

**Case No. 81293**

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,

Appellant,

vs.

U.S. BANK N.A., A NATIONAL  
BANKING ASSOCIATION; AND  
NATIONSTAR MORTGAGE, LLC, A  
FOREIGN LIMITED LIABILITY  
COMPANY,

Respondent.

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**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable GLORIA STURMAN, District Judge  
District Court Case No. A-14-705563-C

**JOINT APPENDIX VOLUME 4**

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Respectfully submitted by:

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1 Alessi. This tender discharged the super-priority portion of the HOA's lien, which carried over to the  
2 Second HOA Lien.

3 Additionally, any further attempts to pay the super-priority amount would have been futile.  
4 Tender is excused when a tender would be futile. *See* 15 Williston, A Treatise on the Law of  
5 Contracts, § 1819 (3d ed. 1972); *see also Enfield v. Huffman Motor Co.*, 117 Cal. App. 2d 800, 807  
6 (1953). Not only is tender excused, the lien itself may be waived. *Id.* Here, it was clear that it  
7 would have been futile to tender payment to the HOA Trustee to satisfy the HOA's super-priority  
8 lien. Accordingly, this issue of BAC's tender raises triable issues of fact that precludes this Court  
9 from granting SFR summary judgment.

10 Accordingly, this Court should deny SFR motion for summary judgment and instead grant  
11 summary judgment in favor of Nationstar.

12 **C. THE HOA'S LOW FORECLOSURE SALE PRICE, COUPLED WITH**  
13 **IRREGULARITIES IN THE SALE, WARRANTS THIS COURT EXERCISING ITS**  
14 **EQUITABLE POWERS TO SET ASIDE THE SALE.**

15 SFR's Motion should also be denied because the HOA Sale the sale should be set aside  
16 under equitable principles because the sale of the Property for less than 20% of its fair market value  
17 is grossly inadequate, and when coupled with the unfairness evidenced in this case, warrants setting  
18 aside the sale. *See, Nationstar Mortgage, LLC v. Saticoy Bay, LLC Series 2227 Shadow Canyon*,  
19 133 Nev. Adv. Op. 91 (Nov. 22, 2017).

20 In *Nationstar*, which was recently decided by the Nevada Supreme Court, the Court clarified  
21 the standard upon which a sale can be set aside as "commercially unreasonable." In particular, the  
22 Court held that *Shadow Wood* did not overturn the Court's longstanding rule that "inadequacy of  
23 price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale" absent  
24 additional "proof of some element of fraud, unfairness, or oppression as accounts for and brings  
25 about the inadequacy of price". *See Id.* at 2-3 citing *Shadow Wood*, 132 Nev., Adv. Op. 5, 366 P.3d  
26 111 (quoting *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963)).

27 However, the Nevada Supreme noted in *Nationstar*: "This is not to say that price is wholly  
28 irrelevant. To the contrary, *Golden* recognized that the price/fair-market-value disparity is a relevant



1 consideration because a wide disparity may require less evidence of fraud, unfairness, or oppression  
2 to justify setting aside the sale:

3 [I]t is universally recognized that inadequacy of price is a circumstance of  
4 greater or less weight to be considered in connection with other  
5 circumstances impeaching the fairness of the transaction as a cause of  
6 vacating it, and that, where the inadequacy is palpable and great, very  
slight additional evidence of unfairness or irregularity is sufficient to  
authorize the granting of relief sought.”<sup>1</sup>

7 Thus, in *Nationstar*, the Nevada Supreme Court clarified that it continues to endorse the approach in  
8 *Golden* when evaluating the validity of foreclosure sales – mere inadequacy of price is not in itself  
9 sufficient to set aside the foreclosure sale, but it should be considered together with any  
10 irregularities in the sales process to determine whether the sale was affected by fraud, unfairness, or  
11 oppression. *See Id.* at 15-16. There is no doubt that the SFR’s purchase price of \$59,000.00 at  
12 19.2% of the fair market value of the Property was wholly inadequate. *See, BFP v. Resolution Trust*  
13 *Corp.*, 511 U.S. 531, 538 (1994).

14 Here, not only was the sale price woefully insufficient, but the sale exhibits fatal  
15 irregularities resulting in substantial unfairness. After BAC tendered payment to Alessi to satisfy  
16 the super-priority portion of its lien and after Alessi rejected the tender, Alessi recorded a release of  
17 the delinquent assessment lien, only then to rerecord the lien with the same balance of delinquent  
18 assessments, late fees, and other fees that existed in the 1<sup>st</sup> HOA Lien. These significant  
19 irregularities serve to render the sale patently unfair and, when considering the entirety of the  
20 circumstances, warrant setting aside the foreclosure sale.

21 **D. SFR INVESTMENTS IS NOT A BONA FIDE PURCHASER FOR VALUE**

22 In the *JPMorgan Chase Bank* decision, the Supreme Court noted the futility of proving that  
23 one is a bona fide purchaser in a case where an HOA lien had been satisfied through tender:  
24

25 <sup>1</sup> *Nationstar* at 15 (citing *Golden*, 79 Nev. at 515-16, 387 P.2d at 995 (quoting *Odell*  
26 *v. Cox*, 90 P. 194, 196 (Cal. 1907)); *id.* (“While mere inadequacy of price has rarely been  
27 held sufficient in itself to justify setting aside a judicial sale of property, courts are not slow  
28 to seize upon other circumstances impeaching the fairness of the transaction as a cause for  
vacating it, especially if the inadequacy be so gross as to shock the conscience.” (quoting  
*Schroeder v. Young*, 161 U.S. 334, 337-38 (1896)).

1 Although appellant argues it was a bona fide purchaser, appellant has not explained  
2 how its putative BFP status could have revived the already-satisfied superpriority  
component of the HOA's lien.

3 No. 71246, 2017 WL 6597154 Fn. 1. (Nev. Dec. 22, 2017). Although the bona fide purchaser  
4 status is not a defense to a sale which is rendered void due to the extinguishing of the underlying  
5 lien prior to the HOA Sale, as occurred in this case, Nationstar will address SFR's status as a bona  
6 fide purchaser.

7 Under Nevada law, the bona fide purchaser status is an affirmative defense. *Bailey v.*  
8 *Butner*, 64 Nev. 1, 4, 176 P.2d 226, 229 (1947) (the right to protection as a bona fide purchaser is  
9 ordinarily regarded as an affirmative defense). The party asserting an affirmative defense always  
10 bears the burden of proving each element of that defense. *See Nev. Ass'n Servs., Inc. v. Eighth*  
11 *Judicial Dist. Court*, 130 Nev. Adv. Rep. 94, 338 P.3d 1250, 1254 (2014) (noting that the party  
12 asserting an affirmative defense bears the burden of proving each element of that defense); *Schwartz*  
13 *v. Schwartz*, 95 Nev. 202, 206 n.2, 591 P.2d 1137, 1140 n.2 (1979) (A party who asserts an  
14 affirmative defense has the burden to prove each element of the defense). In this case, SFR has  
15 failed to set out any facts which might support its claim of bona fide purchaser status, such as efforts  
16 to determine whether or not a payment had been made that would extinguish the HOA Lien. SFR  
17 cannot therefore claim to be a bona fide purchaser and this defense is unavailable to it.

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V.

**CONCLUSION**

WHEREFORE, for the foregoing reasons, Nationstar Mortgage, LLC respectfully requests that this Court deny SFR Investments Pool 1, LLC's Motion for Summary Judgment.

Dated this 19<sup>th</sup> day of July, 2018.

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**CERTIFICATE OF SERVICE**

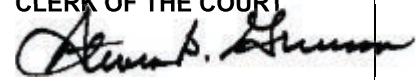
I hereby certify that I am an employee of GERRARD COX LARSEN, and that on the 19<sup>th</sup> day of July, 2018, I served a copy of the **OPPOSITION TO SFR INVESTMENTS POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**, by e-serving a copy on all parties *listed in the Master Service List pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.*

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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF CLARK**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,  
Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBNWO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic governmental entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,  
Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES  
I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Case No. A-14-705563-C

Dept. No. 17

**ERRATA TO:**

**SFR INVESTMENTS POOL 1 LLC'S  
OPPOSITION TO CROSS-DEFENDANT  
NATIONSTAR MORTGAGE, LLC'S  
MOTION FOR SUMMARY JUDGMENT**

**AND**

**U.S. BANK, N.A. AS TRUSTEE FOR THE  
CERTIFICATE HOLDERS OF THE LXS  
2006-4N TRUST FUND'S JOINDER TO  
NATIONSTAR MORTGAGE, LLC'S  
MOTION**

Third-Party Defendant(s).  
SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company,

Third-Party Counterclaimant/Cross-Claimant,  
vs.

U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, foreign limited liability  
company; KRISTEN JORDAL, as Trustee for  
the JBWNO REVOCABLE LIVING TRUST, a  
Trust; STACY MOORE, an individual; and  
MAGNOLIA GOTERA, an individual,

Counter-Defendants/Cross-Defendants.

**ERRATA TO:**

**SFR INVESTMENTS POOL 1 LLC'S OPPOSITION TO CROSS-DEFENDANT  
NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGMENT; AND  
U.S. BANK, N.A. AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF THE LXS  
2006-4N TRUST FUND'S JOINDER TO NATIONSTAR MORTGAGE, LLC'S MOTION**

SFR Investments Pool 1, LLC ("SFR"), by and through its undersigned counsel of record,  
hereby submits its Errata to its Nationstar Mortgage, LLC's motion for summary judgment and  
to U.S. Bank, N.A. joinder thereto.

The attorney signature was inadvertently omitted from the original document filed July  
19, 2018. Attached hereto as **Exhibit A** is a corrected version of the motion that includes the  
attorney signature, as well as minor cosmetic changes that do not affect the substance of the  
original motion.

DATED this 20th day of July, 2018.

**KIM GILBERT EBRON**

/s/Jacqueline A. Gilbert

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of July, 2018, pursuant to NRCP 5(b)(2)(D), I caused service of a true and correct copy of **ERRATA TO: SFR INVESTMENTS POOL 1 LLC'S OPPOSITION TO CROSS-DEFENDANT NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGMENT AND U.S. BANK, N.A. AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF THE LXS 2006-4N TRUST FUND'S JOINDER TO NATIONSTAR MORTGAGE, LLC'S MOTION** to be made electronically via the Eighth Judicial District Court's electronic filing system upon the following parties at the e-mail addresses listed below:

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Alexander Loglia, an employee of  
KIM GILBERT EBRON



Ex. A

# EXHIBIT A

Ex. A

**OMSJ**

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the JBWNO REVOCABLE LIVING TRUST, a  
Trust; STACY MOORE, an individual; and  
MAGNOLIA GOTERA, an individual,  
  
Counter-Defendants/Cross-Defendants.

SFR Investments Pool 1, LLC (“SFR”) hereby opposes Nationstar Mortgage, LLC (“Nationstar”) motion for summary judgment and U.S. Bank, N.A. (“U.S. Bank”), Joinder.

This Opposition is based on the papers and pleadings on file herein, the following memorandum of points and authorities, the Declaration of Jacqueline A. Gilbert, Esq. (“Gilbert Decl.”), attached hereto as **Exhibit A**, and such evidence and oral argument as may be presented at the time of the hearing on this matter.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Nationstar’s motion should be denied for the following reasons: **First**, Nationstar has not proven its standing to enforce the note and, therefore, the deed of trust. **Second**, Nationstar has failed to meet its burden to establish its alleged “tender” defense was effective to discharge the superpriority portion of the Association’s lien. Nationstar has not shown that the rejection was unjustified. Nationstar’s payment is unenforceable against third-parties such as SFR because it was unrecorded. Contrary to Nationstar’s unsubstantiated statements, without recording, SFR is not in position to ever know whether an alleged tender ever occurred. Given Nationstar’s failure to establish its tender defense, such defense was not sufficient to preclude summary judgment in SFR’s favor. **Third**, Nationstar failed to demonstrate any element of fraud, oppression or unfairness sufficient to set aside the Association foreclosure sale. Since Nationstar has failed to raise a genuine dispute regarding whether the sale was commercially reasonable, this Court must

1 deny Nationstar's motion.

2 **II. STATEMENT OF DISPUTED FACTS**

3 **Disputed Fact#1:** Nationstar's purported interest in the DOT, if any.

4 SFR does not object to the Bank's request that the Court take judicial notice of the fact that its  
5 exhibits<sup>1</sup> (publicly recorded documents purporting to pertain to the property's title) were recorded by the  
6 Clark County Recorder on the recording dates provided therein. *See* F.R.E. 201(b)(2); NRS  
7 47.130(2)(b). However, SFR objects to the Bank's request to the extent the Bank intends to use them to  
8 establish the truth or falsity of the facts contained therein. *Id.*; *see also* F.R.E. 201(e); NRS 47.160 (a  
9 party can challenge "the propriety of taking judicial notice and the tenor of the matter to be noticed."").  
10 The mere recording of a document does not guarantee the accuracy or the authenticity of such a  
11 document.

12 SFR challenges the Bank's standing to enforce the alleged note and deed of trust ("DOT"). It is  
13 a matter of public record that various mortgage holders and servicers engaged in serious misconduct that  
14 drew into question the validity of documentation underlying their property transactions. In 2012, the  
15 Office of Inspector General, Department of Housing & Urban Development issued its Memorandum No.  
16 2012-CH-1803. *See* Gilbert Decl., **Exhibit A-1** ("OIG Report"). SFR has noted these types of problems  
17 raised in recent litigation by other parties.<sup>2</sup> *See* Gilbert Decl., **Exhibits A-2 through A-6**. Based on these  
18 same issues, another court in this District denied a bank's motion to substitute parties based on a recorded  
19 assignment. *See Ditech Financial LLC v. SFR Investments Pool 1, LLC*, Case No. 2:16-cv-00127-GMN-  
20 NJK, at ECF No. 98 (D. Nev. Nov. 8, 2017) (Order, referencing ECF No. 93 which included the above-

21  
22 

---

<sup>1</sup> *See* [ECF No. 49].

23 <sup>2</sup> *See* Gilbert Decl., ¶6(b) & **Exhibit A-2** (U.S. Bank unable to explain the 2007 reconveyance of  
24 the purported first deed of trust or the 2013 rescission of the 2007 reconveyance; unable to explain  
25 how J.P. Morgan became the depositor for a loan originated by Countrywide and explaining that  
26 a single code in the bank's system of record served the basis for the bank's position that the loan  
27 is contained in the trust and to determine in which entity the deed of trust should be assigned). *See*  
28 Gilbert Decl., ¶6(d) & **Exhibit A-5** (bank's written discovery responses and recorded assignment  
stated HSBC Bank USA, N.A. a Trustee for Sequoia Mortgage Trust 2007-3 was owner of loan  
while bank witness testified that bank system of record showed the loan to be contained in a  
different trust)

1 referenced exhibits herein listed as A-1 through A-6).<sup>3</sup> Given the issues above, the relevance in  
2 mandating that the Bank produce the original of the Deed of Trust, Note and Assignments to establish  
3 its claimed interest in the property is apparent. Copies will not suffice.

4 **Disputed Fact #2: Nationstar's "Tender." See Bank's Mot. pg. 7 at ¶¶ 5-8.**

5 The motion is supported by an affidavit from Doug Miles. See Nationstar's Mot. at Exhibit  
6 E. Miles was never properly disclosed as witness during the course of discovery. So as to not  
7 waive its opposition to use of the affidavit and any unauthenticated documents, SFR will not  
8 respond to the affidavit. NRCP 16.1(a)(3)(A); NRCP 16.1(e)(B); see also section A *infra*. If the  
9 Affidavit is not considered by this Court, then what is left is unsubstantiated statements that a  
10 "tender" occurred, which is insufficient for summary judgment. NRCP 56(c). Even if that is not  
11 enough, Miles cannot lay a foundation for the Association's ledger or the letters from Alessi &  
12 Koenig, LLC ("A&K"). The purpose of attaching said letters and ledgers is for the truth of the  
13 matter asserted making these documents hearsay. Accordingly, the court cannot rely on these  
14 documents.

15 Without waiving the waiver, SFR disputes the use of the word "tender" as what constitutes  
16 proper "tender" is a question of law. Second, the amount of the lien entitled to super-priority status  
17 is a legal question and not proper for the facts section. Third, in making any payment, Nationstar  
18 insisted that acceptance of such payment was conditional on the fact that this check would have  
19 "paid in full" all the obligations towards the Association and required acceptance that the amount  
20 proffered was all that was due. See Nationstar's Mot. Exhibit E, Sub-Exhibit 3. In fact, the letter  
21 stated as follows:

22 Our client has authorized us to make payment to you in the amount of \$207.00 to satisfy its obligations to  
23 the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a  
24 cashier's check made out to Alessi & Koenig, LLC in the sum of \$207.00, which represents the maximum  
25 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and  
26 any endorsement of said cashier's check on your part, whether express or implied, will be strictly  
27 construed as an unconditional acceptance on your part of the facts stated herein and express agreement  
28 that BAC's financial obligations towards the HOA in regards to the real property located at 5327 Marsh  
Butte Street have now been "paid in full".

<sup>3</sup> True and correct copies of the Order and [ECF No. 93] are attached hereto as **Exhibit B**.

1 *Id.* If such impermissible condition was not contained in the letter, A&K likely would have  
2 accepted this payment and applied it to the balance of the delinquent homeowner.

3 But more importantly, Nationstar has failed to establish through admissible evidence that  
4 Nationstar ever made any payment to A&K or the Association. The only evidence that a check was  
5 ever delivered to A&K is an unauthenticated letter, unauthenticated copy of the purported check  
6 and a copy of the purported run slip from Legal Wings which is hearsay. The run slip is an out of  
7 court statement that is being used for the truth of the matter asserted, and there is no exception that  
8 is applicable. NRS 51.035. Additionally, the run slip has not been authenticated. Simply put,  
9 Nationstar is asking this Court to take it at face value that this check was received. As such, this  
10 Court cannot conclude at this stage of litigation that such a payment was even sent to AMS as  
11 claimed by Nationstar.

12 **Disputed Fact#3:** “...SFR purported to be the highest bidder and allegedly purchased  
13 the property for \$59,000.00.”

14 SFR disputes the use of “purported” as the evidence that it was highest bidder is the fact  
15 that SFR purchased the Property at the publicly conducted auction, evidenced by the check in the  
16 amount of \$59,000 and the foreclosure deed which reflects the same.

17 **Disputed Fact#4:** “At the time of the foreclosure sale, the fair market value of the Property  
18 was \$306,000.00.”

19 SFR disputes this “fact” as it calls for a legal conclusion. First, Mr. Dugan’s retrospective  
20 market appraisal should be disregarded because it fails to take into account the realities of the sale  
21 itself, that it was a forced sale, rather Nationstar’s expert did an appraisal as if it was a typical  
22 property being sold under normal conditions.

23 Mr. Dugan relied on a Sales Comparison Approach as if none of the factors surrounding the sale  
24 existed. Every property sale used by Mr. Dugan was a traditional sale. This type of sale bears no  
25 resemblance to an NRS 116 sale. NRS 116 sale issues have engendered countless litigation costing  
26 thousands of dollars, led to many Nevada Supreme Court decisions, and is still driving costly  
27 litigation. The fact that Mr. Dugan had to ignore this in its entirety to formulate his opinion is  
28 unequivocal proof that his Appraisal Report is based upon an erroneous assumption. As is

discussed further below, market value has no applicability to a forced sale situation. *BFP v. Resolution Trust Corporation*, 511 U.S. 531 (1994).

### III. LEGAL ARGUMENT

#### A. The Bank's Quiet Title Claim Fails Because It Did Not Prove Standing to Enforce.

The Bank does not have and has never had title to the Property. Thus, the Bank has the burden of proof to demonstrate that both the note and deed of trust were properly transferred to it in order to obtain the declaratory relief it seeks. *Breliaht v. Preferred Equities Corp.*, 918 P.2d 314, 318 (Nev. 1996)). If the Bank did not have a property interest to be deprived of at the time of the Association foreclosure sale. If the Bank is not currently entitled to enforce the deed of trust and promissory note, then it is not the proper party to bring this lawsuit and a declaration from the Court saying the Bank's deed of trust was not extinguished would be improper. SFR challenges the Bank's standing to enforce the deed of trust and promissory note in its affirmative defenses and counterclaims.

#### 1) Evidentiary Principles from Nevada's Foreclosure Mediation Program Reveal that the Bank did not Prove Standing to Enforce.

Nevada law contemplates the spirit of requiring lenders to prove good title: standing to enforce. Under NRS 107.086, the Bank is required to bring to mediation the original or a certified copy of the deed of trust, the mortgage note, and each assignment of the deed of trust and/or mortgage note. If the beneficiary of the deed of trust is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust or have access at all times during the mediation to a person with such authority. Nev. Rev. Stat. Ann. § 107.086 (West); *see also Law v. Federal National Mort. Ass'n*, Case No. 69469 (Nev. Ct. App. Dec. 28, 2016) (unpublished disposition) (holding that where the beneficiary of record is one entity and holder of note is another, the beneficiary cannot enforce). Therefore, in order for the Bank to strip SFR of its property rights, the Bank must at least prove its standing to enforce, or the transaction in which it acquired standing, by providing the original or certified copy of the Deed of Trust, the Note, and each assignment upon which it relies.

///

1           **2) Under the UCC, the Bank did not Prove that it can Enforce the Note.**

2           The proper method of transferring a mortgage note is governed by Article 3 of the Uniform  
3 Commercial Code—Negotiable Instruments, because a mortgage note is a negotiable instrument.<sup>4</sup>  
4 *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 255 P.3d 1275, 1279–81 (2011) (citing  
5 *Birkland v. Silver State Financial Services, Inc.*, No. 2:10–CV–00035–KJD, 2010 WL 3419372,  
6 at \*4 (D. Nev. Aug. 25, 2010)). The obligor on the note has the right to know the identity of the  
7 entity that is “entitled to enforce” the mortgage note under Article 3, *see* NRS 104.3301, *see also*  
8 *In re Veal*, 450 B.R. 897, 920, at \*16 (B.A.P. 9th Cir. June 10, 2011) (holding that a purported  
9 servicer, did not prove that it was the party entitled to enforce, and receive payments from, a  
10 mortgage note because it “presented no evidence as to who possessed the original Note. It also  
11 presented no evidence showing [e]ndorsement of the note either in its favor or in favor of Wells  
12 Fargo, for whom AHMSI allegedly was servicing the [bankrupt party's] Loan.”).

13           Similarly, in a quiet title action, a lender must show that it is the party entitled to enforce  
14 the mortgage note. “An instrument is transferred when it is delivered by a person other than its  
15 issuer for the purpose of giving to the person receiving delivery the right to enforce the  
16 instrument.” UCC § 3–203(a). “Transfer of an instrument, whether or not the transfer is a  
17 negotiation, vests in the transferee any right of the transferor to enforce the instrument. ...” UCC §  
18 3–203(b). While the failure to obtain the endorsement of the payee or other holder does not prevent  
19 a person in possession from being the “person entitled to enforce” the note, the possessor does not

20  
21 <sup>4</sup> *See* NRS 104.3102 (1) which applies to negotiable instruments like mortgage notes under  
22 Nevada’s adoption of UCC Article 3. Transfer of a mortgage note must be done in accordance to  
NRS 104.3109 (note payable to bearer or order) and properly transferred or negotiated to a  
subsequent holder by proper endorsement if required. *See* NRS 104.3109; 104.3201; 104.3204;  
*see also* *Leyva v. Nat'l Default Servicing Corp.*, 255 P.3d 1275, 1280 (Nev. 2011).

23           If the note is payable to the order of an identifiable party but is then sold or otherwise  
24 assigned to a new party, it must be endorsed by the party to whom it was originally payable for the  
note to be considered properly negotiated to the new party. *Leyva*, 255 P.3d at 1280. “When  
25 endorsed in blank, an instrument becomes payable to bearer....” NRS 104.3205(2). Further, “a note  
initially made payable ‘to order’ can become a bearer instrument, if it is endorsed in blank.” *Bank*  
26 *of New York v. Raftogianis*, 418 N.J.Super. 323, 13 A.3d 435, 439 (N.J.Super.Ct.Ch.Div.2010);  
*see also* U.C.C. § 3–205 cmt. 2 (2004). A party wishing to enforce a note must demonstrate it was  
27 validly negotiated or transferred by proper endorsement or proving the transaction through which,  
the note was acquired. *Leyva*, 255 P.3d at 1281 citing NRS 104.3203(2) and U.C.C. § 3-202 cmt  
28 2.



1 have the presumption of a right to enforce. *Branch Banking & Trust Co. v. Smoke Ranch Dev.,*  
2 *LLC*, No. 2:12-CV-00453-APG-NJK, 2014 WL 4796939, at \*4 (D. Nev. Sept. 26, 2014). Rather,  
3 the possessor of the note must demonstrate both the fact and the purpose of the delivery of the note  
4 to the transferee in order to qualify as the “person entitled to enforce.” *Leyva*, 255 P.3d at 1281.

5 The Bank may argue that it has possession of the note and that alone demonstrates standing  
6 to enforce the note and deed of trust. However, this argument fails because it never proved it had  
7 possession of the original note. *See id.* at 1280. Even if it had, Article 3 requires the Bank to  
8 demonstrate more than mere possession of the original note to be able to enforce it as a negotiable  
9 instrument. *Id.* Mere possession of the note does not evidence valid transfer. Without a valid or  
10 blank endorsement, “the possessor does not have the presumption of a right to enforce. Rather, the  
11 possessor of the note must demonstrate both the fact and the purpose of the delivery of the note to  
12 the transferee in order to qualify as the ‘person entitled to enforce.’” *Branch Banking & Trust Co.*  
13 *v. Smoke Ranch Dev., LLC*, No. 2:12-CV-00453-APG-NJ, 2014 WL 4796939, at \*4 (D. Nev. Sept.  
14 26, 2014) *citing Leyva*, 255 P.3d at 1281. In this matter, the Bank has not demonstrated both the  
15 fact and delivery of the note. Here, the Bank failed to produce or otherwise make available the  
16 original note. In light of the above, the Bank has completely failed to prove it has standing to  
17 enforce the note and deed of trust which precludes it from quiet title.

18 **3) Lack of production of evidence reinforces the Bank’s lack of standing to enforce.**

19 A written assignment of a deed of trust is an instrument that sets forth the chain of title.  
20 *Kono v. Wells Fargo Bank, N.A.*, No. 59928, 2013 WL 7158570, at \*2 (Nev. Dec. 17, 2013). A  
21 written assignment’s purpose is to complete the chain of title of the person seeking to enforce the  
22 note. *See Cf. Einhorn*, 128 Nev. Adv. Op. 61, 290 P.3d 249, 254 (2012).

23 The Bank must provide a certified copy of the assignment of mortgage and provide proof  
24 that the assignment was made by a party that itself held the mortgage. *See U.S. Bank N.A. v. Ibanez*,  
25 *941 N.E.2d 40, 52* (Mass.App. 2011) (*citing In re Samuels*, 415 B.R. 8, 20 (Bankr.D.Mass.2009)).  
26 The Bank may provide a complete chain of assignments linking it to the record holder of the  
27 mortgage, or a single assignment from the record holder of the mortgage. *Id.* (*citing In re Parrish*,  
28 326 B.R. 708, 720 (Bankr.N.D.Ohio 2005)) (“If the claimant acquired the note and mortgage from

1 the original lender or from another party who acquired it from the original lender, the claimant can  
2 meet its burden through evidence that traces the loan from the original lender to the claimant”)).

3 The Bank failed to produce the original, wet-ink endorsed note, a certified copy of the  
4 mortgage, a certified copy of the assignment, and the chain of ownership of the note and the deed  
5 of trust. Thus, the Bank has not demonstrated it has standing to enforce the mortgage loan. Where  
6 the Bank files a complaint asking for a declaration of clear title, the parties are entitled to ask for  
7 proof that it is has standing. *Ibanez*, 941 N.E.2d at 52-53. A plaintiff that cannot make this modest  
8 showing, cannot justly proclaim that it was unfairly denied a declaration of clear title. *Id.* at 54  
9 (citing *In re Schwartz*, 461 B.R. 93 (Bankr. D. Mass. 2011) (“When HomEq [Servicing  
10 Corporation] was required to prove its authority to conduct the sale, and despite having been given  
11 ample opportunity to do so, what it produced instead was a jumble of documents and conclusory  
12 statements, some of which are not supported by the documents and indeed even contradicted by  
13 them”)); see also *Bayview Loan Servicing, LLC v. Nelson*, 382 Ill.App.3d 1184, 1188, 322, 890  
14 N.E.2d 940 (Ill. Dec. 21, 2008) (reversing grant of summary judgment in favor of financial entity  
15 in a foreclosure action, where there was “no evidence that [the entity] ever obtained any legal  
16 interest in the subject property”). It is too late for the Bank to try and overcome these evidentiary  
17 issues.

18 In conclusion, the Bank failed to prove its standing with any evidence of valid transfer of  
19 the note and Deed of Trust. The Bank failed to provide a validly endorsed note, failed to provide  
20 the chain of ownership of the note and the Deed of Trust and failed to provide the original writing  
21 transferring the deed of trust. Therefore, this Court should deny the Bank’s Motion for Summary  
22 Judgment as it has not met its burden to show standing to enforce the loan; thus, it cannot legally  
23 show it is entitled to “quiet title.”

24 **B. Nationstar Failed to Show the Association’s Lien did not Include Superpriority**  
25 **Amounts.**

26 The Association’s notices constitute prima facie evidence that the Association foreclosed  
27 on the superpriority portion of the Lien. *PNC Bank v. Saticoy Bay*, No. 69595 (unpublished order  
28 May 25, 2017); *PNC Bank v. Saticoy Bay*, No. 69201 (unpublished order June 15, 2017). Similarly,

1 a foreclosure deed “conveying all its right, title and interest” constitutes prima facie evidence that  
2 the Association foreclosed on the superpriority portion of the lien. *BNY Mellon v. K&P Homes,*  
3 *LLC*, No. 71273, 404 P.3d 403 (Nev. October 20, 2017) (unpublished disposition). As such,  
4 Nationstar bears the burden to overcome the presumption. Nationstar has failed to meet said  
5 burden. As set forth below, any purported partial payment by the Bank failed to discharge the  
6 super-priority portion of the lien.

7 **C. Undisclosed Witness, Unauthenticated Documents and Documents Containing**  
8 **Hearsay are Not Admissible.**

9 **1) Doug Miles was NOT Disclosed**

10 Nationstar uses an affidavit from an undisclosed witness, Doug Miles (“Miles”). While  
11 Nationstar will claim it disclosed a “corporate designee for the law firm of Miles Bauer Bergstrom  
12 and Winters, LLC (“Miles Bauer”) this is insufficient because the rules require identification of  
13 witnesses by name. NRCP 16.1(a)(3)(A), provides the following: “[t]he name, and..., the address  
14 and telephone number of each witness, separately identifying those whom the party expects to  
15 present, those witnesses who have been subpoenaed for trial and those whom the party may call if  
16 the need arises[.]” *Id.* Here, SFR was not provided the name of the witness during the discovery  
17 period, making the disclosure meaningless. Nationstar’s disclosure merely stated “corporate  
18 designee for the Miles Bauer.” This is insufficient and contra to NRCP 16.1 as the named  
19 individual was not identified. Since a witness was never properly disclosed, it is prejudicial for  
20 Nationstar to now rely on Miles’ affidavit in its motion for summary judgment. As a result, this  
21 Court should not consider the affidavit of Miles. Pursuant to NRCP 16.1(e)(B) “[a]n order  
22 prohibiting the use of any witness, document, or tangible thing which should have been  
23 disclosed... pursuant to Rule 16.1(a).” *Id.*

24 Nationstar should have produced this witness without being asked, as part of its initial  
25 disclosures and supplements thereto. *See* NRCP 16.1(a)(1)(B) and *see also*, NRCP 26(b).  
26 Pursuant to NRCP 26(b) (1) “Parties may obtain discovery regarding any matter...which is  
27 relevant to the subject matter involved in the pending action... and the **identity and location of**  
28 **persons** having knowledge of any discoverable matter.” *Id.* (emphasis added). The fact that the

1 Nationstar is supporting its motion with this declaration reveals it is relevant to the claims. The  
2 witness' identity should have been disclosed timely. Since Nationstar did not, this motion should  
3 easily be denied.

4 **2) Unauthenticated Exhibits are Inadmissible.**

5 Even if this Court were to overlook the failure to disclose, Nationstar still needs to  
6 authenticate and establish foundation for the admission of the documents, which they have not  
7 done. Pursuant to NRS 52.015(1) authentication is a condition precedent in order for documentary  
8 and other physical evidence to be admitted. In order to authenticate evidence, Nationstar must  
9 show that the exhibit is what the movant claims it is. Here, Miles cannot authenticate and lay a  
10 foundation for the Association's ledger or the letters written by A&K as Miles in his capacity as  
11 an employee of Miles Bauer did not prepare these documents. Additionally, Exhibit E-5 is a  
12 computer screen shot. Nationstar is seeking to use these purported screenshots to establish its  
13 claims against SFR. However, when business records exist in electronic form, the focus is not so  
14 much on the creation of the record, "but rather on the circumstances of the preservation of the  
15 record during the time it is in the file so as to assure that the document being proffered is the same  
16 as the document that originally was created." *In re Vee Vinhnee*, 336 B.R. 437, 444 (B.A.P. 9<sup>th</sup>  
17 Cir. 2005). It is not sufficient to identify the computer program. Instead, Nationstar is required to  
18 show the "entities policies and procedures for the use of the equipment, database, and programs."  
19 The Custodian of the records must also establish how access to the system is controlled, how  
20 changes are logged and recorded, and the implementation of backup systems." *Id.* The Miles  
21 Affidavit fails in all respects in meeting the *In re Vee* standard. Evidence in support of a motion  
22 for summary judgment must be admissible. NRCP 56(e); *Schneider v. Continental Assurance Co.*,  
23 110 Nev. 1270, 1274, 885 P.2d 572, 575 (1994). This Court should deny Nationstar's Motion  
24 because it is not supported with admissible evidence.

25 **3) Hearsay Makes Documents Inadmissible**

26 Further, these same exhibits contain hearsay, as Nationstar is using these documents for  
27 the truth of the matter asserted in order to establish its defense of "tender." However, in order to  
28 be admissible, Nationstar needs to establish an exception, which it cannot. Accordingly, these

documents cannot be relied upon to support its motion for summary judgment.

**D. Nationstar's Alleged Payment did not Constitute a Valid Tender.**

**1) The Payment was Conditional and Therefore Not Valid.**

While the Nevada Supreme Court has not defined the term “tender,” in a published decision, two unpublished orders recently were issued which held that a “[t]o make an effective tender, the debtor must actually attempt to pay the sums due; mere offers to pay or declarations that the debtor is willing to pay, are not enough.” *See The Bank of New York Mellon, FKA The Bank of New York as Trustee for the Certificateholders of CWALT Inc., Alternative Loan Trust 2005-1CB, Mortgage Pass-Through Certificates, Series 2005-1CB v. SFR Investments Pool 1, LLC*, No. 68165, at \*2 (Nev. June 15, 2018) (unpublished order of affirmance) (“BYNM”); *see also Bank of America, N.A. Successor By Merger to BAC Home Loans Servicing LP, FKA Countrywide Home Loans Servicing, LP, A National Association v. SFR Investments Pool 1, LLC*, No. 69323 at \*2 (Nev. June 15, 2018) (unpublished order of affirmance); *see also Cochran v. Griffith Energy Serv., Inc.*, 993 A.2d 153 (Md. Ct. Spec. App. 2010).

Assuming *arguendo* Nationstar sent the letter, the letter read as follows:

Our client has authorized us to make payment to you in the amount of \$207.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$207.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 5327 Marsh Butte Street have now been “paid in full”.

*See* Nationstar's Mot. Exhibit E-3. This language does not limit the time or scope of Nationstar's obligation to the Association. Thus, this restrictive language could mean that (1) acceptance of the check meant that the Association would have to accept all of the facts and arguments made by Nationstar in its letter, including what constitutes the super-priority portion of a lien and its recitation of the statute, and (2) Nationstar never again would have to pay the Association further sums after said check. It would be reasonably problematic for the Association/A&K to have unconditionally accepted all of these facts and arguments, however, because the issue of what comprised the super-priority amount was “still open.” Additionally, the letter could be deemed to

1 absolve Nationstar from any future payments in the event that that the borrower later again  
2 defaulted, Nationstar obtained title, or it again lent money on the Property in the future. By way  
3 of example, if like the bank in *Shadow Wood*<sup>5</sup>, Nationstar were to foreclose and take title to the  
4 Property, it could argue it was relieved of any obligation to pay assessments despite being the unit  
5 owner. *Shadow Wood*, 366 P.3d at 1113 (stating the lender's conditional offer failed to consider  
6 its obligation to pay ongoing assessments).

7 This is especially true because lenders have argued the "one and done" argument, *i.e.*, if  
8 they paid or attempted to pay the super-priority amount once, they never had to pay it again. The  
9 Nevada Supreme Court rejected that argument.<sup>6</sup> In *Property Plus* Bank argued an association is  
10 only entitled to one super-priority lien ever. *Id.*, 401 P.3d at 729, 730-31. Thus, an association  
11 would be justified in rejecting an attempt at such a payment based on such a letter when the banks  
12 themselves considered the language to mean the bank's financial obligations towards the  
13 Association would be resolved forever, regardless of later delinquencies.

14 Furthermore, requiring agreement with the facts is especially egregious where Nationstar  
15 does not even acknowledge that an association has a superpriority portion of its lien for any  
16 amounts that constitute nuisance or abatement under NRS 116.310312. NRS 116.3116(2). The  
17 letter purportedly sent with the alleged check expressly eliminates this statutory language, stating:

18 The lien is also prior to all security interests described in paragraph (b) to the extent  
19 of the assessments for common expenses which would have become due in the  
20 absence of acceleration during the 9 months immediately preceding institution of  
an action to enforce the lien.

21 See Nationstar's Mot. at Exhibit E-3. The actual statutory language is:

22 The lien is also prior to all security interests described in paragraph (b) **to the**  
23 **extent of any charges incurred by the association on a unit pursuant to NRS**  
24 **116.310312 and** to the extent of the assessments for common expenses which  
would have become due in the absence of acceleration during the 9 months  
immediately preceding institution of an action to enforce the lien

25 \_\_\_\_\_  
26 <sup>5</sup> *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. \_\_\_, 366 P.3d 1105 (Nev. 2016) ("*Shadow Wood*").

27 <sup>6</sup> See *Property Plus Investments, LLC v. Mortgage Electronic Registration System*, 401 P.3d 728,  
28 730-31 (Nev. 2017) (involving a letter like the one here, stating "We agree with the analysis set forth in *JPMorgan* and conclude that NRS 116.3116 does not limit an HOA to one lien enforcement action or one superpriority lien per property forever.")

1 NRS 116.3116(2)(emphasis added). Nationstar never offered to pay for abatement or recognize  
2 these charges would have priority over a first deed of trust. Nationstar apparently purposefully  
3 miscites the statute to the Association and fails to recognize and correct its mistake to this Court  
4 in attempting to rely on the purported letter.

5 Nationstar's reliance on *Bank of America, N.A. v. Ferrell Street Trust*, 416 P.3d 208 (Nev.  
6 2018) (unpublished disposition) is misplaced. First as stated in Ferrell a tender "must be... an  
7 unconditional offer of payment." *Id.* Here, as discussed above the "tender" was impermissibly  
8 conditional. As set forth below, Sec. D 1, a payment that requires the creditor to admit the amount  
9 is correct and that no more is possibly due will not discharge the lien. More importantly, here,  
10 Nationstar limited the superpriority amount to only 9 months of assessments, while in reality, the  
11 superpriority portion of an association lien includes assessments, nuisance and abatement charges  
12 under NRS 106.310312-which was purposefully omitted in the "tender." *See* NRS 116.3116(2);  
13 NRS 116.30312; *see also* NRS 116.3102(j). The important point is that under no set of  
14 circumstances is an offer to pay a sum less than what may constitute the super-priority amount a  
15 "tender." Nor can any offer be coupled with impermissible conditions.

16 Based on the above, the impermissibly conditional nature of the letter precludes the alleged  
17 offer to pay, if it was made, from being effective to discharge the super-priority portion of the lien.

18 **2) The Association Rejected the Payment in Good Faith.**

19 Assuming *arguendo*, that Nationstar delivered and A&K rejected the check, "an actual  
20 tender of the proper amount due and owing **will not operate to discharge a lien** where the  
21 lienholder in good faith believes that a greater sum is due." *See Segars v. Classen Garage &*  
22 *Service Co.*, 612 P.2d 293, 295 (Okla. Ct. App. 1980) (emphasis added). "To constitute a sufficient  
23 tender, it must be unconditional. Where a larger sum than that tendered is in good faith claimed  
24 to be due, the **tender is ineffectual as such if its acceptance involves the admission that no**  
25 **more is due.**" *First Nat. Bank of Davis v. Britton*, 94 P.2d 896, 898 (Okla. 1939) (emphasis  
26 added); *see also Smith v. School Dist. No. 64 Marion County*, 89 Kan. 225, 131 P. 557, 558 (1913)  
27 ("Where it appears that a larger sum than that tendered is claimed to be due, **the offer is not**  
28 **effectual as a tender if** coupled with such conditions that the acceptance of it as tendered **involves**

1 **an admission** on the part of the person accepting it **that no more is due.**") (emphasis added). This  
2 is true even if the person rejecting was ultimately wrong. *Hilmes v. Moon*, 11 P.2d 253, 260 (Wash.  
3 1932)(" In order to discharge the lien of the mortgage, the proof must be clear that the refusal was  
4 palpably unreasonable, absolute, arbitrary, and unaccompanied by any bona fide, **though**  
5 **mistaken**, claim of right) (emphasis added); *see also Bank of America, N.A. v. Rugged Oaks*  
6 *Investments , LLC*, Nevada Supreme Court Case No. 68504 (Sept. 16, 2016)(unpublished order),  
7 *citing Cf. 59 C.J.S. Mortgage § 582* (2016) ("It has been held. . . that a good and sufficient tender  
8 on the day when payment is due will relieve the property from the lien of the mortgage, **except**  
9 where the refusal [of payment] was. . . grounded on an honest belief that the tender was  
10 insufficient.") (emphasis added)).

11 Determining whether a rejection was reasonable and made in good faith must be made  
12 based on the facts **at the time of the act**, not by way of Monday morning quarterbacking. In other  
13 words, to the extent this Court believes the issue of what constitutes the super-priority amount in  
14 an association foreclosure case has been decided—which it has not—that is irrelevant in deciding  
15 whether rejection was reasonable and in good faith. It is not based on who eventually prevails on  
16 the disagreement. *See Hilmes*, 11 p.2d at 260 (determining whether rejection is unreasonable does  
17 not depend on eventually being proven right).

18 Whether a lender had to pay nine months assessments plus collections costs to protect its  
19 deed of trust was still open to interpretation at the relevant time. *Shadow Wood*, 366 P.3d at 1113.  
20 In fact, at the time of this sale, there were conflicting opinions from CCICCH that lead to  
21 Association to reasonable believe they were entitled to more. *See Horizons at Seven Hills v. Ikon*  
22 *Holdings*, 373 P.3d 66, 71 (Nev. 2016)(citing 10-01 Op. CCICCH 1, 12-13 (2010)). Put simply,  
23 if the answer to the question of whether rejection was reasonable would change if *Ikon* had been  
24 decided differently, then this Court cannot deem rejection unreasonable simply based on *Ikon*.  
25 Therefore, Nationstar's argument falls flat.

26 Here, A&K did not receive the letter with the check. *See* Deposition Testimony of David  
27 Alessi, attached to Gilbert Decl. as **Exhibit D-5**; *see specifically*, pg. 53:13-15, and pg. 59:22-25.  
28 Nationstar's alleged tender is problematic because the letter dated September 30, 2010 to A&K on



1 behalf of the Association states “have now paid in full.” Nationstar Mot. at Exhibit E-3. But  
2 assessments can become delinquent again, giving rise to a new notice of delinquent assessments  
3 and a new super-priority portion of that delinquency. If A&K had accepted the tender, A&K would  
4 be precluded from enforcing future super-priority amounts against the deed of trust, or from  
5 collecting any fees and costs for which the Association may be entitled. David Alessi testified as  
6 much, stating that accepting a partial payment with the conditions included by Miles Bauer “would  
7 end up causing potential harm to the association, client of Alessi & Koenig[,]” including  
8 potentially waiving rights under NRS 116. See Ex. A-11 at pg. 63:11-20. Additionally, the alleged  
9 tender is not in compliance with NRS 116.3116 because the letter completely eliminates the phrase  
10 before “to the extent of the assessments for common expenses”: the phrase making costs incurred  
11 for nuisance, abatement, and maintenance prior to the deed of trust. Thus, the letter requires the  
12 Association to agree to Nationstar’s narrow interpretation of what was needed to protect the deed  
13 of trust. A condition on which it had no right to insist.

14 In this regard, it was not reasonable for Nationstar to pay less than the full amount requested  
15 by A&K. The open question, along with the conditions attached to the payment, means A&K’s  
16 rejection of the check (assuming it was sent and received) was justified and made in good faith.

17 **3) Nationstar failed to record its “Performance” (the professed “tender”) so as to**  
18 **protect itself from third-party purchasers as required by Nevada Law.**

19 Even if Nationstar’s actions could be construed as “tender,” it would not be effective to  
20 allow the deed of trust to remain on the Property, as it was not recorded, and Nationstar has made  
21 no assertions that it was recorded. Nothing in NRS 116.3116 et seq. relieves anyone from the  
22 requirements of NRS 111 or NRS 106 with regard to recording.

23 Under Nevada law, every interest in property must be recorded as set forth NRS 111.315,  
24 which reads:

25 **NRS 111.315 Recording of conveyances and instruments: Notice to third**  
26 **persons.** Every conveyance of real property, and every instrument of writing  
27 setting forth an agreement to convey any real property, or whereby any real  
28 property may be affected, proved, acknowledged and certified in the manner  
prescribed in this chapter, to operate as notice to third persons, shall be recorded  
in the office of the recorder of the county in which the real property is situated or  
to the extent permitted by NRS 105.010 to 105.080, inclusive, in the Office of the

Secretary of State, but shall be valid and binding between the parties thereto without such record.

If a "conveyance" is not recorded, it will have no effect on a subsequent purchaser. This is confirmed by NRS 111.325 which states:

**NRS 111.325 Unrecorded conveyances void as against a subsequent bona fide purchaser for value when conveyance recorded.**

Every conveyance of real property within this State hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser, in good faith and for valuable consideration, of the same real property, or any portion thereof, where his or her own conveyance shall be first duly. (Emphasis added).

As such, any "tender" by Nationstar is a "conveyance" under Nevada law as can be seen from NRS 111.010(1) defining conveyance:

**NRS 111.010 Definitions.** As used in this chapter:

1. "Conveyance" shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, alienated, assigned or surrendered. (emphasis added).

As stated above, the definition of "conveyance" is broad and includes extinguishment or discharge of the lien. NRS 111.010.

The purported satisfaction of the super-priority portion of the association's lien is a surrender or release of the Association's senior position. Surrender and release are defined as:

**Surrender, n. (15c)** 1. The act of yielding to another's power or control. 2. The giving up of a right or claim.

**Release, n. (14c)** Liberation from an obligation, duty, or demand; the act of giving up a right or claim to the person against whom it could have been enforced. 2. The relinquishment or concession of a right, title or claim. 3. A written discharge, acquaintance, or receipt; specifically, a writing - either under seal or supported by sufficient consideration. 4. A written authorization or permission for publication. 5. The act of conveying an estate or right to another, or of legally disposing of it. 6. A deed or document effecting a conveyance. 7. The action of freeing of the fact of being freed from restraint or confinement. 8. A document giving formal discharge from custody.

**Release of mortgage.** A written document that discharges a mortgage upon full payment by the borrower and that is publicly recorded to show that the borrower has full equity in the property.

Black's Law Dictionary 971 (6th ed. 1990) (emphasis added).

There can be no doubt that a payment, which discharges the super-priority portion of the Association's lien, constitutes an instrument or conveyance that affects the property. See

1 *Restatement (Third) of Property: Mortgages* § 6.4 cmt. (g). Per the Restatement, if a junior interest  
2 holder pays the senior lien, that debt is assigned to the payor under the doctrine of subrogation and  
3 is added to the junior lienholders's loan. *See Restatement* § 6.4 cmt. (g)("[R]edemption by a person  
4 not primarily responsible for payment of the debt does not extinguish the [lien], but rather **assigns**  
5 both the [lien] and the debt to the payor by operation of law under the doctrine of  
6 subrogation[.]")(emphasis added). Per the Restatement § 6.4 cmt. (f), "[t]he junior interest-holder  
7 who redeems is not entitled to a document of discharge, but rather an *assignment* of the [lien]." *Id.*  
8 (emphasis added). *See also*, Black's Law Dictionary 971 (6th ed. 1990) Per Black's, "release" is  
9 defined as, "Liberation from an obligation, duty, or demand; the act of giving up a right or claim  
10 to the person against whom it could have been enforced. 2. The relinquishment or concession of a  
11 right, title or claim. 3. A written discharge, acquaintance, or receipt; specifically, a writing - either  
12 under seal or supported by sufficient consideration. 4. A written authorization or permission for  
13 publication. 5. The act of conveying an estate or right to another, or of legally disposing of it. 6. A  
14 deed or document effecting a conveyance. 7. The action of freeing of the fact of being freed from  
15 restraint or confinement. 8. A document giving formal discharge from custody." Because the  
16 satisfaction of a lien is a form of conveyance, "surrender" or discharge, NRS 111.315 requires that  
17 Nationstar's satisfaction be recorded to be effective as to SFR. Whatever effect the purported  
18 payment may have had as to the Association, because Nationstar failed to record its purported  
19 payment, whatever its legal effect, it has no validity against SFR. Simply put, Nationstar cannot  
20 rely on its inadequate "performance" of tender to defeat SFR's clean title.

21 Furthermore, Nationstar must have recorded its purported "tender" pursuant to NRS  
22 106.220, which reads in pertinent part, "[a]ny instrument which any...lien upon...real property is  
23 subordinated or waived as to priority, must...be recorded..."

24 There can be no doubt that a payment, which discharges the superpriority portion of the  
25 Association's lien, constitutes an instrument or conveyance that affects the property or which  
26 subordinates or waives said lien as to priority. This is consistent with the Restatement, which  
27 characterizes the type of payment by Nationstar as an **assignment** of the debt to Nationstar, who  
28 then adds it to the amount owed by its borrower. *See Restatement (Third) of Property: Mortgages*

§ 6.4 cmt. (g) and (f).<sup>7</sup> An assignment must be recorded to be effective against a third party. NRS 111.325.

Further, because Nationstar’s “tender” purports to subordinate or waive the lien as to priority, NRS 106.220 requires that Nationstar’s purported satisfaction be recorded. Since Nationstar is the entity attempting to use the purported partial payment to its advantage, Nationstar should have ensured that its attempt was recorded. Having failed to record its purported payment, whatever its legal effect, therefore has no validity against SFR. All case law regarding satisfaction of a debt based on tender are between the debtor and creditor. Nothing in those cases addresses the effect on a third party. In fact, those authorities that do address the issue state that the third-party purchaser should not be affected by any proper or wrongfully rejected “tender.” *See, e.g., Moeller v. Lien*, 25 Cal. App. 4th 822, 830, 30 Cal. Rptr. 2d 777, 782 (1994) (cannot unwind sale to bona fide purchaser). Simply put, Nationstar cannot rely on its inadequate “performance” of tender.

Assuming *arguendo* that Nationstar “tendered” to A&K, SFR, a third-party purchaser, would not be in a position to have knowledge of the transaction; a transaction between Nationstar, the Association and the Association’s Agent. Glaringly, and most importantly, Nationstar did absolutely nothing to notify potential bidders of its purported tender. Had Nationstar recorded a document putting the world on notice of its alleged “tender” or a dispute regarding same, we would not be here today. Nationstar’s argument that it had no obligation to record evidence of tender ignores obligations under Nevada’s recording statutes. Absent recording, there is no way for a third-party purchaser at an Association sale to be on notice of any purported tender by any bank.

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<sup>7</sup> “[R]edemption by a person not primarily responsible for payment of the debt does not extinguish the [lien], but rather **assigns** both the [lien] and the debt to the payor by operation of law under the doctrine of subrogation[.]” (Emphasis added). Restatement § 6.4 cmt. (g). Per the Restatement § 6.4 cmt. (f), “[t]he junior interest-holder who redeems is not entitled to a document of discharge, but rather an **assignment** of the [lien].” *Id.* (emphasis added). *See also*, Black’s Law Dictionary 971 (6th ed. 1990) Per Black’s, “release” is defined as, “Liberation from an obligation, duty, or demand; the act of giving up a right or claim to the person against whom it could have been enforced. 2. The relinquishment or concession of a right, title or claim. 3. A written discharge, acquaintance, or receipt; specifically, a writing - either under seal or supported by sufficient consideration. 4. A written authorization or permission for publication. 5. The act of conveying an estate or right to another, or of legally disposing of it. 6. A deed or document effecting a conveyance. 7. The action of freeing of the fact of being freed from restraint or confinement. 8. A document giving formal discharge from custody.”

1 In *Shadow Wood*, the law did not impose a duty of inquiry on a third-party purchaser as SFR,  
2 unless there were facts revealing that a bank actually paid the super-priority amount, not just that  
3 a bank could have paid it. *Shadow Wood*, 366 P.3d at 1116. Furthermore, “[w]here a former  
4 statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent  
5 legislation, it has been held that such amendment is persuasive evidence of what the Legislature  
6 intended by the first statute.” *Estate of Thomas v. Costello*, 116 Nev. 492, 495, 998 P.2d 560, 562  
7 (Nev. 2000) (quoting *Sheriff v. Smith*, 91 Nev. 729, 734, 542 P.2d 440, 443 (1975)). Here, NRS  
8 Chapter 116 has been amended and said amendments state that a “tender” must now be recorded  
9 to prevent extinguishment of the deed of trust.

10 Currently, NRS 116.31162(1)(b)(3)(I) and (II) read as follows:

11 (3) State that:

12 (I) If the holder of the first security interest on the unit does not satisfy the  
13 amount of the association’s lien that is prior to that first security interest pursuant  
14 to subsection 3 of NRS 116.3116, the association may foreclose its lien by sale and  
15 that the sale may extinguish the first security interest as to the unit; and

16 (II) If, not later than 5 days before the date of the sale, the holder of the first  
17 security interest on the unit satisfies the amount of the association’s lien that is prior  
18 to that first security interest pursuant to subsection 3 of NRS 116.3116 and, not  
19 later than 2 days before the date of the sale, **a record of such satisfaction is**  
20 **recorded in the office of the recorder** of the county in which the unit is located,  
21 the association may foreclose its lien by sale but the sale may not extinguish the  
22 first security interest as to the unit.

23 (Emphasis added). Put simply, if Nationstar satisfies the super-priority amount, but fails to record  
24 such satisfaction prior to the sale, the first security interest is still extinguished.

25 **E. In Nevada, the Golden Rule Applies for Analyzing Foreclosure Sales and Nationstar**  
26 **Bears the Burden of Production and Proof to Invalidate the Sale.**

27 The Nevada Supreme Court has reaffirmed that:

28 ‘inadequacy of price, **however gross**, is not in itself a sufficient ground for setting  
aside a trustee’s sale legally made; there must be in addition proof of some  
element of fraud, unfairness or oppression **as accounts for and brings about the**  
**inadequacy of price**’ (internal citations omitted) (emphasis added).

*Shadow Canyon*, 405 P.3d at 647 (quoting *Golden v. Tomiyasu*, 387 P.2d 989, 995 (Nev. 1963)).  
The Court outright rejected Nationstar’s proffered Restatement 20-percent bright line rule: “Nor  
do we believe that we should adopt a 20-percent standard and abandon *Golden*.” *Id.* “If this court  
had adopted the Restatement, we would have overruled *Golden* rather than cite favorably to it.”

1 *Id.* In doing so, the Court rejected a commercial reasonableness standard for association  
2 foreclosure sale, since NRS 116.3116 et seq. provides the framework in which a foreclosure sale  
3 must proceed. *Id.* at 645-46. Instead, an analysis must be done under the *Golden Rule*, with **actual**  
4 evidence of fraud, unfairness, or oppression that affected the sale to consider setting aside the sale,  
5 **and** Nationstar “has the burden to show that the sale should be set aside in light of [SFR’s] status  
6 as the record title holder.” *Id.* (citing *Breliant v. Preferred Equities Corp.*, 918 P.2d 314, 318 (Nev.  
7 1996); NRS 47.250(16) (rebuttable presumption law has been obeyed); and NRS 116.31166(1)-  
8 (2) (“[C]onclusive presumption that certain steps in foreclosure process have been followed.”).  
9 Nationstar only complained about price, and price alone is not enough. Accordingly, Nationstar  
10 failed to meet this burden.

11 **F. The Price Paid was Adequate.**

12 As no irregularities existed with the foreclosure, this Court need not consider the price paid  
13 by SFR at foreclosure. *See Shadow Canyon*, 405 P.3d at 649 (if the district court looks at the sale  
14 as a whole and finds no evidence of fraud, unfairness or oppression affecting the sale, “then the  
15 sale cannot be set aside, regardless of the inadequacy of price.”); *see also Oller v. Sonoma Cty.*  
16 *Land Title Co.*, 290 P.2d 880, 882 (Cal.Ct.App. 1955) (case from which *Golden Rule* was adopted)  
17 (failure of the court to determine the value of property was not abuse of discretion because of lack  
18 of evidence of fraud, unfairness or oppression). However, even if analyzed, this Court will find  
19 the price paid by SFR was adequate because fair market value has no applicability to a forced sale  
20 situation. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537-538 (1994). This is because  
21 foreclosure redefines the market in which the property is offered for sale” as opposed to the free  
22 market. *Id.* at 548-49. So long as the state statutes include requirements for public noticing of the  
23 auction and provisions for competitive bidding, then the price obtained is the reasonable equivalent  
24 value of the property. *See In re Tracht Gut, LLC*, 836 F.3d 1146 (9th Cir. 2016)(extending *BFP’s*  
25 analysis to California tax sales because they afford the same procedural safeguards as a mortgage  
26 foreclosure sale); *T.F. Stone v. Harper*, 72 F.3d 466 (5th Cir. 1995); *Kojima v. Grandote Int’l Ltd.*  
27 *Co.*, 252 F.3d 1146 (10th Cir. 2001). Regardless of the type of sale, the analysis still aptly explains  
28 how market value cannot be compared to a forced sale transaction.

1 The report should be disregarded. Mr. Dugan's retrospective market appraisal fails to take  
2 into account the realities of the sale itself, that it was a forced sale, rather the Bank's expert did an  
3 appraisal as if it was a typical property being sold under normal conditions. Nationstar's Mot. at  
4 Exhibit R.

5 Mr. Dugan relied on a Sales Comparison Approach as if none of the factors surrounding  
6 the sale existed. Every property sale used by Mr. Dugan was a traditional sale. This type of sale  
7 bears no resemblance to an NRS 116 sale. NRS 116 sale issues have engendered countless  
8 litigation costing thousands of dollars, led to many Nevada Supreme Court decisions, and is still  
9 driving costly litigation. The fact that Mr. Dugan had to ignore this in its entirety to formulate his  
10 opinion is unequivocal proof that his Appraisal Report is based upon an erroneous assumption. As  
11 is discussed further below, market value has no applicability to a forced sale situation. *BFP v.*  
12 *Resolution Trust Corporation*, 511 U.S. 531 (1994).

13 This was a forced sale, which the Bank's expert failed to consider in his analysis. Instead  
14 the Bank's expert did an appraisal as if it was a typical property being sold under normal  
15 conditions. *See* Nationstar's Mot.

16 Thus, Mr. Dugan's analysis is faulty.

17 Mr. Dugan's retrospective market appraisal is a typical residential appraisal that states that  
18 the Appraisal is based on the "market value" defined as follows:

19 [T]he most probable price which a property should bring in a competitive and open  
20 market under all conditions requisite to a fair sale, the buyer and seller each acting  
21 prudently and knowledgeably, and **assuming the price is not affected by undue stimulus**. Implicit in this definition is the consummation of a sale of a specified  
date and the passing of title from seller to buyer under conditions whereby:

- 22 1. Buyer and seller are typically motivated;
- 23 2. Both parties are well informed or well advised and acting in what they consider  
their best interest;
- 24 3. A reasonable time is allowed for exposure in the open market;
- 25 4. Payment is made in terms of cash in U.S. dollars or in terms of financial  
arrangements comparable thereto; and
- 26 5. The price represents the normal consideration for the property sold unaffected  
by special or creative financing or sales concessions granted by anyone associated  
with the sale.

1 See Bank's Designation of Expert Retained. Mr. Dugan also opines in his "clarification of scope  
2 of work" that foreclosures cannot be qualified or quantified in an appraisal:

3 **Valuation Methodology:** The data presented in the report is considered to be the most relevant to the valuation of the subject  
4 property (and its market segment) based on its current occupancy and market environment. In areas influenced by foreclosure,  
5 short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional  
6 characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading.  
Verifications and drive-by inspections frequently reveal inconsistencies between the MLS and public records. Through this  
process, the appraiser can present the rationale supporting the final value opinion within the reconciliation and the reader can  
comprehend the logic and its application to the valuation process.

7 *Id.* at 28. Dugan goes on to explain that these factors may make his Market Value opinion  
8 "misleading." *Id.* Mr. Dugan has stated in multiple depositions that *fair market value is not*  
9 *applicable* in the context of an NRS 116 sale.<sup>8 9 10</sup> This is consistent with the reasoning set forth  
10 herein, that market value has no applicability to a forced sale situation. *BFP*, 511 U.S. at 537.  
11 Because Mr. Dugan testified that his Reports substantively contain the same information, the  
12 testimony contained in those depositions apply here. *See* July 2, 2015, Deposition (Dappled Light  
13 property), [9:3 – 11:21], attached hereto as **Exhibit D-1**.

14 **G. SFR is a Bona Fide Purchaser.**

15 Nationstar's suggestion that SFR is not a BFP, that SFR's BFP status is irrelevant, and that  
16 Nationstar is entitled to equity, flies in the face of this Court's precedent. Nothing in NRS 116  
17 suggests this Court should ignore the BFP doctrine under property law. *See* NRS 116.3108  
18 (incorporating property law, among others). The Bank's reliance of *Stone Hollow II* and *Stone*  
19 *Hollow III* for the notion that tender somehow trumps BFP status is simply incorrect.

20 Because Nationstar has failed to demonstrate any fraud, unfairness or oppression in the  
21 sale process that accounted for and about the sale price of which Nationstar complains, SFR's bona

22 <sup>8</sup> *See* June 1, 2015 Deposition Excerpt (Rabbit Track property) at 12:5-12; 16:22-25 through 17:1-  
23 2; 18:1-4; 30:3-19; 31:5-9; 34:23-25 through 36:1-2; 38:10-25 through 42:1-11; 60:13-17; 61:24-  
25 through 62:1-23; 69:15-25 through 70: 1-3; 74:12-24; 82: 6-12; 97:5-8; 103:2-6; 105:11-17;  
24 106:8-11; 22-25; 108:16-19; 126:19-22; 130:11-15; 23-25 through 131:1, attached hereto as  
**Exhibit D-2**.

25 <sup>9</sup> *See* June 1, 2015 Deposition Excerpt (Manorwood property) at 28:21-25 through 29:1; 29:14-25  
26 through 30:1-9; 41:14-21; 49:16-21; 55:8-15; 67:16-19; 68:22-25 through 69:1-3; 77:3-18,  
attached hereto as **Exhibit D-3**.

27 <sup>10</sup> *See* June 16, 2015 Deposition Excerpt (Brighton Summit property) at 14:15-18; 21:2-25 through  
28 22:1-8; 23:12-21; 26:2-13; 32:21-25 through 35:1-3; 36:3-16; 37:10-25 through 38:1-3; 15-22;  
41:2-18; 48: 1-3; 15-18; 23-25 through 49:1-5; 66:6-23; 82:11-21; 84:3-7, attached hereto as  
**Exhibit D-4**.



1 fide purchaser (“BFP”) status is not relevant. However, to the extent this Court accepts  
2 Nationstar’s tender argument, SFR’s BFP status is something that must be considered and given  
3 appropriate weight in an equitable balancing.

4 Generally, a BFP “claiming title to the land by a subsequent conveyance must show the  
5 purchase was made in good faith, for valuable consideration; and the conveyance of the legal title  
6 was received before notice of any equities of the prior grantee.” *Berge v. Fredericks*, 591 P.2d 246,  
7 247 (Nev. 1979).

8 However, because Nationstar is seeking equitable title the burden shifts and Nationstar  
9 **must prove** SFR, the legal titleholder, is not a BFP. *See First Fidelity Thrift & Loan Ass’n v.*  
10 *Alliance Bank*, 60 Cal. App. 4th 1433, 71 Cal. Rptr. 2d 295 (Cal.Ct.App. 1998). *Shadow Wood*  
11 stood for the proposition that if Nationstar claims a pre-sale dispute occurred between it and the  
12 Association/Agent, and SFR had no knowledge of this pre-sale dispute. Unless SFR caused or  
13 knew of any purported irregularities with the sale, SFR is a BFP. “Where the complaining party  
14 has access to all the facts surrounding the questioned transaction and merely makes a mistake as  
15 to the legal consequences of his act, equity should normally not interfere, especially where the  
16 rights of third parties might be prejudiced thereby.” *Shadow Wood*, 366 P.3d at 1116 (*quoting*  
17 *Nussbaumer v. Sup. Ct. in & for Yuma Cty.*, 107 Ariz. 504, 489 P.2d 843, 846 (1971).

18 It is undisputed that SFR paid valuable consideration for the Property in the form of actual  
19 funds. At the time of the sale, SFR had no notice of any equities of the prior grantee where the  
20 public records show only that (1) a deed of trust was recorded after the Association perfected its  
21 lien by recording its declaration of CC&Rs, (2) there was a delinquency by the homeowner, which  
22 resulted in the Association instituting foreclosure proceedings and after complying with NRS  
23 Chapter 116, sold the Property at a public auction. Prior to the sale, Nationstar never recorded a  
24 lis pendens or other documents alleging any problems with the foreclosure process or the  
25 foreclosure sale. As far as a duty of inquiry, some set of facts would have had to put SFR on notice  
26 to make an inquiry. Merely being a frequent purchaser is not enough in itself and no information  
27 ever came to light regarding whether a bank made a payment. *See Albice v. Premier Mortg. Servs.*  
28 *Of Wash., Inc.*, 276 P.3d 1277, 1284-85 (Wash. 2012) (“But if the purchaser has knowledge or

1 information that would cause an ordinarily prudent person to inquire further, and if such inquiry,  
2 reasonably diligently pursued, would lead to discovery of title defects or of equitable rights of  
3 others regarding the property, then the purchaser has constructive knowledge of everything the  
4 inquiry would have revealed.”). Moreover, the experience of the purchaser does not automatically  
5 defeat BFP status, and general knowledge by a purchaser is not enough to defeat it—it is the  
6 specific facts of that sale that are relevant. *Melendrez v. D & I Inv., Inc.*, 127 Cal. App. 4th 1238,  
7 1253, 26 Cal. Rptr. 3d 413, 426 (2005).

8 This is especially true when related to “tender.” Let us assume *arguendo* that the Bank  
9 “tendered” to A&K and A&K rejected for the reasons stated above. SFR, a third-party purchaser,  
10 would not be in a position to have knowledge of the transaction or dispute; something strictly  
11 between the Bank, the Association and the Association’s Agent. *See Shadow Wood*, 366 p.3d at  
12 1116. Glaringly, and most importantly, Nationstar did absolutely nothing to notify potential  
13 bidders of its purported tender. Had Nationstar recorded a document putting the world on notice  
14 of its alleged “tender” or a dispute regarding same, we would not be here today. Nationstar’s  
15 argument that it had no obligation to record evidence of tender ignores obligations under Nevada’s  
16 recording statutes. Absent recording, there is no way for a third-party purchaser at an Association  
17 sale to be on notice of any purported tender by any bank. In *Shadow Wood*, the law did not impose  
18 a duty of inquiry on a third-party purchaser as SFR, unless there were facts revealing that a bank  
19 actually paid the super-priority amount, not just that a bank could have paid it. *Shadow Wood*, 366  
20 P.3d at 1116. Furthermore, “[w]here a former statute is amended, or a doubtful interpretation of  
21 a former statute rendered certain by subsequent legislation, it has been held that such amendment  
22 is persuasive evidence of what the Legislature intended by the first statute.” *Estate of Thomas v.*  
23 *Costello*, 116 Nev. 492, 495, 998 P.2d 560, 562 (Nev. 2000) (quoting *Sheriff v. Smith*, 91 Nev.  
24 729, 734, 542 P.2d 440, 443 (1975)). Here, NRS Chapter 116 has been amended and said  
25 amendments state that a “tender” must now be recorded to prevent extinguishment of the deed of  
26 trust.

27 Currently, NRS 116.31162(1)(b)(3)(I) and (II) read as follows:

28 (3) State that:

(I) If the holder of the first security interest on the unit does not satisfy the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116, the association may foreclose its lien by sale and that the sale may extinguish the first security interest as to the unit; and

(II) If, not later than 5 days before the date of the sale, the holder of the first security interest on the unit satisfies the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116 and, not later than 2 days before the date of the sale, **a record of such satisfaction is recorded in the office of the recorder** of the county in which the unit is located, the association may foreclose its lien by sale but the sale may not extinguish the first security interest as to the unit.

(Emphasis added). Put simply, if the bank satisfies the super-priority amount, but fails to record such satisfaction prior to the sale, the first security interest is still extinguished.

Additionally, SFR had no knowledge of Nationstar's payment. Ex. D Hardin Decl. at ¶ 22. SFR does not recall any announcement at the Association sale regarding payments of any kind. *Id.* at ¶ 21. In fact, SFR was not even aware of banks making or attempting to make payments to the associations at any time prior to the Association foreclosure sale, as no bank was making such an argument in litigation, *see id.* at ¶ 23. Finally, SFR has never seen the documents Nationstar is using to support its "tender" defense. *Id.* at ¶ 24. Therefore, nothing, in this case, refutes SFR's status as a BFP.

## **V. CONCLUSION**

Based on the above, this Court should deny Nationstar's motion and US Bank's joinder thereto.

DATED July 19, 2018.

**KIM GILBERT EBRON**

/s/ Jacqueline A. Gilbert  
Jacqueline A. Gilbert, Esq.  
Nevada Bar No. 10593  
Diana S. Ebron, Esq.  
Nevada Bar No. 10580  
Karen L. Hanks, Esq.  
Nevada Bar No. 9578  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
*Attorneys for SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19th day of July, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing SFR INVESTMENTS POOL 1 LLC'S OPPOSITION TO CROSS-DEFENDANT NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGMENT, AND U.S. BANK, N.A. AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF THE LXS 2006-4N TRUST FUNDS JOINDER TO NATIONSTAR'S MORTGAGE, LLC'S MOTION to the following parties:

**Douglas D. Gerrard, Esq.**    [dgerrard@gerrard-cox.com](mailto:dgerrard@gerrard-cox.com)

**Akerman LLP**    [Melanie.morgan@akerman.com](mailto:Melanie.morgan@akerman.com)

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*/s/ Caryn R. Schiffman*

An employee of Kim Gilbert Ebron

Ex. A

# EXHIBIT A

Declaration of Jacqueline A. Gilbert

Ex. A

**DECLARATION OF JACQUELINE A. GILBERT**

I, Jacqueline A. Gilbert, Esq., declare as follows:

1. I am an attorney with Kim Gilbert Ebron, and I am admitted to practice law in the State of Nevada.

2. I am counsel for SFR Investments Pool 1, LLC in this action.

3. I make this declaration in support of SFR INVESTMENTS POOL 1, LLC'S OPPOSITION to CROSS DEFENDANT NATIONSTAR MORTGAGE LLC'S MOTION FOR SUMMARY JUDGMENT("NATIONSTAR") MOTION FOR SUMMARY JUDGMENT AND U.S. BANK, N.A.'S ("US BANK") JOINDER THERETO. I have personal knowledge of the facts set forth below based upon my review of the documents produced in this matter, except for those factual statements expressly made upon information and belief, and as to those facts, I believe them to be true, and I am competent to testify.

4. I am knowledgeable about how Kim Gilbert Ebron maintains its records associated with litigation, including litigation in this case. In connection with this litigation **5327 Marsh Butte Street, Las Vegas, Nevada 89148**; (the "Property"). I reviewed the documents attached hereto as **Exhibits A-1** through **Exhibit A-6**.

5. In many of these cases, it is impossible to rely on publically recorded documents or written discovery responses to determine who has an interest in a particular loan or deed of trust. While I have not had the opportunity to compile all examples of which I am aware, some examples include the following:

- a. In 2012, the Office of Inspector General, Department of Housing & Urban Development issued its Memorandum No. 2012-CH-1803, a copy of which is attached hereto as **Exhibit A-1** ("OIG Report"). (Available by searching OIG memorandum no. 2012-CH-1803: <https://www.hudoig.gov/sites/default/files/documents/audit-reports/2012-ch-1803.pdf> (last accessed July 17, 2018). The OIG Report summarizes the misconduct of five major lender / servicers, including Bank of America, CitiMortgage, JPMorgan Chase, and Wells Fargo Bank, and Ally Financial. The

summary findings were demonstrate why publicly recorded documents cannot be  
accorded any presumption of validity:

The five servicers did not establish effective control over their foreclosure process.  
This failure permitted a control environment in which:

- Affiants routinely signed foreclosure documents, including affidavits, certifying that they had personal knowledge of the facts when they did not and without reviewing the supporting documentation referenced in them. Affiants . . . consistently failed to verify the accuracy of the foreclosure documents they signed.

