling, so just for
20 point of clarification. And counsel for Defense said that this Court
21 limited this witness to custodian of records, that's how she was
22 designated and called, so this Court didn't make a limitation one way or
23 another. It's the way she was called, that's how she's on the stand. But
24 with regards to introducing these documents as exhibits, you haven't
25 met what's necessary, because of the objection raised by counsel.

You've given me some arguments on what may be necessary, but you haven't heard it from the witness, that she is, or is not doing it in her various roles to get what you need to get these admitted yet. So, I need to sustain without prejudice. I need to sustain the objection and deny without prejudice 100 through 105, at this juncture, and it is without prejudice. Okay.

[Counsel confer]

BY MS. LEHMAN:

Q So, Ms. Saucedo, is it important for CAMCO to maintain accurate records of the assessment account?

MS. HANKS: Objection, leading.

THE COURT: How interesting. The Court's going to overrule that objection, because this party was adverse at the time this case was -- right, it's on the opposite of the V, was it not?

MS. HANKS: Not now.

THE COURT: But it was at the time the subpoena went out, correct?

MS. LEHMAN: I believe so. Yes.

MS. HANKS: I don't even know when the subpoena went out, Your Honor.

THE COURT: Are you asserting that this is an adverse witness? I just need to know for leading question purposes, or not. Is she here voluntarily or under subpoena?

MS. LEHMAN: Under subpoena.

THE COURT: Under subpoena, if somebody who is adverse

1 under a separate side of the V, I overrule the leading objection on that
2 one question. Go ahead, Counsel.

3 THE WITNESS: Yes.

4 BY MS. LEHMAN:

5 Q Does CAMCO have any type of audit system to ensure the
6 accuracy of the records it maintains?

7 A We do the bank reconciliations for the association monthly,
8 and the financial packet. So, in reviewing those every month, any errors
9 with posting would be caught.

10 Q Could you walk me through how the accounting records are
11 input and maintained by CAMCO?

12 A Are you speaking specifically just to like a homeowner
13 account history?

14 Q Yes.

15 A Okay. So, like I had stated previously the assessments get
16 charged when the statements go out for the community, and that's kind
17 of done automatically through the system, with a push of a button,
18 basically. And then the payments get posted same day that they're
19 made, whether it's online or through the bank lockbox, or a payment is
20 brought into our office.

21 Q Can you explain more about what you mean by a push of a
22 button that the statements go out?

23 A That the -- the billing is done with a push -- a push of a
24 button pretty much. The statements, it takes a little more work, but in
25 regards to the ledger you basically go into the system, select your

1 association, everything is already set up, and you push the process
2 button and it builds the assessment to all the accounts within the
3 community.

4 Q Do you know how a homeowner's assessment account is set
5 up? And by that I mean, if a homeowner is new to the community, and
6 they are getting their assessments billed for the first time, how is that
7 information input into the CAMCO system?

8 A We receive the title of closing paperwork from the title
9 company, and we enter the new homeowner into the system. So, if
10 there was a previous homeowner, we would enter the new homeowner
11 with a new account number, and a whole new account, and then we
12 would bill them accordingly, to whenever the close of escrow date was.

13 Q And where does CAMCO get the amount of the monthly
14 assessment; where does that figure come from?

15 A From the annual budget.

16 Q And where does the annual budget come from?

17 A It's ratified annually by the board of directors of the HOA.

18 Q And is the annual budget a record that CAMCO maintains, as
19 well, for Antelope?

20 A Yes.

21 Q And when the assessment amount is input into CAMCO's
22 computer system is that input by a person with knowledge of that
23 information?

24 A Yes.

25 Q Is maintaining the account ledger and the assessment

1 amount for a particular property, is that part of CAMCO's duties for
2 Antelope, as its management company?

3 A Yes.

4 Q Who has access to the assessment's account in CAMCO's
5 system for this property?

6 A There are different levels. So, to view it, to make changes, to
7 add? Can you be more specific?

8 Q Would the access that a CAMCO employee has to the system
9 depend upon that person's job duties?

10 A Yes.

11 Q And can anyone at CAMCO make changes to an assessment
12 account?

13 A No.

14 Q And who can make changes to an assessment account?

15 A Only the accounting department.

16 Q Okay. And is there some kind of password or other
17 mechanism to ensure that only people with the level of access are able
18 to make changes in the CAMCO computer system?

19 A It would just be their log-in and password to their computer,
20 because each person is set up with a different access, based on their
21 computer.

22 Q So the account information in this assessment account for
23 the Marbledoe property is restricted to people that are in the accounting
24 department, in order to make changes to it?

25 A That's correct.

1 Q And going back when you had looked previously at the
2 pages ANT100 through 105, the account ledger we talked about earlier,
3 in proposed Exhibit 44, was that a true and correct copy of a ledger that's
4 maintained at CAMCO for Antelope?

5 A Yes.

6 Q And did you -- or how do you know that it's a true and
7 correct copy?

8 A Well, it -- I mean, it looks like the one I reviewed before I
9 came here today. Obviously I don't memorize every single line of the
10 ledger, but it looks like a CAMCO ledger.

11 [Counsel confer]

12 BY MS. LEHMAN:

13 Q Ms. Saucedo, when a CAMCO employee in the accounting
14 department is making changes to an assessment account, would they
15 use a code in order to indicate that a certain event was being recorded,
16 such as, would there be one code for assessments versus a different
17 code to indicate a payment?

18 A Yes.

19 Q Do you know if there was a code for a late fee?

20 A Yes.

21 Q And for interest?

22 A Yes.

23 Q Would there have been a code for nuisance?

24 A Yes.

25 Q I don't know if it's together, but abatement charges, would

1 there be a separate code for that?

2 A It would be the same as nuisance.

3 Q What about, would there be a code for maintenance charges?

4 A Yes.

5 MS. LEHMAN: Your Honor, I'd move for admission of the
6 account ledger in proposed Exhibit 44, which ANT100 through 105.

7 THE COURT: I'm not hearing any objection, so --

8 MS. HANKS: No, Your Honor, I'm sorry. I was looking to see
9 what page she was referring to --

10 THE COURT: The same ones, 100 to 105.

11 MS. HANKS: Your Honor, I renew my objection with respect
12 to hearsay. I didn't hear any of the -- well, I still object to this witness
13 going beyond the confines of being called as COR. And I also object,
14 because I didn't hear testimony this person could qualify this document
15 past the hearsay exception. Coupled with that, I think she can't even
16 testify it's a true and correct copy, because she said, it looks like a
17 CAMCO ledger, but there was no testimony as to what she was actually
18 cross-comparing.

19 So, I'd object that she can even authenticate this ledger. I
20 wrote it down; It looks like a CAMCO ledger --

21 THE COURT: Yeah.

22 MS. HANKS: -- but she doesn't remember. I am not sure
23 what she looked at to compare this to what; that was unclear.

24 THE COURT: I recollect from her earlier testimony that she
25 said in preparation for her testimony here today, she reviewed the

1 records of this particular file.

2 MS. HANKS: Right. But if she reviewed the file itself, and
3 now she's saying, well, this is a copy of a copy that I reviewed. That's
4 the problem that I thought that one was even more confusing. Because
5 if you looked at this set of documents, because that's what was produced
6 by Antelope, then she's saying, the page I see in this binder looks like the
7 same as the copy that I reviewed.

8 Well, that's a copy of a copy. That is far and different than
9 saying, this is a true and correct copy of the one that's housed by
10 CAMCO, for this file. And I thought that kind of got highlighted, when --
11 in the most recent question, when she said, well, it looks like one, I can't
12 remember, but it looks like the one that I looked at. So that's where I
13 think it draws confusion as to was she really looking at the original
14 custodian of record documents, or was she just looking at another set of
15 this?

16 THE COURT: Counsel, for Plaintiff, would you like to
17 respond, or would you like the Court to rule; what would you like to do.

18 MS. LEHMAN: I'll respond.

19 THE COURT: Feel free to do so.

20 MS. LEHMAN: Regarding whether Ms. Saucedo could be
21 called back to get this document in as a business records exception to
22 the hearsay rule, under NRS 51.135 the rule specifically states that after
23 all, you know, all the different requirements are met, which I believe Ms.
24 Saucedo's testimony fully met all the requirements for the business
25 records exception, and that this information, these requirements can be

1 met by the testimony of the custodian, or other qualified person, and
2 that it would be exception to the hearsay rule.

3 So, she did testify. She testified that it looked like the ledger
4 that she reviewed, but in order for her to determine, she would have to
5 be looking more closely at the document which, you know, opposing
6 counsel objected previously that she was not to testify from the
7 document.

8 So, in order for her to determine if this is -- you know, the
9 ledger looks exactly like the one that she reviewed in preparation for her
10 testimony, she's going to need to look at the actual numbers in the
11 document. But she did testify earlier that it looks to be the one that she
12 reviewed.

13 THE COURT: Okay. I think the objection was to reading from
14 the documents, not looking at the documents, because she's looking at
15 the documents in front of her, and that's the only way she could say it
16 looks like what she reviewed earlier, right?

17 MS. LEHMAN: Yes.

18 THE COURT: The objection was reading from.

19 MS. LEHMAN: Yes. But if I ask her what's the balance she
20 has to look at the document.

21 THE COURT: Well --

22 MS. LEHMAN: Additionally, in this business record's
23 exception the -- you know, it is an exception to the hearsay rule, and the
24 onus is on opposing counsel to come forth with any kind of information
25 that would show a lack of trustworthiness. And Ms. Saucedo testified to

1 the audit procedures that they have, or that, you know, there's restricted
2 access to this information in the CAMCO system; it's on the password
3 basis and only for the accounting department.

4 So, I haven't heard anything back from Ms. Hanks, that
5 there's anything that would show that this was not trustworthy.

6 THE COURT: I've got a couple of different basis for the
7 objection. The challenge this Court has, is I don't see how you both
8 come to hearsay exception. Because I don't think I've even heard any
9 testimony about the substance of what's in the record. You all danced
10 around it very nicely. Okay. You got it; you got the work information.
11 Okay.

12 You've got -- remember, hearsay is substance, right, truth of
13 the matter asserted in the documents. So, I have to sustain their
14 objection on hearsay, because this witness hasn't overcome the hearsay
15 objection by any of her testimony. You've got part of it taken care of,
16 but not the other part of it taken care of, it's a small two-prong.

17 MS. LEHMAN: Ms. Saucedo, you testified what information
18 is in the ledger, assessments, maintenance, she testified as to what is in
19 there. The only thing she had testified was to the actual numbers in the
20 ledger, because she doesn't have those memorized.

21 THE COURT: Counsel, you heard the Court's ruling

22 MS. LEHMAN: Your Honor, my apologies if I'm just not
23 understanding, because I am going through the business records
24 exception, and I believe I'm asking Ms. Saucedo the questions that are
25 required, so I'm not understanding what the Court is finding it's failing in

1 the proof. I feel like I've gone through it three or four times.

2 So, I'm not sure what it is the Court is looking for, that's not
3 been testified to, and I wish we had an actual transcriptionist here so we
4 could go back and look at it, because I feel like we've gone through it.
5 I'm, you know, I'd asked what is failing proof in this hearsay exception.

6 THE COURT: Counsel for Defense, do you still have your
7 objection?

8 MS. HANKS: Yes. I still have a hearsay objection, Your
9 Honor.

10 THE COURT: Do you want to explain it? The Court can't give
11 legal advice.

12 MS. HANKS: And I --

13 THE COURT: So, I can sustain the objection because it hasn't
14 met the prongs necessary of any of the exceptions. The Court can only
15 go as far as saying that you got part of the aspects taken care of, but I
16 can't give you the roadmap to what you don't have. I can't advocate for
17 either side. I am the trier of fact, fair and neutral to all sides.

18 So, I can't tell one side, hey, you're missing this, here's the
19 roadmap to go do this, A, B, C and D. That I can't do, I'm a judge, I'm the
20 trier of fact. So, I have to make my rulings on each side presents what
21 their arguments are. I give you a chance. I can say as much as the Court
22 can say about which ruling it is, which things have not been met, but I
23 can't tell you how to do -- to get over an exception, because that would
24 not be permissible in my role as a judge.

25 So, I'm hearing what you're saying, but I'm the judge and the

1 trier of fact, so I cannot do what you're asking me to do, I can't give you
2 the roadmap, and make my ruling. If Defense counsel wants to reassert
3 theirs and explain it more, that's really up to them, but I as a judge can't
4 tell you, just like I can't tell Defense counsel.

5 I can clarify my rulings, but this isn't clarifying, this is me
6 explaining to you which you haven't yet gotten, and that wouldn't be
7 permissible in my role as a judge.

8 MS. LEHMAN: Understood.

9 [Counsel confer]

10 BY MS. LEHMAN:

11 Q Ms. Saucedo, I believe you testified to it earlier, but I'm not
12 recalling. What is your position or title at CAMCO?

13 A Accounting director.

14 Q Is CAMCO licensed to do business in the State of Nevada?

15 A I believe so, yes.

16 Q And what is CAMCO's business?

17 A Community management.

18 Q Prior to your testimony today did you review the original of
19 the records that are in proposed Exhibit 44, prior to today?

20 A Yes. I mean, we email everything when we send it over, like
21 to our attorney for a case, we email them everything, and I save
22 everything that was emailed in a digital file, and that is what I reviewed
23 before I came here today.

24 Q When you say, a digital file, did you look into the assessment
25 account for this property and this borrower, the Marbledoe property and

1 the borrower, Ivy?

2 A No. I looked at all the documents that were provided to the
3 attorney at the time we were asked to get documents. I save all of those
4 documents in an electronic file, and that's what I reviewed prior to
5 coming today.

6 Q Is it your understanding that the documents that were
7 provided to you were the originals of the assessment account
8 information for this property?

9 A Well, I mean, we had provided the documents to the
10 attorney. So, they were documents that CAMCO gathered and produced
11 to our attorney. So, they would have been documents that we pulled.
12 When you say original for the ledger, I mean it gets exported from a
13 computer system, so it's not actually like a piece of paper.

14 Q Okay. So, the original of the account ledger lives in a
15 computer, but you were provided with, or your attorney provided you
16 with a copy from that computer?

17 A No. We provided the documents to our attorney.

18 Q Okay. And then --

19 A And those are the documents that I reviewed.

20 Q Okay. So, the documents that were provided to your
21 attorney were originals from CAMCO?

22 A Correct.

23 Q And then you personally reviewed what was provided to the
24 attorney?

25 A Correct.

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[Pause]

BY MS. LEHMAN:

Q So Ms. Saucedo, the documents that CAMCO pulled the original records of proposed Exhibit 44, that you testified that were provided to the attorney, that you in turn reviewed, were those records made at or near the time of the act of that condition, recited therein, or from information transmitted by a person with knowledge?

MS. HANKS: Objection. Lacks foundation.

THE COURT: Sustained.

BY MS. LEHMAN:

Q Do you know how the original documents that were pulled by CAMCO and provided to your attorney were compiled?

A Yes.

Q And can you explain?

A Yes. So, we have physical homeowner file that has any documents received or sent out regarding the property, and then we also have a digital file, which would be emails, or like the account ledger being pulled, notes from our system. So, we compiled the physical homeowner file, along with the electronic records, and sent that to the attorney.