- A number of employees . . . engaged as “robosigners,” had little or no education beyond high school and little or no experience in banking or real estate. . . . work histories revealed a lack of qualifications to hold the titles held by affiants. Interviews . . . disclosed that employees were given titles such as vice president for the sole purpose of allowing the individuals to sign documents, and the titles came with no other duties or authority.

- Notaries public for three of the servicers . . . routinely notarized documents without witnessing affiant signatures.

\* \* \*

- For two of the five servicers . . . , the amounts of borrower’s indebtedness were unsupported or mathematically inaccurate.

\* \* \*

The five servicers failed to follow HUD requirements for properties they foreclosed upon in judicial foreclosure States and jurisdictions . . . [which] required these services to obtain and convey to the Secretary of HUD good and marketable title to properties. **The mortgage servicers may have conveyed flawed or improper titles to HUD because they did not establish a control environment which ensured that affiants performed a due diligence review of the facts submitted to the courts and that employees properly notarized documents.**

See OIG Report, Ex. A-1 at 5-6.

- b. In case number 2:15-cv-01484-JAD-VCF, *U.S. Bank, N.A., as trustee for the holders of the J.P. Morgan Mortgage Trust 2007-S3, Mortgage Pass Through Certificates Series 2007-S3 v. SFR Investments Pool 1, LLC*, the bank was unable to explain a 2007 reconveyance of the purported first deed of trust or the 2013 rescission of the 2007 reconveyance. In addition, the bank was unable to explain how J.P. Morgan became the depositor for a loan originated by Countrywide and explained that a single code in the bank’s system of record served as the basis for the bank’s position that the loan is contained in the trust and to determine in which entity the deed of trust should be assigned. See *June*

15, 2016 Deposition Transcript of Diane Deloney at 29-31, 36-42, 81-85, a true and correct copy of which is attached as **Exhibit A-2**.

- c. In case number A-12-673671-C, *SFR Investments Pool 1, LLC v. U.S. Bank, N.A., as trustee for the Certificateholders of the Banc of America Mortgage Securities 2008-A Trust, Mortgage Pass-Through Certificates, Series 2008-A*, the bank was unable to explain a Discharge of Assignment recorded in 2015 purporting to rescind a 2011 assignment to U.S. Bank that included a statement that U.S. Bank had never purchased the underlying promissory note. See *October 21, 2015 Deposition Testimony of Jessica Woodbridge*, at 54-56, at true and correct copy of which is attached as **Exhibit A-3**. A true and correct copy of the Discharge of Assignment is attached hereto as **Exhibit A-4**.
- d. In case number A-12-673418-C, *SFR Investments Pool 1, LLC v. HSBC Bank USA, N.A. a Trustee for Sequoia Mortgage Trust 2007-3*, the bank's written discovery responses and recorded assignment stated HSBC Bank USA, N.A. a Trustee for Sequoia Mortgage Trust 2007-3 was owner of loan while bank witness testified that bank system of record showed the loan to be contained in a different trust. See Deposition Transcript of Katherine Ortwerth, 58:17-60:19, a true and correct copy of which is attached as **Exhibit A-5**.



1 e. In Case No. 2:16-cv-00470-APG-CWH, *Deutsche Bank National Trust v. SFR*  
2 *Investments Pool I, LLC, et al*, a bank's deposition witness stated an  
3 assignment from Deutsche Bank to Bank of America was an invalid "ghost  
4 assignment" and later confirmed having seen a "rogue assignment" by Bank of  
5 America more than once, agreed that he had seen situations in the past where  
6 "an Assignment . . . doesn't necessarily match up with reality." *See* Deposition  
7 Transcript of Keith Kovalic, August 2, 2016, 61-65, a true and correct copy of  
8 which is attached as **Exhibit A-6**.

9 I declare under penalty of perjury under the laws of Nevada and the United States that the  
10 foregoing is true and correct.

11 DATED this 19th day of July, 2018.

12 /s/ Jacqueline A. Gilbert  
13 Jacqueline A. Gilbert  
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# EXHIBIT A-1

Office of the Inspector General, U.S. Department of Housing and Urban Development

Memorandum No. 2012-CH-1803

A Summary of the Foreclosure and Claims Process Reviews for Five Mortgage Servicers That  
Engaged in Improper Foreclosure Practices

September 28, 2012



U.S. DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT  
OFFICE OF INSPECTOR GENERAL

MEMORANDUM NO.  
2012-CH-1803

September 28, 2012

**MEMORANDUM FOR:** Charles S. Coulter, Deputy Assistant Secretary for Single Family Housing, HU  
Dane M. Narode, Associate General Counsel for Program Enforcement, CACC  
Craig T. Clemmensen, Director of Departmental Enforcement Center, CACB

*Kelly Anderson*  
**FROM:** Kelly Anderson, Regional Inspector General for Audit, SAGA

**SUBJECT:** A Summary of the Foreclosure and Claims Process Reviews for Five Mortgage Servicers That Engaged in Improper Foreclosure Practices

**INTRODUCTION AND BACKGROUND**

In October 2010, the U.S. Department of Housing and Urban Development's (HUD) Office of Inspector General (OIG) began its nationwide effort to review the foreclosure practices of the five largest Federal Housing Administration (FHA)<sup>1</sup> mortgage servicers (Ally Financial, Incorporated, Bank of America, CitiMortgage, JPMorgan Chase, and Wells Fargo Bank). We performed these reviews due to reported allegations made in the fall of 2010 that national mortgage servicing lenders were engaged in widespread questionable foreclosure practices involving the use of foreclosure "mills" and a practice known as "robosigning"<sup>2</sup> of sworn documents in thousands of foreclosures throughout the United States. On March 12, 2012, we issued separate memorandums to HUD, which detailed our results for each of the five reviews.<sup>3</sup> We initially focused our efforts on examining the foreclosure practices of servicers in the judicial States and jurisdictions in which they do business.<sup>4</sup>

<sup>1</sup> FHA provides mortgage insurance on loans made by FHA-approved lenders throughout the United States and its territories. Mortgage insurance provides lenders with protection against losses as the result of homeowners defaulting on their mortgage loans.

<sup>2</sup> We have defined the term "robosigning" as the practice of an employee or agent of the servicer signing documents automatically without performing a due diligence review or verification of the facts.

<sup>3</sup> See memorandums (2012-PH-1801, 2012-FW-1802, 2012-KC-1801, 2012-CH-1801, and 2012-AT-1801).

<sup>4</sup> With respect to foreclosure procedures, there are three variations: those States that require a complete judicial



The five servicers were either supervised or nonsupervised FHA direct endorsement lenders that could originate, sponsor, and service FHA-insured loans. During the period October 1, 2008, through September 30, 2010,<sup>5</sup> the servicers collectively submitted 93,120 FHA insurance claims totaling more than \$12.04 billion. Of the 93,120 claims, 34,357 conveyance<sup>6</sup> claims totaling more than \$4.1 billion were for foreclosed-upon properties in the 23 judicial foreclosure States and jurisdictions. Between September and October 2010, three of the five banks (Ally, Bank of America, and Chase) stated that they had temporarily halted judicial foreclosures or suspended evictions and postforeclosure closing in the 23 judicial States while they conducted a review of their processes.

Because we identified potential False Claims Act<sup>7</sup> violations, we provided the U.S. Department of Justice (DOJ) with our analyses and preliminary conclusions as to whether these lenders engaged in the reported foreclosure practices. DOJ used our reviews and analyses in negotiating a settlement agreement with the servicers. On February 9, 2012, DOJ and 49 State attorneys general<sup>8</sup> announced their proposed joint settlement agreement totaling \$25 billion with the five mortgage servicers for their reported violations of foreclosure requirements. On March 12, 2012, DOJ and the State attorneys general filed proposed consent judgments with the court to resolve violations of State and Federal law. The consent judgments provided details of the servicers' financial obligations under the agreement, such as payments to borrowers whose properties were foreclosed upon and the Federal and State governments. They also included more than \$20 billion, collectively, in consumer relief activities, such as principal reductions and refinancing and new standards the servicers would be required to implement regarding loan servicing and foreclosure practices, and established a monitoring committee<sup>9</sup> and a monitor to ensure compliance with agreed-upon servicing standards and consumer relief provisions.

The judgments also included a Federal payment settlement amount of more than \$684 million. The funds would be used for (1) losses incurred to FHA's capital reserve account and the Veterans Housing Benefit Program Fund or as otherwise directed by the U.S. Department of Veterans Affairs and the U.S. Department of Agriculture's Rural Housing Service and (2) the resolution of qui tam<sup>10</sup> actions. Of the \$684 million, as of July 15, 2012, more than \$315.2 million had been deposited into FHA's account.

The objective of our reviews was to determine whether the servicing lenders complied with applicable foreclosure procedures when processing foreclosures on FHA-insured loans. We

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proceeding, which are referred to as "judicial jurisdictions"; those that do not require a judicial proceeding; and those that are a hybrid. For the purposes of this review, we determined that there were 23 judicial States and jurisdictions.

<sup>5</sup> Federal fiscal years 2009 and 2010

<sup>6</sup> Excludes deeds in lieu of foreclosure

<sup>7</sup> 31 U.S.C. (United States Code) 3729 et seq.

<sup>8</sup> The State of Oklahoma elected not to participate in the settlement agreement. This means that borrowers from Oklahoma will not be eligible for any of the relief directly available for homeowners.

<sup>9</sup> The monitoring committee is comprised of State attorneys general and staff, representatives from the State mortgage regulator for the State of Maryland, DOJ, and HUD.

<sup>10</sup> A lawsuit brought by a private citizen (popularly called a "whistle blower") against a person or company who is believed to have violated the law in the performance of a contract with the government or in violation of a government regulation, when there is a statute which provides for a penalty for such violations.



reported our results in individual memorandums to HUD. This memorandum summarizes the results of the foreclosure and claims process reviews and presents OIG's recommendations to correct weaknesses identified in the five individual memorandums that were issued.

We provided the draft memorandum to HUD on August 17, 2012. We asked HUD to provide written comments to the draft memorandum by September 17, 2012. On September 18, 2012, HUD proposed alternative language for the recommendations and opted not to provide formal written comments to the memorandum.

### **METHODOLOGY AND SCOPE**

To accomplish the objective, we<sup>11</sup>

- Obtained and reviewed relevant written policies and procedures and reviews for all five of the servicers' servicing and foreclosure processes.
- Obtained and reviewed personnel documents or excerpts of personnel documents that three servicers (Ally, Wells Fargo, and Bank of America) provided for selected employees.
- Interviewed management officials and staff members of four of the five mortgage servicers (Bank of America, Chase, CitiMortgage, and Wells Fargo), including those involved in the document execution, notary, foreclosure, and claims processes.
- Coordinated with the servicers' legal counsel, our Office of Legal Counsel, and DOJ attorneys.
- Identified samples of 388 claims processed by HUD during the review period. Additionally, for Chase, we selected and reviewed 30 FHA-insured loans, the borrowers of which were identified as currently undergoing foreclosure actions.
- Reviewed FHA claims and related documents, including affidavits, for 364 of the 388 claims in our samples (see Scope Limitation section).
- Obtained and analyzed FHA claims data from the five servicers or HUD.
- Obtained and analyzed Chase's production records<sup>12</sup> and Bank of America's shipping logs<sup>13</sup> that identified documents that were signed and notarized during the review period. However, as described in the following section, the data were incomplete and did not represent our entire review period.
- Obtained and reviewed various congressional testimonies and documents from various court proceedings related to the foreclosure practices of CitiMortgage and other lenders and law firms. Additionally, we obtained and reviewed various court documents related to the foreclosure practices of Bank of America and law firms that conducted work on its behalf.
- Worked with DOJ to issue 54 civil investigative demands (CID)<sup>14</sup> to compel testimony for our review of Ally and Bank of America. Additionally, we attended testimonies given by 17 individuals pursuant to CIDs issued by DOJ.

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<sup>11</sup> For additional details on the scope and methodology used in the reviews of the five servicers, see the related memorandums.

<sup>12</sup> Chase's production records in Microsoft Excel

<sup>13</sup> Bank of America's shipping logs included FHA and non-FHA foreclosure documents.

<sup>14</sup> Under 31 U.S.C. 3733 et seq., CIDs can be served on a person to give oral testimony whenever the attorney

- Issued Inspector General administrative subpoenas for documents and records of all of the servicers, with the exception of Wells Fargo.
- Reviewed and extracted pertinent information from each of the five issued memorandums to summarize the information.

Additionally, we

- Obtained and reviewed default and claim information from HUD's Single Family Data Warehouse system<sup>15</sup> for each of the five servicers and
- Identified the number of foreclosures in which an insurance claim had yet to be filed and determined the number of days the property had been in foreclosure.

During the course of our reviews and the drafting of the memorandums, all five lenders were actively engaged in negotiations with DOJ in an attempt to resolve potential claims under the False Claims Act or other statutes for the conduct we were reviewing. Accordingly, OIG determined that our work product was privileged and not releasable to the lenders for any purpose, including the solicitation of written comments on our findings from the lenders. For this same reason, we did not provide them with a copy of the draft memorandums. Both DOJ and HUD concurred with our determination that the work product was privileged.

The results reported in the five memorandums differed due to various factors. These factors included (1) the level of information made available to the auditors at the time of the onsite reviews or that was obtained later through subpoenas or CIDs; (2) variances in review procedures used, including the analysis of the data, that were governed in part by the amount and types of information obtained; (3) differences in the foreclosure procedures used by the servicers; and (4) scope limitations imposed by some servicers.

The reviews generally covered the servicers' foreclosure and claims processes for their FHA claims initially processed by HUD between October 1, 2008, and September 30, 2010, including their procedures for signing and notarizing sworn judgment affidavits. Additionally, they either focused on FHA-insured loans for properties located primarily in judicial foreclosure States and jurisdictions, because foreclosures in these States would require the filing of some form of sworn affidavit of indebtedness with a court, or included both judicial and nonjudicial foreclosure States and jurisdictions to provide a comprehensive overview of the servicers' practices and compliance with requirements. The scope of the reviews was expanded as needed to accomplish the objective. We initiated the reviews on October 15, 2010, and performed the onsite work at the lenders' offices<sup>16</sup> between October 2010 and January 2011.

#### Scope Limitation

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general has reason to believe that the person may be in control of information relevant to a false claim investigation.

<sup>15</sup> We relied in part on data maintained in HUD's system to obtain loan level data. Although we did not perform a detailed assessment of the reliability of the data, we performed a minimal level of testing and found the data to be adequately reliable for our purposes.

<sup>16</sup> Ally's office in Fort Washington, PA; Bank of America's offices in Fort Worth, Plano, and Addison, TX, and Simi Valley, CA; Chase's office in Columbus, OH; CitiMortgage's office in O'Fallon, MO; and Wells Fargo's office in Fort Mill, SC.



The reviews were significantly hindered due to (1) restricted or denied employee interviews because of the involvement of the servicers' management or attorneys, (2) limited access to data or documents, (3) incomplete records, or (4) delays in obtaining requested records or reports. Due to these limitations, we were not always able to review the requested records.

### **RESULTS OF REVIEW**

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The servicers' flawed control environments resulted in their filing improper legal documents, thereby misrepresenting their claims to HUD, which exposed them to potential liability under the False Claims Act. Further, during our review of the five servicers' foreclosure practices, we determined that they appeared to have temporarily ceased submitting claims for FHA insurance benefits, thus creating a backlog. If these five servicers were to file these withheld claims, the FHA insurance fund would suffer a significant loss.

### **Questionable Affidavit and Foreclosure Document Processes**

<sup>17</sup> An affiant is a person who signs an affidavit and attests to its truthfulness before a notary public.

<sup>18</sup> Chase employees who prepared legal documents including affidavits

The five servicers failed to follow HUD requirements<sup>19</sup> for properties they foreclosed upon in judicial foreclosure States and jurisdictions. These provisions required these servicers to obtain and convey to the Secretary of HUD good and marketable title to properties. The mortgage servicers may have conveyed flawed or improper titles to HUD because they did not establish a control environment which ensured that affiants performed a due diligence review of the facts submitted to courts and that employees properly notarized documents.

Judicial foreclosures were processed through the court system, beginning with each of the five servicers filing a complaint or petition regarding a mortgage purportedly in default. The formal legal document stated what the debt was and why the default should allow any of these lenders to foreclose on the property. In many judicial foreclosures, an affidavit was part of the foreclosure documentation. Generally, a representative of each lender swore in a notarized affidavit that the lender owned or held the mortgage in question and the borrower's mortgage payments were in arrears. As judicial States and jurisdictions routinely resolved foreclosures through summary judgment,<sup>20</sup> the accuracy and propriety of the documents were essential to ensure the integrity of the foreclosure process. All five servicers used flawed processes to submit 34,357 conveyance<sup>21</sup> claims for judicially foreclosed-upon properties during the review period and received payments totaling more than \$4.1 billion.<sup>22</sup>

Servicer	Number of conveyance claims	Total claim payments <sup>23</sup>
Ally Financial	1,345	\$161
Bank of America	8,973	1,127
CitiMortgage	5,182	597
JPMorgan Chase	4,437	547
Wells Fargo	14,420	\$1,684
Total	34,357	\$4,116

### *Affiants Robosigned Foreclosure Documents*

Based on sworn or CID testimonies or interviews with the servicers' management and staff and legal representations, we determined that affiants routinely signed and certified that they had personal knowledge of the contents of documents, including affidavits, without reviewing the source documents. Additionally, some affiants acknowledged that they did not reverify the accuracy of the foreclosure information stated in the affidavits. For instance, sworn testimony from the team leader of Ally's foreclosure department, provided during depositions in Florida<sup>24</sup> and Pennsylvania,<sup>25</sup> revealed that he routinely signed legal documents, including affidavits,

<sup>19</sup> 24 CFR (Code of Federal Regulations) 203.366(a) and HUD Handbook 4330.4, paragraphs 2-6 and 2-23

<sup>20</sup> A decision made on the basis of statements and evidence presented for the record without a trial. It is used when there is no dispute as to the facts of the case and one party is entitled to judgment as a matter of law.

<sup>21</sup> Excludes deeds in lieu of foreclosure

<sup>22</sup> This amount was calculated based on information in HUD's Single Family Data Warehouse and excludes claims for deeds in lieu of foreclosure.

<sup>23</sup> In millions

<sup>24</sup> This disposition on December 10, 2009, was related to a foreclosure case in Florida: GMAC Mortgage v. Ann Neu, in the Circuit Court of the Fifteen Judicial Circuit in and for Palm Beach County, FL, Case Number 50 2008 CA 040805XXXX MB.

<sup>25</sup> This disposition on June 7, 2010, was related to a foreclosure case in Maine: Federal National Mortgage



without the supporting documentation and without reviewing and verifying the accuracy of the foreclosure information. He testified that he signed 400 affidavits per day and up to 10,000 affidavits per month.

Affidavits generally require an affirmation that the person executing the legal document had personally reviewed borrowers' accounts and applicable records and had personal knowledge of the amounts due on those accounts. Therefore, the processes used by the five servicers did not ensure that (1) their foreclosure documents were properly executed before submitting them to courts or (2) they conveyed good and marketable title to HUD.

The consent judgments outlined provisions for documents used in foreclosure and bankruptcy proceedings. Some of the provisions that addressed the apparent robo signing of foreclosure documents by the five servicers required them to ensure that

- Affidavits, sworn statements, and declarations executed by the servicers' affiants were based on the affiants' review and personal knowledge of the accuracy and completeness of the assertions in the affidavit, sworn statement, or declaration and
- Affiants confirmed that they reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and required loan ownership information.

Further, affiants for Wells Fargo signed hundreds of foreclosure affidavits per day, and most verified only that their name was properly typed on the document as the signer of the affidavit. In reviewing the personnel files for these affiants, we identified that Wells Fargo may have hired and designated unqualified persons as "vice president of loan documentation," with their sole responsibility as vice president being to sign affidavits. Affiants for Chase also signed affidavits using titles such as "vice president of Chase Home Finance," although they were not.

In accordance with the provisions of the settlement, servicers should have standards for qualifications, training, and supervision of employees. The servicer should train and supervise employees who regularly prepare and execute affidavits, sworn statements, or declarations. Further, each employee should sign a certification stating that he or she has received training.

#### *Notaries Did Not Witness Signatures*

The five servicers did not establish a control environment which ensured that notaries<sup>26</sup> met their responsibilities under State laws that required them to witness affiants' signatures on documents they notarized.<sup>27</sup> For instance, during interviews with employees at Wells Fargo, it was mentioned that they notarized documents without witnessing the person signing the documents. Further, some of the notaries acknowledged that they notarized documents that were unsigned or

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Association v. Nicole M. Bradbury, Maine District Court, District Nine, Division of Northern Cumberland, Docket Number BRI-RE-09-65.

<sup>26</sup> The notaries had additional job duties and responsibilities.

<sup>27</sup> Every State's notary laws require that the notary personally administer an oath and personally verify the identity of the document signer.



allowed others to use their notary stamp to notarize the affidavits. Wells Fargo notaries also stated that they had not received training when they began notarizing affidavits. It was not until October 2010 that training began and then only as a result of our review.

According to Bank of America's employees, affiants did not routinely sign documents in front of a notary. Two of its employees specifically testified that they had raised concerns about the notary process to management but were told to continue the process. In CID testimony, one of the referenced managers said that she did not recall concerns about the notary process being brought to her attention. One notary stated that Bank of America set a target of notarizing 75 to 80 documents per hour and he was evaluated on whether he met the target. In reviewing the data provided, the 10 most active notaries each notarized between 14,000 and 77,000 foreclosure documents during the 2-year review period. The data also showed that one of Bank of America's notaries, in violation of Texas law, notarized her own signature on two documents.

One of the primary purposes for using a notary is to verify the authenticity of the signer. The servicers' failure to ensure that notaries witnessed signatures indicated a significant control weakness. Because this type of deficiency undermined the integrity of the control environment, the affidavits and other foreclosure documents submitted by the servicers were unreliable and inauthentic and may have exposed the servicers to false claims liability. Under the terms of the settlement, servicers must maintain records that identify all notarizations of documents executed by each notary employed by them and cannot rely on an affidavit, sworn statement, or declaration that was not properly executed as required. The servicers are also prohibited from paying volume-based or other incentives to employees that encourage undue haste or lack of due diligence over quality.

#### *Law Firms May Have Engaged in Improper Practices*

Bank of America and CitiMortgage used law firms that may have engaged in questionable practices to process FHA-insured foreclosures. These practices ranged from robo-signing and the unauthorized practice of law to a judge's ruling that in an attempt to collect on questionable debt, a firm filed deceptive documents and one of the lawyers lied in court. For example, our reviews of Bank of America and CitiMortgage included a complaint<sup>28</sup> against Goldbeck, McCafferty, and McKeever, PC, a law firm that conducted foreclosure work for both servicers. The complaint alleged that nonlawyers in the firm engaged in the unauthorized practice of law by preparing foreclosure complaints, signing lawyers' names to those complaints, and filing those complaints in county courts around the Commonwealth of Pennsylvania. The complaint included 27 exhibits containing signatures to support the plaintiff's allegation that hundreds or thousands of cases were prepared, signed, and filed by the nonlawyer defendants without attorney review.

In addition, the Chief U.S. Bankruptcy Judge for Western Pennsylvania issued a memorandum opinion and order<sup>29</sup> and a memorandum order<sup>30</sup> that were "intended to serve as a public reprimand"<sup>31</sup> of Goldbeck, McCafferty, and McKeever and one of its attorneys. The judge

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<sup>28</sup> *Loughren vs Lion, et al.*, GD-10, Allegheny County, PA

<sup>29</sup> *In re Hill*, 437 B.R. 503 (Bankr. W.D. Pa., October 5, 2010)

<sup>30</sup> *In re Hill*, 437 B.R. 503 (Bankr. W.D. Pa., November 24, 2010)

<sup>31</sup> *In re Hill*, 437 B.R. 503 pg 8 (Bankr. W.D. Pa., November 24, 2010)



sanctioned the firm and the attorney for filing deceptive documents in a foreclosure proceeding and found that “the attorney, and by extension GMM [Goldbeck, McCafferty, and McKeever], had not been honest with this Court.”<sup>32</sup> The judge ruled that the firm filed copies of three key letters created after the fact in an attempt to collect on questionable debt that were not sent to the homeowner or her lawyer. The judge publicly reprimanded the firm and the attorney for their misconduct and ordered them to report to the Disciplinary Board of the State Supreme Court. We determined that Goldbeck, McCafferty, and McKeever processed 469 foreclosure documents for Bank of America in Pennsylvania and New Jersey.

In interviews with Chase’s management and staff, they acknowledged that on occasion, Chase’s operations specialists obtained affidavits from their foreclosure counsel that already contained the amounts of the borrowers’ indebtedness, since the foreclosure counsel had read-only access to certain data screens in Chase’s mortgage servicing system. Additionally, in some cases, before the foreclosure counsel filed the complaints with the court, he or she sometimes added verbiage and clauses to the affidavits regarding borrowers or the subject properties. In these instances, the information on the affidavits was not verified or validated by Chase.

The provisions of the settlement require that the servicers not pay volume-based or other incentives to third-party providers or trustees that encourage undue haste or lack of due diligence over quality. The servicers must also

- Adopt policies and processes to oversee and manage foreclosure firms, law firms, etc., retained by or on behalf of the lenders that provide servicing activities.
- Ensure that attorneys are licensed to practice in the relevant jurisdiction and have the experience and competence necessary to perform the services requested and that their services comply with applicable regulations.
- Adopt policies and procedures to oversee and manage foreclosure firms, law firms, etc., retained by or on behalf of the servicers that provide servicing.
- Adopt policies requiring third-party providers to maintain records that identify all notarizations of documents executed by each notary employed by the provider.

#### *Affidavits Contained Inconsistencies and Errors*

For two of the five servicers, Bank of America and Chase, we reviewed the affidavits to determine whether the amounts of the borrowers’ indebtedness were supported or mathematically accurate. In reviewing seven of Bank of America’s affidavits that contained judgment figures in judicial foreclosure States, we identified mathematical errors with the per diem interest calculations, which ranged from \$16 to \$470. This error rate indicated that Bank of America lacked proper controls to ensure that it correctly and consistently calculated accrued interest charges in documents it filed in courts to support its foreclosure actions.

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<sup>32</sup> *In re Hill*, 437 B.R. 503 pg 4 (Bankr. W.D. Pa., November 24, 2010)

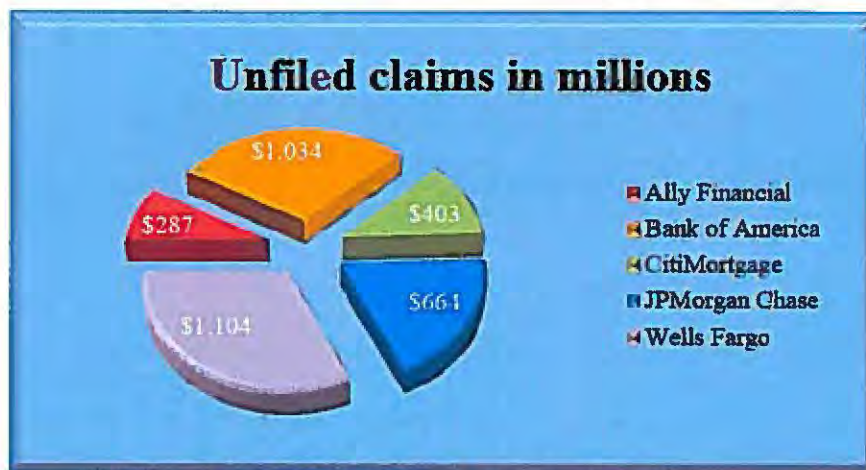
For Chase, we also reviewed 36 affidavits for foreclosures in judicial States to determine whether the amounts of borrowers' indebtedness were supported. Chase was unable to provide documentation to support the amounts of borrowers' indebtedness listed on the affidavits for all except four.<sup>33</sup> When we reviewed the four affidavits, three were inaccurate. Specifically, the amounts of the borrowers' late charges and accumulated interest did not reconcile with the information in Chase's mortgage servicing system.

Therefore, both Chase and Bank of America lacked proper controls to ensure that they correctly and consistently calculated borrowers' indebtedness and in most cases, the accrued interest charges in documents they filed in courts to support their foreclosure actions.

On November 16, 2010, the Congressional Oversight Panel released an indepth report analyzing the robo-signing allegations.<sup>34</sup> Its report concluded that "[t]he foreclosure documentation irregularities unquestionably show a system riddled with errors" and emphasized "that mortgage lenders and securitization servicers should not undertake to foreclose on any homeowner unless they are able to do so in full compliance with applicable laws and their contractual agreements."

#### *The Five Largest Mortgage Servicers Had Unfiled Claims*

As of April 2012, a little over 1 month after the settlement, the five largest FHA mortgage servicers (Ally, Bank of America, CitiMortgage, Chase, and Wells Fargo) had not filed FHA insurance claims for 26,306 foreclosed-upon properties with unpaid mortgage balances of more than \$3.49 billion. According to HUD's Annual Report to Congress regarding the financial status of the FHA Mutual Mortgage Insurance Fund, as of the end of fiscal year 2011, FHA's total capital resources stood at \$33.7 billion. Of that total, \$29 billion was in its financing accounts to offset expected claims, and \$4.7 billion was in its capital reserve account.



Source – HUD's SFDW system retrieved on May 3, 2012

<sup>33</sup> Chase's foreclosure processing software overrode account histories when applying claim payments, which caused the principal and interest records necessary for verifying the affidavits to display as zero.

<sup>34</sup> Congressional Oversight Panel, November Oversight Report Examining the Consequences of Mortgage Irregularities for Financial Stability and Foreclosure Mitigation (November 16, 2010), available at <http://cop.senate.gov/documents/cop-111610-report.pdf> (submitted under section 125(b)(1) of Title 1 of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343).



Using HUD's December 2011 estimated loss severity rate of 66 percent on the resale of foreclosed-upon properties,<sup>35</sup> the insurance fund may be reduced by as much as \$2.3 billion. Of the \$3.49 billion in unfilled claims, nearly \$1.64 billion represented 11,953 properties that had been in foreclosure for more than 180 days. Some of these unfilled claims were for properties foreclosed upon in November 2009.

As of August 3, 2012, HUD's Single Family Claims division had a backlog of 4,776 unpaid claims due to a significant increase in the volume of claims received in March and April 2012. Additionally, as of August 3, 2012, it had a backlog of 27,343 supplemental claims.<sup>36</sup> Consequently, if the servicers were to consecutively file these claims or file these claims all at once, the backlog of unpaid claims would significantly increase, thus potentially impacting HUD's ability to process and pay claims in a timely manner.

### **CONCLUSION**

The five servicers did not establish an effective control environment to ensure the integrity of their foreclosure process. Because they failed to establish proper policies and procedures that fostered compliance with laws and regulations, their affiants signed foreclosure documents automatically without performing a due diligence review or verification of the facts, their notaries failed to authenticate signatures, and they used law firms that may have included inaccurate information on foreclosure documents. As a result, the servicers engaged in improper practices by not fully complying with applicable foreclosure procedures when processing foreclosures on FHA-insured loans. Their flawed control environments resulted in the five mortgage servicers' filing improper legal documents, thereby misrepresenting their claims to HUD.

As previously mentioned, on March 12, 2012, DOJ and the State attorneys general filed proposed consent judgments with the court to resolve violations of State and Federal law. The judgments included, collectively, a Federal payment settlement amount of more than \$684 million. Of the \$684 million, as of July 15, 2012, \$315,250,829 had been deposited into FHA's capital reserve account for incurred losses.

### **RECOMMENDATIONS**

We recommend that HUD's Deputy Assistant Secretary for Single Family Housing

- 1A. Consult with HUD's Office of General Counsel to determine the changes needed to FHA's servicing and foreclosure policies based on the consent judgments. Once determined, ensure that the servicers incorporate the necessary changes into their procedures for servicing FHA-insured loans.

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<sup>35</sup> Single Family Acquired Asset Management System's case management profit and loss by acquisition as of December 2011.

<sup>36</sup> Adjustments to the initial claim payment in the event of delayed disbursements and to correct errors in the original claim or payment.

- 1B. Ensure that the servicers establish or implement adequate procedures and controls to address the control deficiencies cited in the five issued memorandums, including but not limited to, the withholding of claims for insurance benefits, and the retention of appropriate legal documentation supporting the appropriateness of the foreclosure for all FHA-insured properties for the life of the loans.

We recommend that HUD's Associate General Counsel for Program Enforcement

- 1C. Agree to allow HUD OIG to record the recovery amount of \$315,250,829 in HUD's Audit Resolution and Corrective Action Tracking System as resolution of the civil actions against the five servicers identified in this memorandum.

We recommend that the Director of HUD's Departmental Enforcement Center

- 1D. Pursue appropriate administrative sanctions against attorneys who may have violated professional obligations related to the foreclosure of FHA-insured properties.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-4. Please furnish us copies of any correspondence or directives issued because of the review.

## APPENDIXES

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### Appendix A

#### SCHEDULE OF QUESTIONED COSTS

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Recommendation number	Ineligible 1/
1C	<u>\$ 315,250,829</u>
Total	<u>\$ 315,250,829</u>

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.

# EXHIBIT A-2

## Deloney Deposition Transcript



**In The Matter Of:**  
*U.S. Bank, National Association vs.  
Southern Highlands Community, et al.*

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*30(b)(6) U.S. Bank & Bank of America, N.A. - Diane Deloney  
June 15, 2016*

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*Min-U-Script® with Word Index*

30(b)(6) U.S. Bank & Bank of America, N.A. - Diane Deloney - June 15, 2016  
U.S. Bank, National Association vs. Southern Highlands Community, et al.

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2	DISTRICT OF NEVADA	2	WITNESS: PAGE
3	U.S. BANK, NATIONAL )	3	DIANE DELONEY
4	ASSOCIATION, AS TRUSTEE FOR )	4	Examination by Ms. Ebron 6
5	THE HOLDERS OF THE )	5	
6	J.P. MORGAN MORTGAGE TRUST )	6	
7	2007-S3, MORTGAGE )	7	
8	PASS-THROUGH CERTIFICATES, )	8	
9	SERIES 2007-S3, )	9	E X H I B I T S
10	Plaintiff, )	10	EXHIBIT DESCRIPTION PAGE
11	vs. )	11	Exhibit 1 Amended Notice of Rule 30(b)(6) 19
12	SOUTHERN HIGHLANDS COMMUNITY )	12	Deposition of Bank of America, N.A. (7 pages)
13	ASSOCIATION; SFR INVESTMENTS )	13	Exhibit 2 Second Amended Notice of Rule 30(b)(6) Deposition of U.S. Bank, N.A. (8 pages) 20
14	POOL I, LLC; DOES INDIVIDUALS )	14	
15	I-X, inclusive, and ROE )	15	Exhibit 3 **CONFIDENTIAL** Note, Bates stamped USBANK000391 through USBANK000392 (2 pages) 22
16	CORPORATIONS I-X, inclusive, )	16	
17	Defendants. )	17	Exhibit 4 Deed of Trust, Bates stamped SFR9 through SFR28 (20 pages) 23
18	AND ALL RELATED ACTIONS. )	18	Exhibit 5 Deed of Trust, Bates stamped SFR30 through SFR39 (10 pages) 32
19		19	Exhibit 6 Trust Agreement, dated July 1, 2007, Bates stamped USBANK000351 through USBANK000381 (31 pages) 38
20	DEPOSITION OF DIANE DELONEY	20	Exhibit 7 Master Declaration of Covenants, Conditions, and Restrictions for Southern Highlands, Bates stamped USBANK000186 through USBANK000193 (8 pages) 42
21	PERSON MOST KNOWLEDGEABLE FOR	21	
22	BANK OF AMERICA, N.A. and U.S. BANK, N.A.	22	
23	(La Crescenta Court)	23	
24	Taken on Wednesday, June 15, 2016	24	
25	At 9:05 a.m.	25	
	At 7625 Dean Martin Drive, Suite 110		
	Las Vegas, Nevada		
	REPORTED BY: JEAN DAHLBERG, RPR, CCR NO. 759, CSR 11715		

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1	APPEARANCES:	1	E X H I B I T S (continued)
2	For BANK OF AMERICA, N.A., and U.S. BANK, N.A.:	2	EXHIBIT DESCRIPTION PAGE
3	AKERMAN (NEVADA) LLP	3	Exhibit 8 Grant, Bargain, Sale Deed, Bates stamped SFR1 through SFR3 (3 pages) 48
4	BY: MELANIE MORGAN, ESQ.	4	Exhibit 9 Notice of Default/Election to Sell Under Deed of Trust, Bates stamped SFR41 through SFR42 (2 pages) 48
5	1160 Town Center Drive, Suite 330	5	
6	Las Vegas, Nevada 89144	6	Exhibit 10 Rescission of Election to Declare Default Nevada, Bates stamped USBANK000158 through USBANK000159 (2 pages) 50
7	(702) 634-5000	7	
8	(702) 380-8572 (Facsimile)	8	Exhibit 11 Notice of Delinquent Assessment (Lien), Bates stamped SFR45 (1 page) 51
9	melanie.morgan@akerman.com	9	Exhibit 12 Notice of Default and Election to Sell Under Homeowners Association Lien, Bates stamped SFR46 (1 page) 52
10	For the SFR INVESTMENTS POOL I, LLC:	10	Exhibit 13 Notice of Trustee's Sale, Bates stamped SRF47 (1 page) 52
11	KIM GILBERT EBRON	11	Exhibit 14 Corporation Assignment of Deed of Trust Nevada, Bates stamped SFR48 (1 page) 54
12	BY: DIANA S. CLINE EBRON, ESQ.	12	Exhibit 15 Corporation Assignment of Deed of Trust Nevada, Bates stamped SFR49 (1 page) 58
13	7625 Dean Martin Drive, Suite 110	13	Exhibit 16 Notice of Trustee's Sale, Bates stamped SFR50 (1 page) 60
14	Las Vegas, Nevada 89139	14	Exhibit 17 Notice of Trustee's Sale and Election to Sell Under Homeowners Association Lien, including other documents, Bates stamped USBANK0003401 through USBANK000350 (11 pages) 61
15	(702) 485-3300	15	
16	(702) 485-3301	16	
17	diana@kgelegal.com	17	
18	For SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION:	18	
19	ALVERSON, TAYLOR, MORTENSEN & SANDERS	19	
20	BY: DAVID J. ROTHENBERG, ESQ.	20	
21	7401 West Charleston Boulevard	21	
22	Las Vegas, Nevada 89117	22	
23	(702) 384-7000	23	
24	(702) 385-7000 (Facsimile)	24	
25	drothenberg@alversontaylor.com	25	

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1	E X H I B I T S (continued)	
2	EXHIBIT	PAGE
3	Exhibit 18 **CONFIDENTIAL**	71
4	Letter from Jacqueline R. Hagerman	
5	to Bank of America, dated	
6	October 29, 2012, Bates stamped	
7	USBANK000393 (1 page)	
8	Exhibit 19 Corporation Assignment of Deed of	74
9	Trust Nevada, Bates stamped SFR55	
10	(1 page)	
11	Exhibit 20 Trustee's Deed Upon Sale, Bates	76
12	stamped SFR51 through SFR52 (2 pages)	
13	Exhibit 21 Quitclaim Deed, Bates stamped	80
14	USBANK000117 through USBANK000121	
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16	Exhibit 22 Full Reconveyance, Bates stamped	81
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19	Bates stamped SFR57 through SFR59	
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22	Responsibility from Bank of America	
23	to Nationstar Mortgage, Bates	
24	stamped USBANK000382 through	
25	USBANK000390 (9 pages)	

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1	LAS VEGAS, NEVADA; WEDNESDAY, JUNE 15, 2016
2	9:05 A.M.
3	-oOo-
4	Whereupon --
5	(In an off-the-record discussion held prior to
6	the commencement of the proceedings, counsel agreed to
7	waive the court reporter's requirements under Nevada
8	Rules of Civil Procedure, Rule 30(b)(4), or Federal
9	Rules of Civil Procedure, Rule 30(b)(5), as applicable.)
10	
11	DIANE DELONEY,
12	having been first duly sworn to testify to the truth,
13	the whole truth, and nothing but the truth, was examined
14	and testified as follows:
15	EXAMINATION
16	BY MS. EBRON:
17	Q. Good morning. I'm Diana Cline Ebron, and I
18	represent SFR Investments Pool I, LLC in this matter.
19	Can you please state your name for the record.
20	A. Yes. It's Diane Deloney.
21	Q. Are you employed?
22	A. Yes.
23	Q. Who is your employer?
24	A. Bank of America.
25	Q. Is that Bank of America, N.A.?

Page 7	
1	A. Yes.
2	Q. And what's your office address?
3	A. 16001 North Dallas Parkway, Addison, Texas
4	75001.
5	Q. How long have you been employed with Bank of
6	America?
7	A. For Bank of America, approximately eight years.
8	Q. Do you know your start date?
9	A. I started at the time of the Bank of
10	America/Countrywide merger, so sometime in '08 or '09.
11	Q. Did you work for Countrywide before Bank of
12	America?
13	A. I did.
14	Q. When did you start working for Countrywide?
15	A. In October 1994.
16	MS. EBRON: Off the record.
17	(Discussion held off the record.)
18	BY MS. EBRON:
19	Q. What positions did you hold at Countrywide?
20	A. At Countrywide I held various positions within
21	the foreclosure department: Specialist, management
22	roles. I also handled or had a litigation-associate
23	role, as well, for a couple of years.
24	Q. Anything else?
25	A. No.

Page 8	
1	Q. Before we get too much further, have you had
2	your deposition taken before?
3	A. Yes.
4	Q. Approximately how many times?
5	A. I would have to estimate probably close to 100
6	times.
7	Q. So you're familiar with the ground rules of a
8	deposition?
9	A. Yes.
10	Q. And you understand that the testimony that
11	you're giving today is under oath and it has the same
12	force and effect as if you were testifying in court?
13	A. Yes.
14	Q. And it has the same penalty for perjury?
15	A. Yes.
16	Q. Have you also testified at trials?
17	A. Yes.
18	Q. About how many?
19	A. You know, 75 to 100 trials, probably. Maybe not
20	quite as many as depositions.
21	Q. When you testified at deposition, has it been in
22	certain geographical areas, or has it been all over the
23	country?
24	A. All over the country.
25	Q. Have you testified in any depositions in Nevada

Page 9	Page 11
<p>1 before?</p> <p>2 <b>A. I don't believe so.</b></p> <p>3 Q. Were those depositions -- approximately 100</p> <p>4 depositions -- were those on behalf of Bank of America?</p> <p>5 <b>A. Some were, yes.</b></p> <p>6 Q. Were the others for Countrywide?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And what was your -- what were your duties as</p> <p>9 specialist in the foreclosure department at Countrywide?</p> <p>10 <b>A. Well, when I first started I was handling a</b></p> <p>11 <b>portfolio of loans in a presale status, working with</b></p> <p>12 <b>counsel up and through the foreclosure -- from referral</b></p> <p>13 <b>to foreclosure sale date.</b></p> <p>14 Q. Anything else?</p> <p>15 <b>A. No, not that I can think of right now.</b></p> <p>16 Q. When you were in management at Countrywide, what</p> <p>17 were your duties?</p> <p>18 <b>A. I managed various teams of associates that were</b></p> <p>19 <b>in a foreclosure-specialist role. So basically managing</b></p> <p>20 <b>associates in foreclosure presale.</b></p> <p>21 Q. Anything else?</p> <p>22 <b>A. I also managed associates that were handling</b></p> <p>23 <b>files in litigation for a couple years.</b></p> <p>24 Q. Anything else?</p> <p>25 <b>A. That's all I can think of right now.</b></p>	<p>1 <b>group; I also was a senior operations consultant in our</b></p> <p>2 <b>advocacy litigation group; and my current role, which is</b></p> <p>3 <b>consumer resolution associate with our consumer</b></p> <p>4 <b>resolution associate team.</b></p> <p>5 Q. Is there a difference between consumer</p> <p>6 resolution associate and a mortgage resolution</p> <p>7 associate?</p> <p>8 <b>A. No. There was a name change not too long ago.</b></p> <p>9 Q. Did any -- when there was a name change, did any</p> <p>10 functionality change within the department?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Do you know the time period that you were a unit</p> <p>13 manager for state mediations?</p> <p>14 <b>A. I was unit manager from January 2010 until about</b></p> <p>15 <b>December 2010.</b></p> <p>16 Q. And what were your duties?</p> <p>17 <b>A. I managed a team of associates who handled</b></p> <p>18 <b>our -- what we call our state mediations, the</b></p> <p>19 <b>foreclosure mediations that were being held across the</b></p> <p>20 <b>country; basic management duties involved.</b></p> <p>21 Q. Anything else?</p> <p>22 <b>A. I would appear from time to time on behalf of</b></p> <p>23 <b>the bank at state mediations.</b></p> <p>24 Q. Anything else?</p> <p>25 <b>A. Not that I can think of right now.</b></p>
Page 10	Page 12
<p>1 Q. You also mentioned that you were a litigation</p> <p>2 associate; is that correct?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And what was your role as a litigation</p> <p>5 associate?</p> <p>6 <b>A. I was handling a portfolio of contested</b></p> <p>7 <b>foreclosures at that time. I would work with counsel</b></p> <p>8 <b>toward collecting documents, anything on the servicing</b></p> <p>9 <b>side, which also would include appearing on behalf of</b></p> <p>10 <b>the bank when needed.</b></p> <p>11 Q. So when you say "appearing on behalf of the</p> <p>12 bank," does that mean appearing at deposition, in court,</p> <p>13 or like settlement conferences?</p> <p>14 <b>A. All of the above.</b></p> <p>15 Q. Were you ever a vice president at Countrywide?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Were you ever any type of officer?</p> <p>18 <b>A. I -- yes. Currently I'm an assistant vice</b></p> <p>19 <b>president.</b></p> <p>20 Q. And what about when you were at Countrywide?</p> <p>21 Were you an assistant vice president?</p> <p>22 <b>A. I don't recall.</b></p> <p>23 Q. What positions have you held at Bank of America</p> <p>24 since Countrywide and Bank of America merged?</p> <p>25 <b>A. I was a unit manager in our state mediation</b></p>	<p>1 Q. Did you ever work on any mediations, or files</p> <p>2 that were in mediations, in Nevada?</p> <p>3 <b>A. Not that I recall.</b></p> <p>4 Q. Do you know if your team did?</p> <p>5 <b>A. We had a team in California, and they handled</b></p> <p>6 <b>the majority of it in Nevada.</b></p> <p>7 Q. Have you worked at any other Bank of America</p> <p>8 offices besides the one that you're at right now in</p> <p>9 Addison?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Where?</p> <p>12 <b>A. I worked in the Fort Worth office, and I also</b></p> <p>13 <b>worked in the Plano office.</b></p> <p>14 Q. What about when you were at Countrywide? What</p> <p>15 offices or what office did you work at?</p> <p>16 <b>A. I was out of the Plano, Texas office.</b></p> <p>17 Q. Okay. So for the whole time from 1994 to 2008,</p> <p>18 2009, you were in the Plano office?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Are you an officer of MERS?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Do you know when you became an officer of MERS?</p> <p>23 <b>MS. MORGAN: Objection; scope.</b></p> <p>24 <b>THE WITNESS: I don't remember exactly.</b></p> <p>25 ///</p>

Page 13	Page 15
<p>1 <b>BY MS. EBRON:</b></p> <p>2 Q. Do you know if you were an officer of MERS when</p> <p>3 you worked for Countrywide?</p> <p>4 <b>MS. MORGAN:</b> Objection; scope.</p> <p>5 <b>THE WITNESS:</b> I was not.</p> <p>6 <b>BY MS. EBRON:</b></p> <p>7 Q. What were your duties as a senior operations</p> <p>8 consultant?</p> <p>9 <b>A. I would appear on behalf of the bank in</b></p> <p>10 <b>depositions, trials, and mediations where the issue was</b></p> <p>11 <b>loan modification related, whether it be allegations or</b></p> <p>12 <b>the settlement was based on loan modification.</b></p> <p>13 Q. Anything else?</p> <p>14 <b>A. Not that I recall.</b></p> <p>15 Q. Do you know the time period that you were a</p> <p>16 senior operations consultant?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. When was that?</p> <p>19 <b>A. That was January 2011 until about June 2012.</b></p> <p>20 Q. What are your duties as a consumer resolution</p> <p>21 associate?</p> <p>22 <b>A. Today I handle a portfolio of loans that are</b></p> <p>23 <b>contested or litigated, I work with counsel toward a</b></p> <p>24 <b>resolution. I also appear on behalf of the bank when</b></p> <p>25 <b>needed at trials, depositions, and mediations.</b></p>	<p>1 occurred. It could have been with the senior operations</p> <p>2 consultant. Again, I don't exactly recall.</p> <p>3 Q. Were you employed before you worked for</p> <p>4 Countrywide?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Where were you employed?</p> <p>7 <b>A. I was employed by Lomas Mortgage U.S.A.</b></p> <p>8 Q. Can you spell that?</p> <p>9 <b>A. It's L-o-m-a-s.</b></p> <p>10 Q. Where was Lomas Mortgage located?</p> <p>11 <b>A. They were located in Dallas, Texas.</b></p> <p>12 Q. What were the dates of employment for Lomas</p> <p>13 Mortgage U.S.A.?</p> <p>14 <b>A. 1988 to 1994.</b></p> <p>15 Q. And what positions did you hold at Lomas?</p> <p>16 <b>A. I held various positions within the foreclosure</b></p> <p>17 <b>department.</b></p> <p>18 Q. What types of positions?</p> <p>19 <b>A. Handling, pulling up the claim proceeds,</b></p> <p>20 <b>providing bids for foreclosure sales.</b></p> <p>21 Q. Anything else?</p> <p>22 <b>A. That's all I can think of right now.</b></p> <p>23 Q. Were you employed before you worked for Lomas?</p> <p>24 <b>A. Various part-time jobs while going to school.</b></p> <p>25 Q. Do you have any other mortgage-related</p>
Page 14	Page 16
<p>1 Q. Anything else?</p> <p>2 <b>A. Just various duties as they come about</b></p> <p>3 <b>throughout the workday.</b></p> <p>4 Q. What types of duties might come about during a</p> <p>5 workday?</p> <p>6 <b>A. There might be some training involved,</b></p> <p>7 <b>collecting documents; you know, whatever it takes to</b></p> <p>8 <b>handle a case in litigation.</b></p> <p>9 Q. When you say "training," is that you being</p> <p>10 trained, or are you training other people?</p> <p>11 <b>A. Both.</b></p> <p>12 Q. Do you have any other duties as the consumer</p> <p>13 resolution associate?</p> <p>14 <b>A. Not that comes to mind.</b></p> <p>15 Q. Did you become the consumer resolution associate</p> <p>16 right after you were the senior operations consultant?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. So that would have been from June of 2012 until</p> <p>19 present?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. And there was sometime during your time at Bank</p> <p>22 of America that you became an assistant vice president.</p> <p>23 Was that when you became a consumer resolution</p> <p>24 associate?</p> <p>25 <b>A. I don't remember exactly when the officer title</b></p>	<p>1 employment?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Where did you go to school?</p> <p>4 <b>A. What kind of school?</b></p> <p>5 Q. Sorry. Did you graduate from high school?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. When?</p> <p>8 <b>A. In May 1979.</b></p> <p>9 Q. Where?</p> <p>10 <b>A. In Dallas.</b></p> <p>11 Q. Did you attend a college or university?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Where?</p> <p>14 <b>A. I attended Texas Tech University.</b></p> <p>15 Q. Any others?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Where?</p> <p>18 <b>A. University of North Texas.</b></p> <p>19 Q. Any others?</p> <p>20 <b>A. There was probably some junior college work in</b></p> <p>21 <b>between, various local schools, but I don't remember</b></p> <p>22 <b>exactly which ones.</b></p> <p>23 Q. Have you earned any degrees?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. How many?</p>

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1 A. One.  
2 Q. And what is it?  
3 A. I have a bachelor's of business administration  
4 in real estate finance.  
5 Q. When did you get your degree?  
6 A. In December 1987.  
7 Q. So after graduating, you've pretty much been in  
8 the banking or mortgage industry since?  
9 A. Yes.  
10 Q. How many different loan files do you think  
11 you've reviewed in your career?  
12 A. I have no idea.  
13 Q. And would that number be in, like, the hundreds  
14 or thousands?  
15 A. I really don't know.  
16 Q. Do you have -- with your current job with Bank  
17 of America, do you have certain files that you're  
18 assigned to work on from start to finish, or is it  
19 appearance-based?  
20 A. I do have files that I work on from start to  
21 finish that do not involve an appearance.  
22 Q. And then are there some times when you make an  
23 appearance, like at a deposition, when you haven't been  
24 necessarily working that file throughout the litigation?  
25 A. Yes.

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1 Q. Have you ever worked on files where Bank of  
2 America was hiring counsel to attempt to make a payment  
3 to a homeowners association? I understand we're  
4 litigating about that issue in some of these cases now,  
5 but have you ever been assigned to a file where you were  
6 working with outside counsel to try to make a payment  
7 before an association foreclosure sale took place?  
8 MS. MORGAN: Objection; scope.  
9 THE WITNESS: So to make sure I understand your  
10 question, have I ever worked on a file where working  
11 with outside counsel to make a payment on an HOA  
12 foreclosure sale; is that correct?  
13 BY MS. EBRON:  
14 Q. Yes.  
15 A. You know, I really don't know. I don't recall.  
16 Q. Have you ever been part of a department that  
17 would process foreclosure notices received from a  
18 homeowners association?  
19 MS. MORGAN: Objection; scope.  
20 THE WITNESS: I can't say for sure throughout my  
21 years working with foreclosure whether that was -- the  
22 HOA was part of that or not.  
23 BY MS. EBRON:  
24 Q. When you say in your "years of working with  
25 foreclosure," that's generally when the bank is

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1 foreclosing on a Deed of Trust; correct?  
2 A. Correct.  
3 Q. Would you say that you're pretty familiar with  
4 the process of a bank foreclosing on a Deed of Trust?  
5 MS. MORGAN: Objection; form, scope.  
6 THE WITNESS: Fairly, yes.  
7 BY MS. EBRON:  
8 Q. I'm going to show you a document that we're  
9 going to mark as Exhibit 1.  
10 (Exhibit 1 was marked for identification.)  
11 BY MS. EBRON:  
12 Q. Do you recognize this document?  
13 A. I do.  
14 Q. And what is it?  
15 A. A document that's entitled Amended Notice of  
16 Rule 30(b)(6) Deposition of Bank of America, N.A.  
17 Q. Is this something that you've reviewed prior to  
18 your deposition today?  
19 A. Yes.  
20 Q. And are you the person that Bank of America,  
21 N.A. has designated to testify on its behalf on these  
22 topics?  
23 A. Yes.  
24 Q. I'm going to go ahead and show you another  
25 deposition notice that we'll mark as Exhibit 2.

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1 (Exhibit 2 was marked for identification.)  
2 BY MS. EBRON:  
3 Q. Do you recognize this document?  
4 A. I do.  
5 Q. What is it?  
6 A. This is the Second Amended Notice of  
7 Rule 30(b)(6) Deposition of U.S. Bank, N.A.  
8 Q. And did you have a chance to review the topics  
9 that are in this notice?  
10 A. I did.  
11 Q. It's my understanding that you have been  
12 designated by U.S. Bank, N.A. to testify on its behalf  
13 for certain topics in this notice; is that correct?  
14 A. Yes.  
15 MS. EBRON: And, Counsel, did you want to just  
16 go over --  
17 MS. MORGAN: Sure. We designated Ms. Deloney  
18 for Topics 1, 2, 4 -- to be split with a Nationstar  
19 30(b)(6) -- 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17,  
20 18, 19, and 20. And the remaining topics will be a  
21 Nationstar deponent.  
22 BY MS. EBRON:  
23 Q. Okay. Going back to the first deposition  
24 notice, on Page 2 there are some definitions, and these  
25 definitions should be the same in Exhibit 2 as well.

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1 The first one refers to the property as the real  
2 property located at 10702 La Crescenta Court, Las Vegas,  
3 Nevada 89141. Parcel No. 176-36-619-021. Whenever I  
4 refer to the property today, I'm going to be referring  
5 to the property La Crescenta. Is that okay?  
6 **A. Yes.**  
7 Q. Also, it defines the homeowners association as  
8 Southern Highlands Homeowners Association. So whenever  
9 I refer to the association, unless otherwise specified,  
10 I'm going to be referring to the Southern Highlands  
11 Homeowners Association. Actually, it should be Southern  
12 Highlands Community Association.  
13 So with that correction, anytime I refer to the  
14 association, I will be referring to the Southern  
15 Highlands Community Association. Okay?  
16 **A. Okay.**  
17 Q. We will be talking about an association  
18 foreclosure sale that took place on September 5th, 2012,  
19 by Alessi & Koenig, LLC on behalf of the association.  
20 So whenever I ask for any information about the  
21 association foreclosure sale or something that happened  
22 before the association foreclosure sale, I'll be looking  
23 to that date of September 5th, 2012. Okay?  
24 **A. Okay.**  
25 Q. I also might refer to Alessi & Koenig as Alessi,

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1 if that's all right?  
2 **A. Sure.**  
3 Q. Okay. I'm going to show you a document that we  
4 will mark as Exhibit 3.  
5 (Exhibit 3 was marked for identification and  
6 will be sealed as "Confidential.")  
7 **BY MS. EBRON:**  
8 Q. Do you recognize this document?  
9 **A. I do.**  
10 Q. What is it?  
11 **A. This is a copy of a Note.**  
12 Q. Is this something that you reviewed in  
13 preparation for your deposition?  
14 **A. I did.**  
15 Q. And does this Note relate to the property on  
16 La Crescenta?  
17 **A. Yes.**  
18 Q. Who is the borrower for this Note?  
19 **A. The borrower is Jacqueline R. Hagerman.**  
20 Q. And who is the lender?  
21 **A. The lender is Countrywide Home Loans, Inc.**  
22 Q. Do you know when this Note was executed?  
23 **A. Yes.**  
24 Q. When?  
25 **A. Well, it's dated March 12, 2007.**

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1 Q. Have you seen the original wet-ink signature  
2 Note before?  
3 **A. No.**  
4 Q. I'm going to show you a document that we will  
5 mark as Exhibit 4.  
6 (Exhibit 4 was marked for identification.)  
7 **BY MS. EBRON:**  
8 Q. I think there may be an extra page at the back,  
9 so you can just remove that. It should be SFR9 through  
10 SFR28, and I think I accidentally attached that as  
11 SFR39. So if you could just remove that.  
12 And, Counsel, I originally printed copies of the  
13 ones disclosed by U.S. Bank, but for some reason the  
14 page, like, started halfway down. So it cut some things  
15 off.  
16 **MS. MORGAN:** Okay. So if it affects your  
17 answers today to the questions, just let us know;  
18 otherwise we'll just move forward.  
19 **THE WITNESS:** Okay.  
20 **BY MS. EBRON:**  
21 Q. Do you recognize this document?  
22 **A. I do.**  
23 Q. What is that?  
24 **A. This is a copy of the Deed of Trust, along with**  
25 **a copy of the Planned Urban Development Rider attached**

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1 **to the Deed of Trust for the property in question.**  
2 Q. Is this something that you reviewed in  
3 preparation for your deposition?  
4 **A. I did.**  
5 Q. And does this Deed of Trust relate to the Note  
6 that we marked as Exhibit 3?  
7 **A. Yes.**  
8 Q. So is this Deed of Trust dated or executed at  
9 the same time as the Note?  
10 **MS. MORGAN:** Objection; the documents speak for  
11 themselves.  
12 **THE WITNESS:** It is -- or it was executed around  
13 the same time, yes.  
14 **BY MS. EBRON:**  
15 Q. Was this Deed of Trust and the Promissory Note  
16 stored in Bank of America's business records?  
17 **A. Yes.**  
18 Q. And where did you look to find them?  
19 **A. I looked in our imaging system.**  
20 Q. When you pulled up -- or how did you pull up the  
21 Note and the Deed of Trust in your imaging system?  
22 **A. I went to our imaging system and entered the**  
23 **loan number assigned to this particular loan and found**  
24 **it by those means.**  
25 Q. When you entered the loan number into the

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1 imaging system, about how many documents were returned  
2 from that search?  
3 **MS. MORGAN:** Objection; scope.  
4 **THE WITNESS:** I'd have to estimate probably --  
5 well, I'd just be guessing. A 100, maybe.  
6 **MS. MORGAN:** Yeah, I don't want you to guess,  
7 but you can give your best estimate, if you're able.  
8 **THE WITNESS:** That's just an estimate.  
9 **BY MS. EBRON:**  
10 Q. Fair enough. What other types of documents did  
11 you review in preparation for your deposition?  
12 **A. I reviewed -- excuse me -- our servicing notes,**  
13 **and I reviewed some of the other documents that were**  
14 **produced.**  
15 Q. What do you mean "other documents that were  
16 produced"?  
17 **A. That were produced by the bank.**  
18 Q. In this litigation?  
19 **A. Yes.**  
20 Q. Were there any documents that you reviewed that  
21 were not part of Bank of America's business records?  
22 **A. Not that I recall.**  
23 Q. Going back, well let's -- sorry, strike that.  
24 You said you reviewed the servicing notes; is  
25 that correct?

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1 **A. Yes.**  
2 Q. Where are the servicing notes located for this  
3 file? Are they also in the imaging system?  
4 **A. No. They'd be in a separate database commonly**  
5 **referred to as our AS-400 servicing notes.**  
6 Q. And what were you looking for when you reviewed  
7 the AS-400?  
8 **A. I was just reviewing the history of the loan**  
9 **file.**  
10 Q. And so what types of information did you look at  
11 in AS-400?  
12 **A. I reviewed notes made by our customer -- our**  
13 **customer service, by our foreclosure; just the general**  
14 **origination terms of the loan. The payments made, that**  
15 **sort of thing.**  
16 Q. Anything else?  
17 **A. Not that I recall right now.**  
18 Q. Did you -- when you were reviewing the notes,  
19 did you check to see if there were any references to a  
20 homeowners association?  
21 **A. I did.**  
22 Q. Did you see any?  
23 **A. I did.**  
24 Q. Do you know about how many references about  
25 homeowners associations you saw in the AS-400?

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1 **A. My best estimate would be maybe four or five.**  
2 Q. Do you know the time period from where those  
3 were from?  
4 **A. The earliest I recall was October 2010.**  
5 Q. And what about the latest?  
6 **A. In AS-400, maybe some time 2011, 2012. I don't**  
7 **recall exactly.**  
8 Q. Was there a certain time period of the customer  
9 service notes or other information in AS-400 that you  
10 reviewed?  
11 **A. I reviewed it from the beginning of when the**  
12 **loan originally was boarded.**  
13 Q. Did you review to the last entry in the AS-400,  
14 or did you stop at a certain date?  
15 **A. To the last entry.**  
16 Q. And what's the last entry, approximately?  
17 **A. 2013.**  
18 Q. Do you know when in 2013?  
19 **A. No.**  
20 Q. And is it correct that Bank of America was the  
21 servicer after the mortgager with Countrywide through  
22 2013?  
23 **A. Yes.**  
24 Q. And do you know who became the servicer after  
25 Bank of America?

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1 **A. Yes.**  
2 Q. Who?  
3 **A. Nationstar.**  
4 Q. And it's my understanding that Countrywide was  
5 the originating lender; correct?  
6 **A. Correct.**  
7 Q. Was Countrywide also the first servicer?  
8 **A. Yes.**  
9 Q. Did Countrywide ever sell the loan?  
10 **MS. MORGAN:** Objection; form.  
11 **THE WITNESS:** Sell the loan? Sell the -- what  
12 exactly do you mean?  
13 **BY MS. EBRON:**  
14 Q. Well, I guess I want to distinguish between the  
15 servicing rights and being the investor. So was  
16 Countrywide an investor of this loan at any point in  
17 time?  
18 **A. Not to my knowledge.**  
19 Q. So is there a different investor for this loan?  
20 **A. Well, when we were servicing it, it was still**  
21 **U.S. Bank.**  
22 Q. When did U.S. Bank become the investor?  
23 **A. Shortly after the loan originated.**  
24 Q. Do you know about how long?  
25 **A. No.**



1 Q. But sometime in 2007?

2 A. Yes.

3 Q. Had Bank of America ever been the investor on  
4 the loan?

5 A. Not to my knowledge.

6 Q.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 Q. I'm going to show you a document that we'll mark  
14 as Exhibit 5.

15 (Exhibit 5 was marked for identification.)

16 **BY MS. EBRON:**

17 Q. Do you recognize that document?

18 A. I do.

19 Q. What is it?

20 A. This is the Deed of Trust line of credit for the  
21 second that was on the property.

22 Q. Was this loan that was secured by this Deed of  
23 Trust also originated by Countrywide?

24 A. Yes.

25 Q. And at the same time as the First Deed of Trust?

1     **A. Yes.**  
2     Q. Do you know if these were purchase money loans?  
3     **MS. MORGAN:** Objection; scope.  
4     **THE WITNESS:** Yes.  
5     **BY MS. EBRON:**  
6     Q. Were they purchase money loans?  
7     **A. Yes.**  
8     Q. Now, Mortgage Electronic Registration Systems,  
9     Inc. is mentioned in both of these Deeds of Trust. Can  
10    you tell me, or do you know, what Mortgage Electronic  
11    Registration Systems, Inc.'s role is with these Deeds of  
12    Trust?  
13    **MS. MORGAN:** Objection; scope, calls for a legal  
14    conclusion.  
15    **THE WITNESS:** For both of the Deeds of Trust,  
16    Mortgage Electronic Registration Systems was acting as  
17    the nominee for the lender, Countrywide Home Loans, Inc.  
18    **BY MS. EBRON:**  
19    Q. Going to Exhibit 4 on the page that's Bates  
20    stamped SFR10 right under the title Deed of Trust, it  
21    says MIN and then there's a number. Do you see that?  
22    **A. I do.**  
23    Q. Do you know what that number is for?  
24    **MS. MORGAN:** Objection; scope.  
25    **THE WITNESS:** Yes.

1 **BY MS. EBON:**  
2 Q. Looking at the page Bates stamped SFR27,  
3 Paragraph A, it says: PUD Obligations. Borrower shall  
4 perform all of Borrower's obligations under the PUD's  
5 Constituent Documents. The Constituent Documents are  
6 the Declaration, Articles of Incorporation, Trust  
7 Instruments or any equivalent document which creates the  
8 Owners Association, and any bylaws or other rules or  
9 regulations of the Owners Association. Borrower shall  
10 promptly pay, when due, all dues and assessments imposed  
11 pursuant to the Constituent Documents.  
12 Did I read that correctly?  
13 **A. Yes.**  
14 Q. Is it fair to say that this notifies the  
15 borrower that the borrower has to pay homeowners  
16 association dues?  
17 **MS. MORGAN:** Objection; scope, the document  
18 speaks for itself.  
19 **THE WITNESS:** Yes.  
20 **BY MS. EBON:**  
21 Q. And then on the last page, 3 of 3 that's Bates  
22 stamped SFR28, Paragraph F, it says, "Remedies. If  
23 Borrower does not pay PUD dues and assessments when due,  
24 then Lender may pay them. Any amounts disbursed by  
25 Lender under this paragraph F shall become additional

1 **BY MS. EBRON:**  
2 Q. What's it for?  
3 **A. That is basically the MERS identification**  
4 **number.**  
5 Q. Do you know what a MERS identification number is  
6 used for?  
7 **A. It is used on behalf of MERS to determine who**  
8 **the current servicer is on a loan.**  
9 Q. If you turn to the page that is Bates stamped  
10 SFR26 --  
11 **A. Sorry, Exhibit 4 still?**  
12 Q. Sorry, Exhibit 4 still.  
13 **A. Okay.**  
14 Q. Do you know what a Planned Unit Development  
15 Rider is?  
16 **A. Basically.**  
17 Q. What is it?  
18 **A. It's basically a document regarding a**  
19 **subdivision or parcels of land with common**  
20 **characteristics.**  
21 Q. Do you know why the Planned Unit Development  
22 Rider would have been attached to this Deed of Trust?  
23 **MS. MORGAN:** Objection; form, calls for  
24 speculation.  
25 **THE WITNESS:** I don't.

[illegible]

[illegible]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 Restrictions for Southern Highlands. It included the  
2 pages Bates stamped 000186 through 000193. It's a very  
3 voluminous document, and I just included the title page  
4 and the Table of Contents.  
5 **A. Okay.**  
6 Q. Did you see a copy of the Master Declaration of  
7 Covenants, Conditions, and Restrictions for Southern  
8 Highlands in Bank of America's business records?  
9 **A. No.**  
10 Q. Do you know if the declaration -- the portion  
11 that was just marked as Exhibit 7 -- is in Bank of  
12 America's business records, like in a separate place  
13 rather than the imaging system?  
14 **A. Not to my knowledge. I -- that's just something**  
15 **that's between the homeowner and the association, so**  
16 **it's something the bank typically doesn't receive.**  
17 Q. Before loaning money to the borrower, did  
18 Countrywide review the Master Declaration of Covenants,  
19 Conditions, and Restrictions for Southern Highlands?  
20 **MS. MORGAN:** Objection; scope.  
21 **THE WITNESS:** I don't know.  
22 **BY MS. EBRON:**  
23 Q. Was Countrywide aware that the property was  
24 located -- at that time of origination, was Countrywide  
25 aware that the property was located within Southern

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 **BY MS. EBRON:**  
20 Q. I'm going to show you a document that we will  
21 mark as Exhibit 7.  
22 (Exhibit 7 was marked for identification.)  
23 **BY MS. EBRON:**  
24 Q. Just for the record, this is a portion of the  
25 Master Declaration of Covenants, Conditions, and

1 Highlands?  
2 **MS. MORGAN:** Objection; scope.  
3 **THE WITNESS:** I don't know.  
4 **BY MS. EBRON:**  
5 Q. Did you review any of the origination documents?  
6 **A. I did see a few of them.**  
7 Q. Did you see any reference besides in the Deed of  
8 Trust to a homeowners association?  
9 **A. Not that I recall.**  
10 Q. Did Countrywide obtain a title report before  
11 loaning money against the property?  
12 **MS. MORGAN:** Objection; scope.  
13 **THE WITNESS:** Well, we typically do. I don't  
14 recall seeing it in this file, but that's -- again, I  
15 didn't look at all the origination documents.  
16 **BY MS. EBRON:**  
17 Q. Were homeowners association dues escrowed for  
18 this loan?  
19 **MS. MORGAN:** Objection; scope.  
20 **THE WITNESS:** We typically do not escrow for HOA  
21 dues, so -- but I don't recall. Again, it would not be  
22 typical.  
23 **BY MS. EBRON:**  
24 Q. Do you know why you would not typically escrow  
25 homeowners association dues?

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1 **MS. MORGAN:** Objection; scope.  
2 **THE WITNESS:** Again, that's between the -- it's  
3 the borrower's responsibility to pay them, so it's not  
4 something that the bank pays on their behalf on a  
5 monthly basis.  
6 **BY MS. EBRON:**  
7 Q. Before loaning money against this property, did  
8 Countrywide review any of the other documents that had  
9 been recorded against the property?  
10 **MS. MORGAN:** Objection; scope.  
11 **THE WITNESS:** What exactly do you mean?  
12 **BY MS. EBRON:**  
13 Q. For example -- I'm just going to go ahead and  
14 show this to you, rather than attaching it as an  
15 exhibit. This is a document that is Bates stamped  
16 USBANK000006 through USBANK000042. And it's actually  
17 two different Deeds of Trust that were -- that appear to  
18 have been recorded in 2002.  
19 **A. I'm sorry, the question again?**  
20 Q. Did Countrywide review any of the documents that  
21 were previously recorded against the property before  
22 loaning money against the property?  
23 **MS. MORGAN:** Objection; scope.  
24 **THE WITNESS:** Well, it would be part of the  
25 title report. And, again, I didn't see it specifically,

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1 but it is something that is typically done before  
2 closing on loans.  
3 **BY MS. EBRON:**  
4 Q. So if the Declaration of Covenants, Conditions,  
5 and Restrictions for Southern Highlands was recorded  
6 against the property, then Countrywide may have looked  
7 at them?  
8 **MS. MORGAN:** Objection; form, scope.  
9 **THE WITNESS:** I'm sorry, your question? I  
10 didn't hear all the question.  
11 **BY MS. EBRON:**  
12 Q. So if the Declaration of Covenants, Conditions,  
13 and Restrictions for Southern Highlands were recorded  
14 against the property, then Countrywide may have looked  
15 at them before loaning against the property?  
16 **MS. MORGAN:** Same objection.  
17 **THE WITNESS:** I'd only be speculating. But if  
18 it was recorded and appeared on the title report, then  
19 we would have been aware of it.  
20 **BY MS. EBRON:**  
21 Q. Do you know if Countrywide relied on any  
22 particular provisions or portions of the Declaration of  
23 CC&Rs for Southern Highlands when loaning money against  
24 the property?  
25 **MS. MORGAN:** Objection; scope, calls for

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1 speculation.  
2 **THE WITNESS:** I don't know.  
3 **BY MS. EBRON:**  
4 Q. When Bank of America merged with Countrywide,  
5 did it review property records for this file?  
6 **MS. MORGAN:** Objection; scope.  
7 **THE WITNESS:** At the time of the merger?  
8 **BY MS. EBRON:**  
9 Q. Yes.  
10 **A. Not that I'm aware of.**  
11 Q. Do you know if at the time U.S. Bank obtained an  
12 interest in the loan, if U.S. Bank reviewed the  
13 Declaration of Covenants, Conditions, and Restrictions  
14 for Southern Highlands?  
15 **MS. MORGAN:** Objection; scope, calls for  
16 speculation.  
17 **THE WITNESS:** I don't know.  
18 **BY MS. EBRON:**  
19 Q. Did U.S. Bank rely on any particular provisions  
20 in the Declaration of Covenants, Conditions, and  
21 Restrictions for Southern Highlands when it obtained its  
22 interest in the loan?  
23 **A. I don't know.**  
24 Q. Do you know who would know that?  
25 **A. I don't.**

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1 Q. I'm going to show you a document that we'll mark  
2 as Exhibit 8.  
3 (Exhibit 8 was marked for identification.)  
4 **BY MS. EBRON:**  
5 Q. Do you recognize that document?  
6 **A. No, I have not seen it before.**  
7 Q. Do you know from the face of the document what  
8 it is?  
9 **A. Yes.**  
10 Q. What is it?  
11 **A. The document's entitled Grant, Bargain, Sale**  
12 **Deed that was executed by the County granting or**  
13 **conveying to Ms. Hagerman, the mortgager on the loan.**  
14 Q. Is this typically a document that would be  
15 included in Bank of America's or Countrywide's business  
16 records?  
17 **A. Yes.**  
18 **MS. MORGAN:** Objection; scope.  
19 **BY MS. EBRON:**  
20 Q. So is it possible it's within their business  
21 records and that's just one of the ones you didn't open?  
22 **A. Yes.**  
23 Q. I'm going to show you a document that we'll mark  
24 as Exhibit 9.  
25 (Exhibit 9 was marked for identification.)

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<p>1       <b>THE WITNESS:</b> Okay.</p> <p>2 <b>BY MS. EBRON:</b></p> <p>3     Q. Do you recognize this document?</p> <p>4     <b>A. I do.</b></p> <p>5     Q. What is it?</p> <p>6     <b>A. This is a Notice of Default, Election to Sell</b></p> <p>7 <b>Under Deed of Trust.</b></p> <p>8     Q. Does this relate to the Deed of Trust that we</p> <p>9 marked as Exhibit 4?</p> <p>10    <b>A. Yes.</b></p> <p>11    Q. There is a paragraph that's in all caps, and it</p> <p>12 says -- it starts off: Failure to pay the installment</p> <p>13 of principal and interest which became due on</p> <p>14 September 1st, 2009. Do you see that?</p> <p>15    <b>A. Yes.</b></p> <p>16    Q. Do you know if the borrower made any payments</p> <p>17 after September 1st, 2009?</p> <p>18       <b>MS. MORGAN:</b> Objection; scope.</p> <p>19       <b>THE WITNESS:</b> I don't. I don't know.</p> <p>20 <b>BY MS. EBRON:</b></p> <p>21    Q. And you would look in the payment history to see</p> <p>22 that?</p> <p>23    <b>A. Yes.</b></p> <p>24    Q. Well, at least for the time period that Bank of</p> <p>25 America was servicing?</p>	<p>1 cutting off the page, so I just want to make sure I've</p> <p>2 got the right ones here in the right order.</p> <p>3       Okay. I want to show you a document that we'll</p> <p>4 mark as Exhibit 11.</p> <p>5       (Exhibit 11 was marked for identification.)</p> <p>6       <b>THE WITNESS:</b> Okay.</p> <p>7 <b>BY MS. EBRON:</b></p> <p>8    Q. Have you seen this document before?</p> <p>9    <b>A. I have.</b></p> <p>10    Q. Is this document part of Bank of America's</p> <p>11 business records?</p> <p>12    <b>A. I saw it in preparation for today. I did not</b></p> <p>13 <b>see it within our actual business record.</b></p> <p>14    Q. Did you see anything in Bank of America's</p> <p>15 business records that would lead you to doubt that the</p> <p>16 borrower was delinquent to Southern Highlands Community</p> <p>17 Association as of that date?</p> <p>18    <b>A. No.</b></p> <p>19    Q. Did you see anything in Bank of America's</p> <p>20 business records that would lead you to dispute the</p> <p>21 amounts listed in this Notice of Delinquent Assessment</p> <p>22 Lien?</p> <p>23       <b>MS. MORGAN:</b> Objection; scope.</p> <p>24       <b>THE WITNESS:</b> No.</p> <p>25    ///</p>
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<p>1    <b>A. Correct.</b></p> <p>2    Q. I'm going to show you a document that we'll mark</p> <p>3 as Exhibit 10.</p> <p>4       (Exhibit 10 was marked for identification.)</p> <p>5       <b>THE WITNESS:</b> Okay.</p> <p>6 <b>BY MS. EBRON:</b></p> <p>7    Q. Do you recognize that document?</p> <p>8    <b>A. I do.</b></p> <p>9    Q. What is it?</p> <p>10   <b>A. Exhibit 10 is labeled Rescission of Election to</b></p> <p>11 <b>Declare Default Nevada.</b></p> <p>12    Q. Does this rescission relate to the Notice of</p> <p>13 Default that we marked as Exhibit 9?</p> <p>14    <b>A. Yes.</b></p> <p>15    Q. Do you know why this rescission was recorded?</p> <p>16       <b>MS. MORGAN:</b> Objection; scope, calls for</p> <p>17 speculation.</p> <p>18       <b>THE WITNESS:</b> I don't.</p> <p>19 <b>BY MS. EBRON:</b></p> <p>20    Q. Where would you look to find that information?</p> <p>21    <b>A. I am not sure.</b></p> <p>22    Q. So would it be in the servicing notes somewhere?</p> <p>23    <b>A. It was not.</b></p> <p>24    Q. I apologize. I printed a whole bunch of</p> <p>25 exhibits before I realized that the U.S. Bank ones were</p>	<p>1 <b>BY MS. EBRON:</b></p> <p>2    Q. I'll show you a document that we will mark as</p> <p>3 Exhibit 12.</p> <p>4       (Exhibit 12 was marked for identification.)</p> <p>5       <b>THE WITNESS:</b> Okay.</p> <p>6 <b>BY MS. EBRON:</b></p> <p>7    Q. Do you recognize this document?</p> <p>8    <b>A. I do.</b></p> <p>9    Q. What is it?</p> <p>10   <b>A. A document -- or Exhibit 12 is labeled Notice of</b></p> <p>11 <b>Default and Election to Sell Under Homeowners</b></p> <p>12 <b>Association Lien.</b></p> <p>13    Q. Is this something that is contained within Bank</p> <p>14 of America's business records?</p> <p>15    <b>A. Yes. I did find it in our business records.</b></p> <p>16    Q. And do you know when it was received by Bank of</p> <p>17 America?</p> <p>18    <b>A. It was received sometime in October or November</b></p> <p>19 <b>of 2010.</b></p> <p>20    Q. Do you know if Bank of America received multiple</p> <p>21 copies or just one copy of this Notice of Default?</p> <p>22    <b>A. I don't recall.</b></p> <p>23    Q. I'm going to show you a document we'll mark as</p> <p>24 Exhibit 13.</p> <p>25       (Exhibit 13 was marked for identification.)</p>

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1       **THE WITNESS:** Okay.  
2 **BY MS. EBRON:**  
3 Q. Do you recognize this document?  
4 **A. I do.**  
5 Q. What is it?  
6 **A. Exhibit 13 is the Notice of Trustee's Sale.**  
7 Q. And this is a Notice of Trustee's Sale on behalf  
8 of the homeowners association?  
9 **A. Yes.**  
10 Q. Is this something that was received by Bank of  
11 America?  
12 **A. Yes.**  
13 Q. Do you know when it was received?  
14 **A. Not the exact date. It was received sometime in**  
15 **late April 2011.**  
16 Q. How do you know that?  
17 **A. Just based on my review of the business records.**  
18 Q. And what business records told you that it was  
19 received in April of 2011?  
20 **A. It was notated in the servicing notes.**  
21 Q. Were there also servicing notes about the Notice  
22 of Default in 2010?  
23 **A. I don't remember right now.**  
24 Q. And you would look back at the AS-400 to see if  
25 there were -- if there was a notation in the servicing

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1 notes about the Notice of Default from the association?  
2 **A. Correct.**  
3 Q. I'll show you a document that we will mark as  
4 Exhibit 14.  
5 (Exhibit 14 was marked for identification.)  
6 **THE WITNESS:** Okay.  
7 **BY MS. EBRON:**  
8 Q. Do you recognize this document?  
9 **A. I do.**  
10 Q. What is it?  
11 **A. Exhibit 14 is a copy of a Corporate Assignment**  
12 **of Deed of Trust.**  
13 Q. Who is the assignment from and who is it to?  
14 **A. The assignment is from Mortgage Electronic**  
15 **Registration Systems, Inc. to Bank of America, N.A.,**  
16 **successor by merger to BAC Home Loan Servicing, LP.**  
17 Q. When was this executed?  
18 **A. This was executed on August 23rd, 2011.**  
19 Q. Do you know Tiffany Woolen?  
20 **A. No.**  
21 Q. If Tiffany Woolen -- or do you know if Tiffany  
22 Woolen is also, in addition to being a secretary for  
23 MERS, an employee of Bank of America?  
24 **MS. MORGAN:** Objection; scope, calls for  
25 speculation.

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1       **THE WITNESS:** I don't know.  
2 **BY MS. EBRON:**  
3 Q. Do you know if someone at Bank of America  
4 prepared this assignment?  
5 **A. I don't.**  
6 Q. Do you know who would know who prepared the  
7 assignment?  
8 **A. I don't, no.**  
9 Q. Do you know why the assignment was to Bank of  
10 America, N.A. if the loan had been transferred to the  
11 trust with U.S. Bank as trustee already?  
12 **MS. MORGAN:** Objection; scope.  
13 **THE WITNESS:** I don't know.  
14 **BY MS. EBRON:**  
15 Q. The language in this assignment states that it's  
16 granting, assigning, and transferring all beneficial  
17 interest under the Deed of Trust that we marked as  
18 Exhibit 4; right?  
19 **A. Correct.**  
20 Q. And it also says together with the Note or Notes  
21 therein described or referred to. Do you see that?  
22 **A. Yes.**  
23 Q. So at this time, August 23rd of 2011, was the  
24 Promissory Note transferred to Bank of America?  
25 **MS. MORGAN:** Objection; scope.

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1       **THE WITNESS:** I'm sorry, the question again?  
2 **THE REPORTER:** "So at this time, August 23rd of  
3 2011, was the Promissory Note transferred to Bank of  
4 America?"  
5 **MS. MORGAN:** I'll add a form objection, as well.  
6 **THE WITNESS:** Can you rephrase the question, or  
7 elaborate on the question? I'm not sure if I follow.  
8 **BY MS. EBRON:**  
9 Q. At the time that this assignment of Deed of  
10 Trust was executed, was the Promissory Note assigned or  
11 transferred to Bank of America?  
12 **MS. MORGAN:** Same objections.  
13 **THE WITNESS:** So are you -- let me make sure I  
14 understand your question. Are you asking if at the same  
15 time that this assignment was executed for the Deed of  
16 Trust that it also included the Note?  
17 **BY MS. EBRON:**  
18 Q. Yes. Based on the language of this assignment.  
19 That's why I'm asking.  
20 **MS. MORGAN:** I'll also add an objection, it  
21 calls for a legal conclusion.  
22 **THE WITNESS:** Based on just the language in the  
23 document, that claims that, together with the Note.  
24 **BY MS. EBRON:**  
25 Q. I'm sorry, was that a yes?

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1 **A. I'm sorry, I'm just going off the language of**  
2 **the document that states that it's a Deed of Trust along**  
3 **with the Note. So yes.**  
4 Q. Do you know if there's any other entity that may  
5 have prepared this assignment besides Bank of America?  
6 **MS. MORGAN:** Objection; scope, calls for  
7 speculation.  
8 **THE WITNESS:** Just based on the document itself,  
9 it's possible that ReconTrust Company drafted the  
10 document.  
11 **BY MS. EBRON:**  
12 Q. And who is ReconTrust?  
13 **A. They were the trustee handling the foreclosure**  
14 **of the loan on behalf of the bank.**  
15 Q. At this time, on August 23rd, 2011, was there an  
16 active foreclosure of this loan?  
17 **MS. MORGAN:** Objection; scope.  
18 **THE WITNESS:** I don't recall.  
19 **BY MS. EBRON:**  
20 Q. I mean, I know we saw the Notice of Default  
21 before, but that was rescinded. Do you know if there  
22 was any other foreclosure activity after that rescission  
23 of the Notice of Default?  
24 **A. I don't recall.**  
25 Q. I'll show you a document that we'll mark as

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1 Exhibit 15.  
2 (Exhibit 15 was marked for identification.)  
3 **BY MS. EBRON:**  
4 Q. Do you recognize this document?  
5 **A. I do.**  
6 Q. What is it?  
7 **A. Exhibit 15 is a Corporate Assignment of Deed of**  
8 **Trust Nevada.**  
9 Q. Does this assignment also relate to the Deed of  
10 Trust marked as Exhibit 4?  
11 **A. Yes.**  
12 Q. When was it executed?  
13 **A. This assignment was executed on August 24th,**  
14 **2011.**  
15 Q. Do you know who Sandra L. Hickey is?  
16 **A. I do not.**  
17 Q. Who is this assignment from and who is it to?  
18 **MS. MORGAN:** Objection; the document speaks for  
19 itself.  
20 **THE WITNESS:** Exhibit 15, this assignment is  
21 from Mortgage Electronic Registration Systems, Inc. to  
22 Bank of America, N.A., successor by merger to BAC Home  
23 Loan Servicing, LP.  
24 **BY MS. EBRON:**  
25 Q. Do you know why there was an assignment executed

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1 on August 24th when one was already executed on  
2 August 23rd?  
3 **A. No.**  
4 Q. Do you know what the -- up on the top left --  
5 what TS Number refers to?  
6 **MS. MORGAN:** Objection; scope.  
7 **THE WITNESS:** I don't.  
8 **BY MS. EBRON:**  
9 Q. Do you know what Title Order Number refers to?  
10 **MS. MORGAN:** Objection; scope.  
11 **THE WITNESS:** No.  
12 **BY MS. EBRON:**  
13 Q. In your review of the file, did you see any  
14 other assignments of the Deed of Trust that we marked as  
15 Exhibit 4?  
16 **A. Not that comes to mind right now.**  
17 Q. I'm asking because I feel like there should be  
18 to U.S. Bank.  
19 **MS. MORGAN:** Yeah. I reviewed one in my review  
20 of my records, so --  
21 **MS. EBRON:** I'll keep going and I'll look for  
22 that, for the other one.  
23 **BY MS. EBRON:**  
24 Q. But let me show you a document that we'll mark  
25 as Exhibit 16.

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1 (Exhibit 16 was marked for identification.)  
2 **BY MS. EBRON:**  
3 Q. Just let me know when you're ready.  
4 **A. Okay, I'm ready.**  
5 Q. Do you recognize that document?  
6 **A. I do.**  
7 Q. What is it?  
8 **A. Exhibit 16 is the Notice of Trustee's Sale.**  
9 Q. And this one is also from the association;  
10 correct?  
11 **A. Yes.**  
12 Q. But this one is from August of 2012 -- or,  
13 sorry, it was recorded in August of 2012; is that right?  
14 **A. Yes, it was recorded August 2012.**  
15 Q. Did Bank of America receive a copy of this  
16 Notice of Trustee's Sale?  
17 **A. Yes.**  
18 Q. Do you know when Bank of America received a copy  
19 of this Notice of Trustee's Sale?  
20 **A. I do not recall.**  
21 Q. Is that something that you would be able to see  
22 in the AS-400 servicing notes?  
23 **A. I don't remember if it was notated in the AS-400**  
24 **or not.**  
25 Q. I'm going to show you some documents, multiple



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1 documents, that we'll mark as Exhibit 17.  
2 (Exhibit 17 was marked for identification.)  
3 **MS. EBRON:** We can go ahead and go off the  
4 record and give you a chance to review all those, and go  
5 grab the other assignment.  
6 (Recess taken.)  
7 **BY MS. EBRON:**  
8 Q. Back on the record.  
9 Exhibit 17 are documents that are Bates stamped  
10 USBANK000340 through USBANK000350. You've had a chance  
11 to look over these?  
12 **A. I did.**  
13 Q. Are these documents that were contained in Bank  
14 of America's business records in their imaging system?  
15 **A. Yes.**  
16 Q. And just to kind of go back for a second, when  
17 Countrywide transferred the loan to U.S. Bank as trustee  
18 for the trust, it remained as the servicer of the loan;  
19 right?  
20 **MS. MORGAN:** Objection; form.  
21 **THE WITNESS:** Based on my review, Countrywide's  
22 been the servicer since the loan originated.  
23 **BY MS. EBRON:**  
24 Q. Right. And then Bank of America became the  
25 servicer and then the merger happened, so sometime 2008,

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1 2009?  
2 **A. Right.**  
3 Q. And so as the servicer, would Bank of America  
4 during that time period have been acting on behalf of  
5 U.S. Bank?  
6 **MS. MORGAN:** Objection; form.  
7 **THE WITNESS:** Yes. We were servicing -- Bank of  
8 America was servicing the loan on behalf of U.S. Bank.  
9 **BY MS. EBRON:**  
10 Q. Did U.S. Bank, during the time period that Bank  
11 of America and Countrywide were involved, keep separate  
12 business records related to a homeowners association?  
13 **MS. MORGAN:** Objection; scope.  
14 **THE WITNESS:** Not to my knowledge.  
15 **BY MS. EBRON:**  
16 Q. What do you base that on?  
17 **A. It's based on my just time with the bank. I**  
18 **rarely ever see covenants or what have you from a**  
19 **homeowners association as part of bank records.**  
20 Q. Well, what about documents like the ones  
21 contained in Exhibit 17? Are those types of documents  
22 that would be maintained by U.S. Bank as the trustee for  
23 a loan that Bank of America was servicing?  
24 **A. The bank -- U.S. Bank would rely on Bank of**  
25 **America -- Countrywide or Bank of America -- to retain**

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1 **those documents and service the loan accordingly.**  
2 Q. Is it fair to say that U.S. Bank's business  
3 records, related to the day-to-day servicing of the  
4 loan, were maintained through Bank of America?  
5 **A. Yeah. Countrywide or Bank of America, yes.**  
6 Q. Okay. Looking at the first page of Exhibit 17,  
7 it's Bates stamped USBANK000340. Do you know what that  
8 is?  
9 **A. The first page of Exhibit 17 appears to be a --**  
10 **appears to be maybe a copy of an envelope or some sort**  
11 **of cover letter addressed to Countrywide Home Loans,**  
12 **Inc. It includes a bar code which appears to be a**  
13 **first-class mail reference.**  
14 Q. Do you know who stamped Foreclosure No. 6,  
15 October 19th, 2010, received, on the right-hand side of  
16 that document?  
17 **A. I don't know.**  
18 Q. Have you seen stamps like that before?  
19 **A. I don't recall if it actually had a -- I've seen**  
20 **foreclosure stamps before, yes.**  
21 Q. And is it -- or was it at that time, the policy  
22 and practice of Bank of America to stamp incoming mail?  
23 **A. In 2010, I don't recall.**  
24 Q. Do you have any reason to doubt that this  
25 document was received by Bank of America on

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1 October 19th, 2010?  
2 **A. I'm sorry, received by whom?**  
3 Q. Bank of America.  
4 **A. Well, the addressee is Countrywide Home Loans,**  
5 **Inc. It was part of the loan file, but whether it was**  
6 **received technically by Bank of America or not, I don't**  
7 **have any reason to doubt, given the merger of the**  
8 **documents.**  
9 Q. Let me ask you this: Was Countrywide Home  
10 Loans, Inc. part of the merger with Bank of America?  
11 **A. Yes.**  
12 Q. And looking at the next page that's Bates  
13 stamped USBANK000341, do you know if this page was  
14 attached -- or in the envelope that's copied on the  
15 previous page?  
16 **A. I don't know for sure.**  
17 Q. Do you know who wrote the handwritten reference  
18 at the top of the page on the left?  
19 **A. No.**  
20 Q. Do you know what that means?  
21 **MS. MORGAN:** Objection; calls for speculation.  
22 **THE WITNESS:** No, I don't.  
23 **BY MS. EBRON:**  
24 Q. Do you know what it says?  
25 **A. Well, there are a bunch of numbers. And before**

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<p>1 <b>the numbers, no, I don't.</b></p> <p>2 Q. Was -- was there a reference in the AS-400 to</p> <p>3 receipt of this Notice of Default on October 19th, 2010?</p> <p>4 <b>A. I don't remember.</b></p> <p>5 Q. Does a foreclosure stamp mean it was routed</p> <p>6 through a foreclosure department?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. So is it the foreclosure department that would</p> <p>9 have stamped -- stamped the document with the</p> <p>10 foreclosure stamp?</p> <p>11 <b>A. I don't know if it was the actual department</b></p> <p>12 <b>that did the stamp.</b></p> <p>13 Q. Or do you know if the mailroom had a foreclosure</p> <p>14 stamp that it would stamp when it was received?</p> <p>15 <b>MS. MORGAN:</b> Objection; scope.</p> <p>16 <b>THE WITNESS:</b> That is possible. I don't know</p> <p>17 for sure. I don't recall what the process was in 2010.</p> <p>18 <b>BY MS. EBRON:</b></p> <p>19 Q. Okay. Turning to the page Bates stamped</p> <p>20 USBANK000342, this is also a document that you saw</p> <p>21 within the imaging system?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And based on the foreclosure stamp on this page,</p> <p>24 would it be fair to say that there was a second copy of</p> <p>25 the Notice of Default that was received on or about</p>	<p>1 Q. Do you have any reason to doubt that the Notice</p> <p>2 of Trustee's Sale that is Bates stamped USBANK000345 is</p> <p>3 the document that was contained in the envelope, a copy</p> <p>4 of which is Bates stamped as USBANK000344?</p> <p>5 <b>A. I don't have any reason one way or the other to</b></p> <p>6 <b>know what was in the envelope.</b></p> <p>7 Q. Did Bank of America in 2011 have a policy,</p> <p>8 practice, or procedures for storing copies of</p> <p>9 foreclosure notices?</p> <p>10 <b>MS. MORGAN:</b> Objection; scope.</p> <p>11 <b>THE WITNESS:</b> I'm sorry, the question one more</p> <p>12 time.</p> <p>13 <b>BY MS. EBRON:</b></p> <p>14 Q. In 2011, did Bank of America have a policy,</p> <p>15 practice, or procedure for electronically storing</p> <p>16 foreclosure notices?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Did that practice, policy, or procedure include</p> <p>19 keeping a copy of the envelope and what was contained in</p> <p>20 the envelope?</p> <p>21 <b>A. I don't know about the practice of always</b></p> <p>22 <b>keeping a copy of the envelope. But definitely whatever</b></p> <p>23 <b>was contained within an envelope.</b></p> <p>24 Q. When you reviewed these documents in Bank of</p> <p>25 America's business records, were they in the same order</p>
Page 66	Page 68
<p>1 October 20th, 2010?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Looking at page USBANK000344, do you know what</p> <p>4 this page is?</p> <p>5 <b>A. 344 is a copy of an envelope.</b></p> <p>6 Q. And there's also a foreclosure stamp on the top</p> <p>7 right-hand of the page; correct?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. And the document following this envelope is a</p> <p>10 Notice of Trustee's Sale dated March 30th, 2011; is that</p> <p>11 correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. So based on the foreclosure stamp dated</p> <p>14 April 21st, 2011, is it fair to say that Bank of America</p> <p>15 through Countrywide received a copy of the Notice of</p> <p>16 Sale dated March 30th, 2011, on approximately</p> <p>17 April 21st, 2011?</p> <p>18 <b>A. Well, that's assuming this Notice of Sale, which</b></p> <p>19 <b>is Bates stamped 345, was included in the envelope Bates</b></p> <p>20 <b>344.</b></p> <p>21 Q. Do you have any reason to doubt that the Notice</p> <p>22 of Trustee's Sale Bates stamped USBANK000345 was the</p> <p>23 document contained in the envelope that's copied as</p> <p>24 USBANK000344?</p> <p>25 <b>A. I'm sorry, the question one more time.</b></p>	<p>1 or -- I mean, these were produced to us by U.S. Bank in</p> <p>2 this order. Do you know if that is how they were stored</p> <p>3 in Bank of America's business records?</p> <p>4 <b>A. They're typically stored in chronological order,</b></p> <p>5 <b>so I don't know if there was anything else stored</b></p> <p>6 <b>between October 2010 and April 2011.</b></p> <p>7 Q. Looking at the page Bates USBANK000346 --</p> <p>8 <b>A. Okay.</b></p> <p>9 Q. -- do you recognize this document?</p> <p>10 <b>A. I do.</b></p> <p>11 Q. What is that?</p> <p>12 <b>A. 346 is a copy of a -- basically an electronic</b></p> <p>13 <b>cover letter that the bank received from MERS.</b></p> <p>14 Q. When did the bank receive this from MERS?</p> <p>15 <b>A. The -- well, the 346 is dated on 8/15/2012.</b></p> <p>16 <b>There is a foreclosure date stamp of August 17th, 2012.</b></p> <p>17 Q. So it may have been received by the e-mail</p> <p>18 in-box on August 15th of 2012, and then by the</p> <p>19 foreclosure department on August 17th of 2012; is that</p> <p>20 right?</p> <p>21 <b>A. Well, it could be -- and, again, this is just</b></p> <p>22 <b>speculating -- that a hard copy was routed to the</b></p> <p>23 <b>foreclosure department on August 17th, 2012.</b></p> <p>24 Q. Were there any notes about this particular</p> <p>25 communication from MERS in the AS-400?</p>

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1 **A. You know, I don't remember.**  
2 Q. The next page that's Bates stamped USBANK000347,  
3 do you know what this is?  
4 **A. Yes.**  
5 Q. What is it?  
6 **A. This is just a general cover letter that we**  
7 **typically receive from MERS on any sort of document**  
8 **received by MERS and sent to the servicer.**  
9 Q. Looking at the next page, USBANK000348, do you  
10 know what this is?  
11 **A. Yes.**  
12 Q. What is it?  
13 **A. Again, this is just some -- an identifier that**  
14 **we typically receive from MERS when they forward**  
15 **documents to the servicer.**  
16 Q. And then the next page that's Bates stamped  
17 USBANK000349, do you know what this is?  
18 **A. 349 is a copy of the Notice of Trustee's Sale.**  
19 Q. And this one is dated June 14th, 2012; correct?  
20 **A. Yes.**  
21 Q. And it lists a sale date of September 5th, 2012?  
22 **A. Yes.**  
23 Q. And Bank of America received this before  
24 September 5th, 2012; correct?  
25 **A. Correct.**

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1 Q. Based on your review of Bank of America's  
2 business records, did you see any information that would  
3 lead you to doubt that the amount listed in the Notice  
4 of Sale was accurate?  
5 **MS. MORGAN:** Objection; scope.  
6 **THE WITNESS:** No.  
7 **BY MS. EBRON:**  
8 Q. In your review of the business records, did you  
9 see any information that would lead you to believe that  
10 the borrower was not delinquent on the homeowners  
11 association dues at the time of this notice?  
12 **A. No.**  
13 Q. Does Bank of America have any reason to doubt  
14 that the borrower was also given this Notice of  
15 Trustee's Sale?  
16 **MS. MORGAN:** Objection; calls for speculation,  
17 scope.  
18 **THE WITNESS:** We didn't know one way or the  
19 other whether the borrower received the notice.  
20 **BY MS. EBRON:**  
21 Q. I know sometimes in these files, you know, the  
22 borrower will call up or send in a letter that says  
23 something about the foreclosure proceedings, or a  
24 dispute that they have with the association. So did you  
25 see anything like that in Bank of America's business

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1 records?  
2 **A. Yes.**  
3 Q. And what did you see?  
4 **A. I saw a copy of a letter from the borrower**  
5 **regarding -- let's see -- it was -- she was trying to do**  
6 **a short sale and discovered through the tax records that**  
7 **another entity was the new owner of the property.**  
8 Q. Okay. And I'll show you a document that we'll  
9 mark as Exhibit 18.  
10 (Exhibit 18 was marked for identification and  
11 will be sealed as "Confidential.")  
12 **MS. MORGAN:** And just for clarification,  
13 Exhibit 18 was produced pursuant to a protective order,  
14 as was the Note that was attached as an exhibit earlier.  
15 And the testimony, with respect to the communications  
16 with the borrower, will also fall under the purview of  
17 that protective order.  
18 **MS. EBRON:** Well, I guess I should say I  
19 understand your position. I don't agree that the Note  
20 is confidential, but we do have a protective order in  
21 place, so --  
22 **MS. MORGAN:** Yes. I wasn't sure that the terms  
23 of the protective order contemplate testimony as well,  
24 so --  
25 ///

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1 **BY MS. EBRON:**  
2 Q. Yes. Have you had a chance to look at  
3 Exhibit 18?  
4 **A. Yes.**  
5 Q. Is this the communication or letter you were  
6 talking about?  
7 **A. Yes.**  
8 Q. Are there any other communications with the  
9 borrower about the association foreclosure sale  
10 contained in Bank of America's business records?  
11 **A. Not based on my review, no.**  
12 Q. In that first paragraph, the second sentence, it  
13 says: I have never received any Notice of Default or  
14 Foreclosures documents from Bank of America. Do you  
15 know if the Notice of Default that we looked at as  
16 Exhibit 9, do you know if that was ever mailed to the  
17 borrower?  
18 **MS. MORGAN:** Objection; scope.  
19 **THE WITNESS:** I don't know.  
20 **BY MS. EBRON:**  
21 Q. Do you know when the borrower had begun to be  
22 considered for a short sale?  
23 **A. No.**  
24 **MS. MORGAN:** Objection; scope.  
25 ///

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1 **BY MS. EBRON:**  
2 Q. Do you know if the borrower was considered for a  
3 short sale?  
4 **MS. MORGAN:** Scope.  
5 **THE WITNESS:** I don't know.  
6 **BY MS. EBRON:**  
7 Q. Going back to Exhibit 17, there's a page that's  
8 Bates stamped USBANK000350. Is it fair to say that  
9 that's a copy of an envelope that was addressed to MERS?  
10 **A. Yes.**  
11 Q. And that that copy, or at least a copy of the  
12 envelope, was provided to Bank of America at the same  
13 time as the Notice of Trustee's Sale?  
14 **A. Yes, from MERS.**  
15 Q. So Bank of America doesn't dispute that it  
16 received the Notice of Default and both Notices of  
17 Trustee's Sale; correct?  
18 **A. No.**  
19 Q. Did Bank of America ever pay the association any  
20 amounts after receiving the Notice of Default or Notice  
21 of Sale?  
22 **A. No.**  
23 Q. Do you know why not?  
24 **A. I don't.**  
25 Q. Did Bank of America ever contact the borrower

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1 about the delinquency with the association?  
2 **A. Not based on my review of the notes. I don't**  
3 **recall anything to that degree.**  
4 Q. Do you know if Countrywide considered the amount  
5 of the association dues when qualifying the borrower for  
6 this loan?  
7 **MS. MORGAN:** Objection; scope.  
8 **THE WITNESS:** You know, I don't know. In 2007,  
9 I don't know if that -- how that was handled.  
10 **BY MS. EBRON:**  
11 Q. Did U.S. Bank ever -- before having the loan put  
12 into the trust, did U.S. Bank look at how the borrower  
13 was qualified for the loan?  
14 **MS. MORGAN:** Objection; scope.  
15 **THE WITNESS:** I don't know.  
16 **MS. EBRON:** Off the record.  
17 (Discussion held off the record.)  
18 **MS. EBRON:** I'm going to show you a document  
19 that we will mark as Exhibit 19.  
20 (Exhibit 19 was marked for identification.)  
21 **THE WITNESS:** Okay.  
22 **BY MS. EBRON:**  
23 Q. Do you recognize this document?  
24 **A. I do.**  
25 Q. What is it?

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1 **A. Exhibit 19 is a Corporate Assignment of Deed of**  
2 **Trust Nevada.**  
3 Q. And who is it from and who is it to?  
4 **A. The assignment is from Bank of America, N.A.**  
5 **successor by merger to BAC Home Loan Servicing, LP to**  
6 **U.S. Bank National Association as Trustee for the**  
7 **Holders of the J.P. Morgan Mortgage Trust 2007-S3**  
8 **Mortgage Pass-Through Certificates Series 2007-S3.**  
9 Q. When was this executed?  
10 **A. April 16th, 2013.**  
11 Q. And who prepared this assignment?  
12 **MS. MORGAN:** Objection; scope.  
13 **THE WITNESS:** It's not noted on the document who  
14 prepared it.  
15 **BY MS. EBRON:**  
16 Q. Do you know who Sandra Brown Waites is?  
17 **MS. MORGAN:** Objection; scope.  
18 **THE WITNESS:** No.  
19 **BY MS. EBRON:**  
20 Q. Do you know why the assignment to U.S. Bank  
21 wasn't until April of 2013 if U.S. Bank obtained its  
22 interest in 2007?  
23 **MS. MORGAN:** Objection; scope.  
24 **THE WITNESS:** I do not.  
25 ///

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1 **BY MS. EBRON:**  
2 Q. Do you know if Bank of America or U.S. Bank  
3 reviewed the recorded documents before -- or, sorry --  
4 the other documents recorded against the property before  
5 recording this Deed of Trust?  
6 **MS. MORGAN:** Objection; scope.  
7 **THE WITNESS:** I don't know.  
8 **BY MS. EBRON:**  
9 Q. I'll show you a document that we're going to  
10 mark as Exhibit 20.  
11 (Exhibit 20 was marked for identification.)  
12 **THE WITNESS:** Okay.  
13 **BY MS. EBRON:**  
14 Q. Do you recognize this document?  
15 **A. I do.**  
16 Q. And what is it?  
17 **A. Exhibit 20 is a Trustee's Deed Upon Sale.**  
18 Q. Is this something that is contained in Bank of  
19 America's business records?  
20 **A. I did not find it in our business records. I**  
21 **just viewed it in preparation for today.**  
22 Q. Did Bank of America attend the auction on  
23 September 5th, 2012?  
24 **A. Not to my knowledge.**  
25 Q. Did U.S. Bank attend the auction on

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<p>1 September 5th, 2012?</p> <p>2 <b>A. Not to my knowledge.</b></p> <p>3 Q. Do you know why not?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Does Bank of America or U.S. Bank have any</p> <p>6 information contained in its business records about the</p> <p>7 events of the auction on September 5th, 2012?</p> <p>8 <b>A. No.</b></p> <p>9 Q. Does Bank of America have any reason to doubt</p> <p>10 the Notice of Sale that we marked as Exhibit 16 was</p> <p>11 posted on the property?</p> <p>12 <b>MS. MORGAN:</b> Objection; scope.</p> <p>13 <b>THE WITNESS:</b> I'm sorry, the question is, do we</p> <p>14 have any knowledge or any doubt that it was posted?</p> <p>15 <b>BY MS. EBRON:</b></p> <p>16 Q. Correct.</p> <p>17 <b>A. No. One way or the other.</b></p> <p>18 Q. Does Bank of America have any information or any</p> <p>19 reason to doubt, based on its business records, that the</p> <p>20 Notice of Trustee's Sale was published in a newspaper?</p> <p>21 <b>MS. MORGAN:</b> Objection; scope.</p> <p>22 <b>THE WITNESS:</b> Don't have -- there was nothing in</p> <p>23 the business records one way or the other.</p> <p>24 <b>BY MS. EBRON:</b></p> <p>25 Q. Does Bank of America have any information about</p>	<p>1 <b>THE WITNESS:</b> We don't have any information one</p> <p>2 way or the other.</p> <p>3 <b>BY MS. EBRON:</b></p> <p>4 Q. And to be clear, I'm not asking you to</p> <p>5 speculate. I'm just asking you, based on what you've</p> <p>6 seen in your business records, do you have any</p> <p>7 information about that?</p> <p>8 <b>A. Correct. And, yes, I understand.</b></p> <p>9 Q. Does Bank of America have any information about</p> <p>10 whether or not the Notice of Default was posted on the</p> <p>11 property?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Did Bank of America ever hire outside counsel to</p> <p>14 handle the foreclosure notices received from the</p> <p>15 association?</p> <p>16 <b>A. No.</b></p> <p>17 Q. And just to be clear, before the association</p> <p>18 foreclosure sale?</p> <p>19 <b>A. No.</b></p> <p>20 Q. At the time those notices were received in 2010,</p> <p>21 and 2011 and 2012, I guess, did Bank of America have a</p> <p>22 policy or procedure for handling association foreclosure</p> <p>23 notices?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And what was that policy?</p>
Page 78	Page 80
<p>1 whether the Notice of Trustee's Sale was posted in three</p> <p>2 public places?</p> <p>3 <b>MS. MORGAN:</b> Objection; scope.</p> <p>4 <b>THE WITNESS:</b> I don't have any information one</p> <p>5 way or the other.</p> <p>6 <b>BY MS. EBRON:</b></p> <p>7 Q. Does Bank of America have any information about</p> <p>8 whether or not the Notice of Trustee's Sale was</p> <p>9 personally served on the borrower?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Looking back at Exhibit 11, which is the Notice</p> <p>12 of Delinquent Assessments --</p> <p>13 <b>A. Okay.</b></p> <p>14 Q. -- does Bank of America have any information or</p> <p>15 reason to -- information about, or reason to doubt, that</p> <p>16 the Notice of Delinquent Assessment was mailed to the</p> <p>17 borrower?</p> <p>18 <b>A. The bank doesn't have information one way or the</b></p> <p>19 <b>other.</b></p> <p>20 Q. Looking at Exhibit 12, does Bank of America have</p> <p>21 any information about whether or not the Notice of</p> <p>22 Default and Election to Sell Under Homeowners</p> <p>23 Association Lien was mailed to the borrower?</p> <p>24 <b>MS. MORGAN:</b> Objection; scope, calls for</p> <p>25 speculation.</p>	<p>1 <b>A. Just, in general, the notices are sent -- we</b></p> <p>2 <b>hire counsel, a notice is sent to counsel so they can be</b></p> <p>3 <b>evaluated to determine if we are required to pay them.</b></p> <p>4 Q. But that didn't happen in this case; right?</p> <p>5 <b>A. Correct.</b></p> <p>6 Q. Any idea why?</p> <p>7 <b>A. No.</b></p> <p>8 Q. That's something that you looked for; right?</p> <p>9 <b>A. Right.</b></p> <p>10 Q. Just a couple more documents. I'll show you a</p> <p>11 document that we'll mark as Exhibit 21. This is Bates</p> <p>12 stamped USBANK000117 through USBANK000121.</p> <p>13 (Exhibit 21 was marked for identification.)</p> <p>14 <b>BY MS. EBRON:</b></p> <p>15 Q. Do you recognize this document or documents?</p> <p>16 <b>A. I do not. And just for the record, part of 120</b></p> <p>17 <b>and 121 has been cut off.</b></p> <p>18 Q. Right. And I think it is for all of the pages.</p> <p>19 This is one that I didn't catch in the reprint.</p> <p>20 But can you tell from the face of the document</p> <p>21 what it is?</p> <p>22 <b>A. It is a Quitclaim Deed.</b></p> <p>23 Q. And a Quitclaim Deed to the borrower in this</p> <p>24 case, right, from her spouse?</p> <p>25 <b>MS. MORGAN:</b> Objection; the document speaks for</p>

1    itself.

2       **THE WITNESS:** Yes. That's how it's outlined on

3    Page 117.

4       **BY MS. EBRON:**

5       Q. Is this something that would normally be

6       contained in Bank of America's business records?

7       **A. Yes.**

8       Q. And it may be there; you just didn't review

9       every document in the origination file; is that correct?

10      **A. Correct.**

[illegible]

Rank	Length (approx. % of total)
1	95
2	85
3	75
4	95
5	85
6	95
7	85
8	95
9	85
10	75
11	85
12	95
13	85
14	75
15	95
16	85
17	95
18	95
19	5
20	75

Row	Bar Length (approx. %)
1	55
2	85
3	90
4	15
5	40
6	85
7	75
8	15
9	100
10	65
11	15
12	85
13	30
14	95
15	65
16	100
17	100
18	95
19	100
20	65
21	15
22	100
23	65
24	15

[illegible]

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 Q. Back in 2010, when ReconTrust recorded the  
12 Notice of Default and Election to Sell Under Deed of  
13 Trust that we looked at in Exhibit 9, would it have been  
14 the policy, practice, and procedure of ReconTrust or  
15 Bank of America to have a title report or a Trustee's  
16 Sale Guarantee before recording a Notice of Default?  
17 A. Yes.  
18 Q. So -- well, did you see a Trustee's Sale  
19 Guarantee or a title report from 2010?  
20 A. Not -- I don't recall one way or the other.  
21 Q. Do you know the specific date that the loan was  
22 put into the trust?  
23 A. No.  
24 Q. The trust agreement that we looked at in  
25 Exhibit 6, is dated July 1st, 2007; is that right?

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1 A. Sorry, Exhibit 6?  
2 Q. Correct.  
3 A. July 1st, 2007?  
4 Q. Yes.  
5 A. Yes.  
6 Q. So is that an accurate date as to when the trust  
7 was formed?  
8 A. Well, the July 1st, 2007, is notated on  
9 USBANK351, claims that that's the date of the trust  
10 agreement.  
11 Q. Right. And then on the page that's Bates  
12 stamped USBANK000353 in the Recitals, it also mentions  
13 the Pooling and Servicing Agreement as dated after  
14 July 1st of 2007. Do you see that?  
15 A. Yes.  
16 Q. Do you see any reference to an earlier date as  
17 to when the trust would have been formed before these  
18 other documents, the trust agreement and the Pooling and  
19 Servicing Agreement?  
20 A. Yes.  
21 Q. Where?  
22 A. USBANK357 at the very top, the prospectus dated  
23 April 26th, 2007.  
24 Q. What's a prospectus?  
25 A. Well, flipping through this Exhibit 6, there's

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1 no specific definition of prospectus. But, in general  
2 terms, it's the preliminary terms of an agreement.  
3 Q. So is a prospectus something that would be  
4 prepared in advance of an agreement before it was  
5 formally agreed to?  
6 MS. MORGAN: Objection; calls for a legal  
7 conclusion and exceeds the scope of the topics.  
8 THE WITNESS: Again, that's my own definition,  
9 given that it's not -- the specific definition is not  
10 outlined in this document.  
11 BY MS. EBRON:  
12 Q. Do you know if -- and I apologize if I asked  
13 this before -- but do you know if U.S. Bank ordered a  
14 title report for this property before the loan was put  
15 into the trust?  
16 MS. MORGAN: Objection; scope.  
17 THE WITNESS: That's typically left up to the  
18 servicer, so I don't know.  
19 BY MS. EBRON:  
20 Q. Back on Exhibit 23, it says that the -- well,  
21 I'm paraphrasing -- that the Deed of Trust, the one that  
22 we marked as Exhibit 24 (sic), was erroneously or  
23 fraudulently reconveyed, and it references the Full  
24 Reconveyance that we marked as Exhibit 22. Do you see  
25 that?

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1 A. Yes.  
2 Q. Do you know if the reconveyance was erroneous or  
3 fraudulent?  
4 MS. MORGAN: Objection; scope.  
5 THE WITNESS: I don't.  
6 BY MS. EBRON:  
7 Q. In your review of the file, did you see any  
8 evidence that there was an investigation into the  
9 reconveyance?  
10 MS. MORGAN: Objection; scope.  
11 THE WITNESS: I don't recall.  
12 BY MS. EBRON:  
13 Q. Did you see any evidence that anyone was  
14 prosecuted for committing fraud?  
15 A. No.  
16 MS. EBRON: I'm going to show you a document  
17 that we'll mark as Exhibit 24.  
18 (Exhibit 24 was marked for identification.)  
19 BY MS. EBRON:  
20 Q. And I actually think there may be multiple  
21 documents. They're Bates stamped USBANK000382 through  
22 000390.  
23 A. Okay.  
24 Q. Do you recognize these documents?  
25 A. I do. They're various letters that were sent by

<p style="text-align: right;">Page 89</p> <p>1 <b>Bank of America to various entities while we were</b> 2 <b>servicing the loan.</b> 3 Q. And the page that's Bates stamped USBANK000382, 4 does it state that effective November 30th, 2013, Bank 5 of America, N.A. will be transferring servicing 6 responsibility for the first-lien mortgage listed above 7 to Nationstar Mortgage, LLC? 8 <b>A. Yes.</b> 9 Q. So is it fair to say that as of November 30th, 10 2013, Nationstar took over servicing and Bank of America 11 was no longer servicer for this loan? 12 <b>A. Correct.</b> 13 Q. I just wanted to nail down the actual date. 14 <b>MS. EBRON:</b> Counsel, if you want to go ahead and 15 ask questions -- 16 <b>MR. ROTHENBERG:</b> You've actually covered them 17 all, so -- 18 <b>MS. EBRON:</b> Let me just look really quick and 19 see if there's anything else. 20 <b>BY MS. EBRON:</b> 21 Q. Okay, I do have a couple more. 22 Does Bank of America currently have any interest 23 in the First Deed of Trust? 24 <b>A. No.</b> 25 Q. Does Bank of America have any current interest</p>	<p style="text-align: right;">Page 91</p> <p>1 America; correct? 2 <b>MS. MORGAN:</b> Objection; form, and calls for a 3 legal conclusion. 4 <b>THE WITNESS:</b> I'm sorry, can we go off? I 5 thought there was another assignment. It's -- weren't 6 we searching for another assignment? 7 <b>BY MS. EBRON:</b> 8 Q. Oh, yeah. We did. We got that. That was to 9 U.S. Bank in 2013. 10 <b>A. What exhibit number was that? I'm sorry.</b> 11 Q. Let me find it for you. 12 <b>A. Oh, here it is, 19.</b> 13 Q. So it's Exhibit 19. 14 <b>A. Okay. So, again, to make sure I understand your</b> 15 <b>question, as of the date of the association foreclosure</b> 16 <b>sale, was there an assignment to Bank of America?</b> 17 Q. Yes. 18 <b>A. Yes.</b> 19 Q. And that assignment also referenced the Note? 20 <b>MS. MORGAN:</b> Objection; the document speaks for 21 itself. 22 <b>THE WITNESS:</b> Yes. 23 <b>BY MS. EBRON:</b> 24 Q. But your testimony is that Bank of America did 25 not own the Note at that time?</p>
<p style="text-align: right;">Page 90</p> <p>1 in the Promissory Note? 2 <b>A. No.</b> 3 Q. And just to be clear, on the date of the 4 association foreclosure sale on September 5th, 2012, 5 Bank of America was only the servicer of the loan; 6 correct? 7 <b>MS. MORGAN:</b> Hang on. What was the question? 8 <b>BY MS. EBRON:</b> 9 Q. On the date of the association foreclosure sale 10 on September 5th, 2012, Bank of America was only the 11 servicer of the loan? 12 <b>A. Correct.</b> 13 <b>MS. MORGAN:</b> Wait. Objection; form. 14 <b>BY MS. EBRON:</b> 15 Q. Was Bank of America the investor on 16 September 5th of 2012? 17 <b>A. No.</b> 18 Q. And there was a recorded assignment of the Deed 19 of Trust to Bank of America at that time; correct? 20 <b>A. I'd have to go back and look at the dates again.</b> 21 Q. There were two. There were two assignments at 22 that time. 23 <b>A. I'm sorry, the question again?</b> 24 Q. At the time of the association foreclosure sale, 25 there was an assignment of the Deed of Trust to Bank of</p>	<p style="text-align: right;">Page 92</p> <p>1 <b>MS. MORGAN:</b> Objection; form. 2 <b>THE WITNESS:</b> Correct. 3 <b>BY MS. EBRON:</b> 4 Q. When did Bank of America learn about SFR's 5 interest in the property? 6 <b>A. How are you defining "interest"?</b> 7 Q. As explained in the Trustee's Deed Upon Sale. 8 <b>A. I am not sure when we became aware.</b> 9 Q. Is there anything in Bank of America's business 10 records that suggest that it knew about SFR's interest 11 in the property before the letter was sent by the 12 borrower, the one that we marked as Exhibit 18? 13 <b>A. And, again, you're defining a trust as outlined</b> 14 <b>in the Trustee's Sale Deed?</b> 15 Q. Yes. The Trustee's Deed Upon Sale, the one that 16 we marked as Exhibit 20. 17 <b>A. You know, I don't remember.</b> 18 Q. Is it fair to say that as of October 29th, 2012, 19 Bank of America would have known due to the letter from 20 the borrower? 21 <b>MS. MORGAN:</b> Objection; form. 22 <b>THE WITNESS:</b> I'm sorry, the question one more 23 time. 24 <b>THE REPORTER:</b> "Is it fair to say that as of 25 October 29th, 2012, Bank of America would have known due</p>



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1 to the letter from the borrower?"  
2 **THE WITNESS:** Yes.  
3 **BY MS. EBRON:**  
4 Q. How much did Bank of America pay for its  
5 interest in the First Deed of Trust?  
6 **MS. MORGAN:** Objection; form.  
7 **THE WITNESS:** Again, how are you defining  
8 "interest"?  
9 **BY MS. EBRON:**  
10 Q. Well, we can break it down if that's easier.  
11 Did Bank of America pay anything for the  
12 servicing rights?  
13 **A. No, not that I'm aware of.**  
14 Q. Was Bank of America paid to be the servicer?  
15 **A. Yes.**  
16 Q. How much did the trust of which U.S. Bank was a  
17 trustee pay for its interest in the loan?  
18 **MS. MORGAN:** Objection; form.  
19 **THE WITNESS:** I don't know.  
20 **BY MS. EBRON:**  
21 Q. Did U.S. Bank pay anything to be the investor?  
22 **A. I don't know.**  
23 Q. Who would know that?  
24 **A. I am not sure.**  
25 Q. When the loan was transferred to the trust, did

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1 Countrywide or Bank of America receive any compensation?  
2 **A. I don't know.**  
3 Q. Who would know that?  
4 **A. In 2007, I'm not sure.**  
5 Q. Do you know where you would look to find out  
6 that information?  
7 **A. I don't know if it's notated in the PSA or not.**  
8 Q. Can you tell me what you did to prepare for  
9 Topic No. 5 in Bank of America's deposition notice?  
10 **A. No. 5?**  
11 Q. Correct.  
12 **A. I wasn't sure what was meant by "transferring**  
13 **its interest" in the Deed of Trust.**  
14 Q. So did you ask what that meant?  
15 **THE WITNESS:** Not that I recall.  
16 **MS. MORGAN:** Objection, to the extent it calls  
17 for attorney-client privilege.  
18 **THE WITNESS:** Not that I recall.  
19 **BY MS. EBRON:**  
20 Q. So because you didn't understand what  
21 "transferred its interest" meant, you didn't do anything  
22 to prepare for the topic?  
23 **MS. MORGAN:** Objection; misstates prior  
24 testimony.  
25 ///

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1 **BY MS. EBRON:**  
2 Q. Well, did you do anything?  
3 **A. Well, as I stated earlier, as I wasn't sure what**  
4 **the question meant, then it was hard to prepare for.**  
5 Q. Did you make any attempt to prepare for  
6 Topic No. 5?  
7 **A. Well, again --**  
8 **MS. MORGAN:** I'll object to the extent it calls  
9 for attorney-client privilege.  
10 **THE WITNESS:** And being unclear of the question,  
11 it made it difficult to prepare for.  
12 **BY MS. EBRON:**  
13 Q. What about the part that says the amount BANA  
14 was paid for its interest in the First Deed of Trust  
15 and/or underlying Promissory Note? Did you understand  
16 what that meant?  
17 **A. Not what it meant by that part of the question**  
18 **meaning its interest.**  
19 Q. What did you do to prepare for Topic No. 6?  
20 **A. I reviewed our servicing records.**  
21 Q. Anything else?  
22 **A. Not that I can recall.**  
23 Q. We already established that you didn't talk to  
24 anybody at ReconTrust about the Rescission of Full  
25 Reconveyance; right?

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1 **A. Correct.**  
2 Q. What did you do to prepare for Topic Number 2 in  
3 U.S. Bank's deposition notice that's marked as Exhibit  
4 No. 2?  
5 **A. I looked for the information in our servicing**  
6 **records.**  
7 Q. Where specifically in your servicing records did  
8 you look?  
9 **A. In our AS-400 servicing notes.**  
10 Q. Is that something that you would typically see  
11 in the AS-400 notes?  
12 **A. I'm not sure.**  
13 Q. Have you ever seen the amount paid by the  
14 investor in the AS-400 servicing notes in all of the  
15 files that you've ever reviewed?  
16 **MS. MORGAN:** Objection; scope.  
17 **THE WITNESS:** You know, I only looked for it --  
18 I can only attest to this loan, and I didn't find  
19 information.  
20 **BY MS. EBRON:**  
21 Q. Did you look for it in the Lotus Note database?  
22 **A. No.**  
23 Q. But that's where you found the Pooling and  
24 Servicing Agreement?  
25 **A. Correct.**

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1 Q. Where was the trust agreement stored in Bank of  
2 America's business records?  
3 **MS. MORGAN:** Objection; scope.  
4 **THE WITNESS:** The trust agreement?  
5 **BY MS. EBRON:**  
6 Q. Right. The one that we have marked as  
7 Exhibit 6.  
8 **A. I don't know. It has a web site, sec.gov web**  
9 **site noted on the document.**  
10 Q. Is that where Bank of America stores trust  
11 agreements?  
12 **MS. MORGAN:** Objection; scope.  
13 **THE WITNESS:** I don't know, again, where this  
14 particular document was retrieved from.  
15 **BY MS. EBRON:**  
16 Q. Do you know if U.S. Bank keeps a copy of the  
17 documents in which it had obtained an interest in the  
18 Deed of Trust?  
19 **MS. MORGAN:** Objection; scope.  
20 **THE WITNESS:** I don't know.  
21 **BY MS. EBRON:**  
22 Q. Did you ask anyone at U.S. Bank?  
23 **A. No.**  
24 Q. Why not?  
25 **MS. MORGAN:** Objection; scope.

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1 **BY MS. EBRON:**  
2 Q. It's 2 of U.S. Bank depo notice.  
3 **MS. MORGAN:** But you're asking where documents  
4 are stored, and I don't think that's part of 2, so  
5 that's my objection.  
6 **MS. EBRON:** I actually just asked if she talked  
7 to anybody at U.S. Bank and --  
8 **MS. MORGAN:** About where they were stored;  
9 right?  
10 **MS. EBRON:** If they had any documents.  
11 **MS. MORGAN:** Right. And I'm objecting that it's  
12 outside the scope of Topic Number 2.  
13 But to the extent you know, you can answer.  
14 **THE WITNESS:** So what was the question?  
15 (Discussion held off the record.)  
16 **BY MS. EBRON:**  
17 Q. Okay. Let's start with this one: Did you ask  
18 U.S. Bank if they had any documents about the  
19 transaction through which they obtained an interest in  
20 this loan?  
21 **MS. MORGAN:** Objection; scope.  
22 **THE WITNESS:** No.  
23 **BY MS. EBRON:**  
24 Q. Is there a reason why you didn't talk to someone  
25 at U.S. Bank?

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1 **A. No.**  
2 Q. So am I correct to understand that once you  
3 looked through the AS-400 before and did not see any  
4 information about the price the trust paid for the loan,  
5 that you stopped looking?  
6 **MS. MORGAN:** Objection; misstates prior  
7 testimony.  
8 **THE WITNESS:** I believe I also said reviewed  
9 the -- pulling the servicing agreement.  
10 **BY MS. EBRON:**  
11 Q. And was there any information in there about the  
12 price?  
13 **A. Not that I recall.**  
14 Q. And I believe earlier you said that you did not  
15 see a schedule of loans?  
16 **A. Correct.**  
17 Q. Did you look for a schedule of loans?  
18 **A. Yes.**  
19 Q. And where did you look?  
20 **A. In Lotus Notes.**  
21 Q. In your review of the file, did you see any  
22 other communications with the association or Alessi &  
23 Koenig other than the ones in Exhibit 17? Exhibit 17  
24 were the foreclosure notes that were received by Bank of  
25 America.

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1 **A. No.**  
2 Q. And besides the letter in Exhibit 18, you didn't  
3 see any additional communications with the borrower  
4 about the association lien, foreclosure or assessments?  
5 **A. Correct.**  
6 Q. Was there anything that the association did that  
7 prevented Bank of America from making a payment on the  
8 lien?  
9 **A. Not to my knowledge.**  
10 Q. Similarly, was there anything that Alessi &  
11 Koenig did that prevented Bank of America from making a  
12 payment on the association lien?  
13 **MS. MORGAN:** Objection; exceeds the scope.  
14 **THE WITNESS:** Not to my knowledge.  
15 **BY MS. EBRON:**  
16 Q. Did Bank of America ever file a civil or  
17 administrative action challenging the association lien  
18 or foreclosure sale before the date of the foreclosure  
19 sale?  
20 **A. Not to my knowledge.**  
21 Q. Are there any internal communications about the  
22 association foreclosure notices? I know you mentioned  
23 that there were some servicing notes, but did you see  
24 any references to communications about the foreclosure  
25 notices?

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<p>1 <b>A. Not that I can recall, no.</b></p> <p>2 Q. Did you look in the MRT file?</p> <p>3 <b>A. The MRT file?</b></p> <p>4 Q. Yes.</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And did you see any reference to the association</p> <p>7 foreclosure or lien in the MRT file?</p> <p>8 <b>A. No.</b></p> <p>9 Q. And that's where you would expect to see</p> <p>10 information about whether or not outside counsel was</p> <p>11 hired in relation to the foreclosure notices?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Was U.S. Bank aware of any other entity at the</p> <p>14 time of the association foreclosure sale that claimed an</p> <p>15 interest in the First Deed of Trust?</p> <p>16 <b>A. I didn't hear all that.</b></p> <p>17 Q. Was U.S. Bank aware of any other entity that</p> <p>18 claimed an interest in the first Deed of Trust at the</p> <p>19 time of the association foreclosure sale?</p> <p>20 <b>MS. MORGAN:</b> Objection; form, calls for a legal</p> <p>21 conclusion.</p> <p>22 <b>THE WITNESS:</b> I don't know.</p> <p>23 <b>BY MS. EBRON:</b></p> <p>24 Q. You would have seen in your review of the</p> <p>25 records if, for example, Fannie Mae claimed an interest</p>	<p>1 Q. Did U.S. Bank take any action to protect its</p> <p>2 interest in the First Deed of Trust after the</p> <p>3 association was enforcing its lien on the property?</p> <p>4 <b>MS. MORGAN:</b> Objection; form, calls for a legal</p> <p>5 conclusion.</p> <p>6 <b>THE WITNESS:</b> Not to my knowledge.</p> <p>7 <b>BY MS. EBRON:</b></p> <p>8 Q. Did U.S. Bank have any practices, policies, or</p> <p>9 procedures applicable to the property for handling</p> <p>10 association liens? That's from origination to the date</p> <p>11 of the foreclosure sale.</p> <p>12 <b>A. Not to my knowledge.</b></p> <p>13 Q. What is U.S. Bank's factual basis for its</p> <p>14 foundation that the First Deed of Trust was not</p> <p>15 extinguished by the association foreclosure sale?</p> <p>16 <b>MS. MORGAN:</b> Objection; calls for a legal</p> <p>17 conclusion, and form.</p> <p>18 <b>THE WITNESS:</b> The question again?</p> <p>19 (Discussion held off the record.)</p> <p>20 <b>MS. EBRON:</b> What is U.S. Bank's factual basis</p> <p>21 for its allegation that the First Deed of Trust was not</p> <p>22 extinguished by the association foreclosure sale?</p> <p>23 <b>MS. MORGAN:</b> Same objections.</p> <p>24 <b>THE WITNESS:</b> That the Deed of Trust was not</p> <p>25 extinguished?</p>
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<p>1 in the Deed of Trust or the loan at the time of the</p> <p>2 sale?</p> <p>3 <b>A. I'm not sure I follow your question.</b></p> <p>4 Q. Do you know if this was ever a Fannie Mae loan?</p> <p>5 <b>A. It was not.</b></p> <p>6 Q. Do you know if this was ever a Freddie Mac loan?</p> <p>7 <b>A. It was not.</b></p> <p>8 Q. Did you know if this loan was ever FHA insured?</p> <p>9 <b>A. It was not.</b></p> <p>10 <b>(Discussion held off the record.)</b></p> <p>11 <b>MS. EBRON:</b> Let's stay off the record for a</p> <p>12 second.</p> <p>13 (Pause in proceedings.)</p> <p>14 <b>BY MS. EBRON:</b></p> <p>15 Q. Were there any communications between U.S. Bank</p> <p>16 and Bank of America that mention the association lien,</p> <p>17 assessments, or foreclosure as it relates to the</p> <p>18 property?</p> <p>19 <b>A. No.</b></p> <p>20 Q. And I asked before about Bank of America</p> <p>21 attempting -- or not attempting to make a payment -- but</p> <p>22 is that the same for U.S. Bank? Is it fair to say that</p> <p>23 U.S. Bank did not attempt to make any payment on the</p> <p>24 association lien?</p> <p>25 <b>A. Correct.</b></p>	<p>1 <b>BY MS. EBRON:</b></p> <p>2 Q. Correct.</p> <p>3 <b>A. I'm not sure.</b></p> <p>4 Q. What did you do to prepare for Topic No. 17 in</p> <p>5 U.S. Bank's depo notice?</p> <p>6 <b>MS. MORGAN:</b> And I'll object to the extent it</p> <p>7 calls for information protected by the attorney-client</p> <p>8 privilege.</p> <p>9 <b>THE WITNESS:</b> I reviewed the documents that --</p> <p>10 some of the documents that were produced, including the</p> <p>11 responses.</p> <p>12 <b>BY MS. EBRON:</b></p> <p>13 Q. What is -- sorry. Was there anything else?</p> <p>14 <b>A. No.</b></p> <p>15 Q. What is U.S. Bank's factual basis for its</p> <p>16 allegation, if any, that SFR is not a bona fide</p> <p>17 purchaser for value?</p> <p>18 <b>MS. MORGAN:</b> Objection; calls for a legal</p> <p>19 conclusion.</p> <p>20 <b>THE WITNESS:</b> How are you defining "bona fide</p> <p>21 purchaser"?</p> <p>22 <b>BY MS. EBRON:</b></p> <p>23 Q. Well, I can break it down, the question.</p> <p>24 Is there a presale dispute that Bank of America</p> <p>25 or U.S. Bank contends it had with the association?</p>

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<p>1 <b>A. Not that I'm aware of.</b></p> <p>2 Q. Is there anything about the sale itself that</p> <p>3 U.S. Bank claims was unfair?</p> <p>4 <b>MS. MORGAN:</b> Objection; form.</p> <p>5 <b>THE WITNESS:</b> Not that I'm aware.</p> <p>6 <b>BY MS. EBRON:</b></p> <p>7 Q. Does U.S. Bank contend that SFR knew something</p> <p>8 before the sale that would have caused SFR to know about</p> <p>9 a presale dispute?</p> <p>10 <b>MS. MORGAN:</b> Objection; form.</p> <p>11 <b>THE WITNESS:</b> Yeah, can you repeat the question?</p> <p>12 I'm not sure --</p> <p>13 <b>BY MS. EBRON:</b></p> <p>14 Q. It's hard, because I think you just said that</p> <p>15 there was a presale dispute, so --</p> <p>16 <b>A. I don't think I understand.</b></p> <p>17 Q. Does U.S. Bank allege that SFR knew there was</p> <p>18 some type of problem with the association foreclosure</p> <p>19 sale before it purchased the property?</p> <p>20 <b>MS. MORGAN:</b> Objection; calls for a legal</p> <p>21 conclusion, form.</p> <p>22 <b>THE WITNESS:</b> The question one more time. I'm</p> <p>23 sorry.</p> <p>24 <b>THE REPORTER:</b> "Does U.S. Bank allege that SFR</p> <p>25 knew there was some type of problem with the association</p>	<p>1 What is U.S. Bank's factual basis for its allegation, if</p> <p>2 any, that the circumstances surrounding the association</p> <p>3 foreclosure sale constitute unfairness?</p> <p>4 <b>THE WITNESS:</b> I don't know.</p> <p>5 <b>MS. MORGAN:</b> Objection; calls for a legal</p> <p>6 conclusion.</p> <p>7 <b>BY MS. EBRON:</b></p> <p>8 Q. And are there any provisions in the Pooling and</p> <p>9 Servicing Agreement that reference the association or</p> <p>10 are applicable to association liens?</p> <p>11 <b>A. Not that I've seen.</b></p> <p>12 Q. During the time leading up to the association</p> <p>13 foreclosure sale, did U.S. Bank have a specific policy</p> <p>14 that it required its servicers to follow when it came to</p> <p>15 association foreclosure liens -- or association</p> <p>16 foreclosure sales?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And what was that?</p> <p>19 <b>A. Well, it's just the general practice that the</b></p> <p>20 <b>servicer is to protect the priority lien, the mortgage</b></p> <p>21 <b>loan lien according to applicable state laws.</b></p> <p>22 Q. Is there something in the agreement between</p> <p>23 U.S. Bank and its servicer that provides remedies to</p> <p>24 U.S. Bank if the servicer does not follow that general</p> <p>25 practice?</p>
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<p>1 foreclosure sale before it purchased the property?"</p> <p>2 <b>THE WITNESS:</b> Well, U.S. Bank doesn't know what</p> <p>3 SFR was aware of, so it's hard to say one way or the</p> <p>4 other.</p> <p>5 <b>BY MS. EBRON:</b></p> <p>6 Q. Okay. But there's nothing in your file that</p> <p>7 suggests that SFR knew something was wrong with the</p> <p>8 association foreclosure proceedings before the sale;</p> <p>9 right?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. What is U.S. Bank's factual basis for its</p> <p>12 allegation that the circumstances surrounding the</p> <p>13 association foreclosure sale constitute fraud?</p> <p>14 <b>MS. MORGAN:</b> Objection; calls for a legal</p> <p>15 conclusion.</p> <p>16 <b>THE WITNESS:</b> I don't know.</p> <p>17 <b>BY MS. EBRON:</b></p> <p>18 Q. What is U.S. Bank's factual basis for its</p> <p>19 allegation, if any, that the circumstances surrounding</p> <p>20 the association foreclosure sale constitute oppression?</p> <p>21 <b>MS. MORGAN:</b> Objection; calls for a legal</p> <p>22 conclusion.</p> <p>23 <b>THE WITNESS:</b> I don't know.</p> <p>24 <b>BY MS. EBRON:</b></p> <p>25 Q. I think I already asked this, but just in case:</p>	<p>1 <b>MS. MORGAN:</b> Objection; scope.</p> <p>2 <b>THE WITNESS:</b> I'm not sure.</p> <p>3 <b>MS. EBRON:</b> I think I'm done.</p> <p>4 Do you have any questions?</p> <p>5 <b>MR. ROTHENBERG:</b> No, I'm good.</p> <p>6 <b>MS. MORGAN:</b> I don't have any questions.</p> <p>7 (The deposition concluded at 12:42 p.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1 CERTIFICATE OF DEPONENT  
2 PAGE LINE CHANGE REASON  
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19 \* \* \* \* \*  
20 I, DIANE DELONEY, deponent herein, do hereby certify  
21 and declare that the within and foregoing transcription  
22 to be my deposition in said action; that I have read,  
23 corrected and do hereby affix my signature to said  
24 deposition, under penalty of perjury.  
25  
26 \_\_\_\_\_  
27 DIANE DELONEY, Deponent Date

1 CERTIFICATE OF REPORTER  
2 STATE OF NEVADA )  
3 COUNTY OF CLARK ) SS:  
4 I, Jean M. Dahlberg, a duly commissioned and licensed  
5 Court Reporter, Clark County, State of Nevada, do hereby  
6 certify: That I reported the taking of the deposition  
7 of the deponent, Diane Deloney, commencing on Wednesday,  
8 June 15, 2016, at 9:05 a.m.  
9 That prior to being examined, the deponent was, by  
10 me, duly sworn to testify to the truth. That I  
11 thereafter transcribed my said shorthand notes into  
12 typewriting and that the typewritten transcript of said  
13 deposition is a complete, true and accurate  
14 transcription of said shorthand notes.  
15 I further certify that I am not a relative or  
16 employee of an attorney or counsel of any of the  
17 parties, nor a relative or employee of an attorney or  
18 counsel involved in said action, nor a person  
19 financially interested in the action.  
20 IN WITNESS WHEREOF, I have hereunto set my hand in my  
21 office in the County of Clark, State of Nevada, this  
22 22nd day of June, 2016.  
23  
24 \_\_\_\_\_  
25 JEAN M. DAHLBERG, RPR, CCR NO. 759, CSR 11715

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<p><b>thousands (1)</b> 17:14</p> <p><b>three (1)</b> 78:1</p> <p><b>throughout (3)</b> 14:3;17:24;18:20</p> <p><b>Tiffany (3)</b> 54:19,21,21</p> <p><b>times (3)</b> 8:4,6;17:22</p> <p><b>title (10)</b> 14:25;33:20;43:3;44:10; 45:25;46:18;59:9;85:15,19; 87:14</p> <p><b>titled (2)</b> 39:5;81:19</p> <p><b>today (8)</b> 8:11;13:22;19:18;21:4; 23:17;51:12;76:21;83:13</p> <p><b>together (2)</b> 55:20;56:23</p> <p><b>told (1)</b> 53:18</p> <p><b>took (4)</b> 18:7;21:18;85:8;89:10</p> <p><b>top (4)</b> 59:4;64:18;66:6;86:22</p> <p><b>Topic (7)</b> 94:9,22;95:6,19;96:2; 98:12;104:4</p> <p><b>topics (6)</b> 19:22;20:8,13,18,20;87:7</p> <p><b>toward (2)</b> 10:8;13:23</p> <p><b>trained (1)</b> 14:10</p> <p><b>training (3)</b> 14:6,9,10</p> <p><b>transaction (1)</b> 98:19</p> <p><b>transfer (2)</b> 36:19;38:9</p> <p><b>transferred (8)</b> 31:11;55:10,24;56:3,11; 61:17;93:25;94:21</p> <p><b>transferring (3)</b> 55:16;89:5;94:12</p> <p><b>trials (4)</b> 8:16,19;13:10,25</p> <p><b>Trust (81)</b> 19:1,4;23:24;24:1,5,8,15, 21;29:7,8,17;32:5,20,23,25; 33:9,12,15,20;34:22;35:6; 36:8,15;38:2,10,15,15;39:5; 40:4;41:2,9,21;44:8;45:17; 49:7,8;54:12;55:11,17;56:10, 16;57:2;58:8,10;59:14;61:18; 74:12;75:2,7;76:5;82:10;</p>	<p>85:13,22,24;86:6,9,17,18; 87:15,21;89:23;90:19,25; 92:13;93:5,16,25;94:13; 95:14;97:1,4,10,18;99:4; 101:15,18;102:1;103:2,14,21, 24</p> <p><b>trustee (8)</b> 29:9;39:12;55:11;57:13; 61:17;62:22;75:6;93:17</p> <p><b>Trustee's (21)</b> 53:6,7;60:8,16,19;66:10,22; 67:2;69:18;70:15;73:13,17; 76:17;77:20;78:1,8;85:15,18; 92:7,14,15</p> <p><b>truth (3)</b> 6:12,13,13</p> <p><b>try (1)</b> 18:6</p> <p><b>trying (1)</b> 71:5</p> <p><b>TS (1)</b> 59:5</p> <p><b>turn (1)</b> 34:9</p> <p><b>Turning (1)</b> 65:19</p> <p><b>two (3)</b> 45:17;90:21,21</p> <p><b>type (4)</b> 10:17;30:20;105:18,25</p> <p><b>types (7)</b> 14:4;15:18;25:10;26:10; 30:13;31:23;62:21</p> <p><b>typical (1)</b> 44:22</p> <p><b>typically (14)</b> 29:14;39:24;40:18;43:16; 44:13,20,24;46:1,48:14;68:4; 69:7,14;87:17;96:10</p>	<p><b>unless (1)</b> 21:9</p> <p><b>up (11)</b> 9:12;15:19;24:20,20;30:9, 11;37:17;59:4;70:22;87:17; 107:12</p> <p><b>Upon (3)</b> 76:17;92:7,15</p> <p><b>Urban (1)</b> 23:25</p> <p><b>USA (2)</b> 15:7,13</p> <p><b>USBANK000006 (1)</b> 45:16</p> <p><b>USBANK000042 (1)</b> 45:16</p> <p><b>USBANK000117 (1)</b> 80:12</p> <p><b>USBANK000121 (1)</b> 80:12</p> <p><b>USBANK000340 (2)</b> 61:10;63:7</p> <p><b>USBANK000341 (1)</b> 64:13</p> <p><b>USBANK000342 (1)</b> 65:20</p> <p><b>USBANK000344 (3)</b> 66:3,24;67:4</p> <p><b>USBANK000345 (2)</b> 66:22;67:2</p> <p><b>USBANK000346 (1)</b> 68:7</p> <p><b>USBANK000347 (1)</b> 69:2</p> <p><b>USBANK000348 (1)</b> 69:9</p> <p><b>USBANK000349 (1)</b> 69:17</p> <p><b>USBANK000350 (2)</b> 61:10;73:8</p> <p><b>USBANK000351 (1)</b> 39:7</p> <p><b>USBANK000353 (1)</b> 86:12</p> <p><b>USBANK000381 (1)</b> 39:7</p> <p><b>USBANK000382 (2)</b> 88:21;89:3</p> <p><b>USBANK351 (1)</b> 86:9</p> <p><b>USBANK357 (1)</b> 86:22</p> <p><b>used (2)</b> 34:6,7</p>	<p>104:17</p> <p><b>various (8)</b> 7:20;9:18;14:2;15:16,24; 16:21;88:25;89:1</p> <p><b>VEGAS (2)</b> 6:1;21:2</p> <p><b>vice (4)</b> 10:15,18,21;14:22</p> <p><b>viewed (1)</b> 76:21</p> <p><b>voluminous (1)</b> 43:3</p>
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		<b>V</b>	
		<b>value (1)</b>	

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**U.S. Bank, National Association vs. Southern Highlands Community, et al.**

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STATE OF NEVADA )  
 ) SS:  
COUNTY OF CLARK )

That prior to being examined, the deponent was, by me, duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand in my  
office in the County of Clark, State of Nevada, this  
22nd day of June, 2016.