Q Are the documents that are in proposed Exhibit 44, the documents that CAMCO sent to CAMCO's attorney?

A It was the HOA's attorney, but, yes.

[Counsel confer]

BY MS. LEHMAN:

1 Q Ms. Saucedo, regarding the account ledgers. The
2 information that's contained in there, for example let's say the
3 assessment amount. Is the assessment amount input into the account
4 ledger by someone with knowledge of the assessment amount?

5 MS. HANKS: Objection. Lacks foundation.

6 THE COURT: Sustained.

7 BY MS. LEHMAN:

8 Q Ms. Saucedo, do you have an understanding of how the
9 account ledgers are -- the information contained in the account ledgers
10 are maintained?

11 A Yes.

12 Q And can you please explain?

13 A So there's, within our operating system, there's a setup
14 portion, that is where the particular association is set up. So, there's a
15 section that would have the amount of the assessment, and that would
16 only ever get changed if there was a change in assessment, annually
17 with the budget. So that stays the same in the setup. And then we bill
18 the assessments it pulls the information from the setup of the
19 association to charge to each account.

20 Q Is that -- is the charge for the assessment, is that an
21 automated procedure, or do someone need to physically go in and select
22 to print a bill to the homeowner, for example, for each month?

23 A So the charge and sending the bill are two totally separate
24 things. So, when you charge the assessment, it's like I had stated before,
25 it's pretty much just clicking a button to process the charge. And then

1 actually generating the statement is a whole other process.

2 Q So the person who clicks the button to assess -- to charge the
3 monthly assessment, do they have an understanding, or have knowledge
4 that this assessment is due for this property?

5 A The assessment is due for all properties every month, so that
6 would never change.

7 Q So is it my understanding that the assessments are charged
8 to all the properties in HOA at the same time?

9 A Correct.

10 Q Okay. So, the person who makes the decision to push the
11 button to charge the assessments, does that person have an
12 understanding that they are adding a charge for an assessment to all the
13 accounts for the Antelope HOA?

14 A Yes.

15 Q And when that person -- would that person be in the
16 accounting department of CAMCO?

17 A Yes.

18 Q And when that CAMCO accounting employee pushes the
19 button to assess that charge, would that be at the time that the charge is
20 due?

21 A So we charge the assessment when we send out the
22 statement. So, if their statements go out on the 15th of the month before
23 the assessment is due, we would bill. So, let's say it's March 15th, we're
24 sending out statements for April, we would bill April's assessment, but it
25 would be dated April 1st.

1 Q Is that CAMCO's policy and procedure to process the billing
2 statements for Antelope on a certain day of the month?

3 A Yes.

4 Q And is billing the homeowner in this case, Ivy, was that part
5 of CAMCO's duties as the management company for Antelope?

6 A Yes.

7 MS. LEHMAN: Your Honor, I'd move for admission of
8 proposed Exhibit 44, specifically pages ANT100 through 1005.

9 MS. HANKS: Your Honor, I renew my objection as to
10 hearsay, and then I also have objection as to authenticity, because I
11 heard the witness testify that she reviewed a copy of a copy.

12 THE COURT: Counsel, in light of the additional testimony the
13 Court needs clarification on the basis of what your hearsay is these days,
14 because your last one was before a lot of additional testimony, so --

15 MS. HANKS: Sure. I still think the witness is failing the *Vee*
16 *Vinhnee* case, to satisfy the business exception rule, because we are
17 dealing with computerized records, at least as to the partial records that
18 counsel seek to be admitted.

19 And then it's particularly compounded by the fact that we
20 have a date on the document at the bottom, is March 2016, but it looks
21 like the Association produced them in discovery in November of 2018,
22 and all I heard from the witness is what I reviewed this copy, with the
23 copy that we gave our attorney, not the original. So --

24 THE COURT: What's the date of production?

25 MS. HANKS: The date that these documents were produced

1 by Antelope, was November 26, 2018. But the footer of the record is
2 dated 2016, at least from the pages that we're just talking about right
3 now, not the whole exhibit .

4 THE COURT: Counsel, would you like to respond?

5 MS. LEHMAN: Yes. So, Ms. Saucedo testified that CAMCO
6 pulled the originals of the documents that are in proposed Exhibit 44,
7 and provided them to the attorney, and then that she reviewed what was
8 provided to the attorney; so, they were the originals.

9 Also, she does meet the requirements for -- or the document
10 does meet the requirements for business records exception under NRS
11 51.135, and then also under 52.260, which discusses the affidavit
12 required for a custodian of records, and her testimony meets all of the
13 points that would have been in a certificate, has she not been here to
14 testify in person.

15 THE COURT: Okay. Those are foundational. I'm trying to
16 address the hearsay ones. And addressing hearsay I've still got a
17 question. You heard Defense counsel -- do the parties agree that these
18 documents first came into this case in November 2018 as initial
19 disclosures by Antelope Valley?

20 MS. LEHMAN: Yes.

21 THE COURT: Then I have to sustain the objection of Defense
22 counsel.

23 MS. LEHMAN: And what is the basis of that?

24 THE COURT: As she stated --

25 MS. LEHMAN: I'm not understanding.

1 THE COURT: Okay. Counsel, the challenge is, I listen to each
2 of you, right? Hear everything that you're saying, then I have to made a
3 decision based on what you tell me. I don't -- the case law, the statutory
4 provisions and this witness' testimony and you all agreeing to a
5 stipulated fact that these -- that proposed Exhibit 44 came into this case
6 for the first time in November 2018, means that I have to sustain
7 Defendant's objection on hearsay, and there's no exception in the
8 business records rule, based on this witness' testimony.

9 Counsel for Defense explained the reason why in her
10 objection. I can't tell -- if counsel for Defense is okay the Court can
11 explain more, but the Court can't assist either party, I'm your trier of fact,
12 as well as the trier of law in this case.

13 If Defense counsel waives all that and says they want the
14 Court to give further explanation, the Court only can give explanation as
15 it can in its rule in a bench trial.

16 MS. HANKS: I do not waive that, Your Honor.

17 THE COURT: As long as I have an expressed waiver of
18 Defendant that they wish me to provide information that the Court would
19 not normally provide as a trier of fact in a bench trial.

20 MS. HANKS: I do not waive that, Your Honor.

21 THE COURT: Okay.

22 MS. HANKS: I think their sustaining objection is sufficient.

23 THE COURT: Then the Court can only give the basis for
24 sustaining the objection. I can't say anything else, and the parties can
25 appreciate why the Court can't, because I am the judge in this case.

1 BY MS. LEHMAN:

2 Q Ms. Saucedo, do you know why the account ledger that was
3 produced has the date of March 2nd, 2016?

4 A Kind of. Yes.

5 Q Okay. What is your understanding?

6 A That would have been the date that the ledger was pulled
7 and provided to our attorney. I don't know if maybe there was another
8 case going on involving the property at that time, but we did provide
9 documentation to our attorney, at that time, which would have been the
10 exact same documentation that we would have used in response to a
11 subpoena at a later date, because none of the documents would have
12 changed.

13 [Counsel confer]

14 BY MS. LEHMAN:

15 Q Do you know whether assessments for this property are still
16 being charged to the homeowner, Mr. Ivy?

17 A I don't believe so, no.

18 Q Do you know whether there's a new homeowner for this
19 property, for the HOA assessment?

20 A Yes, there is.

21 Q And do you happen to know who that is?

22 A I believe it's Estevan [phonetic].

23 Q Do you know when the account for Mr. Ivy was closed out?

24 A Am I allowed to look at the ledger?

25 Q Without looking at the ledger do you recall?

1 A No.

2 Q Okay. Does CAMCO have a policy and procedure of when an
3 assessment account would be closed out for a particular homeowner?

4 A When there's a new owner of record.

5 Q Would you expect an account to be closed out after an HOA
6 foreclosure sale?

7 A Yes.

8 Q Do you know if that was done in this case?

9 A Yes, it was.

10 MS. LEHMAN: Your Honor, I'd move for admission for
11 proposed Exhibit 44, ANT100 through 105.

12 MS. HANKS: 44?

13 THE COURT: Proposed 44 --

14 MS. HANKS: Oh, sorry.

15 THE COURT: Bates 100 to 105, the same --

16 MS. HANKS: The same thing. Okay. Sorry I was thrown off
17 by the numbering. Your Honor, I still --

18 THE COURT: I assume it's the same thing, right, that you
19 said the same number?

20 MS. LEHMAN: Yeah. Yeah. I'm sorry.

21 MS. HANKS: Sorry, I think got thrown off by the 44.

22 Your Honor, I still renew my objection with respect to hearsay,
23 particularly highlighting the *In Vee Vinhnee* case. I didn't hear any
24 additional testimony on that, and still renew my objection as to lack of
25 authenticity, based on the testimony we've heard today from Ms.

1 Saucedo.

2 THE COURT: What, counsel, if anything you want to
3 respond?

4 MS. LEHMAN: Yes, Your Honor. So again, I believe Ms.
5 Saucedo did meet the business records' exception to the hearsay rule.
6 She did explain why the date on this account ledger is different from,
7 when the HOA provided the disclosure, she said they are the same
8 documents, that original that would have been provided. That this is
9 about -- this is the time when there was some kind of case or litigation
10 regarding the property, which coincides around the time that we filed
11 this case, that the HOA would have been notified that there was
12 litigation.

13 And then, additionally, I did talk with -- or Ms. Saucedo did
14 testify regarding the issue with computer records. She talked about
15 there was controlled access to make changes in CAMCO's system
16 regarding the assessments.

17 THE COURT: First off, does this witness have an issue with
18 Valet Parking, that somebody needs to --- they should be taking a break
19 right now, that somebody needs to put money in the meter, do we know
20 at all?

21 MS. HANKS: No, we don't know, Your Honor.

22 THE WITNESS: Yes, please.

23 THE COURT: Do we all need a brief 15 minute break so that
24 somebody can do what they need to at a meter by chance, we wouldn't
25 want anyone to get a ticket. Does anyone have -- is that an issue?

1 THE WITNESS: Yeah.

2 MS. LEHMAN: That's fine.

3 THE COURT: Does anyone have an objection.

4 MS. HANKS: I'll offer to pay her ticket, if she gets it, Your
5 Honor.

6 [Parties confer confer]

7 THE COURT: It's about time to take a break anyways, folks.
8 Let's take a --

9 [Recess at 2:41 p.m., recommencing at 3:08 p.m.]

10 THE COURT: Okay. We're back on the record. The same
11 witness is on the stand. Are you ready to go?

12 MS. LEHMAN: Yes. Thank you.

13 THE COURT: No worries. Counsel is in direct examination.
14 Feel free to -- I think you were about to finish off your response to
15 Defendant's objection. Defendant had just clarified -- asked to clarify
16 what was her hearsay in light of the subsequent.

17 And I think you were about to respond until we needed to
18 take the break because we just needed to ensure that the witness was
19 able to answer questions and wasn't being concerned about anything
20 else that may be existing with regards to parking. Go ahead.

21 MS. LEHMAN: Yes, Your Honor. So, I was explaining that
22 Ms. Saucedo had provided testimony as to why the account ledger and
23 proposed Exhibit 44 is dated March 2nd, 2016. And then the Court -- I
24 explained to the Court that 2016 is when this complaint was filed. And
25 then the Court asked for clarification of when exactly this case was filed.

1 So, during the break, I took some time to provide -- get some
2 dates to provide to the Court.

3 THE COURT: Sure. Thank you.

4 MS. LEHMAN: So --

5 THE COURT: Because it looked like it was July of 2016 when
6 the case was filed, and that's why.

7 MS. LEHMAN: Correct. So, the case was filed in July 2016.
8 However, prior to that, an NRED complaint was filed with the NRED
9 office August 27th, 2015.

10 THE COURT: Okay. Just --

11 MS. LEHMAN: And --

12 THE COURT: The only reason why I'm going to stop you,
13 Counsel, is we do you have a witness on the stand. The only thing that
14 the Court was asking is -- because you said it was at the time the
15 complaint was filed, and the Court actually had it up on its screen, as I in
16 preparation when you all -- because, remember, we already had the
17 discussion about the various other documents --

18 MS. LEHMAN: Uh-huh.

19 THE COURT: -- and your co-counsel or lead counsel, I'm not
20 sure which way you're referring to yourself, as co-trial counsel or lead-
21 trial Counsel -- when -- and the question was first calling the witness,
22 right. So, I don't want certain information that this witness may not be
23 aware of while she's sitting on the stand. So, is everyone okay that she's
24 on the stand while this discussion is going on?

25 MS. HANKS: No.

1 THE COURT: Meaning if you're bringing information that's
2 not within her purview that she would have known. I just want to make
3 sure all counsel are okay that she's on the stand while this discussion is
4 going on.

5 MS. HANKS: No, Your Honor, I'm not okay with that.

6 MS. LEHMAN: If we'd like to excuse her while we have this
7 discussion, that's fine.

8 THE COURT: Ms. Saucedo, there's a wonderful anteroom, if
9 you wanted to sit in, or you can feel free to be in the hallway. Just
10 realize that you can't discuss obviously the case in any manner because
11 you're still a witness on the stand. Okay?

12 THE WITNESS: Got it. Thank you.

13 THE COURT: I do appreciate it. Thank you so very much.
14 So, at the request of Defense counsel, since it may involve information
15 that may not be in the witness' purview, she's being asked to state as
16 much. Okay. And, Counsel, you understand why the Court was asking
17 the question?

18 MS. LEHMAN: Correct.

19 THE COURT: If you're going to start getting into NRED and
20 other things, you can't educate a witness who's currently on the stand.
21 And I don't know whether she does or does not know this. Maybe you
22 all do, but I don't. So that's why I was asking. If you both are okay with
23 it, she's fine to stay. The Defense wasn't. So, feel free to finish your
24 offer of proof, your explanation, or whatever you'd like to call it so I can
25 then rule. Go ahead.

1 MS. LEHMAN: Okay. So, the -- there was an NRED claim by U.S.
2 Bank against Antelope. That was submitted August 27th, 2015. And I
3 believe -- and I apologize. I did not get the date. We did a notice of
4 completion of NRED that was filed in this case. I don't have that in front
5 of me. But from our records that I did look at, I believe it was filed -- but I
6 saw a copy of it -- that the mediation was held January 23rd, 2017.

7 So, that falls within the time that Antelope was on notice that we
8 were bringing claims. So, the fact that this was printed out March 2nd,
9 2016 falls within Ms. Saucedo's testimony, that that was the time that
10 she testified that the HOA was involved in some kind of claim -- she
11 didn't know if it was particularly this litigation or something else -- that
12 these records were compiled and sent to the attorney.

13 The HOA was not named in this case until May 8th, 2018. And then
14 they filed a motion to dismiss July 9th, 2018. And then the HOA filed an
15 answer September 7th, 2018, and then made their disclosures in
16 November 2018.

17 THE COURT: Okay. So, I appreciate those extra dates. The
18 only date I was just referencing was how did you know this case was
19 July 2016. So, it wasn't matching up with the March 2016. So those
20 extra dates support your position in what manner, Counsel? Because I
21 can't --

22 MS. LEHMAN: So, Ms. --

23 THE COURT: -- assume what you may be arguing.

24 MS. LEHMAN: So, Ms. Saucedo testified -- because I asked her, I
25 said why -- do you know why these documents were printed in March

1 2016? And she said she was aware that there was some kind of
2 complaint or claim involving Antelope at that time and that's why they
3 were compiled.

4 And so, I looked at what was going on with the HOA at that time,
5 and we were in NRED -- U.S. Bank was in NRED mediation from --
6 August 27th, 2015 is when we filed the claim, but the mediation didn't
7 actually, occur until January 23rd, 2017.

8 So, this date of the ledger corresponds to the time period in which
9 the HOA was involved in NRED mediation with U.S. Bank, which is part
10 of the record because we -- I believe we filed the notice of completion
11 which was required prior to us naming the HOA as a party in this case;
12 we had to complete the NRED mediation before we can name them as a
13 party.

14 THE COURT: Okay. So, we're back to -- your hearsay
15 objection was on the electronic information, double hearsay because of a
16 copy of a copy. And foundation still or not in light of the subsequent?

17 MS. HANKS: Still -- oh, yeah, I've always had my ongoing
18 objection to the witness going outside of the designation of COR,
19 understanding the Court didn't make a ruling to limit it, but -- and
20 authenticity, Your Honor. That's the only one that was missing, because
21 I think she testified that she reviewed a copy of a copy.

22 THE COURT: Okay. So, the copy of a copy was an
23 authenticity, not a hearsay?

24 MS. HANKS: Well, both. I mean, it's --

25 THE COURT: Okay.

1 MS. HANKS: Yeah. It's --

2 THE COURT: I --

3 MS. HANKS: I'm just building.

4 THE COURT: I'm trying to be clear on --

5 MS. HANKS: Yes.

6 THE COURT: -- what I'm looking at. So, you have double
7 hearsay, electronic hearsay, outside the scope of her designation, and
8 authenticity.

9 I am not seeing your outside the scope for a custodian of
10 records with regards to a record that she says that they have maintained
11 and kept for the purposes that she said that for that last -- because the
12 purpose of what I'm being asked right now is admission of an exhibit.
13 So, I'm not seeing that --

14 MS. HANKS: This --

15 THE COURT: -- admitting an exhibit by definition, a
16 custodian of record, can support the admission of an exhibit separate
17 and apart from some of your testimonial objections, which were different
18 and distinct. With regards to the electronic hearsay, the state of Nevada
19 hasn't specifically adopted the federal standard with some of those
20 electronic hearsay issues.

21 And even in the most recent comments to 16.1, while there's
22 some issues about discussions of electronic discovery, there isn't
23 anything in there -- there's some limitations and some things that need
24 to be addressed. It's the mandatory 16.1 conferences. There's not
25 something that specifically adopts a distinction for electronic

1 documentation or anything under -- that would tie into the NRS'
2 provisions of hearsay that would adopt a bankruptcy court's ruling,
3 which I can take for guidance but obviously not precedential. In a federal
4 rule, we're close but not always the same; some intentional aspects that
5 were distinct, particularly on the electronic discovery aspect.

6 So, I have to take that into guidance but not precedential.
7 And then a copy of a copy. Well, by definition, you're always going to
8 have a copy of a copy when you propose exhibits in an exhibit binder
9 because that's where they're sitting.

10 MS. HANKS: Well --

11 THE COURT: Now, let me walk through your last --
12 authenticity aspect. I think I need to have your copy of a copy --

13 MS. HANKS: Explained?

14 THE COURT: Yes.

15 MS. HANKS: What I heard from the witness' testimony is,
16 this set that we see in Exhibit 44 was a set that was sent to counsel. So,
17 when she's saying the set that I'm seeing in front of me right now
18 matched that other set, that is not authenticating anything. That's
19 saying, this copy is the same copy of the set that I looked at. What a
20 custodian of records needs to say is -- and this is why the *In Vee Vinhnee*
21 case also kind of plays into that, is when you're dealing with
22 computerized records, you're trying to say, this record -- and this record
23 has a lot of dates in it, this proposed record -- you have to say --

24 THE COURT: I understand.

25 MS. HANKS: -- this is a true and correct copy as it looked in

1 '09, '10, '11, '12, '13. She's not doing that because she's just saying, this
2 copy looks like the same copy I reviewed. That's not authenticating
3 anything.

4 THE COURT: Okay.

5 MS. HANKS: And she never said she was the person
6 responsible for pulling that together. She just said, CAMCO did it, and I
7 looked at that set and compared it to this set.

8 THE COURT: Okay. Counsel for Plaintiff, you understand
9 that's a question that this Court's going to have because of the witness'
10 testimony? Remember her witness -- her testimony was that she looked
11 -- when she provided what she called their attorneys, her attorneys,
12 right, all -- you know what I mean -- our attorneys, right, and then down
13 the road she finally clarified that it wasn't CAMCO's attorneys, it was
14 Antelope Valley's attorneys.

15 But anyway, she said that they digitize. When they compiled
16 the set of document that they provided to counsel -- remember, she said
17 it came from two sources; it came from the homeowners' records and it
18 came from their electronic records. And then she says that they digitize
19 a copy of what they provide to counsel, and that that's what she looked
20 at, and that's what this looked like it was a copy of.

21 So, what we don't have from this witness, which is why I'm
22 inclined to sustain on that ground, Defense counsel's -- without
23 prejudice, Defense counsel's objection, and deny your admissions, that's
24 all this witness has said; it's a copy of something that was collected at
25 some date for counsel, Antelope Valley's counsel. I don't have it that it's

1 their business records. And you seem quizzical.

2 MS. LEHMAN: Yes. Because she testified that CAMCO maintains
3 these records as part of their business managing the HOA These are
4 their business records.

5 THE COURT: Counsel, here's what --

6 MS. LEHMAN: That's why I'm trying -- I'm not
7 understanding.

8 THE COURT: Well --

9 MS. LEHMAN: She said they compiled the original of CAMCO's
10 records for the HOA -- is what she testified -- and they provided it to
11 counsel, and then she reviewed what -- the originals that were provided
12 to counsel.

13 THE COURT: She didn't review the originals that were
14 provided to counsel. She said it was a digitized copy that she keeps of
15 what they provide to counsel. She looked at the digitized copy in
16 preparation for her testimony today, based on the questions you asked.
17 And then she thought that this looked like -- similar to the digitized copy
18 that she looked at. But that does not make it their business records.

19 Whereas if Defense counsel wanted the Court to give some
20 examples, the Court could give some examples, but the Court can't
21 because, as your trier of fact, unless I have a full waiver, because she has
22 done it at a distinct point in time, a digitized copy provided to Antelope
23 Valley's counsel at a distinct point in time, which we don't even know
24 that a distinct point in time. And she reviewed that digitized copy of
25 things that were compiled at a distinct point in time.

1 And since proposed Exhibit 44 mirrors or are similar to -- she
2 thinks it's similar to that digitized copy of whatever was provided to
3 Antelope's counsel at some point in time. That does not equal a
4 business record exception under the NRS based on what she has
5 testified to. I'm not saying that you don't have certain other aspects, but
6 that does not meet the totality of what you need for a business records
7 exception. Which means it still would fall into hearsay. Which means I
8 have to sustain the hearsay objection by Defense.

9 It also has a question on authenticity, because once again, it
10 may be -- once again, it's the way she has phrased things. I have to
11 focus on the testimony of this witness. The way she's phrased it; it's true
12 and correct as to X, but that X may not be the universe for records.

13 So, I also have to sustain it on the authenticity aspect as a
14 compilation for custodian of records for what the custodian of records'
15 statement would need to be to comply with a custodian of records'
16 statement would need to be in its totality to be the first prong to even get
17 you towards a potential business records exception under hearsay.

18 So that would be on the authenticity aspect. Those both
19 being sustained means I need to deny without prejudice your request to
20 introduce proposed Exhibit 44, pages 100 to 105. You got another
21 problem, but it hasn't yet been brought to the Court's attention, so the
22 Court's not going there yet. I only deal with the objections raised. So, at
23 this juncture, should we bring the witness back in and you can ask her
24 your next question?

25 MS. LEHMAN: Yes.

1 THE COURT: Okay. Marshal, would you please bring the
2 witness back? Counsel, I hope you can appreciate it's not that I --

3 MS. LEHMAN: Yeah.

4 THE COURT: -- is this Court can't -- until I decide -- you know
5 what I mean -- make rulings, not give advice. Okay. Welcome back.
6 Thank you, sir. Ms. Saucedo, you're still on the stand. You understand
7 you're still under oath, correct?

8 THE WITNESS: Yes.

9 THE COURT: Welcome back. Counsel, feel free to ask your
10 next question. Just to let you know, the Court did deny without
11 prejudice the admission of proposed 44, pages 100 to 105. So, counsel
12 is moving on with her next question.

13 DIRECT EXAMINATION CONTINUED

14 BY MS. LEHMAN:

15 Q Ms. Saucedo, earlier you testified about accounts being
16 closed after the homeowner is no longer the homeowner of record. Do
17 you recall testifying about that?

18 A Yes.

19 Q Okay. So once the Ivy -- and you -- oh, you -- and did you
20 also testify that the Ivy account was -- the Ivy assessment account was
21 closed with CAMCO?

22 A Correct.

23 Q Once the Ivy account, the homeowners association -- or
24 assessment account was closed, were there any changes made to the
25 account?

1 A No.

2 Q Would a printout of the Ivy account be the same in March
3 2016 as it would be today?

4 MS. HANKS: Objection. Lacks foundation.

5 THE COURT: Overruled, in light of her prior testimony of
6 what she knows of the case.

7 THE WITNESS: Yeah. Yes.

8 THE COURT: Okay.

9 BY MS. LEHMAN:

10 Q Would --

11 THE COURT: Can you repeat -- wait. Will you phrase that
12 question again?

13 BY MS. LEHMAN:

14 Q So I asked whether -- would the Ivy account -- or the printout
15 of the Ivy account be the same in March 2016 as it would be today?

16 THE COURT: Okay. Yeah. The Court reaffirms its ruling, that
17 it was correct to overrule that objection.

18 THE WITNESS: Yes.

19 BY MS. LEHMAN:

20 Q And so after March 2016, would there have been any
21 changes in the Ivy assessment account?

22 MS. HANKS: Sorry --

23 THE WITNESS: No.

24 MS. HANKS: I'm sorry. After March '16?

25 MS. LEHMAN: March 2016.

1 MS. HANKS: Is that what you're asking?

2 MS. LEHMAN: I'm asking, yes, as of -- after March 2016,
3 would there have been any changes to the Ivy assessment account.

4 MS. HANKS: Okay. Sorry. Objection. Foundation.

5 THE COURT: Overruled, in light of the witness' prior
6 statement -- prior testimony.

7 THE WITNESS: No.

8 BY MS. LEHMAN:

9 Q And earlier did you testify that the account ledger that we've
10 been talking about this afternoon, the ANT 100 through 105 -- earlier you
11 testified that this account ledger was generated to give to Antelope's
12 counsel?

13 A That's correct.

14 Q Did you review the digital record of this account ledger that
15 was generated for counsel?

16 A You mean when I provided it to them?

17 Q Yes.

18 A No.

19 Q In order to generate this account ledger, would the person
20 that generated it have to review the digital record for this account
21 ledger?

22 MS. HANKS: Objection. Speculation.

23 THE COURT: Sustained, in light of the witness' last
24 response.

25 BY MS. LEHMAN:

1 Q Do you know how the account ledger that we've been
2 talking about was generated?

3 A Yes.

4 Q And can you explain that process?

5 A So once you are within the homeowner's account in our
6 operating system, there's a button that you push to export a report. So,
7 you would select account ledger, which it's actually called Resident
8 Transaction Detail, and then you would click export, and save it to your
9 desktop or whenever you're going to save it, and then that's it.

10 Q Okay. So, the -- you explained how this account ledger was
11 generated by exporting a file. Is that exported file what was provided to
12 HOA's counsel?

13 MS. HANKS: Objection. Calls for speculation. Lacks
14 foundation.

15 THE COURT: Sustained, in light of the witness' prior
16 testimony at approximately 3:27.

17 [Counsel confer]

18 BY MS. LEHMAN:

19 Q Do you know who generated the file that was exported to
20 create this ledger?

21 MS. HANKS: I'm sorry, Counsel. I missed the first part of
22 your question.

23 MS. LEHMAN: I asked her, do you know who generated the
24 file that was used to create this account ledger?

25 THE WITNESS: I can answer?

1 MS. LEHMAN: Okay.

2 THE WITNESS: Sorry. Okay. It was either myself or Dawn
3 Alexander.

4 BY MS. LEHMAN:

5 Q And who is Dawn Alexander?

6 A She is also a custodian of records. So, we both compile
7 documents for subpoenas and attorneys.

8 Q And is Dawn Alexander an employee with CAMCO?

9 A She is, but she works remotely. She lives in Illinois
10 currently.

11 Q And what is Dawn Alexander's title with CAMCO?

12 A I believe it's a senior accounts receivable clerk.

13 [Counsel confer]

14 BY MS. LEHMAN:

15 Q So earlier you testified that the documents, the proposed
16 Exhibit 44, were generated for the counsel for Antelope HOA, correct?

17 A Correct.

18 Q And then you just testified now that Dawn Alexander is
19 another custodian of records for Antelope that works at CAMCO, correct?

20 A Correct.

21 Q So it would have been either you or Dawn that generated
22 the file that was provided to Antelope's counsel; is that correct?

23 A That's correct.

24 Q And does CAMCO have a policy and procedure about
25 generating those -- generating files to provide to counsel, how that --

1 how that's done?

2 A I -- I did recently draft something up as I was training
3 somebody else to compile the documents, kind of like a step by step of
4 what to look for and what to pull to put together. So yes, I guess.

5 Q Well, during the time that this file would have been
6 generated and provided to counsel, can you walk me through what
7 CAMCO's -- whether it's a written or unwritten -- policy was of how to
8 provide assessment files to counsel?

9 A I feel like I answered that already. But yeah, so there's a
10 physical homeowner file that has all correspondence that is received or
11 sent physically in the file. So, we would make a copy of that. And then
12 we would also take any digital records from within our operating system,
13 like the ledger and the notes, and put that together with the physical file,
14 as well as any HOA documents that are requested, like the collection
15 policy or the CC&Rs. We would put that all together and send it to the
16 attorney.

17 Q And when you are compiling those documents, are you
18 looking at the original of those documents to compile them?

19 A Yes.

20 Q Okay. And to your knowledge, is proposed Exhibit 44 a true
21 and accurate copy of the documents that were sent from CAMCO to
22 Antelope's attorney?

23 MS. HANKS: Objection. Calls for speculation. Lacks
24 foundation.

25 THE COURT: To your knowledge. Overruled, the way the

1 question was phrased.

2 THE WITNESS: Yes.

3 [Counsel confer]

4 MS. LEHMAN: Okay. Your Honor, I would move for
5 admission of Exhibit 44, the account ledger, ANT 100 to 105.

6 MS. HANKS: Your Honor, we renew our objection under
7 hearsay and lack of authenticity. And I'd like to add an objection as to --
8 the bank actually never disclosed these records. These records were
9 part of Antelope's initial disclosures, but that was only after you
10 reopened discovery for the limited purpose of the association conducting
11 discovery. But even during that period of time, the bank never actually
12 disclosed these records as part of their records that they intend to use at
13 trial. And Antelope never did pretrial disclosures.