Jean M. Hallberg

JEAN M. DAHLBERG, RPR, CCR NO. 759, CSR 11715

Ex. A-3

# EXHIBIT A-3

Woodbridge Deposition Transcript

Ex. A-3

**30(b)(6) Jessica Woodbridge - 10/21/2015**  
**SFR Investments Pool 1, LLC vs. US Bank, N.A., et al.**

DISTRICT COURT  
CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a  
Nevada limited liability company,  
Plaintiff,  
vs.  
US BANK, N.A., a national banking  
association as Trustee for the  
Certificate Holders of the Banc  
of America Mortgage Securities  
2008-A Trust, Mortgage Pass-  
Through Certificates, Series  
2008-A, CAL-WESTERN RECONVEYANCE  
CORPORATION, a California  
corporation, SAN SEVINO WEST AT  
SOUTHERN HIGHLANDS HOMEOWNERS  
ASSOCIATION, a Nevada non-profit  
corporation, SOUTHERN HIGHLANDS  
COMMUNITY ASSOCIATION, a Nevada  
non-profit corporation, GEORGE  
A. SHERWOOD, an individual,  
SHARON L. SHERWOOD, an individual,  
DOES I through X; and ROE  
CORPORATIONS I through X,  
inclusive,  
Defendants.

U.S. BANK, N.A., as Trustee for  
the Certificate Holders of the Banc  
of America Mortgage Securities  
2008-A Trust, Mortgage Pass-Through  
Certificates, Series 2008-A,  
Counterclaimant,  
vs.  
SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company;  
DOES 1-10, inclusive; ROE  
CORPORATIONS 1-10, inclusive,  
Counterdefendants.

ORAL DEPOSITION OF JESSICA WOODBRIDGE, produced as a  
witness at the instance of the Plaintiff/Counterdefendant.

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and duly sworn, was taken in the above-styled and  
numbered cause on October 21, 2015, from 3:22 p.m. to  
5:18 p.m., before April R. Eichelberger, CSR in and for  
the State of Texas, reported by machine shorthand, at  
the law offices of Akerman, LLP, 2001 Ross Avenue,  
Suite 2550, Dallas, Texas, pursuant to the Nevada Rules  
of Civil Procedure and the provisions stated on the  
record or attached hereto.

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A P P E A R A N C E S

FOR THE PLAINTIFF AND COUNTERDEFENDANT:

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702.634.5000  
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**30(b)(6) Jessica Woodbridge - 10/21/2015**  
**SFR Investments Pool 1, LLC vs. US Bank, N.A., et al.**

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5	SFR14-SFR17	
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1 Q. Is there anything different about your  
2 previous background or your duties at Bank of America  
3 since the last time I took your deposition?  
4 A. I don't believe so. Everything seems -- I  
5 believe everything is the same.  
6 Q. Will you look at what's been marked Exhibit 1,  
7 please.  
8 A. Okay.  
9 Q. Do you recognize that document?  
10 A. Yes.  
11 Q. Have you had a chance to review it before  
12 today?  
13 A. Yes.  
14 Q. When was the first time that you saw this  
15 document?  
16 A. I'm not sure if I saw this exact document, but  
17 I believe it was sometime last week, but a version of  
18 the Notice of Deposition.  
19 Q. When did you first find out that you were  
20 going to be testifying as the 30(b)(6) witness for  
21 U.S. Bank, N.A.?  
22 A. I believe it was either last week or the week  
23 before.  
24 Q. Since you're employed by Bank of America, why  
25 are you the person who was designated to testify on

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1 PROCEEDINGS

2 (Exhibits 1 through 8 were marked.)

3 JESSICA WOODBRIDGE,

4 having been first duly sworn, testified as follows:

5 EXAMINATION

6 BY MS. EBON:

7 Q. Good morning. Can you please -- I guess it's  
8 afternoon now. Can you please state your name for the  
9 record.

10 A. Jessica Woodbridge.

11 Q. Are you employed?

12 A. Yes.

13 Q. Who is your employer?

14 A. Bank of America, N.A.

15 Q. Where is your office located?

16 A. It is located in Plano, Texas.

17 Q. We've taken your deposition before in a  
18 different case where SFR Investments Pool 1 is involved.  
19 Do you recall that?

20 A. Yes.

21 Q. Counsel and I have spoken before we went on  
22 the record and agreed that we could incorporate  
23 testimony from your previous depositions on your  
24 background. Is that okay with you?

25 A. Yes.

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1 behalf of U.S. Bank, N.A.?

2 A. Bank of America, N.A. is the servicer for the  
3 trust where U.S. Bank is the trustee.

4 Q. And just for the record, the trust we're  
5 talking about is Banc of America Mortgage Securities  
6 2008-A Trust, Mortgage Pass-Through Certificates, Series  
7 2008-A; is that correct?

8 A. Yes.

9 MR. BRENNER: I just want to correct  
10 something because I think if I do it now it's going to  
11 save a heck of a lot of time rather than create more  
12 confusion. You said Bank of America is the servicer?

13 THE WITNESS: Sorry. Bank of America was  
14 the servicer during the time of the HOA foreclosure  
15 sale.

16 Q. (BY MS. EBON) Who is the servicer now?

17 A. I believe it's Specialized Loan Servicing.

18 Q. From what date to what date was Bank of  
19 America servicer for this loan?

20 A. I believe that we -- Bank of America was the  
21 servicer from the -- from origination, and I'm not sure  
22 of the exact date of the service transfer but believe it  
23 was sometime in 2013.

24 Q. Let's go back to the deposition notice. On  
25 page 2 it defines "property" as 11577 Capanna Rosso

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30(b)(6) Jessica Woodbridge - 10/21/2015  
SFR Investments Pool 1, LLC vs. US Bank, N.A., et al.

1 Place, Las Vegas, Nevada 89141, Parcel  
2 Number 191-05-27-040. Whenever I refer to "the  
3 property," I'm going to be referring to the property on  
4 Capanna Rosso; is that okay?  
5 A. Yes.  
6 Q. Also when I refer to "the association," I will  
7 be, unless I otherwise specify, referring to Southern  
8 Highlands Community Association. In addition, when I  
9 talk about "the foreclosure sale" or "the date of the  
10 foreclosure sale," I'll be referring to the auction that  
11 was held on September 5th, 2012, by Alessi & Koenig LLC  
12 on behalf of the association; is that okay?  
13 A. Okay.  
14 Q. When I talk about "the borrowers," I'll be  
15 referring to George A. Sherwood and Sharon L. Sherwood.  
16 If you could turn to page 3, please.  
17 There are topics that start with Number 1 and go through  
18 30 on page 7. Have you had a chance to review those  
19 topics?  
20 A. Yes.  
21 Q. Are you prepared to testify on those topics  
22 today?  
23 A. Yes.  
24 Q. And you're the person that U.S. Bank has  
25 designated to testify on its behalf?

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1 Q. Who was that?  
2 A. I believe her name is Antonia Hood.  
3 Q. Can you spell that, her last name?  
4 A. H-O-O-D.  
5 Q. Anyone else?  
6 A. I can't think of anyone else at this time.  
7 Q. Did you communicate with anyone from U.S. Bank  
8 in preparation for your deposition?  
9 A. I did not communicate with anyone directly  
10 from U.S. Bank.  
11 Q. Did you communicate with anyone who did  
12 communicate with U.S. Bank in preparation for your  
13 deposition today?  
14 MR. BRENNER: Calls for speculation.  
15 A. Yeah, I don't know. I don't know if other --  
16 if they communicated with U.S. Bank.  
17 Q. (BY MS. EBRON) What was the e-mail with  
18 Antonia Hood about?  
19 A. She just informed me of the communications  
20 from U.S. Bank and from SLS, the new servicer.  
21 Q. What communications with U.S. Bank?  
22 A. Just their knowledge of the topics from this  
23 deposition, the notice that they were asked about.  
24 Q. What did Antonia Hood tell you about the  
25 communications with U.S. Bank and SLS?

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1 A. Yes.  
2 MR. BRENNER: Subject to the limitations  
3 by the Court as agreed to by the parties.  
4 Q. (BY MS. EBRON) Can you -- actually, can you  
5 tell me what you did to prepare for your deposition  
6 today?  
7 A. I reviewed the deposition notice. I looked at  
8 the servicing records of Bank of America, N.A. I also  
9 reviewed information from U.S. Bank, N.A. as well as the  
10 new servicer. And I looked at documents on the Bank of  
11 America platform -- servicing platforms and met with  
12 attorneys, my -- the attorneys for this case.  
13 Q. Did you meet with anyone else besides your  
14 attorneys?  
15 A. No.  
16 Q. Did you speak to anyone else besides your  
17 attorneys about -- in preparation for your deposition  
18 today?  
19 A. I did not speak with anyone.  
20 Q. Did you communicate in another way with anyone  
21 else about preparation for your deposition today?  
22 A. Yes.  
23 Q. Who?  
24 A. I spoke with somebody else in the MRT  
25 department, e-mailed communication.

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1 A. Just in general that U.S. Bank has no  
2 knowledge of -- you know, it was -- I mean, there's many  
3 topics on here where U.S. Bank was asked specifically  
4 about their knowledge of certain things, and so they  
5 were -- she was just saying that in general they don't  
6 have any knowledge. And then also their document  
7 retention policy of U.S. Bank and confirming with SLS  
8 that their records also show that U.S. Bank is still the  
9 trustee for this loan.  
10 Q. So did -- I'm sorry. Is it Antonio or  
11 Antonia?  
12 A. Antonia.  
13 Q. Ms. Hood?  
14 A. Yeah.  
15 Q. Did she communicate with U.S. Bank and that's  
16 how she knows that information to tell you about what  
17 they know or don't know?  
18 MR. BRENNER: Calls for speculation.  
19 A. The e-mail wasn't clear of how she knew that  
20 information.  
21 Q. (BY MS. EBRON) And so you sent an e-mail, and  
22 Ms. Hood sent you an e-mail back saying that U.S. Bank  
23 and SLS don't have any knowledge of the topics?  
24 A. No.  
25 Q. What did the e-mail say?

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1 A. I didn't e-mail her. She e-mailed me.  
2 Q. Okay. So she just sent an e-mail and had  
3 already received a copy of the deposition notice and  
4 then said what?  
5 A. She just outlined, again, the answers from the  
6 deposition notice that Bank of America, N.A.'s records  
7 would not reflect, that we needed to reach out to  
8 U.S. Bank for -- or SLS for that information.  
9 Q. Do you know what Ms. Hood's title is?  
10 A. I believe that she is a mortgage resolution --  
11 MRT specialist.  
12 Q. Do you know where her office is located?  
13 A. I do not.  
14 Q. Is there somewhere that you would look to find  
15 that information?  
16 A. I could look in the company's directory.  
17 Q. So did she give you any information in that  
18 e-mail that you need to rely on today for your testimony  
19 on these topics?  
20 A. It would depend. It, I guess, depends on the  
21 questions that I'm asked.  
22 Q. For example, you mentioned the document  
23 retention policy. Were you provided a copy of the  
24 document -- of U.S. Bank's document retention policy in  
25 the e-mail?

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1 e-mailed someone and this is how I know to tell you for  
2 the deposition?  
3 A. I'm not sure. I just don't remember if it  
4 said that or not.  
5 Q. Do you still have a copy of that e-mail?  
6 A. Yes.  
7 Q. Can you provide that, please?  
8 MR. BRENNER: We'll meet and confer about  
9 that, whether it's appropriate for production.  
10 MS. EBRON: Are you claiming a privilege?  
11 MR. BRENNER: I don't know. You just  
12 asked for it.  
13 MS. EBRON: It was actually one of the  
14 topics, but let's keep going.  
15 Q. (BY MS. EBRON) What about from SLS, did  
16 Ms. Hood give you any information specifically from SLS?  
17 A. Yes.  
18 Q. What was that?  
19 A. That SLS confirms that U.S. Bank is the  
20 trust -- is still in their records show -- or that  
21 U.S. Bank is still the trustee and that the trust is  
22 still showing as the investor for this property.  
23 Q. When was this e-mail?  
24 A. It was sent to me today.  
25 Q. Do you know who the person at SLS was that

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1 MR. BRENNER: Foundation, assumes facts  
2 not in evidence.  
3 A. I was not given -- there was not -- no  
4 attachments to the e-mail.  
5 Q. (BY MS. EBRON) Okay. Was there information  
6 contained in the e-mail about the document retention  
7 policy for U.S. Bank?  
8 A. Yes.  
9 Q. And what was that information?  
10 A. Just that they -- if they had received a  
11 document, they would scan the document, save the  
12 document, and forward it to the servicer.  
13 Q. And where did that information come from  
14 originally? Was that something that Ms. Hood knew from  
15 personally working at U.S. Bank or some other way?  
16 MR. BRENNER: Foundation.  
17 A. I don't know.  
18 Q. (BY MS. EBRON) Did the e-mail indicate where  
19 Ms. Hood obtained that information from?  
20 A. My understanding is that it was from  
21 U.S. Bank, but I'm not sure if the e-mail indicated that  
22 or if I just was assuming that it was directly from  
23 U.S. Bank itself.  
24 Q. So it didn't say in the e-mail, oh, I talked  
25 to so and so at U.S. Bank or I talked to a contact or

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1 provided the information about the records showing  
2 U.S. Bank is still the trustee and the trust is still --  
3 and that the loan is still under this trust?  
4 A. No.  
5 Q. Okay. Other than your counsel and Ms. Hood,  
6 did you communicate with anyone else about the  
7 deposition topics in preparation for your deposition  
8 today?  
9 A. No.  
10 Q. About how much time did you prepare for the  
11 deposition today?  
12 A. I spent probably six or seven hours preparing,  
13 off and on.  
14 Q. Over the last week?  
15 A. Yes.  
16 Q. You mentioned that you reviewed info from  
17 U.S. Bank and the new servicer. Aside from the  
18 information contained in the e-mail from Ms. Hood, is  
19 there any other information that you reviewed from  
20 U.S. Bank and SLS?  
21 A. No.  
22 Q. What servicing records from Bank of America  
23 did you review in preparation for your deposition?  
24 A. I looked at an AS/400. I looked in CTWI. I  
25 looked in our imaging system, the DM portal, and I

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1 reviewed the loan -- the loan modification or loss  
2 mitigation notes.  
3 Q. Anything else?  
4 A. I can't think of anything at this time, but I  
5 might have looked somewhere else that I can't think of  
6 right now.  
7 Q. What is CIMI?  
8 A. It is the corresponding -- correspondence and  
9 imaging workflow interface.  
10 Q. What's the purpose of CIMI?  
11 A. It is the system that we use to image any  
12 correspondence received by Bank of America, N.A. and --  
13 to image it and then to route it to the proper  
14 departments.  
15 Q. Did you review the entire AS/400 or did --  
16 were there certain portions of it that you reviewed?  
17 A. Just certain portions.  
18 Q. What portions were those?  
19 A. I looked at several screens. I would have  
20 looked -- I looked at the accounts inquiry display  
21 screen. I looked at the location of the collateral file  
22 screens. I looked at the bankruptcy screens. I looked  
23 at -- I believe I reviewed all of the customer service  
24 notes.  
25 Q. Anything else?

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1 Q. Will you look at what has been marked  
2 Exhibit 2.  
3 A. Okay.  
4 Q. Do you recognize this document?  
5 A. Yes.  
6 Q. What is it?  
7 A. It is a copy of the deed of trust.  
8 Q. Is this the deed of trust that's related to  
9 the property on Capanna Rosso?  
10 A. Yes.  
11 Q. Who originated this deed of trust?  
12 A. Bank of America, N.A.  
13 Q. When was it originated?  
14 A. It's October 11th, 2007.  
15 Q. How much is it for?  
16 A. For \$885,000.  
17 Q. Was this a refinance loan?  
18 A. Yes.  
19 Q. How much cash was provided to the Sherwoods,  
20 if any, after this loan closed?  
21 MR. BRENNER: Objection, relevance and  
22 it's confidential.  
23 A. I don't know. I didn't review that.  
24 Q. (BY MS. EBRON) Will you look at what has been  
25 marked as Exhibit 3. Do you recognize that document?

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1 A. I can't think of anything else right now.  
2 Q. Okay. If you think of anything else as we go  
3 along, if you could just let me know, that would be  
4 great.  
5 You also mentioned that you looked at docs  
6 in the servicing platform. What documents did you look  
7 at?  
8 A. I looked at the notes, the deed of trust,  
9 assignments of mortgage. I looked for correspondence in  
10 that file. I looked at the title policy and just  
11 other -- I think that those are the main documents. I  
12 can't think of other documents that I would have looked  
13 at.  
14 Q. Did you say you reviewed notes, plural?  
15 A. If I did, I meant the note.  
16 Q. Okay. I just wanted to make sure there wasn't  
17 more than one promissory note. Is there?  
18 A. No.  
19 Q. Okay. And when you say "notes," that wouldn't  
20 include, like, servicing notes or anything. You're just  
21 talking about a promissory note; is that right?  
22 A. That's correct.  
23 Q. Is there anything else that you recall that  
24 you reviewed?  
25 A. Not that I haven't already mentioned.

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1 A. I'm not sure if I've seen this before or not.  
2 Q. Is this something that was contained in the  
3 file that you reviewed?  
4 A. It may have been contained in the homeowner's  
5 file, but it's not something that I reviewed or looked  
6 at in their file.  
7 Q. Do you know what this document is?  
8 A. Yes.  
9 Q. What is it?  
10 A. It looks like it's a recorded copy of the  
11 deed, it appears for this property.  
12 Q. Do you know if the Sherwoods used a loan to  
13 purchase this property?  
14 A. I'm not sure.  
15 Q. How long has U.S. Bank had an interest in this  
16 loan?  
17 A. Since it was placed in the trust.  
18 Q. When was that?  
19 A. January 28th, 2008.  
20 Q. And how do you know that?  
21 A. Because that's what the records of Bank of  
22 America show, and that's also the date of the pooling  
23 and servicing agreement.  
24 Q. What exactly is U.S. Bank's interest in this  
25 loan?

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1 A. They are the trustee.  
2 Q. And what does that mean?  
3 MR. BRENNER: Calls for a legal  
4 conclusion.  
5 A. My just general understanding of a trustee is  
6 that they are going to act in the place of the  
7 certificate holders who hold the trust.  
8 Q. (BY MS. EBRON) Did the trust pay anything to  
9 obtain its interest in the loan?  
10 MR. BRENNER: Form.  
11 A. Yes.  
12 Q. (BY MS. EBRON) What?  
13 A. I believe that they paid the face value of the  
14 property at the time, the unpaid principal balance of  
15 \$885,000.  
16 Q. How do you know that?  
17 A. It's my understanding of what is paid and that  
18 it also is what the records of Bank of America, N.A.  
19 show.  
20 Q. How is that your understanding?  
21 A. It's just my general knowledge of when the --  
22 through my training and experience that when these  
23 trusts are created, that they pay the -- whenever they  
24 are put -- whenever the loan is put into the pooling and  
25 servicing, then that is the price that is paid is

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1 Exhibit 4? Do you recognize this document?  
2 A. Yes.  
3 Q. What is it?  
4 A. It is a copy of the pooling and servicing  
5 agreements dated January 28th, 2008, for this pool of  
6 loans.  
7 Q. And does -- is there somewhere in the pooling  
8 and servicing agreement that shows or identifies the  
9 loan secured by the deed of trust we marked as  
10 Exhibit 2?  
11 A. I'm not sure if there is. I don't -- it does  
12 not appear that this version of the servicing agreement  
13 would include the list of loans that are included as  
14 part of this.  
15 Q. Did you review a list of loans?  
16 A. Yes.  
17 Q. And you were able to identify on that list the  
18 loan secured by the deed of trust in this case?  
19 A. Yes.  
20 Q. How big was that report or how big was that  
21 list?  
22 A. I only looked at one page of that report, and  
23 I -- I don't know how long.  
24 Q. Where was that report stored?  
25 A. I am not sure.

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1 whatever the unpaid principal balance.  
2 Q. What record of Bank of America tells you that  
3 that was the price paid?  
4 A. It was a screen in AS/400.  
5 Q. What screen is that?  
6 A. The loan transfer detail screen.  
7 Q. What else is included on that screen besides  
8 the price?  
9 A. It shows the dates of the transfer, the  
10 investor number that it was transferring from and then  
11 transferring into, what the new investor was.  
12 Q. Anything else?  
13 A. It also shows the paid-through dates and if  
14 there's any -- I believe that it shows what the escrow  
15 balance is and anything like -- and something like that.  
16 Q. Anything else?  
17 A. That's all I can think of on that screen right  
18 now.  
19 Q. So until January 28th, 2008, Bank of America  
20 was both the servicer and the investor; is that correct?  
21 A. Yes.  
22 Q. And until sometime in 2013, Bank of America  
23 remained the servicer; is that correct?  
24 A. Yes.  
25 Q. And can you look at what's been marked as

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1 Q. Where did you get it from?  
2 A. I received it as a part of that e-mail.  
3 Q. So how was it included in that e-mail?  
4 A. It was just a screen shot.  
5 Q. Were there any other screen shots in the  
6 e-mail?  
7 A. No.  
8 Q. Was there any commentary about the screen  
9 shot?  
10 A. No.  
11 Q. Do you know where the actual list is stored?  
12 A. I don't.  
13 Q. Is that something that Ms. Hood would know?  
14 MR. BRENNER: Calls for speculation.  
15 A. I don't know.  
16 Q. (BY MS. EBRON) What other documents exist  
17 that evidence the transaction where the loan was put  
18 into this pool of loans?  
19 MR. BRENNER: Form and foundation.  
20 A. I'm not sure I understand your question.  
21 Q. (BY MS. EBRON) Well, we've got the pooling  
22 and servicing agreement, right? Are there other  
23 documents that were created and executed as part of the  
24 transaction of placing this loan into the trust?  
25 MR. BRENNER: Same objections.

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1 A. I'm not sure.  
2 Q. (BY MS. EBRON) Have you seen any other  
3 documents that relate to the transaction where the loan  
4 was placed into the trust?  
5 A. I have -- I don't believe I have, no.  
6 Q. Where is the pooling and servicing agreement  
7 stored on Bank of America's system?  
8 A. I'm not sure.  
9 Q. Where did you get the copy from to review?  
10 A. I request it from the -- we have a department  
11 that maintains these, all of the pooling and servicing  
12 agreements, and I request them through that. There's a  
13 software program that I would go to and make a request.  
14 Q. Okay. When did you make a request for this  
15 pooling and servicing agreement?  
16 A. I believe it was Monday.  
17 Q. And when did you receive it?  
18 A. That same day.  
19 Q. Did you make any other requests to that  
20 department?  
21 A. No.  
22 Q. Is there a name for the place that you go to  
23 to make that request for pooling and servicing  
24 agreement?  
25 A. I type "Request Net" into the browser, so I

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1 Q. But this isn't something that was contained  
2 within Bank of America's files?  
3 A. If it was, it just wasn't something I looked  
4 at in the file.  
5 Q. Can you look at what's been marked as Exhibit  
6 Number 6? Do you recognize this document?  
7 A. Yes.  
8 Q. What is that?  
9 A. It's the notice of breach and default and of  
10 election to cause sale of real property under deed of  
11 trust.  
12 Q. Was this something that was contained in Bank  
13 of America's records?  
14 A. Yes.  
15 Q. When is it dated?  
16 A. It is -- it looks like it was recorded on  
17 9/17/2009.  
18 Q. On the first page there's a bolded part on the  
19 third paragraph from the bottom that starts off -- or it  
20 reads: Failure to pay the monthly payment due  
21 November 1st, 2008, of interest only in subsequent  
22 installments due thereafter plus late charges together  
23 with all subsequent sums advanced by beneficiary person  
24 to the terms and conditions of deed of trust.  
25 Did I read that correctly?

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1 don't know if that's the name of the software or if  
2 that's just what pulls it up. It's called Request Net.  
3 Q. Can you request other things besides the  
4 pooling and servicing agreement through Request Net?  
5 A. There appears to be a long list of things that  
6 can be requested, but this is -- pooling and servicing  
7 agreements are the only thing that I've been trained to  
8 request through there.  
9 Q. Are there other platforms or websites that you  
10 went to in preparation for your deposition today that  
11 you requested information from?  
12 A. I mean, there were other websites I use but  
13 nothing that I requested through, no.  
14 Q. So the other ones you could just pull up the  
15 information and you had access to it and were able to  
16 look at it, is that correct?  
17 A. Yes.  
18 Q. Okay. Can you look at what we've marked as  
19 Exhibit 5? Have you seen this document before?  
20 A. I might have seen it before, but not in the  
21 Bank of America records.  
22 Q. Where would you have seen it?  
23 A. I was given documents that had been -- I guess  
24 there had been a file pulled from all of the recorded  
25 documents.

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1 A. I believe you might have missed "said deed of  
2 trust," but...  
3 Q. Said deed of trust, okay. Is it accurate,  
4 based on your review of the records and this notice of  
5 default, that the borrowers did not pay, beginning  
6 November 1st of 2008?  
7 MR. BRENNER: Outside the scope of this  
8 deposition.  
9 A. I just know -- I believe that that's the -- I  
10 believe that they are still due for that payment, yes.  
11 Q. (BY MS. EBRON) Can you look at what has been  
12 marked as Exhibit Number 7? Do you recognize that  
13 document?  
14 A. Yes.  
15 Q. What is that?  
16 A. This is a recorded copy of an assignment of  
17 deed of trust dated November 26th, 2010.  
18 Q. Who is --  
19 A. It looks like it was actually recorded  
20 12/7/2010.  
21 Q. Okay. And who is this assignment from?  
22 A. It is from Bank of America, N.A. to U.S. Bank  
23 National Association as trustee for the certificate  
24 holders of the Banc of America Mortgage 2008-A Trust,  
25 Mortgage Pass-Through Certificates, Series 2008-A.

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1 Q. Do you know who Michelle Reinhard is?  
2 A. I know that just from this document that she  
3 says that she's an assistant vice president of Bank of  
4 America, N.A.  
5 Q. Do you have any reason to believe that she was  
6 not an assistant vice president of Bank of America, N.A.  
7 at the time this was executed?  
8 A. I do not.  
9 Q. Can you look at what's been marked as Exhibit  
10 Number 8, please? Do you recognize this document?  
11 A. Yes. This is a copy of the recorded  
12 assignment of deed of trust dated 11 -- it looks like it  
13 was recorded 11/23/2011.  
14 Q. Who was this from and who is it to?  
15 A. It is from Bank of America, N.A. by  
16 Cal-Western Reconveyance Corporation as attorney in fact  
17 to U.S. Bank National Association as trustee of the  
18 certificate holders of the Banc of America Mortgage  
19 Securities 2008-A Trust, Mortgage Pass-Through  
20 Certificates, Series 2008-A.  
21 Q. Is that the same entity from the previous  
22 assignment?  
23 A. It appears that Bank of America, N.A.'s  
24 attorney in fact executed this, but it is the same  
25 entities, yes.

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1 they were all the same notice of sale.  
2 Q. In the notices that you saw in the system, I'm  
3 assuming it was a scanned image, is that -- or those  
4 were scanned images; is that correct?  
5 A. Yes.  
6 Q. Did it also include the envelopes?  
7 A. Yes.  
8 Q. Was there any other information included along  
9 with the notice of sale?  
10 MR. BRENNER: Form.  
11 A. I'm not sure I --  
12 Q. (BY MS. EBRON) Or any other documents that  
13 were attached besides the envelope that it was received  
14 in?  
15 A. No.  
16 Q. And how do you know what days they were  
17 received?  
18 A. The images that I looked at had a stamp on  
19 them showing -- stating that they were received that  
20 date.  
21 Q. In your review of the file, did you see any  
22 notices of default?  
23 MR. BRENNER: From the HOA?  
24 MS. EBRON: Yes.  
25 A. I did.

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1 Q. Do you know why there were two assignments to  
2 U.S. Bank?  
3 A. I don't.  
4 Q. Do you know who would know that?  
5 A. I don't. I do not.  
6 Q. Is it common for there to be two assignments  
7 to the same entity recorded against a property?  
8 A. I don't know whether it's common or not.  
9 Q. Have you seen it happen before in other cases  
10 besides this one?  
11 A. I believe so, yes.  
12 Q. In your review of the file, did you see any  
13 foreclosure notices besides ones related -- sorry.  
14 Strike that.  
15 Did you see any foreclosure notices from a  
16 homeowners' association or its agent?  
17 A. Yes.  
18 Q. And what did you see?  
19 A. I saw that there were notices addressed to  
20 Bank of America, N.A. sent for the notice of sale.  
21 Q. When was that received?  
22 A. I show that one was received on October 12th,  
23 2013 and another one October 13th -- sorry. I said  
24 20- -- I meant October 12 of 2011, October 13th of 2011,  
25 October 31st of 2011, and December 21st of 2011. And

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1 Q. (BY MS. EBRON) How many?  
2 A. I saw one.  
3 Q. And when was that received?  
4 A. I don't actually show that it was received.  
5 There was no information indicating that it was  
6 received. It was just scanned into the system.  
7 Q. When was it scanned?  
8 A. On December 20th of 2010.  
9 Q. So it was received sometime before  
10 December 20th of 2010 or either on or before that day?  
11 A. I don't know how it was given to us because it  
12 did not include an envelope or any other information  
13 indicating how we got that item.  
14 Q. But Bank of America had it in its records as  
15 early as December 20th of 2010?  
16 A. I believe so, yes.  
17 Q. Is there a way for it to show to have been  
18 scanned on that date if it was received after that date?  
19 A. Not -- my understanding, no.  
20 Q. What steps did Bank of America take in  
21 relation to the notice of default after December 20th of  
22 2010?  
23 MR. BRENNER: Form.  
24 A. I reviewed the file. I could not find any  
25 information about that particular document.

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1 Q. (BY MS. EBRON) Was the document -- that  
2 notice of default, was that noted somewhere in the  
3 AS/400 report?  
4 A. The -- could you repeat the question?  
5 (Requested portion read by the reporter.)  
6 A. It was not.  
7 Q. (BY MS. EBRON) What about the notices of  
8 sale, were those noted in the AS/400 report?  
9 A. Yes.  
10 Q. And what did those notes say?  
11 A. It just noted that they were -- had been  
12 received by CINI and then they were routed to -- just I  
13 guess where they were routed.  
14 Q. Has Bank of America used the same routing  
15 system since this loan was originated?  
16 MR. BRENNER: Outside the scope of the  
17 deposition.  
18 A. I don't know.  
19 Q. (BY MS. EBRON) Do you know if CINI was used  
20 in 2010?  
21 A. I don't know.  
22 Q. Do you know who might know that?  
23 A. It would just be something I'd have to look  
24 up. I believe that I've seen documents that were older  
25 than that in other files, but I am not -- it's just not

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1 for handling those types of notices from homeowners'  
2 associations?  
3 MR. BRENNER: Outside the scope of this  
4 deposition.  
5 A. Bank of America's policy would have would  
6 have -- sorry. I'm not sure. The Bank of America's  
7 policy would have been to handle however -- they would  
8 handle it however they were instructed by the  
9 beneficiary on the deed of trust to handle these types  
10 of liens.  
11 Q. (BY MS. EBRON) And what about in this case,  
12 were there any specific instructions on how to handle  
13 notices of default from homeowners' associations?  
14 A. My understanding is that U.S. Bank never  
15 receives the notices -- a notice of default or the  
16 notice of sale for this property, so they did not  
17 provide any specific instructions of what to do with it.  
18 Q. Why didn't U.S. Bank receive a copy after Bank  
19 of America received a copy?  
20 A. My understanding --  
21 MR. BRENNER: Form and foundation.  
22 Go ahead.  
23 Calls for speculation.  
24 A. All I know is that they -- that none of those  
25 letters were addressed to U.S. Bank, so as far as I'm

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1 something I know off the top of my head, how long we've  
2 used CINI.  
3 Q. Is there somewhere else that you can look to  
4 obtain an explanation of how the notice of default was  
5 received?  
6 A. I can't think of anywhere else that I would  
7 look.  
8 Q. Are there systems at Bank of America that you  
9 don't have access to?  
10 MR. BRENNER: Form.  
11 A. Yes.  
12 Q. (BY MS. EBRON) What systems are those?  
13 MR. BRENNER: Objection, calls for a  
14 narrative, irrelevant, and outside the scope of this  
15 deposition, and calls for speculation.  
16 Go ahead.  
17 Q. (BY MS. EBRON) That you know of.  
18 A. I'm not aware of anything -- of any database  
19 or any information -- thing that I would not have access  
20 to that would pertain to first lien mortgages, any  
21 system that -- so I believe that I have access to every  
22 system, but I wouldn't have outside-of-my-department  
23 access.  
24 Q. What was Bank of America's policy and  
25 procedure at the time the notice of default was received

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1 aware, the HOA did not send anything to U.S. Bank.  
2 Q. (BY MS. EBRON) Right. But my question is,  
3 why didn't Bank of America send them to U.S. Bank after  
4 they received them?  
5 A. I don't know.  
6 Q. How do you know that U.S. Bank didn't receive  
7 any notices?  
8 A. I know that they did not receive them because  
9 none of the letters that were in our system were  
10 addressed to U.S. Bank. Additionally, they have  
11 indicated that they have nothing in their files.  
12 Q. Who indicated that?  
13 A. U.S. Bank.  
14 Q. Who at U.S. Bank?  
15 MR. BRENNER: Calls for speculation.  
16 A. I'm not sure.  
17 Q. (BY MS. EBRON) But you never talked to  
18 anybody at U.S. Bank, right?  
19 A. That's true.  
20 Q. And did U.S. Bank send any documents that  
21 showed information about what mail they received for  
22 that loan at -- during that time frame of December 2010  
23 to December of 2011?  
24 MR. BRENNER: Form and foundation.  
25 A. I don't know what they sent. I just know that

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1 it wasn't indicated on that -- on any information I  
2 have.  
3 Q. (BY MS. EBON) If they would have sent  
4 something -- if U.S. Bank would have sent a document or  
5 servicing notes or any kind of notes to Bank of America,  
6 you would have had access to them, correct?  
7 MR. BRENNER: Calls for speculation,  
8 lacks foundation, assumes facts not in evidence.  
9 A. I don't know.  
10 Q. (BY MS. EBON) Did you ask for any  
11 communications about this loan with U.S. Bank when you  
12 were preparing for this deposition?  
13 MR. BRENNER: Form.  
14 A. Are you -- I'm sorry. I'm not sure if I  
15 understand the question.  
16 Q. (BY MS. EBON) Did you request from anyone at  
17 Bank of America to be given information about  
18 communications with U.S. Bank regarding this loan when  
19 you were preparing for your deposition?  
20 A. I did not ask anybody about communication --  
21 for those communications, no.  
22 Q. Why?  
23 A. Because our notes indicated that there had not  
24 been any communication with U.S. Bank.  
25 Q. What notes were those that indicated there

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1 where somebody said the pooling and servicing agreement  
2 didn't contain those guidelines but there was a separate  
3 servicing guideline document, so just asking if there  
4 was in this case as well.  
5 MR. BRENNER: But that wasn't Bank of  
6 America, right?  
7 MS. EBON: No, it wasn't Bank of  
8 America, and it wasn't -- I think it was U.S. Bank, but  
9 it wasn't for this same trust.  
10 Q. (BY MS. EBON) Does Bank of America provide  
11 any type of regular reporting to U.S. Bank about this  
12 loan?  
13 A. I'm not sure that I reviewed what this -- what  
14 U.S. Bank would have wanted as regards to regular  
15 reporting.  
16 Q. But do you know if there has been regular  
17 reporting in the past seven years to U.S. Bank?  
18 A. Again, I didn't review what kind of reporting  
19 we would do for this particular investor so I don't know  
20 if there is -- what kind of -- what, if any, reporting  
21 we would do for this particular investor.  
22 Q. Is there a way that Bank of America  
23 communicates to U.S. Bank about this loan, like a  
24 certain -- you know, like a website or somebody at Bank  
25 of America sends an e-mail?

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1 hadn't been any communication?  
2 A. So I looked at our --  
3 MR. BRENNER: Hold on. Hold on a second.  
4 Lacks foundation, misstates testimony.  
5 Go ahead.  
6 A. I reviewed the Bank of America servicing notes  
7 and could not find any communications with U.S. Bank, so  
8 I didn't look any further. And then that information  
9 was confirmed to me that they also had not -- that  
10 U.S. Bank had not received any communications as well.  
11 Q. (BY MS. EBON) And how was that confirmed to  
12 you?  
13 A. From that e-mail.  
14 Q. Is there a document that contains guidelines  
15 pertaining to how Bank of America was to service this  
16 loan on behalf of U.S. Bank?  
17 A. Yes.  
18 Q. And what is that?  
19 A. The pooling and servicing agreement.  
20 Q. Anything else?  
21 A. I mean, we would have had internal policies on  
22 how to generally service loans for investors. I don't  
23 know if that's what you're asking for.  
24 Q. Yeah, I'm not sure exactly what I'm asking  
25 for. I'm just checking. I had a deposition yesterday

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1 A. Again, I didn't review that information for  
2 this particular investor, so I don't know.  
3 Q. Where would that information be found?  
4 A. I believe that most of that would be in the  
5 pooling and servicing agreement as to what kind of  
6 reporting they would require, and then the mechanism  
7 would be something I'd have to, I guess investigate.  
8 Q. Would it surprise you if there wasn't some  
9 type of regular reporting to U.S. Bank from Bank of  
10 America?  
11 A. I mean, I just don't know. I haven't really  
12 done much research on that topic at all with regards to  
13 any investors other than like the GOCs and even then I  
14 haven't done much research on that, just general  
15 knowledge.  
16 Q. How does U.S. Bank know what's happening with  
17 the loan?  
18 MR. BRENNER: Calls for speculation.  
19 A. I don't know. I'm not sure.  
20 Q. (BY MS. EBON) What did you do to prepare for  
21 Topic Number 17?  
22 A. I looked in the Bank of America, N.A.'s  
23 servicing records for any communication and then also  
24 confirmed, you know, with that -- received information  
25 that U.S. Bank agreed that they had no communication

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1 with us.  
2 Q. Where is the collateral file located?  
3 A. It is -- as of the date that Bank of America,  
4 N.A. stopped servicing the loan, it was located at  
5 U.S. Bank Trust National Association vault.  
6 Q. Where is that?  
7 A. I don't know.  
8 Q. Just a vault somewhere?  
9 A. That's just not information that was -- it  
10 just indicated that it was with U.S. Bank Trust N.A. but  
11 not the address.  
12 Q. So you haven't seen a copy of the collateral  
13 file or you haven't seen the actual collateral file,  
14 right?  
15 A. Yes, that's true.  
16 Q. And do you have any information about the  
17 collateral file since 2013?  
18 A. I do not.  
19 Q. So you don't know if it even still exists,  
20 right?  
21 A. Yeah, I know that it existed at the time that  
22 it was service transferred.  
23 Q. Did you ask anyone about the location of the  
24 collateral file?  
25 MR. BRENNER: This is outside the scope  
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1 A. Yes.  
2 Q. Were there any endorsements on the promissory  
3 note?  
4 MR. BRENNER: Outside the scope of the  
5 deposition and irrelevant.  
6 A. Yes.  
7 Q. (BY MS. EBRON) What endorsements are on the  
8 promissory note?  
9 MR. BRENNER: Same objection.  
10 A. There was I believe an endorsement and blank  
11 from Bank of America, N.A.  
12 Q. (BY MS. EBRON) Is U.S. Bank aware of any  
13 other entity that currently claims an interest in the  
14 first deed of trust or the underlying promissory note?  
15 A. No.  
16 Q. Is U.S. Bank aware of any entity that  
17 currently insures the first deed of trust or the  
18 underlying promissory note?  
19 A. I know that there was a title policy on the  
20 loan, but to the extent that -- that that would insure.  
21 Q. Is U.S. Bank aware of any entity that claims a  
22 contractual interest in the first deed of trust or the  
23 underlying promissory note?  
24 A. I don't -- can't think of any other entity at  
25 this time.  
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1 of the deposition.  
2 A. I -- no, I did not.  
3 Q. (BY MS. EBRON) What was contained in the  
4 collateral file at the time of the last information that  
5 you had on that?  
6 MR. BRENNER: Also outside the scope of  
7 the deposition.  
8 A. I believe the original notes, the deed of  
9 trust, the original title policy, the original  
10 assignments of mortgage. I show there was a borrower's  
11 protection plan, so an original copy of that. And there  
12 was a settlement statement that was in there.  
13 Q. (BY MS. EBRON) Were there any other  
14 assignments besides the ones that we have marked as  
15 Exhibits 7 and 8 in the collateral file?  
16 A. I believe that there was a 2008 assignment of  
17 mortgage.  
18 Q. And who was that to?  
19 A. I didn't -- it didn't have that information.  
20 It said it was blank.  
21 Q. But it was an original assignment? Or was it  
22 an original assignment?  
23 A. That's what it said it was in the collateral  
24 file, yes.  
25 Q. Did you look at the promissory note?  
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1 Q. Well, did you do anything to prepare for Topic  
2 Number 8?  
3 A. Yes.  
4 Q. And what was that?  
5 A. I looked at the type of loan to see whether it  
6 was an FHA loan or any other sort of governmental -- you  
7 know, part of any other program and looked at the title  
8 policy for -- I looked for a title policy.  
9 Q. And are you aware -- well, did you determine  
10 if the FHA had an interest in the first deed of trust or  
11 underlying promissory note?  
12 A. I saw that this is not a loan that is insured  
13 by HUD or FHA.  
14 Q. Does Fannie Mae have an interest in the deed  
15 of trust or the underlying promissory note?  
16 A. Not that I was able to -- no, I don't know.  
17 Q. Does Freddie Mac have any interest in the deed  
18 of trust or the underlying promissory note?  
19 A. No.  
20 Q. Are there any provisions in the pooling and  
21 servicing agreement applicable to this property that  
22 are -- that mention or are applicable to associations,  
23 association liens, association foreclosures?  
24 MR. BRENNER: Form.  
25 A. I believe that there is a -- yes, there is a  
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1 provision.  
2 Q. (BY MS. EBRON) Which provision is that?  
3 A. I believe it's 3.09, and it's a some  
4 subsection.  
5 THE REPORTER: It's what inspection?  
6 THE WITNESS: It's a subsection.  
7 Q. (BY MS. EBRON) So 3.09 is on page 60. Which  
8 subsection are you referring to?  
9 A. It looks like B.  
10 Q. B? So that's the part that's applicable here?  
11 A. It's the only part of the agreement that  
12 mentions association dues.  
13 Q. Does U.S. Bank have any remedies if the  
14 servicer doesn't follow the pooling and servicing  
15 agreement?  
16 MR. BRENNER: It's outside the scope of  
17 this deposition.  
18 MS. EBRON: No, it isn't. It's in Topic  
19 Number 9.  
20 MR. BRENNER: Hold on. Don't answer.  
21 Disagree.  
22 Q. (BY MS. EBRON) Okay. Go ahead.  
23 A. I'm not sure I -- it would -- if so, I would  
24 imagine it would be in the pooling and servicing  
25 agreement.

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1 the borrower?  
2 MR. BRENNER: Hold on a second before you  
3 answer that.  
4 I think the topic is specifically limited  
5 to prior to the foreclosure sale.  
6 MS. EBRON: That's true, but if you know,  
7 I'm --  
8 MR. BRENNER: Well, I think the purpose  
9 of having a meet and confer is to limit these things.  
10 And if you limit them and then you go ask questions that  
11 we limited is completely contrary to what we agreed to.  
12 Go ahead and answer.  
13 A. Yes, I believe so.  
14 Q. (BY MS. EBRON) Did you see any communications  
15 with SFR Investments Pool 1, LLC before litigation  
16 started?  
17 A. I -- I wasn't looking, so I don't know.  
18 Q. That's fine. Just checking.  
19 Did U.S. Bank make any monetary payments  
20 to the association or its agents in relation to this  
21 property?  
22 A. No.  
23 Q. Is there a reason why U.S. Bank did not make  
24 any payments to the association before the association  
25 foreclosure sale?

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1 Q. Besides the five foreclosure notices that were  
2 contained in Bank of America's files, has U.S. -- did  
3 you see any evidence of communications with the  
4 homeowners' association or its agents?  
5 MR. BRENNER: Form.  
6 A. I did not.  
7 Q. (BY MS. EBRON) Did you see any communications  
8 in the file with either U.S. Bank or Bank of America and  
9 the borrower about the homeowners' association lien?  
10 MR. BRENNER: Form.  
11 A. I -- I didn't see anything prior to the  
12 foreclosure sale.  
13 Q. (BY MS. EBRON) Were there communications with  
14 the borrower about the homeowners' association lien  
15 after the sale?  
16 MR. BRENNER: Outside the scope of the  
17 deposition.  
18 A. Yes.  
19 Q. (BY MS. EBRON) Do you know what those were?  
20 MR. BRENNER: Same objection.  
21 A. I just saw a phone call where the borrower  
22 informed us of the foreclosure sale -- informed Bank of  
23 America, N.A. of the foreclosure sale after the sale had  
24 already taken place.  
25 Q. (BY MS. EBRON) So it was a call initiated by

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1 A. I mean, they did not receive any notice of the  
2 sale. U.S. Bank did not receive any notice of the sale.  
3 Q. But its agent did, correct?  
4 MR. BRENNER: Calls for a legal  
5 conclusion.  
6 Q. (BY MS. EBRON) Bank of America received the  
7 notices.  
8 A. Yes.  
9 Q. Do you know why Bank of America did not  
10 attempt to make any payment to the association?  
11 MR. BRENNER: Outside the scope of this  
12 deposition.  
13 A. I don't know.  
14 Q. (BY MS. EBRON) Do you know if Bank of America  
15 asked U.S. Bank if it should make a payment to the  
16 association?  
17 A. I have -- could you repeat the question?  
18 (Requested portion read by the reporter.)  
19 A. I know that there -- yes, I know that we did  
20 not make a communication with them. We did not  
21 communicate with them.  
22 Q. (BY MS. EBRON) Okay. So just to be clear,  
23 Bank of America, after receiving the foreclosure  
24 notices, did not ask U.S. Bank if it should do something  
25 about those notices?

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1 A. That's what I -- our records show, yes.  
2 Q. Would you have expected to see evidence of  
3 such communication, if one existed, in the documents  
4 that you reviewed?  
5 A. Yes.  
6 Q. Did U.S. Bank attend the association  
7 foreclosure sale?  
8 A. No.  
9 Q. Why not?  
10 A. They were not given notice of the sale. And  
11 additional -- I don't believe that they were given  
12 notice of the new date of when the date moved to the  
13 sale.  
14 Q. Did U.S. Bank participate in any civil or  
15 administrative action challenging the association lien  
16 or the association foreclosure sale before the  
17 foreclosure sale?  
18 A. No.  
19 Q. Has U.S. Bank been paid any money from Bank of  
20 America for this loan?  
21 MR. BRENNER: Form.  
22 A. Yes.  
23 Q. (BY MS. EBON) And what were those payments  
24 for? Just when loan payments were received?  
25 A. Those, and then additionally, U.S. -- Bank of

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1 Bank of America, N.A.  
2 Q. Who?  
3 A. I'm not sure.  
4 Q. How did you come to know that there have been  
5 no legal settlements that have involved this loan?  
6 A. That was, again, in that e-mail that I  
7 received.  
8 Q. And what did it say specifically about legal  
9 settlements?  
10 A. I believe it said that there had been legal  
11 settlements between U.S. trust and -- U.S. Bank and Bank  
12 of America.  
13 Q. Did U.S. Bank receive any funds from the  
14 settlement between the SEC and Bank of America?  
15 MR. BRENNER: That's not only outside the  
16 scope of the deposition, but subject to the protective  
17 order. If you want to try to rephrase your question  
18 specific to this loan, I think we can start to answer,  
19 but that might be within...  
20 Q. (BY MS. EBON) Specific to this loan?  
21 A. No, I do not believe so, no.  
22 Q. Why do you believe that?  
23 A. Again, it's something that U.S. Bank has told  
24 us.  
25 Q. So was that in that same e-mail?

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1 America, N.A. was the original lender so that when it  
2 was -- to acquire its interest, U.S. Bank would have  
3 paid Bank of America.  
4 Q. Okay. So U.S. Bank paid Bank of America.  
5 What happened to the money that the borrowers paid  
6 during the time that they were paying on the loan?  
7 MR. BRENNER: Outside the scope of the  
8 deposition.  
9 A. It would have been paid to the investor per  
10 the pooling and servicing agreement.  
11 Q. (BY MS. EBON) Have there been any other  
12 funds received by U.S. Bank for this loan that were not  
13 included in those monthly mortgage payments?  
14 MR. BRENNER: Outside the scope of the  
15 deposition.  
16 A. I don't know.  
17 Q. (BY MS. EBON) Have there been any legal  
18 settlements through which U.S. Bank received funds for  
19 this loan?  
20 A. No.  
21 Q. How do you know that?  
22 A. Because that's -- U.S. Bank has informed us of  
23 that.  
24 Q. How did they inform you of that?  
25 A. In -- they communicated that to somebody at

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1 A. Yes.  
2 Q. And did it specifically say U.S. Bank has not  
3 received any funds related to this loan from the  
4 settlement between Bank of America and the SEC or the  
5 judgment?  
6 A. I don't believe it was specific, no.  
7 (Exhibit 9 was marked.)  
8 Q. (BY MS. EBON) Let me show you a document  
9 that's been marked as Exhibit 9. Do you recognize that  
10 document?  
11 A. I didn't review it.  
12 Q. Do you know what it is?  
13 A. Just what it states on the cover.  
14 Q. Where does U.S. Bank get the information to  
15 populate this report?  
16 MR. BRENNER: Outside the scope of this  
17 deposition.  
18 A. I don't know.  
19 Q. (BY MS. EBON) Is it fair to say that Bank of  
20 America or the servicer would need to communicate with  
21 U.S. Bank in order to get this information?  
22 MR. BRENNER: Calls for speculation.  
23 A. I don't know what -- where this report came  
24 from, so I don't know.  
25 Q. (BY MS. EBON) Did you talk to anybody about

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1 U.S. -- at U.S. Bank about where it would get its  
2 information to give reports to the certificate holders?  
3 MR. BRENNER: Outside the scope of this  
4 deposition.  
5 A. No.  
6 (Exhibit 10 was marked.)  
7 Q. (BY MS. EBON) Do you recognize this  
8 document? It's been marked as Exhibit 10.  
9 A. I believe I may have seen it in passing.  
10 Q. Where would you have seen it?  
11 A. I think it was part of the copy of documents  
12 that was pulled from all the recorded documents.  
13 Q. Who pulled those documents?  
14 MR. BRENNER: Calls for speculation.  
15 A. I'm not sure.  
16 (Exhibit 11 was marked.)  
17 Q. (BY MS. EBON) Do you recognize this  
18 document?  
19 MR. BRENNER: Exhibit 11, for the record  
20 A. Yes.  
21 Q. (BY MS. EBON) What is it?  
22 A. It is a notice of trustee sale. It looks like  
23 a recorded copy of a notice of trustee sale.  
24 Q. And whose notice of trustee sale is that?  
25 A. It was done by Cal-Western Reconveyance

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[illegible]

1 Corporation.  
2 Q. On behalf of?  
3 A. On behalf of the beneficiary under the deed of  
4 trust.  
5 Q. So at that time Cal-Western Reconveyance was  
6 the trustee of the deed of trust?  
7 A. Yes.  
8 [REDACTED]  
9 Q. [REDACTED]  
10 document?  
11 A. Yes.  
12 Q. [REDACTED]  
13 A. It is a copy of the recorded discharge of  
14 [REDACTED]  
15 [REDACTED] a you [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 the first version of that document.  
19 Q. [REDACTED]  
20 A. [REDACTED]  
21 Q. [REDACTED]  
22 A. [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

[illegible]

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 MS. EBRON: Yeah, and it's -- I believe  
5 that it is not outside the scope. Their ability to  
6 enforce the promissory note or deed of trust is one of  
7 the topics, and if they don't own it, that is completely  
8 within the realm of whether or not U.S. Bank can sustain  
9 a claim in this case.  
10 MR. BRENNER: We can meet and confer  
11 after, but we're getting close to 5:00, so...  
12 MS. EBRON: Yeah, well, we'll just finish  
13 and then we can leave. But you requested that this be  
14 at a later time, and I'm going to keep going until we  
15 finish. You can walk out if you want to, but as I said,  
16 it's probably going to take a little bit longer because  
17 of the issues that we have in this case.  
18 MR. BRENNER: Well, then I'll say for the  
19 record, A, we started early for you. B, I told you we  
20 had a hard stop at 5:00. C, you agreed with the time.  
21 D, you didn't tell me until very, very late last night  
22 that you were going to need additional time. And I  
23 apologize, Diana. I just can't accommodate the request.  
24 MS. EBRON: Darren, I disagree with your  
25 assessment.  
MR. BRENNER: Let's just get going so

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1 MS. EBRON: It was that on your part,  
2 just an assumption.  
3 MR. BRENNER: Well --  
4 Q. (BY MS. EBRON) What was Bank of America's --  
5 or sorry -- U.S. Bank's involvement with the borrower's  
6 bankruptcy?  
7 MR. BRENNER: I think that's outside the  
8 scope of the deposition, too. I think that was limited.  
9 MS. EBRON: No, it isn't.  
10 MR. BRENNER: I'm pretty sure that your  
11 topic was limited to U.S. Bank's -- per protective order  
12 to U.S. Bank's knowledge of the bankruptcy when it  
13 obtained an interest in the loan. And at any rate, the  
14 question calls for a narrative.  
15 A. I know that U.S. Bank had already obtained its  
16 interest in the property prior to the bankruptcy, that  
17 there was evidence in the file of -- that Bank of  
18 America, N.A. as servicer had been -- there appeared to  
19 be that we were monitoring the bankruptcy in some  
20 capacity. And I'm not sure -- I didn't review the  
21 bankruptcy file itself to see what actions we -- that  
22 were taken on behalf of U.S. Bank in the bankruptcy.  
23 Q. (BY MS. EBRON) How did U.S. Bank know about  
24 the bankruptcy? Or did they?  
25 MR. BRENNER: Outside the scope of the

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1 that we can use the time --  
2 MS. EBRON: I do. I disagree with all of  
3 that, everything that you just said.  
4 MR. BRENNER: What part? That you didn't  
5 just contact me last night? That wasn't the first time  
6 you didn't agree with the time?  
7 MS. EBRON: I never agreed to stop at  
8 five o'clock ever, that that was not something. Had I  
9 known there would have been a hard stop at 5:00, I would  
10 never have agreed to move this from two o'clock on  
11 Monday, spend an extra day here and start at 3:30. I  
12 just -- it just occurred to me last night that I wanted  
13 to make sure that you understood that.  
14 MR. BRENNER: I don't think that's fair,  
15 given that every deposition we've taken has been an hour  
16 or less. I don't think --  
17 MS. EBRON: No, they haven't, Darren.  
18 MR. BRENNER: Depositions have gone  
19 normal hours. Per case law of Nevada, depositions go  
20 between the hours of 9:00 and 5:00 unless there's an  
21 agreement or an order. So --  
22 MS. EBRON: And again, the agreement --  
23 MR. BRENNER: Hold on. Hold on. So it  
24 is completely logical that that would be an assumption  
25 in scheduling, but why don't we just march forward.

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1 deposition.  
2 A. I'm not sure what U.S. Bank's knowledge --  
3 what they would have known about the bankruptcy.  
4 Q. (BY MS. EBRON) When -- is there a requirement  
5 for Bank of America to report to U.S. Bank when a  
6 borrower goes into bankruptcy?  
7 MR. BRENNER: Outside the scope of the  
8 deposition.  
9 A. I don't know.  
10 Q. (BY MS. EBRON) Did Bank of America provide  
11 U.S. Bank with a copy of the borrower's bankruptcy  
12 petition?  
13 A. I don't know.  
14 Q. Did Bank of America tell U.S. Bank that the  
15 bankruptcy petition listed delinquent homeowners'  
16 association dues within the petition?  
17 A. I don't know.  
18 Q. Was U.S. Bank aware that Bank of America gave  
19 the borrowers another loan for another property before  
20 they filed bankruptcy?  
21 MR. BRENNER: Outside the scope of this  
22 deposition.  
23 A. I don't know.  
24 Q. (BY MS. EBRON) Does -- has U.S. Bank required  
25 Bank of America to repurchase this loan?

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30(b)(6) Jessica Woodbridge - 10/21/2015  
SFR Investments Pool 1, LLC vs. US Bank, N.A., et al.

1 MR. BRENNER: Outside the scope of this  
2 deposition.  
3 A. Not -- not currently.  
4 (Exhibit 13 was marked.)  
5 Q. (BY MS. EBROW) Let me show you a document  
6 that's been marked as Exhibit 13. Do you recognize this  
7 document?  
8 A. Yes.  
9 Q. What is it?  
10 A. It is the first amended answer, counterclaims,  
11 cross claims and third-party complaints in this case.  
12 Q. Are you aware of the factual basis for  
13 U.S. Bank's affirmative defenses?  
14 A. Yes.  
15 Q. Okay. What about for U.S. Bank's 11th  
16 affirmative defense, what's the factual basis for that?  
17 MR. BRENNER: Calls for a legal  
18 conclusion.  
19 A. I -- I just know -- I just know kind of in  
20 general the factual basis for all of the defenses or for  
21 just in sort of general knowledge.  
22 Q. (BY MS. EBROW) Okay.  
23 A. That the notice of sale was not sent to  
24 U.S. Bank as the beneficiary under the deed of trust,  
25 that the notice of sale never included a superlien

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1 A. Again, without -- I mean, I'm not sure if --  
2 with the -- if it's a legal conclusion, I'm not really  
3 sure of it. But I also know we had a -- that there was  
4 a recorded deed of trust on file.  
5 Q. (BY MS. EBROW) Okay. So all the things that  
6 were listed were things that were done by whoever  
7 conducted the sale, as far as I can tell, or the  
8 association -- the association had CC&Rs, the notice of  
9 sale was not prepared by SFR, there was a price, and  
10 that I guess is related to SFR because they were the  
11 highest bidder at the sale. But is there anything,  
12 like, involving the process or that U.S. Bank believes  
13 SFR did to cause a problem with the sale?  
14 MR. BRENNER: Form.  
15 A. I'm not sure.  
16 Q. (BY MS. EBROW) Did you see anything in your  
17 files that evidence some type of fraud by SFR in  
18 connection with the sale?  
19 A. Not in the records that I reviewed, no.  
20 Q. Were there in records that you didn't review  
21 that somebody else told you about?  
22 A. No.  
23 Q. And I guess the same question would apply to  
24 the 14th affirmative defense, failure to do equity. Are  
25 you aware of any facts that show that SFR failed to do

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1 priority amounts, that the sale price at the auction was  
2 much lower than the actual appraised values, that, that  
3 the notice of sale was given starting -- the HOA's  
4 notice of sale was sent out during the bankruptcy action  
5 while it was ongoing, that the CC&Rs had a clause saying  
6 that they wouldn't foreclose on the first lien, that the  
7 sale date was moved without telling U.S. Bank, and that  
8 the notice of sale was executed -- appears to have been  
9 executed on September 12th of 2011 but it was not sent  
10 for several weeks later and, again, was not sent -- was  
11 only sent to Bank of America, N.A.  
12 Q. Anything else?  
13 A. That's all that I can think of at this moment.  
14 Q. Is there any fact that you're aware of that  
15 relates to some action or inaction of SFR?  
16 MR. BRENNER: Form, foundation.  
17 A. I'm not sure if I understand your question.  
18 Q. (BY MS. EBROW) Well, I'm looking at the 11th  
19 affirmative defense, and it says, "SFR" -- well, this  
20 doesn't make any sense. "SFR avers the affirmative  
21 defense of unclean hands."  
22 So is there anything that SFR did to cause  
23 it to have unclean hands, in the view of U.S. Bank?  
24 MR. BRENNER: Calls for a legal  
25 conclusion.

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1 equity, in your understanding?  
2 MR. BRENNER: Calls for a legal  
3 conclusion.  
4 A. Yeah, I'm not sure that I could -- would be  
5 able to answer that question because I'm not sure  
6 legally or what that means.  
7 Q. (BY MS. EBROW) Okay. The 15th affirmative  
8 defense is that SFR is not a bona fide purchaser. Is it  
9 correct, based on your previous answer, that you're  
10 saying that SFR is not a bona fide purchaser because the  
11 deed of trust was recorded?  
12 A. Yes. And I believe also that the amount was  
13 commercially unreasonable or that it was so much lower  
14 than the actual appraised value at the time of the sale.  
15 Q. Okay. So the facts that you're aware of for  
16 the 15th affirmative defense is that there was a  
17 recorded deed of trust and there was a low purchase  
18 price at the auction?  
19 A. Again, not as with any legal conclusion, but  
20 that's my understanding, yes.  
21 Q. I just want to make sure that there aren't any  
22 additional facts that I'm unaware of.  
23 Oh, do you know of any facts -- because we  
24 talked about earlier that the federal -- you weren't  
25 aware of any federal agencies having an interest in this

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30(b)(6) Jessica Woodbridge - 10/21/2015  
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1 loan, correct? Do you know why or what is the basis for  
2 the 23rd affirmative defense?  
3 A. Just my general understanding that a bank --  
4 that the bankruptcy is a federal process, and to the  
5 extent that the notice of sale was sent while that  
6 bankruptcy was still ongoing.  
7 Q. Okay. Right. For the 22nd -- thank you. I  
8 skipped over that.  
9 Also the 23rd affirmative defense is  
10 federal preemption. Are you aware of what the basis of  
11 that affirmative defense is?  
12 MR. BRENNER: She answered that question.  
13 A. I believe that it's --  
14 Q. (BY MS. EBRON) It's also related to the  
15 bankruptcy?  
16 A. I believe that's so, but again, not a legal  
17 conclusion, so there could be...  
18 Q. Okay. I just wanted to make sure there was  
19 no, like, FHFA or FHA implied in that federal  
20 preemption.  
21 Do you know the basis of the 24th  
22 affirmative defense?  
23 A. Again, I think that that's, like, a Nevada  
24 law, so I think all of that is a legal conclusion, just  
25 the fact that we were not able to foreclose on the

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1 A. So the third claim?  
2 Q. (BY MS. EBRON) Yeah, on page 16.  
3 A. Right. I just think that it's the same facts  
4 that I stated prior.  
5 Q. Okay. What about the fourth claim, tortious  
6 interference with contract against a lessee in Southern  
7 Highlands, what contract?  
8 MR. BRENNER: Same objections.  
9 A. It would -- is it not indicated in here?  
10 Q. (BY MS. EBRON) I know. That's why I was  
11 asking.  
12 A. This is not something that -- again, it's -- I  
13 think the facts are the facts that I've stated  
14 previously and that anything else would be a legal  
15 conclusion.  
16 MR. BRENNER: And already pled in the  
17 complaint.  
18 Q. (BY MS. EBRON) All right. Let's go to the  
19 eighth claim for relief, please. Do you know the  
20 factual basis for the breach of contract in Southern  
21 Highlands? Is it just the CC&Rs having a mortgage  
22 savings clause -- or mortgage protection clause?  
23 A. I believe that that's -- I mean, I wouldn't  
24 know any more than what it states there or what the  
25 facts that I've already stated.

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1 property before pursuing deficiency is my general  
2 understanding of that.  
3 Q. Okay. So because U.S. Bank couldn't pursue a  
4 deficiency before foreclosing, that the association  
5 foreclosure sale is a violation?  
6 A. That --  
7 MR. BRENNER: Calls for a legal  
8 conclusion.  
9 A. My just general understanding of that would be  
10 the reverse, that we're incapable -- if the HOA sale  
11 could make it incapable of us foreclosing and then --  
12 and that would make us violate the one -- Nevada  
13 one-action rule. I'm not really sure if I understand  
14 that. None of it would be -- I don't think there's any  
15 factual. It's all just legal conclusion.  
16 Q. (BY MS. EBRON) Okay. I didn't understand it  
17 either, so I think we're both on the same page there.  
18 Okay. Let's go to U.S. Bank's claims in  
19 the first amended complaint. I want to look at the  
20 third claim, I believe. Do you know the factual basis  
21 for the third claim for relief of unjust enrichment  
22 against a lessee in Southern Highlands?  
23 MR. BRENNER: Calls for a legal  
24 conclusion and it's also irrelevant and not pled against  
25 SFR.

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1 Q. What about the tenth claim for relief,  
2 negligent misrepresentation?  
3 A. Again, just that it would -- the facts that  
4 I've already stated plus, you know, what it states in  
5 the complaint itself.  
6 Q. But nothing else?  
7 A. Anything else would -- I think that -- I mean,  
8 if there's a legal conclusion to be said, I wouldn't  
9 know.  
10 Q. Will you go back to Exhibit 9, please.  
11 MR. BRENNER: It's now 3:08 and we're  
12 going back to ask the witness questions. I'm noting for  
13 the record, we're going back -- I'm sorry, 5:08. We're  
14 going back to ask the witness questions about a document  
15 she said she has no knowledge about. I'm giving this a  
16 couple more minutes because I'm trying to be fair, but  
17 then we're calling it off.  
18 Q. (BY MS. EBRON) I want you to look at page 17,  
19 please. I guess it's -- I think it's at 17 where there  
20 are -- 16 and 17. They list loan numbers of what  
21 appears to be information -- or loans contained within  
22 the trust. Do you see the loan number for this property  
23 on either of these two pages?  
24 A. I'm not sure if I remember offhand the loan  
25 number.

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SFR Investments Pool 1, LLC vs. US Bank, N.A., et al.

1 Q. Do you know what the loan number is? Or do  
2 you know where you would be able to look to find the  
3 loan number?  
4 A. I would have to look in our system, as I'm not  
5 sure that -- I'm not sure that the -- actually, I'm not  
6 sure what loan number U.S. Bank is using.  
7 MR. BRENNER: Are we talk -- this is  
8 page 17 and 18?  
9 MS. EBRON: 16 and 17 of Exhibit 9.  
10 A. And I don't know if the loan number -- I know  
11 that the loan number on the deed of trust does not match  
12 the loan number that is currently being used in our  
13 system, but I'm not sure which loan number, if they have  
14 a separate -- even another loan number or different loan  
15 number in here.  
16 Q. (BY MS. EBRON) So U.S. Bank -- are you saying  
17 that U.S. Bank may have a different loan number  
18 associated with this particular deed of trust or  
19 promissory note than Bank of America has?  
20 A. Yes.  
21 Q. Who would be able to -- who would know that  
22 information?  
23 A. The new servicer would have given a new loan  
24 number -- likely would have given a new loan number at  
25 the time of the service transfer, and then you'd have to

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1 A. I know that --  
2 MR. BRENNER: Hold on. It's also outside  
3 the scope of the deposition and the way it was asked was  
4 specifically protected by the Court.  
5 A. I know that there is -- there is no litigation  
6 for this particular loan between U.S. Bank and Bank of  
7 America, N.A.  
8 Q. (BY MS. EBRON) Thank you.  
9 Just back to Number 12, you are not aware  
10 of why this was recorded?  
11 MR. BRENNER: Asked and answered.  
12 A. I'm not specifically aware, no.  
13 Q. (BY MS. EBRON) I think I'm about done.  
14 Were there any valuations in the file?  
15 A. Yes.  
16 Q. How many?  
17 A. There were, I believe, two appraisals and  
18 numerous BPOs, I mean, a good handful of BPOs.  
19 Q. Were there any around the time of the  
20 association foreclosure sale?  
21 A. Yes.  
22 Q. How many?  
23 A. There was an appraisal and on August 16th,  
24 2012, there was a BPO with interior inspection done the  
25 same day. There were also a -- two BPOs done that month

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1 match -- I just don't know -- you'd have to match it up  
2 to see whether or not it made sense with this particular  
3 loan number.  
4 (Exhibit 14 was marked.)  
5 Q. (BY MS. EBRON) Let me show you a document  
6 that's marked as Exhibit 14. Do you recognize this  
7 document?  
8 A. I did not review it before this deposition.  
9 Q. Do you know, did you certify or verify a copy  
10 of these?  
11 A. I did not, no.  
12 Q. Do you know if somebody has?  
13 A. I don't know if that's required or not.  
14 Q. Well, I'll just represent that it is required,  
15 but do you know if anyone at U.S. Bank or Bank of  
16 America has verified the interrogatories -- the  
17 responses to interrogatories?  
18 A. I did not review that -- any of that  
19 information before, so I don't know.  
20 MR. BRENNER: And interrogatories in the  
21 question are not within the scope of the deposition.  
22 Q. (BY MS. EBRON) Is there any litigation  
23 between the trust and the servicer of the loan securing  
24 the first deed of trust?  
25 MR. BRENNER: Asked and answered.

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1 on August 9th and August 10th, there was also one BPO  
2 done like post, in November of 2012. Plus there was an  
3 expert opinion.  
4 Q. And the expert opinion was done just recently,  
5 right?  
6 A. Yes, but the valuation date was the date of  
7 the sale.  
8 Q. Okay. What were the amounts of the valuation  
9 on August 16, 2012?  
10 A. The appraisal was for \$475,000, and the BPO  
11 had the price as \$567,000.  
12 Q. Did the borrower's apply for a loan  
13 modification?  
14 MR. BRENNER: Outside the scope of this  
15 deposition.  
16 MS. EBRON: No, it's in Topic Number 2.  
17 MR. BRENNER: How is it in Topic  
18 Number 27  
19 Q. (BY MS. EBRON) You can answer.  
20 MS. EBRON: Unless you're instructing her  
21 not to answer.  
22 MR. BRENNER: Well, we're out of time.  
23 How many more questions do you have?  
24 MS. EBRON: Not that many.  
25 MR. BRENNER: Well, how many is "not that

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1 many?"  
2 MS. EBON: I don't know. It depends on  
3 how she answers.  
4 MR. BRENNER: Well, I've already let  
5 this -- I'm going to let this be the last question. I  
6 already let this go half an hour after it was noticed.  
7 MS. EBON: It wasn't noticed to end at  
8 five o'clock, and it was noticed --  
9 MR. BRENNER: So you can go until  
10 2:00 a.m.?  
11 MS. EBON: It was noticed at 2:00 p.m.  
12 on Monday, and I moved it at your request, to this time  
13 at your request. It's not even six o'clock yet. It's  
14 not even 5:30, so I don't think it's --  
15 MR. BRENNER: Well, it's obvious that  
16 you've come unprepared. You're not working from notes.  
17 There have been long pauses. You're looking at the --  
18 MS. EBON: That's not even true.  
19 MR. BRENNER: -- documents slowly.  
20 You're asking questions that you are outside the scope  
21 of the notice, that you know are outside the scope of  
22 the notice. You've even agreed on the record. You're  
23 asking questions that the Court limited, and now you're  
24 asking about a loan modification with the borrower which  
25 is completely irrelevant.

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1 A. Yes.  
2 Q. Was part of the loan modification process --  
3 did that include any reference to the association  
4 foreclosure sale or the lien or association assessments?  
5 A. No.  
6 Q. Were there any communications with the  
7 borrower about the homeowners' association lien before  
8 the sale?  
9 MR. BRENNER: Asked and answered. This  
10 is precisely where before you then tried to ask after  
11 the foreclosure sale even though the notice limits it.  
12 A. No.  
13 MS. EBON: Okay. I'm going to end this  
14 now but reserve my right to recall the witness based on  
15 documents that were not provided in advance of the  
16 deposition and we can go from there.  
17 (Proceeding concluded at 5:18 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25

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1 I told you I've got other things going  
2 on. I've explained that to you. We could have done  
3 this differently. You went down this way, so I've  
4 already --  
5 MS. EBON: No, we couldn't have done it  
6 differently because you requested to change it this way  
7 and then all of a sudden you're like, oh, my gosh, we  
8 can't go any longer.  
9 MR. BRENNER: Because you asked me at  
10 11:00 p.m. --  
11 MS. EBON: No.  
12 MR. BRENNER: -- the day before the  
13 deposition.  
14 MS. EBON: No.  
15 MR. BRENNER: You knew --  
16 MS. EBON: No.  
17 MR. BRENNER: You knew that it was a  
18 problem or you wouldn't have asked.  
19 MS. EBON: No, no. That's not what  
20 happened.  
21 Q. (BY MS. EBON) So did they apply for a loan  
22 modification?  
23 A. I believe our records show yes.  
24 Q. And was that before the association  
25 foreclosure sale?