14 THE COURT: Well, these were -- well, these were put in the
15 joint pretrial memorandum as proposed exhibits.

16 MS. HANKS: They were proposed, but they were -- and I had
17 my objections to them. But that -- we've always done the joint binder
18 just from a prospective of having one set. But at no point were any --
19 was there any stipulation as to admission of exhibits just by doing it
20 from a joint prospective. And that would have been put on the record at
21 the 2.67.

22 THE COURT: And what's the prejudice to the Defendant with
23 regards to these as being proposed exhibits on the idea that they were
24 provided by Antelope versus by the bank?

25 MS. HANKS: Because there's no suggestion that they were

1 going to be intended to be used at trial. So, when Antelope's coming
2 into the litigation late, putting it as part of an initial disclosure -- you can
3 disclose a lot of stuff as part of your initial disclosure, but pretrial is
4 when you have to start narrowing down what you intend to use, who
5 you intend to call.

6 And my understanding is that the bank would never disclose
7 these records as part of their 16.1 disclosures to be able to even use
8 them in part of the pretrial disclosures.

9 THE COURT: Were they in the 16.1(a)(3)?

10 MS. HANKS: I believe they were. Let me double-check that.
11 I know we objected to them, so I feel like they must have been because
12 we objected to them. But I'm not sure. Because sometimes they'll say,
13 any records disclosed by any parties. And I'll do a -- I'll do an objection.
14 But let me double-check, Your Honor.

15 THE COURT: Counsel for Plaintiff, can you also check?
16 Because once again, since they're not on Odyssey, I can't look at your
17 16.1(a)(3) disclosures. Let me do this --

18 MS. HANKS: Yeah, they just listed it as the association's
19 initial disclosures. That's what they're listed as.

20 THE COURT: Those are affirmatively stated?

21 MS. HANKS: No, they're not affirmative. No. They're just
22 listed as Antelope Association's Initial Disclosures and any and all
23 Supplements. So, it's just kind of generically identifying all the parties'
24 16.1 disclosures.

25 THE COURT: Okay. And your hearsay objection, because

1 you phrased it a couple of different ways at different times, depending
2 on the testimony, can you just set forth --

3 MS. HANKS: Sure. I believe this witness has still not met the
4 standard. I understand the BKK is persuasive and not precedential, but it
5 does track the -- a similar rule that we have for the business exception
6 rule. So, I still have the renewed objection that this witness was only
7 called as a COR.

8 I don't believe she can testify into the field of foundation to
9 set the business exception rule to the exception of hearsay. Not only
10 that, we have double hearsay within this document because the witness
11 testified that some of the information drawn from the document is from
12 other documents that we don't have before us.

13 So that's your double hearsay. So, I don't think that even the
14 one business exception, if she can even meet it, would qualify for that
15 hearsay. The secondary part of it being a business exception is the BKK's
16 -- the reason why it's persuasive is it talks about electronic records and
17 talks about the business exception rule, because it's a very generic rule
18 in terms of it's created at or a time near the occurrence by someone with
19 knowledge and it's kept in the ordinary course.

20 And they just highlight how computerized records offer an
21 extra layer of problems because they can be altered . And so there -- so
22 within that rule, they lay out an additional territory that the witness
23 should go into to meet the business exception rule. And despite the fact
24 that the records being introduced in that case were the credit card
25 company's records, they still said the credit card company could not

1 authenticate and lay the hearsay exception to the rules.

2 So that's -- that's where I am getting at from the hearsay.

3 And as -- I still renew my authenticity objection because now we've even
4 heard -- I thought we heard earlier that she reviewed a copy of a copy.
5 And now in this latest testimony, she confirms she never reviewed the
6 digital version. She's only ever reviewed a copy of a copy.

7 THE COURT: Okay. Well, I mean, Plaintiff, I'm going to let
8 you respond, but I'm going to have to tell you, my inclination on the first
9 portion, about the failure of the disclosure, I'm going to overrule it
10 because it was brought in when there was a party to the case, it was
11 done in 16.1 disclosures, and it's records that were part of this case.

12 And so, the Court's not really seeing that there's a prejudice
13 to Defendant. Although I appreciate you preserved your objections. And
14 like new records, these were records that were provided. Under
15 16.1(a)(3), it does say that they would have been disclosed. And but for
16 the fact that the other party resolved, these were cases that could have
17 come in at trial through the other party; and really because the party
18 filed today their stip and order, okay, after the trial commenced, I -- that
19 presents a challenge.

20 So however, hearsay and the authenticity, I -- the Court has
21 concerns about those. While you're more than welcome to address all
22 three different bases, I already gave the inclination on the one. So, it's
23 up to you if you want to address all three. Whatever you'd like to do,
24 counsel for Plaintiff, or if you don't want to address and you want the
25 Court to rule, that's fine, too.

1 MS. LEHMAN: So, I'll address on the disclosures. I'm
2 looking at our amended pretrial disclosures. We did include Antelope's
3 initial disclosures and referenced them specifically by Bate's number in
4 there. As far as the business record exception, again, the rule, NRS
5 51.135, specifically states that a custodian of records can testify to meet
6 the requirements for the business records exception.

7 And then with regards to the issue of computer records, Ms.
8 Saucedo did testify regarding the controlled access to these records.
9 Only people in the accounting department of CAMCO that have a login
10 and password can access these records to make changes.

11 So, I believe that's satisfied. Even though I agree with the
12 Court that the bankruptcy case is not precedential but only merely
13 persuasive, but it showed -- she's -- Ms. Saucedo has testified how the
14 documents are maintained and how -- you know, what access is -- is
15 allowed, that it's controlled access.

16 And she also testified regarding audits. I asked her
17 specifically about whether there was any audits or way -- you know,
18 checking the figures, and she mentioned that CAMCO does the account
19 balances for the HOA, and they make sure that all the accounts are
20 correct.

21 And then with regard to authenticity, I believe Ms. Hanks, in
22 her objection, misstated Ms. Saucedo's testimony; that she did review a
23 digital copy of the records of what was sent to counsel, and that -- and
24 she explained at great length how the digital copy was prepared from
25 the originals, how it was exported from their system and made into the

1 ledger. And so, with that, I would --

2 THE COURT: Okay.

3 MS. LEHMAN: -- submit.

4 THE COURT: Okay. I'm going to -- just because I think you
5 all may have a difference of what you're referring on the digital record,
6 and the Court needs to be clear on what you're each referring to as a
7 digital record, so for point of clarification, Defense counsel, can you just
8 clarify which digital record you were referencing when you used the
9 term digital record?

10 Because I'm not sure -- it appears, at least from the Court's
11 understanding, that Defense counsel's talking about an original digital
12 record, and Plaintiff's counsel is talking about the digital copy that was
13 prepared at the time a compilation of documents that came from both
14 digital source and hard copy source were provided to counsel. But I just
15 want to be clear of what Defense counsel's reference to digital was
16 because I just heard Plaintiff's reference, but --

17 MS. HANKS: Yes, that's my -- at least my understanding
18 from the testimony is the digital -- I'm talking about the digital version
19 that's on -- in the computer, not the digital version that was exported and
20 saved as a PDF and is now saved as a digital copy in the file. That's just
21 reviewing a copy of a copy. I'm talking about the actual digital file.

22 THE COURT: Okay. With that point of clarification, Plaintiff's
23 counsel, did you want to say anything else? You understand --

24 MS. LEHMAN: Yes.

25 THE COURT: -- the distinction of what --

1 MS. LEHMAN: Yes. And I believe Ms. Saucedo's testimony
2 spoke to both aspects. She discussed how even to access the digital
3 copy that lives in the computer, that only people in the accounting
4 department with a login and password can even look there and make
5 changes to it, and that that digital copy that's in the computer, the actual
6 computer part, that is what is used to be exported to make the ledger,
7 whether -- and that is later digitized, I guess.

8 But what I was talking about was the access to even make --
9 where this data comes from for the ledger is controlled access. And
10 that's what I believe -- the testimony addresses those issues from the
11 case that Ms. Hanks cited.

12 THE COURT: Okay. Point of clarification, what the Court
13 needs to have an understanding. And yes, I think I do know the answer
14 to my question, but I'm just going to say it because it's been a while
15 since you all read books on this. Is counsel requesting that Bates stamp
16 100 to 105 of proposed 44 would be admitted for the truth of the
17 underlying information, including the numeric numbers contained
18 therein for the truth of those to be provided or just for the fact that the
19 ledger exists --

20 MS. LEHMAN: For the truth.

21 THE COURT: -- or something different?

22 MS. LEHMAN: For the truth.

23 THE COURT: Then I have to sustain the objection of Defense
24 counsel under the double hearsay, and therefore, I have to deny without
25 prejudice the admission of proposed Exhibit 44, Bates 100 through 105.

1 [Counsel confer]

2 MS. LEHMAN: I'll pass the witness.

3 THE COURT: Okay. Counsel, cross-examination by Defense?

4 MS. HANKS: I have no questions, Your Honor.

5 THE COURT: Okay. Given that counsel has no questions for
6 cross-examination in Plaintiff's case-in-chief, is this witness excused, and
7 if so, under what parameters is this witness excused?

8 MR. NITZ: She's excused as a witness in our case-in-chief.

9 THE COURT: Is she reserved in any other aspects?

10 MR. NITZ: Yes.

11 THE COURT: Which aspect? You understand, you've got
12 claims, counterclaims, you've got rebuttal. I just need to know in what
13 roles -- and presumably the witness may wish to know if she's under
14 subpoena -- what, if any, roles she is reserved under. And then I'm
15 going to ask the same question of Defense -- Defendant counterclaimant.

16 MR. NITZ: She could be re-called in a rebuttal case.

17 THE COURT: Okay. That's it? Okay. So, from Defense, did
18 you subpoena her? Did you reserve any aspect for her testimony?

19 MS. HANKS: We have not subpoenaed her, no.

20 THE COURT: Are you asserting that you have any right to
21 call her in any of your respective cases?

22 MS. HANKS: No.

23 THE COURT: Okay. So, this witness is excused. Although
24 you heard counsel for Plaintiff saying that it's reserving its right with
25 regards to his rebuttal case --

1 THE WITNESS: What --

2 THE COURT: -- and that means you'd need to speak with
3 their office with regards to what that means.

4 THE WITNESS: Okay.

5 THE COURT: It means you're excused for today.

6 THE WITNESS: Thank you.

7 THE COURT: We do appreciate it. Thank you so very much.

8 MR. NITZ: And she's free to do so, Your Honor? And she's
9 free to call and discuss that with us? Because you keep on --

10 THE COURT: Timing and --

11 MR. NITZ: -- telling --

12 THE COURT: Timing and -- timing and scheduling.

13 MS. HANKS: Just timing and scheduling, of course.

14 THE COURT: Oh, timing and scheduling, yes. I mean, if
15 you're going to re-call her in your rebuttal case, she would need to know
16 when and if she needs to be here. I guess from a point of clarification,
17 are you all concluding today or not concluding today, then maybe she
18 should know if your rebuttal case is going to be today, right?

19 Because remember, Defendant said that they weren't
20 planning on calling any witnesses in their case-in-chief. That was last
21 Thursday. I don't know if that's today -- Tuesday's viewpoint, but that
22 was last Thursday's viewpoint. So, I don't know if --

23 MS. HANKS: That is still today's viewpoint, just so that
24 everyone's not in suspension. That is -- there's no -- I would be calling
25 no witnesses.

1 THE COURT: So, I'm not sure if this was Plaintiff's last
2 witness, and then I would be going to Defense, and then I'd be going
3 right back to Plaintiff's rebuttal case. So, I'm not sure if you want the
4 witness standing here if we're letting her leave. Or what do you all wish
5 to do? It's up -- it's your case. When I say, your case, meaning it's
6 counsel's case on behalf of your respective clients.

7 MR. NITZ: I don't think there's any chance she'll be re-called
8 today.

9 THE COURT: Well, we are going to move straight on to -- if
10 there is no -- you know what I mean? We'll be moving to Plaintiff's next
11 witness. Then if there's no Plaintiff's next witness, then we would move
12 to Defendant's witnesses. Hence says there's no witnesses, so I would
13 move right back to Plaintiff's rebuttal case.

14 So, everyone's aware that we're not going to have a gap in
15 testimony. Everyone understands that, right? Because it's a quarter --
16 it's 10 of 4, right?

17 MS. LEHMAN: Yes.

18 THE COURT: Okay. You might want to sit down for a quick
19 second. It's up to you. It's -- I'm just trying to find out, so. Counsel, if
20 you need a moment, we can ask the witness to step outside for a quick
21 second, and then we can see if you need her back or -- what would you
22 like to do?

23 MR. NITZ: I won't need her back today.

24 THE COURT: Okay. Well, thank you so very much.

25 THE WITNESS: Okay.

1 THE COURT: That's what we heard from Plaintiff's counsel.
2 We appreciate your time. Just watch your step on the way out.

3 THE WITNESS: Thank you.

4 THE COURT: And make sure you take your stuff and drive
5 safe. Okay.

6 THE WITNESS: Thank you.

7 THE COURT: So, the witness understands that she's been
8 reserved for Plaintiff's rebuttal case. Okay. So then at this juncture,
9 counsel for Plaintiff, would you like to call your next witness?

10 MR. NITZ: Your Honor, the other day when we called the
11 custodian of records for U.S. Bank, there was a discussion. Your Honor
12 reviewed pages of the deposition of Katherine Ortwerth, and those were,
13 as I recall, marked as a Court's exhibit.

14 THE COURT: A couple of those pages were. Oh, Madam Clerk,
15 that -- usually we would return the rest of the deposition at the end, but
16 Madam Clerk can give it back. Did you have a chance to make a copy of
17 the couple pages, Madam Clerk? Because we need the rest of the
18 deposition -- remember the tote script?

19 MS. HANKS: You gave it back to me, Your Honor.

20 THE COURT: Oh. Madam Clerk -- okay.

21 MS. HANKS: I have my copy back.

22 THE COURT: Okay. You got your copy back?

23 MS. HANKS: Yes.

24 THE COURT: Okay. So, what was Court's Exhibit -- what
25 number, Madam Clerk?

1 THE CLERK: 2.

2 THE COURT: Pardon?

3 THE CLERK: That was page --

4 THE COURT: Sorry. Court's Exhibit 2 -- yes, just so we're
5 clear, Court's Exhibit 2, I'm going to receive the tote script page, and I'm
6 also going to reference what pages that would have in the deposition.
7 So, it was page 9 in the tote script, which incorporated pages 24 to 27 of
8 the 6/14/2018, and it was page 11 of the tote script because there was a
9 reference to page 34 by Defense counsel. The first -- the first page, page
10 9 is because there was a reference by Plaintiff's counsel to testimony on
11 pages 24 through 26.

12 So that's why Madam Clerk xeroxed off page 9, which
13 includes 24 to 27. Madam Clerk also, Court Exhibit 2, did page -- xeroxed
14 off page 11 because of the reference to page 34 by Defense counsel.
15 Madam Clerk also Xeroxed off page 3 of what's called the -- well, it
16 doesn't have the word association.

17 It's -- I've been calling it index, for lack of a better term,
18 because it had the C in it. And what I mean by the C, it had the letter C
19 because what the Court told the parties is the Court did look in the back
20 to see under -- if there was a reference in the deposition to the term
21 custodian. So, we xeroxed off the index, for lack of a better term, that
22 covered all the Cs, which was -- although they call it page 3 in the lower
23 right-hand corner -- I'm not sure why -- so it looks like it's page 3 of the
24 index.

25 But those were the three pages that were made Court's

1 Exhibit 2 from the deposition of Katherine Ortwerth -- O-R-T-W-E-R-T-H
2 of June 14th, 2018. They're not an exhibit for purposes -- of testimonial
3 purposes but only as a reference because those were portions that the
4 Court was asked to refer to for purposes of a ruling on a pending matter
5 by the parties.

6 So, yes, counsel, is that -- and then the rest of the tote script
7 was returned to Defense counsel. Correct, Defense counsel?

8 MS. HANKS: Yes.

9 THE COURT: Okay. Go ahead, Counsel.

10 MR. NITZ: Yes. At that time, Your Honor, I requested that
11 the deposition of Ms. Ortwerth be published because the Court had
12 reviewed it. And your alternative was to just create the Court's exhibit of
13 the pages that you reviewed either at my instance or on your own.

14 At this time, I would make the request that Ms. Ortwerth's
15 deposition be published quite apart from that as evidentiary as opposed
16 to just qualifying whether Mr. Whittaker could be called as the custodian
17 of records of U.S. Bank.

18 THE COURT: Okay. I need you to finish before Defense
19 counsel stop -- starts.

20 MR. NITZ: I've made my request.

21 THE COURT: Okay. No worries. Defense counsel, do you --
22 do you have --

23 MS. HANKS: Your Honor --

24 THE COURT: -- a position?

25 MS. HANKS: Yeah. Your Honor, we would object because

1 there's been no showing of unavailability of a witness on behalf of U.S.
2 Bank, and also there's been no designation of the transcript. I'm not
3 aware of any -- at any point in time, even after we adjourned on Friday,
4 where counsel did any designations of intention to use certain portions
5 of the transcript. I'm the only party that did it in our pretrial disclosures.
6 I'm not offering to do that right now. So that's my objection.

7 MR. NITZ: Taking the first point first, Your Honor, as I
8 indicated previously, Ms. Ortwerth I believe left the employment of
9 Ocwen in February of 2019. I had no personal email address for her. I
10 only had her Ocwen email address. I had no cell phone number, no
11 individual way to reach her. The last contact I had with her; she was a
12 resident of Texas. Ocwen, out of privacy concerns, is -- was unable to
13 reveal to me her present location or her last known address. Certainly
14 the -- being a resident of Texas at that time puts her outside of 100 miles
15 away.

16 So, under Rule 32, her deposition could be used. 32(a)(4), a
17 party may use for any purpose the deposition of a witness, whether or
18 not a party, if the court finds the witness is dead, the witness is more
19 than 100 miles from the place of hearing or trial or is out of state unless
20 it appears that the witness' absence was procured by the part -- by the
21 party offering the deposition. That's simply not the case. She left the
22 employment of Ocwen. She's unavailable.

23 As far as the second part of the objection about designation,
24 as Your Honor may recall, but if not, I'll offer, in SFR's disclosures from
25 2018, they designate -- they offered or designated the deposition of

1 Katherine Ortwerth, deposition testimony, and we objected at that point
2 but also reserved the right at that point to require SFR to introduce the
3 entire or other parts of the deposition transcript in -- in accordance with
4 NRCP 32(a)(4), which I've just read to the Court.

5 In addition, in our amended pretrial disclosures from March
6 15 of this year, it specifically states, U.S. Bank reserves the right to use
7 any deposition designated by any other party related to this matter. SFR
8 designated the deposition, we reserved our right to use it. We didn't
9 need to set it out separately. We reserved our right to use it.

10 THE COURT: Okay. Well, once again, I don't have the
11 pretrial disclosures. First off, do you agree that it's in the pretrial
12 disclosures? And then you can address all your other arguments.

13 MS. HANKS: Yeah. Let me respond with that, Your Honor. I
14 only disclosed certain portions, and I said I may use them. So, I -- I
15 complied with 16.1(a)(3) little (ii). I don't know how you do that. They
16 didn't. So nowhere in their pretrial disclosures, whether we look at the
17 March 15, 2013 -- 2000 -- Is it --

18 MR. MARTINEZ: March 15, 2019.

19 MS. HANKS: -- 2019 disclosures or the amended ones --

20 MR. MARTINEZ: That was --

21 MS. HANKS: -- that's --

22 THE COURT: Once again, I can't look at what is not on
23 Odyssey, so --

24 MS. HANKS: Sure. But I -- I can pull it up again, if we want
25 to do it. But in neither of their pretrial disclosures do they designate that

1 they intend to use portions of Ms. Ortwerth's transcript. And the pretrial
2 disclosure rules require that you do that. They didn't. I did in my pretrial
3 disclosures. And I still only designated certain portions.

4 So, I'm -- that's what I'm addressing. I never designated the
5 entirety of the transcript. But my designations and what I might do have
6 nothing to do with what the bank is trying to do right now. He's
7 attempting to use the entire transcript even though it wasn't designated.

8 I can respond to the other arguments, but that's the response
9 to the pretrial disclosures.

10 THE COURT: You can respond to all of them, because the
11 Court's going to have to make a ruling, right?

12 MS. HANKS: Yes. The other -- the other point I want to
13 address, Your Honor, is Ms. Ortwith [sic] was the witness they produced
14 as the 30(b)(6). I don't really think that's the analysis of whether she
15 individually, as the 30(b)(6), is unavailable. The witness that has to be
16 unavailable is someone from U.S. Bank. That's who the -- that's who she
17 was speaking on behalf.

18 So, while Ms. Ortwith [sic] might be unavailable, that's not
19 who we're talking about. That deposition was of U.S. Bank. They just --
20 obviously we can't have a corporation testify, so they designated an
21 individual to be the mouthpiece for it. There's no evidence that U.S.
22 Bank, the party in this case, would be unavailable and can't testify.

23 Now, of course, they would have trouble because they didn't
24 actually designate anyone from U.S. Bank; they just did the corporate
25 designee. But -- that's the added problem. But the point is, U.S. Bank is

1 not unavailable.

2 So, I think the analysis is wrong when you're coming at it as
3 Ms. Ortwith [sic] is unavailable. Nevertheless, the pretrial disclosures
4 rules require that you designate any portion of a transcript that you
5 intend to use of a witness by deposition. They never did that. Never.
6 Not only did they not designate it, they never even said in their pretrial
7 disclosures that they would intend to rely on the deposition transcript.

8 So, this isn't me being technical. It's not as if they identified,
9 we intend to use the deposition transcript, and then just didn't do a
10 page/line designation. There's no indication whatsoever. And it wasn't
11 even done after that. There was no attempt to do second amendment
12 pretrial disclosures, there was no attempt to file something with the
13 Court to say that. There's just simply nothing until we get to trial last
14 week.

15 THE COURT: Okay.

16 MR. NITZ: Your Honor. We reserved the right to use the
17 entirety of the deposition.

18 THE COURT: Where?

19 MR. NITZ: It wasn't designation of individual parts. It was
20 reservation to use the entirety of the deposition.

21 THE COURT: Where did you do it? I have not seen it.

22 MR. NITZ: I can show you the --

23 THE COURT: Because it's not in your joint pretrial
24 memorandum, correct? I'm looking at it right now. I'm looking -- that's
25 what I'm asking.

1 MR. NITZ: Your Honor asked where we disclosed it.

2 THE COURT: Yes.

3 MR. NITZ: I'm trying to explain where we disclosed it --

4 THE COURT: Sure.

5 MR. NITZ: -- and present it to the Court. If the Court doesn't
6 accept my representation as an officer of the Court, then you can look at
7 the papers.

8 THE COURT: I'm just asking where, Counsel. I -- I'm looking
9 at the joint pretrial memo. It's not in here. So, the reasonable question
10 would be, where was it?

11 MR. NITZ: In two places. One, it was in U.S. Bank's
12 objections to SFR Investments' pretrial disclosures served July 18, 2018.
13 And then it was repeated in U.S. Bank's amended pretrial disclosures of
14 3/15/19.

15 THE COURT: Okay. So 3/15/19. Did you affirmatively,
16 through your case-in-chief, designate the deposition of Ms. Ortwerth or
17 was it only in response to a designation in Defendant's case-in-chief?
18 That's what the Court's trying to have an understanding, because I have
19 to know, is it a witness through your case or only in response to
20 Defendant's case? And since I don't have the benefit of being able to see
21 it online, and I don't see -- in your joint pretrial memorandum, there is
22 nothing about Ms. Ortwerth -- about -- with regards to U.S. Bank.

23 So that's why I don't see it there. So, I don't see you
24 preserved it there. So that would lie in favor of the Court ruling in favor
25 of Defendant. So, what the Court, once again, is doing is trying to see is

1 there any other place that U.S. Bank has reserved its right to do so. So,
2 if you -- if you have it from an objection to a 2018 for Defendant's case-
3 in-chief doesn't preserve it for your case-in-chief because we haven't
4 even gotten to Defendant's case-in-chief. So, we're not there yet.

5 So, looking in Plaintiff's case-in-chief. Is there anything
6 affirmatively that would allow Ms. Ortwerth in Plaintiff's case-in-chief?
7 Because I'm not to Defendant's case-in-chief yet, so I don't -- I wouldn't
8 be dealing with objection to designations in Defendant's case-in-chief.
9 I'm dealing with Plaintiff's case-in-chief. It's not in the joint pretrial.
10 You've told me it was in the objections to Defendant's case-in-chief from
11 July --

12 MR. NITZ: No, I didn't --

13 THE COURT: -- 2018.

14 MR. NITZ: -- Your Honor.

15 THE COURT: So now I'm asking you, in the 2019, was that
16 for Plaintiff's case-in-chief or in response to Defendant's case-in-chief?

17 MR. NITZ: Your Honor misstated what I stated to the Court.

18 THE COURT: Sure. Which -- what -- then I misunderstood
19 you. Please clarify, Counsel. Because I was reading straight from the
20 joint pretrial memorandum, and Ms. Ortwerth's -- if her name's in the
21 joint pretrial memorandum, can someone please point it out to me? Or
22 her deposition.

23 MR. NITZ: I don't think it is.

24 THE COURT: Okay. So, then I go to July 2018, correct? So
25 that's the last time. So, let me look in July 2018. That is -- can you give

1 me the date, please, Counsel, specific in July 2018? There's a lot of
2 things filed in July of 2018.

3 MR. NITZ: July 18, 2018.

4 THE COURT: I appreciate it. One second, please. Let me
5 look. I see a stipulation and an order on that date. Hold on. Did you file
6 the objections? Wait. Objection 7/30. I see objections on 7/30. That's the
7 only objections I see. Did you file your objections or is it just -- no, I
8 don't -- those are SFR's objections. Counsel, did you file your objections
9 in 2018?

10 MR. NITZ: To the best of my knowledge, they were
11 electronically served as a --

12 THE COURT: No. They have to be filed. Okay. They weren't
13 filed. So how is the Court even going to take them into consideration if
14 they weren't properly filed, as they need to be? Okay. Do you have a
15 copy with you? Could I at least see them then so I can see --

16 MR. NITZ: Yes, Your Honor.

17 THE COURT: Sure.

18 MR. NITZ: May I approach?

19 THE COURT: Of course, you may. If you've got the 2019 --
20 Counsel, do you have any objection to me looking into what was served,
21 since you've been referencing them?

22 MS. HANKS: No. I have a copy.

23 THE COURT: Okay. So, let me see. Okay. So now I'm
24 looking at what's not been filed but has -- Defense says it's been served.
25 Yeah, it just says it's only been electronically served. So, it was not

1 properly filed. It's supposed to be filed in order for the Court to take it
2 into consideration. But even looking at it, let's see if -- objections.

3 Objection to calling Chris Hardin.

4 Okay. Wait a second. Objections to the use of transcripts.
5 U.S. Bank objects to SFR to present deposition and/or trial transcript
6 testimony of Katherine Ortwith [sic], intends to call -- and the transcript
7 testimony -- well, it says you're planning on intending to call her here --
8 to the need of the aforesaid deposition transcript for direct testimony.
9 U.S. Bank further reserves the right to require SFR to introduce the entire
10 other parts. So, the sentence you didn't mention to the Court in this
11 paragraph says,

12 U.S. Bank intends to call Ms. Ortwerth to testify at trial
13 obviating the need for the use of the aforesaid deposition
14 transcript for direct testimony. U.S. Bank further reserves the
15 right to require SFR to introduce the entire or the parts of the
16 deposition transcript in accordance with NRCP 32(a)(4).

17 In NRCP (a)(4), If only a part of a deposition is offered into
18 evidence by a party, an adverse party may require the offer
19 to introduce any other part which ought, in fairness, be
20 considered with the part introduced.

21 So, 32(a)(4) doesn't apply because we're not to Defendant's
22 case-in-chief yet. So, I can't rule on that. The first part, you have an
23 objection, so I don't have to address that. The next part, if you intended
24 to call her at trial, you didn't in 2019 designate her or subpoena her. And
25 I appreciate in 2018 you didn't realize that she wasn't going to be with

1 the company in 2019.

2 So maybe that might be moot. So, in 2019, you, in your
3 additional pretrial disclosures, and Ms. Ortwerth in those or her -- is her
4 deposition in those affirmatively? Since now you know that she's
5 already gone because she's gone in February.

6 So, you filed these on 3/15, right, about a month to six weeks
7 after she's gone? I don't know when she's gone in February. That's
8 why I was saying a month or so, right? In the March 2019 pretrial
9 disclosures under 16.1(a)(3), do you -- does U.S. Bank do any disclosure
10 of any deposition of Ms. Ortwith [sic] in your affirmative case-in-chief?

11 MR. NITZ: The express statement is, U.S. Bank reserves the
12 right to use any deposition designated by any other party related to this
13 matter. They didn't do a supplemental disclosure or an amended
14 disclosure. They only did one. And they did disclose her deposition.

15 And so, we reserved the right to use any deposition
16 designated by any other party. They designated her deposition. As I
17 said, we're offering the entirety of the deposition. We're not offering just
18 portions of the deposition.

19 THE COURT: Under -- can I see your designation, if you don't
20 mind? That also -- since it's not on file, I have to ask you for it to at least
21 look at it. Counsel for Defense, do you have any objection, since you
22 said you were served with it?

23 MS. HANKS: I was served with it, but I still have an objection
24 to it in terms of it preserving anything.

25 THE COURT: Do you have any objection for me to --

1 MS. HANKS: Look at it?

2 THE COURT: -- look at it just for contextual language so I can
3 read it myself?

4 MS. HANKS: No, I do not.

5 THE COURT: Since I can't find it online --

6 MS. HANKS: Correct.

7 THE COURT: -- because it's not filed. It was only served.
8 Okay.

9 The following -- but, Counsel, this is under the section for
10 impeachment, right? It's under Subsection C. So, the reason why the
11 Court wanted to take a look at this is because context matters. Counsel,
12 isn't it on page 6 of 11, the following deposition will be presented for
13 impeachment if the need arises? It's under that section, right? It's not
14 under a section for affirmative testimony.