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1 CHANGES AND SIGNATURE  
2 WITNESS NAME: Jessica Woodbridge DATE: October 21, 2015  
3 PAGE LINE CHANGE REASON  
4 \_\_\_\_\_  
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25 \_\_\_\_\_

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**30(b)(6) Jessica Woodbridge - 10/21/2015**  
**SFR Investments Pool 1, LLC vs. US Bank, N.A., et al.**

1 I, JESSICA WOODBRIDGE, have read the foregoing  
2 deposition and hereby affix my signature that same is  
3 true and correct, except as noted above.  
4  
5 JESSICA WOODBRIDGE  
6  
7  
8 THE STATE OF \_\_\_\_\_ )  
9 COUNTY OF \_\_\_\_\_ )  
10  
11 Before me, \_\_\_\_\_, on  
12 this day personally appeared JESSICA WOODBRIDGE, known  
13 to me (or proved to me under oath or through  
14 \_\_\_\_\_) (description of identity  
15 card or other document)) to be the person whose name is  
16 subscribed to the foregoing instrument and acknowledged  
17 to me that they executed the same for the purposes and  
18 consideration therein expressed.  
19 Given under my hand and seal of office this  
20 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
21  
22  
23 NOTARY PUBLIC IN AND FOR  
24 THE STATE OF \_\_\_\_\_  
25 COMMISSION EXPIRES: \_\_\_\_\_

Page 77

1  
2 I, April R. Eichelberger, Certified Shorthand  
3 Reporter in and for the State of Texas, hereby certify  
4 to the following:  
5 That the witness, JESSICA WOODBRIDGE, was duly sworn  
6 by the officer and that the transcript of the oral  
7 deposition is a true record of the testimony given by  
8 the witness;  
9 I further certify that the examination and signature  
10 by the deponent was requested by the deponent or a party  
11 and that, therefore, the deposition transcript was  
12 submitted on \_\_\_\_\_, 2015, to the witness  
13 or to the attorney for the witness for examination and  
14 signature before any notary public and to be returned to  
15 me within \_\_\_\_\_ days from date of receipt of the  
16 transcript. If returned, the attached Changes and  
17 Signature Page contains any changes and the reasons  
18 therefore;  
19 That pursuant to information given to the deposition  
20 officer at the time said testimony was taken, the  
21 following includes counsel for all parties of record:  
22 FOR THE PLAINTIFF AND COUNTERDEFENDANT:  
23 Ms. Diana S. Ebron  
24 HOWARD KIM & ASSOCIATES  
25 1055 Whitney Ranch Drive, Suite 110  
Henderson, Nevada 89014  
702.485.3300, 702.485.3301 (Fax)  
diana@hkimlaw.com

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DISTRICT COURT  
CLARK COUNTY, NEVADA

3 SFR INVESTMENTS POOL 1, LLC a ) Case No. A-12-673671-C  
4 Nevada limited liability company, )  
5 vs. Plaintiff, ) Dept. No. XXVII  
6 US BANK, N.A., a national banking ) ORAL DEPOSITION OF  
7 association as Trustee for the ) JESSICA WOODBRIDGE, AS  
8 Certificate Holders of the Banc ) US BANK N.A. 30(b)(6)  
9 of America Mortgage Securities ) VOLUME 1  
10 2008-A Trust, Mortgage Pass- ) Date: October 21, 2015  
11 Through Certificates, Series )  
12 2008-A, CAL-WESTERN RECONVEYANCE )  
13 CORPORATION, a California )  
14 corporation, SAN SEVINO WEST AT )  
15 SOUTHERN HIGHLANDS HOMEOWNERS )  
16 ASSOCIATION, a Nevada non-profit )  
17 corporation, SOUTHERN HIGHLANDS )  
18 COMMUNITY ASSOCIATION, a Nevada )  
19 non-profit corporation, GEORGE )  
20 A. SHERWOOD, an individual, )  
21 SHARON L. SHERWOOD, an individual, )  
22 DOES I through X; and ROE )  
23 CORPORATIONS I through X, )  
24 inclusive, )  
25 Defendants. )

16 U.S. BANK, N.A., as Trustee for )  
17 the Certificate Holders of the Banc )  
18 of America Mortgage Securities )  
19 2008-A Trust, Mortgage Pass-Through )  
20 Certificates, Series 2008-A, )  
21 Counterclaimant, )  
22 vs. )  
23 SFR INVESTMENTS POOL 1, LLC, a )  
24 Nevada limited liability company, )  
25 DOES 1-10, inclusive; ROE )  
CORPORATIONS 1-10, inclusive, )  
Counterdefendants. )

REPORTER'S CERTIFICATION  
DEPOSITION OF JESSICA WOODBRIDGE  
OCTOBER 21, 2015

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1 FOR THE DEFENDANTS AND COUNTERCLAIMANTS:  
2 Mr. Darren Brenner  
3 AKERMAN, L.L.P.  
4 1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
702.634.5000  
darren.brenner@akerman.com  
5 That \_\_\_\_\_ is the deposition officer's charges  
6 to the Plaintiff for preparing the original deposition  
7 transcript and any copies of exhibits;  
8 I further certify that I am neither counsel for,  
9 related to, nor employed by any of the parties or  
10 attorneys in the action in which this proceeding was  
11 taken, and further that I am not financially or  
12 otherwise interested in the outcome of the action.  
13 Certified to by me this \_\_\_\_\_ day of  
14 \_\_\_\_\_, 2015.  
15  
16  
17 April R. Eichelberger  
18 Texas CSR No. 7495  
19 Expiration Date: 12/31/2017  
20 Depo International  
21 702-386-9322  
22  
23  
24  
25

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# EXHIBIT A-4

## Discharge of Assignment

TAX PARCEL: 191-05-217-040  
THIS INSTRUMENT WAS PREPARED BY:  
JOANN NORMAN

WHEN RECORDED MAIL TO:  
CORELOGIC  
450 EAST BOUNDARY STREET  
CHAPIN, SC 29036

Loan No 1008707928272005N

Mortgagor: GEORGE A SHERWOOD and  
SHARON L SHERWOOD

Inst #: 20150413-0001690

Fees: \$17.00

N/C Fee: \$25.00

04/13/2016 11:43:57 AM

Receipt #: 2382632

Requestor:

CORELOGIC

Recorded By: MAT Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

31645524

DISCHARGE OF ASSIGNMENT

KNOWN ALL MEN BY THESE PRESENTS,

THAT THE ASSIGNMENT OF MORTGAGE/DEED OF TRUST DATED 11/21/2011

FROM BANK OF AMERICA, N.A. BY CAL-WESTERN RECONVEYANCE CORPORATION AS ATTORNEY-IN-FACT

WHOSE ADDRESS IS 1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063

TO U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE BANC OF AMERICA

MORTGAGE SECURITIES 2008-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2008-A

WHOSE ADDRESS IS 1 FEDERAL STREET, FL 3, BOSTON, MA 02110-2012

RECORDED ON 11/23/11 INSTRUMENT #201111230000496, BOOK# N/A, PAGE# N/A, IN PUBLIC RECORDS OF CLARK COUNTY, STATE OF NV, IS HEREBY DISCHARGED OF RECORD FOR THE REASON THAT SAID ASSIGNMENT OF MORTGAGE/DEED OF TRUST WAS ERRONEOUSLY RECORDED AND THE SPECIFIED THEREIN WAS RECORDED WAS NOT INTENDED TO BE ASSIGNED OR TRANSFERRED. THE UNDERLYING LOAN HAVING NEVER PURCHASED BY U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE BANC OF AMERICA MORTGAGE SECURITIES 2008-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2008-A

IN WITNESS WHEREOF, BANK OF AMERICA, N.A.

HAS CAUSED THIS DISCHARGE OF ASSIGNMENT TO BE SIGNED THIS DATE

11/25/14

BY:

JoAnn Norman  
JoAnn Norman - ASSISTANT VICE PRESIDENT

STATE OF CALIFORNIA  
COUNTY OF VENTURA

ON 11/25/14 BEFORE ME, C. SANTOS, NOTARY PUBLIC, PERSONALLY APPEARED JOANN NORMAN, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL:

SIGNATURE

C. Santos

C. SANTOS - Notary Public



# EXHIBIT A-5

Ortwerth Deposition Transcript

**In The Matter Of:**  
*SFR Investments Pool 1, LLC vs.*  
*Morgan Stanley, et al.*

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*Katherine Ortwerth*  
*April 5, 2016*

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*Min-U-Script® with Word Index*

**Katherine Ortwerth - April 5, 2016**  
**SFR Investments Pool 1, LLC vs. Morgan Stanley, et al.**

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21				
22	DEPOSITION of KATHERINE ORTWERTH			
23	Taken on Tuesday, April 5, 2016			
24	At 1:06 p.m.			
25	At 7625 Dean Martin Drive, Suite 110			
	Las Vegas, Nevada			
	Reported by: Lori-Ann Landers, CCR 792, RPR			
		Page 2		Page 4
1	A P P E A R A N C E S:		1	P R O C E E D I N G S
2	For SFR Investments Pool 1, LLC		2	(Prior to the commencement of the deposition proceedings,
3	DIANA CLINE EBON, ESQ.		3	a discussion was held off the record among the court
4	Kim Gilbert Ebron		4	reporter and counsel, wherein counsel stipulated to waive
5	7625 Dean Martin Drive, Suite 110		5	the reporter requirements under Rule 30(b)(4).)
6	Las Vegas, Nevada 89139		6	(Witness sworn.)
7	Email: diana@kgelegal.com		7	KATHERINE ORTWERTH,
8	For HSBC BANK USA, N.A.		8	having been first duly sworn, was examined and
9	JEFFREY S. ALLISON, ESQ.		9	testified as follows:
10	LINDSEY E. PEÑA, ESQ.		10	EXAMINATION
11	Houser & Allison, APC		11	BY MS. EBON:
12	3900 Paradise Road, Suite 101		12	Q. Good afternoon. My name is Diana Cline Ebron.
13	Las Vegas, Nevada 89169		13	I represent SFR Investments Pool 1, LLC in this matter.
14	Email: jallison@houser-law.com		14	Can you please state your name for the record.
15			15	A. Katherine Ortwerth.
16			16	Q. Can you spell that?
17			17	A. K-a-t-h-e-r-i-n-e, Ortwerth, O-r-t-w-e-r-t-h.
18			18	Q. Are you employed?
19			19	A. Yes.
20			20	Q. Who is your employer?
21			21	A. Ocwen Financial Corporation.
22			22	Q. Have you had your deposition taken before?
23			23	A. Yes.
24			24	Q. How many times?
25			25	A. I don't know.
				Q. More than 10?
				A. More than 10.

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1 Q. So you are familiar with the ground rules for a  
2 deposition?  
3 A. Yes.  
4 Q. Okay. I will just remind you that everything  
5 you say today is under oath, and that oath has the same  
6 force and effect as if we were sitting in a courtroom in  
7 front of a judge, even though there isn't one here today.  
8 Do you understand?  
9 A. Yes.  
10 Q. Great. If you need to take a break at any time  
11 or anything else, you need a drink, just let me know. If  
12 there is a pending question I will have you answer that  
13 question before we take a break. But, other than that,  
14 let's get started.  
15 A. Okay.  
16 Q. How long have you been employed with Ocwen?  
17 A. January 2014.  
18 Q. What's your position?  
19 A. Loan analyst.  
20 Q. Have you held any other positions at Ocwen?  
21 A. No.  
22 Q. Were you employed before Ocwen?  
23 A. OneWest Bank.  
24 Q. What were the dates of employment?  
25 A. April 2012 to November 2013.

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1 Q. What was your position?  
2 A. Default litigation specialist.  
3 Q. Did you have any other positions besides the  
4 default litigation specialist at OneWest?  
5 A. No.  
6 Q. Were you employed before OneWest?  
7 A. Yes.  
8 Q. Where?  
9 A. Lawyer's Aid Service.  
10 Q. What were your dates of employment? It's okay  
11 if you estimate.  
12 A. Sometime in 2011 to April 2012. I think it was  
13 May 2011, but I'm not sure.  
14 Q. What was your position?  
15 A. I didn't really have a title. I was kind of the  
16 assistant to the vice president of the company.  
17 Q. Were you employed before Lawyer's Aid Service?  
18 A. Yes.  
19 Q. Where?  
20 A. I kind of had two jobs running at the same time.  
21 One of them was at Aviles Engineering Corporation, and I  
22 was just digitizing their files for them. So, again, no  
23 title there. And that was from around August 2009 to  
24 April 2011.  
25 And then for part of that I was doing recruiting

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1 for University of Illinois College of Law.  
2 Q. What were the dates that you did recruiting for  
3 the University of Illinois College of Law?  
4 A. I think August 2009 to February 2010.  
5 Q. Were you employed before that?  
6 A. Yes.  
7 Q. Where?  
8 A. I worked for Law Offices of Kent Follmer part  
9 time from June 2008 to May 2009, I think.  
10 Q. Did you have any other experience in the  
11 mortgage or banking industry other than Ocwen and  
12 OneWest?  
13 A. No.  
14 Q. Did you graduate high school?  
15 A. Yes.  
16 Q. Where?  
17 A. Klein Forest High School in Houston.  
18 Q. When was that?  
19 A. 2001.  
20 Q. Did you attend college?  
21 A. Yes.  
22 Q. Where?  
23 A. University of Texas.  
24 Q. What dates?  
25 A. Fall 2001 through fall 2004.

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1 Q. Did you earn a degree at University of Texas?  
2 A. Yes.  
3 Q. What?  
4 A. BA in English.  
5 Q. Do you have any other degrees?  
6 A. Yes, I have a J.D. in law from the University of  
7 Illinois.  
8 Q. What year did you get your degree from the  
9 University of Illinois?  
10 A. 2009.  
11 Q. Do you have any other professional  
12 certifications or licenses?  
13 A. I passed the bar in Texas, but I'm inactive. I  
14 have been inactive pretty much the whole time.  
15 Q. What were your duties as the default litigation  
16 specialist at OneWest Bank?  
17 A. I basically case managed litigation that came in  
18 related to loan servicing. I would assign a file to  
19 outside counsel. I would do all the research on it, pull  
20 all documents, any kind of settlement authority I would  
21 get from the appropriate departments. Just kind of the  
22 day-to-day stuff on litigated files.  
23 Q. Were part of your responsibilities at OneWest to  
24 testify at depositions or at trial?  
25 A. No.



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1 Q. When you worked at OneWest Bank did you work on  
2 files that were dealing with loans in Nevada?  
3 **A. Probably, but I don't know for sure.**  
4 Q. What office or what state was the office that  
5 you worked at for OneWest Bank?  
6 **A. Austin, Texas.**  
7 Q. What's your current business address at Ocwen?  
8 **A. 1661 Worthington, W-o-r-t-h-i-n-g-t-o-n, Road,**  
9 **Suite 100, West Palm Beach, Florida.**  
10 Q. What are your duties as a loan analyst?  
11 **A. Kind of -- my job has two parts, one which is**  
12 **appearing on behalf of Ocwen and the investors on**  
13 **litigated files, depositions, trials, hearings, mediations,**  
14 **stuff like that.**  
15 **The other half is doing in-office stuff. I'm**  
16 **either preparing for those appearances or I'm reviewing**  
17 **and signing documents for litigation such as**  
18 **verifications, affidavits, declarations.**  
19 **I also do research on litigated files. If the**  
20 **attorneys need something looked into, I will get assigned**  
21 **it.**  
22 Q. Anything else?  
23 **A. That's pretty much it.**  
24 Q. You mentioned that you appear on behalf of Ocwen  
25 and investors. I'm assuming in depositions as well as at

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1 trial; is that right?  
2 **A. Yes.**  
3 Q. About how many trials have you testified at?  
4 **A. I have no idea.**  
5 Q. More than 100?  
6 **A. I don't know. I had a week where -- Florida**  
7 **does this kind of rocket docket thing where they do a**  
8 **bunch in a day, and I did a bunch that week, but I don't**  
9 **know how many it was. That may have sent me over 100,**  
10 **but apart from that, not really.**  
11 Q. Fair enough. Are the cases that you testify in  
12 just usually in Florida or are they across the country?  
13 **A. They are across the country.**  
14 Q. About how many files do you work on at a time  
15 that you are assigned to?  
16 **A. I don't really get assigned files. I get**  
17 **assigned an appearance, and I work on that appearance and**  
18 **I get assigned documents and I work on that document, but**  
19 **I'm not ever assigned to a specific file from beginning**  
20 **to end or anything like that.**  
21 **So I don't have a typical work week, so I can't**  
22 **say what my normal amount of things I'm working on at one**  
23 **time are.**  
24 Q. Fair enough. I'm going to show you a document  
25 that we are going to mark as Exhibit 1.

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1 (Notice Of 30(b)(6) Deposition Of HSBC  
2 Bank USA, N.A. was marked as Exhibit 1, for  
3 identification, as of this date.)  
4 Q. It's double-sided, so you can look at both  
5 sides.  
6 Do you recognize this document?  
7 **A. I do.**  
8 Q. What is it?  
9 **A. A Notice of 30(b)(6) Deposition of HSBC Bank**  
10 **USA, N.A.**  
11 Q. Have you had a chance to review this before  
12 today?  
13 **A. I have.**  
14 Q. What is HSBC Bank USA, N.A.'s relationship with  
15 Ocwen such that you would be testifying on its behalf  
16 today?  
17 **A. So, just so we can clarify, it's all one -- HSBC**  
18 **Bank USA, N.A. as Trustee for Sequoia Mortgage Trust 2003**  
19 **(sic), I am going to refer to as "the trust" from now on,**  
20 **that whole name, because HSBC Bank isn't here as HSBC**  
21 **Bank; it's for them as trustee for this trust. And we**  
22 **have a power of attorney for them, and we service the**  
23 **loan on their behalf.**  
24 Q. On Page 2 of the notice there are some  
25 definitions. It defines the property as the real

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1 property located at 6023 Aromatico Court, Las Vegas,  
2 Nevada 89141, Parcel No. 176-36-417-040.  
3 Whenever we talk about "the property" today, I'm  
4 going to be referring to the real property on Aromatico  
5 Court; is that okay?  
6 **A. Yes.**  
7 Q. Also, it defines the association as Southern  
8 Highlands HOA, but I think it's actually Southern  
9 Highlands Community Association.  
10 So whenever I talk about "the association," I'm  
11 going to be referring to Southern Highland Community  
12 Association unless otherwise specified.  
13 Okay?  
14 **A. Okay.**  
15 Q. Also, there is a definition for association  
16 foreclosure sale. And it refers to the auction held on  
17 July 11, 2012 by Alessi & Koenig, LLC on behalf of the  
18 association.  
19 There are a lot of topics that are narrowed by  
20 the date of the association foreclosure sale, so if I ask  
21 you for information about something that happened before  
22 the association foreclosure sale, I'm looking to that  
23 date of July 11, 2012.  
24 Okay?  
25 **A. Okay.**

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1 Q. Also, I may refer to Alessi & Koenig, LLC as  
2 "Alessi," if that's okay with you?  
3 A. **That's fine.**  
4 Q. What did you do to prepare for your deposition?  
5 A. **I reviewed our servicing records on this loan.**  
6 **I reviewed the prior servicer's records on this loan. I**  
7 **reviewed documents that we produced in discovery, and I**  
8 **had prep sessions with counsel.**  
9 Q. About how long did you spend preparing for your  
10 deposition?  
11 A. **I just got notified Thursday night. So I flew**  
12 **up here yesterday and spent all day yesterday preparing**  
13 **for it and then all this morning.**  
14 Q. Other than counsel, did you speak to anyone else  
15 in preparation for your deposition?  
16 A. **No.**  
17 Q. Did you email with anyone besides counsel to get  
18 information for your deposition?  
19 A. **We did, but we didn't get those answers yet, so**  
20 **it's not anything that I would be testifying to today.**  
21 Q. Okay. Were you able to speak with anyone or  
22 communicate with anyone from HSBC Bank USA in preparation  
23 for your deposition?  
24 A. **No.**  
25 Q. Did you speak to the previous servicer or email

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1 with the previous servicer in preparation for your  
2 deposition?  
3 A. **They don't exist anymore, so, no.**  
4 Q. Who was the previous servicer?  
5 A. **Saxon.**  
6 Q. When was -- when did Ocwen become the servicer?  
7 A. **April 2012.**  
8 Q. Do you know if there were any other servicers  
9 before April of 2012 besides Saxon?  
10 A. **Not that I am aware of, but I don't know.**  
11 Q. On Page 3 of Exhibit 1 there are topics. Start  
12 there and go to Page 6.  
13 Did you have a chance to review each of these  
14 topics before today?  
15 A. **I did.**  
16 Q. And are you the person that HSBC has designated  
17 to testify on its behalf?  
18 A. **Yes.**  
19 Q. You mentioned that you reviewed servicing  
20 records. What types of servicing records did you review?  
21 A. **I reviewed the comments and transaction history**  
22 **from Saxon, I reviewed Ocwen's comments and transaction**  
23 **history as well. I reviewed our actual system. I**  
24 **reviewed a bunch of -- they are called BPOs, but they are**  
25 **basically valuations of the property. I reviewed**

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1 **recorded documents related to this property, and I**  
2 **reviewed discovery responses.**  
3 Q. Anything else?  
4 A. **I think that's it.**  
5 Q. If you think of anything else, you can go ahead  
6 and let me know.  
7 A. **Okay.**  
8 Q. Do you know what types of documents were  
9 included in the prior servicer's records?  
10 A. **So anything that happened on this loan prior to**  
11 **April 2012 we would have had incorporated into our**  
12 **business records.**  
13 **So it would have been -- I mean, there are**  
14 **certain things in the prior servicer that I didn't go**  
15 **through such as letters to the borrower because they**  
16 **weren't really relevant to this litigation. But the**  
17 **comments log and transaction history would have been from**  
18 **the prior servicer, and I did review those.**  
19 Q. You mentioned that you reviewed Ocwen's system.  
20 Does that have a particular name?  
21 A. **REALServicing.**  
22 Q. And when you reviewed the other documents in the  
23 system like the BPOs and the recorded docs, were those  
24 imaged files or hard copies?  
25 A. **They were copies that I made sure they were in**

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1 **our system as well, but I reviewed them as copies and**  
2 **then just checked that they were in our system.**  
3 Q. Does Ocwen store those types of records, like,  
4 in a separate imaging system or are those part of  
5 REALServicing?  
6 A. **We store them in vault.**  
7 Q. The prior servicer's records, are those all  
8 contained in vault or are they contained in vault and  
9 REALServicing?  
10 A. **All of Saxon's are in vault.**  
11 Q. I'm going to show you a document that we are  
12 going to mark as Exhibit 2.  
13 (HSBC000001 through HSBC000004 was marked  
14 as Exhibit 2, for identification, as of this date.)  
15 Q. Do you recognize this document?  
16 A. **I do.**  
17 Q. What is it?  
18 A. **It is a copy of the adjustable rate note for the**  
19 **property.**  
20 Q. I'm going to show you a document that we will  
21 mark as Exhibit 3.  
22 (HSBC000005 through HSBC000022 was marked  
23 as Exhibit 3, for identification, as of this date.)  
24 Q. Do you recognize this document?  
25 A. **I do.**

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1 Q. What is it?

2 **A. It's a copy of the deed of trust for the**

3 **property.**

4 Q. These two documents, Exhibits 2 and 3, is it

5 your understanding that these make up the loan or the

6 mortgage?

7 **MR. ALLISON:** Objection. Vague.

8 **A. I don't know what you mean by that question.**

9 Q. Okay. Both of these, the note and the deed of

10 trust relate to the property on Aromatico; correct?

11 **A. Yes.**

12 Q. And the promissory note marked as Exhibit 2 was

13 secured by the deed of trust; is that your understanding?

14 **A. Yes.**

15 Q. Who was the originating lender?

16 **A. Morgan Stanley Dean Witter Credit Corporation.**

17 Q. When was this loan originated?

18 **A. I'm trying to find the date on here.**

19 **September 16, 2004.**

20 Q. When did HSBC first attain an interest in this

21 loan?

22 **A. We haven't been able to find the pooling and**

23 **service agreement for this, so I don't know the date they**

24 **got the interest. It would have been around 2007, just**

25 **based on the name of the trust, and then the assignment I**

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1 believe was done, which just memorialized the purchase,

2 was -- I believe was done in 2004.

3 Q. What do you mean?

4 **A. Well, it was recorded in 2012.**

5 Q. Oh, it was recorded in 2012 --

6 **A. The assignment, yes. Sorry.**

7 Q. Okay. Let's look at that. We will mark this as

8 Exhibit 4.

9 (HSBC0000031 through HSBC0000032 was

10 marked as Exhibit 4, for identification, as of this

11 date.)

12 Q. Do you recognize this document?

13 **A. I do.**

14 Q. What is it?

15 **A. It is the assignment of deed of trust from**

16 **Morgan Stanley Dean Witter to HSBC, N.A. as trustee for**

17 **the trust.**

18 Q. And, as you mentioned before, this was recorded

19 in 2012, correct?

20 **A. Yes.**

21 Q. And when was this executed?

22 **A. It appears to have been executed on**

23 **September 24, 2004.**

24 Q. Is it your understanding that there was a blank

25 assignment included with the file that was later filled

Page 19

1 in to show the transfer to HSBC Bank USA?

2 **A. I believe that's the case, but I don't know for**

3 **sure. I haven't seen any documentation as to that. I**

4 **have not seen the blank one, if there was a blank one.**

5 Q. But it does look like the page that's Bates

6 stamped HSBC0000032 has printed information as well as

7 handwritten information?

8 **A. Yes.**

9 Q. You mentioned earlier that you couldn't find the

10 pooling and servicing agreement for the trust; right?

11 **A. Yes.**

12 Q. And the trust is the Sequoia Mortgage Trust

13 2007-3?

14 **A. Yes.**

15 Q. Why did you say you think that it was put into

16 the trust sometime around 2007?

17 **A. Generally the name of the trust has the date**

18 **that -- all of the 2007 trusts are 2007 dash something.**

19 **Just generally based on the name they usually have the**

20 **year in the name.**

21 Q. So this isn't a loan that was originated and

22 then put immediately into a trust, like some that I have

23 seen, there was one that was originated and then it was

24 several years later before it was put into a trust?

25 **MR. ALLISON:** Objection. Speculation.

Page 20

1 **A. I don't know.**

2 Q. Where did you look to see if you could find the

3 pooling and servicing agreement?

4 **A. Ocwen has a system, it's kind of a shared server**

5 **that we keep all the PSAs, and it wasn't located on**

6 **there. So this is -- we reached out to some other people**

7 **and they reached out to HSBC, but we haven't been able to**

8 **get it yet.**

9 Q. Do you know who filled out the information on

10 the assignment?

11 **A. I do not. It's not on the business records.**

12 Q. Is that something that HSBC would know?

13 **A. I doubt it.**

14 Q. Who would know that?

15 **MR. ALLISON:** Objection. Speculation.

16 **A. I don't know. I don't know if anyone will know**

17 **that at this point besides the person that wrote on it.**

18 Q. Do you know what entity the person who would

19 have completed this would have been working for?

20 **A. I don't know because I don't know what date this**

21 **was written on, and I don't know who did it, so I**

22 **couldn't tell you.**

23 Q. But it wasn't Ocwen; right?

24 **A. I don't know.**

25 Q. You don't know if it was Ocwen?

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1 **A. I do not.**  
2 Q. And this was recorded after Ocwen serviced the  
3 loan?  
4 **A. Yes.**  
5 Q. So it could have been Ocwen?  
6 **A. Could have been, yes.**  
7 Q. Now I'm just going to go through some of the  
8 recorded documents --  
9 **A. Okay.**  
10 Q. -- with you. I'm trying to do them basically in  
11 date order. I will show you some documents that have  
12 been marked as Exhibit 5.  
13 (Notice Of Claim of Lien For Solid Waste Service  
14 was marked as Exhibit 5, for identification, as of this  
15 date.)  
16 Q. Do you recognize these documents?  
17 **A. I don't know that I have seen all four of these,**  
18 **but I have seen at least some of them.**  
19 Q. What are they?  
20 **A. They are notice of claim of lien for solid waste**  
21 **services on the property.**  
22 Q. Are these something that are contained in HSBC's  
23 business records?  
24 **A. I don't know that they would have been unless**  
25 **they had been sent to the servicer.**

Page 22

1 Q. Are these something that are contained in  
2 Ocwen's business records?  
3 **A. I don't believe that we had copies of these. I**  
4 **think the only copies we got were when counsel pulled**  
5 **them from the recordings on the property.**  
6 Q. Do you know when these were pulled?  
7 **A. Sometime during the course of this litigation.**  
8 **I don't know when.**  
9 Q. Do you know up in the upper left-hand corner  
10 what that stamp means, L 11/SPL1?  
11 **A. I do not.**  
12 Q. Look at what has been -- a document that we will  
13 mark as Exhibit 6.  
14 (Notice Of Violation (Lien) was marked as  
15 Exhibit 6, for identification, as of this date.)  
16 Q. Do you recognize this document?  
17 **A. Again, I don't know if I recognize this one. I**  
18 **have seen -- I believe there were a couple, and I don't**  
19 **know if I have seen this particular one or not.**  
20 Q. Do you recall seeing documents referencing  
21 Southern Highlands Community Association and Alessi &  
22 Koenig in HSBC's business records?  
23 **A. Again, they weren't in our business records,**  
24 **they were provided to me by counsel who pulled them from**  
25 **the recording office.**

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1 Q. Let's look at this document that we will mark as  
2 Exhibit 7.  
3 (HSBC0000026 was marked as Exhibit 7, for  
4 identification, as of this date.)  
5 Q. Do you recognize this document?  
6 **A. I believe so.**  
7 Q. Is this something that was contained in HSBC's  
8 business records before counsel pulled publically  
9 recorded documents?  
10 **A. No.**  
11 Q. I'm going to show you a document that we will  
12 mark as Exhibit 8.  
13 (HSBC0000023 was marked as Exhibit 8, for  
14 identification, as of this date.)  
15 Q. Do you recognize this document?  
16 **A. Yes.**  
17 Q. What is it?  
18 **A. It's a notice of default and election to sell**  
19 **for the property from Saxon at the time.**  
20 Q. And this relates to the deed of trust that we  
21 marked as Exhibit 3?  
22 **A. Yes.**  
23 Q. On the page that is Bates stamped HSBC0000024,  
24 in the paragraph that is second from the bottom, it  
25 mentions that there was a "Failure to pay the installment

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1 of principal, interest and impounds which became due on  
2 November 1, 2009..." Do you see that?  
3 **A. Yes.**  
4 Q. Do you know if there were any payments made by  
5 the borrower on the loan after November 1, 2009?  
6 **A. I don't know if he was making payments that**  
7 **weren't applied before that, but I do know he's still due**  
8 **for November 1, 2009.**  
9 Q. I'm going to show you a document that we will  
10 mark as Exhibit 9.  
11 (HSBC0000027 was marked as Exhibit 9, for  
12 identification, as of this date.)  
13 Q. Do you recognize this document?  
14 **A. I believe so.**  
15 Q. What is it?  
16 **A. "Notice Of Default and Election to Sell Under**  
17 **Homeowners Association Lien."**  
18 Q. And is this something that was contained in  
19 HSBC's business records before counsel pulled the  
20 recorded documents?  
21 **A. No.**  
22 Q. Do you know when the first time was that HSBC  
23 obtained a copy of this notice of default and election to  
24 sell under homeowners association lien?  
25 **A. I don't know that we ever received a copy**

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1 outside of counsel pulling this from the recordings. I  
2 don't know if it was part of any litigation documents or  
3 not, but I know it's not something that we ever received  
4 outside of the litigation.  
5 Q. This was recorded in February of 2011, right?  
6 A. Yes.  
7 Q. And that was before Ocwen took over servicing?  
8 A. Yes.  
9 Q. Do you know if Saxon received a copy of this?  
10 A. It's not included in any of the business records  
11 we got from Saxon when we took over servicing the loan,  
12 and there is no reference to it in the comments log.  
13 Q. Okay. So no reference in the comments logs, and  
14 there isn't, like, a scanned image of it?  
15 A. Correct.  
16 Q. I show you a document that we will mark as  
17 Exhibit 10.  
18 (HSBC0000028 through HSBC0000029 was  
19 marked as Exhibit 10, for identification, as of  
20 this date.)  
21 Q. Now, this is not a recorded document, but do you  
22 recognize it?  
23 A. I don't know if I have seen the recorded version  
24 or this version, but I have seen the document, yes.  
25 Q. And this first page that is Bates stamped

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1 HSBC0000028; what is it?  
2 A. A "Notice of Trustee's Sale."  
3 Q. And is this something that is contained in  
4 HSBC's business records?  
5 A. Yes.  
6 Q. And did it receive a copy or in what way did it  
7 receive a copy?  
8 A. It appears that National Default Servicing  
9 Corporation sent it to Saxon. There was an envelope that  
10 was dated October 11th. I don't know when Saxon received  
11 it, but the image copy is contained in the system.  
12 Q. Who is National Default Servicing Corporation?  
13 A. I believe -- I don't know what they are called  
14 in Nevada, but they were the foreclosure firm on the  
15 foreclosure trustee.  
16 Q. And National Default Servicing Corporation is  
17 the one that recorded the notice of default and election  
18 to sell under deed of trust that we marked as Exhibit 8?  
19 MR. ALLISON: Objection. Speculation to the  
20 extent that you know.  
21 A. It appears to have been, yes.  
22 Q. And is it your understanding that National  
23 Default Servicing Corporation was acting on behalf of  
24 HSBC at that time?  
25 A. As far as I know, yes.

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1 Q. So the one that we have in Exhibit 10 has an  
2 attachment to it. There is -- the page Bates stamped  
3 HSBC0000029. Is it your understanding that Alessi &  
4 Koenig mailed a copy of this notice of sale to National  
5 Default Servicing Corporation?  
6 MR. ALLISON: Objection. Speculation.  
7 A. They appear to have.  
8 Q. And then you mentioned that Saxon Mortgage had  
9 received a copy of the notice of sale; is that right?  
10 A. Yes.  
11 Q. I'm going to show you a document that we will  
12 mark as Exhibit 11.  
13 (Copy of certified mail envelope addressed  
14 to National Default Servicing Corporation and copy  
15 of an envelope addressed to Saxon Mortgage were  
16 marked as Exhibit 11, for identification, as of  
17 this date.)  
18 Q. Have you seen this document before?  
19 A. I have.  
20 Q. These ones aren't Bates numbered, they were  
21 attached to the request for production of documents.  
22 Is that your understanding?  
23 A. I don't know what they were attached to. I know  
24 they were in our business records.  
25 Q. Okay. So it looks to me that the first page of

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1 Exhibit 11 is the same or a copy of the same document  
2 that was on -- in Exhibit 10, the second page.  
3 A. Yes.  
4 Q. Okay. And then the second page of Exhibit 11  
5 appears to me to be a copy of an envelope addressed to  
6 Saxon Mortgage?  
7 A. Yes.  
8 Q. Do you know whose address is 7720 North 16th  
9 Street, Suite 300, Phoenix, Arizona 85020?  
10 A. It appears to match the address for National  
11 Default Servicing Corporation.  
12 Q. Was this -- a copy of this envelope included in  
13 the business records that Ocwen received when it took  
14 over servicing from Saxon Mortgage?  
15 A. Yes.  
16 Q. Were there any servicing notes corresponding to  
17 receipt of this notice of trustee's sale?  
18 A. No.  
19 Q. Do you know why there wouldn't have been any  
20 servicing notes?  
21 A. I do not.  
22 Q. Do you know what the -- it looks like it's  
23 handwritten FCL.  
24 A. My best guess is that it stands for foreclosure,  
25 but I don't know for sure.

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1 Q. Now, earlier you mentioned when we were looking  
2 at the notice of default in Exhibit 9 that you didn't see  
3 any record of the notice of default?  
4 **A. Correct.**  
5 Q. Can you say for sure that Saxon did not receive  
6 a copy of this notice of default?  
7 **A. They appear to have imaged it, imaged the notice**  
8 **of trustee's sale which tells me that they image things**  
9 **they receive, and this was never imaged into the system,**  
10 **so my best guess is that they never received it.**  
11 Q. But you can't say for sure, right?  
12 **A. I cannot, no.**  
13 Q. Let me show you a document that we will mark as  
14 Exhibit 12.  
15 (HSBC0000039 through HSBC0000040 was  
16 marked as Exhibit 12, for identification, as of  
17 this date.)  
18 Q. Do you recognize this document?  
19 **A. I believe so.**  
20 Q. What is it?  
21 **A. "Trustee's Deed Upon Sale."**  
22 Q. Is this contained in HSBC's business records?  
23 **A. I do not believe so.**  
24 Q. Do you know when HSBC first obtained a copy of  
25 the trustee's deed upon sale?

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1 **A. I do not, but I believe it was as part of this**  
2 **litigation.**  
3 Q. What is the process of boarding a loan when you  
4 take on the servicing rights?  
5 **A. So the process is generally that we, our**  
6 **technical people, get together with their technical**  
7 **people and talk about how we are going to translate the**  
8 **data. So obviously there is just data that's contained**  
9 **in the system.**  
10 **So they get together, they talk about that, they**  
11 **create kind of a translation system. The information is**  
12 **uploaded onto a server, as far as the translation system,**  
13 **then it's boarded in our system; that's just for data,**  
14 **and then there is a series of quality checks to make sure**  
15 **that the data has been entered correctly and matches up**  
16 **with what was in the previous servicer's system.**  
17 **And then also any imaged documents that are**  
18 **related to the loan are sent to us and put in our imaging**  
19 **system. And -- again, that's electronically. And then**  
20 **if the prior servicer is in possession of the collateral**  
21 **file, they would forward it to us as well, and the**  
22 **origination file.**  
23 Q. Anything else?  
24 **A. Just that there is a series of quality checks,**  
25 **they kind of match up the original documents versus the**

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1 **system to make sure it was boarded correctly, and they**  
2 **match up our information against the information they got**  
3 **from the prior servicer as well.**  
4 Q. Is there some kind of a process or procedure  
5 that Ocwen goes through when it takes over servicing a  
6 loan to see if there is action that needs to be taken on  
7 a file right away?  
8 **A. The prior servicer is supposed to let us know**  
9 **whether there is something pending on the loan. So, for**  
10 **example, if the borrower was in sort of a loss mitigation**  
11 **or dual proceeding they would let you know where they**  
12 **were at and provide us with all the documents.**  
13 **If it was in foreclosure they'd code it as**  
14 **foreclosure and let us know who the foreclosure firm they**  
15 **were using is, and then we would usually transfer to one**  
16 **of our vendors unless it was close to being done, and**  
17 **then we would keep it.**  
18 **Same with if there was pending litigation, they**  
19 **would let us know who the attorneys handling the**  
20 **litigation were and what the status of the litigation**  
21 **was.**  
22 Q. So for this file there would have been a  
23 foreclosure started, so that would have been flagged; is  
24 that correct?  
25 **A. Yes.**

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1 Q. Was the borrower in loss mitigation at this  
2 time?  
3 **A. I don't believe that he was in loss mitigation**  
4 **with Saxon. I do know that Ocwen talked to him about**  
5 **potentially doing some sort of modification.**  
6 Q. Do you know if he ever -- and we are talking  
7 about the borrower, Mr. Somdahl; right?  
8 **A. Yes.**  
9 Q. Do you know if Mr. Somdahl ever filled out any,  
10 like, loan modification or short sale application?  
11 **A. From my review of the records it appears that he**  
12 **never did. He talked about it but never actually went**  
13 **through the process.**  
14 Q. Did Saxon flag the notice of trustee's sale that  
15 had been received from Alessi & Koenig through National  
16 Default Servicing Corporation when it transferred the  
17 loan to Ocwen?  
18 **A. Not that I have seen.**  
19 Q. Did Ocwen review the documents included in the  
20 file to determine if action needed to be taken on the  
21 association's notice of sale?  
22 **A. I don't believe so, no.**  
23 Q. When Ocwen began servicing the loan, did it look  
24 at the publicly recorded documents to see what was  
25 recorded against the property?

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1 **A. No, we wouldn't do that unless it was part of --**  
2 **if we were in the part of the foreclosure process where**  
3 **we were running title.**  
4 Q. In your review of Saxon's records, did you see  
5 any information about any action taken in relation to the  
6 association lien after the receipt of the foreclosure  
7 notice?  
8 **A. I did not.**  
9 Q. Has HSBC made any payments to the association  
10 before the date of the association foreclosure sale?  
11 **A. I don't believe so.**  
12 Q. And why don't you believe so?  
13 **A. I don't see any records in the transaction**  
14 **history showing that or any reference in the comments**  
15 **logs.**  
16 Q. Did HSBC, through either Saxon or Ocwen, ever  
17 communicate with Alessi & Koenig about the association  
18 foreclosure sale?  
19 **A. Not that I am aware of.**  
20 Q. Did HSBC or its servicers ever communicate with  
21 the association about this property?  
22 **A. I don't believe so.**  
23 Q. Were the taxes and insurance escrowed for this  
24 loan?  
25 **A. The taxes were always escrowed. The insurance**

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1 **was escrowed after Ocwen started servicing it, I believe.**  
2 Q. Were the association dues ever escrowed for this  
3 loan?  
4 **A. Not that I believe -- not that I am aware of.**  
5 Q. I'm going to show you a document that we will  
6 mark as Exhibit 13.  
7 (HSBC0000035 was marked as Exhibit 13, for  
8 identification, as of this date.)  
9 Q. Do you recognize this document?  
10 **A. I do.**  
11 Q. What is it?  
12 **A. A "Substitution Of Trustee."**  
13 Q. Who is being substituted as trustee?  
14 **A. National Default Servicing Corporation.**  
15 Q. And at this point -- this was in December of  
16 2012; right?  
17 **A. Yes.**  
18 Q. And do you know why there wasn't a substitution  
19 of trustee back in 2010 when National Default Servicing  
20 Corporation first recorded the notice of default?  
21 **MR. ALLISON: Objection. Speculation.**  
22 **A. I do not.**  
23 Q. I'm going to show you a document that we will  
24 mark as Exhibit 14.  
25 (HSBC0000036 through HSBC0000038 was

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1 marked as Exhibit 14, for identification, as of  
2 this date.)  
3 Q. Do you recognize this document?  
4 **A. I do.**  
5 Q. What is it?  
6 **A. A "Notice of Trustee's Sale."**  
7 Q. Does this notice of trustee's sale give notice  
8 of a sale to take place under the deed of trust that we  
9 marked as Exhibit 3?  
10 **A. Yes.**  
11 Q. This was recorded on behalf of HSBC; is that  
12 right?  
13 **A. Yes.**  
14 Q. It states that there is date and time of sale on  
15 December 26, 2012. Do you see that?  
16 **A. Yes.**  
17 Q. Did that sale go forward?  
18 **A. No.**  
19 Q. Do you know why not?  
20 **A. I know that they were just, from my review of**  
21 **the records, they were looking for the assignment of**  
22 **mortgage or trying to get an assignment of mortgage**  
23 **drafted. I don't know if that was before or after this**  
24 **time period.**  
25 **There was also some -- we were talking to the**

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1 **borrower about loss mitigation, so we put the sale on**  
2 **hold for that.**  
3 **And then there was -- the investor put a hold or**  
4 **the trust put a hold on all foreclosures to try to -- on**  
5 **the basis of something. I couldn't really tell what it**  
6 **was, but it was by investor request.**  
7 Q. So the assignment, which we marked as Exhibit 4,  
8 appears to have been recorded right around the same time,  
9 maybe a few seconds before --  
10 **A. Yes.**  
11 Q. -- before this one. So this sale wasn't  
12 postponed because they were looking for the assignment;  
13 right?  
14 **A. No, it would have been because of loss mit or**  
15 **because of the investor request.**  
16 Q. Okay. So that would have maybe explained the  
17 lag between the notice of default and the notice of sale?  
18 **A. Yes.**  
19 Q. Okay. Have you seen other notices of trustee's  
20 sale before in your capacity as a loan analyst?  
21 **A. Yes.**  
22 Q. Would you say that you are familiar with these  
23 types of documents?  
24 **A. I'm familiar with them in general. Again, every**  
25 **state requires different things, so I don't know what**

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1 **legal necessity they have.**  
2 Q. Fair enough. On the second page, the one that's  
3 Bates stamped HSBC0000037.  
4 **A. Yes.**  
5 Q. There is a paragraph that says, "Said sale will  
6 be made, in an 'as is' condition, without covenant or  
7 warranty, express or implied, regarding title, possession  
8 or encumbrances..." Do you see that?  
9 **A. Yes.**  
10 Q. Do you know why that's included?  
11 **A. I do not. I just know that we always do**  
12 **foreclosure sales as is.**  
13 Q. Okay. And so this language is something that's  
14 always included or usually included in notices of  
15 trustee's sale?  
16 **A. Again, I don't know if it's usually included. I**  
17 **would assume that's something that's state by state**  
18 **whether it needs to be included or not, or maybe even**  
19 **foreclosure firm by foreclosure firm whether it needs to**  
20 **be included or not. But I know we generally only sell**  
21 **things as is.**  
22 **I'm going to run to the bathroom real quick.**  
23 Q. Sure.  
24 **MR. ALLISON:** Can we take a five-minute break.  
25 **MS. EBRON:** Absolutely.

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1 (Whereupon, a recess was taken at this time.)  
2 **BY MS. EBRON:**  
3 Q. Let's take a look at Exhibit 3 first before we  
4 move on to any additional documents. I wanted to ask you  
5 a couple of questions about the deed of trust.  
6 Now, on the page that is Bates stamped  
7 HSBC000007 it has uniform covenants.  
8 Do you see that?  
9 **A. Yes.**  
10 Q. And then in paragraph 1 it says, "Payment of  
11 Principal, Interest, Escrow Items, Prepayment Charges,  
12 and Late Charges."  
13 Do you see that?  
14 **A. Yes.**  
15 Q. In the second sentence of that section it says,  
16 "Borrower shall pay" -- or "shall also pay funds for  
17 Escrow Items pursuant to Section 3."  
18 **A. Yes.**  
19 Q. If you skip down to Section 3 it says, "Funds  
20 for Escrow Items. Borrower shall pay to Lender on the  
21 day Periodic Payments are due under the Note, until the  
22 Note is paid in full, a sum to provide for payment  
23 amounts due for (a) taxes and assessments and other items  
24 which can attain priority over the Security Instrument as  
25 a lien or encumbrance on the property."

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1 Do you see that?  
2 **A. Yes.**  
3 Q. Do you know why that was included?  
4 **MR. ALLISON:** Objection. Speculation. Legal  
5 conclusion.  
6 **A. I do not.**  
7 Q. And you mentioned before that the taxes were  
8 escrowed, but the assessments to the association were not  
9 escrowed?  
10 **A. Correct.**  
11 Q. Do you know why they were not?  
12 **A. They usually are not, but I don't know**  
13 **specifically in this case.**  
14 Q. If you turn to the page in Exhibit 3 that is  
15 Bates stamped HSBC0000018.  
16 **A. Okay.**  
17 Q. Do you recognize that portion of the document?  
18 **A. Yes.**  
19 Q. What is it?  
20 **A. "Planned Unit Development Rider."**  
21 Q. Do you have an understanding of why a planned  
22 unit development rider would have been attached to this  
23 deed of trust?  
24 **A. Not really.**  
25 Q. Do you see in Exhibit F -- sorry, not Exhibit F,

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1 Paragraph F, which is on the page Bates stamped  
2 HSBC0000019, it says, "Remedies. If Borrower does not  
3 pay PUD dues and assessments when due, then the Lender  
4 may pay them."  
5 **A. Yes.**  
6 Q. "Any amounts disbursed by Lender under this  
7 paragraph F shall become additional debt of Borrower  
8 secured by the Security Instrument."  
9 **A. Yes.**  
10 Q. Is it your understanding that this planned unit  
11 development rider gives the borrower notice that it has a  
12 responsibility to pay dues to the association; and that  
13 if the borrower does not pay, then the lender has the  
14 ability to pay them if it chooses; and then add whatever  
15 payments it made to the association as additional debt  
16 secured by the deed of trust?  
17 **A. That appears to be what it says, yes.**  
18 Q. Look at the document that we marked as  
19 Exhibit 15.  
20 (Affidavit Of Debt was marked as  
21 Exhibit 15, for identification, as of this date.)  
22 **A. Yes.**  
23 Q. Again, these are double-sided. It looks like  
24 the first six pages are titled "Affidavit of Debt."  
25 Do you see that?



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1 A. Yes.  
2 Q. What is an affidavit of debt?  
3 A. It's basically just something that we can run in  
4 our system to show what is the debt in the property and  
5 how it's broken down.  
6 Q. Okay. So this is showing that as of April 1,  
7 2016, that the principal balance of the loan is  
8 \$338,000 -- \$338,601.24?  
9 A. Yes.  
10 Q. And that there is a negative escrow balance; is  
11 that right?  
12 A. Yes.  
13 Q. So the advances made on behalf of borrower are  
14 shown at the bottom part of that page; is that right?  
15 A. The bottom part of that page and the top part of  
16 the next page.  
17 Q. So is it your understanding that all of the  
18 amounts that were advanced on behalf of this loan would  
19 be included somewhere within this six pages?  
20 A. Just the amounts that Ocwen advanced.  
21 Q. Where would the amounts that the previous  
22 servicer advanced be found?  
23 A. In the Saxon payment history, which starts --  
24 but --  
25 Q. We will get there in a second.

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1 A. Yeah.  
2 Q. On the affidavit of debt, Page 3, do you know  
3 what's included on that page?  
4 A. So those are actually -- it's kind of included  
5 twice for some reason.  
6 Q. What's included twice?  
7 A. This is kind of the same information that's in  
8 the other paragraph, they are just like -- like it  
9 matches up.  
10 Q. When you say the other paragraph --  
11 A. The advances. So there is advances made on  
12 behalf of the borrowers all, and then they are supposed  
13 to be broken down between prior service and current  
14 servicer, but since this one only has Ocwen, it only has  
15 the current servicer, so that paragraph is -- or that  
16 section is essentially the same as the advances made on  
17 behalf of borrower all section. The entries are the  
18 same.  
19 Q. Are we looking at -- oh, Page 2.  
20 A. Oh, you are on Page 3. So 3 is going to be  
21 interest.  
22 Q. Okay. And then what's included -- what type of  
23 information is included on Page 4?  
24 A. That is continued interest.  
25 Q. What about Page 5?

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1 A. Continued interest and then it has fees on the  
2 property.  
3 Q. So the description of the fees on the property  
4 appear to be property inspection fees, and then there is  
5 a property valuation fee?  
6 A. There is two, but, yes.  
7 Q. A couple of those?  
8 A. Yes.  
9 Q. And then it says prior servicer fees of  
10 \$1,251.52; is that right?  
11 A. Yes.  
12 Q. What does the column all the way to the right  
13 mean, like r-e-g-p-m-t-b-a-l?  
14 A. I don't know.  
15 Q. Okay. And then on Page 6 of the affidavit of  
16 debt, those are additional property inspection fees and  
17 BPO fees?  
18 A. So those aren't additional. Again, this is just  
19 a situation where the first thing is all of them, and  
20 then it's supposed to be broken down between prior and  
21 current, but since the prior fees aren't included in this  
22 the current just matches up exactly with all.  
23 Q. The next document appears to be a detailed  
24 transaction history, and it looks like it's one page.  
25 A. Yes.

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1 Q. What is this?  
2 A. This is Ocwen transaction history.  
3 Q. And what's included -- what type of information  
4 is included in the transaction history?  
5 A. Disbursements on the account, late fees, if the  
6 borrower were making payments those would be included,  
7 but the borrower never made any payments to Ocwen. So  
8 tax disbursements, insurance disbursements.  
9 If we were paying -- if there was PMI on this  
10 loan, mortgage insurance, it would be on here too.  
11 Q. Is there mortgage insurance on this loan?  
12 A. Not that I am aware of.  
13 Q. In the column that's marked "Description," all  
14 the way -- third from the bottom, it says, "Expense  
15 waive."  
16 Do you know what that means? It's the one  
17 that's dated, it looks like, 7/29/15 or '13.  
18 A. It appears that they were credited 875 for some  
19 sort of expense, but I don't know what it was. If you go  
20 to the third column or the third column after that it  
21 says, "total amount" and it says, "875."  
22 Q. And then --  
23 MR. ALLISON: Just for clarification, that's  
24 \$8.75.  
25 THE WITNESS: Yes.

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1 Q. There is the one right above that, it looks like  
2 2/12/13, it says, "Tax escrow disbursement"; is that  
3 right?  
4 **A. Yes.**  
5 Q. And then that means -- if you go over to that  
6 total amount column, what was the tax escrow disbursement  
7 for that?  
8 **A. It's hard to read, but it looks like 575.65**  
9 **or -- could be a 5 or it could be 3. I don't know.**  
10 Q. Five, three or a dollar sign?  
11 **A. It's definitely not a dollar sign.**  
12 Q. Okay. And then right above that, above the tax  
13 escrow disbursement it says, "Investor pool/pool" -- I  
14 think "T"?  
15 **A. Yeah, "T." Transfer out and transfer in. This**  
16 **is where some money was moved around. We had been trying**  
17 **to get some explanation for this and we haven't been able**  
18 **to get it yet.**  
19 Q. What do you mean the money was moved around?  
20 **A. It was just transferred from one investor pool**  
21 **to another, but it doesn't appear to have ever -- we**  
22 **don't know if it was actually transferred or if they were**  
23 **just fixing things on the account or what.**  
24 Q. Can you tell what date that it was moved?  
25 **A. It looks like 1/12/2015.**

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1 Q. And was that -- did both of those investor  
2 pools, did those both happen on the same date?  
3 **A. Yes.**  
4 Q. I couldn't tell, some of those look like 5s and  
5 3s. So the tax escrow disbursements, that's any time  
6 that taxes were paid?  
7 **A. Yes.**  
8 Q. And this is where you would have looked to see  
9 if there were any disbursements to a homeowners  
10 association?  
11 **A. Yes.**  
12 Q. But there weren't, right?  
13 **A. Correct.**  
14 Q. The next page looks like it's titled "Saxon  
15 Payment History." It says, "Page 1 of 17."  
16 **A. Yes.**  
17 Q. What is this?  
18 **A. It's basically the same thing as Ocwen's payment**  
19 **history, just in whatever system Saxon used at the time.**  
20 Q. And is it your understanding that the date in  
21 the bottom left-hand corner -- or do you know what your  
22 understanding is of that date, Thursday, November 8,  
23 2012?  
24 **A. I have no understanding of that date.**  
25 Q. Okay. And then in the upper right-hand corner

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1 it says, "Note, Principal balance, escrow balance, late  
2 charge balance and unapplied funds balance for  
3 transactions after August 2010 will be blank."  
4 Do you know what that means?  
5 **A. I do not.**  
6 Q. The borrower didn't make any payments after  
7 Ocwen began servicing; right?  
8 **A. Correct.**  
9 Q. Did you see anything in this Saxon payment  
10 history that indicated that any payments were made to an  
11 association?  
12 **A. No.**  
13 Q. Let's look at the document that is marked as  
14 Exhibit 16.  
15 (Saxon System Printout was marked as  
16 Exhibit 16, for identification, as of this date.)  
17 **A. Okay.**  
18 Q. Do you know what this is?  
19 **A. This seems like a Saxon system printout, but I**  
20 **can just -- I know as much about it as you do.**  
21 Q. Okay.  
22 **A. But it is what it is.**  
23 Q. This is something that Ocwen received from the  
24 previous servicer?  
25 **A. Yes.**

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1 Q. And then on the next page, and I think that  
2 these may go together, at least they were put together in  
3 the documents and disclosed that way, do you know what  
4 this is?  
5 **A. It appears to be a printout of a property**  
6 **account summary for taxes for the county.**  
7 Q. Is this something that was contained in the file  
8 that Ocwen received from Saxon?  
9 **A. Yes.**  
10 Q. And do you have any reason to doubt that the  
11 date in the bottom right-hand corner of September 22,  
12 2010 is when this was printed?  
13 **A. It appears they were printed separately, just**  
14 **based on the date on the top right on the screenshot.**  
15 Q. Oh, sorry, on the top right of the screenshot we  
16 are talking about the first page of Exhibit 16?  
17 **A. Yes.**  
18 Q. And that is August 9, 2010, right?  
19 **A. Yes.**  
20 Q. And then on the bottom right-hand side of the  
21 property account inquiry it's September 22, 2010?  
22 **A. That's what it appears to be, yes.**  
23 Q. Do you know why this information would have been  
24 included in the file?  
25 **A. It was in Saxon's imaging system, so they sent**

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1 **it to us. I don't know why it was in their imaging**  
2 **system.**  
3 Q. Can you look at what's been marked as  
4 Exhibit 17.  
5 (LPS Screen Shot was marked as Exhibit 17,  
6 for identification, as of this date.)  
7 **A. Yes.**  
8 Q. Do you recognize that document?  
9 **A. Yes.**  
10 Q. What is it?  
11 **A. It appears to be a screenshot from LPS, but,**  
12 **again, this was -- screenshot was included in the image**  
13 **records from the prior servicer, and I don't know why**  
14 **they specifically imaged this document.**  
15 Q. What is LPS?  
16 **A. It is a platform that we use or that servicers**  
17 **use to communicate with vendors such as foreclosure**  
18 **trustees.**  
19 Q. And have you seen similar screens?  
20 **A. We used LPS at OneWest, so I have.**  
21 Q. Okay. So is it your understanding that this  
22 would have been something related to National Default  
23 Servicing based on the identification of the vendor on  
24 the top right?  
25 **A. Yes.**

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1 Q. Do you know if the start on the -- it's like in  
2 the top rectangle right underneath mortgagor, it says,  
3 "Start 1/3/2011."  
4 Do you see that?  
5 **A. Yes.**  
6 Q. Do you know what that date would refer to?  
7 **A. Generally it refers to when it was opened up in**  
8 **LPS.**  
9 Q. Do you know who wrote the handwritten  
10 information "7/26, Ok RH" arrow, "John"?  
11 **A. No.**  
12 Q. That's just how it was contained in the business  
13 records from Saxon?  
14 **A. Yes.**  
15 Q. Look at what's been marked as Exhibit 18.  
16 (Scanned Collateral File was marked as  
17 Exhibit 18, for identification, as of this date.)  
18 Q. Again, this is a stack of documents, again,  
19 double-sided, that appear to go together, but I could be  
20 wrong.  
21 So if you can just take a look through and let  
22 me know when you are ready.  
23 **A. I'm ready.**  
24 Q. You're ready?  
25 **A. Yeah.**

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1 Q. Okay. Do you know what these documents are?  
2 **A. It appears to be a scan of everything contained**  
3 **in the collateral file.**  
4 Q. So if we could go through just the pages -- the  
5 first page is something indicating when, like, the dates  
6 that the collateral file was scanned; is that right?  
7 **A. It's, like, basically the front page of the**  
8 **folder.**  
9 Q. Okay. So the collateral file has a folder and  
10 the first page and the last page are the outside of the  
11 folder?  
12 **A. Yes.**  
13 Q. And then inside the first page looks like a  
14 shipping label. Does that mean that the collateral file  
15 was shipped?  
16 **A. Yes.**  
17 Q. Same thing with the next page?  
18 **A. Yes.**  
19 Q. And then after that there is a letter?  
20 **A. It's a bailee letter.**  
21 Q. Bailee letter. And then if you go past the  
22 bailee letter it says, "Original document level inventory  
23 of collateral file"?  
24 **A. Yes.**  
25 Q. And so the checkmarks are the documents that are

Page 52

1 included?  
2 **A. The original documents that are included, yes.**  
3 Q. And it says, "Original documents at receiving  
4 verified by" -- what does that mean?  
5 **A. So basically Ocwen received the collateral file**  
6 **from the custodian, and when we got it Patricia Hudson**  
7 **went through and filled out this sheet to say what was in**  
8 **it when she received it.**  
9 Q. So starting on the next page we've got a copy of  
10 the original note, right?  
11 **A. Yes.**  
12 Q. And is it your understanding that the current --  
13 or the way that the note is currently, there is this  
14 endorsement allonge, no other endorsements?  
15 **A. Correct.**  
16 Q. And this is endorsed in blank?  
17 **A. Correct.**  
18 Q. And next we have a copy of the original deed of  
19 trust?  
20 **A. Yes.**  
21 Q. After the deed of trust it's title insurance  
22 policy; is that right?  
23 **A. Appears to be, yes.**  
24 Q. Do you know if the originating lender was aware  
25 that the property was located within a homeowners

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1 association when it originated the loan?

2 **A. I can just speculate that they did based on the**

3 **PUD rider, but apart from that I don't know anything that**

4 **they did or did not know.**

5 Q. Was there a copy of the CCNRs included in the

6 origination file?

7 **A. I haven't reviewed that, so I don't know.**

8 Q. Do you know if the originating lender relied on

9 any provisions in the CCNRs when it originated the loan?

10 **A. I do not.**

11 Q. Do you know if HSBC was relying on any

12 particular provision of the CCNRs when it purchased the

13 loan?

14 **A. So HSBC, the trust, again, purchased this as**

15 **part of a pool of loans; they didn't purchase this loan**

16 **specifically. So my best guess is that they would not**

17 **have known anything about the specifics of CCNRs related**

18 **to this loan when they purchased the pool.**

19 Q. Do you know how much the trust paid for its

20 interest in the loan?

21 **MR. ALLISON:** Objection. Speculation. Legal

22 conclusion. Relevance.

23 **A. I do not. Again, they purchased -- they had one**

24 **price that they paid for the whole pool. It wasn't**

25 **broken up between loans, and I do not know what that**

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1 **price was.**

2 Q. How do you know that this loan was included in

3 the pool that was purchased?

4 **A. Again, I haven't seen the PSA or the MLS in this**

5 **one, so I don't know for sure because I haven't been able**

6 **to get those documents yet.**

7 Q. You said the PSA or the what?

8 **A. The MLS. Pooling and Service Agreement or**

9 **Mortgage Loan Schedule.**

10 Q. And the mortgage loan schedule would be attached

11 to the pooling and servicing agreement to let you know

12 what loans were included in the pool?

13 **A. It would be an exhibit, yes.**

14 Q. So still in Exhibit 18, it looks like there is

15 an endorsement to the title policy.

16 Is it your understanding that all of the maps at

17 Southern Highlands, those are all included with the title

18 policy?

19 **A. It's my understanding, yes.**

20 Q. There is a page, it says, "Endorsement attached

21 to policy" and then it says, "The company hereby insures

22 the owner of the indebtedness secured by the insured

23 mortgage against loss or damage which the insured shall

24 sustain by reason of" -- and then "1, the existence of

25 any of the following:"

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1 Do you see that?

2 **A. Trying to find that page.**

3 Q. This is 1 of 2.

4 **A. I got it. Yes.**

5 Q. It says, "Covenants, conditions or restrictions

6 under which the lien of the mortgage referred to in

7 Schedule A can be cut off, subordinated, or otherwise

8 impaired."

9 **A. That's what it says.**

10 Q. On Page 3 -- that was page -- this makes no

11 sense. Okay. It says Page 1 of 2, but then the next

12 page is Schedule B, and it says Page 4, and then it says

13 Schedule B, Page 3.

14 **A. It's probably just out of order in the**

15 **collateral file.**

16 Q. Okay. On the Schedule B that's marked as

17 Page 3, it includes covenants, conditions and

18 restrictions as an exception.

19 Do you see that?

20 **A. Yes.**

21 Q. Then it looks like there is another copy of the

22 deed of trust?

23 **A. Yes.**

24 Q. And this one has a stamp Fidelity National Title

25 on it?

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1 **A. Yes.**

2 Q. Then we got a preliminary title report?

3 **A. Yes.**

4 Q. This would have been with the origination file?

5 **A. All of this is contained in the collateral file.**

6 Q. Would this title report have been attained

7 either at or before origination?

8 **A. Generally, yes.**

9 Q. Do you have any reason to believe that in this

10 case that it wouldn't have been attained at or before

11 origination?

12 **A. No.**

13 Q. Then do you know what this -- there is a request

14 for release of documents.

15 What is that?

16 **A. It's basically Ocwen requesting that they send**

17 **the documents to us from the custodian.**

18 Q. And then the reason for requesting the documents

19 at that time was foreclosure?

20 **A. Yes.**

21 Q. And that was in October of 2012?

22 **A. Yes.**

23 Q. Do you know what that next page is?

24 **A. My best guess is that they requested both of**

25 **these files at the same time.**

1 Q. Do you know what WFLN means?  
2 A. **Wells Fargo Loan Number.**  
3 Q. Was Wells Fargo the custodian?  
4 A. **Yes.**  
5 Q. The next is another bailee letter?  
6 A. **Yes.**  
7 Q. Is this the loan number for the note and deed of  
8 trust marked as Exhibits 2 and 3?  
9 A. **I believe so.**  
10 Q. And then we have another "Document Level  
11 Inventory of Collateral File"?  
12 A. **Yes.**  
13 Q. This one is from 2012?  
14 A. **Yes.**  
15 Q. Another shipping label?  
16 A. **I don't think that -- maybe. I don't know.**  
17 Q. Something -- something related to shipping;  
18 right?  
19 A. **Yeah.**  
20 Q. And then do you know what this next page that  
21 says, "Doc Title. Title Special Instructions"?  
22 A. **No.**  
23 Q. What about the next page dated November 3, 2004?  
24 A. **It appears to be a letter to Morgan Stanley Dean**  
25 **Witter, but apart from that, I don't really.**

[REDACTED]

1 Q. All right. I think that's everything in that  
2 file. Is there a document or, like, screenshot that you  
3 would look at that shows who the investor is on this  
4 loan?  
5 A. **Yes.**  
6 Q. Is it in REALServicing?  
7 A. **Yes.**  
8 Q. Is there a particular name of the screen that  
9 you would look up?  
10 A. **There is actually -- it would just have the**  
11 **investor number on the main screen, and then you would --**  
12 **we would have cross-referenced it on a different**  
13 **document.**  
14 Q. And did you do that for this case?  
15 A. **I did.**  
16 Q. And what did you find?  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

[REDACTED]

20 Q. What's your understanding about the transaction  
21 through which the trust attained an interest in the  
22 property?  
23 A. **Just in general that the trust would have**  
24 **purchased the -- basically the loans would have been**  
25 **pooled together, the trust would have purchased a pool**

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1 and then appointed a trustee, in this case HSBC is  
2 trustee for both, and then they would have a servicer  
3 that actually does all the day-to-day activity on the  
4 loan.  
5 Q. Are there any other entities of which HSBC is  
6 aware that currently claim an interest in the deed of  
7 trust?  
8 A. No.  
9 Q. Are there any other entities of which HSBC is  
10 aware that, at the time of the association foreclosure  
11 sale, claimed an interest in the deed of trust?  
12 A. Not that I am aware of.  
13 Q. Same thing but for the promissory note?  
14 A. Not that I am aware of.  
15 Q. Is there any entity that currently ensures the  
16 deed of trust or promissory note?  
17 A. Just the title policy, but not anything besides  
18 that.  
19 Q. Do you know if there has been any claims made  
20 against the title policy?  
21 A. Just from prepping this I believe we tried to  
22 make a title policy claim regarding this litigation, but  
23 other than that I don't think so.  
24 Q. Do you know if that claim was accepted or  
25 rejected?

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1 A. I do not know.  
2 Q. Are there servicing guidelines applicable to  
3 HSBC's deed of trust?  
4 A. Those would be contained in the PSA.  
5 Q. And since we don't have copies of those we can't  
6 say for sure if there are any provisions that mention or  
7 are applicable to associations, association liens or  
8 association foreclosures, right?  
9 A. Correct.  
10 Q. Did HSBC or any of its servicers ever  
11 communicate with the borrower about the association lien?  
12 A. I believe -- not about the lien. The borrower  
13 did talk to Ocwen regarding loss mitigation in late 2012,  
14 and he mentioned that it had been sold at an HOA sale.  
15 Q. How do you know that?  
16 A. From the comments log.  
17 Q. What else did the comment say about that?  
18 A. Just they asked him to send in a copy of the --  
19 I forget what it's called, the bill, basically, and fill  
20 out some sort of form giving us the right to talk to the  
21 HOA.  
22 Q. Do you know when in 2012 that was?  
23 A. I believe December.  
24 Q. Were there any other communications with the  
25 borrower about the association or the lien or

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1 foreclosure?  
2 A. I just believe a couple of times when he was  
3 talking about loss mitigation he just mentioned that it  
4 happened and that he wanted to keep the property, but no  
5 specifics were ever discussed.  
6 Q. Did the borrower ever give any information about  
7 the facts or circumstances surrounding the sale?  
8 A. I don't believe so.  
9 Q. Did the borrower ever say that he was not  
10 delinquent on the association dues?  
11 A. I don't believe so.  
12 Q. Do you have any reason to believe that the  
13 borrower was not delinquent?  
14 A. I do not.  
15 Q. Does HSBC have any reason to believe that the  
16 notice of delinquent assessments that we looked at as  
17 Exhibit 7 was not mailed to the borrower?  
18 A. We wouldn't know one way or the other whether it  
19 was mailed to the borrower.  
20 Q. Does HSBC have any reason to believe that the  
21 notice of default recorded by the association that we  
22 marked as Exhibit 9 was not mailed to the borrower?  
23 A. We wouldn't know whether it was mailed to the  
24 borrower.  
25 Q. Does HSBC have any reason to believe that the

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1 notice of default was not posted on the property?  
2 MR. ALLISON: Can you repeat that?  
3 Q. Does HSBC have any reason to believe that the  
4 notice of default, the one that we marked as Exhibit 9,  
5 was not posted on the property?  
6 A. I don't believe we know one way or the other  
7 whether it was or was not.  
8 Q. Does HSBC have any reason to believe that the  
9 notice of trustee's sale, a copy of which was marked as  
10 Exhibit 10, was not mailed to the borrower?  
11 A. We wouldn't know whether this was or was not.  
12 Q. Does HSBC have any reason to believe that the  
13 notice of trustee's sale was not posted on the property?  
14 A. We would not know whether it was or was not.  
15 Q. Does HSBC have reason to believe that the notice  
16 of trustee's sale was not posted in three public places?  
17 A. I don't believe whether we would know whether it  
18 was or was not.  
19 Q. Does HSBC have any reason to believe that the  
20 information contained in the notice of trustee's sale was  
21 not published in a newspaper?  
22 A. We wouldn't know whether it was or was not.  
23 Q. Does HSBC have any reason to believe that the  
24 sale originally scheduled for October 26, 2011 was not  
25 orally postponed at that time?

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1 **A. We don't know whether it was or was not.**  
2 Q. Did HSBC or any of its servicers or agents  
3 attend the scheduled foreclosure sale on October 26,  
4 2011?  
5 **A. Not that I am aware of.**  
6 Q. Did HSBC or any of its agents attend the  
7 association foreclosure sale on July 11, 2012?  
8 **A. Not that I am aware of.**  
9 Q. Did HSBC or any of its servicers or agents  
10 participate in any civil or administrative action  
11 challenging the association lien or foreclosure sale  
12 before July 11, 2012?  
13 **A. Not that I am aware of.**  
14 Q. Did HSBC ever communicate with the association?  
15 **A. Not that I am aware of.**  
16 Q. Did HSBC ever communicate with Alessi & Koenig  
17 about this property?  
18 **A. Not that I am aware of.**  
19 Q. Does HSBC allege that Saxon took any action to  
20 protect the deed of trust after learning of the  
21 association foreclosure sale?  
22 **MR. ALLISON:** Objection. Vague. Speculative  
23 and -- sorry, could you repeat that one more time.  
24 (Whereupon, the record was read by the  
25 reporter.)

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1 **MR. ALLISON:** Further, I don't believe HSBC  
2 alleges anything as a plaintiff in this action.  
3 **A. I can just tell you what we did to protect our**  
4 **interest in the deed of trust. We continued paying taxes**  
5 **on an interest to protect the property and make sure that**  
6 **it was not sold at a tax sale, or if it burned down that**  
7 **we wouldn't get funds from it.**  
8 **We continued to send people out to the property**  
9 **to make sure it was being maintained and that it was**  
10 **occupied. For a while we were continuing to work with**  
11 **the borrower to try to come up with some sort of**  
12 **situation where we can bring him current.**  
13 Q. In your review of the file did you see any  
14 internal communications that mention the association's  
15 lien, delinquent association assessments or the  
16 association foreclosure sale as it relates to the  
17 property?  
18 **A. There was one entry in Saxon's notes before the**  
19 **notice of trustee's sale was posted where the default**  
20 **company, I forget what their name is, but where the**  
21 **foreclosure trustee mentioned that there was a -- either**  
22 **a notice of lien or something like that posted, but there**  
23 **was nothing about the notice of trustee's sale.**  
24 Q. Do you know when that note was from?  
25 **A. I do not.**

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1 Q. But it was included in Saxon's servicing notes?  
2 **A. Yes.**  
3 Q. Did HSBC have practices, policies or procedures  
4 applicable to the property for handling association liens  
5 at the time of the association foreclosure sale and  
6 during the time that it was noticing the foreclosure?  
7 **A. So it would have been the servicer policies and**  
8 **procedures; they rely on the servicer to handle things**  
9 **like that.**  
10 **I don't know specifically what Ocwen's policies**  
11 **and procedures were from April 2012 to July 2012 period,**  
12 **and I certainly don't know what Saxon's procedures were.**  
13 Q. Who would know what Ocwen's policies and  
14 procedures were during that time period?  
15 **A. That department, I don't know who is in that**  
16 **department or what it is called.**  
17 Q. What department?  
18 **A. Whoever handles HOA liens. I'm sure there is a**  
19 **department.**  
20 Q. In preparation for your deposition did you check  
21 to see if there was a specific department that handled  
22 HOA foreclosures?  
23 **A. I did not.**  
24 Q. Do you know HSBC's factual basis for its  
25 allegation that the first deed of trust was not

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1 extinguished by the association foreclosure?  
2 **A. I know that we are pending the deposition of the**  
3 **HOA to get a breakdown of the fees, and we are waiting on**  
4 **that to really determine things from there.**  
5 **Also, I know that there is a question about**  
6 **whether the purchase price at the sale was appropriate as**  
7 **the value of the property in our mind was around 230-,**  
8 **and it was sold for around, I believe, 6,200 at the sale.**  
9 **I think that's it.**  
10 Q. Okay. You mentioned that the value of the  
11 property according to HSBC was around 230,000?  
12 **A. Yes.**  
13 Q. And you reviewed some evaluations that were in  
14 the file?  
15 **A. Yes.**  
16 Q. Were there evaluations that were done around the  
17 time of the sale?  
18 **A. There was one that was in April 2012, and there**  
19 **was one that was in December 2012. I forget which one**  
20 **was which, but one was 229- and one was 230-.**  
21 Q. Do you know what the valuation of the property  
22 was at origination?  
23 **A. I do not.**  
24 Q. Do you know if it was -- if it would have been  
25 at least as much as the loan amount?