15 That's the reason why the Court was asking the question.
16 Because this Court, in order to make a well-reasoned ruling, has to know
17 in what context things have been presented. It's under Subsection C
18 where it says, the following deposition testimony will be presented for
19 impeachment if the need arises, one, deposition of David Alessi; two,
20 David Bembas, and then -- although it doesn't have a number, it says,
21 U.S. Bank reserves the right to use any deposition designated by any
22 other party related to this matter. U.S. Bank further reserves the right to
23 use any testimony given in the above-named deposition during the trial
24 in this matter regardless of the subject matter, including for
25 impeachment purposes.

1 MR. NITZ: Your Honor is reading --

2 THE COURT: But I just --

3 MR. NITZ: -- that as too narrow, because it's all --

4 THE COURT: But I finished the --

5 MR. NITZ: -- in the context of use of depositions at trial. If
6 you turn back a page --

7 THE COURT: Just a second. I was reading the next
8 paragraph.

9 By disclosing deposition testimony, including any additional
10 volumes of the transcript and exhibits attached thereto, U.S.
11 Bank does not waive the right to challenge and exclude such
12 deposition and/or exhibits or portions thereof on any basis.

13 Okay. But I now am going back to paragraph -- see, that's --
14 okay. Now, I go back to page 5, right? Page 5, Roman Numeral II, U.S.
15 Bank expects to present the following depositions at trial pursuant to
16 NRCP 16.1(a)(3)(B);

17 A, U.S. Bank expects to use the depositions as allowed under
18 Nevada law. None at this time.

19 B, U.S. Bank expects to present the following deposition
20 testimony if the witness is unavailable at the time of trial.

21 One, deposition of David Alessi, a 30(b)(6) witness, for Alessi
22 & Koenig, paren, including all volumes of transcripts and all
23 accompanying exhibits referenced therein.

24 Two, the deposition of David Bembas, B-E-M-B-A-S, a
25 30(b)(6) witness for SFR Investments Pool 1, LLC, paren, including all

1 volume of transcripts and all accompanying exhibits referenced therein.
2 End of paren two. Then you have Subsection C.

3 So, I don't see Ms. Answorth [sic] under either your A,
4 deposition under Nevada law, right, which would be an affirmative using
5 hers, or two, the expect to present the following deposition testimony if
6 the witness is unavailable. You've named two people, but you don't
7 name Ms. Answorth [sic] under there. I just mispronounced her name,
8 didn't I?

9 MR. NITZ: Ms. Ortwerth.

10 THE COURT: Ortwerth. I'm sorry. Thank you so much.
11 I don't see her name.

12 MS. HANKS: Your Honor, could we go off the record for --
13 could I approach the bench for just one second? I don't want to interrupt
14 your thought, but I have to approach the bench real quick.

15 THE COURT: Counsel, if both of you approach --

16 MS. HANKS: I just don't want it on the record.

17 THE COURT: Huh?

18 MS. HANKS: I just don't want it on the record.

19 THE COURT: Ms. --

20 MS. HANKS: Is that okay?

21 THE COURT: Madam Court Reporter, can you please go off
22 the record then for a quick second, and both parties can approach. Yes.

23 [Recess at 4:15 p.m., recommencing at 4:16 p.m.]

24 THE COURT REPORTER: Hold on while I -- sorry. It's --

25 THE COURT: No worries. It's --

1 THE COURT REPORTER: -- acting strange on me. Okay. Go
2 ahead.

3 THE COURT: It's the afternoon.

4 THE COURT REPORTER: Sorry.

5 THE COURT: Oh, no worries. Our recording system
6 sometimes like to take a little extra time in the afternoon. Okay. So,
7 what the Court did is the Court read page 5 of 11 of an electronically
8 served 3/15/2019, 4:12 p.m. U.S. Bank, National Association's amended
9 pretrial disclosures. I read from line 17 on page 5 through 11 under
10 Roman Numeral II: U.S. Bank expects to the following depositions at
11 trial pursuant to NRCP 16.1(a)(3)(B). I read section capital A, I read
12 section capital B.

13 And then on page 6 of 11, capital C. I had already just read,
14 which was: The following deposition testimony will be presented for
15 impeachment, comma, if the read arises. They have the same; David
16 Alessi and David Bembas.

17 And then not under that same numeric there's a new
18 paragraph that starts at line 8. It says,

19 U.S. Bank reserves the right to use any deposition
20 designated by any other party related to this matter. U.S.
21 Bank further reserves the right to use any testimony given in
22 the above-named depositions during trial of this matter
23 regardless of the subject matter, including for impeachment
24 purposes.

25 New paragraph starting at line 12, indented,

1 By disclosing deposition testimony, including any additional
2 volumes of the transcript and exhibits attached thereto,
3 comma, U.S. Bank does not waive the right to challenge and
4 exclude such deposition testimony and our exhibits or
5 portions thereof on any basis.

6 And then on page -- then line 15 starts Roman Numeral III,
7 Exhibits, and it has exhibits.

8 So, Counsel, I thank you for providing that to me. So now
9 the Court has a context of where that sentence is that you just read from.
10 Now, would you like to say something about the context? Counsel for
11 Plaintiff?

12 MR. NITZ: Yes, Your Honor. The context is under, as you
13 read, Roman Numeral II, U.S. Bank expects to presents the following
14 depositions at trial. And in that Roman Numeral II -- Roman Numeral III
15 you just began was the exhibits. The State with U.S. Bank reserves the
16 right to use any deposition designated by any other party related to this
17 matter was in --

18 [Recess at 4:18 p.m., recommencing at 4:19 p.m.]

19 THE CLERK: On the record.

20 THE COURT: Okay. Back on the record. Madam Court
21 Recorder, did you hear the very last statement of Plaintiff's counsel?

22 Plaintiff's counsel, in an abundance of caution, would you
23 mind restating your last statement? I just want to make sure it does get
24 heard. Not exactly clear if it went off halfway through yours. So, it's up
25 to you if you want to repeat it. It was just for your clarity. More than

1 glad to if you want to.

2 MR. NITZ: I'll do the best I can.

3 THE COURT: Sure.

4 MR. NITZ: The reservation of rights that U.S. Bank made
5 reserving the right to use any deposition designated by any other party
6 related to this matter, was in the context of Roman Numeral II.

7 U.S. Bank expects to present the following depositions at
8 trial pursuant to NRCP16.1(a)(3)(b), it was not limited to 2(a). U.S. Bank
9 expects to use depositions as allowed under Nevada law. It was not
10 limited to (b), U.S. Bank expects to present the following deposition
11 testimony if the witness is unavailable at trial.

12 It was not limited to 2(c), the following deposition testimony
13 will be presented for impeachment if the need arises. It was not limited.
14 It was totally within the context of presenting depositions.

15 THE COURT: And the Court did not see Ms. Ortwerth, O-R-T-
16 W-E-R-T-H, named anywhere listed there on. Is she anywhere in there?

17 MR. NITZ: No. It didn't say on there.

18 THE COURT: Okay.

19 MR. NITZ: We had previously stated in our reservation of
20 rights to require the entire testimony of Ms. Ortwerth be admitted.

21 THE COURT: Okay. So, here's what -- now the Court also
22 has to -- I'm going to let SFR respond in just a second. The Court also
23 notes is obviously all parties understand that in addition to the
24 requirements under the NRCP, the EDCR statutory, et cetera, that the
25 courts, both, all parties had to comply with the Court's handout and

1 procedure for counsel at civil bench trials, correct?

2 MS. HANKS: Yes.

3 MR. NITZ: Right? Both parties agree that you have to
4 comply with Department 31 civil bench trials? It's in your trial order, it's
5 an order of this Court, correct?

6 MR. NITZ: Yes.

7 THE COURT: Okay. So, we also go to that. Under that,
8 second paragraph in the nice orange sheet, right? Which says that,
9 which everyone has and is available online and incorporated in your trial
10 order, does specifically require the parties: All original depositions
11 anticipated to be used in any manner during the trial, (other than in lieu
12 of live testimony), must be delivered to the clerk at the date and time
13 exhibits are delivered at or prior to the calendar call. If depositions
14 anticipated to be used in lieu of live testimony, the parties should discuss
15 the designations at the EDCR 2.67 conference.

16 Was there any discussion at the EDCR 2.67 conference about
17 designations of Ms. Ortwerth?

18 MR. NITZ: There was in the supplemental 2.67 conference.
19 We scheduled it, counsel agree to appear at the date and time scheduled
20 and then failed to appear then and just said, oh, I didn't have to show up
21 in your office for the other matter that I was going to be there.

22 So, we endeavored to have a supplemental 2.67 to
23 supplement the one from 2018 and it was scheduled at a date and time
24 agreed by counsel and they didn't appear.

25 THE COURT: At any 2.67 conference as required by this

1 Court's rules, the parties need to discuss the designations, is that a yes
2 or a no? Was the designations of Ms. Ortwerth that were going to be
3 requested by Plaintiff's counsel discussed at any 2.67 conference for this
4 case?

5 MR. NITZ: I have no idea. It was attended by Jamie
6 Hendrickson who is no longer with the firm. There was a transcript
7 supposedly of the 2.67 conference that we were unaware of, and we did
8 not have a copy of.

9 THE COURT: Okay. Well, Defense counsel, you've already
10 cited the transcript so was it discussed at the 2.67 and were one of the
11 two of you all present?

12 MS. HANKS: I believe I was present, Your Honor, and we did
13 discuss it, and Jamie Henderson advised Ms. Ortwerth was going to be
14 at trial.

15 THE COURT: Okay.

16 MS. HANKS: That came up in some of these other earlier
17 objections. I can pull that up for you.

18 THE COURT: Okay. Let's just go to the next sentence.

19 MS. HANKS: Okay.

20 THE COURT: Because I appreciate 2018 may have been
21 different , because she was there than 2019.

22 MS. HANKS: Right. I'm not aware of any supplemental 2.67
23 being noticed. So, we're looking through our file right now. I have no
24 idea what counsel is talking about, the supplemental 2.67 was scheduled,
25 and we didn't show up.

1 I will represent there are only two people to my knowledge
2 that attended 2.67 conferences. Myself, which I usually do 99 percent of
3 them or Mr. Martinez in the off chance I'm not available. But 99.9
4 percent of the time, I'm the one that goes because I'm the lead trial
5 counsel.

6 THE COURT: I am appreciative. I'm really not looking at
7 what the parties did or did not comply with a different aspect because
8 I'm really about to get to the next sentences, right? Okay. Any
9 designation, now I'm going back to the Court's rules which all parties
10 need to do if they wish to do any designation.

11 Any designation by page, line, citation of the portions of the
12 testimony to be offered must be served on all parties with a courtesy
13 copy to the Court two judicial days prior to the calendar call. This Court
14 did not receive any designations at all regarding Ms. Ortwerth two days
15 before the calendar call, one day before the calendar call, at the calendar
16 call or any time up into today. So, no party is compliant with Ms.
17 Ortwerth on any deposition testimony in lieu of live testimony.

18 Any counter designations, (by page, line, citation of
19 testimony), must -- of course most of this is bold and underlined or at
20 least underlined -- must be served on all parties with a courtesy copy to
21 the Court at least one judicial day prior to the calendar call.

22 This Court did not receive any counter designations with
23 regards to Ms. Ortwerth one judicial day before the calendar call, the
24 calendar call or anytime between prior to the calendar call up until right
25 this particular moment at 4:25 on the X number day of trial. Okay.

1 If there are any objections to the designations or counter
2 designations, then the parties need to provide the Court at or before the
3 calendar call with copies of the depositions which show on each page
4 which excerpts are objected to and by whom.

5 The Court did not receive any depositions with any
6 objections, with any excerpts objected to whom by whom.

7 If there is to be use of deposition testimony in lieu of live
8 testimony for more than one witness, notify the Court at the pretrial
9 conference so the time can be set aside prior to trial to hear these
10 objections.

11 Nobody told the Court at the time of the pretrial conference
12 of any deposition in lieu of live, which was after February 2019.

13 So even independent of all the other issues, if anyone was
14 intending to use any deposition in lieu of live testimony in this trial, that
15 party must have complied with this Court's specific order set forth in
16 your trial order, which this is not new. This has been around in this
17 department and almost every other department, very similar. I know it's
18 been in this department for years and years.

19 So, no one did it. And the risk if nobody does it by these
20 specific aspect where it has to be specific designations, it can't be a
21 reservation of a whole deposition. It has to be specific designations,
22 have to be provided to the Court.

23 And I will ask, did anyone serve among the other parties and
24 so that it was just a matter of it didn't come to the Court any
25 designations by page and line citation? Plaintiff, did you receive any

1 designations by page and line citation for any depositions in lieu of live
2 testimony?

3 MR. NITZ: Not this time around.

4 THE COURT: Okay. Counsel for Defense?

5 MS. HANKS: No, Your Honor.

6 THE COURT: Did you receive any?

7 MS. HANKS: No, Your Honor.

8 THE COURT: Okay. And this Court didn't. It would have
9 been required prior to the calendar call. Doesn't count if you did it in
10 2018, you had to do it before the calendar call here. Plus, the Court
11 didn't receive it, it didn't have a calendar call so it wouldn't have counted
12 in 2018 anyway.

13 So, you also have noncompliance with the Court rule which
14 would preclude it. Separate and apart from that, here's going to be the
15 Court's ruling, okay? It's straight out of Rule 32, it's straight out of Rule
16 16.1(a)(3). Ms. Ortwerth is not appropriately named as a witness.

17 So even if you don't even get down to if you were to view
18 this as a funnel and you view the NRCP at the top of the funnel, although
19 there's other things at the tippy top of the funnel. But if you viewed the
20 NRCP as the top of the funnel, under the new rules, under the old rules,
21 either rules, you still have to disclose.

22 And in fact, the comments even on the new rules are even
23 more specific how they specifically say that they reject some of the more
24 generalized aspects of the federal rules and retain the very specific
25 nature of witnesses, designations here in our state Court rules.

1 So, if there was any doubt that there was any leniency in the
2 newer rules, there's not. Even under the older rules, it still requires the
3 exact same thing for purposes of designating specific names of
4 individuals and that would include with regards to depositions.

5 So not named, wouldn't be a witness -- be a witness in lieu of
6 deposition because not only would she need to be named by deposition
7 in lieu of live testimony, then that would have to be taken care of, it was
8 not.

9 So, then you go to, well does maybe Rule 32 offer something
10 that the Court should look at separately and apart from 16.1(a)(3). So,
11 you look at what's been cited to this Court.

12 Rule 32, use of depositions in Court proceedings, (a), use of
13 depositions at trial or upon the hearing of a motion or an interlocutory
14 proceeding any part or all the deposition so far is admissible under the
15 rules of evidence apply just as though the witness were then present and
16 testifying may be used against any party who is present or represented
17 at the taping of the deposition.

18 Okay, well it's not going to be used against. This is in
19 support of, so that doesn't apply. Who had reasonable notice thereof in
20 accordance with any of the following provisions.

21 Well here there's not reasonable notice thereof because it's
22 coming in the midst of trial. So, there's not reasonable notice. There in
23 fact was in the argument with regards to the other U.S. Bank witness
24 who couldn't testify because that individual wasn't named. The
25 argument that Ms. Ortwerth left in February, that's why the other witness

1 was going to be designated.

2 So, obviously, everyone knew Ms. Ortwerth wasn't there
3 sometime February or soon thereafter. Pretrial disclosures were in
4 March. If she was going to be designated or her deposition in lieu of live
5 testimony because if you couldn't reach her and you knew about it,
6 deposition in lieu of live testimony could have been done in March,
7 could have done the designations and complied with not only the Court
8 rules but with the NRCP. And I don't even have to get to my Court rules
9 because the NRCP would have precluded it even before you even get to
10 the Court rules which is an additional reason to preclude it.

11 But it could have been done, deposition in lieu of live
12 testimony for her being unavailable, not designated 16.1(a)(3), doesn't
13 fall within 32(2).

14 Then you look at the sub parens, right? Sub parens. Any
15 deposition may be used by any party for the purpose of contradicting or
16 impeaching testimony.

17 Well, so far no nobody's telling me it's contradicting or
18 impeaching, so (1) doesn't work. (2), the deposition of a party or anyone
19 who at the time of taking the deposition was an officer, director or
20 managing agent or a person designated under Rule 30(b)(6) or 31(a) to
21 testify on behalf of the public or private corporation, partnership or
22 association which is a party that may be used by an adverse party for
23 any purpose.

24 Well, she does fall within the 30(b)(6) designation, but she's
25 not being asked to be used by an adverse party for any purpose because

1 she was Ocwen on behalf of U.S. Bank and U.S. Bank is trying to use her
2 for their case in chief. So that is not adverse. It's not SFR trying to use
3 her, so that means (2), 32(a)(2) does not apply because it's not an
4 adverse party.

5 So, then you go to (3). The deposition of a witness whether
6 or not a party may be used by any party for the purpose if the Court
7 finds, (a), the witness is dead. Well, that's not the case. No one's told
8 me she's dead. The witness is a greater distance than 100 miles in a
9 place of hearing out of state unless it appears that the absence was
10 procured by the party of the deposition.

11 Well, that one is what Plaintiff says applies because she's more
12 than 100. And the witness is unable to attend because age, illness -- that
13 doesn't apply. Okay. Or (d), that the party offering the deposition is
14 unable to procure the attendance of the witness by subpoena.

15 Well, nobody's told me that she hasn't been able to be
16 procured by subpoena because nobody said that there's been any
17 attempt. So, we have to then look at the idea that she is more than 100
18 miles in place of trial or hearing or is out of state, okay?

19 So, then we look at that because (e) is upon application
20 notice such exceptional circumstances exist. Well, there's been no
21 application and notice of that one, (e) wouldn't apply because there's
22 been no notice right in the midst of trial to make it desirable.

23 So, then we're looking at the deposition of a witness may be
24 used by any party for the purpose if Court finds the witness is, okay, is
25 greater distance than 100 miles in the place of trial or hearing is out of

1 state in this appearance, whatever.

2 So now Court has to have an understanding with regards to
3 32(a)(3) why the witness should or should not be utilized whose name
4 did not appear in the pretrial disclosures in the case in chief, not in a
5 joint pretrial memorandum. And we'll let Defense, you get a minute or
6 two and then we'll let Plaintiff respond his final words so the Court can
7 address the 32(a)(3) argument raised by Plaintiff's counsel.

8 MS. HANKS: Can I pull it up, Your Honor?

9 THE COURT: Of course, you may. And the Court in no way
10 is not saying that you still don't need the against the party aspect of the
11 noticed party. I'm just reading, counsel for Plaintiff cited (a)(3)(b).

12 Plaintiff's counsel cited 32(a)(3)(B).

13 MS. HANKS: Right. More that they're more than 100 miles.
14 I just renew my objection in terms of you, can't get past the disclosure
15 problem, Your Honor, and the designation problem.

16 But setting aside that, I come at it from a more, the witness is
17 really U.S. Bank. Ms. Ortwerth was the 30(b)(6) for U.S. Bank. She was
18 never designated as just a witness in it of herself.

19 So really the question is, is a witness for U.S. Bank, I know
20 we still have the disclosure problem, but is U.S. Bank unavailable? And I
21 don't know how a party can be unavailable when they're here
22 represented.

23 So that's where I think that rule doesn't really function for a
24 30(b)(6) when they're saying, is the witness unavailable, the witness had
25 to be disclosed individually and then it now is unavailable. Well, Ms.

1 Ortwerth was never disclosed individually as a witness. She always
2 appeared as the 30(b)(6) for U.S. Bank.

3 So, I think it is error to say Ms. Ortwerth individually is 100
4 miles away. She was U.S. Bank. She was the voice box for U.S. Bank.
5 So, I don't think that rule would function that way.

6 To say the 30(b)(6) is unavailable, and, therefore, now I need
7 to use the deposition. No. Who's the witness? It's U.S. Bank. And if
8 you don't disclose any one for them, then you have an added layer. But
9 that's how I'm coming at it.

10 THE COURT: Okay. Counsel for Plaintiff, you get last word
11 then the Court's going to make a ruling.

12 MR. NITZ: This is coming out of both sides of the mouth. On
13 the one hand they object to -- obviously U.S. Bank NA as trustee for this
14 big long trust name can't testify. Obviously U.S. Bank NA as trustee can
15 only present witnesses to testify. They can only present corporate
16 designees to testify.

17 In this case we identified the corporate designee of U.S. Bank
18 NA as trustee for the trust with a big long name. And we called as a
19 witness the corporate designee of U.S. Bank NA as trustee for the trust,
20 and that person that walked up to the stand or was about to walk up to
21 the stand was Harrison Whittaker.

22 So, yeah, granted we couldn't call Katherine Ortwerth and
23 U.S. Bank NA as trustee for the trust, couldn't testify anyway but through
24 a witness. No matter what name that we put out, they would still have
25 the objection, well that isn't the witness that you produced for

1 deposition. That isn't the 30(b)(6) witness you produced. Their
2 testimony may be different than the 30(b)(6) witness testimony. It's
3 prejudicial for us to put any witness on the stand other than Katherine
4 Ortwerth.

5 And now they're saying just the opposite basically. Now
6 they're saying Katherine Ortwerth or nobody because U.S. Bank NA as
7 trustee for the trust can't testify without a witness. So, once she left,
8 there was no witness that could testify as the corporate designee.

9 THE COURT: Simply put, counsel for Plaintiff, was there any
10 reason why you couldn't have designated the deposition of Katherine
11 Ortwerth in your pretrial 16.1(a)(3) disclosures and then done the
12 appropriate line and cite designations as required?

13 MR. NITZ: Is there any reason?

14 THE COURT: Yeah. Is there any good cause, Is there any
15 reason?

16 MR. NITZ: For me personally, I didn't become involved with
17 the case until then.

18 THE COURT: But the law firm Wright, Finlay and Zak as
19 counsel for U.S. Bank, who did the disclosures.

20 MS. HANKS: I don't know when Wright, Finlay and Zak
21 learned that Ms. Ortwerth was not going to be available for trial. I don't
22 know when Harrison Whittaker was designated by Ocwen to be the
23 corporate designee for U.S. Bank NA as the trustee.

24 THE COURT: I appreciate it. Okay. This is going to be the
25 Court's ruling. Presumably counsel for -- prior to any counsel doing their

1 16.1(a)(3) disclosures has the affirmative obligation to speak with their
2 respective clients and determine who their witnesses are going to be for
3 trial and reach out to them. The reason why the Court was asking if
4 there is any good cause, I was trying to find out if somebody hid
5 something. Nobody's telling me they hid anything.

6 So, before parties did their mandatory pretrial disclosures,
7 you got to find out who your witnesses are going to be which is the
8 whole reason to give the other side the advance notice so there is no
9 surprise and all that kind of good stuff that happens at the time of trial.

10 And so, the Court can't find that Ms. Ortwerth couldn't have
11 been designated by deposition way back on or about April 15th, 2019
12 when 16.1(a)(3) disclosures because if she left in February, once again,
13 people are telling me February. So, it's not like she left April 15th. I just
14 picked that as a hypothetical day. I was trying to pick a date, you know,
15 basically trial started.

16 But she left back in February and disclosures weren't until
17 sometime -- even if you take the very, very last day of February, at least
18 two weeks later, so it's not a day later, it's at least two weeks later,
19 somewhere between six weeks and two weeks. Nobody's told me
20 exactly when she left in February. That she couldn't have been named
21 as a deposition or even subsequently if it was found out after the fact
22 that she was no longer with the company, that there couldn't have been
23 relief requested of this Court at the time of the pretrial conference, at the
24 time the calendar call, before the calendar call so you could comply with
25 the Court's rules on that that, you know, look, we found out one of our

1 witnesses is no longer there, we're going to substitute someone so relief
2 from the Court, et cetera. None of that was done.

3 So, in the absence of that, Ms. Ortwerth was not designated.
4 Since Ms. Ortwerth was not designated under 16.1(a)(3), she wouldn't be
5 able to come in affirmatively in Plaintiff's case in chief from that basis.

6 So, then the Court looks at what other basis she potentially
7 could come in it. Court gave the analysis through NRCP 32, she can't
8 come in through 32 because even if you look at 32(a)(3)(B) about being
9 more than 100 miles from the place, you still have to look at (a). And (a)
10 requires that, admissible under the rules of evidence applied as though
11 the witness were present and testifying, may be used against any party
12 who was present or represented at the taking of the deposition.

13 Well, she's not being used against any party who was
14 present or represented at the taking of the deposition, she's being used
15 to support of, or had reasonable notice thereof in accordance with the
16 following provisions. And there's not any reasonable notice because it's
17 coming at what already would have been when this trial was supposed
18 to be concluded, even though you all started a few hours late, we're still
19 way past the time and you're past the extra day I already gave you.

20 So even taking into account the fact you had to start a few
21 hours late on the first day, I'm more than made up with that because you
22 already have the whole extra other day. So, you're way past that time
23 and now it's today way passed on the -- and you had Tuesday,
24 Wednesday, Thursday and now it's the following Tuesday. And even
25 though you had the break between last Thursday and today and there

1 still was no OST. I'm not saying what would have or would not have
2 happened.

3 I'm just saying, there's been nothing presented to this Court,
4 any motion practice, anything that somehow gets Ms. Ortwerth to come
5 in or any effort showing that there was any attempt to try and get her. I
6 appreciate as officers of the Court -- I am fully taking into account the
7 privacy they said they would not give her, and I'm not going to ask you
8 whether or not it's in her deposition because no one presented it to me,
9 so I'm not asking whether her address is in there or not. I'm not asking.
10 So, don't tell me. Okay.

11 So regardless however, she would not fall under 32(a)(3)(B)
12 for the reasons the Court says. So, if she doesn't fall under 16.1(a)(3),
13 she wasn't named, she doesn't fall under 32 as some other additional.
14 She violates the Court -- so if she violates 16.1(a)(3) by not being named.
15 She doesn't fall under any potential exception under 32.

16 So, then the Court goes, well, the fact that she was in the
17 pretrial disclosures not directly, but under some type of catch all of a
18 designation of a deposition. Well, the Court can't find that that works for
19 purposes of Plaintiff's case in chief for the very two reasons; one, the
20 only time she potentially is being viewed as designated is to Defense's
21 case-in-chief, and we haven't yet gotten to Defense's case-in-chief.

22 So, I can't bootstrap the fact that she was named in 2018 in
23 Defense's case in chief, but somehow that means Plaintiff gets to utilize
24 her in their case in chief because we haven't gotten to the Defense's case
25 in chief.

1 Plus, Defendant has specifically stated, now they've changed
2 their mind, but specifically say they're not planning on calling any
3 witnesses. They also said that last week, so Plaintiff knew, and if they
4 wanted to file something, they could have let the Court know. But even
5 not even taking into account Defendant's position whether they wish or
6 do not wish to call witnesses were not to Defense's case in chief.

7 So, any designations properly or improperly, and Defendant
8 didn't do it properly anyway, the designations, because they have not
9 been presented to the Court. But even if I don't take the fact that -- even
10 if I gave Plaintiff all the benefit the doubt and it somehow bootstraps
11 Defendant's designations from 2018 and said that they were appropriate,
12 they're not, and they'll never do that again in any future trial in this
13 department. I'm sure they'll make sure they do proper designations.

14 But even if I view those designations as proper because
15 somehow Plaintiff relied on it, were not to Defendant's case in chief.
16 And so that doesn't bootstrap it to get the witness to be affirmatively in
17 Plaintiff's case in chief because Plaintiff knew that the only designation
18 was in Defense case in chief and just doing a reservation of rights in a
19 global context does not allow you to somehow use a deposition
20 affirmatively for purposes of a trial when it violates 16.1(a)(3), when it
21 does not fall with any provision of 32 and violates the Court's rules.

22 Those are three independent basis which all could stand on
23 their own. So, they stand on their own independently and they could
24 also be looked in totality of all three, they could look into a totality of any
25 combination of two. Those are all independent reasons. So that does

1 not give you any basis to have Ms. Ortwerth.

2 So, then the Court looks at the fact that because the Court
3 while not brought to the Court's attention, but the Court's going to
4 address this anyway specifically. The fact that parties referenced just for
5 purposes of a different witness to try and get the benefit of doubt a
6 Plaintiff on a different witness, that somehow that witness'
7 non-designation doing a reference to Ms. Ortwerth, a couple pages of
8 her deposition for purposes of designation purposes whether that
9 somehow would bootstrap that she can then be utilized for purposes of
10 affirmative testimony, no.

11 The Court wouldn't find it is and the Court's making that
12 affirmative ruling because at the time the Court even was going to look
13 at that , it was said only for the benefit potentially of Plaintiff for that
14 other witness and no other purpose.

15 And so, everybody knew why the Court was going to look at
16 it. No one could have relied on it for any other purposes. Plus, it
17 wouldn't in any matter as a matter of law be for any other purposes and
18 that wouldn't have been and it was said it was always going to be -- well,
19 in the Court's exhibit because you all want wanted it to be, which is fine.
20 So, it did not affirmatively do the testimony.

21 I appreciate counsel had wanted to do testimony, but the
22 Court said no and the Court -- because the only purpose was for the
23 purpose only to assist Plaintiff in giving Plaintiff the full benefit of the
24 doubt with regards to their other improperly non-designated U.S. Bank.
25 And that doesn't then somehow bootstrap it, they could use somebody

1 else's deposition testimony when the Court's trying to provide if there's
2 any possible basis on a different witness to somehow mean that they
3 could then use Ms. Ortwerth's deposition testimony.

4 So, then the Court also looked at the objections from July
5 2018. Those were objections to Defendant's designations in their case in
6 chief. That doesn't help Plaintiffs. That doesn't get Ms. Ortwerth in the
7 case in chief.

8 The Court also did look at 315-19, even under the reading
9 stated by Plaintiff, while Plaintiff would know, he drafted the document,
10 the Court doesn't see on its face that way, but once again, I'm taking
11 Plaintiff's view of the document of 315. Even though it has
12 subparagraphs (a), (b) and (c), even taking that paragraph on page 6 in
13 the broadest possible sense falling within the totality of Roman Numeral
14 II, even though it's not under I where it says it would be a deposition and
15 it's not under depositions in lieu of live testimony (b) and it's after (c),
16 but even taking it into the broadest concept there, it still does not allow
17 Ms. Ortwerth to testify because that in and of itself would only be
18 depositions through designations that other parties were actually
19 utilizing and no party is utilizing Ms. Ortwerth in Plaintiff's case in chief
20 and so it can't be then isolation just all of sudden bootstraps.