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1 **A. Generally, yes.**  
2 Q. Do you know if this was a loan that allowed,  
3 like, 100 percent financing?  
4 **A. I do not. I know that this was a refi, and I**  
5 **think that's it.**  
6 Q. Do you know if the borrower received cash out?  
7 **A. I do not. I have not seen the settlement**  
8 **statement.**  
9 Q. I guess I keep saying borrower, but it's  
10 actually two people, Michael Somdahl and Joanna Somdahl.  
11 **A. Right.**  
12 Q. In your review of the file did you see any  
13 information about SFR Investment Pool 1, LLC that  
14 predated any litigation?  
15 **A. No.**  
16 Q. Does HSBC have any information in its records,  
17 its own business records that suggest that SFR had a  
18 relationship with the association beyond being a  
19 homeowner and a purchaser of association foreclosure  
20 properties?  
21 **A. Not that I am aware of.**  
22 Q. Does HSBC have any information in its records  
23 that suggest that SFR has or had a relationship with  
24 Alessi & Koenig, LLC except for purchasing properties at  
25 association foreclosure sales or from associations?

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1 **A. Not that I am aware of.**  
2 Q. You mentioned some communications with  
3 Mr. Somdahl about the association foreclosure.  
4 **A. Yes.**  
5 Q. Did any of those communications or any others  
6 with Mr. Somdahl indicate that Mr. Somdahl thought that  
7 there was something -- some relationship between SFR and  
8 the association that was improper?  
9 **A. I don't believe he ever mentioned SFR.**  
10 Q. Does HSBC have any reason to believe that SFR  
11 had any relationship with Mr. Somdahl other than being  
12 the entity that purchased the property that he had  
13 previously owned?  
14 **A. Not that I am aware of.**  
15 Q. Does HSBC have any information about what SFR  
16 knew about the noticing of the sale at the time of the  
17 foreclosure sale?  
18 So, for example, we have gone through the  
19 foreclosure notices here, you've mentioned that HSBC  
20 doesn't have any record of receipt of the notice of  
21 default.  
22 Do you know if SFR knew that HSBC didn't have  
23 record of the notice of default at the time of the  
24 association foreclosure sale?  
25 **A. We do not know that, no.**

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1 Q. Is there anything about the facts and  
2 circumstances surrounding the association foreclosure  
3 sale that HSBC alleges constitutes fraud?  
4 **A. Again, we are waiting to speak with them about**  
5 **their breakdown of the amounts owed, and we won't know**  
6 **that information until we do their depo.**  
7 Q. But as far as information from HSBC's business  
8 records, is there anything contained in those records  
9 that suggests that the facts and circumstances  
10 surrounding the sale constitute fraud?  
11 **MR. ALLISON:** Objection. Legal conclusion.  
12 **A. I'm not aware of any.**  
13 Q. Does HSBC have any information about any  
14 collusion associated with the sale?  
15 **MR. ALLISON:** Objection to legal conclusion.  
16 **A. I'm not aware of any.**  
17 Q. Does HSBC have any information that it believes  
18 supports an allegation that the association foreclosure  
19 sale was oppressive?  
20 **MR. ALLISON:** Objection. Legal conclusion.  
21 **A. I'm not aware of any.**  
22 Q. Is there any information contained in HSBC's  
23 business records that it believes supports an allegation  
24 of unfairness in the circumstances surrounding the  
25 foreclosure sale?

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1 **MR. ALLISON:** Same objection.  
2 **A. I believe I would say the one thing is, again,**  
3 **as far as we were concerned it was at least were 229-,**  
4 **230- at that time, and it was sold for 6,200.**  
5 Q. Anything else?  
6 **A. I don't think so.**  
7 Q. We are about done. One more question. In your  
8 review of the file did you see any communications between  
9 HSBC and the servicer of loan regarding the association?  
10 **A. No.**  
11 **MS. EBON:** Do you have any questions?  
12 **MR. ALLISON:** I have no questions.  
13 **THE REPORTER:** Electronic?  
14 **MS. EBON:** Yes.  
15 **MR. ALLISON:** Yes.  
16  
17 -oOo-  
18 (Whereupon, the deposition of  
19 Katherine Ortwerth was concluded at  
20 2:51 p.m.)  
21  
22  
23 KATHERINE ORTWERTH  
24  
25

1 CERTIFICATE OF DEPONENT  
2 PAGE LINE CHANGE REASON  
3  
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11  
12  
13  
14  
15 \* \* \* \* \*  
16  
17 I, KATHERINE ORTWERTH, deponent herein, do  
18 hereby certify and declare under penalty of perjury the  
19 within and foregoing transcription to be my deposition in  
20 said action; that I have read, corrected and do hereby  
21 affix my signature to said deposition.  
22  
23 KATHERINE ORTWERTH  
24 Deponent  
25  
26 Subscribed and sworn to before me the  
27 day of 2016.  
28  
29 Notary Public  
30

1 REPORTER'S CERTIFICATE  
2 STATE OF NEVADA )  
3 ) ss  
4 COUNTY OF CLARK )  
5  
6 I, Lori-Ann Landers, a duly commissioned  
7 Notary Public, Clark County, State of Nevada, do hereby  
8 certify:  
9  
10 That I reported the taking of the deposition  
11 of the witness, KATHERINE ORTWERTH, at the time and place  
12 aforesaid;  
13  
14 That prior to being examined, the witness  
15 was by me duly sworn to testify to the truth, the whole  
16 truth, and nothing but the truth;  
17  
18 That I thereafter transcribed my shorthand  
19 notes into typewriting and that the typewritten  
20 transcript of said deposition is a complete, true and  
21 accurate transcription of my said shorthand notes taken  
22 down at said time to the best of my ability.  
23  
24 I further certify that I am not a relative  
25 or employee of an attorney or counsel of any of the  
26 parties, nor a relative or employee of any attorney or  
27 counsel involved in said action, nor a person financially  
28 interested in the action; and that transcript review NRC  
29 30(e) was requested.  
30  
31 IN WITNESS WHEREOF, I have hereunto set my  
32 hand in the County of Clark, State of Nevada, this 5th  
33 day of April 2016.  
34  
35 LORI-ANN LANDERS, CCR 792, RPR  
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Ex. A-6

# EXHIBIT A-6

Kovalic Deposition Transcript

Ex. A-6

**In The Matter Of:**

*Deutsche Bank National Trust, et al. vs.  
SFR Investments Pool 1, LLC, et al.*

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*Keith Kovalic  
August 2, 2016*

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*Min-U-Script® with Word Index*

Keith Kovalic - August 2, 2016  
Deutsche Bank National Trust, et al. vs. SFR Investments Pool 1, LLC, et al.

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

DEUTSCHE BANK NATIONAL TRUST )  
COMPANY, AS TRUSTEE FOR THE )  
BENEFIT OF THE HARBORVIEW 2004-8 )  
TRUST FUND, )  
Plaintiff, )  
vs. ) Case No. 2:16-cv-  
SFR INVESTMENTS POOL 1, LLC, a ) 00470-APG-CWH  
Nevada limited liability )  
company; CENTENNIAL POINT )  
COMMUNITY ASSOCIATION, INC., a )  
Nevada non-profit corporation, )  
Defendants. )  
SFR INVESTMENTS POOL 1, LLC, )  
Counter/Cross-Claimant, )  
vs. )  
DEUTSCHE BANK NATIONAL TRUST )  
COMPANY, AS TRUSTEE FOR THE )  
BENEFIT OF THE HARBORVIEW 2004-8 )  
TRUST FUND; NATIONSTAR MORTGAGE, )  
LLC, a Delaware limited )  
liability company; MARK KITCHEN, )  
an individual; and NICOLE )  
KITCHEN, an individual, )  
Counter/Cross-Defendants. )

DEPOSITION OF KEITH KOVALIC

Taken at the Offices of Kim Gilbert Ebron  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada

On Tuesday, August 2, 2016  
At 10:19 a.m.

Reported by: Jane V. Efaw, CCR #601, RPR

Page 2

1 Appearances:

2 For the Plaintiff:

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4 Wright Finlay & Zak  
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\* \* \* \* \*

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<p>1 Thereupon --</p> <p>2 KEITH KOVALIC</p> <p>3 was called as a witness by the Defendant, and having</p> <p>4 been first duly sworn, testified as follows:</p> <p>5</p> <p>6 EXAMINATION</p> <p>7 BY MS. EBRON:</p> <p>8 Q. Can you please state your name for the</p> <p>9 record?</p> <p>10 A. Keith, K-e-i-t-h. Last name's Kovalic,</p> <p>11 K-o-v, as in Victor, a-l-i-c.</p> <p>12 Q. Are you employed?</p> <p>13 A. Yes.</p> <p>14 Q. Who is your employer?</p> <p>15 A. Nationstar Mortgage, LLC.</p> <p>16 Q. I've taken your deposition quite a few</p> <p>17 times. Before the deposition, we discussed</p> <p>18 incorporating your background testimony from</p> <p>19 December 15th of 2015, Case Number 2:15-cv-01146, the</p> <p>20 Cayman Beach Street property where the Medlocks were</p> <p>21 the borrowers.</p> <p>22 Is it okay if we incorporate your background</p> <p>23 testimony from that deposition?</p> <p>24 A. Yes.</p> <p>25 MS. EBRON: I'm going to mark that as</p>	<p>1 the property on Melva Blue Court. Is that okay?</p> <p>2 A. Yes.</p> <p>3 Q. Also, definition Number 4 defines "the</p> <p>4 association" as Centennial Point Community</p> <p>5 Association, Inc.</p> <p>6 So unless otherwise specified, whenever I</p> <p>7 refer to "the association" or "HOA," I'll be talking</p> <p>8 about the Centennial Point Community Association,</p> <p>9 Inc. Okay?</p> <p>10 A. Yes.</p> <p>11 Q. Also, we're here to talk about an</p> <p>12 association foreclosure sale. When I reference the</p> <p>13 association foreclosure sale, I'm talking about the</p> <p>14 auction held on September 11th, 2013, by Alessi &amp;</p> <p>15 Koenig, LLC, on behalf of the association.</p> <p>16 So whenever I look for anything that</p> <p>17 happened before the association foreclosure sale, I'm</p> <p>18 looking to that date of September 11th, 2013. Okay?</p> <p>19 A. Yes.</p> <p>20 Q. If I reference the borrowers in this case,</p> <p>21 I'm talking about Mark Kitchen or Nicole Kitchen.</p> <p>22 Okay?</p> <p>23 A. Okay.</p> <p>24 Q. And then if I talk about the Trust, I'll be</p> <p>25 talking about the Harborview 2004-8 Trust Fund for</p>
Page 6	Page 8
<p>1 Exhibit 1.</p> <p>2 (Thereupon Defendant's Exhibit 1</p> <p>3 was marked for identification.)</p> <p>4 BY MS. EBRON:</p> <p>5 Q. I'm going to show you a document that we'll</p> <p>6 mark as Exhibit 2.</p> <p>7 (Thereupon Defendant's Exhibit 2</p> <p>8 was marked for identification.)</p> <p>9 BY MS. EBRON:</p> <p>10 Q. Do you recognize this document?</p> <p>11 A. Yes.</p> <p>12 Q. What is it?</p> <p>13 A. The Notice of 30(b)(6) Deposition of</p> <p>14 Deutsche Bank National Trust Company, as Trustee for</p> <p>15 the Benefit of the Harborview 2004-8 Trust Fund.</p> <p>16 Q. Is this something you've had a chance to</p> <p>17 review before your deposition today?</p> <p>18 A. Yes.</p> <p>19 Q. If you turn to page 2, there are some</p> <p>20 definitions. The first one is "property." It refers</p> <p>21 to the real property located at 9432 Melva Blue</p> <p>22 Court, Las Vegas, Nevada 89166, Parcel Number</p> <p>23 125-07-811-040.</p> <p>24 Whenever we talk about the property today of</p> <p>25 purposes of this deposition, we'll be talking about</p>	<p>1 Deutsche Bank as the Trustee. Okay?</p> <p>2 A. Okay.</p> <p>3 Q. And then just to be clear. Would it be</p> <p>4 accurate to say that the Trust is called the</p> <p>5 Harborview Mortgage Loan Trust 2004-8 Mortgage Loan</p> <p>6 Pass-Through Certificates, Series 2004-8?</p> <p>7 A. That is correct.</p> <p>8 Q. Did you have a chance to review the topics</p> <p>9 that start on page 3 and go to page 4?</p> <p>10 A. Yes.</p> <p>11 Q. Are you the person that Deutsche Bank, not</p> <p>12 Bank of America, has designated to testify on its</p> <p>13 behalf?</p> <p>14 A. Yes.</p> <p>15 Q. What did you do to prepare for the</p> <p>16 deposition?</p> <p>17 A. I reviewed the topics of inquiry in this</p> <p>18 deposition notice. I cross-checked those with the</p> <p>19 current servicer, Nationstar's, system of record. I</p> <p>20 spoke with my counsel. I reviewed the documentation</p> <p>21 associated with this file as it pertained to these</p> <p>22 topics.</p> <p>23 Q. Anything else?</p> <p>24 A. No.</p> <p>25 Q. When you say you reviewed documents</p>

<p>Page 9</p> <p>1 associated with this file, is there a particular 2 location that you looked to find those documents? 3 <b>A. Nationstar has a system called FileNet, 4 where all of the imaged documents are held. So I 5 reviewed that system.</b> 6 Q. Anything else? 7 <b>A. No. I'm sorry. In terms of documentation?</b> 8 Q. Correct. 9 <b>A. No. Everything -- any document associated 10 with this file would be in FileNet.</b> 11 Q. Did you look at any screen shots to learn 12 any information for your testimony today? 13 <b>A. What do you mean? Did I look at any --</b> 14 Q. Did you look at a system of record? 15 <b>A. Yes. As I stated, I reviewed Nationstar's 16 system of record.</b> 17 Q. And what's that called? 18 <b>A. LSAMS, L-S-A-M-S.</b> 19 Q. Were there any particular screens you looked 20 at on LSAMS? 21 <b>A. I looked at the general servicing notes 22 regarding communications between the homeowner and 23 the servicer, Nationstar, and Nationstar and the 24 homeowners. I looked at the payment history.</b> 25 Q. Anything else?</p>	<p>Page 11</p> <p>1 <b>THE WITNESS:</b> Okay. 2 <b>BY MS. EBRON:</b> 3 Q. Do you recognize this document? 4 <b>A. I do not.</b> 5 Q. I'm sorry? 6 <b>A. I do not.</b> 7 Q. When you were reviewing the file, did you 8 see any declarations of covenants, conditions and 9 restrictions? 10 <b>A. I did not.</b> 11 Q. So you didn't see any for Centennial Point? 12 <b>A. No.</b> 13 Q. Do you know if Deutsche Bank reviewed a copy 14 of the declaration of covenants, conditions and 15 restrictions before it obtained its interest in the 16 property? 17 <b>A. I do not.</b> 18 Q. Do you know who would know that? 19 <b>MR. JUNG:</b> Objection. Speculation. 20 <b>THE WITNESS:</b> I do not. 21 <b>BY MS. EBRON:</b> 22 Q. Do you know if there are any particular 23 provisions contained in the declaration of covenants, 24 conditions and restrictions for Centennial Point that 25 Deutsche Bank relied on at any point after it</p>
<p>Page 10</p> <p>1 <b>A. Not that I recall.</b> 2 Q. When did Nationstar become a servicer for 3 this loan? 4 <b>A. I do not recall the exact date. I 5 apologize.</b> 6 Q. Do you know an approximate date? 7 <b>A. I'm sorry, I don't.</b> 8 Q. Do you know if there was a servicer before 9 Nationstar? 10 <b>A. Yes. Bank of America.</b> 11 Q. Do you know if Nationstar became the 12 servicer before or after the association foreclosure 13 sale in September of 2013? 14 <b>A. It was prior to the sale.</b> 15 Q. Do you know if there are any other servicers 16 besides Bank of America? 17 <b>A. Not that I --</b> 18 <b>MR. JUNG:</b> Objection. Calls for 19 speculation. 20 <b>THE WITNESS:</b> Not that I'm aware of. 21 <b>BY MS. EBRON:</b> 22 Q. I'm going to show you a document that we 23 will mark as Exhibit 3. 24 (Whereupon Defendant's Exhibit 3 25 was marked for identification.)</p>	<p>Page 12</p> <p>1 obtained its interest in the Deed of Trust? 2 <b>A. Like I said, I've never seen this document. 3 It wasn't in any system of record. So I don't know 4 how anybody would have been able to rely on something 5 that I don't see a record of existing in any system 6 of record for Deutsche Bank.</b> 7 <b>BY MS. EBRON:</b> 8 Q. I'm going to show you a document that we'll 9 mark Exhibit 4. 10 (Whereupon Defendant's Exhibit 4 11 was marked for identification.) 12 <b>BY MS. EBRON:</b> 13 Q. Do you recognize this document? 14 <b>A. Yes, I do.</b> 15 Q. What is it? 16 <b>A. This is a Grant, Bargain and Sale Deed.</b> 17 Q. Does this involve the property located at 18 Melva Blue Court? 19 <b>A. Yes, it does.</b> 20 Q. And is this something that's contained in 21 Deutsche Bank's business records? 22 <b>A. Yes.</b> 23 Q. Just going back to the relationship between 24 Nationstar and Deutsche Bank. What is the 25 relationship between Nationstar and Deutsche Bank</p>

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1 such that you, as an employee of Nationstar, would be  
2 testifying on Deutsche Bank's behalf?  
3 **A. Nationstar under the pooling and servicing**  
4 **agreement conducts all front-facing functions or any**  
5 **customer-facing functions on behalf of the investor,**  
6 **Deutsche Bank.**  
7 **So one of those things is if a lawsuit is to**  
8 **arise, the current servicer is given the right to**  
9 **handle all the litigation on behalf of Deutsche Bank.**  
10 **So as an employee of Nationstar, I'm speaking on**  
11 **behalf of Deutsche Bank.**  
12 Q. In preparation for your deposition, did you  
13 speak to anyone from Deutsche Bank?  
14 **A. I did not.**  
15 Q. Is it accurate to say that anything dealing  
16 with this particular loan should be available to you  
17 in Nationstar's business records?  
18 **MR. JUNG:** Objection. Form. You can  
19 answer, Keith.  
20 **THE WITNESS:** If by "anything" you mean  
21 recorded documents or things of that nature, when a  
22 loan's originated, there are certain documents. And  
23 then as the loan is transferred, some documents are  
24 transferred. Some are not.  
25 I'm not here to place blame on anybody, but

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1 I can only review what documents Nationstar has on  
2 hand. So whatever Nationstar has today, that would  
3 be the documents that Deutsche Bank would also be  
4 relying on. Does that answer your question?  
5 **BY MS. EBRON:**  
6 Q. Well, I guess my question would be: Does  
7 Deutsche Bank maintain a file of documents that would  
8 be responsive to these topics that are in the  
9 deposition notice?  
10 **A. No. That's a duty of the servicer.**  
11 Q. Okay. So when you say Nationstar has only  
12 what it's got in its own file, do you mean that it's  
13 possible that some of the documents were not  
14 transferred from Bank of America to Nationstar?  
15 **A. It's possible. But as we've talked about in**  
16 **other depositions -- and I hate to refer back to**  
17 **another deposition other than this one. But unless**  
18 **something is transferred from a prior servicer and it**  
19 **says -- for instance, on Exhibit 4 on the bottom, it**  
20 **says page 1 of 4. If Nationstar, as the new**  
21 **servicer, were to receive pages 1 2 and 4, we would**  
22 **know that 3 is missing and could go back and request**  
23 **it.**  
24 **However, if a document as a whole -- and**  
25 **it's not part of the collateral file that's**

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1 **audited -- is missing, you don't know to ask for**  
2 **something if you don't know it exists.**  
3 Q. In preparation for your deposition, did you  
4 speak to anyone at Bank of America to see if there  
5 were any additional documents or information that  
6 would be helpful in preparation for these topics?  
7 **A. I did not.**  
8 Q. I'm going to show you a document that we  
9 will mark as Exhibit 5.  
10 (Whereupon Defendant's Exhibit 5  
11 was marked for identification.)  
12 **BY MS. EBRON:**  
13 Q. Do you recognize this document?  
14 **A. Yes.**  
15 Q. What is it?  
16 **A. This is the Deed of Trust for the subject**  
17 **property.**  
18 Q. Who was the originating lender?  
19 **A. The originating lender was Full Spectrum**  
20 **Lending, Incorporated.**  
21 Q. And the borrowers were?  
22 **A. Mark and Nicole Kitchen, husband and wife.**  
23 Q. When was this loan originated?  
24 **A. The Deed of Trust is dated January 26th,**  
25 **2004, and is notarized the same date on the page**

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1 **Bates-stamped SFR 20. So January 26th, 2004.**  
2 Q. Can you tell me what the relationship to  
3 this Deed of Trust is with Mortgage Electronic  
4 Registration Systems, Inc.?  
5 **A. As it's stated on the second page of the**  
6 **exhibit, MERS is Mortgage Electronic Registration**  
7 **Systems, Incorporated. MERS is a separate**  
8 **corporation that is acting solely as a nominee for**  
9 **the lender and the lender's successors and assigns.**  
10 **MERS is the beneficiary under the security**  
11 **instrument. So they're acting as the nominee for the**  
12 **lender and the beneficiary and acting as the**  
13 **beneficiary.**  
14 Q. And do you know the purpose of the number  
15 that is right underneath the title "Deed of Trust"?  
16 It says MIN.  
17 **MR. JUNG:** Objection. Calls for  
18 speculation.  
19 **THE WITNESS:** It's the MERS identification  
20 number.  
21 **BY MS. EBRON:**  
22 Q. Do you have an understanding of the use of  
23 that number?  
24 **MR. JUNG:** Objection. Form.  
25 **THE WITNESS:** What do you mean by --

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<p>1 <b>BY MS. EBRON:</b> 2 Q. Do you know what the identification number 3 is used for? 4 <b>A. As I've never been an employee of MERS, I</b> 5 <b>don't know everything that it's used for. But on a</b> 6 <b>surface level, it's essentially their loan number,</b> 7 <b>their record name for the loan -- or for this Deed of</b> 8 <b>Trust rather.</b> 9 Q. And is it fair to say that if someone mails 10 a document to MERS at the address listed here in the 11 Deed of Trust in paragraph E and they include that 12 MIN number, that the document would be forwarded to 13 the current servicer? 14 <b>MR. JUNG:</b> Objection. Form. And it calls 15 for speculation. 16 <b>THE WITNESS:</b> I can't -- I don't know. 17 <b>BY MS. EBRON:</b> 18 Q. Is it accurate to state that this Deed of 19 Trust allows the lender to create an escrow? I'm 20 looking on -- 21 <b>A. Yes, it does.</b> 22 Q. -- page 3 of 16 and looking on page 6 of 16, 23 which is Bates-stamped SFR 10. 24 <b>A. And your question was does it allow the</b> 25 <b>lender to create an escrow account?</b></p>	<p>1 <b>THE WITNESS:</b> I don't. Not that I recall. 2 <b>BY MS. EBRON:</b> 3 Q. Do you know the purpose of including a 4 planned unit development rider, like the one that's 5 on the page Bates-stamped SFR 22 through SFR 25? 6 <b>MR. JUNG:</b> Objection. Form. Calls for 7 speculation. 8 <b>THE WITNESS:</b> If the property is in a 9 neighborhood that is usually governed by a homeowners 10 association that may or may not require dues, which 11 would be considered a planned unit development, the 12 property -- the Deed of Trust would have a planned 13 unit development rider. 14 <b>BY MS. EBRON:</b> 15 Q. Is it fair to say that the Planned Unit 16 Development Rider in paragraph A notifies the 17 borrower that they have obligations under the CC&amp;Rs? 18 <b>MR. JUNG:</b> Objection. The document speaks 19 for itself. 20 <b>THE WITNESS:</b> I'm sorry. Could you read the 21 question back? 22 (Whereupon the pending question 23 was read by the reporter.) 24 <b>THE WITNESS:</b> The document says that the 25 borrower shall perform all the borrower's obligations</p>
Page 18	Page 20
<p>1 Q. Yes. 2 <b>A. Yes, it does.</b> 3 Q. In paragraph 4 on page 6 of 16, it says, 4 "Discharges and liens. Borrower shall pay all taxes, 5 assessments, charges, fines and impositions 6 attributable to the property, which can obtain 7 priority over the security instrument." Did I read 8 that correctly? 9 <b>A. I'm sorry. Where are you looking at?</b> 10 Q. Page 6 of 16, paragraph 4. Discharges and 11 liens. 12 <b>MR. JUNG:</b> It's the first sentence under 13 Section 4. 14 <b>THE WITNESS:</b> Yes, that is correct. 15 <b>BY MS. EBRON:</b> 16 Q. Do you know if there was an escrow set up 17 for taxes? 18 <b>MR. JUNG:</b> Objection. Calls for 19 speculation. 20 <b>THE WITNESS:</b> Yes, there was, I believe. 21 <b>BY MS. EBRON:</b> 22 Q. Do you know if there was an escrow set up 23 for homeowners association assessments? 24 <b>MR. JUNG:</b> Objection. Calls for 25 speculation.</p>	<p>1 under the planned unit development's constituent 2 documents. And, again, constituent documents are, 1, 3 the declaration; 2, articles of incorporation, trust 4 instrument, or any equivalent document which creates 5 the owners association; and, 3, any bylaws or other 6 rules or regulations of the owners association. 7 Borrower shall promptly pay when due all dues and 8 assessments pursuant to the constituent documents. 9 <b>BY MS. EBRON:</b> 10 Q. So would you agree that paragraph F, 11 Remedies, allows the lender to choose to pay dues to 12 an association if the borrower does not pay? 13 <b>MR. JUNG:</b> Objection. The document speaks 14 for itself. 15 <b>THE WITNESS:</b> The first sentence of Section 16 F states that if the borrower does not pay planned 17 unit development dues and assessments when due, the 18 lender may -- emphasis on the word "may" -- pay them. 19 It doesn't say they have to pay them or that they're 20 under any obligation to but that they may. 21 However, if the lender does choose to pay 22 them, any amounts disbursed shall become the 23 additional debt of the borrower secured by the 24 security instrument. 25 And unless the borrower and lender agree to</p>

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1 other terms of payment, those amounts shall bear  
2 interest from the date of disbursement at the note  
3 rate and shall be payable, with interest, upon notice  
4 from lender to borrower requesting a payment.  
5 **BY MS. EBRON:**  
6 Q. Thank you. Have you seen the promissory  
7 note that this Deed of Trust secured?  
8 **A. I've seen a digital copy of it.**  
9 Q. And that was in FileNet?  
10 **A. Yes.**  
11 Q. Were there any endorsements?  
12 **A. Yes.**  
13 Q. How many?  
14 **A. I believe just one.**  
15 Q. And who was it to and from?  
16 **A. I believe it was from Full Spectrum Lending**  
17 **and then an endorsement in blank.**  
18 Q. Do you know when that copy of the promissory  
19 note with the blank endorsement from Full Spectrum  
20 Lending was scanned into your files?  
21 **A. I don't know the exact date. But it would**  
22 **have been within 90 days of the service transfer.**  
23 Q. And that was, again, sometime before the  
24 association foreclosure sale?  
25 **A. That's correct.**

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1 Q. I'm going to show you a document that we'll  
2 mark as Exhibit 6.  
3 (Whereupon Defendant's Exhibit 6  
4 was marked for identification.)  
5 **BY MS. EBRON:**  
6 Q. Do you recognize this document?  
7 **A. I do not.**  
8 Q. Do you know if that -- do you recognize what  
9 type of document it is from the face of the document?  
10 **A. Yes.**  
11 Q. What is it?  
12 **A. It's a homestead declaration.**  
13 Q. Do you know if that's something that would  
14 normally be contained in your business records?  
15 **A. "Normally" is a relative term, but I**  
16 **wouldn't say it's -- let me go back. This is**  
17 **something that is commonly found in our files. I**  
18 **don't recall seeing a copy of it. It's not to say it**  
19 **wasn't there, though.**  
20 Q. Okay. I'll show you a document that I'll  
21 mark as Exhibit 7.  
22 (Whereupon Defendant's Exhibit 7  
23 was marked for identification.)  
24 **BY MS. EBRON:**  
25 Q. Do you recognize this document?

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1 **A. Yes, I do.**  
2 Q. What is it?  
3 **A. Notice of Default/Election to Sell under**  
4 **Deed of Trust.**  
5 Q. Is this something that was contained in your  
6 business records?  
7 **A. Yes.**  
8 Q. And this relates to the Deed of Trust that  
9 we marked as Exhibit 5?  
10 **A. Yes, it is.**  
11 **MS. EBRON:** Off the record.  
12 (Off the record.)  
13 **MS. EBRON:** We'll come back to the Notice of  
14 Default in a second.  
15 **BY MS. EBRON:**  
16 Q. I'll show you a document that we're going to  
17 mark as Exhibit 8.  
18 (Thereupon Defendant's Exhibit 8  
19 was marked for identification.)  
20 **MR. JUNG:** And, Diana, per our discussion  
21 before we went back on the record, Keith is going to  
22 have an opportunity just to clarify his earlier  
23 remarks about the servicing dates.  
24 **MS. EBRON:** Correct. Go ahead.  
25 **THE WITNESS:** Do you want me to clarify the

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1 Deed of Trust, or are you going to go through the  
2 line of questioning again?  
3 **BY MS. EBRON:**  
4 Q. We'll clear it up.  
5 **A. Okay.**  
6 Q. Let's make sure we've got the right Deed of  
7 Trust to reference, and then we'll go from there. Do  
8 you recognize this document that's been marked as  
9 Exhibit 8?  
10 **A. Yes. But before I answer that, I did want**  
11 **to clarify something I said earlier.**  
12 **I do have multiple depositions this week,**  
13 **and for some reason I could not remember the service**  
14 **transfer date. And I know I have one case where the**  
15 **sale happened before the service transfer and one**  
16 **where it happened after.**  
17 **In this case the foreclosure sale was held**  
18 **on September 11th, 2013, which when the loan was**  
19 **being serviced by Bank of America, Nationstar started**  
20 **servicing this loan on April 1st, 2014.**  
21 **So the foreclosure sale actually happened**  
22 **under Bank of America's watch, so to say, and about**  
23 **seven months prior to Nationstar obtaining the**  
24 **servicing rights of the loan.**  
25 Q. Thank you.



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1 **A. And also you asked a question about the**  
2 **note. The note is from Countrywide to endorsement in**  
3 **blank. Just to clear that up.**  
4 Q. Okay. Let's go there. I'll probably just  
5 ask you that again after we go through this Deed of  
6 Trust.  
7 Is it your understanding that the Deed of  
8 Trust that was marked as Exhibit 5 was reconveyed?  
9 **A. I don't know.**  
10 Q. Is it your understanding that this is a  
11 subsequent Deed of Trust that secured a loan on the  
12 property?  
13 **A. Yes.**  
14 Q. Who is the originating lender?  
15 **A. Countrywide Home Loans, Incorporated.**  
16 Q. And are the borrowers Mark Kitchen and  
17 Nicole Kitchen in this one too?  
18 **A. Yes. Husband and wife as joint tenants.**  
19 Q. And the amount of the note is how much?  
20 **A. \$258,750.**  
21 Q. This Deed of Trust also contains  
22 authorization to create an escrow account; correct?  
23 **A. That is correct.**  
24 Q. And were your answers before about the  
25 escrow account related to this particular Deed of

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1 Trust rather than the one marked as Exhibit 5?  
2 **A. The --**  
3 **MR. JUNG:** Objection. Vague as to which  
4 particular question.  
5 **THE WITNESS:** Which question was it?  
6 **BY MS. EBRON:**  
7 Q. Was there an escrow account set up for this  
8 loan?  
9 **A. Yes. I was referencing this. This is the**  
10 **Deed of Trust I looked at in my review of the file.**  
11 Q. Okay. So there was an escrow account set up  
12 for taxes but not for association dues; is that  
13 correct?  
14 **A. That is correct.**  
15 Q. And this Deed of Trust also contains a  
16 Planned Unit Development Rider with the same  
17 provisions as the one in Exhibit 5; correct?  
18 **A. That is correct. I would also point out**  
19 **that this is dated August 25th, 2004, and was signed**  
20 **and notarized on August 26th, 2004.**  
21 Q. Thank you. Going back to Exhibit 7.  
22 **A. Okay.**  
23 Q. This Notice of Default and Election to Sell  
24 under Deed of Trust relates to the Deed of Trust  
25 marked as Exhibit 8; correct?

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1 **A. That is correct.**  
2 Q. You mentioned that you reviewed the payment  
3 history; right?  
4 **A. That is correct.**  
5 Q. In this Notice of Default, it mentions a  
6 delinquency date of September 1st, 2009. Do you see  
7 that?  
8 **A. Yes.**  
9 Q. Does that coincide with what you saw on the  
10 payment history?  
11 **A. Yes.**  
12 Q. Who is Recontrust Company, NA?  
13 **A. They were -- as it states on the first line**  
14 **of Exhibit 7, Recontrust NA is acting as an agent for**  
15 **the beneficiary under the Deed of Trust dated**  
16 **8/25/2004.**  
17 **They sent notices and things of this nature**  
18 **on behalf of Countrywide and subsequently Bank of**  
19 **America after they had merged.**  
20 Q. Going back to the promissory note. Did you  
21 see the original promissory note?  
22 **MR. JUNG:** Objection. Asked and answered.  
23 **THE WITNESS:** No. As I stated, I saw a  
24 digital copy.  
25 ///

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1 **BY MS. EBRON:**  
2 Q. Do you know where the original promissory  
3 note is?  
4 **MR. JUNG:** Objection. Speculation.  
5 **THE WITNESS:** It's in our -- it's in  
6 Nationstar's vault warehouse in Dallas, Texas.  
7 **BY MS. EBRON:**  
8 Q. How do you know that?  
9 **A. There's a reference to the location of it**  
10 **within that warehouse in Nationstar's system of**  
11 **record, what file number, so on and so forth.**  
12 Q. Is there a particular screen where you see  
13 that information?  
14 **A. It's in LSAMS.**  
15 Q. When did this loan become part of the Trust?  
16 **A. I don't know.**  
17 Q. Where would you look to find out that  
18 information?  
19 **A. It would have been roughly on or around the**  
20 **time of origination. I believe -- well, I don't know**  
21 **exactly where you would find the exact date.**  
22 Q. I'm going to show you a document that we're  
23 going to mark as Exhibit 9.  
24 (Whereupon Defendant's Exhibit 9  
25 was marked for identification.)

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1 **BY MS. EBRON:**  
2 Q. Do you recognize this document?  
3 **A. Yes, I do.**  
4 Q. And this is something that I printed off of  
5 the internet, off the SEC website?  
6 **A. Okay.**  
7 Q. And you had a chance to review this before  
8 your deposition and verify that this is a copy of the  
9 pooling and servicing agreement applicable to the  
10 Harborview Mortgage Loan Trust 2004-8 Mortgage Loan  
11 Pass-Through Certificates, Series 2004-8?  
12 **A. That is correct.**  
13 Q. Does the pooling and servicing agreement  
14 give you any additional information on when this loan  
15 would have been put into the trust or a time frame  
16 that that would have happened?  
17 **MR. JUNG:** Objection. Form.  
18 **THE WITNESS:** I can tell you the Pooling and  
19 Servicing Agreement is dated October 1st, 2004, which  
20 is on the fourth page of the document. So it would  
21 have been on or around that time. I mean, without  
22 going through this page by page --  
23 **BY MS. EBRON:**  
24 Q. Let me just ask you this. Is it your  
25 understanding that the loan would have been put into

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1 the trust sometime in 2004?  
2 **A. Yes. It would have been essentially. I**  
3 **mean, the name of the trust being 2004-8, it's the**  
4 **eighth trust that was created in 2004. Those are**  
5 **typically how those are numbered.**  
6 Q. Did Countrywide, who was the lender on the  
7 Deed of Trust, sell the loan to someone else before  
8 the trust purchased it?  
9 **MR. JUNG:** Objection. Calls for  
10 speculation.  
11 **THE WITNESS:** What do you mean sell? Sell  
12 to what?  
13 **BY MS. EBRON:**  
14 Q. I'm just looking at the front of the Pooling  
15 and Servicing Agreement. And I see Greenwich Capital  
16 Acceptance, Inc., as depositor of Greenwich Capital  
17 Financial Products, Inc., as the seller; Wells Fargo  
18 Bank, NA, as master servicer and securities  
19 administrator; and Deutsche Bank National Trust  
20 Company as trustee custodian. But I don't see  
21 Countrywide.  
22 **A. Just like any other loan, Countrywide is a**  
23 **bank that has -- or had access to multiple different**  
24 **investors in order to get their customers the best**  
25 **rates that they could offer, which didn't necessarily**

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1 mean they were investing in every single loan that  
2 they originated.  
3 **So it's normally the case that they're not**  
4 **going to be the investor on every single loan or**  
5 **probably even on the majority of their loans. That's**  
6 **speculation. But from working there and originating**  
7 **loans there, it was rare that Countrywide was an**  
8 **investor on their own loans.**  
9 **So even though they were the lender and the**  
10 **servicer, they might not have been the investor.**  
11 **They were servicing on behalf of whoever provided**  
12 **that product.**  
13 Q. Okay. So even though the Deed of Trust says  
14 Countrywide is the lender, that means that maybe  
15 Countrywide didn't front the money for the loan?  
16 **THE WITNESS:** The lender is --  
17 **MR. JUNG:** Objection. Form. Speculation.  
18 **THE WITNESS:** It's my understanding that the  
19 lender is who originated the loan. It could be  
20 Countrywide. It could be Wells Fargo. It could be  
21 ABC Mortgage Company. It could be John Smith's  
22 Brokerage Shop. That doesn't necessarily mean that  
23 they lent the money. They were doing that front  
24 facing function of originating the loan on behalf of  
25 an investor.

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1 **BY MS. EBRON:**  
2 Q. So the investor would provide the funds, and  
3 the lender would be the one who's interfacing with  
4 the public to lend it?  
5 **MR. JUNG:** Objection. Calls for  
6 speculation.  
7 **THE WITNESS:** Essentially. But that would  
8 be without going into the full origination of the  
9 loan. I guess that's the easiest way to say it.  
10 **BY MS. EBRON:**  
11 Q. Do you know how much the trust paid for its  
12 interest in the Deed of Trust?  
13 **A. I do not.**  
14 Q. Do you know who would know that?  
15 **MR. JUNG:** Objection. Speculation.  
16 **THE WITNESS:** I do not. Are you saying how  
17 much did the trust pay for --  
18 **BY MS. EBRON:**  
19 Q. For the Deed of Trust.  
20 **A. For the Deed of Trust. I don't know. And I**  
21 **don't know who would know that.**  
22 Q. Did you review a complete copy of the  
23 Pooling and Servicing Agreement?  
24 **A. I reviewed exactly what I'm looking at in**  
25 **Exhibit 9, if that's what you mean by -- well,**

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1 there's 97 pages. The last page is numbered 97 of 97  
2 on the copy you printed out.  
3 Q. That's the only one that you saw. Did you  
4 see any copy with any schedules attached in your  
5 business records?  
6 And what I'm getting at is on page 23 of 97,  
7 it defines mortgage loan schedule, "As of any day the  
8 list of mortgage loans included in the Trust Fund on  
9 such date attached hereto as Schedule 1." So I'm  
10 looking for whether or not you saw Schedule 1.  
11 A. I did see a loan schedule with this loan  
12 number in there -- or with this mortgage in there  
13 rather. I do apologize.  
14 Q. How many loans were listed on Schedule 1?  
15 A. I wasn't looking for the total number. I  
16 apologize. I was just looking to ensure that this  
17 file was in the trust.  
18 Q. Do you know if it was more than one page of  
19 loan numbers?  
20 A. I honestly today assign function for  
21 information. So I don't know.  
22 BY MS. EBRON:  
23 Q. I'm going to show you a document that we'll  
24 mark as Exhibit 10.  
25 ///

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1 (Whereupon Defendant's Exhibit 10  
2 was marked for identification.)  
3 BY MS. EBRON:  
4 Q. Do you recognize that document?  
5 A. Yes, I do.  
6 Q. What is it?  
7 A. Corporation Assignment of Deed of Trust for  
8 the State of Nevada.  
9 Q. Does this relate to the Deed of Trust we  
10 marked as Exhibit 8?  
11 A. Yes, it does.  
12 Q. Who is it from and who is it to?  
13 MR. JUNG: Objection. The document speaks  
14 for itself.  
15 THE WITNESS: It's from Mortgage Electronic  
16 Registration Systems, Incorporated, to Deutsche Bank  
17 National Trust Company as trustee for the benefit of  
18 the Harborview 2004-8 Trust Fund.  
19 BY MS. EBRON:  
20 Q. Do you see right after it says "Trust Fund,"  
21 there's a couple asterisks and then some other  
22 language?  
23 A. Yes.  
24 Q. Do you know what that means?  
25 MR. JUNG: Objection. Calls for

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1 speculation.  
2 THE WITNESS: I mean, there's obviously some  
3 abbreviations here. It says "SND," which I'm not  
4 going to speculate what that means. Then it says  
5 "FCLR." I'm not going to speculate what that means.  
6 "Notice to Wells Fargo. Once notice is sent, proceed  
7 with," and then once again "FCLR," which I'm not  
8 going to speculate on that.  
9 BY MS. EBRON:  
10 Q. But it's your understanding that that isn't  
11 supposed to be part of the title of the entity that  
12 the Deed of Trust was assigned to?  
13 MR. JUNG: Objection. Misstates prior  
14 testimony.  
15 THE WITNESS: Could you rephrase your  
16 question?  
17 BY MS. EBRON:  
18 Q. When I asked you who the assignment was to  
19 and from, you stopped at "Trust Fund."  
20 A. Right.  
21 Q. And you didn't --  
22 A. It appears that that is a note. Once again,  
23 I don't know what that note means because of the  
24 truncated words. But I've never seen anything like  
25 that in my career under the name of somebody taking

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1 the beneficial interest in a property.  
2 Q. I haven't had that either. That's a first.  
3 Do you know Khadija Gulley?  
4 A. I do not.  
5 Q. I'm going to show you a document that we'll  
6 mark as Exhibit 11.  
7 (Thereupon Defendant's Exhibit 11  
8 was marked for identification.)  
9 MR. JUNG: Diane, can I take a restroom  
10 break?  
11 MS. EBRON: Sure. Off the record.  
12 (A brief recess was taken.)  
13 MS. EBRON: Back on.  
14 BY MS. EBRON:  
15 Q. I'm looking at Exhibit 11. Do you recognize  
16 this document?  
17 A. Yes, I do.  
18 Q. What is it?  
19 A. Substitution of Trustee for the State of  
20 Nevada.  
21 Q. And it's substituting Recontrust Company,  
22 NA, as the trustee?  
23 A. That is correct. Deutsche Bank is  
24 substituting Recontrust.  
25 Q. I had a quick question about the deed of

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1 trust again, Exhibit 8.  
2 **A. Okay.**  
3 Q. Does Fannie Mae have an interest in this  
4 loan?  
5 **MR. JUNG:** Objection. Calls for  
6 speculation.  
7 **THE WITNESS:** No.  
8 **BY MS. EBRON:**  
9 Q. Does that call for speculation? I mean, you  
10 would know if Fannie Mae had an interest; right?  
11 **A. Yes. It would be -- on that Pooling and**  
12 **Servicing Agreement, there would be references to**  
13 **Fannie Mae. Are you asking because of the form?**  
14 Q. Yes. Can you explain to me why it says  
15 Fannie Mae and Freddie Mac?  
16 **A. Once again, it is my understanding that it's**  
17 **a uniform instrument. And seeing as how at the time**  
18 **that this was originated Fannie Mae and Freddie Mac**  
19 **were just kind of the standard barriers of the**  
20 **mortgage industry. So their forms were used by most**  
21 **companies.**  
22 Q. Okay. So just because it says Fannie Mae  
23 and Freddie Mac, it doesn't mean that Fannie or  
24 Freddie had an interest in a particular loan?  
25 **A. Correct. It's just a form they created that**

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1 **is available for public use. It's like calling**  
2 **tissue "Kleenex" or a bandage a "Band-Aid." It's**  
3 **just a Fannie Mae form.**  
4 Q. Great. Does Freddie Mac has an interest in  
5 this loan?  
6 **A. No.**  
7 Q. Do you know if this loan is FHA insured?  
8 **A. It is not.**  
9 Q. And you know that by looking in your  
10 business records?  
11 **A. Yes.**  
12 Q. I'm going to show you a document that we'll  
13 mark as Exhibit 12.  
14 (Thereupon Defendant's Exhibit 12  
15 was marked for identification.)  
16 **BY MS. EBRON:**  
17 Q. Do you recognize this?  
18 **A. Yes, I do.**  
19 Q. What is it?  
20 **A. It's the Recision of Election to Declare**  
21 **Default in the State of Nevada.**  
22 Q. Does this relate to the Notice of Default we  
23 looked at in Exhibit 7?  
24 **A. Yes, it does.**  
25 Q. Do you know why the Notice of Default was

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1 rescinded?  
2 **A. I do not.**  
3 Q. Where would you look to find that out?  
4 **A. I would need to refer to whatever records**  
5 **Bank of America provided to Nationstar at the time of**  
6 **the servicing transfer in April of 2014.**  
7 Q. When you prepared for this deposition, did  
8 you open up every document that was in the file on --  
9 **A. Yes, I did.**  
10 Q. -- FileNet. And were there documents that  
11 were received by Bank of America?  
12 **A. Yes, there were.**  
13 Q. Did those documents include AS-400 notes?  
14 **A. I don't recall. I don't recall. And**  
15 **oftentimes Nationstar's system will reference AS-400**  
16 **notes if things come up. Well, there's a subsequent**  
17 **servicer, and I didn't see any references to any**  
18 **AS-400 notes in Nationstar's collection history, or**  
19 **profile is what they call it. It's really just a**  
20 **comments log.**  
21 Q. So the only comments log that you saw were  
22 from April of 2014 going forward?  
23 **A. That I can say with certainty. Once again,**  
24 **I'm not saying they weren't there. There's**  
25 **nothing -- I did open everything in FileNet. If**

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1 **there were notes, there was nothing in them that**  
2 **jumped out at me or that I recall that jumped out at**  
3 **me.**  
4 Q. And when you were looking for the documents,  
5 or looking for information for your deposition and  
6 you were opening up documents, you were looking for  
7 any references to a homeowners association?  
8 **A. That is correct.**  
9 Q. And so if there were notes about homeowners  
10 association, lien, then you would have made a note of  
11 that?  
12 **A. Yes.**  
13 Q. Do you recall if there were any notes on the  
14 foreclosure of the property?  
15 **MR. JUNG:** Objection. Vague as to  
16 "foreclosure of the property." By which entity?  
17 **MS. EBRON:** The bank.  
18 **THE WITNESS:** Which bank?  
19 **BY MS. EBRON:**  
20 Q. Anyone acting on behalf of Deutsche Bank?  
21 **A. And which foreclosure are you talking about?**  
22 Q. Foreclosure of the Deed of Trust?  
23 **A. By any party? Are you talking about the**  
24 **homeowners association foreclosure sale?**  
25 Q. No. The foreclosure of the Deed of Trust.

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1    **A. I guess I don't understand your question.**  
2    Q. There was a Notice of Default that was  
3    filed -- or recorded against the property, which was  
4    the beginning of a foreclosure of the Deed of Trust?  
5    **A. Right.**  
6    Q. Did you see any notes on that?  
7    **A. I don't recall anything specific.**  
8    Q. Okay. I'm going to show you a document that  
9    we'll mark as Exhibit 13.  
10       (Whereupon Defendant's Exhibit 13  
11       was marked for identification.)  
12   **BY MS. EBRON:**  
13    Q. Do you recognize this document?  
14    **A. I believe I saw a couple of these. I don't**  
15    **know if they were -- I don't recall if they were the**  
16    **same or different or if this is one of the exact**  
17    **notice of delinquent assessment liens that I saw.**  
18    **But I did see a notice of delinquent assessment lien.**  
19    Q. Is that something that was contained in your  
20    business records?  
21    **A. Yes.**  
22    Q. Do you know when it became a part of your  
23    business records?  
24    **A. It became a part of -- when you say "you,"**  
25    **you're talking about Deutsche Bank?**

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1    Q. Correct.  
2    **A. It became a part of Bank of America's**  
3    **business records and subsequently Nationstar's upon**  
4    **the service transfer in April of 2014.**  
5       **But I believe it was the latter half of**  
6    **November 2011 or possibly in early December 2011. On**  
7    **or about when this is dated.**  
8    Q. Do you have any reason to dispute the amount  
9    listed in this Notice of Delinquent Assessment?  
10    **A. I mean, all I see is a dollar -- it just**  
11    **says the amount owing is \$796.12. And as of**  
12    **November 14th, 2011, it increases on the first day of**  
13    **each month at a rate of \$57 per month, plus late**  
14    **charges and/or interest, plus attorneys/legal fees,**  
15    **and the fees of the agent for the association, the**  
16    **management body incurred in connection with**  
17    **preparation, recording, or foreclosure of this Notice**  
18    **of Delinquent Assessment.**  
19       **So given all that, I don't see a breakdown**  
20    **of what equals \$796.12.**  
21    Q. Do you have a reason to dispute that the  
22    borrowers were delinquent at this time?  
23    **A. I mean, they were delinquent on their**  
24    **mortgage at this time. So without being too**  
25    **speculative, I don't think it's too far off to say**

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1    **that they were most likely delinquent on their**  
2    **homeowners association fees.**  
3    Q. Okay. But you didn't see anything in the  
4    file that was like --  
5    **A. They didn't call in and say, "Why are we**  
6    **getting these? We paid our fees," or anything.**  
7    Q. So you didn't see anything like that?  
8    **A. No.**  
9    Q. Okay. And I think I meant to ask this  
10   before when we were looking at Exhibit 12, the  
11   Recision of the Notice of Default.  
12       Is it your understanding that the borrowers  
13   were still delinquent when the Notice of Default was  
14   rescinded?  
15    **A. Based on my recollection of the payment**  
16    **history, I don't believe they ever became current.**  
17    Q. Thank you.  
18    **A. Like I said, though, obviously based on just**  
19    **what you provided and documents today, this is a very**  
20    **document intensive file. So that's just based on my**  
21    **recollection.**  
22    Q. But when you looked at the payment history,  
23    did you see any payments after -- I think it was  
24    sometime in 2009 that was listed on the NOD; right?  
25    September 1st, 2009?

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1       **MR. JUNG:** Objection. Vague as to "any  
2   payments."  
3   **BY MS. EBRON:**  
4    Q. Any payments from the borrower to the loan  
5   that was secured by the Deed of Trust we marked as  
6   Exhibit 8.  
7    **A. I don't recall exactly if the payments just**  
8    **stopped on that date or if payments were made after**  
9    **that date and applied to the furthest payment back**  
10   **that was due and owing. I don't believe they made**  
11   **any additional payments.**  
12    Q. Okay.  
13    **A. But, once again, if I had a copy of the**  
14    **payment history in front of me, I could very easily**  
15    **answer that for you.**  
16       **(Thereupon Defendant's Exhibit 14**  
17       **was marked for identification.)**  
18   **BY MS. EBRON:**  
19    Q. Okay. Let's look at Exhibit 14. Do you  
20   recognize this document?  
21    **A. Yes, I do.**  
22    Q. What is it?  
23    **A. Notice of Default and Election to Self Real**  
24    **Property to Satisfy Notice of Delinquent Assessment**  
25    **Lien.**

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1 Q. Is this something that was contained in  
2 records you received from Bank of America?  
3 A. Yes, it was. And just like the previous  
4 exhibit, Exhibit 13, I believe there were a couple of  
5 these -- I don't recall if this is the exact one I  
6 saw, but I have no reason to believe that it's not  
7 legitimate.  
8 Q. Do you see any evidence of when it was  
9 received by Bank of America?  
10 A. On or about when it was dated. Shortly  
11 thereafter. So like February, early March 2012.  
12 Q. Did you see any copies of this Notice of  
13 Default that were paired with envelopes or  
14 Bates-stamped?  
15 A. I did not.  
16 Q. And did you see any AS-400 notes about the  
17 receipt of the Notice of Default?  
18 A. I did see some mention of the Notice of  
19 Default and Election to Sell because there were  
20 attempts to cure that.  
21 Q. And where did you see those?  
22 A. In the AS-400 notes, I believe. Once again,  
23 it's a very document heavy file.  
24 Q. Do you know how many notes there were about  
25 the Notice of Default?

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1 A. I don't recall the exact number.  
2 Q. But you would be able to tell if you had the  
3 AS-400 notes?  
4 A. Yes. If I had those in front of me, I could  
5 point you to them.  
6 Q. I do. Do you have any reason to dispute  
7 that as of the time this was recorded, that the  
8 borrowers were still delinquent to the association?  
9 A. Just as I answered before, as they were  
10 still delinquent on their mortgage, I don't think  
11 it's outside the realm of possibility that they were  
12 still delinquent on their homeowners association  
13 fees.  
14 Q. Do you have any knowledge about whether the  
15 Notice of Delinquent Assessment Lien was mailed to  
16 the borrowers?  
17 MR. JUNG: Objection. Speculation.  
18 THE WITNESS: I do not.  
19 BY MS. EBRON:  
20 Q. Do you have any knowledge about whether the  
21 Notice of Default and Election to Sell Real Property  
22 to Satisfy Notice of Delinquent Assessment Lien that  
23 we marked as Exhibit 14 was mailed to the borrowers?  
24 MR. JUNG: Objection. Speculation.  
25 THE WITNESS: I do not.

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1 BY MS. EBRON:  
2 Q. Do you have any knowledge about whether the  
3 Notice of Default we marked as Exhibit 14 was posted  
4 on the property?  
5 A. I do not.  
6 Q. Do you have any knowledge as to whether the  
7 Notice of Default and Election to Sell Real Property  
8 was mailed to any of the other subordinate  
9 lienholders on the property?  
10 MR. JUNG: Objection. Speculation.  
11 THE WITNESS: I do not.  
12 BY MS. EBRON:  
13 Q. Do you have any reason to dispute that the  
14 Notice of Default was mailed to --  
15 A. I'm sorry. What was your previous question?  
16 Q. Any subordinate lienholders.  
17 A. Am I aware that it was sent to any or --  
18 Q. Do you have any knowledge?  
19 A. Okay. Not do I dispute?  
20 Q. Right. Do you have any knowledge of it?  
21 A. I do not, no.  
22 Q. Okay. Do you have any reason to dispute  
23 that the Notice of Default we marked as Exhibit 14  
24 was mailed to the address on the Assignment we marked  
25 as Exhibit 10?

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1 A. As it's been in the system of record, it got  
2 in there somehow. So I don't know if it was sent to  
3 that address or another Bank of America address. But  
4 since it's contained in Bank of America's records, it  
5 got there somehow.  
6 Q. I'm going to show you multiple documents  
7 that are similar. I'm going to mark that as  
8 Exhibit 15.  
9 (Whereupon Defendant's Exhibit 15  
10 was marked for identification.)  
11 BY MS. EBRON:  
12 Q. They're Bates-stamped SFR 109, 110, 116 and  
13 117. If you can just take a quick look at these.  
14 A. Okay.  
15 Q. Have you seen these documents before?  
16 A. I don't think so.  
17 Q. In your review of the file, did you see any  
18 notices of lien?  
19 MR. JUNG: Objection. Asked and answered.  
20 THE WITNESS: I saw the Notice of Delinquent  
21 Assessment Lien. Possibly multiple notices, as we  
22 talked about on Exhibit 13. But in terms of these,  
23 which appear to be sewer liens, I don't recall seeing  
24 any sewer liens.  
25 ///

<p style="text-align: right;">Page 49</p> <p>1 <b>BY MS. EBRON:</b> 2 Q. Okay. Thank you. I'm going to show you a 3 document that we will mark as Exhibit 16. 4 (Thereupon Defendant's Exhibit 16 5 was marked for identification.) 6 <b>BY MS. EBRON:</b> 7 Q. Do you recognize this document? 8 <b>A. Yes, I do.</b> 9 Q. What is it? 10 <b>A. A Notice of Trustee's Sale.</b> 11 Q. Is this something that's contained in your 12 business records? 13 <b>A. Yes, I believe so.</b> 14 Q. And it's something that would have been 15 received by Bank of America and then forwarded to 16 Nationstar upon the servicing transfer? 17 <b>A. That is correct.</b> 18 Q. Did you see any notes in the AS-400 report 19 about this Notice of Trustee's Sale? 20 <b>A. I believe it was the same type of notes.</b> 21 <b>Once again, if they're in front of me, I could give</b> 22 <b>you a definite answer.</b> 23 <b>But between the Notice of Default and the</b> 24 <b>Notice of Sale, there were notes as to the file being</b> 25 <b>referred to outside counsel to tender the</b></p>	<p style="text-align: right;">Page 51</p> <p>1 be different. 2 <b>BY MS. EBRON:</b> 3 Q. Do you have any reason to believe that there 4 wasn't a delinquency? 5 <b>MR. JUNG:</b> Objection. Speculation. 6 <b>THE WITNESS:</b> Just as we've talked about 7 multiple times now, the owners were still delinquent 8 on their property. I don't think it's outside the 9 realm of possibility that they were still delinquent 10 on their homeowners association fees. 11 But, once again, I know Bank of America 12 acquired outside -- or obtained outside counsel to 13 tender payment for the super-priority amount of the 14 HOA's lien. 15 <b>BY MS. EBRON:</b> 16 Q. Did Deutsche Bank or any of its agents go to 17 9500 West Flamingo Road, Suite Number 205, Las Vegas, 18 Nevada 89147 at 2:00 p.m. on May 8th, 2013? 19 <b>MR. JUNG:</b> Objection. Speculation. Form. 20 <b>THE WITNESS:</b> I don't know. 21 <b>BY MS. EBRON:</b> 22 Q. If somebody had attended the noticed 23 foreclosure sale, is that something that you would 24 have expected to have seen in the business records? 25 <b>A. Not necessarily.</b></p>
<p style="text-align: right;">Page 50</p> <p>1 <b>super-priority amount of the lien.</b> 2 Q. Do you know when that attempt happened? 3 <b>A. If I had some documentation in front of me,</b> 4 <b>I could tell you an exact date. But I don't want to</b> 5 <b>speculate. It was prior to the sale date, the HOA</b> 6 <b>sale date.</b> 7 Q. Do you have any information that would lead 8 you to dispute the amount that's listed in the last 9 paragraph as being the unpaid balance to the 10 association? 11 <b>MR. JUNG:</b> Objection. Form. 12 <b>THE WITNESS:</b> Just as we talked about, I 13 believe, on Exhibit 13, it just gives a total number. 14 It says the total amount of the unpaid -- this is the 15 second-to-last sentence of the document. 16 It says, "The total amount of the unpaid 17 balance of the obligation secured by the property to 18 be sold and reasonable estimated costs, expenses and 19 advances at the time of initial publication of the 20 Notice of Sale is \$4,917.38." There's no breakdown 21 of what adds up to that -- or what that number is 22 comprised of. And it says it's an estimate on top of 23 that. 24 So the fact that it just says estimated, 25 that does leave me some doubt that the number could</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Why not? 2 <b>A. It's -- in my experience, I have never seen</b> 3 <b>where it says John Smith attended sale date at</b> 4 <b>blah-blah-blah address at blah-blah-blah time and the</b> 5 <b>date matches the date. And also the sale didn't even</b> 6 <b>happen on that date of May 18th, 2013. It happened</b> 7 <b>on September 11th, 2013.</b> 8 Q. Right. So there's no way for you to 9 know -- strike that. You don't have any information 10 about whether the sale was orally postponed, do you? 11 <b>MR. JUNG:</b> Objection. Calls for 12 speculation. 13 <b>THE WITNESS:</b> I do not. 14 <b>BY MS. EBRON:</b> 15 Q. And you didn't see any notes in your file 16 saying the May 8th, 2013, sale didn't go forward; it 17 was postponed? 18 <b>A. Not that I recall seeing.</b> 19 Q. Do you have any information or knowledge 20 about whether or not the Notice of Trustee's Sale was 21 posted on the property? 22 <b>A. I do not.</b> 23 Q. Do you have any knowledge or information 24 whether the Notice of Trustee's Sale was posted in 25 three public places?</p>

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1 **MR. JUNG:** Objection. Calls for  
2 speculation.  
3 **THE WITNESS:** I do not.  
4 **BY MS. EBRON:**  
5 Q. Do you have any knowledge or information  
6 about whether the Notice of Trustee's Sale was mailed  
7 to the borrowers?  
8 **MR. JUNG:** Calls for speculation.  
9 Objection.  
10 **THE WITNESS:** I do not.  
11 **BY MS. EBRON:**  
12 Q. Do you have any knowledge or information  
13 about whether the information contained in the Notice  
14 of Trustee's Sale was published in any newspaper?  
15 **MR. JUNG:** Objection. Calls for  
16 speculation.  
17 **THE WITNESS:** I do not.  
18 **BY MS. EBRON:**  
19 Q. Did you see any evidence that someone from  
20 Deutsche Bank, Bank of America, or anyone they hired  
21 called Alessi & Koenig at the number listed on this  
22 Notice of Trustee's Sale?  
23 **A. Do I have knowledge that they called them?**  
24 Q. Right.  
25 **A. No. But I know that there was written**

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1 **correspondence.**  
2 Q. How do you know that?  
3 **A. Because I've seen it.**  
4 Q. And where was that located in your files?  
5 **A. It was provided to me by counsel.**  
6 Q. But it wasn't something that you saw on  
7 FileNet or LSAMS?  
8 **A. No. I don't believe so.**  
9 Q. Did you -- meaning Deutsche Bank through  
10 your servicer, which was probably Bank of America at  
11 the time -- call the ombudsman's office at the number  
12 listed on the Notice of Trustee's Sale?  
13 **A. Not that I'm aware of.**  
14 Q. Did Deutsche Bank have a policy or procedure  
15 for handling association foreclosure notices in April  
16 of 2013?  
17 **A. Once again, that is what I call a**  
18 **front-facing function. It has to do with the**  
19 **customer. So it would have defaulted to Bank of**  
20 **America's policies on that, which were to obtain**  
21 **outside counsel to determine the super-priority**  
22 **amount and tender that amount in order to satisfy the**  
23 **super-priority portion of the lien at minimum and**  
24 **protect their interests in the primary Deed of Trust.**  
25 Q. How do you know that that was Bank of

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1 America's policy and procedure for handling  
2 association liens?  
3 **A. From previously talking with Bank of America**  
4 **regarding what their policies and procedures were at**  
5 **that time.**  
6 Q. Did you ever talk to anyone at Bank of  
7 America about whether or not their policies and  
8 procedures changed after December 12th, 2012, when  
9 NRED issued its advisory opinion about the  
10 super-priority?  
11 **A. I just asked a general question about a**  
12 **general time period, which I believe was from when I**  
13 **worked at Bank of America until 2012, 2013 roughly.**  
14 **So until 2012.**  
15 **So I believe I asked what the policies and**  
16 **procedures were from 2012 to current when I talked to**  
17 **them. And they are as I just explained.**  
18 Q. And did they mention if they had any  
19 procedure changes after NRED's advisory opinion?  
20 **A. Not specifically, no.**  
21 Q. Did you talk to them about whether or not  
22 there were changes after the SFR and U.S. Bank  
23 decision in September of 2014?  
24 **A. No, I did not. But I believe -- there's no**  
25 **but. Never mind.**

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1 Q. Do you know if they had a policy change?  
2 **A. I do not.**  
3 Q. I'm going to show you a document we'll mark  
4 as Exhibit 17.  
5 (Whereupon Defendant's Exhibit 17  
6 was marked for identification.)  
7 **BY MS. EBRON:**  
8 Q. Do you recognize this document?  
9 **A. I do not recall seeing this.**  
10 Q. Okay. I'm going to show you a document  
11 we'll mark as Exhibit 18.  
12 (Whereupon Defendant's Exhibit 18  
13 was marked for identification.)  
14 **BY MS. EBRON:**  
15 Q. Do you recognize this document?  
16 **A. I do not.**  
17 Q. Do you have any reason to dispute that as of  
18 February 4th, 2013, that there were fines for  
19 violations that had occurred against the property?  
20 **A. I have never seen a document like this, a**  
21 **notice of violation. I don't know what this is in**  
22 **reference to. This is the first time I've seen this.**  
23 **So I can't really speculate on that.**  
24 **MR. JUNG:** Diana, I'm sorry. What exhibit  
25 number are we on?



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1 **MS. EBRON:** 18.  
2 **MR. JUNG:** That's the Notice of Violation  
3 Lien?  
4 **MS. EBRON:** Correct.  
5 **MR. JUNG:** And the Substitution of Trustee,  
6 that would have been Exhibit 17?  
7 **MS. EBRON:** Correct.  
8 **MR. JUNG:** Thank you.  
9 **BY MS. EBRON:**  
10 Q. During this time period in 2013, do you know  
11 if Deutsche Bank through its servicer was maintaining  
12 the property?  
13 **A. I don't recall.**  
14 Q. Do you know if they sent anyone by to check  
15 on the property?  
16 **A. I know there were property inspections done,**  
17 **numerous property inspections. Nothing jumped out at**  
18 **me, though, regarding anything where the lender would**  
19 **have -- I don't recall anything where the lender**  
20 **would have had to step in and change the locks or mow**  
21 **the grass or anything like that. I don't recall**  
22 **seeing any notes of that nature.**  
23 Q. I'm going to show you another document we'll  
24 mark as Exhibit 19.  
25 ///

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1 (Whereupon Defendant's Exhibit 19  
2 was marked for identification.)  
3 **BY MS. EBRON:**  
4 Q. Do you recognize this document?  
5 **A. Yes, I do.**  
6 Q. What is it?  
7 **A. The Trustee's Deed upon Sale.**  
8 Q. Is this something that was contained in the  
9 business records that you received from Bank of  
10 America when Nationstar began servicing the loan?  
11 **A. I believe this was provided to me by**  
12 **counsel.**  
13 Q. Is it accurate to say that no one from  
14 Deutsche Bank attended the auction on September 11th,  
15 2013?  
16 **A. Not that I'm aware of.**  
17 Q. I'm sorry. I asked that poorly. Did anyone  
18 from Deutsche Bank attend the auction on  
19 September 11th, 2013?  
20 **A. No.**  
21 Q. Do you have any knowledge about the number  
22 of bidders at the sale?  
23 **A. No.**  
24 Q. Do you have any knowledge about any  
25 announcements that were made or not made before the

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1 sale?  
2 **MR. JUNG:** Objection. Calls for  
3 speculation.  
4 **THE WITNESS:** No.  
5 **BY MS. EBRON:**  
6 Q. Do you have any knowledge about any of the  
7 actual events of the sale?  
8 **A. No.**  
9 Q. Do you have any reason to doubt that SFR  
10 paid the winning bid?  
11 **MR. JUNG:** Objection. Calls for  
12 speculation.  
13 **THE WITNESS:** According to this Trustee's  
14 Deed, the buyer was SFR Investments Pool 1, LLC, who  
15 you represent. So I assume they purchased it, but  
16 that is an assumption.  
17 **BY MS. EBRON:**  
18 Q. Do you have any information about the  
19 identity of the other bidders at the sale?  
20 **A. I do not.**  
21 Q. Do you have any reason to believe that the  
22 bidders at the sale colluded with SFR so that SFR  
23 could purchase the property for \$15,000?  
24 **A. I don't know.**  
25 Q. Do you have any reason to believe that SFR

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1 Investments Pool 1, LLC, colluded with Alessi &  
2 Koenig, LLC, so that it could pay \$15,000 as the  
3 highest bid?  
4 **A. I don't know.**  
5 Q. Do you have any reason to believe that SFR  
6 colluded with the association in any way in relation  
7 to the sale?  
8 **A. I don't know.**  
9 Q. I'm showing you a document that we will mark  
10 as Exhibit 20.  
11 (Whereupon Defendant's Exhibit 20  
12 was marked for identification.)  
13 **BY MS. EBRON:**  
14 Q. Do you recognize this document?  
15 **A. I believe I did see this document.**  
16 Q. What is it?  
17 **A. Substitution of Trustee.**  
18 Q. And it substitutes National Default  
19 Servicing Corporation as the trustee for the Deed of  
20 Trust we marked as Exhibit 8?  
21 **A. That is correct.**  
22 Q. I'll show you a document that we will mark  
23 as Exhibit 21.  
24 (Whereupon Defendant's Exhibit 21  
25 was marked for identification.)

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1 **BY MS. EBRON:**  
2 Q. Do you recognize this document?  
3 **A. Yes, I do.**  
4 Q. What is this?  
5 **A. This is an Assignment of the Deed of Trust.**  
6 Q. And that's the Deed of Trust that is marked  
7 as Exhibit 8?  
8 **A. That is correct.**  
9 Q. Who is this from and who is it to?  
10 **A. It is from Bank of America, NA, to**  
11 **Nationstar Mortgage, LLC.**  
12 Q. In your review of the file, did you see any  
13 other Assignments besides this one and the one that  
14 we marked as Exhibit 10?  
15 **A. No, I did not.**  
16 Q. Why is Bank of America assigning this Deed  
17 of Trust to Nationstar?  
18 **A. I guess I don't -- can you rephrase your**  
19 **question?**  
20 Q. When did Bank of America, NA, become the  
21 beneficiary of the Deed of Trust marked as Exhibit 8?  
22 **A. I don't know.**  
23 Q. So we have this Assignment in February of  
24 2010 that assigned the Deed of Trust to Deutsche  
25 Bank; right?

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1 **A. That's correct.**  
2 Q. And then this assignment -- that was from  
3 MERS?  
4 **A. Yes. From MERS to Deutsche Bank.**  
5 **MR. JUNG:** Diana, for the record, when you  
6 refer to the Assignment in 2010, what Exhibit Number?  
7 **MS. EBRON:** 10.  
8 **MR. JUNG:** 10?  
9 **MS. EBRON:** Yes.  
10 **BY MS. EBRON:**  
11 Q. Do you have any idea why this Assignment was  
12 prepared?  
13 **MR. JUNG:** Objection as to form.  
14 **THE WITNESS:** Can you rephrase your  
15 question?  
16 **BY MS. EBRON:**  
17 Q. Do you know why this was prepared?  
18 **A. I do not.**  
19 Q. Did Nationstar begin servicing in October of  
20 2013?  
21 **A. No.**  
22 Q. It was in April of 2014; right?  
23 **A. Correct. I believe this is a -- I don't**  
24 **think this is a valid assignment.**  
25 Q. Do you know if there's a policy and

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1 procedure in place at Bank of America or if there was  
2 at this time for recording documents against a  
3 property?  
4 **MR. JUNG:** Objection. Calls for  
5 speculation.  
6 **THE WITNESS:** I don't.  
7 **BY MS. EBRON:**  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 Q. Do you think that the Assignment to Deutsche  
17 Bank could have been a mistake?  
18 **MR. JUNG:** Objection. Calls for  
19 speculation.  
20 **THE WITNESS:** Any answer I give you would be  
21 a hundred percent speculation. I just know that the  
22 chain follows to that point, and then the next step  
23 would be from Deutsche Bank to somebody else.  
24 **BY MS. EBRON:**  
25 Q. Okay.

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1 **A. So I can't say whether that was done in**  
2 **error or not because everything up to that point**  
3 **falls in line.**  
4 Q. [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 Q. [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 Q. [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 Q. I'm showing you a document that we'll mark  
10 as Exhibit 22.  
11 (Whereupon Defendant's Exhibit 22  
12 was marked for identification.)  
13 **BY MS. EBRON:**  
14 Q. Do you recognize this document?  
15 A. **I believe that this -- yes.**  
16 Q. Wright Finlay & Zak, LLP is a law firm  
17 retained by Nationstar; correct?  
18 A. **That is correct.**  
19 Q. And they would have recorded this on behalf  
20 of Nationstar?  
21 A. **That is correct.**  
22 Q. And Nationstar directed them to do it in  
23 their capacity as servicer for Deutsche Bank?  
24 A. **That is correct.**  
25 Q. I'm showing you a document that we'll mark

1 as Exhibit 23.  
2 (Whereupon Defendant's Exhibit 23  
3 was marked for identification.)  
4 **BY MS. EBRON:**  
5 Q. Do you recognize this document?  
6 A. **Yes, I do.**  
7 Q. Similarly, this was recorded by your  
8 attorneys?  
9 A. **That is correct.**  
10 Q. I'm showing you a document that we'll mark  
11 as Exhibit 24.  
12 (Whereupon Defendant's Exhibit 24  
13 was marked for identification.)  
14 **BY MS. EBRON:**  
15 Q. Do you recognize this document?  
16 A. **Yes, I do.**  
17 Q. What is it?  
18 A. **The title insurance policy.**  
19 Q. Do you know when this was obtained?  
20 **MR. JUNG:** Objection. Diana, just as it  
21 goes to the topics listed in Exhibit Number 2 for  
22 this deposition, was this included?  
23 **THE WITNESS:** And this isn't --  
24 **MR. JUNG:** Regarding the title. I don't  
25 recall seeing that.

1 **MS. EBRON:** Oh, I'm not sure if I mentioned  
2 this specifically.  
3 **THE WITNESS:** And just for the record, I  
4 didn't -- I saw this as it's part of the collateral  
5 file, but I didn't see anything in here that  
6 referenced title. So it's nothing that I looked at  
7 other than to make sure that we had a copy of it.  
8 **BY MS. EBRON:**  
9 Q. Do you know if there were any claims made on  
10 it?  
11 A. **I don't. And it's not something that I --**  
12 Q. Do you know where you would look to find  
13 that information out?  
14 A. **The systems of record for all the servicers**  
15 **since origination. Or contacting the title and title**  
16 **company directly.**  
17 Q. I'm showing you a document that we'll mark  
18 as Exhibit 25.  
19 (Whereupon Defendant's Exhibit 25  
20 was marked for identification.)  
21 **BY MS. EBRON:**  
22 Q. And these were part of the responses to  
23 requests for production of documents. Did you review  
24 the responses to requests for production of  
25 documents?