21 So therefore, Ms. Ortwerth's deposition cannot be introduced
22 with the additional reason the Court already analyzed that the violation
23 of the Court rules in addition to everything else the Court said, it is so
24 ordered.

25 So, counsel, call your next witness please. Plaintiff's

1 counsel.

2 MR. NITZ: Your Honor, I offer proposed Exhibit 34. I'm
3 sorry. I offer proposed Exhibit 39.

4 THE COURT: I'm sorry. Was there another witness or you
5 asking to admit an exhibit without a witness? Is there any other
6 witnesses on behalf of Plaintiff? I need to -- is there any other testimony
7 of witnesses on behalf of Plaintiff?

8 MR. NITZ: No, Your Honor.

9 THE COURT: Okay. So, before you rest, you want to see
10 about admitting some exhibits, is that where you're going?

11 MR. NITZ: Yes, Your Honor.

12 THE COURT: Okay. Proposed Exhibit 39. So, it has a bates
13 stamp range of 1012 through 1027, is that correct, counsel?

14 MS. HANKS: You want the whole bates range; she's asking?

15 MR. NITZ: You asked me 1012 to 1027?

16 THE COURT: Okay.

17 MR. NITZ: Yes, Your Honor.

18 MS. HANKS: We don't stipulate, Your Honor. We objected
19 to these documents under hearsay, lack of authenticity and lack of
20 foundation.

21 THE COURT: Counsel for Plaintiff, you heard the three
22 objections. What would be the response to those if you wish? And what
23 would be the testimony in support to these documents or any other
24 support that we get proposed Exhibit 39 in?

25 MR. NITZ: Yes, Your Honor. I would like to begin with the

1 pretrial memorandum. There we set forth facts stipulated by the parties.
2 I would direct the Court to item number 3.

3 THE COURT: One second. I got to get back onto the system.
4 One second please. You can keep talking. I just -- joint pretrial
5 memorandum, page what counsel? I'm sorry.

6 MR. NITZ: It's on page 2, item number 1-3.

7 THE COURT: Thank you so much. Page 2, item 3 at line 18
8 on --

9 MR. NITZ: That's where it begins.

10 THE COURT: -- May 13, 2005? Go ahead, counsel.

11 MR. NITZ: That's where it begins. Yes, Your Honor.

12 THE COURT: These are stipulated facts. Go ahead.

13 MR. NITZ: For the record it says on May 13, 2005, Henry E.
14 Ivy and Freddie S. Ivy, borrowers, obtained a loan for \$212,750 secured
15 by a deed of trust recorded against the property identifying Universal
16 American Mortgage Company, LLC universal as the lender and
17 beneficiary. And that whole designation is given the shorthand of the Ivy
18 note.

19 And now if you turn to USB 1012 --

20 THE COURT: Okay.

21 MR. NITZ: -- which is actually the first page of Exhibit 39.

22 THE COURT: Okay.

23 MR. NITZ: You will see in the upper left hand corner the date
24 of this adjustable rate note is indeed May 13, 2005 and the amount of the
25 loan is indeed under borrower's promise to pay \$212,750. And in that

1 same paragraph it says, lender is Universal American Mortgage
2 Company LLC et cetera.

3 Stipulated fact number 3, identifies the borrowers as Henry
4 E. Ivy and Freddie S. Ivy. And if Your Honor would then turn to USB
5 1015 which is page 4 of 4 of the adjustable rate note.

6 THE COURT: Uh-huh. So, can I jump ahead? Counsel, are
7 you objecting to pages 1012 through 1015?

8 MS. HANKS: To 1015? I mean, I do, but again, I can clarify
9 the stipulation. But I would agree that if you want to say just until 1015,
10 that's what that statement kind of represents, but no.

11 THE COURT: I'm just doing this piece by piece.

12 MS. HANKS: No, I would still object to the entirety of the
13 document.

14 THE COURT: Okay. Well, counsel -- okay. Counsel for
15 Plaintiff, are you doing this piece by piece, you're going through the
16 entirety of the document? The only reason why I'm asking is because
17 everything referenced to me so far is covered in 1012 to 1015.

18 I'll take the Court's inclination, 1012 to 1015 is consistent with
19 a stipulated fact and I don't see how it wouldn't come in. But once again,
20 I'm not -- I need to know if Plaintiff's counsel is that he wants it to be in
21 its entirety or not at all. I don't know strategically what you want so
22 that's why I'm asking.

23 I haven't gotten a 1016 because nobody's gotten to me yet
24 on assignment type issues.

25 MR. NITZ: I'm not limiting the offer to USB 1015.

1 THE COURT: Okay.

2 MR. NITZ: I would extend that offer to USB 1017. All I was
3 doing as far as directing the Court to USB 1015 was to identify the
4 borrowers as identified in stipulated fact number 3.

5 THE COURT: Sure. Is there any other stipulated facts,
6 counselor, you want me to take a look at?

7 MR. NITZ: Pardon?

8 THE COURT: Is there any other stipulated fact or anything
9 else you want me to take a look at in regards to proposed 39?

10 MR. NITZ: Yes, Your Honor.

11 THE COURT: Sure.

12 MR. NITZ: I'd ask the Court to turn to Exhibit 5. This has
13 already been admitted.

14 THE COURT: Okay. One second, please. Okay. Go ahead.
15 Deed of trust, USB 73 it starts on?

16 MR. NITZ: That's right. And the first thing I would direct the
17 Court to is the definitions. It identifies borrower as Henry E. Ivy and
18 Freddie S. Ivy coinciding with the adjustable rate note.

19 It also identifies the lender in paragraph C is Universal
20 American Mortgage Company. I would also direct the Court to the loan
21 number which the last four digits, all but the last four digits were
22 redacted at the request of Defense counsel.

23 THE COURT: Sure.

24 MR. NITZ: And that is 0683. And if you look at USB 1012 in
25 the upper left hand corner it likewise identifies loan number 0683. If you

1 turn to USB 74, the second page of Exhibit 5. Definition E, it says: Note
2 means the promissory note signed by borrower and dated May 13, 2005.

3 As we already established the adjustable rate note is dated
4 May 13, 2005. If you then continue in paragraph E it states the note
5 states that borrower owes lender \$212,750 which again coincides with
6 the borrower's promise to pay in the adjustable rate note.

7 THE COURT: Uh-huh. Counsel, I'm seeing everything you're
8 saying so far. The only question I'm not seeing is the assignment for
9 page 1016 and the affidavit of loss note on 1027. If you want to jump to
10 where the Court -- the Court's going to have questions on those two
11 pages based on the objections raised by Defendant because otherwise I
12 see where your stipulated fact matches your proposed -- the joint Exhibit
13 5 for the dates, costs and everything and your stipulated facts. And so,
14 we've got the adjustable rate note.

15 That's an inclination I haven't yet ruled, but what I don't see
16 so far as any support for 1016 or 1027. Now I'm not in any way limiting
17 your analysis, feel free to go on with your analysis, but if you wanted me
18 to jump to where the Court's question is, that's the question on those
19 two pages. I'm sure Defense counsel will tell you if I'm missing
20 something.

21 MS. HANKS: I'll speak when it's my turn, Your Honor.

22 THE COURT: Because otherwise it looks like there's two
23 copies of the notes other than one has got a stamp on it on 1018 about
24 being a true and correct copy. Go ahead, counsel.

25 MR. NITZ: Your Honor, part of the objection raised with us is

1 authenticity.

2 THE COURT: Uh-huh.

3 MR. NITZ: I have the original collateral file here. This was
4 already presented to counsel, and they acknowledged receipt of the
5 opportunity to inspect and review this, and they acknowledged that in
6 Exhibit 43 --

7 THE COURT: Did they object if either it was authentic or did
8 they just -- inspection. Hold on just a sec.

9 MS. HANKS: Just acknowledged we inspected it.

10 THE COURT: Go ahead, counsel.

11 MR. NITZ: So, by that acknowledgement, they acknowledged
12 reviewing the original collateral file, and it identifies various things
13 including number 2, the note. I have the original note.

14 THE COURT: But counsel, you can't testify.

15 MR. NITZ: I know. I'm not testifying, Your Honor, but you're
16 the trier of fact and you can compare the original with the copy to satisfy
17 the Court that it is a true and accurate copy of the original. That's what
18 we're trying to establish and overcome the objection of that authenticity.

19 THE COURT: Right. If the authenticity objection relates to
20 pages 12 through 15, and then I think with the stipulated fact, I don't
21 think you're going to get the authenticity comparing Exhibit 5. You've
22 got a stipulated fact I think 12 through 15 comes in.

23 But what I hadn't heard from and we're going to have to stop
24 in just a minute because it's the 5:00 hour, and we're going to have to
25 find another day. But folks, I'll start another trial on Thursday, and it's a

1 jury trial. I can't put them off.

2 Because I haven't heard anything about assignments which
3 is one of 16 --

4 MS. HANKS: You mean endorsements, Your Honor?

5 THE COURT: Yeah. Endorsements.

6 MS. HANKS: That's okay. Just clarifying.

7 THE COURT: Page 1016, yes. The Court's endorsements,
8 yes. So, let me hear Defense's objection and then I'm going to have to
9 rule. Go ahead, counsel.

10 MS. HANKS: If we're talking about the entirety of it, we just
11 acknowledge that we reviewed the collateral file. And that fact as I'm
12 stipulating to the Ivy's took out a loan. I'm not stipulating to an
13 admission of an exhibit.

14 And we have an added problem just as an offer proof
15 without admitting the exhibit under your bench trial, so you can look at it
16 without considering it. The first note that we see, the first copy, doesn't
17 match the next copy we see in the sequence at 1018 through 10 -- the
18 signatures are completely different. Now you have been on top of each
19 other. So, if you look at page 1022, match that with --

20 THE COURT: Oh, they're on different sides.

21 MS. HANKS: -- 1015, it's different. Adding to that problem,
22 you have an affidavit from Greenpoint Mortgage saying they lost the
23 note dated February 14th of 2007.

24 So, I just don't want to get too far afield, the fact that I
25 stipulated to a fact that the Ivy's took out a loan based on a deed of trust,

1 that's a given. The deed of trust is admitted, it says they took out a loan.
2 I don't think anyone disputes that.

3 I never took that fact to mean now I'm going to admit to, or
4 excuse me, stipulate to the admission of documents and this exhibit in
5 itself is highly problematic.

6 THE COURT: Yeah.

7 MR. NITZ: Your Honor --

8 THE COURT: Counsel raises a good point. Actually, that last
9 page is also different. Well, a revision, though it is different as well as
10 the -- okay.

11 MR. NITZ: Your Honor --

12 THE COURT: Counsel pointed the differences on that
13 signature page, okay. Counsel, go ahead. For Plaintiff.

14 MR. NITZ: This is going to be an extended process. You
15 already identified that we're at the 5:00 hour.

16 THE COURT: So, it sounds like we're continuing the
17 argument to a different day, right?

18 MR. NITZ: This isn't argument, Your Honor, it's presentation
19 of evidence, and I'm pointing you to the documents you need to
20 authenticate or rule on the authenticity and hearsay objections that were
21 raised.

22 But in any case, we do need to resume on a different date.

23 THE COURT: Okay. Well, I can tell you right now for the
24 authenticity with counsel for Defendant pointing out that there is an
25 affidavit of loss note and yet somebody's telling me that there's two

1 different original notes, that presents its own authenticity. So, I'd be
2 inclined to sustain it.

3 I will tell you also counsel for Defense pointing out that bates
4 page -- the different signatures. That the USB 122 -- 10, sorry, 1022
5 where the Ivy's are both on the left hand column and it says
6 GRPT56NF.UFF. And it has a revision dated to 2/24/04 and created
7 10/16/02 is different than USB 1015 where you've got Henry Ivy on the
8 left hand side and Freddie Ivy signature on the right hand side with a
9 GRIONT4.UFF and issued 5/2/02 with revision 5/30/04 presents a
10 challenge on what the Court's supposed to be taking as the original note
11 for May 13th, 2005 an admission from an exhibit standpoint.

12 And so therefore the Court has to reconsider its inclination
13 with regards to USB 1012 through 1015 in light of what was pointed out
14 to the Court when Defense had an opportunity to speak.

15 And so therefore the Court's going to deny without prejudice
16 proposed 39 and let you all re-argue it, and then revisit it when it gets re-
17 argued because you heard the Court's inclination and the reasoning now
18 that I had the Defense speak.

19 So, here's what your choices are, tomorrow I actually do
20 have a little bit of time. If not, you're going to be waiting several weeks
21 because tomorrow I have time after my construction defect calendar that
22 I could start you at 11:00 or 1:00, but I cannot start to the 25th. I start a
23 jury trial. That jury trial goes through May 1st. And then after that I am
24 in trial, then I have the district judge's conference.

25 And then when I return I pretty much go straight to back to

1 back trials including an eight week construction defect case that starts in
2 May.

3 So, I presume you want me to take me up on tomorrow so
4 we can get this done, right?

5 MS. HANKS: Yeah. What time tomorrow, Your Honor?

6 THE COURT: I can start you at 11:00 or I can start you at 1:00.
7 If I start you at 11:00, we'll break for lunch and then do it at 1:00. But I
8 really do need to stop this in like two minutes.

9 MS. HANKS: Yeah. I can do tomorrow, Your Honor. Either
10 time.

11 MR. NITZ: May I check my calendar?

12 THE COURT: Of course, you may. But realize it's tomorrow
13 and then we are starting a different jury trial that has been -- and they
14 have witnesses from out of state and we already have the two juries
15 coming in. So, this case cannot go to Thursday.

16 MR. NITZ: I'm clear for tomorrow. We could start at 11:00,
17 Your Honor.

18 THE COURT: Sure. I actually only have four matters on my
19 9:00. I could probably start you at 10:30 or 11:00 which meets your
20 needs purposes. Oh, you know, there's a to withdraw and three
21 motions for good faith settlement. My longer motion came off for
22 tomorrow. So, I could actually start you 10:15 if you wanted to. You
23 want 10:15 or you want 11:00? It depends on how much you want in the
24 morning.

25 MS. HANKS: Can we have 11:00?

1 THE COURT: Depends on what your morning calendar's like.
2 I offered you 11:00, so I'll stick with 11:00 or I can offer you 10:15 I'm
3 offering you more time. Just realize if we don't get done tomorrow, it's
4 not because the Court's not offering you enough time.

5 MS. HANKS: I'd prefer to go to 11:00, Your Honor.

6 THE COURT: That work for you, counsel?

7 MR. NITZ: 11:00 would work for me, 10:15 would work for
8 me as well.

9 THE COURT: Well let's say 10:45 then.

10 MS. HANKS: Okay.

11 THE COURT: 10:45. See you all here, we'll get continued.
12 Thank you so very much. Have a great evening. Appreciate it if you
13 wouldn't mind expediting your exit so that my team can minimize the
14 overtime that you will be paying them.

15 [Proceedings adjourned at 5:08 p.m.]

16
17
18
19 ATTEST: I do hereby certify that I have truly and correctly transcribed the
20 audio-visual recording of the proceeding in the above entitled case to the
21 best of my ability.

22 
23

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