1 A. **Yes.**  
2 Q. Did you also review the interrogatories?  
3 A. **Yes.**  
4 Q. Do you know who AJ Loll is?  
5 A. **Yes.**  
6 Q. Who is that?  
7 A. **He's vice president, I believe, of loss**  
8 **mitigation.**  
9 Q. For Nationstar?  
10 A. **For Nationstar, yes.**  
11 Q. And attorney-in-fact for Deutsche Bank?  
12 A. **I'm sorry?**  
13 Q. Is he also attorney-in-fact for Deutsche  
14 Bank?  
15 **MR. JUNG:** Diana, you're referring to the  
16 response to interrogatories, the verification page?  
17 **MS. EBRON:** Yeah.  
18 **THE WITNESS:** Yes. I'm sorry.  
19 **BY MS. EBRON:**  
20 Q. All right. Let's go back to Exhibit 25.  
21 A. **Okay.**  
22 Q. Do you recognize the documents within this  
23 exhibit?  
24 A. **Yes, I do.**  
25 Q. What are they?

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1 A. Essentially it's the chain of letters from  
2 Miles, Bauer, Bergstrom & Winters, who are the law  
3 firm obtained by Bank of America to address the issue  
4 of the super-priority amount of the homeowners  
5 association lien. So the first document is --  
6 Q. Let me just ask you real quick. Are any of  
7 these documents ones that were contained in your  
8 business records?  
9 A. These were provided by counsel.  
10 Q. Do you know where they came from?  
11 A. I do not.  
12 Q. Do you have anyone to authenticate them  
13 through your business records?  
14 A. Because they were provided to me by counsel,  
15 I didn't -- I wasn't looking for them when I was  
16 going through the thousands of documents in FileNet.  
17 Q. But you opened up the web page?  
18 A. Right.  
19 Q. And you would have made a note if there was  
20 something referencing a homeowners association lien?  
21 A. Yes.  
22 Q. Do you have any information about any  
23 efforts to make any payments to the association on  
24 behalf of this property other than these documents?  
25 A. I believe there was -- like I said, there

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1 were notes in AS-400 regarding Miles Bauer and  
2 retaining them to acquire a payoff, which Centennial  
3 Point Homeowners Association provided on the SOB,  
4 technically page 2, 3 and 4. But nothing in there  
5 actually says what the super-priority amount is.  
6 And we have a letter with Miles Bauer's  
7 response where they use the nine months of  
8 assessments and a copy of the check provided.  
9 Q. Are there any other documents that were  
10 contained in your business records that relate to any  
11 attempts to pay?  
12 A. Other than notes. These might have been in  
13 there, but I might not have made a mental note of it  
14 because I already had them.  
15 Q. Okay.  
16 A. So I'm not saying that they're not in there.  
17 I can verify that for you.  
18 Q. Okay.  
19 A. Which, if that's the case, then we would  
20 have the originals.  
21 MS. EBRON: Well, I don't have any other  
22 questions.  
23 MR. JUNG: I have some quick follow-up  
24 questions, please.  
25 ///

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1 EXAMINATION  
2 BY MR. JUNG:  
3 Q. Mr. Kovalic, for the record, could you state  
4 when the HOA sale took place?  
5 A. September 11th, 2013.  
6 Q. When did Nationstar start servicing the  
7 subject loan?  
8 A. April 1st, 2014.  
9 Q. At the time of the HOA sale on September 11,  
10 2013, was Bank of America the servicer?  
11 A. Yes.  
12 Q. And did Bank of America reach out to the HOA  
13 trustee, who at the time was Asset Recovery Services,  
14 after receiving a copy of the recorded Notice of  
15 Default that was recorded on March 6th, 2012?  
16 MS. EBRON: Calls for speculation.  
17 BY MR. JUNG:  
18 Q. I'd like to point you back to Exhibit Number  
19 25.  
20 A. Okay.  
21 MS. EBRON: He's already testified that he  
22 just received this from counsel, and it wasn't part  
23 of the business records. So I don't think we need to  
24 go through any of the details on here.  
25 MR. JUNG: Right. But he won't have to

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1 speculate because it's actually right here on  
2 Exhibit 25.  
3 MS. EBRON: Expect for he can't verify or  
4 authenticate any of these business records. He's not  
5 an appropriate witness to do that. Anything that's  
6 on the face of these documents, he can't make any  
7 conclusions based on that.  
8 BY MR. JUNG:  
9 Q. Well, have you heard of the law firm Miles,  
10 Bauer, Bergstrom & Winters.  
11 A. Yes. And it's mentioned in the Bank of  
12 America servicing notes.  
13 Q. What has Miles, Bauer, Bergstrom & Winters  
14 done in their role in these HOA disputes?  
15 MS. EBRON: Form. Calls for speculation.  
16 THE WITNESS: Based on what I have seen in  
17 this file, they were retained to deal with the  
18 super-priority -- one, find out what the  
19 super-priority portion of the homeowners association  
20 lien was and then tender payment on behalf of Bank of  
21 America.  
22 BY MR. JUNG:  
23 Q. And based on the documents that you received  
24 and documents also contained in Exhibit Number 25  
25 introduced by counsel, do you believe Miles, Bauer,

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<p>1 Bergstrom &amp; Winters did that in this situation?</p> <p>2 <b>MS. EBRON:</b> Form. Calls for speculation.</p> <p>3 <b>THE WITNESS:</b> Based on the copy of the check</p> <p>4 that is in Exhibit 25, it appears that a check in the</p> <p>5 amount of \$558, which is the equivalent of</p> <p>6 nine months of assessments, was made to Asset</p> <p>7 Recovery Services.</p> <p>8 <b>BY MR. JUNG:</b></p> <p>9 Q. And then based on the documents that you</p> <p>10 reviewed and also contained in Exhibit Number 25,</p> <p>11 would you agree that there was a payoff demand</p> <p>12 provided by the HOA trustee at the time, which was</p> <p>13 Asset Recovery Services?</p> <p>14 <b>MS. EBRON:</b> Form. Calls for speculation.</p> <p>15 <b>THE WITNESS:</b> The first sentence of the</p> <p>16 second page of Exhibit 25 says, "We are in receipt of</p> <p>17 your demand for payoff regarding the above-referenced</p> <p>18 property." And then they provide the total amount.</p> <p>19 And then they provide the monthly assessment. And</p> <p>20 then there is a full ledger on the third page. It</p> <p>21 continues onto the fourth page.</p> <p>22 <b>BY MR. JUNG:</b></p> <p>23 Q. And going back to that first sentence. When</p> <p>24 was that demand for payoff dated?</p> <p>25 <b>A. March 23rd, 2012.</b></p>	<p>1 <b>THE WITNESS:</b> Based on the information, yes,</p> <p>2 and based on my review in preparation.</p> <p>3 <b>BY MR. JUNG:</b></p> <p>4 Q. And based on your experience working for</p> <p>5 Nationstar, Miles, Bauer, Bergstrom &amp; Winters is a</p> <p>6 law firm that has in the past tendered super-priority</p> <p>7 amount checks to HOAs or HOA trustees on behalf of</p> <p>8 banks or First Deed of Trust lienholders?</p> <p>9 <b>MS. EBRON:</b> Calls for speculation. Form.</p> <p>10 <b>THE WITNESS:</b> Based on my experience, yes.</p> <p>11 <b>BY MR. JUNG:</b></p> <p>12 Q. Do you have any reason to doubt the</p> <p>13 authenticity of the documents that counsel presented</p> <p>14 as Exhibit 25 or documents you reviewed prior to this</p> <p>15 deposition?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Earlier counsel asked you if you had come</p> <p>18 across any records that would indicate any</p> <p>19 improprieties with the HOA sale including but not</p> <p>20 limited to collusions on the part of HOA trustee and</p> <p>21 SFR or between other bidders at the HOA sale and SFR;</p> <p>22 is that correct?</p> <p>23 <b>A. Yes. Are you asking whether those questions</b></p> <p>24 <b>were asked?</b></p> <p>25 Q. Yes.</p>
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<p>1 Q. And when was the letter from Miles, Bauer</p> <p>2 Bergstrom &amp; Winters with a copy of the tendered check</p> <p>3 dated?</p> <p>4 <b>MS. EBRON:</b> Calls for speculation.</p> <p>5 <b>BY MR. JUNG:</b></p> <p>6 Q. If you look on the copy of the check --</p> <p>7 <b>A. Right. You're just asking what date was the</b></p> <p>8 <b>check dated?</b></p> <p>9 Q. Right.</p> <p>10 <b>A. April 20th, 2012.</b></p> <p>11 Q. And is that prior to the HOA sale of 2013?</p> <p>12 <b>A. Yes. The sale was in 2013.</b></p> <p>13 Q. Is that also prior to when Alessi &amp; Koenig</p> <p>14 was substituted in as HOA trustee for Asset Recovery</p> <p>15 Services? I believe it was introduced as an earlier</p> <p>16 exhibit, as Exhibit 17.</p> <p>17 <b>A. According to Exhibit 17, that is dated</b></p> <p>18 <b>January 10th, 2013, and notarized the same day. So,</b></p> <p>19 <b>yes, it was prior to that.</b></p> <p>20 Q. Just for the record, there was a tendered</p> <p>21 super-priority amount check from Miles, Bauer</p> <p>22 Bergstrom &amp; Winters to the HOA trustee, who was Asset</p> <p>23 Recovery Services at the time?</p> <p>24 <b>MS. EBRON:</b> Form. Calls for speculation.</p> <p>25 Calls for a legal conclusion.</p>	<p>1 <b>A. Yes, they are.</b></p> <p>2 Q. And I believe you said you didn't -- at this</p> <p>3 point in time, you had not come across any such</p> <p>4 information; correct?</p> <p>5 <b>A. That's correct.</b></p> <p>6 Q. But just because you have not at this point</p> <p>7 and discovery is still ongoing, is it possible that</p> <p>8 additional information may come to the surface that</p> <p>9 does show improprieties of the sale?</p> <p>10 <b>MS. EBRON:</b> Form.</p> <p>11 <b>THE WITNESS:</b> It's possible. Not with</p> <p>12 certainty, but it's possible.</p> <p>13 <b>MR. JUNG:</b> Thank you. No further questions.</p> <p>14</p> <p>15 <b>FURTHER EXAMINATION</b></p> <p>16 <b>BY MS. EBRON:</b></p> <p>17 Q. You didn't see anything in any of your</p> <p>18 business records that suggested any improprieties</p> <p>19 with the sale; right?</p> <p>20 <b>A. In my preparation for today's deposition, I</b></p> <p>21 <b>didn't see anything that suggested that.</b></p> <p>22 Q. Right. Do you know if this check was</p> <p>23 accepted?</p> <p>24 <b>A. The check was dated April 20th, 2012. And</b></p> <p>25 <b>the last two pages of Exhibit 25 is another letter</b></p>

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1 from Miles Bauer dated July 29th, 2016. It's still  
2 questioning the --  
3 Q. Do you have any information of whether or  
4 not the check was accepted?  
5 A. I don't have any information.  
6 Q. Okay. Are you aware that Bank of America's  
7 policies and procedures were to make a payment with a  
8 letter containing the same language as in this letter  
9 and then if it was rejected, to go ahead and just  
10 close the file?  
11 A. I'm not aware of it. And that would have  
12 been -- no, I don't know.  
13 MS. EBON: Okay. That's all I have.  
14  
15 FURTHER EXAMINATION  
16 BY MR. JUNG:  
17 Q. One more follow-up question, Mr. Kovalic.  
18 Are you aware that it was the practice and procedures  
19 of HOA trustees to not accept any amount less than  
20 the full amount shown on the payoff demands they  
21 provided?  
22 MS. EBON: Form. Calls for speculation.  
23 THE WITNESS: Could you rephrase that?  
24 BY MR. JUNG:  
25 Q. Sure. I'm sorry.

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1 A. That one I don't understand.  
2 Q. Are you aware that as a practice the HOA  
3 trustees or HOAs in Nevada did not accept  
4 nine months' worth of common assessments for the  
5 super-priority amount?  
6 MS. EBON: Form. Incomplete hypothetical.  
7 Calls for speculation.  
8 THE WITNESS: Based on my experience, I  
9 can't recall a time when -- if the total amount due  
10 was more than nine months of assessments, whether  
11 that money was accepted as a payoff of the lien and  
12 the sale didn't -- and the sale stopped.  
13 BY MR. JUNG:  
14 Q. And how many cases or properties have you  
15 dealt with in Nevada where a super-priority amount  
16 was attempted to be tendered to the HOA?  
17 MS. EBON: Form. Calls for a legal  
18 conclusion. Calls for speculation.  
19 THE WITNESS: In terms of just HOA  
20 super-priority lien issues, from December 2015 to  
21 today, I've probably dealt with 35 to 50 of these  
22 cases.  
23 In terms of how many times there's been an  
24 attempt to tender or money's been tendered, it's  
25 probably been 75 percent of those.

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1 MR. JUNG: Thank you. No further questions.  
2  
3 FURTHER EXAMINATION  
4 BY MS. EBON:  
5 Q. None of those cases where there was an  
6 attempt to pay were ones where Nationstar attempted  
7 to pay; correct?  
8 A. I'm sorry?  
9 Q. All those cases that you were talking about,  
10 the 75 percent that included some type of attempt to  
11 pay.  
12 A. Uh-huh.  
13 Q. All those were with Bank of America, not  
14 with Nationstar. Correct?  
15 MR. JUNG: Objection. Form.  
16 THE WITNESS: They weren't solely with Bank  
17 of America, but they were not with Nationstar. Are  
18 you asking --  
19 BY MS. EBON:  
20 Q. Has Nationstar ever tried to pay a  
21 homeowners association lien?  
22 A. No. But prior servicers have.  
23 Q. Right. So Nationstar doesn't have any  
24 firsthand knowledge of attempts to pay homeowners  
25 association liens in 2012 and '13; correct?

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1 A. Not that I'm aware of, no.  
2 MS. EBON: Okay.  
3  
4 FURTHER EXAMINATION  
5 BY MR. JUNG:  
6 Q. One last question. As part of the servicing  
7 notes you had received from the prior servicer, would  
8 Nationstar have asked for documents showing a past  
9 tender?  
10 MS. EBON: Form. Calls for speculation.  
11 Incomplete hypothetical.  
12 THE WITNESS: It would be situational. And  
13 it would depend on multiple factors. But if the file  
14 came over in foreclosure and then when the file's  
15 onboard and if it was found that it's a Nevada --  
16 once again, sorry, just to go back. What time frame  
17 are we looking at here?  
18 BY MR. JUNG:  
19 Q. Sure. Just from 2012 to today, to this  
20 year, 2016.  
21 A. Well, today the policies are totally  
22 different than they were in 2012, when this was a  
23 fairly -- when this was an issue on the rise.  
24 So if through the foreclosure process you  
25 the homeowner being delinquent come to find out that

1 the property was sold due to an HOA lien, yes, then  
2 documents would be requested from prior servicers by  
3 Nationstar in order to see, you know, if there was an  
4 attempt to tender payment.

5 However, now that most of these files have  
6 been identified and they are usually flagged in some  
7 sort of way during the onboarding process that, you  
8 know, an HOA sale was held on date X, you know,  
9 they're going to request that documentation a lot  
10 quicker now than they would have four years ago.

11 MR. JUNG: Understood. Thank you. No  
12 further questions.

13 MS. EBRON: Okay. We're done. I would like  
14 an e-tran.

15 THE REPORTER: And would you like a copy of  
16 the transcript, Mr. Jung?

17 MR. JUNG: Yes, please.

18 THE REPORTER: Would you like an e-tran?

19 MR. JUNG: I'll go with e-tran. That's  
20 fine. Sure.

21 (Thereupon the taking of the  
22 deposition was concluded at  
23 12:32 p.m.)  
24 \* \* \* \* \*

25

1 CERTIFICATE OF DEPONENT  
2 PAGE LINE CHANGE REASON  
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15 \* \* \* \* \*  
16  
17 I, KEITH KOVALIC, deponent herein, do hereby  
18 certify and declare the within and foregoing  
19 transcription to be my deposition in said action;  
20 that I have read, corrected and do hereby affix my  
21 signature to said deposition.

22  
23  
24  
25

\_\_\_\_\_  
KEITH KOVALIC, Deponent

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA }  
3 COUNTY OF CLARK } ss:

4 I, Jane V. Efaw, CCR No. 601, do hereby certify:

5 That I reported the taking of the deposition of  
6 the witness, KEITH KOVALIC, at the time and place  
7 aforesaid;

8 That prior to being examined, the witness was by  
9 me duly sworn to testify to the truth, the whole  
10 truth, and nothing but the truth;

11 That I thereafter transcribed my shorthand notes  
12 into typewriting and that the typewritten transcript  
13 of said deposition is a complete, true and accurate  
14 transcription of said shorthand notes taken down at  
15 said time, and that a request has been made to review  
16 the transcript.

17 I further certify that I am not a relative or  
18 employee of counsel of any party involved in said  
19 action, nor a relative or employee of the parties  
20 involved in said action, nor a person financially  
21 interested in the action.

22 Dated at Las Vegas, Nevada, this \_\_\_\_ day of  
23 \_\_\_\_\_, 2016.

24

25 \_\_\_\_\_  
Jane V. Efaw, CCR #601

**Keith Kovalic - August 2, 2016**  
**Deutsche Bank National Trust, et al. vs. SFR Investments Pool 1, LLC, et al.**

	<b>actually (3)</b> 24:21;70:5;72:1	51:13;54:22,22;69:4;70:5; 73:5,18;74:21;75:7;77:19,20; 78:5,9,15	16:9
<b>\$</b>	<b>additional (5)</b> 15:5;20:23;29:14;44:11; 76:8	<b>amounts (2)</b> 20:22;21:1	<b>associated (3)</b> 8:21;9:1,9
<b>\$15,000 (2)</b> 59:23;60:2	<b>address (6)</b> 17:10;47:24;48:3,3;52:4; 69:3	<b>and/or (1)</b> 42:14	<b>association (35)</b> 7:4,5,7,8,12,13,15,17;10:12; 18:23;19:10;20:5,6,12;21:24; 26:12;40:7,10,24;42:15;43:2; 46:8,12;50:10;51:10;54:15; 55:2;60:6;69:5,20,23;70:3; 72:19;79:21,25
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<b>\$4,917.38 (1)</b> 50:20	<b>administrator (2)</b> 30:19;64:17	<b>answered (3)</b> 27:22;46:9;48:19	<b>assume (1)</b> 59:15
<b>\$558 (1)</b> 73:5	<b>advances (1)</b> 50:19	<b>apologize (3)</b> 10:5;33:13,16	<b>assumption (1)</b> 59:16
<b>\$57 (1)</b> 42:13	<b>advisory (2)</b> 55:9,19	<b>appear (1)</b> 48:23	<b>asterisks (1)</b> 34:21
<b>\$796.12 (2)</b> 42:11,20	<b>again (15)</b> 20:2;21:23;24:2;25:5;35:7, 22;37:1,16;39:23;44:13; 45:22;49:21;51:11;54:17; 80:16	<b>appears (2)</b> 35:22;73:4	<b>attached (2)</b> 33:4,9
<b>/</b>	<b>against (3)</b> 41:3;56:19;63:2	<b>applicable (1)</b> 29:9	<b>attempt (5)</b> 50:2;78:24;79:6,10;81:4
<b>/// (5)</b> 27:25;33:25;48:25;57:25; 70:25	<b>agent (2)</b> 27:14;42:15	<b>applied (1)</b> 44:9	<b>attempted (2)</b> 78:16;79:6
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<b>abbreviations (1)</b> 35:3	<b>ago (1)</b> 81:10	<b>approximate (1)</b> 10:6	<b>attend (1)</b> 58:18
<b>ABC (1)</b> 31:21	<b>agree (3)</b> 20:10,25;73:11	<b>April (9)</b> 24:20;39:6,22;42:4;54:15; 62:22;71:8;74:10;76:24	<b>attended (3)</b> 51:22;52:3;58:14
<b>able (2)</b> 12:4;46:2	<b>agreement (8)</b> 13:4;29:9,13,19;30:15; 32:23;37:12;64:7	<b>arise (1)</b> 13:8	<b>attorney-in-fact (2)</b> 68:11,13
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<b>accept (2)</b> 77:19;78:3	<b>AJ (1)</b> 68:4	<b>articles (1)</b> 20:3	<b>attorneys/legal (1)</b> 42:14
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<b>accepted (3)</b> 76:23;77:4;78:11	<b>a-l-i-c (1)</b> 5:11	<b>assessment (9)</b> 41:17,18;42:9,18;44:24; 46:15,22;48:21;73:19	<b>auction (3)</b> 7:14;58:14,18
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**Keith Kovalic - August 2, 2016**  
**Deutsche Bank National Trust, et al. vs. SFR Investments Pool 1, LLC, et al.**

<b>terms (5)</b> 9:7;21:1;48:22;78:19,23 <b>testified (2)</b> 5:4;71:21 <b>testify (1)</b> 8:12 <b>testifying (1)</b> 13:2 <b>testimony (4)</b> 5:18,23;9:12;35:14 <b>Texas (1)</b> 28:6 <b>thereafter (1)</b> 45:11 <b>Thereupon (10)</b> 5:1;6:2,7;23:18;36:7;38:14; 44:16;49:4;65:11;81:21 <b>third (1)</b> 73:20 <b>though (5)</b> 22:19;31:9,13;43:18;57:18 <b>thousands (1)</b> 69:16 <b>three (1)</b> 52:25 <b>times (3)</b> 5:17;51:7;78:23 <b>tissue (1)</b> 38:2 <b>title (7)</b> 16:15;35:11;66:18,24;67:6, 15,15 <b>today (10)</b> 6:17,24;9:12;14:2;33:20; 43:19;64:14;78:21;80:19,21 <b>today's (1)</b> 76:20 <b>took (1)</b> 71:4 <b>top (1)</b> 50:22 <b>topics (7)</b> 8:8,17,22;14:8;15:6;64:13; 66:21 <b>total (6)</b> 33:15;50:13,14,16;73:18; 78:9 <b>totally (1)</b> 80:21 <b>transcript (1)</b> 81:16 <b>transfer (6)</b> 21:22;24:14,15;39:6;42:4; 49:16 <b>transferred (5)</b> 13:23,24;14:14,18;64:25 <b>tried (1)</b> 79:20	<b>truncated (1)</b> 35:24 <b>Trust (69)</b> 6:14,15;7:24,25;8:4,5;12:1; 15:16,24;16:3,15;17:8,11,19; 19:12;20:3;21:7;23:4,8;24:1, 7;25:6,8,11,21;26:1,10,15,24, 24;27:15;28:15;29:10,15; 30:1,3,4,7,8,19;31:13;32:11, 12,17,19,20;33:8,17;34:7,9, 17,18,20;35:12,19;37:1; 40:22,25;41:4;44:5;54:24; 60:20;61:5,6,17,21,24;64:25; 75:8 <b>Trustee (14)</b> 6:14;8:1;30:20;34:17; 36:19,22;57:5;60:17,19; 71:13;73:12;74:14,22;75:20 <b>trustees (3)</b> 75:7;77:19;78:3 <b>Trustee's (10)</b> 49:10,19;52:20,24;53:6,14, 22;54:12;58:7;59:13 <b>turn (1)</b> 6:19 <b>two (1)</b> 76:25 <b>type (3)</b> 22:9;49:20;79:10 <b>typically (1)</b> 30:5	21:3;42:3;49:16;58:7 <b>use (3)</b> 16:22;38:1;70:7 <b>used (3)</b> 17:3,5;37:20 <b>usually (3)</b> 19:9;64:17;81:6	48:9;56:5,12;58:1;60:11,24; 66:2,12;67:19 <b>whole (1)</b> 14:24 <b>who's (1)</b> 32:3 <b>wife (2)</b> 15:22;25:18 <b>winning (1)</b> 59:10 <b>Winters (7)</b> 69:2;72:10,13;73:1;74:2, 22;75:5 <b>within (3)</b> 21:22;28:10;68:22 <b>without (3)</b> 29:21;32:8;42:24 <b>witness (61)</b> 5:3;10:20;11:1,20;13:20; 16:19,25;17:16;18:14,20; 19:1,8,20,24;20:15;23:25; 26:5;27:23;28:5;29:18;30:11; 31:16,18;32:7,16;34:15;35:2, 15;37:7;40:18;46:18,25; 47:11;48:20;50:12;51:6,20; 52:13;53:3,10,17;59:4,13; 62:14;63:6,20;66:23;67:3; 68:18;72:5,16;73:3,15;75:1, 10;76:11;77:23;78:8,19; 79:16;80:12
	<b>U</b>		
	<b>under (11)</b> 13:3;16:10;18:12;19:17; 20:1,20;23:3;24:22;26:24; 27:15;35:25 <b>underneath (1)</b> 16:15 <b>Understood (1)</b> 81:11 <b>Unfortunately (1)</b> 65:8 <b>uniform (1)</b> 37:17 <b>unit (7)</b> 19:4,11,13,15;20:1,17; 26:16 <b>unless (3)</b> 7:6;14:17;20:25 <b>unpaid (3)</b> 50:9,14,16 <b>up (13)</b> 18:16,22;24:4;25:3;26:7, 11;39:8,16;40:6;50:21;64:2; 65:7;69:17 <b>upon (4)</b>		
		<b>W</b>	
		<b>warehouse (2)</b> 28:6,10 <b>watch (1)</b> 24:22 <b>way (4)</b> 32:9;52:8;60:6;81:7 <b>web (1)</b> 69:17 <b>website (1)</b> 29:5 <b>week (1)</b> 24:12 <b>Wells (4)</b> 30:17;31:20;35:6;64:15 <b>weren't (2)</b> 39:24;79:16 <b>West (1)</b> 51:17 <b>what's (1)</b> 9:17 <b>Whenever (3)</b> 6:24;7:6,16 <b>Whereupon (18)</b> 10:24;12:10;15:10;19:22; 22:3,22;28:24;34:1;41:10;	<b>word (1)</b> 20:18 <b>words (1)</b> 35:24 <b>worked (1)</b> 55:13 <b>working (2)</b> 31:6;75:4 <b>worth (1)</b> 78:4 <b>Wright (1)</b> 65:16 <b>written (1)</b> 53:25 <b>wrong (1)</b> 63:8
			<b>Y</b>
			<b>year (1)</b> 80:20 <b>years (1)</b> 81:10
			<b>Z</b>
			<b>Zak (1)</b> 65:16

**Keith Kovalic - August 2, 2016**  
**Deutsche Bank National Trust, et al. vs. SFR Investments Pool 1, LLC, et al.**

<b>1</b>	<b>2</b>	<b>25th (1)</b> 26:19 <b>26th (3)</b> 15:24;16:1;26:20 <b>29th (1)</b> 77:1	<b>8th (2)</b> 51:18;52:16
<b>1 (10)</b> 6:1,2;14:20,21;20:2;33:9, 10,14;59:14;60:1	<b>2 (7)</b> 6:6,7,19;14:21;20:3;66:21; 70:4		<b>9</b>
<b>10 (7)</b> 17:23;33:24;34:1;47:25; 61:14;62:7,8	<b>2:00 (1)</b> 51:18 <b>2:15-cv-01146 (1)</b> 5:19	<b>3</b>	<b>9 (3)</b> 28:23,24;32:25
<b>109 (1)</b> 48:12	<b>20 (3)</b> 16:1;60:10,11	<b>3 (7)</b> 8:9;10:23,24;14:22;17:22; 20:5;70:4	<b>90 (1)</b> 21:22
<b>10th (1)</b> 74:18	<b>2004 (7)</b> 15:25;16:1;26:19,20;29:19; 30:1,4	<b>30b6 (1)</b> 6:13	<b>9432 (1)</b> 6:21
<b>11 (4)</b> 36:6,7,15;71:9	<b>2004-8 (8)</b> 6:15;7:25;8:5,6;29:10,11; 30:3;34:18	<b>35 (1)</b> 78:21	<b>9500 (1)</b> 51:17
<b>110 (1)</b> 48:12	<b>2009 (3)</b> 27:6;43:24,25	<b>4</b>	<b>97 (4)</b> 33:1,1,1,6
<b>116 (1)</b> 48:12	<b>2010 (2)</b> 61:24;62:6	<b>4 (11)</b> 7:3;8:9;12:9,10;14:19,20, 21;18:3,10,13;70:4	
<b>117 (1)</b> 48:13	<b>2011 (3)</b> 42:6,6,12	<b>4th (1)</b> 56:18	
<b>11th (7)</b> 7:14,18;24:18;52:7;58:14, 19;71:5	<b>2012 (12)</b> 45:11;55:8,13,14,16;71:15; 73:25;74:10;76:24;79:25; 80:19,22	<b>5</b>	
<b>12 (3)</b> 38:13,14;43:10	<b>2013 (20)</b> 7:14,18;10:13;24:18;51:18; 52:6,7,16;54:16;55:13;56:18; 57:10;58:15,19;62:20;71:5, 10;74:11,12,18	<b>5 (6)</b> 15:9,10;23:9;25:8;26:1,17	
<b>12:32 (1)</b> 81:23	<b>2014 (7)</b> 24:20;39:6,22;42:4;55:23; 62:22;71:8	<b>50 (1)</b> 78:21	
<b>125-07-811-040 (1)</b> 6:23	<b>2015 (2)</b> 5:19;78:20	<b>6</b>	
<b>12th (1)</b> 55:8	<b>2016 (2)</b> 77:1;80:20	<b>6 (5)</b> 17:22;18:3,10;22:2,3	
<b>13 (6)</b> 41:9,10;45:4;48:22;50:13; 79:25	<b>205 (1)</b> 51:17	<b>6th (1)</b> 71:15	
<b>14 (5)</b> 44:16,19;46:23;47:3,23	<b>20th (2)</b> 74:10;76:24	<b>7</b>	
<b>14th (1)</b> 42:12	<b>21 (2)</b> 60:23,24	<b>7 (5)</b> 22:21,22;26:21;27:14; 38:23	
<b>15 (2)</b> 48:8,9	<b>22 (3)</b> 19:5;65:10,11	<b>75 (2)</b> 78:25;79:10	
<b>15th (1)</b> 5:19	<b>23 (3)</b> 33:6;66:1,2	<b>8</b>	
<b>16 (6)</b> 17:22,22;18:3,10;49:3,4	<b>23rd (1)</b> 73:25	<b>8 (10)</b> 23:17,18;24:9;26:25;34:10; 37:1;44:6;60:20;61:7,21	
<b>17 (5)</b> 56:4,5;57:6;74:16,17	<b>24 (2)</b> 66:11,12	<b>8/25/2004 (1)</b> 27:16	
<b>18 (3)</b> 56:11,12;57:1	<b>25 (12)</b> 19:5;67:18,19;68:20;71:19; 72:2,24;73:4,10,16;75:14; 76:25	<b>89147 (1)</b> 51:18	
<b>18th (1)</b> 52:6		<b>89166 (1)</b> 6:22	
<b>19 (2)</b> 57:24;58:1			
<b>1st (5)</b> 24:20;27:6;29:19;43:25; 71:8			

Ex. B

# EXHIBIT B

Order and Motion

Ex. B

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

DITECH FINANCIAL LLC,

Plaintiff(s),

v.

SFR INVESTMENTS POOL 1, LLC, et al.,

Defendant(s).

Case No. 2:16-cv-00127-GMN-NJK

ORDER

(Docket No. 91)

Pending before the Court is Plaintiff's motion to substitute parties. Docket No. 91. Defendant SFR filed a response in opposition, and Plaintiff filed a reply. Docket Nos. 93, 96. The Court finds the motion properly decided without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the motion is hereby **DENIED** without prejudice.

Whether to permit substitution of parties upon a transfer of interest is a matter entrusted to the Court's discretion. Fed. R. Civ. P. 25(c). The motion acknowledges that discretionary consideration, but provides in total two sentences of "legal argument." Docket No. 91 at 4. After SFR noted several factual concerns, the reply attempts to bolster the motion by contending for the first time that its "Assignment of Deed of Trust" constitutes competent evidence of a transfer of interest subject to judicial notice and that various "instructive" factors support substitution. Docket No. 96 at 2-5. As to the former issue, Plaintiff cites provisions in the Federal Rules of Evidence regarding judicial notice, but provides no legal authority of any kind interpreting those rules as allowing judicial notice of documents similar to the Assignment at issue here. Docket No. 96 at 3. This shortcoming is especially problematic

1 since the thrust of SFR's response is that the accuracy of such documentation is the subject of reasonable  
2 questioning. *Compare id.* (noting standard for judicial notice) *with* Docket No. 93 at 3-5 (noting  
3 potential for inaccuracy). With respect to the newly identified discretionary factors, Plaintiff provides  
4 no explanation as to why such discussion was not provided in its motion. The Court declines to consider  
5 arguments that were raised in reply for the first time. *See, e.g., Bazuaye v. I.N.S.*, 79 F.3d 118, 120 (9th  
6 Cir. 1996).

7 Accordingly, the motion to substitute is hereby **DENIED** without prejudice. Any renewed  
8 motion must provide meaningfully developed argument showing (1) that a transfer of interest has been  
9 established through the motion and any exhibits thereto, and (2) that the Court should exercise its  
10 discretion to afford the relief sought.

11 IT IS SO ORDERED.

12 DATED: November 8, 2017

13  
14   
\_\_\_\_\_  
NANCY J. KOPPE  
United States Magistrate Judge

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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

DITECH FINANCIAL, LLC,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC;  
BOULDER RANCH MASTER  
ASSOCIATION; TWILIGHT  
HOMEOWNERS ASSOCIATION;  
HOMEOWNER ASSOCIATIONS  
SERVICES, INC.; HARMESH SINGH;  
KULJIT KAUR; DOES 1-10, inclusive,

Defendants.

SFR INVESTMENTS POOL 1, LLC,

Counter/Cross Claimant,

vs.

DITECH FINANCIAL, LLC; BANK OF  
NEW YORK MELLON, FKA THE BANK OF  
NEW YORK as Trustee for the  
CERTIFICATEHOLDERS CWABS, INC.,  
ALTERNATIVE LOAN TRUST 2005-J12  
ASSET-BACKED CERTIFICATES SERIES  
2005-17; HOUSEHOLD FINANCE REALTY  
CORPORATION OF NEVADA; HARMESH  
SINGH, an individual; and KULJIT KAUR, an  
individual,

Counter/Cross Defendants.

Case No. 2:16-cv-00127-GMN-NJK

**SFR INVESTMENTS POOL 1, LLC'S  
OPPOSITION TO MOTION FOR  
SUBSTITUTION OF BONY MELLON AS  
PLAINTIFF/COUNTER-DEFENDANT/  
CROSS-DEFENDANT [ECF NO. 91]**

SFR Investments Pool 1, LLC ("SFR") hereby opposes the Motion for Substitution filed  
by DITECH FINANCIAL, LLC ("Ditech") and BANK OF NEW YORK MELLON, FKA THE

BANK OF NEW YORK as Trustee for the CERTIFICATEHOLDERS CWABS, INC.,  
 ALTERNATIVE LOAN TRUST 2005-J12 ASSET-BACKED CERTIFICATES SERIES 2005-  
 17 (“BNY Mellon”) as ECF No. 91. This opposition is based on the pleadings and papers on file  
 herein, the following memorandum of points and authorities, the Declaration of Diana S. Ebron  
 (“Ebron Decl.”), a true and correct copy of which is attached as **Exhibit A**, and any oral argument  
 this Court should entertain.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

The motion to substitute parties should be denied because BNY Mellon has not  
 sufficiently demonstrated an interest in the Deed of Trust. To date, neither Ditech nor BNY  
 Mellon have produced the original, wet-ink signature promissory note for inspection. Similarly,  
 no trust documents—like an executed pooling and servicing agreement and/or trust agreement  
 containing a loan schedule identifying the loan underlying the Deed of Trust—have been  
 disclosed in this case.

Moreover, the assignments of the Deed of Trust are questionable at best. A review of  
 the face of the recorded assignments of deed of trust indicate that the loan related to this Property  
 was first placed into a 2005 trust sometime in 2011. Although SFR disputes the efficacy of such  
 a transfer, this raises various questions regarding any purported interest that BNY Mellon, or  
 any other bank for that matter, may have in the underlying loan. These questions require  
 additional evidentiary support, which Ditech/BNY Mellon failed to provide. Neither Ditech  
 nor BNY Mellon have produced any competent documentation reflecting BNY Mellon’s  
 alleged interest in the Property. Ditech and BNY Mellon failed to attach an affidavit from BNY  
 Mellon substantiating BNY Mellon’s purported interest in the Deed of Trust or explaining the  
 assignments.<sup>1</sup> As such, the motion should be denied.

...

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<sup>1</sup> Even if testimony in the form of an affidavit were provided, SFR submits that without the appropriate  
 documents, this would still not be sufficient to prove BNY Mellon’s alleged interest, as the underlying  
 evidence must still be provided.



## II. LEGAL ARGUMENT

This Court should deny Ditech and BNY Mellon's motion to substitute as they have not established a transfer of interest as required pursuant to FRCP 25(c). According to FRCP 25(c):

(c) Transfer of Interest. If an interest is transferred, **the action may be continued by or against the original party** unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

FRCP 25(c) (emphasis added).

Under FRCP 25(c), substitution must be denied. BNY Mellon's interest has not been established by competent evidence. The Motion merely states that subsequent to Ditech filing its complaint, Ditech allegedly transferred its entire interest to BNY Mellon and the only evidence attached is a copy of an Assignment of Deed of Trust. *See* Motion, Ex. 1. No affidavit from BNY Mellon is provided to substantiate this purported transfer of interest. No further documentation was attached to the motion, nor has it been produced in discovery

It is a matter of public record that the originating lender (Countrywide Home Loans, Inc.) and other alleged mortgage holders /servicers engaged in serious misconduct that drew into question the validity of documentation underlying their property transactions. In 2012, the Office of Inspector General, Department of Housing & Urban Development issued its Memorandum No. 2012-CH-1803. *See* Ebron Decl., Exhibit A-1 ("OIG Report"). The OIG Report summarizes the misconduct of five major lender / servicers. The summary findings were illuminating.

The five servicers did not establish effective control over their foreclosure process. This failure permitted a control environment in which:

- Affiants routinely signed foreclosure documents, including affidavits, certifying that they had personal knowledge of the facts when they did not and without reviewing the supporting documentation referenced in them. Affiants . . . consistently failed to verify the accuracy of the foreclosure documents they signed.
- A number of employees . . . engaged as "robosigners," had little or no education beyond high school and little or no experience in banking or real estate. . . . work histories revealed a lack of qualifications to hold the titles held by affiants. Interviews . . . disclosed that employees were given titles such as vice president for the sole purpose of allowing the individuals to sign documents, and the titles came with no other duties or authority.
- Notaries public for three of the servicers . . . routinely notarized documents without witnessing affiant signatures.

\* \* \*

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- For two of the five servicers . . . , the amounts of borrower's indebtedness were unsupported or mathematically inaccurate.

\* \* \*

The five servicers failed to follow HUD requirements for properties they foreclosed upon in judicial foreclosure States and jurisdictions . . . [which] required these services to obtain and convey to the Secretary of HUD good and marketable title to properties. **The mortgage servicers may have conveyed flawed or improper titles to HUD because they did not establish a control environment which ensured that affiants performed a due diligence review of the facts submitted to the courts and that employees properly notarized documents.**

See **Exhibit A-1**, OIG Report at 5-6 (emphasis added).

SFR has encountered these types of problems in its recent litigation. In one case, a bank was unable to definitively verify that a particular loan was contained in the trust at issue, or which entity the deed of trust belonged to.<sup>2</sup> In another case, a bank recorded a 2015 discharge of its 2011 assignment to U.S. Bank *that included a statement that the assignment was recorded in error because U.S. Bank had never purchased the underlying loan.*<sup>3</sup> This "discharge of assignment" was recorded after years of litigation. In another case, a bank witness testified the loan servicer's internal records showed the recorded assignment of a deed of trust was to a different entity than the loan's owner.<sup>4</sup> In yet another case, a bank's deposition witness stated an assignment from Deutsche Bank to Bank of America was an invalid "ghost assignment," later confirmed having seen a "rogue assignment" by Bank of America more than once, and agreed that he had seen situations in the past where "an Assignment ... doesn't necessarily match up with reality."<sup>5</sup>

Even if the assignments of the Deed of Trust in this case are taken at face value, there are still problems with BNY Mellon's purported interest without further explanation. Pursuant to the Pooling and Servicing Agreement that SFR located online, the **closing date for the Trust is listed as December 29, 2005.** See Pooling and Servicing Agreement ("PSA") attached hereto as **Exhibit**

<sup>2</sup> See Ebron Decl., ¶6(b) & **Exhibit A-2** (U.S. Bank unable to explain the 2007 reconveyance of the purported first deed of trust or the 2013 rescission of the 2007 reconveyance; unable to explain how J.P. Morgan became the depositor for a loan originated by Countrywide and explaining that a single code in the bank's system of record served the basis for the bank's position that the loan is contained in the trust and to determine in which entity the deed of trust should be assigned).

<sup>3</sup> See Ebron Decl., ¶6(c) & **Exhibit A-3** and **Exhibit A-4**.

<sup>4</sup> See Ebron Decl., ¶6(d) & **Exhibit A-5** (bank's written discovery responses and recorded assignment stated HSBC Bank USA, N.A. a Trustee for Sequoia Mortgage Trust 2007-3 was owner of loan while bank witness testified that bank system of record showed the loan to be contained in a different trust)

<sup>5</sup> See Ebron Decl., ¶6(e) & **Exhibit A-6**.

1 A-7 at 32 of 238 and available at <https://www.sec.gov/Archives/edgar/data/1348455/00009>  
2 [0514806000821/efc6-0317\\_5809806ex41.txt](https://www.sec.gov/Archives/edgar/data/1348455/000090514806000821/efc6-0317_5809806ex41.txt) (last accessed 10/30/17).

3 However, the assignment which Ditech alleges first placed this loan into the Trust was not  
4 recorded until **October 24, 2011** as Instrument No. 201110240000999, *nearly 6 years after* the  
5 closing date listed within the PSA.

6 Adding to the confusion, there is another purported assignment of the Deed of Trust from  
7 MERS to BNY Mellon recorded against the Property on June 16, 2011 as Instrument No.  
8 201106160001921. Neither Ditech nor BNY Mellon provided any explanation for this  
9 assignment, as this additional assignment to BNY Mellon was **entirely ignored** in Ditech's  
10 motion.

11 Furthermore, neither Ditech nor BNY Mellon have produced the Trust agreement which  
12 gives BNY Mellon the power to act as trustee for the Trust. This agreement should delineate the  
13 parameters for BNY Mellon's power as it relates to the Trust and its assets, including whether or  
14 not BNY Mellon has the ability to receive and place assets within the Trust or transfer assets out  
15 of the Trust after the closing date.

16 This failure to produce the Trust agreement specifically calls into question the efficacy of  
17 the assignments above, as well as the Assignment of Deed of Trust recorded on May 15, 2015 as  
18 Instrument No. 201505150001470, wherein BNY Mellon purportedly transferred the interest in  
19 the deed of trust and underlying promissory note to Green Tree Servicing, LLC, and the  
20 Assignment of Deed of Trust recorded on September 6, 2017 as Instrument No. 20170906-  
21 0000378, purportedly transferring the interest in the deed of trust and underlying promissory note  
22 back to BNY Mellon. Given the perpetual shuttling of this loan in and out of the Trust, the Trust  
23 agreement is of paramount importance and must be produced.

24 As outlined above, there are serious questions as to whether BNY Mellon holds any actual  
25 interest in the underlying loan. Given the current state of uncertainty, and frankly, utter lack of  
26 competent evidence that BNY Mellon retains any interest in the Deed of Trust, this Court should  
27 deny the Motion because both Ditech and BNY Mellon have failed to establish that any interest  
28 was transferred, let alone a sufficient interest in the subject matter of this litigation.

**III. CONCLUSION**

For the reasons stated above, SFR requests that the Motion for Substitution [ECF No. 91] be denied.

DATED this 30th day of October, 2017.

**KIM GILBERT EBRON**

/s/ Diana S. Ebron

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30th day of October, 2017 pursuant to FRCP 5, I served via the CM-ECF electronic filing system the foregoing **SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO MOTION FOR SUBSTITUTION OF BONY MELLON AS PLAINTIFF/COUNTER-DEFENDANT/CROSS-DEFENDANT [ECF NO. 91]** to the

following parties:

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/s/ Diana S. Ebron  
an employee of Kim Gilbert Ebron

Ex. C

# EXHIBIT C

Declaration of Christopher Hardin

Ex. C

**DECLARATION OF CHRISTOPHER HARDIN**

I, Christopher Hardin, declare as follows:

1. I am over the age of eighteen years old and competent to testify.

2. I am a resident of Clark County, Nevada.

3. Unless otherwise stated, I have personal knowledge of the facts set forth in this declaration, and for those facts stated on information and belief, I believe them to be true.

4. I am the manager at SFR Investments Pool 1, LLC ("SFR").

5. I make this declaration in support of SFR's Motion for Summary Judgment.

6. SFR maintains records related to real property located at **5327 Marsh Butte Street, Las Vegas, Nevada 89148** (the "Property"). As manager of SFR, I am familiar with the type of records maintained by SFR. I have personal knowledge of SFR's procedure for obtaining and keeping these records, which are kept and maintained in the ordinary course of SFR's business.

7. As part of my duties as the manager for SFR, I have attended and bid on real property at multiple public foreclosure auctions held on behalf of homeowners' associations by their agents.

8. Based on NRS 116.3116(2), it was my understanding and belief that the homeowner's association liens being foreclosed upon at the auctions I attended include amounts that were prior to any first security interest recorded on the properties.

9. Typically, prior to attending these auctions, I researched which properties would be available for sale through searches on Foreclosure Radar, Nevada Legal News and Clark County Legal News.

10. Based on a review of SFR's business records as well as documents produced in this litigation, on January 8, 2014, I attended a public foreclosure auction of the Property conducted by Alessi & Koenig, LLC ("A&K") on behalf of on behalf of Shadow Mountain Ranch Community Association (the "Association").

11. Based on a review of SFR's business records as well as documents produced in this litigation, at the publicly noticed auction, I placed the highest bid for \$59,000, which I paid on behalf of SFR.

12. After the auction, SFR received a foreclosure deed. A true and correct copy of the Association foreclosure deed is attached hereto as **Exhibit C-1**.

13. SFR has no reason to doubt the recitals in the foreclosure deed.

14. If there were any issues with delinquency or noticing, none of these were communicated to SFR before the sale.

15. I never attended a sale where there was only one qualified bidder in attendance.

16. Neither SFR nor I have any relationship with or interest in the Association other than now owning property within the community.

17. Neither SFR nor I have any relationship with or interest in A&K, outside of SFR's attendance at auctions, bidding, and purchasing properties at publicly-held auctions conducted by A&K or having purchased some reverted properties through arm's-length negotiations.

18. Based on my research, there was no lis pendens recorded against the Property at the time of the foreclosure.

19. Based on my research, there was no release of the super-priority portion of the Association's lien recorded against the Property prior to the foreclosure sale.

20. SFR has been paying the Association's assessments since SFR acquired the Property.

21. I do not recall any announcement at the Association sale regarding payments of any kind prior to the Association foreclosure sale.

22. I have no knowledge of any attempted or actual payments by anyone prior to the Association foreclosure sale.

23. I do not recall any announcement at the Association sale regarding payments of any kind prior to the Association foreclosure sale.

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

DATED this 19th day of July, 2018.

/s/ Christopher Hardin  
Christopher Hardin



Ex. C-1

# EXHIBIT C-1

Trustee's Deed Upon Sale

Ex. C-1

Inst #: 201401130001460  
Fees: \$17.00 N/C Fee: \$0.00  
RPTT: \$1519.80 Ex: #  
01/13/2014 01:10:44 PM  
Receipt #: 1899989  
Requestor:  
ALESSI & KOENIG, LLC  
Recorded By: SUO Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded mail to and  
Mail Tax Statements to:  
SFR Investments Pool 1, LLC  
5030 Paradise Road, B-214  
Las Vegas, NV 89119

A.P.N. No.163-30-312-007

TS No. 6601

### TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **SFR Investments Pool 1, LLC**  
The Foreclosing Beneficiary herein was: **Shadow Mountain Ranch Community Association**  
The amount of unpaid debt together with costs: \$8,499.11  
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$59,000.00**  
The Documentary Transfer Tax: \$1,519.80  
Property address: **5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669**  
Said property is in [ ] unincorporated area: City of **LAS VEGAS**  
Trustor (Former Owner that was foreclosed on): **STACY MOORE**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded September 11, 2012 as instrument number 0002023, in Clark County, does hereby grant, without warranty expressed or implied to: **SFR Investments Pool 1, LLC** (Grantee), all its right, title and interest in the property legally described as: **SECTION 30 R2-60 70 #5 LOT 7 BLOCK 1**, as per map recorded in Book 102, Pages 28 as shown in the Office of the County Recorder of Clark County Nevada.

#### TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **January 8, 2014** at the place indicated on the Notice of Trustee's Sale.

Huong Lam, Esq.

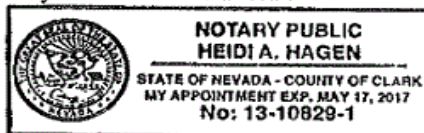
Signature of AUTHORIZED AGENT for Alessi & Koenig, Llc.

State of Nevada )  
County of Clark )

SUBSCRIBED and SWORN before me JAN 13 2014, by Huong Lam

WITNESS my hand and official seal.

(Seal)



(Signature)

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 163-30-312-007  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

a. ☐ Vacant Land      b. ☒ Single Fam. Res.  
c. ☐ Condo/Twnhse      d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg      f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural      h. ☐ Mobile Home  
Other \_\_\_\_\_

FOR RECORDERS OPTIONAL USE ONLY  
Book \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3.a. Total Value/Sales Price of Property \$ 59,000.00  
b. Deed in Lieu of Foreclosure Only (value of property ( \_\_\_\_\_ )  
c. Transfer Tax Value: \$ 297,577.00  
d. Real Property Transfer Tax Due \$ 1,519.80

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_  
b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature  Capacity: Grantor

Signature \_\_\_\_\_ Capacity: \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**  
**(REQUIRED)**

Print Name: Alessi & Koenig, LLC  
Address: 9500 W. Flamingo Rd., Ste. 205  
City: Las Vegas  
State: NV Zip: 89147

**BUYER (GRANTEE) INFORMATION**  
**(REQUIRED)**

Print Name: SFR Investments Pool 1, LLC  
Address: 5030 Paradise Road, B-214  
City: Las Vegas  
State: NV Zip: 89119

**COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)**

Print Name: Alessi & Koenig, LLC  
Address: 9500 W. Flamingo Rd., Ste. 205  
City: Las Vegas

Escrow # N/A Foreclosure  
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

# EXHIBIT D-1

Deposition of R. Scott Dugan

July 2, 2015

(Dappled Light property)

**In The Matter Of:**  
*SFR Investments Pool 1, LLC vs.*  
*Bank of America, N.A., et al.*

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*Richard Scott Dugan*  
*July 2, 2015*

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*Min-U-Script® with Word Index*

**Richard Scott Dugan - July 2, 2015**  
**SFR Investments Pool 1, LLC vs. Bank of America, N.A., et al.**

Page 1	Page 3
<p>1 DISTRICT COURT</p> <p>2 CLARK COUNTY, NEVADA</p> <p>3 SFR INVESTMENTS POOL 1, LLC, }  4 a Nevada limited liability }  company, }  5 Plaintiff, }  6 vs. } CASE NO.: A-14-698102-C  DEPT NO.: XXIV  7 BANK OF AMERICA, N.A., }  Successor by merger to BAC }  8 HOME LOANS SERVICING, LP FKA }  COUNTRYWIDE HOME LOANS }  9 SERVICING, LP, a national }  association; NOE GARZA, an }  10 individual; DOES I through X; }  and ROE CORPORATIONS I }  11 through X, inclusive, }  12 Defendants. }</p> <p>13</p> <p>14</p> <p>15 DEPOSITION OF RICHARD SCOTT DUGAN  16 DEFENDANTS' EXPERT  CERTIFIED GENERAL REAL ESTATE APPRAISER</p> <p>17 (Dappled Light)</p> <p>18 Taken on Thursday, July 2, 2015  19 At 11:37 a.m.</p> <p>20 At 1160 North Town Center Drive, Suite 330  21 Las Vegas, Nevada</p> <p>22</p> <p>23</p> <p>24</p> <p>25 REPORTED BY: JEAN DAHLBERG, RFR, CCR NO. 759, CSR 11715</p>	<p>1 I N D E X</p> <p>2 WITNESS: PAGE</p> <p>3 RICHARD SCOTT DUGAN</p> <p>4 Examination by Ms. Hanks 4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 E X H I B I T S</p> <p>10 EXHIBIT DESCRIPTION PAGE</p> <p>11 Exhibit 1 Appraisal of Real Property for 4  7912 Dappled Light Avenue  (35 pages)</p> <p>12</p> <p>13 Exhibit 2 Copy of deposition testimony of 4  Scott Dugan, dated June 1, 2015  in the Rabbit Track matter  (36 pages)</p> <p>14</p> <p>15 Exhibit 3 Copy of deposition testimony of 4  Scott Dugan, dated June 1, 2015  in the Manorwood matter  (22 pages)</p> <p>16</p> <p>17</p> <p>18 Exhibit 4 Copy of deposition testimony of 4  Scott Dugan, dated June 2, 2015  in the Morning Sorrow matter  (22 pages)</p> <p>19</p> <p>20</p> <p>21 Exhibit 5 Copy of deposition testimony of 4  Scott Dugan, dated June 16, 2015  in the Brighton Summit matter  (26 pages)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2 For the Plaintiff:</p> <p>3 HOWARD KIM &amp; ASSOCIATES  BY: KAREN L. HANKS, ESQ.  4 1055 Whitney Ranch Drive, Suite 110  Henderson, Nevada 89014  5 (702) 485-3300  (702) 485-3301 (Facsimile)  6 karen@hkimlaw.com</p> <p>7</p> <p>8 For the Defendants:</p> <p>9 AKERMAN SENTERFITT, LLP  BY: MELANIE D. MORGAN, ESQ.  10 1160 North Town Center Drive, Suite 330  Las Vegas, Nevada 89144  11 (702) 634-5008  (702) 380-8572 (Facsimile)  12 melanie.morgan@akerman.com</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 LAS VEGAS, NEVADA; THURSDAY, JULY 2, 2015</p> <p>2 11:37 A.M.</p> <p>3 -oOo-</p> <p>4 Whereupon --</p> <p>5 (In an off-the-record discussion held prior to</p> <p>6 the commencement of the proceedings, counsel agreed to</p> <p>7 waive the court reporter's requirements under</p> <p>8 Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)</p> <p>9 (Prior to the commencement of the deposition</p> <p>10 proceedings, Exhibits 1 through 5 were marked for</p> <p>11 identification.)</p> <p>12</p> <p>13 RICHARD SCOTT DUGAN,</p> <p>14 having been first duly sworn to testify to the truth,</p> <p>15 the whole truth, and nothing but the truth, was examined</p> <p>16 and testified as follows:</p> <p>17 EXAMINATION</p> <p>18 BY MS. HANKS:</p> <p>19 Q. Please state your name for the record.</p> <p>20 A. Richard Scott Dugan.</p> <p>21 Q. Mr. Dugan, this is the second deposition we're</p> <p>22 taking of you today. We're going to talk about</p> <p>23 7912 Dappled Light Avenue; is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. And since you've had your deposition taken on</p>

Page 5	Page 7
<p>1 multiple occasions, do you feel comfortable that I don't 2 also go through the admonitions in this deposition? 3 <b>A. Yes.</b> 4 <b>Q.</b> Again, though, I always like to remind anybody 5 sitting in that seat that the oath you just took is the 6 same oath you would take in a court of law. Do you 7 understand that? 8 <b>A. Yes.</b> 9 <b>Q.</b> Now, I want to go through your background. I'll 10 summarize it, and you tell me if I'm wrong. 11 <b>You're a certified appraiser in Nevada; correct?</b> 12 <b>A. Certified general.</b> 13 <b>Q.</b> Certified general appraiser. 14 <b>A. Yes.</b> 15 <b>Q.</b> And you've held that position, so to speak, 16 since 1969; is that correct? 17 <b>A. Well, back in 1969, you didn't have to be</b> 18 <b>licensed.</b> 19 <b>Q.</b> But you were doing appraisal work as of 1969? 20 <b>A. Yes.</b> 21 <b>Q.</b> And I think at some point in 1990, 1991, the 22 Federal Government changed the rules and then required 23 appraisers to be licensed; correct? 24 <b>A. State licensed.</b> 25 <b>Q.</b> And you received your state license in Nevada in</p>	<p>1 other words, what did Akerman ask you to do for this 2 particular property? 3 <b>A. Complete a retrospective market value as of the</b> 4 <b>specific date in the report as of 9/5/2012.</b> 5 <b>Q.</b> And again, when you say they asked you to do 6 that analysis, does that mean that they imposed the 7 condition of market value retrospective analysis on you? 8 <b>A. I think that they had reviewed previous reports</b> 9 <b>and found them to be acceptable, and therefore they</b> 10 <b>requested me to continue in the same manner.</b> 11 <b>Q.</b> Okay. But just to be clear, then, you did not 12 review the litigation in this particular case dealing 13 with this property, looked at the litigation as a whole, 14 and then decide retrospective market value appraisal 15 would be the appropriate appraisal; is that correct? 16 <b>A. Well, they stated they wanted a retrospective</b> 17 <b>and they wanted market value.</b> 18 <b>Q.</b> Right. And when you say "they," that means 19 Akerman on behalf of Bank of America; is that correct? 20 <b>A. Yes.</b> 21 <b>Q.</b> And you have the definition of market value in 22 your report at Page 8; is that correct? 23 <b>A. Yes.</b> 24 <b>Q.</b> Now, does this definition apply to an HOA 25 foreclosure auction?</p>
Page 6	Page 8
<p>1 or around 1989 or 1990; correct? 2 <b>A. '90, '91.</b> 3 <b>Q.</b> And as part of that licensure, you're required 4 to take continuing education classes, which you've done 5 since you've received that licensure; is that correct? 6 <b>A. Yes.</b> 7 <b>Q.</b> And your license has never been revoked; that's 8 right? 9 <b>A. Yes.</b> 10 <b>Q.</b> And your license has never been suspended; 11 correct? 12 <b>A. Yes.</b> 13 <b>Q.</b> Now, in this particular file, who retained you? 14 <b>A. Accurity.</b> 15 <b>Q.</b> And is it your understanding that Accurity was 16 contacting you on behalf of Bank of America? 17 <b>A. Yes.</b> 18 <b>Q.</b> And what was the scope of your assignment? 19 <b>A. Oh, excuse me. I'm sorry. No, I was -- I was</b> 20 <b>contacted by Akerman on this one.</b> 21 <b>Q.</b> Okay. So this is the one case where you were 22 not contacted by Accurity, but instead contacted 23 directly from Akerman on behalf of Bank of America? 24 <b>A. Yes.</b> 25 <b>Q.</b> And what was the scope of your retention? In</p>	<p>1 <b>A. No. There is no definition of market value that</b> 2 <b>would be acceptable for an HOA lien.</b> 3 <b>Q.</b> Okay. And in addition to doing a market value 4 appraisal, you also as part of that assumed -- on Page 7 5 you list your assumption -- that good and marketable 6 title be transferred; correct? 7 <b>A. Yes.</b> 8 <b>Q.</b> Now, are you aware as to whether good and 9 marketable title is transferred in the context of an HOA 10 foreclosure of its lien? 11 <b>MS. MORGAN: Objection; calls for a legal</b> 12 <b>conclusion, incomplete hypothetical.</b> 13 <b>BY MS. HANKS:</b> 14 <b>Q.</b> Go ahead and answer. 15 <b>A. No. It's not under good and marketable title.</b> 16 <b>Q.</b> Okay. So your understanding is that in an HOA 17 foreclosure of a lien, good and marketable title is not 18 transferred to the buyer? 19 <b>MS. MORGAN: Objection; misstates prior</b> 20 <b>testimony, calls for a legal conclusion.</b> 21 <b>THE WITNESS: Correct.</b> 22 <b>BY MS. HANKS:</b> 23 <b>Q.</b> And I asked you this in the prior deposition, 24 you agree with the following statement: That the price 25 at a foreclosure sale is not deemed the equivalent of</p>

Richard Scott Dugan - July 2, 2015  
SFR Investments Pool 1, LLC vs. Bank of America, N.A., et al.

Page 9	Page 11
<p>1 the property's fair-market value; correct?</p> <p>2 A. Yes.</p> <p>3 Q. Now, we marked as Exhibit 1 your report. I know</p> <p>4 you have your own copy; but we marked as Exhibit 1 a</p> <p>5 copy of your report. And then I'm going to go through</p> <p>6 the other exhibits that we marked; but before we get</p> <p>7 there, we'll go through your report like we did the last</p> <p>8 depo.</p> <p>9 So if you look at Page 2 of your report --</p> <p>10 A. Yes.</p> <p>11 Q. -- this looks like a cover letter. And my</p> <p>12 question to you is: I've deposed you on prior matters;</p> <p>13 correct? I've deposed you in the Manorwood property,</p> <p>14 the Rabbit Track property, the Morning Sorrow property,</p> <p>15 the Brighton Summit property, and just a few minutes ago</p> <p>16 the --</p> <p>17 A. Hollow.</p> <p>18 Q. -- Hollow Tree property; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. And in all of those reports it appears you had a</p> <p>21 similar cover letter; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. And with the exception of the top portion where</p> <p>24 you have the date, the party you were sending it to, the</p> <p>25 property you're addressing, the opinion of value, and</p>	<p>1 about this page is substantially the same or is exactly</p> <p>2 the same from "extraordinary assumption" down to the</p> <p>3 "retrospective value" paragraph, ending at that</p> <p>4 parenthetical, "Chicago Appraisal Institute, 2010";</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. The differences would start when you start with</p> <p>8 the sentence "The final value"?</p> <p>9 A. Correct.</p> <p>10 Q. And that the same is true for --</p> <p>11 A. Page 26.</p> <p>12 Q. -- Page 26. So Page 26, other than the top</p> <p>13 portion that identifies the client and the property</p> <p>14 address, is this page the same page that you have</p> <p>15 included in your prior reports for the other prior</p> <p>16 properties?</p> <p>17 A. Yes.</p> <p>18 Q. And is the same true for Page 27?</p> <p>19 A. Yes.</p> <p>20 Q. And 28, is the same true?</p> <p>21 A. Yes.</p> <p>22 Q. So because of that, and we've asked in those</p> <p>23 depositions extensive questions regarding those</p> <p>24 particular pages, I've marked as Exhibit 2 a copy -- a</p> <p>25 copy of the transcript in Case No. A-14-698511,</p>
Page 10	Page 12
<p>1 the effective date, would the body of that letter be the</p> <p>2 same in all of those matters as you see it here?</p> <p>3 A. Yes.</p> <p>4 Q. And is the same true for Page 7 of your report,</p> <p>5 with the exception of the property address at the top</p> <p>6 being different, the body of this page is the same for</p> <p>7 all of those expert reports; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And then is that the same -- true for Page 8?</p> <p>10 With the exception of the property address being</p> <p>11 different, is this page the same as we see here as in</p> <p>12 all of the other reports for all the other properties</p> <p>13 that we've already discussed?</p> <p>14 A. Everything would be the same except the</p> <p>15 information at the top and the bottom with the</p> <p>16 signature and the value.</p> <p>17 Q. And when you say "the information at the top,"</p> <p>18 you're talking about the property address, client, and</p> <p>19 address?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And at the bottom where it says</p> <p>22 "appraiser," "client contact" and "supervisory</p> <p>23 appraiser" box; correct?</p> <p>24 A. Yes.</p> <p>25 Q. And then how about Page 9? I think we talked</p>	<p>1 SFR Investments Pool 1, LLC versus Bank of America,</p> <p>2 et al., and this was on the Rabbit Track property.</p> <p>3 Did you waive your ability to read and sign this</p> <p>4 transcript?</p> <p>5 A. Counsel stated that I did not need to --</p> <p>6 Q. Okay. And then I --</p> <p>7 A. -- so I would say yes.</p> <p>8 Q. And I also marked -- or had the court reporter</p> <p>9 mark as Exhibit 3 a copy of the transcript in</p> <p>10 Case No. A-14-694435, SFR Investments Pool 1, LLC versus</p> <p>11 Bank of America, et al., and this was the Manorwood</p> <p>12 property.</p> <p>13 Did you waive your right to read and sign this</p> <p>14 transcript?</p> <p>15 A. Yes.</p> <p>16 Q. And the court reporter marked as Exhibit 4 the</p> <p>17 transcript in Case No. A-14-696561, SFR Investments</p> <p>18 Pool 1, LLC versus Bank of America, et al., and this is</p> <p>19 the Morning Sorrow property.</p> <p>20 Did you waive your right to read and sign this</p> <p>21 transcript?</p> <p>22 A. Yes.</p> <p>23 Q. And the last transcript we're attaching as an</p> <p>24 exhibit is Exhibit 5. It's Case No. A-14-698568,</p> <p>25 SFR Investments Pool 1, LLC versus Bank of America,</p>



Page 13	Page 15
<p>1 et al., and this is related to the Brighton Summit 2 property. 3 Did you waive your right to read and sign this 4 transcript? 5 A. Yes. 6 MS. MORGAN: I'm just going to object to the 7 attachment of these prior deposition transcripts from 8 his testimony for the purposes of use for any testimony 9 that's not specific to this property. I didn't -- I 10 understand that this is an attempt as a timesaving 11 measure, but I wasn't aware that Counsel intended to do 12 this, and it may very well be just to save time. But to 13 the extent that that testimony in the prior transcripts 14 do not pertain to this property and pertain to another 15 property or a hypothetical not presented in this case, 16 I'll object. 17 BY MS. HANKS: 18 Q. Now, if you go to Page 4 in your report in the 19 matter, the Dappled Light matter, it looks like you 20 compared six properties; is that correct? 21 A. Yes. 22 Q. And Comparable 1 had -- it was exposed to the 23 market, i.e., it was listed on the MLS, for 33 days; 24 correct? 25 A. Yes.</p>	<p>1 Q. Now, what is your understanding of how 2 SFR Investments Pool 1, LLC obtained this property? 3 A. From what I understand, they bought it after 4 somebody purchased it for the \$6,000. 5 Q. Okay. And so I think it's in -- it's Page 24 of 6 your report. You have the Trustee's Deed Upon Sale in 7 here. It's dated February 14th, 2013. Do you see that? 8 A. Yes. 9 Q. Okay. Now, your retrospective value date, 10 though, is September 5th, 2012. Do you know why there's 11 a discrepancy? Actually, I'm sorry, there is no 12 discrepancy. That's the date the document was recorded? 13 A. Recorded, correct. 14 Q. The sale was September 5th, 2012; correct? 15 A. Yes. 16 Q. The public auction? 17 A. Correct. 18 Q. Okay. And based on this Trustee's Deed and 19 Sale, does it appear to you that no one bid on the 20 property so it reverted to the HOA that was foreclosing? 21 A. Yes. 22 Q. And it's your understanding that the HOA then 23 sold it to SFR? 24 A. Correct. 25 Q. Now, can a party like an HOA, who has no</p>
Page 14	Page 16
<p>1 Q. And Property Number 2, Comparable No. 2 was 2 listed on the MLS for 87 days; is that correct? 3 A. Yes. 4 Q. And Comparable No. 3 was listed on the MLS for 5 44 days; is that correct? 6 A. Yes. 7 Q. And Comparable No. 4 was listed on the MLS for 8 78 days; is that correct? 9 A. Yes. 10 Q. And Comparable No. 5 was listed on the MLS for 11 213 days; is that correct? 12 A. Yes. 13 Q. And then Comparable No. 6 was listed on the MLS 14 for 35 days; correct? 15 A. Yes. 16 Q. Okay. Now, we discussed it a little bit in the 17 prior deposition, so I just want to get it on the record 18 in this deposition. An HOA foreclosure of a lien is not 19 a type of transaction that's listed on the MLS; is that 20 correct? 21 A. Yes. 22 Q. And because it's not listed on the MLS, the pool 23 of buyers that could be potential purchasers of property 24 that an HOA is foreclosing upon is limited; correct? 25 A. Yes.</p>	<p>1 mortgages on a property -- in other words, they own it 2 outright -- can they sell it for whatever price they 3 want? 4 A. Sure. But under the definition of "market 5 value," it has to be under responsible ownership. 6 Q. So is there some requirement that a party sell 7 their house for market value? 8 A. No. But buyers and sellers have to act 9 prudently and knowledably (sic) and under no undue 10 stimulus, and they have to do what is reasonably 11 expected by reasonable buyers themselves. But still 12 could give it away, yes. 13 Q. Did you review Mr. Brunson's rebuttal expert 14 report in this matter? 15 A. No. 16 Q. So would it be fair to state that because you 17 have not reviewed Mr. Brunson's report as you sit here 18 today, you do not have any comments about that report? 19 A. Not at this time. 20 Q. Have you been asked by Bank of America to review 21 Mr. Brunson's report and make any comments? 22 A. Not yet. 23 Q. Have all of your opinions that you intend to 24 express in this case, are they contained within the 25 report that we've marked in Exhibit 1 and anything that</p>

Richard Scott Dugan - July 2, 2015  
SFR Investments Pool 1, LLC vs. Bank of America, N.A., et al.

Page 17

1 you've testified to here today?  
2 A. Yes.  
3 MS. HANKS: I don't have anything further.  
4 MS. MORGAN: Okay.  
5 (The deposition concluded at 11:53 a.m.)  
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Page 19

1 CERTIFICATE OF REPORTER  
2 STATE OF NEVADA }  
3 COUNTY OF CLARK } SS:  
4 I, Jean M. Dahlberg, a duly commissioned and licensed  
5 Court Reporter, Clark County, State of Nevada, do hereby  
6 certify: That I reported the taking of the deposition  
7 of the deponent, Richard Scott Dugan, commencing on  
8 Thursday, July 2, 2015, at 11:37 a.m.  
9 That prior to being examined, the deponent was, by  
10 me, duly sworn to testify to the truth. That I  
11 thereafter transcribed my said shorthand notes into  
12 typewriting and that the typewritten transcript of said  
13 deposition is a complete, true and accurate  
14 transcription of said shorthand notes.  
15 I further certify that I am not a relative or  
16 employee of an attorney or counsel of any of the  
17 parties, nor a relative or employee of an attorney or  
18 counsel involved in said action, nor a person  
19 financially interested in the action.  
20 IN WITNESS WHEREOF, I have hereunto set my hand in my  
21 office in the County of Clark, State of Nevada, this 8th  
22 day of July, 2015.  
23  
24 JEAN M. DAHLBERG, RPR, CCR NO. 759, CSR 11715  
25

Page 18

1 CERTIFICATE OF DEPONENT  
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18  
19 \* \* \* \* \*  
20 I, RICHARD SCOTT DUGAN, deponent herein, do hereby  
21 certify and declare that the within and foregoing  
22 transcription to be my deposition in said action; that I  
23 have read, corrected and do hereby affix my signature to  
24 said deposition, under penalty of perjury.  
25  
26 RICHARD SCOTT DUGAN, Deponent Date

CERTIFICATE OF REPORTER

STATE OF NEVADA )  
 ) SS:  
COUNTY OF CLARK )

I, Jean M. Dahlberg, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the deponent, Richard Scott Dugan, commencing on Thursday, July 2, 2015, at 11:37 a.m.

That prior to being examined, the deponent was, by me, duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand in my  
office in the County of Clark, State of Nevada, this 8th  
day of July, 2015.

Juan M. Hallberg

JEAN M. DAHLBERG, RPR, CCR NO. 759, CSR 11715

# EXHIBIT D-2

Deposition of R. Scott Dugan

June 1, 2015

(Rabbit Track property)

**In The Matter Of:**  
*SFR Investments Pool 1, LLC vs.*  
*Bank of America, N.A., et al.*

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*Scott Dugan*  
*June 1, 2015*

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*Min-U-Script® with Word Index*

Scott Dugan - June 1, 2015  
SFR Investments Pool 1, LLC vs. Bank of America, N.A., et al.

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1	DISTRICT COURT		1	I N D E X
2	CLARK COUNTY, NEVADA		2	
3			3	WITNESS PAGE
4	SFR INVESTMENTS POOL 1, LLC, a	Case No. A-14-698511-C	4	SCOTT DUGAN
5	Nevada limited liability		5	Examination by Ms. Hanks 4, 113
6	company,		6	Examination by Mr. Brenner 110
7	Plaintiff,		7	
8	vs.		8	
9	BANK OF AMERICA, N.A., successor		9	E X H I B I T S
10	by merger to BAC HOME LOANS		10	NUMBER DESCRIPTION PAGE
11	SERVICING, LP FKA COUNTRYWIDE		11	Exhibit 1 Bank of America, N.A.'s Expert
12	HOME LOANS SERVICING, LP, a		12	Exhibit 2 Work file 18
13	national association; ROSE OF		13	Exhibit 3 Cover page with two pages of
14	SHARON FAITH MINISTRIES, a		14	excerpts from the book of
15	Nevada non-profit corporation;		15	The Appraisal of Real Estate,
16	DOES I through X; and ROE		16	Twelfth Edition
17	CORPORATIONS I through X,		17	
18	inclusive,		18	
19	Defendants.		19	
20			20	
21			21	
22			22	
23			23	
24			24	
25			25	
		Page 2		Page 4
1	Appearances:		1	Thereupon --
2	For the Plaintiff:		2	SCOTT DUGAN
3	KAREN L. HANKS, ESQ.		3	was called as a witness by the Plaintiff. and having
4	Howard Kim & Associates		4	been first duly sworn, testified as follows:
5	1055 Whitney Ranch Drive		5	
6	Suite 110		6	
7	Las Vegas, Nevada 89014		7	EXAMINATION
8	(702) 485-3300		8	BY MS. HANKS:
9	For Defendant Bank of America, N.A.:		9	Q. Please state your name for the record.
10	DARREN T. BRENNER, ESQ.		10	A. Richard Scott Dugan.
11	Akerman LLP		11	Q. Mr. Dugan, have you had your deposition
12	1160 Town Center		12	taken before?
13	Suite 330		13	A. Yes.
14	Las Vegas, Nevada 89144		14	Q. Have you had it taken enough times that you
15	(702) 634-5000		15	feel comfortable if I don't talk about the typical
16	- and -		16	admonitions?
17	ELIZABETH HAMRICK, ESQ.		17	A. Yes.
18	Bradley Arant Boult Cummings		18	Q. I like to remind every deponent that the
19	200 Clinton Avenue West		19	oath you just took is the same oath you would take in
20	Suite 900		20	a court of law. So if it's found out you didn't tell
21	Huntsville, Alabama 35801-4900		21	the truth here today, it would carry the same penalty
22	(256) 517-5100		22	of perjury that you'd have in court. Do you
23			23	understand that?
24			24	A. Yes.
25			25	Q. What is your occupation?
				A. I'm a licensed certified general real estate

Page 9	Page 11
<p>1 appraisal?</p> <p>2 <b>A. To estimate the reasonableness of the fair</b></p> <p>3 <b>market value or the disposition value of the property</b></p> <p>4 <b>as of a specific time.</b></p> <p>5 Q. And is that so Freddie, Fannie or FHA knows</p> <p>6 how much they can list the property for?</p> <p>7 <b>A. And ultimately sell it for.</b></p> <p>8 Q. In the last two years, have you done any of</p> <p>9 those types of appraisals?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Can you approximate how many?</p> <p>12 <b>A. I have no idea.</b></p> <p>13 Q. And why in those contexts would you do</p> <p>14 disposition value as opposed to market value?</p> <p>15 <b>A. The disposition value is at a point when the</b></p> <p>16 <b>bank or the particular lender has taken it back and</b></p> <p>17 <b>they want to know how quick it can be sold and for</b></p> <p>18 <b>what price.</b></p> <p>19 Q. I understand that. I guess I'm confused as</p> <p>20 to why you wouldn't just give a market value</p> <p>21 appraisal to them, and they could list it at the</p> <p>22 market value?</p> <p>23 <b>MR. BRENNER: Form. Go ahead.</b></p> <p>24 <b>THE WITNESS: Ultimately sometimes banks</b></p> <p>25 <b>want to know what the disposition value is versus</b></p>	<p>1 request.</p> <p>2 <b>BY MS. HANKS:</b></p> <p>3 Q. And again -- and I'm sorry if you answered</p> <p>4 it -- is the reason why they used disposition value</p> <p>5 is mainly because the client has asked you to use</p> <p>6 disposition value?</p> <p>7 <b>MR. BRENNER: Form and calls for</b></p> <p>8 <b>speculation.</b></p> <p>9 <b>THE WITNESS: The majority of the time when</b></p> <p>10 <b>we do appraisals, we do fair market value.</b></p> <p>11 <b>Occasionally we do disposition value but not a lot.</b></p> <p>12 <b>BY MS. HANKS:</b></p> <p>13 Q. And on the occasions where you do</p> <p>14 disposition value, what's the explanation as to why</p> <p>15 you would do that instead of market value?</p> <p>16 <b>A. They want it --</b></p> <p>17 <b>MR. BRENNER: Form.</b></p> <p>18 <b>THE WITNESS: The seller is under compulsion</b></p> <p>19 <b>to sell.</b></p> <p>20 <b>BY MS. HANKS:</b></p> <p>21 Q. No, I understand the definition of</p> <p>22 disposition. I'm talking about in the context of</p> <p>23 when it happened, what was the owner -- Fannie,</p> <p>24 Freddie, or whoever was the owner -- telling you why</p> <p>25 they were asking for disposition value as opposed to</p>
Page 10	Page 12
<p>1 market value under normal circumstances.</p> <p>2 <b>BY MS. HANKS:</b></p> <p>3 Q. And what is the difference between</p> <p>4 disposition value and market value?</p> <p>5 <b>A. The difference is the property is subject to</b></p> <p>6 <b>prevailing rates, consummation of a sale within a</b></p> <p>7 <b>future exposure time dictated by the client, and the</b></p> <p>8 <b>seller is under compulsion to sell.</b></p> <p>9 Q. You looked at a piece of paper to read that</p> <p>10 definition. What is that piece of paper?</p> <p>11 <b>A. That's in Mr. Brunson's report.</b></p> <p>12 Q. And what page of Mr. Brunson's report is</p> <p>13 that?</p> <p>14 <b>A. Page 7.</b></p> <p>15 Q. So you agree with the definition that is</p> <p>16 contained in Mr. Brunson's report for disposition</p> <p>17 value?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And just so I understand. When you have</p> <p>20 done the cases on behalf of either Freddie, Fannie or</p> <p>21 FHA and you had the REO context where they are owning</p> <p>22 it, it's after they foreclosed on the property?</p> <p>23 <b>MR. BRENNER: Form.</b></p> <p>24 <b>THE WITNESS: No, not necessarily after. It</b></p> <p>25 <b>can be prior to depending on the client's specific</b></p>	<p>1 market? Did those conversations take place?</p> <p>2 <b>MR. BRENNER: Form. Calls for speculation.</b></p> <p>3 <b>THE WITNESS: I don't recall.</b></p> <p>4 <b>BY MS. HANKS:</b></p> <p>5 Q. When you're doing appraisals, do you always</p> <p>6 take the direction of the client as to what value you</p> <p>7 will use?</p> <p>8 <b>A. If it's not misleading.</b></p> <p>9 Q. And how would you determine if it's</p> <p>10 misleading?</p> <p>11 <b>A. It depends on the circumstances of the</b></p> <p>12 <b>assignment and the type of property and so forth.</b></p> <p>13 Q. And why do you need to be concerned if it's</p> <p>14 misleading?</p> <p>15 <b>A. Because I ultimately answer to my peers.</b></p> <p>16 Q. And who are your peers?</p> <p>17 <b>A. Other appraisal professionals.</b></p> <p>18 Q. And are appraisers governed by USPAP?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And those are a set of standards that govern</p> <p>21 your industry, so to speak; is that correct?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And those standards, if I understand you</p> <p>24 correctly, require that any appraisal you do is not</p> <p>25 misleading; is that correct?</p>

Page 13	Page 15
<p>1 A. We're supposed to be protectors of the 2 public. 3 Q. And so just in general if a client had asked 4 you to use one type of value in order to do your 5 appraisal, do you under USPAP have a duty to 6 determine whether that value would lead to misleading 7 results? 8 A. You'd have to state in the report what the 9 client asked and possibly do a hypothetical or 10 extraordinary assumption. 11 (Thereupon Plaintiff's Exhibit 1 12 was marked for identification.) 13 BY MS. HANKS: 14 Q. Let's look at your testimony history. I 15 think it's the last page of your report of Exhibit 1. 16 For any of the cases listed here, 1 through 33, did 17 any of them involve an appraisal as to disposition 18 value? 19 A. I can't tell you. I don't have that in 20 front of me. 21 Q. You don't have the list of testimony, or you 22 just need other records to reference? 23 A. That was supplied to you. I didn't bring an 24 extra copy of that. 25 Q. It's actually in Exhibit 1. So if you want</p>	<p>1 A. No. 2 MR. BRENNER: I didn't get a chance to 3 object, but it calls for speculation. 4 BY MS. HANKS: 5 Q. Now let's talk about your retention in this 6 matter. Bank of America hired you to be an expert in 7 this case. And it's SFR Investments Pool 1, LLC 8 versus Bank of America; is that correct? 9 A. Yes. 10 Q. And when you were first contacted to be 11 hired as an expert, what did Bank of America tell you 12 they needed you for? 13 A. To complete a retrospective market value 14 opinion on certain properties as of a specific date 15 and time. 16 Q. And did you inquire as to why they wanted 17 market value? 18 A. They wanted to know the fair market value as 19 of that date. 20 Q. As of what date? 21 A. As of the date of the assignment. 22 Q. You mean the date they were actually 23 retaining you? 24 A. No. The date of each individual report. 25 Q. Okay. And just to be clear. So the date of</p>
Page 14	Page 16
<p>1 to look at it. 2 A. I couldn't tell you without looking at the 3 files. But most of them are probably a fair market 4 value as of a specific date and time. 5 Q. Have you ever had an occasion where a client 6 has asked you to do an appraisal and imposed a 7 certain value -- let's go with market value -- and 8 you came back and said, "No, I can't do that because 9 it would be misleading"? 10 MR. BRENNER: Form. Incomplete 11 hypothetical. 12 THE WITNESS: Not that I recall. 13 BY MS. HANKS: 14 Q. Did I understand your testimony that you're 15 not necessarily required to tell the client that you 16 can't do it? You just merely have to make those 17 disclosures in your report? 18 A. No. If I think it would be misleading, I 19 would decline the assignment. That is my prerogative 20 as the owner of the business. 21 Q. Have you ever been disqualified as an expert 22 by any court? 23 A. No. 24 Q. Have you ever had your testimony limited by 25 any court?</p>	<p>1 the report is the retrospective date for purposes of 2 your appraisal? 3 A. Yes. 4 Q. And what is the date of your report in this 5 matter? 6 A. The date that the valuation was -- the 7 retrospective date was November 1st, 2013. 8 Q. I'm confused, then, because I thought you 9 said the effective date is the date you were retained 10 by Bank of America. Were you retained by Bank of 11 America on November 1st, 2013? 12 A. No. That is the date of the retroactive 13 valuation. 14 Q. What is the significance of that date? 15 A. That is the date that the client wanted to 16 know what the fair market value of that property was. 17 Q. Did you ask the client why November 1st, 18 2013? 19 A. From my instructions from Accurity, it was 20 that they wanted it just prior to the foreclosure 21 date. 22 Q. When you were retained by Bank of America, 23 did you have a discussion with them about eventual 24 foreclosure? Did you have a discussion about the 25 fact that this property was foreclosed upon on</p>



Page 17	Page 19
<p>1 November 1st, 2013?</p> <p>2 A. No, I did not.</p> <p>3 Q. When you were drafting your report, did you</p> <p>4 have any understanding as to who foreclosed on the</p> <p>5 property on November 1st, 2013?</p> <p>6 A. My valuation would have been prior to that.</p> <p>7 And I would not have that knowledge.</p> <p>8 Q. Okay. I'm sorry. You mean you would have</p> <p>9 written your report before knowing that?</p> <p>10 A. My date of value is November 1st. At that</p> <p>11 point in time, the property was still in the owner of</p> <p>12 record's name, Rose of Sharon Faith Ministries.</p> <p>13 Q. But I understand you're drafting a report on</p> <p>14 March 3rd, 2015. Correct?</p> <p>15 A. Correct.</p> <p>16 Q. So at the time you were being retained by</p> <p>17 Bank of America to the time you actually drafted your</p> <p>18 report, did you ever have an understanding of who</p> <p>19 foreclosed on this property in or around November</p> <p>20 1st, 2013?</p> <p>21 A. Yes. I have a copy of the foreclosure deed</p> <p>22 in the report.</p> <p>23 Q. And who foreclosed on the property?</p> <p>24 A. I think it was SFR Investments. I'm sorry.</p> <p>25 It was the HOA. Excuse me.</p>	<p>1 America regarding this file?</p> <p>2 A. Accurity.</p> <p>3 Q. And what is your relation to Accurity?</p> <p>4 A. I'm an independent contract appraiser that</p> <p>5 was hired by them to handle these issues in the state</p> <p>6 of Nevada.</p> <p>7 Q. So am I correct in understanding that Bank</p> <p>8 of America would have contacted Accurity, and then</p> <p>9 Accurity would have contacted you and assigned you</p> <p>10 the assignment?</p> <p>11 A. Yes.</p> <p>12 Q. So if there was any communications between</p> <p>13 Bank of America and Accurity, I would have to ask</p> <p>14 Accurity specifically?</p> <p>15 A. Yes.</p> <p>16 Q. They don't send those communications to you?</p> <p>17 A. I don't recall. I mean, you can look in</p> <p>18 here, document page 84. It shows that they sent</p> <p>19 numerous ones that were due with the dates and the</p> <p>20 addresses and the date of the HOA's lien sale. But</p> <p>21 otherwise, no.</p> <p>22 Q. Okay. Let's talk about that so I understand</p> <p>23 what that document is. You say it's document Bates</p> <p>24 Stamp D-U-N-G-A-N 000084, and then it goes through</p> <p>25 85. Is this a document that Accurity provided to</p>
Page 18	Page 20
<p>1 Q. And was there any discussion with Bank of</p> <p>2 America how the HOA foreclosure might affect the use</p> <p>3 of market value in your appraisal?</p> <p>4 A. None to me.</p> <p>5 (Thereupon Plaintiff's Exhibit 2</p> <p>6 was marked for identification.)</p> <p>7 BY MS. HANKS:</p> <p>8 Q. If you could take a look at Exhibit 2. This</p> <p>9 is what I was told was your work file. Can you look</p> <p>10 through that and confirm. Is this your work file</p> <p>11 related to the report you drafted in this matter?</p> <p>12 A. It appears to be.</p> <p>13 Q. I did not see any handwritten notes or even</p> <p>14 electronic notes. Do you take any type of notes when</p> <p>15 you are conducting an appraisal?</p> <p>16 A. What type of notes?</p> <p>17 Q. Any notes, whether it be electronic or</p> <p>18 handwritten. Any form of notes you might take. Do</p> <p>19 you do that in terms of your work with this file?</p> <p>20 A. No.</p> <p>21 Q. And in terms of communications with Bank of</p> <p>22 America, were they all via telephone?</p> <p>23 A. I didn't have any direct communications with</p> <p>24 Bank of America.</p> <p>25 Q. Who would have communications with Bank of</p>	<p>1 you?</p> <p>2 A. Yes.</p> <p>3 Q. If you needed to contacted Bank of America</p> <p>4 after the assignment, who would you contact? Do you</p> <p>5 have to go through Accurity or do you go directly to</p> <p>6 Bank of America?</p> <p>7 A. Any issues I had I went through Accurity.</p> <p>8 Q. Do you have any of those e-mail</p> <p>9 correspondence?</p> <p>10 A. The majority of the time it's all phone</p> <p>11 calls.</p> <p>12 Q. Do you recall if you had any questions or</p> <p>13 follow-up that you needed for this file in order to</p> <p>14 complete your report?</p> <p>15 A. No. I think by this time we had everything</p> <p>16 pretty much ironed out.</p> <p>17 Q. When you say "by this time," what do you</p> <p>18 mean?</p> <p>19 A. We had already completed 30 or 40 of these</p> <p>20 assignments in previous months.</p> <p>21 Q. In your work file, if you turn to page Dugan</p> <p>22 000086. It starts with, "As a reminder the FHFA</p> <p>23 released a statement." How did you get this</p> <p>24 document?</p> <p>25 A. I think it was an article or something.</p>

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1 as of the date prior to or the date that the transfer  
2 took place.  
3 Q. No. I meant HOA lien cases, not what your  
4 appraisal is. I mean in the context of this type of  
5 litigation we have here, how many appraisals have you  
6 done with Bank of America where there's similar  
7 litigation?  
8 A. I couldn't tell you. I've done quite a few,  
9 but I don't know how many and which for each bank.  
10 Q. And do you have an understanding, having  
11 done quite a few, that the general dispute in the  
12 case -- and we can limit it to just this case, the  
13 Rabbit Track property -- is that Bank of America is  
14 claiming it still has an interest in the property  
15 that SFR purchased at the HOA foreclosure sale?  
16 A. I believe so.  
17 Q. And would that be something that would fall  
18 into the definition of a fractional ownership  
19 property?  
20 A. Possibly.  
21 Q. Now, when you have a fractional ownership  
22 property, would you use a market value as a  
23 definition for an appraisal in that context?  
24 MR. BRENNER: Incomplete hypothetical.  
25 THE WITNESS: I'm not sure where you're

Page 30

1 going with that. I don't understand the question.  
2 BY MS. HANKS:  
3 Q. If you have a piece of property that has the  
4 fractional ownership where, like you said, you have  
5 multiple people either owning it or claiming  
6 ownership and you were doing an appraisal, would you  
7 apply a market value --  
8 MR. BRENNER: Same objection.  
9 BY MS. HANKS:  
10 Q. -- to that appraisal?  
11 A. Yes. You do a market value and then  
12 potentially possibly some type of discount.  
13 Q. And what will be the reason for the  
14 discount?  
15 A. Lack of control.  
16 Q. So the lack of the fee simple? The lack of  
17 each party to use, sell, and lease it any way they  
18 see fit?  
19 A. Yes.  
20 Q. And why does that affect market value of a  
21 particular property?  
22 A. For the reasons I just stated. Lack of  
23 complete control.  
24 Q. Is that an element that's required for  
25 market value? That the party have complete control

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1 to use, sell, lease, or do whatever it wants with the  
2 property?  
3 A. That's of the fee simple title, not market  
4 value.  
5 Q. No, I understand. I thought -- my  
6 understanding was in order for market value to be  
7 applicable, you'd have to have fee simple as an  
8 element of the property. Correct?  
9 A. Yes.  
10 Q. So if you don't have fee simple as an  
11 element of the property, the market value is an  
12 inappropriate value to use?  
13 A. No, because you have to have a starting  
14 point.  
15 Q. Right. I was going to correct that. It's  
16 inappropriate to use it without discounting for the  
17 fact that the fee simple element is absent?  
18 MR. BRENNER: Incomplete hypothetical.  
19 THE WITNESS: Possibly.  
20 BY MS. HANKS:  
21 Q. What do you mean by "possibly"?  
22 A. Well, the hypothetical is so broad that I  
23 can't really give you an answer based on the  
24 question.  
25 Q. Well, I'm just trying to understand. You

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1 said that it had to be discounted. And you said it  
2 has to be discounted because of the fee simple not  
3 being present for all the parties. Correct?  
4 MR. BRENNER: Misstates prior testimony.  
5 BY MS. HANKS:  
6 Q. Is that correct?  
7 A. No.  
8 Q. Okay. Then correct me. Where am I  
9 misunderstanding?  
10 A. I gave you an example of four parties owning  
11 25 percent each.  
12 Q. Okay.  
13 A. And they argue about the property.  
14 Therefore, there's a disagreement on who is to use it  
15 at what time and so forth. And, therefore, you still  
16 estimate the market value, and then potentially one  
17 of the parties may sell their percentage interest for  
18 less in order to get out of it.  
19 Q. Okay. And why would a party sell it for  
20 less in order to get out of it?  
21 A. Because it's not a fee simple ownership  
22 because it has multiple owners.  
23 Q. So if I understand that, let's take that  
24 hypothetical. If you had four people who own a  
25 quarter interest in a property. And we'll go A, B,

Page 33	Page 35
<p>1 C, D. We'll call them A, B, C, D. And Party A gets 2 a market value appraisal. Would Party A be entitled 3 to the remaining 75 percent of that market value? 4 <b>MR. BRENNER:</b> Incomplete hypothetical. 5 Vague. 6 <b>THE WITNESS:</b> I don't understand that 7 question. 8 <b>BY MS. HANKS:</b> 9 Q. What I'm trying to understand is your 10 hypothetical, to understand what you meant by what 11 you just said. That if Party A wanted to sell off or 12 wanted to buy the interest of the other three parties 13 and get the whole hundred percent of the property, it 14 would not be as simple as taking the market value of 15 the property because the other three still control 16 it. So that person would have to discount, in other 17 words, take a little bit less to get rid of them and 18 off the property. Is that what I understood you to 19 say? 20 <b>A. No. It depends on the parties involved in 21 this case, whether the other three parties would 22 discount it. I have no idea.</b> 23 Q. But you have to take into consideration when 24 you're doing the appraisal, is what I'm trying to 25 understand, because the fee simple doesn't exist for</p>	<p>1 <b>THE WITNESS:</b> My assignment was done prior 2 to the HOA lien transfer. 3 <b>BY MS. HANKS:</b> 4 Q. When you say your assignment was done prior 5 to, you didn't actually do the report prior to the 6 foreclosure sale. Correct? 7 <b>A. No.</b> 8 Q. But your retrospective value was to take in 9 consideration before the HOA sale was finalized. Is 10 that how I'm understanding that? 11 <b>A. Correct.</b> 12 Q. But why was that the case? In other words, 13 why did you decide that as opposed to taking into 14 consideration that SFR claims an ownership to the 15 property? 16 <b>MR. BRENNER:</b> Form. 17 <b>THE WITNESS:</b> The client wanted a benchmark, 18 an approximate fair market value of the 19 reasonableness of the value of this property as of 20 that point in time. 21 <b>BY MS. HANKS:</b> 22 Q. And did the client tell you what they 23 intended to use that appraisal for? 24 <b>A. For litigation.</b> 25 Q. In what context?</p>
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<p>1 Party A. So it isn't as simple as, "Here's the 2 market value. Here's what you're entitled to." Is 3 that how I understood it? 4 <b>A. First of all, you said Party A was going to 5 buy the other three parties out. So if you have a 6 market value of a hundred grand and each party is 7 \$25,000, Party A would probably have to pay the other 8 three parties \$25,000 each.</b> 9 Q. And what if they wanted to sell their 10 interest? Would they have to sell it at that rate? 11 When you're doing an appraisal, would you account for 12 a discount because not every party has a fee simple? 13 <b>MR. BRENNER:</b> Form. Vague. 14 <b>THE WITNESS:</b> Well, first of all, all four 15 parties have fee simple because they're all owners of 16 the property. 17 <b>BY MS. HANKS:</b> 18 Q. Together they have fee simple? 19 <b>A. Correct.</b> 20 Q. But individually they don't? 21 <b>A. Correct.</b> 22 Q. In terms of your assignment for this case, 23 why did you not factor in that Bank of America and 24 SFR are disputing who has title to the property? 25 <b>MR. BRENNER:</b> Form.</p>	<p>1 <b>MR. BRENNER:</b> Calls for speculation. 2 <b>THE WITNESS:</b> That was not provided to me. 3 <b>BY MS. HANKS:</b> 4 Q. Well, don't you need to know that as an 5 appraiser, what was discussed earlier in the USPAP, 6 to make sure your report won't be misleading? 7 <b>MR. BRENNER:</b> Argumentative. Misstates 8 prior testimony. 9 <b>THE WITNESS:</b> If I'm doing a retrospective 10 market value as of a specific date, that's not 11 misleading. 12 <b>BY MS. HANKS:</b> 13 Q. Right. But if it's going to be used in the 14 context of a litigation, don't you under the USPAP 15 guidelines need to know whether your report will be 16 misleading? 17 In other words, don't you need to know what 18 the reason for using it in the litigation is going to 19 be in order to make that determination? 20 <b>MR. BRENNER:</b> Form. 21 <b>THE WITNESS:</b> No, because I'm doing a fair 22 market value. And we do it all the time 23 retrospective. I do it for Data Debt. Where 24 somebody dies 20 years ago, we'll go back and do a 25 valuation for IRS purposes. It's fair market. It's</p>

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1 the simplest assignment you can have.  
2 **BY MS. HANKS:**  
3 Q. No, I understand that. But I'm backing up  
4 to make sure you understood how Bank of America  
5 intended to use your report. And you said  
6 litigation. And so I was asking a more specific  
7 question. In what context do you understand that  
8 Bank of America intends to use your report in the  
9 litigation?  
10 **MR. BRENNER:** Are you asking that again, or  
11 are you telling him what you're asking for?  
12 **MS. HANKS:** I'm trying to get back to the  
13 question because I got the general response of  
14 "litigation."  
15 **BY MS. HANKS:**  
16 Q. So what do you understand is the actual  
17 litigation? What are they really using it for?  
18 **MR. BRENNER:** Asked and answered. Calls for  
19 speculation.  
20 **THE WITNESS:** Disparity between what these  
21 properties were ultimately sold or the lien was  
22 purchased for versus what the actual market value of  
23 the property was.  
24 **BY MS. HANKS:**  
25 Q. Okay. So if it's your understanding that

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1 Bank of America intends to use your appraisal to show  
2 the disparity between the price paid by SFR at the  
3 HOA foreclosure sale and what the house was worth in  
4 terms of market value, why wouldn't you take into  
5 consideration that fee simple did not exist at the  
6 time of the HOA foreclosure sale?  
7 A. Because my assignment is prior to the HOA  
8 sale.  
9 Q. But how do you compare -- let's back up.  
10 Would you agree that an HOA foreclosure sale is not a  
11 market value transaction?  
12 **MR. BRENNER:** Calls for speculation.  
13 Incomplete hypothetical.  
14 **THE WITNESS:** Your terminology calling it an  
15 HOA sale is inappropriate. It's an assessment or a  
16 lien. It is not a market value transaction.  
17 **BY MS. HANKS:**  
18 Q. Right. So an HOA forecloses on a lien and  
19 holds a public foreclosure auction for the sale of  
20 property in order to pay its lien on a piece of  
21 property, that is not a market value transaction.  
22 Correct?  
23 A. Correct. And I'm not sure it was at a  
24 public sale.  
25 Q. I think the foreclosure deed says it. But

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1 regardless how the sale is, it's not a market value  
2 transaction. Correct?  
3 A. Yes.  
4 Q. And so if Bank of America is going to use  
5 your report to explain the disparity or dispute the  
6 disparity between the price paid by SFR and the  
7 market value, why would you use a definition that  
8 does not apply to the type of sale that happened in  
9 this case?  
10 **MR. BRENNER:** Vague as to which party "you"  
11 is or "they" and calls for speculation. Go ahead.  
12 **BY MS. HANKS:**  
13 Q. Did you understand the question?  
14 A. At the time I did it, it was not sold. The  
15 original owners were in control.  
16 Q. Right. But that's an actuality that didn't  
17 happen. Right?  
18 A. As of the date I did it, the owner was still  
19 in control prior to the sale of the -- or prior to  
20 the HOA lien foreclosure.  
21 Q. I understand that. But if the report is  
22 being used to show the disparity between the actual  
23 HOA foreclosure sale and the price paid, then why  
24 would you use market value as your appraisal  
25 definition?

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1 **MR. BRENNER:** Vague. Go ahead.  
2 **THE WITNESS:** The client wanted a benchmark  
3 to know what the property reasonableness was. Market  
4 value was as of that date to potentially, I guess,  
5 show the disparity between the two.  
6 **BY MS. HANKS:**  
7 Q. Can we show the disparity between the two  
8 using your market value appraisal?  
9 **MR. BRENNER:** Form. I think it's trying to  
10 call for a legal conclusion. Lacks foundation.  
11 **THE WITNESS:** You'd have to ask the judge  
12 that question, I guess.  
13 **BY MS. HANKS:**  
14 Q. How about under your USPAP guidelines?  
15 A. USPAP guidelines? In doing a fair market  
16 value, I'm in compliance with USPAP.  
17 Q. And how would you explain to the jury how  
18 your report is not misleading? How would you make  
19 sure you met that standard under USPAP?  
20 **MR. BRENNER:** Form. Vague.  
21 **BY MS. HANKS:**  
22 Q. In other words, if you came to court, which  
23 I imagine you intend to testify at trial, how will  
24 you explain the jury to use your report in order to  
25 determine the disparity between the price paid by SFR

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<p>1 and your opinion of what the market value of the 2 property was? How will you tell them to do that? 3 <b>MR. BRENNER:</b> It's outside the scope of the 4 retention. 5 <b>BY MS. HANKS:</b> 6 Q. Okay. I'm sorry. Are you not planning on 7 testifying at trial? 8 A. Yes, to the fair market value of that 9 property as of that date. 10 Q. When you come to testify at trial, are you 11 making any -- are you planning on testifying that 12 therefore the price paid by SFR was wrong? 13 A. I haven't been engaged for that portion yet. 14 Q. And when you say "yet," do you know if 15 there's any intention to engage you for that? 16 A. I couldn't tell you that at this point in 17 time. 18 Q. So if I understand you correctly, your 19 intentions or your engagement is to simply come to 20 trial and testify that the market value of the 21 property before the HOA foreclosure sale was X; is 22 that correct? 23 A. Yes. 24 Q. And essentially what is the jury supposed to 25 then do with that report?</p>	<p>1 your market value appraisal to tell the jury that the 2 price paid by SFR was unreasonable? 3 <b>MR. BRENNER:</b> Incomplete hypothetical. 4 Form. 5 <b>THE WITNESS:</b> I guess I haven't been 6 retained for that. So I would have to analyze it and 7 do the necessary work to prepare for that. 8 <b>BY MS. HANKS:</b> 9 Q. Which I understand that. But as you sit 10 here today, would you be able to use the report you 11 already drafted, or would you have to do additional 12 work? 13 A. Probably both. 14 Q. So would you be able to use the report that 15 you've already drafted? 16 A. To establish a fair market value as one 17 point of reference, yes. 18 Q. Would you be able to use it to establish 19 that the price paid by SFR was unreasonable? 20 A. The relationship between the two indicates 21 that they're potentially unreasonable. 22 Q. And can you compare fair market value 23 appraisal to what a party paid at an HOA foreclosure 24 sale? 25 <b>MR. BRENNER:</b> Form. Vague.</p>
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<p>1 <b>MR. BRENNER:</b> Calls for speculation. 2 <b>THE WITNESS:</b> I have no idea. That's up to 3 the jury and the judge. 4 <b>BY MS. HANKS:</b> 5 Q. Let's assume you were retained to come to 6 trial and testify that the price paid by SFR was 7 unreasonable, would you still use your market value 8 report to make that opinion? 9 <b>MR. BRENNER:</b> Form. 10 <b>THE WITNESS:</b> I haven't completed that type 11 of assignment on this property. 12 <b>BY MS. HANKS:</b> 13 Q. So is it a no? 14 A. What's the question again? 15 Q. Let's assume -- you said you weren't 16 retained to come to court to testify as to that. 17 You're only coming to court to testify, as it stands 18 now, that this is the market value of the property 19 before the HOA foreclosure sale. Correct? 20 A. Yes. 21 Q. And I said let's assume for this 22 hypothetical that two seconds from now Mr. Brenner is 23 going to say, "Yes. I want you to come to trial. I 24 want you to broaden your retention and come to trial 25 and talk about that." Would you then be able to use</p>	<p>1 <b>THE WITNESS:</b> First of all, it's not an HOA 2 foreclosure sale. It's an HOA lien. 3 <b>BY MS. HANKS:</b> 4 Q. Lien sale? 5 A. It doesn't -- you know, I haven't been hired 6 for that yet. So I'll defer at some point if they 7 decide they want me to do that. 8 Q. And I'm clear that you haven't been hired 9 for that. And I appreciate that. But I'm trying to 10 make sure I understand that if at some point you do 11 get hired for that, can you rely on the report that 12 you already drafted, or would you have to do some 13 further work or a different assessment? That's what 14 I'm trying to understand. 15 <b>MR. BRENNER:</b> Same objection. 16 <b>THE WITNESS:</b> I think it's asked and 17 answered. I said I would rely on this, and I'd also 18 have to do some additional work. 19 <b>BY MS. HANKS:</b> 20 Q. And what additional work would you need to 21 do? 22 A. I don't know at this point in time. 23 Q. What would you do if, hypothetically 24 speaking, the bank had come to you and said, "Our 25 problem is we have a disparity in price, and we want</p>

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<p>1 districts, how good they are, and how they relate to 2 a particular buyer profile. 3 Q. Did you research what was happening with 4 respect to sales by HOAs in 2013? 5 A. We never used an HOA sale because we deemed 6 them not to be arms-length transactions in the 7 marketplace. 8 Q. And what's an arms-length transaction? 9 A. Buyer and seller are highly motivated and 10 willing. Basically the definition of fair market 11 value. 12 Q. And just so I understand what you just said. 13 That definition does not apply to a sale by an HOA? 14 MR. BRENNER: Incomplete hypothetical. 15 Form. 16 THE WITNESS: An HOA is not a sale. It's a 17 lien. It's an assessment. 18 BY MS. HANKS: 19 Q. Pickup the HOA forecloses on the lien. You 20 understand that, right? 21 A. Correct. 22 Q. They conduct a sale on their lien, and they 23 sell the property in order to recoup the lien that 24 they're owed. Correct? 25 A. Right. But they're not market driven.</p>	<p>1 A. They could foreclose and keep the property. 2 Q. Well, that's what I mean. I'm asking the 3 foreclosure is not because they're not motivated to 4 do it. It's because they're being compelled to do it 5 in order to get their lien paid. Correct? 6 MR. BRENNER: Foundation. Misstates the 7 law. 8 THE WITNESS: First of all, there's 9 instances in the city where HOAs still own the 10 properties and are renting them out. So they don't 11 have to sell it. 12 BY MS. HANKS: 13 Q. If they do sell it, I'm trying to understand 14 in terms of the definition of "value." They don't 15 fall under the definition of an equally motivated 16 seller because they're being compelled to make the 17 sell, not because they're a motivated seller. 18 MR. BRENNER: Form. 19 BY MS. HANKS: 20 Q. I'm just trying to understand why they don't 21 fit under the definition of a motivated seller under 22 any definition of value, I think is what you said? 23 A. The HOA, they typically sell the liens to 24 stop the bleeding from the HOAs so that they can 25 generate revenue and keep the community maintained at</p>
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<p>1 Q. And what do you mean by "they're not market 2 driven"? 3 A. They're not acting in the best interest to 4 obtain market value. 5 Q. For who? 6 A. For the parties involved. 7 Q. Who are the parties involved from an HOA 8 perspective if they're selling on their lien? 9 A. Well, the HOA per Nevada Revised Statute can 10 only bid in what they're owed, interest and et 11 cetera. So if a property is worth \$300,000 and the 12 HOA lien is \$5,000, it doesn't meet the definition of 13 fair market value. 14 Q. Whatever is paid at the sale you mean? 15 A. Correct. 16 Q. And that's because the HOA is not a 17 motivated seller under that definition? 18 A. It's not a motivated seller under any 19 definition of value. 20 Q. It's being sold because they're being told 21 to sell it. Correct? 22 A. No. Technically the HOA doesn't have to 23 sell it. 24 Q. Well, how would they get their lien 25 otherwise?</p>	<p>1 a certain standard. 2 Q. Just so I'm clear, though. Whatever is 3 compelling the HOA to move forward with a sale in 4 order to recoup their lien, whether they credit bid 5 or sell it to a third party, that does not meet the 6 definition of equally motivated seller for any 7 definition of value. Did I understand that 8 correctly? 9 A. Agreed. 10 Q. And just so I'm clear. When you're talking 11 about all of these various forces -- the economic, 12 the physical, the governmental, and the social 13 forces -- for purposes of your report, you were only 14 looking at the market in terms of fair market value, 15 not what was happening specifically with HOA 16 foreclosure sales; is that correct? 17 A. Yes. 18 Q. Now let's turn to the last paragraph on that 19 page. The second sentence starts with, "The 20 Assumptions and Limiting Conditions along with the 21 Clarification of Scope of Work provide specifics as 22 to the development of the appraisal along with 23 exceptions that may have been necessary to complete a 24 credible report." What are the assumptions that were 25 made in preparing this report?</p>

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<p>1 Or, actually, let me back up. What is an 2 assumption? 3 A. An assumption is something that's presumed 4 to be correct. 5 Q. And then what is a limiting condition? 6 A. Those are the conditions that we make when 7 we do a report, that we include in the body of the 8 report that we're not experts in. 9 Q. And then the end of that sentence says 10 "necessary to complete a credible report." Am I 11 correct in understanding that USPAP requires that the 12 report be credible? Is that a part of the 13 guidelines? 14 A. I think your ethics requires the report to 15 be not misleading. 16 Q. Now jumping back, then. Where are the 17 assumptions that you made when making your opinions 18 with respect to this property? 19 A. Page 8 of the original report. 20 Q. And you're going by your actual page number 21 or the Bates number at the end, just so we're on the 22 same page? 23 A. My page number 8. 24 Q. At the top? So page 8 of your report, 25 Exhibit 1, but is Bates-stamped as Dugan 000009. So</p>	<p>1 A. I made the assumption because we're not 2 title experts, and we're assuming the title is good. 3 Q. Did you review a title report with respect 4 to this property prior to drafting your appraisal? 5 A. No. 6 Q. Why not? 7 A. Because that's not part of my -- I'm not an 8 expert in the title industry. It's not part of my 9 job. 10 Q. Right. 11 A. That's why we make an assumption. These are 12 assumptions that we don't do typically. 13 Q. And that's what I want a clarification on. 14 Do you actually do any research before you make the 15 assumption? In other words, do you do research and 16 say, "Okay, I can make this assumption," or do you 17 automatically make the assumption? 18 A. Automatically make these assumptions. 19 Q. So if, in fact, title is not good and 20 marketable, what would that do in terms of your 21 report. If that assumption were false, how would 22 that affect your report? 23 A. It's not part of my assumptions. I'm not a 24 legal expert. So we make that assumption to keep us 25 out of that. In other words, I'm not a title expert.</p>
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<p>1 here it starts "Statement of Assumptions and Limiting 2 Conditions." 3 And the first one it appears to state, after 4 you get past the first sentence, "The appraiser 5 assumes that the title is good and marketable." Do 6 you see that? It's the very first point but the 7 second sentence. 8 A. Yes. 9 Q. Okay. Now, the title that SFR purchased, is 10 that good and marketable? 11 MR. BRENNER: It calls for a legal 12 conclusion. 13 THE WITNESS: It's not within my scope of 14 work. 15 BY MS. HANKS: 16 Q. Is it your understanding that that is one of 17 the issues that's being litigated in this particular 18 litigation? 19 A. It's not part of my scope of work. 20 Q. So you don't know? 21 A. No. 22 Q. Did you inquire? 23 A. No. 24 Q. So how were you able -- why did you make 25 this assumption?</p>	<p>1 Q. I understand that. But you understand when 2 you're making assumptions in your report the effect 3 they have. Right? 4 A. Right. 5 Q. In other words, they have to be true in 6 order for your report to be credible? 7 A. As of the date of my assignment, the 8 assumption was true. 9 Q. Prior to SFR purchasing the property? 10 A. Correct. 11 Q. But let's assume it's not true. And I'm 12 sorry for the pun because we were talking about 13 assumptions. But for the sake of argument, let's 14 take the proposition that that first assumption, that 15 there's free and marketable title, is not true. How 16 would that affect your report? 17 MR. BRENNER: Incomplete hypothetical. 18 THE WITNESS: It wouldn't affect my report 19 because I'm not a title expert. 20 BY MS. HANKS: 21 Q. So is it your testimony that this assumption 22 could be false and your report for value would still 23 be accurate? 24 MR. BRENNER: Incomplete hypothetical. 25 THE WITNESS: My report makes the assumption</p>

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<p>1 A. Yes.</p> <p>2 Q. And I have the entire textbook if you'd</p> <p>3 rather look at that. Is this a textbook that you use</p> <p>4 in the course of your work as an appraiser?</p> <p>5 A. At times.</p> <p>6 Q. And if you would turn to -- it's page 68 of</p> <p>7 the textbook, but it's the second page in the packet.</p> <p>8 And actually I highlighted this section we're going</p> <p>9 to talk about. It reads, "The Universal Standards of</p> <p>10 Professional Appraisal Practice, USPAP, requires the</p> <p>11 appraiser to identify the real property being</p> <p>12 appraised in every assignment." Did you do that in</p> <p>13 this case?</p> <p>14 A. Yes.</p> <p>15 Q. And what rights were you understanding that</p> <p>16 you were appraising?</p> <p>17 A. Fee simple ownership.</p> <p>18 Q. So as if Rose of Sharon Faith Ministries</p> <p>19 still owned the property?</p> <p>20 A. Yes.</p> <p>21 Q. What does this appraisal have to do with the</p> <p>22 actual problem in the litigation, if anything?</p> <p>23 A. I guess you'd have to --</p> <p>24 MR. BRENNER: Hold on. Incomplete</p> <p>25 hypothetical. Form. Lacks foundation. Calls for a</p>	<p>1 Q. And who did you identify were the intended</p> <p>2 users of your report?</p> <p>3 A. Bank of America; Bradley Arant Boulton</p> <p>4 Cummings, LLP; or legal professionals associated with</p> <p>5 this case.</p> <p>6 Q. Then the next one of the steps says,</p> <p>7 "Intended use of the appraisal." What did you</p> <p>8 determine or what was your understanding was the</p> <p>9 intended use by Bank of America of your appraisal?</p> <p>10 MR. BRENNER: Calls for speculation.</p> <p>11 THE WITNESS: It's listed on page 1 under</p> <p>12 the assignment type in the body of the report.</p> <p>13 BY MS. HANKS:</p> <p>14 Q. What does it say?</p> <p>15 A. "Provide a retrospective market value</p> <p>16 opinion for litigation involving the HOA foreclosures</p> <p>17 of the subject property."</p> <p>18 Q. Okay. I understand that's a general</p> <p>19 statement why you were hired. But under the</p> <p>20 valuation process, did you identify what the intended</p> <p>21 use of the appraisal was?</p> <p>22 MR. BRENNER: Objection. The question</p> <p>23 misstated prior testimony. The witness never said it</p> <p>24 was general. Lacks foundation. And it's</p> <p>25 argumentative.</p>
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<p>1 legal conclusion. Calls for speculation.</p> <p>2 THE WITNESS: Okay. I couldn't answer that</p> <p>3 question because I'm not exactly sure.</p> <p>4 BY MS. HANKS:</p> <p>5 Q. Did you inquire at all of Bank of America or</p> <p>6 Accuracy as to what the problem was in the underlying</p> <p>7 litigation?</p> <p>8 MR. BRENNER: Lacks foundation.</p> <p>9 THE WITNESS: Again, I think I've answered</p> <p>10 it. But to provide a retrospective market value as a</p> <p>11 benchmark of what the fair market value of a given</p> <p>12 property would be as of a specified date and time.</p> <p>13 BY MS. HANKS:</p> <p>14 Q. Okay. So turn to the second page. It's</p> <p>15 page 51 of the textbook and the second page of that</p> <p>16 packet in Exhibit 3. And it gives you Figure 4.1.</p> <p>17 It looks like it's a chart explaining how -- each of</p> <p>18 the steps that you do in terms of a valuation</p> <p>19 process. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And the first box I want to talk about, you</p> <p>22 have to define the problem. And the first one says,</p> <p>23 "Identification of the client/intended users." Did</p> <p>24 you do that in this case?</p> <p>25 A. Yes.</p>	<p>1 THE WITNESS: You know, this is a scope of a</p> <p>2 guideline.</p> <p>3 BY MS. HANKS:</p> <p>4 Q. Right.</p> <p>5 A. And they're in the report. You don't have</p> <p>6 to have -- you have to have what you stated in the</p> <p>7 report here, and it's here. So ask me the next one.</p> <p>8 Q. I'm still trying to understand what your</p> <p>9 understanding is of how your report is going to be</p> <p>10 used or intended to be used by Bank of America as</p> <p>11 required by the USPAP standards identifying it.</p> <p>12 MR. BRENNER: You're misstating the USPAP</p> <p>13 standard. You've already asked this question several</p> <p>14 times. It's vague and it's argumentative.</p> <p>15 THE WITNESS: And this isn't USPAP.</p> <p>16 BY MS. HANKS:</p> <p>17 Q. Okay.</p> <p>18 A. This is not USPAP.</p> <p>19 Q. But you're required to do what you see in</p> <p>20 this diagram. In other words, the definition of the</p> <p>21 problem, you're required to do all of these items</p> <p>22 that are listed in this box. Identify the client,</p> <p>23 the intended use, the purpose of the appraisal, the</p> <p>24 date of opinion, the identification of</p> <p>25 characteristics of the property, extraordinary</p>



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<p>1 assumptions, and then hypothetical conditions. 2 A. They're all there. 3 Q. In your report? 4 A. Yes. 5 Q. I'm sorry. What page was it where you 6 indicated that you identified the intended use of the 7 appraisal? 8 A. The first form page. 9 Q. So I have it as Dugan 5; is that correct? 10 A. Yes. 11 Q. And then where is it that you state intended 12 use of the report? 13 MR. BRENNER: Asked and answered. 14 BY MS. HANKS: 15 Q. In the assignment box here, is that where 16 you were reading from previously? 17 A. Yes. 18 Q. So you have, "Intended use. Provide a 19 retrospective market value opinion for litigation 20 involving the HOA foreclosure of the subject 21 property." 22 Do you need to know any more other than Bank 23 of America intends to use it somehow, some way, in 24 the litigation? 25 A. No, I don't believe so.</p>	<p>1 Q. You only assessed the property rights of 2 Rose of Sharon Faith Ministries assuming they still 3 owned the property free and clear. Correct? Free 4 and clear of a mortgage. 5 A. Well, I wouldn't have any way to know 6 whether the mortgage was free and clear. I'm 7 estimating the market value subject to good title and 8 such. I don't know if they have any liens. 9 Q. Would you agree that your report is only 10 credible to the extent it gets compared to another 11 market value appraisal? 12 A. I don't understand the question. 13 Q. Is your report in terms of -- because I know 14 you really don't understand how Bank of America might 15 use your report other than you said in the HOA 16 litigation. Right? 17 A. Correct. 18 Q. So if the report is -- if your market value 19 appraisal is compared to something other than a 20 market value appraisal, does that jeopardize the 21 credibility of your report in terms of its use? 22 A. You have to ask it again. 23 MS. HANKS: Actually, can you repeat the 24 question? 25 ///</p>
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<p>1 Q. Nothing under the USPAP or your ethical 2 guidelines require you to know anything specific on 3 how the report is going to be used? 4 A. No. 5 MR. BRENNER: Misstates prior testimony. 6 Lacks foundation. 7 BY MS. HANKS: 8 Q. And then after the definition of the problem 9 where it said "Intended use of appraisal," the 10 purpose of the appraisal says "including definition 11 of value." 12 And again just so I'm clear. Bank of 13 America imposed the definition of value that you will 14 be using in your appraisal in this context, correct, 15 because they asked for a market value, a 16 retrospective market value? 17 A. Yes. 18 Q. And then the next one is "Date of opinion of 19 value," which you provided. And the next one says, 20 "Identification of characteristics of the property, 21 including location and property to be valued." 22 Just so I understand, again, you did not 23 analyze the property rights of SFR or Bank of 24 America, correct, in your appraisal? 25 A. Yes.</p>	<p>1 (Whereupon the pending question 2 was read by the reporter.) 3 THE WITNESS: I'm not even sure that makes 4 sense. 5 BY MS. HANKS: 6 Q. Okay. I can clarify it. I understand the 7 underlying report. Your report is credible in its 8 universe in terms of what you did. You did a market 9 value based on the assumptions and limiting 10 conditions. I understand that's your testimony. 11 And what I'm asking is would the credibility 12 of the report in terms of its use, if someone else 13 used it to compare it to a non-market-value 14 appraisal, does that jeopardize the credibility of 15 your report? 16 A. I don't understand that. It doesn't even 17 make any sense. 18 Q. Are you having trouble with the question? 19 A. You're trying to say that my market value 20 approach would not be a market value approach to 21 someone else? 22 Q. No. That it can't be compared to someone 23 who's done something other than a market value 24 appraisal. In other words, can you use your report? 25 Does the credibility of your report hinge on how it's</p>

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<p>1 Q. It's not a market value transaction. Right?</p> <p>2 <b>MR. BRENNER:</b> Same objections.</p> <p>3 <b>THE WITNESS:</b> Yeah. I'm going to say that I</p> <p>4 haven't been hired to do the HOA analysis on the</p> <p>5 other side yet.</p> <p>6 <b>BY MS. HANKS:</b></p> <p>7 Q. So are you taking back your statement that</p> <p>8 the price paid by any person at an HOA sale is</p> <p>9 unreasonable if it's below market value?</p> <p>10 <b>A.</b> Are you asking me if it meets the definition</p> <p>11 of market value or disposition value?</p> <p>12 Q. No. You said that it makes no sense and</p> <p>13 that has to be unreasonable -- or it definitely was</p> <p>14 unreasonable I think was your term -- because they're</p> <p>15 paying so below market value.</p> <p>16 And that's what led me to say, "But it's not</p> <p>17 a market value transaction. So why would you be led</p> <p>18 to that conclusion?" And then you said, "Well, I</p> <p>19 haven't done that analysis." So I'm just asking, are</p> <p>20 you retracting that testimony now?</p> <p>21 <b>MR. BRENNER:</b> And I'm going to continue to</p> <p>22 object that it calls for a legal conclusion. It's</p> <p>23 outside the scope of this witness's testimony and</p> <p>24 what he's been retained for and what he's told you</p> <p>25 he's been retained for. And it's an incomplete</p>	<p>1 that these are not arms-length transactions, and</p> <p>2 they're not market driven. And, therefore, they're</p> <p>3 unreasonable.</p> <p>4 <b>BY MS. HANKS:</b></p> <p>5 Q. Is there ever a context where an HOA</p> <p>6 foreclosure sale could be arms-length?</p> <p>7 <b>A.</b> Sure.</p> <p>8 Q. How?</p> <p>9 <b>A.</b> If at the auction it's bid up to market</p> <p>10 value and then sold with the highest price and it's</p> <p>11 close to market value.</p> <p>12 Q. How could the HOA control the bids at the</p> <p>13 sale to make sure it got up to market value?</p> <p>14 <b>MR. BRENNER:</b> Calls for speculation and</p> <p>15 argumentative.</p> <p>16 <b>THE WITNESS:</b> Well, they can't control it.</p> <p>17 But I believe we've seen that these units today in</p> <p>18 current time are selling for significantly more than</p> <p>19 what they sold for prior to the State Supreme Court</p> <p>20 decision.</p> <p>21 <b>BY MS. HANKS:</b></p> <p>22 Q. Do you know if that, in fact, happened</p> <p>23 because of the Supreme Court decision?</p> <p>24 <b>MR. BRENNER:</b> Calls for speculation.</p> <p>25 <b>THE WITNESS:</b> I can't answer that. I don't</p>
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<p>1 hypothetical and it lacks foundation.</p> <p>2 <b>THE WITNESS:</b> It's outside of my scope of</p> <p>3 work. If I'm at some point retained for that, then I</p> <p>4 can give you a more educated answer.</p> <p>5 <b>BY MS. HANKS:</b></p> <p>6 Q. Just so we're on the same page. You're not</p> <p>7 qualified to testify today that the price paid by SFR</p> <p>8 was unreasonable?</p> <p>9 <b>MR. BRENNER:</b> Objection to the form and</p> <p>10 foundation of the question. You haven't laid</p> <p>11 foundation for his qualifications.</p> <p>12 <b>THE WITNESS:</b> Yes.</p> <p>13 <b>BY MS. HANKS:</b></p> <p>14 Q. You'd agree with what I just said?</p> <p>15 <b>MR. BRENNER:</b> Same objection.</p> <p>16 <b>THE WITNESS:</b> That I'm not testifying on --</p> <p>17 <b>BY MS. HANKS:</b></p> <p>18 Q. Right. As you sit here today, you're not</p> <p>19 qualified to testify that the price paid by SFR was</p> <p>20 unreasonable? Because I think you had indicated you</p> <p>21 haven't done that analysis or been retained to do</p> <p>22 that analysis.</p> <p>23 <b>MR. BRENNER:</b> Objection. Calls for</p> <p>24 speculation. Calls for a legal conclusion.</p> <p>25 <b>THE WITNESS:</b> I think I'm qualified to state</p>	<p>1 know.</p> <p>2 <b>BY MS. HANKS:</b></p> <p>3 Q. So you haven't done any analysis of the ebb</p> <p>4 and flow of prices paid at HOA foreclosure sales in</p> <p>5 relation to certain events, such as the Supreme Court</p> <p>6 decision?</p> <p>7 <b>A.</b> Not yet.</p> <p>8 Q. So getting back to where we were going. How</p> <p>9 can an HOA foreclosure sale ever be an arms-length</p> <p>10 transaction?</p> <p>11 <b>MR. BRENNER:</b> Lacks foundation. Calls for</p> <p>12 speculation.</p> <p>13 <b>THE WITNESS:</b> It could be a minimum bid and</p> <p>14 bid up to close to market value.</p> <p>15 <b>BY MS. HANKS:</b></p> <p>16 Q. But that's based on the bidding. That's</p> <p>17 dictated by the bidding that happens at that</p> <p>18 particular sale. Right?</p> <p>19 <b>A.</b> Correct.</p> <p>20 Q. So is an arms-length transaction -- I guess</p> <p>21 I'm confused on the definition of an arms-length</p> <p>22 transaction. Arms-length transaction is the price</p> <p>23 that was actually paid for something?</p> <p>24 <b>A.</b> No. An arms-length transaction is a willing</p> <p>25 buyer, a willing seller. Paid in cash. Everybody</p>

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<p>1 and said, "But the HOA foreclosure sale where SFR 2 purchased this property was not a market value 3 transaction." Correct? 4 <b>A. Yes.</b> 5 <b>Q.</b> So then how could SFR ever have paid market 6 value for the property? 7 <b>A. They bought it before the HOA lien from the</b> 8 <b>seller.</b> 9 <b>Q.</b> But the seller would have to list it for 10 sale. Correct? 11 <b>A. But they would have to know about it</b> 12 <b>somehow.</b> 13 <b>Q.</b> Do you know if Rose of Sharon Faith 14 Ministries ever listed the house for sale? 15 <b>A. I don't believe so.</b> 16 <b>Q.</b> So the only way SFR could have paid market 17 value is if Rose of Sharon Faith Ministries listed it 18 for sale? 19 <b>MR. BRENNER:</b> Calls for speculation. 20 Incomplete hypothetical. Lacks foundation. 21 <b>THE WITNESS:</b> The question makes absolutely 22 no sense. The question has no concept of reality. 23 <b>BY MS. HANKS:</b> 24 <b>Q.</b> And that's where I'm trying to get 25 clarification because I'm confused by your response.</p>	<p>1 <b>BY MS. HANKS:</b> 2 <b>Q.</b> Let's follow the train of thought here. 3 Again, you said the price paid by SFR was 4 unrealistic. And you said why. And then you 5 answered, "Because it was below market value." And I 6 said, "Isn't the HOA foreclosure a non-market-value 7 transaction?" You said, "Yes." 8 It brings me right back to it, then. Then 9 how could a price be paid at a market value rate if 10 it wasn't a market value transaction? 11 <b>MR. BRENNER:</b> I'm going to object that it's 12 argumentative, lacks foundation, and calls for 13 speculation. And these are arguments, not factual 14 questions. If you can answer her question, please 15 answer it. 16 <b>THE WITNESS:</b> I don't have a clue what 17 you're asking. 18 <b>BY MS. HANKS:</b> 19 <b>Q.</b> Do you know if the bank attended this 20 foreclosure sale? 21 <b>A. No.</b> 22 <b>Q.</b> Do you know if the bank can attend an HOA 23 foreclosure sale? 24 <b>A. It's beyond the scope of my job.</b> 25 <b>Q.</b> So that's an "I don't know"?</p>
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<p>1 <b>A. But that's not my job to tell you how to</b> 2 <b>clarify the question. The question doesn't make any</b> 3 <b>sense.</b> 4 <b>Q.</b> And I'll clarify it. That's what I'm trying 5 to do. I'm trying to clarify it. I'm trying to 6 understand your answer because your answer doesn't 7 make sense. That's what I'm trying to get at. How 8 could a party claim market value for a piece of 9 property in a non-market-value transaction? 10 <b>MR. BRENNER:</b> Calls for speculation. It's 11 an incomplete hypothetical. And it lacks foundation. 12 Mr. Dugan is an appraiser. He's not a real estate 13 agent. He hasn't reviewed other evidence in this 14 case. The question's been asked and answered. 15 <b>MS. HANKS:</b> And I'll just say for the 16 record, Counsel, he made an opinion that the price 17 paid by SFR is unrealistic. So to the extent he's 18 going to come to trial, I'm entitled to know what's 19 the basis for that statement. If you want to retract 20 that -- 21 <b>MR. BRENNER:</b> You're not asking for what the 22 basis for the statement is. 23 <b>MS. HANKS:</b> I am. 24 <b>MR. BRENNER:</b> You're asking how can somebody 25 come in and do that.</p>	<p>1 <b>A. I don't know.</b> 2 <b>Q.</b> Then it would be fair to state that you 3 didn't know if the bank can bid at the foreclosure 4 sale in order to control the price? 5 <b>A. Beyond my scope.</b> 6 <b>Q.</b> So that's an "I don't know"? 7 <b>A. Beyond my scope.</b> 8 <b>Q.</b> Do you know? 9 <b>A. I said it's beyond my scope of work.</b> 10 <b>Q.</b> I understand that. But as you sit here as 11 an appraiser with how many years of experience, do 12 you know if a bank can do that? 13 <b>MR. BRENNER:</b> Calls for speculation. Calls 14 for a legal conclusion. 15 <b>THE WITNESS:</b> I don't go to the auction. So 16 I'm sure banks, people, could bid against the HOA. 17 They can go in there and cure the HOA lien and bring 18 it current anytime prior to the sale or at the time 19 of the sale. 20 <b>BY MS. HANKS:</b> 21 <b>Q.</b> And so you do have an understanding that the 22 bank could go to the HOA foreclosure sale and in some 23 regard control the bidding? 24 <b>MR. BRENNER:</b> Calls for speculation. 25 <b>THE WITNESS:</b> Beyond my scope.</p>

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1 **BY MS. HANKS:**  
2 Q. So that's an "I don't know"?  
3 **A. I don't know.**  
4 Q. Did you in the course and scope of your work  
5 look at other foreclosure sale prices in November  
6 2013?  
7 **A. First of all, they're not arms-length**  
8 **transactions. So they're not sales. They're not**  
9 **market value. They're not disposition value or**  
10 **liquidation value.**  
11 Q. You said a lot in that answer. So I'll back  
12 up. What do you mean by they're not sales?  
13 **A. They're not sales.**  
14 Q. What are they?  
15 **A. They're liens.**  
16 Q. Okay. But that's the actual auction. In  
17 terms of an appraisal, what do you believe the actual  
18 auction is when they're auctioning off the property?  
19 **MR. BRENNER: Form. Vague.**  
20 **BY MS. HANKS:**  
21 Q. You wouldn't call that a sale?  
22 **A. No. They're liens. They're liens by**  
23 **homeowners. And per NRS, they're only allowed to bid**  
24 **in what they're owed.**  
25 Q. And what statute of NRS states that?

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1 **A. 116.**  
2 Q. But which section?  
3 **A. I don't know. I've read it but --**  
4 Q. When you say they're only allowed to bid  
5 what they're owed, who's they?  
6 **A. The HOA.**  
7 Q. How about other people who come to the  
8 auction?  
9 **A. They could bid anything they want.**  
10 Q. And I'm actually calling the actual auction  
11 "the sale of the property." So should we just call  
12 it an auction instead of a sale?  
13 **A. I'd prefer to call it "a lien." It's a sale**  
14 **of some type of partial interest ownership.**  
15 **MR. BRENNER: May I make a suggestion? What**  
16 **if we call it "an HOA foreclosure on a lien." Is**  
17 **that the right terminology?**  
18 **MS. HANKS: If you want to call it an HOA**  
19 **foreclosure on a lien, I can do that.**  
20 **MR. BRENNER: Ask the witness.**  
21 **THE WITNESS: That's fine.**  
22 **MS. HANKS: Can you go back to the original**  
23 **question where we had trouble with the "sale" word?**  
24 **(Whereupon the pending question**  
25 **was read by the reporter.)**

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1 **BY MS. HANKS:**  
2 Q. So in the course and scope of your work for  
3 this particular file, did you review prices being  
4 paid at HOA foreclosures on a lien in or around  
5 November 1st, 2013?  
6 **A. No.**  
7 Q. So would it be fair to state that you do  
8 note that the price paid by SFR of \$22,000 on  
9 November 1st, 2013 is consistent with what other  
10 parties were paying for HOA foreclosures on a lien?  
11 **A. I'm a real estate appraiser. HOA liens are**  
12 **not market definition sales. Therefore, if you want**  
13 **to know what the HOA liens are, anybody could look**  
14 **those up. But that's not part of an appraisal**  
15 **assignment because anybody that would use HOA liens**  
16 **and confer that those are sales and should be used**  
17 **doesn't understand the definition of disposition**  
18 **value or market value.**  
19 Q. So backing up to my question. Because you  
20 didn't research what parties were paying in or around  
21 November 1st, 2013 at HOA foreclosures, would you  
22 agree, then, that you cannot state whether the price  
23 paid by SFR in this case was below, above, or at  
24 those prices?  
25 **A. It's pretty irrelevant to me because I'm a**

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1 **real estate appraiser. They're not market driven**  
2 **transactions. So why would I look at them.**  
3 Q. And I understand why you wouldn't look at  
4 them for a market value appraisal. I get that.  
5 **A. I wouldn't look at them for disposition**  
6 **value.**  
7 Q. And we'll get to that because that was the  
8 second half of your answer. I just want to make  
9 sure. I want you to stick with the question.  
10 The question was, having not reviewed what  
11 parties were paying in or around this time in HOA  
12 foreclosures, you are not in a position to state that  
13 the price paid by SFR was inconsistent with that time  
14 period. Correct?  
15 **MR. BRENNER: Objection. Foundation.**  
16 **THE WITNESS: There would be no reason for**  
17 **an appraiser to look at HOA lien transactions because**  
18 **they are not sales.**  
19 **MS. HANKS: Counsel, he's not answering the**  
20 **question.**  
21 **MR. BRENNER: I think he's answering the**  
22 **question to the best of his ability. He's saying as**  
23 **an appraiser he's looking at market value. And**  
24 **that's the way he's answering the question.**  
25 **Are you able to give her a yes-or-no answer**

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<p>1 or "I don't know"? 2 <b>BY MS. HANKS:</b> 3 Q. It's a yes-or-no question. Let me back up. 4 I'll ask it for the fourth time. 5 I don't care why you would or wouldn't look 6 at stuff. The questioning started with the fact that 7 I asked you, did you as part of your assignment 8 research HOA foreclosures on a lien? And you had 9 indicated, no, you didn't. That wasn't part of the 10 assignment. So you didn't. I understand that. 11 So my next follow-up question to that was, 12 would it be fair to state that because you didn't 13 research that material, you could not state whether 14 the price paid by SFR in this case was inconsistent 15 with what other people were paying at the time at HOA 16 foreclosures? Yes or no? I mean is that correct? 17 <b>A. Correct.</b> 18 Q. Now, the second half of that question, you 19 gave an answer to the extent it's not disposition 20 value. It's not market value. What did you mean by 21 that when I was talking about prices paid at an HOA 22 foreclosure lien? 23 <b>A. That they can't be construed as meeting any</b> 24 <b>type of market value definition.</b> 25 Q. Okay. And how about disposition value?</p>	<p>1 Q. And when parties such as SFR are purchasing 2 a property at the time -- we'll go with November 1st, 3 2013 -- what was SFR buying? 4 <b>MR. BRENNER:</b> Calls for a legal conclusion. 5 <b>THE WITNESS:</b> Plus it's beyond the scope of 6 my work. 7 <b>BY MS. HANKS:</b> 8 Q. I'm asking not in terms of title or anything 9 like that. I'm talking about the bundle of rights we 10 talked about earlier and fee simple. What is 11 somebody buying when they're buying something at an 12 HOA foreclosure? 13 <b>MR. BRENNER:</b> Calls for a legal conclusion. 14 <b>THE WITNESS:</b> My scope was to estimate the 15 value as of March 3rd, 2015, which I have completed. 16 <b>BY MS. HANKS:</b> 17 Q. Are you intending to come to trial and 18 testify that the price paid by SFR was not realistic? 19 <b>MR. BRENNER:</b> Form. Counsel, can I just 20 help clarify? You mean realistic in comparison to 21 market value? If you tack that on, I think you'll 22 get your question answered a lot quicker, and we'll 23 avoid the back-and-forth. 24 <b>BY MS. HANKS:</b> 25 Q. Let's do that. Are you intending to come to</p>
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<p>1 <b>A. Can't make it.</b> 2 Q. Why? 3 <b>A. Both the buyer and seller acting prudently</b> 4 <b>and knowledgeably.</b> 5 Q. You believe that's not happening when an HOA 6 is selling a lien? 7 <b>A. No.</b> 8 Q. What value would you use then? 9 <b>A. There is no value for an HOA lien. There is</b> 10 <b>no market value. They are just prices being paid for</b> 11 <b>whatever, to cure the lien.</b> 12 Q. So how can you have an opinion that it's not 13 realistic, then, if there's no value that goes to it? 14 Can they be realistic, the prices being paid? 15 <b>A. No, because they're pennies on the dollar,</b> 16 <b>and it makes absolutely no sense. In other words,</b> 17 <b>because anybody acting prudently wouldn't give a</b> 18 <b>property away for less than what the land value is.</b> 19 Q. Except for an HOA who's trying to satisfy a 20 lien. Right? 21 <b>A. Correct. But it can be disposition value.</b> 22 Q. And your testimony is that there's no value 23 in the world of appraisal that applies to that type 24 of transaction? 25 <b>A. Correct.</b></p>	<p>1 trial and testify that the price paid by SFR was 2 unrealistic? 3 <b>A. Yes.</b> 4 Q. And how can you compare a market value 5 transaction to a non-market-value transaction and 6 make that value? 7 <b>A. If I appraise something at X and pay Y,</b> 8 <b>which is pennies on the dollar, it indicates there's</b> 9 <b>something wrong with something.</b> 10 Q. But you're comparing a market value to a 11 non-market-value transaction, which we established 12 earlier. It's apples to oranges. 13 <b>A. I'll testify to the market value of this</b> 14 <b>property. And I'll this leave up to the attorneys to</b> 15 <b>argue the rest.</b> 16 Q. So you're not going to come to trial and say 17 that the price paid by SFR was unrealistic because it 18 was below market value? 19 <b>A. Not at this time.</b> 20 Q. And if you change that at any point, would 21 you supplement your report? 22 <b>MR. BRENNER:</b> That would go for the 23 attorneys. I'll represent for the record we'll 24 follow the Rules of Civil Procedure. 25 ///</p>

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<p>1 foundation.</p> <p>2 <b>THE WITNESS:</b> And I can't answer that</p> <p>3 question. I don't know what the ramifications are</p> <p>4 between the two. It's up to the attorneys to argue</p> <p>5 that out in court.</p> <p>6 <b>BY MS. HANKS:</b></p> <p>7 Q. And just so I'm clear. When you're saying</p> <p>8 disposition of value and liquidation value are</p> <p>9 inappropriate definitions to use for a price paid at</p> <p>10 a HOA foreclosure lien, that's because you're basing</p> <p>11 it off of the market value? And you believe that if</p> <p>12 less market value was paid, then concessions were</p> <p>13 made?</p> <p>14 A. I know you understand English. Number 9,</p> <p>15 "The price represents the normal consideration for</p> <p>16 the property sold." Normal consideration.</p> <p>17 Q. Right. But did you compare other HOA</p> <p>18 foreclosure liens?</p> <p>19 <b>MR. BRENNER:</b> Asked and answered.</p> <p>20 <b>THE WITNESS:</b> I've already answered that</p> <p>21 question many times.</p> <p>22 <b>BY MS. HANKS:</b></p> <p>23 Q. And that's what I want to make sure I</p> <p>24 understand. When they say "prices normally paid" and</p> <p>25 understanding that definition, that term is talking</p>	<p>1 November 1st, 2013, fair market value.</p> <p>2 <b>BY MS. HANKS:</b></p> <p>3 Q. Right. I understand that. But your counsel</p> <p>4 asked you, "Are you intending to testify that the</p> <p>5 amount paid by SFR" -- and he asked you three</p> <p>6 things -- "is not market value?" And you said,</p> <p>7 "Yes." And he said, "Is not disposition value?" And</p> <p>8 you said, "Yes." And he said, "Is not liquidation</p> <p>9 value?" And you said, "Yes."</p> <p>10 A. Correct.</p> <p>11 Q. But you cannot come into court and testify</p> <p>12 at all that what SFR paid meets any definition of</p> <p>13 value in the appraisal world because it doesn't fit.</p> <p>14 There's no definition of value that fits the context</p> <p>15 how SFR acquired this property. Correct?</p> <p>16 <b>MR. BRENNER:</b> Form.</p> <p>17 <b>THE WITNESS:</b> I guess in Mr. Brunson's</p> <p>18 report, he said you could customize a definition. So</p> <p>19 I'm not sure how to do that because definitions are</p> <p>20 the rules. And they're not changed. And you can't</p> <p>21 make up a definition for some type of value. But in</p> <p>22 his report, he says you can.</p> <p>23 <b>BY MS. HANKS:</b></p> <p>24 Q. And I just want to be clear. Counsel asked</p> <p>25 you, "Can an HOA start off an auction at the market</p>
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<p>1 about normally paid in a fair market context?</p> <p>2 A. No, in disposition value.</p> <p>3 Q. Okay.</p> <p>4 A. In other words, disposition value says the</p> <p>5 price represents the normal consideration. There's</p> <p>6 nothing normal about these HOA liens, nothing normal</p> <p>7 about these. The HOA liens can't even buy you the</p> <p>8 dirt that the property -- the house sits on for what</p> <p>9 they've paid for these properties.</p> <p>10 Q. And I think that brings me back to kind of</p> <p>11 what we were talking about before, then. It's your</p> <p>12 belief that there's no definition of value that would</p> <p>13 fit that criteria, what was happening in these HOA</p> <p>14 foreclosures on their liens?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And so because of that, how does</p> <p>17 anyone know -- and when I say "anyone," I mean any</p> <p>18 appraiser -- whether the price paid by SFR is</p> <p>19 unreasonable? If you have no definition of value,</p> <p>20 how can you possibly make that an unreasonable price?</p> <p>21 <b>MR. BRENNER:</b> Calls for speculation and</p> <p>22 incomplete hypothetical.</p> <p>23 <b>THE WITNESS:</b> That wasn't my job, to tell</p> <p>24 you whether the price is reasonable, what SFR paid.</p> <p>25 My job was to estimate the market value as of</p>	<p>1 value price?" You had answered "Yes" to him, and you</p> <p>2 answered "No" to me. So which is it?</p> <p>3 <b>MR. BRENNER:</b> Misstates his testimony.</p> <p>4 <b>BY MS. HANKS:</b></p> <p>5 Q. Can an HOA start off an auction on its lien</p> <p>6 at the market value of a house?</p> <p>7 A. I think I said yes.</p> <p>8 Q. Yeah.</p> <p>9 A. I mean, if they felt that they had a</p> <p>10 responsibility to the first.</p> <p>11 Q. And I thought I asked you that question, and</p> <p>12 you said, "No, I don't know if they can do that."</p> <p>13 A. Why don't we just say I don't know.</p> <p>14 Q. Then your last follow-up question with</p> <p>15 counsel was it didn't matter to you for purposes of</p> <p>16 your supplementations who owned the property, whether</p> <p>17 it was Rose of Sharon Faith Ministries or SFR because</p> <p>18 you were assuming that title was free and marketable.</p> <p>19 Correct?</p> <p>20 A. Title was good and marketable.</p> <p>21 Q. That's a dispute in this case, whether SFR</p> <p>22 has good and marketable title?</p> <p>23 A. Beyond the scope of my assignment.</p> <p>24 Q. Do you know if SFR could sell the property</p> <p>25 right now?</p>

REPORTER'S CERTIFICATE

STATE OF NEVADA )  
 ) SS:  
COUNTY OF CLARK )

I, Jane V. Efaw, CCR No. 601, do hereby certify:


That I reported the taking of the deposition of  
the witness, SCOTT DUGAN, at the time and place  
aforesaid;

That prior to being examined, the witness was by  
me duly sworn to testify to the truth, the whole  
truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes  
into typewriting and that the typewritten transcript  
of said deposition is a complete, true and accurate  
transcription of said shorthand notes taken down at  
said time, and that a request has been made to review  
the transcript.

I further certify that I am not a relative or  
employee of counsel of any party involved in said  
action, nor a relative or employee of the parties  
involved in said action, nor a person financially  
interested in the action.

Dated at Las Vegas, Nevada, this \_\_\_\_ day of  
\_\_\_\_\_, 2015.



Jane V. Efaw, CCR #601

REPORTER'S CERTIFICATE

STATE OF NEVADA )  
 ) SS:  
COUNTY OF CLARK )

I, Jane V. Efaw, CCR No. 601, do hereby certify:

That I reported the taking of the deposition of  
the witness, SCOTT DUGAN, at the time and place  
aforesaid;

That prior to being examined, the witness was by  
me duly sworn to testify to the truth, the whole  
truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes  
into typewriting and that the typewritten transcript  
of said deposition is a complete, true and accurate  
transcription of said shorthand notes taken down at  
said time, and that a request has been made to review  
the transcript.

I further certify that I am not a relative or  
employee of counsel of any party involved in said  
action, nor a relative or employee of the parties  
involved in said action, nor a person financially  
interested in the action.

Dated at Las Vegas, Nevada, this \_\_\_\_ day of  
\_\_\_\_\_, 2015.

Jane V. Efaw, CCR #601



1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA )  
3 ) ss  
4 COUNTY OF CLARK )

5 I, Lori-Ann Landers, a duly commissioned  
6 Notary Public, Clark County, State of Nevada, do hereby  
7 certify:  
8

9 That I reported the taking of the deposition  
10 of the witness, RICHARD SCOTT DUGAN, at the time and  
11 place aforesaid;  
12

13 That prior to being examined, the witness  
14 was by me duly sworn to testify to the truth, the whole  
15 truth, and nothing but the truth;  
16

17 That I thereafter transcribed my shorthand  
18 notes into typewriting and that the typewritten  
19 transcript of said deposition is a complete, true and  
20 accurate transcription of my said shorthand notes taken  
21 down at said time to the best of my ability.  
22

23 I further certify that I am not a relative  
24 or employee of an attorney or counsel of any of the  
25 parties, nor a relative or employee of any attorney or  
counsel involved in said action, nor a person financially  
interested in the action; and that transcript review NRC  
30(e) was requested.

IN WITNESS WHEREOF, I have hereunto set my  
hand in the County of Clark, State of Nevada, this 2nd  
day of June 2015.

LORI-ANN LANDERS, CCR 792, RPR

*Lori-Ann Landers*

# EXHIBIT D-3

Deposition of R. Scott Dugan

June 1, 2015

(Manorwood property)