

Case No. 82078

IN THE SUPREME COURT OF NEVADA

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

Appellant,

vs.

NATIONSTAR MORTGAGE, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY,

Respondent.

Electronically Filed
Jul 28 2021 02:41 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable MARY KAY HOLTHUS, District Judge
District Court Case No. A-13-684715-C

JOINT APPENDIX VOLUME 4

Respectfully submitted by:

JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: jackie@KGElegal.com

KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301

*Attorneys for Appellant
SFR Investments Pool 1, LLC*

ALPHABETICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
14	39	10/06/2020	[Proposed] Order Granting Nationstar Mortgage LLC's Motion for Summary Judgment and Denying SFR's Motion to Strike	JA_3232
5	23	04/11/2018	[Proposed] Order Granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment	JA_1131
5	26	05/14/2018	Amended Case Appeal Statement	JA_1158
1	10	10/08/2014	Answer	JA_0064
1	3	08/12/2013	Answer of Defendant Nevada Association Services, INC. and Counterclaim	JA_0027
1	4	08/15/2013	Answer to Defendant Nevada Association Services, Inc. and Counterclaim	JA_0035
1	5	08/19/2013	Answer to Defendant SFR Investments Pool 1, LLC's Counterclaim and Third Party Complaint	JA_0038
1	2	08/02/2013	Answer, Counterclaim, and Third Party Complaint for Quiet Title and Injunctive Relief Arbitration Exception Claimed: Title to Real Estate	JA_0011
14	40	11/05/2020	Case Appeal Statement	JA_3245
1	1	07/08/2013	Complaint, Exempt from Arbitration (Title to Real Property)	JA_0001
7	34	08/12/2020	Errata to SFR Investments Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgment, Renewed Countermotion to Strike or in the Alternative Countermotion for Rule 56(d) Relief	JA_1673
8	34	Contin.	Errata to SFR Investments Pool 1, LLC's...	JA_1688
9	34	Contin.	Errata to SFR Investments Pool 1, LLC's...	JA_1929
5	22	01/31/2018	Minutes	JA_1127

5	18	01/08/2018	Nationstar Mortgage LLC's Errata to Motion for Summary Judgment	JA_0971
14	37	08/26/2020	Nationstar Mortgage LLC's Opposition to Renewed SFR Investments Pool 1, LLC's Motion to Compel	JA_3201
9	35	08/19/2020	Nationstar Mortgage LLC's Reply Supporting Summary Judgment and Opposition to Renewed Countermotion to Strike or in the Alternative, Countermotion for Rule 56(d) Relief	JA_2077
10	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2170
11	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2411
12	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2652
13	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2893
14	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_3134
6	29	02/12/2020	Nationstar Mortgage LLC's Response to SFR Investments Pool 1, LLC's Supplemental Briefing Following Remand	JA_1253
7	31	Contin.	Nationstar Mortgage LLC's Summary Judgme...	JA_1447
6	31	07/17/2020	Nationstar Mortgage LLC's Summary Judgment Motion (Hearing Requested)	JA_1269
5	27	01/29/2020	Nationstar Mortgage LLC's Supplemental Briefing Following Remand	JA_1164
6	27	Contin.	Nationstar Mortgage LLC's Supplemental...	JA_1206
1	11	07/21/2015	Nationstar Mortgage, LLC's Answer to SFR Investments Pool 1, LLC's Third-Party Complaint	JA_0069
1	13	11/15/2017	Nationstar Mortgage, LLC's Renewed Motion for Summary Judgment	JA_0082
2	13	Cont.	Nationstar Mortgage, LLC's Renewed Motion...	JA_0242

4	15	12/14/2017	Nationstar Mortgage, LLC's Response in Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	JA_0873
5	19	01/10/2018	Nationstar's Reply in Support of Motion for Summary Judgment and to Oppose Countermotion to Strike	JA_0984
5	25	05/14/2018	Notice of Appeal	JA_1155
14	41	11/05/2020	Notice of Appeal	JA_3251
1	7	02/15/2014	Notice of Entry of Order	JA_0048
14	38	10/06/2020	Notice of Entry of Order Granting Nationstar Mortgage LLC's Motion for Summary Judgment and Denying SFR's Motion to Strike	JA_3215
5	24	04/11/2018	Notice of Entry of Order Granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment	JA_1141
1	9	05/12/2014	Notice of Entry of Stipulation and Order	JA_0058
1	6	02/14/2014	Order Granting Motion by Defendants Nevada Association Services, Inc. and Horizon Heights Homeowners Association to Dismiss Plaintiff's Complaint	JA_0044
14	42	02/03/2021	Recorder's Transcript of Pending Motions	JA_3255
14	43	02/03/2021	Recorder's Transcript of Pending Motions	JA_3265
14	36	08/25/2020	Reply in Support of SFR Investments Pool 1, LLC's Renewed Countermotion to Strike or in the Alternative Countermotion for Rule 56(d) Relief	JA_3190
2	14	11/16/2017	SFR Investments Pool 1, LLC's Motion for Summary Judgment	JA_0357
3	14	Cont.	SFR Investments Pool 1, LLC's Motion for...	JA_0483
4	14	Cont	SFR Investments Pool 1, LLC's Motion for...	JA_0724

7	33	08/12/2020	SFR Investments Pool 1, LLC's Motion to Compel	JA_1555
4	16	12/14/2017	SFR Investments Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgment and Counter Motion to Strike	JA_0885
5	17	Contin.	SFR Investments Pool 1, LLC's Reply in Supp...	JA_0965
5	20	01/12/2018	SFR Investments Pool 1, LLC's Reply in Support of Counter Motion to Strike	JA_1082
4	17	12/28/2017	SFR Investments Pool 1, LLC's Reply in Support of its Motion for Summary Judgment	JA_0963
6	30	02/12/2020	SFR Investments Pool 1, LLC's Response to Nationstar Mortgage LLC's Supplemental Brief	JA_1260
6	28	01/29/2020	SFR Investments Pool 1, LLC's Supplemental Brief	JA_1229
7	32	08/06/2020	SFR Investmetns Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgment, Renewed Countermotion to Strike or in the Alternative Countermotion for Rule 56(d) Relief	JA_1537
1	8	05/09/2014	Stipulation and Order Dismissing Ignacio Gutierrez without Prejudice	JA_0054
5	21	01/23/2018	Transcript of Proceedings of 01/17/2018, All Pending Motion	JA_1100
1	12	08/01/2017	Transcripts of Proceedings of 07/19/2017 Status Check	JA_0076

CHRONOLOGICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1	1	07/08/2013	Complaint, Exempt from Arbitration (Title to Real Property)	JA_0001
1	2	08/02/2013	Answer, Counterclaim, and Third Party Complaint for Quiet Title and Injunctive Relief Arbitration Exception Claimed: Title to Real Estate	JA_0011
1	3	08/12/2013	Answer of Defendant Nevada Association Services, INC. and Counterclaim	JA_0027
1	4	08/15/2013	Answer to Defendant Nevada Association Services, Inc. and Counterclaim	JA_0035
1	5	08/19/2013	Answer to Defendant SFR Investments Pool 1, LLC's Counterclaim and Third Party Complaint	JA_0038
1	6	02/14/2014	Order Granting Motion by Defendants Nevada Association Services, Inc. and Horizon Heights Homeowners Association to Dismiss Plaintiff's Complaint	JA_0044
1	7	02/15/2014	Notice of Entry of Order	JA_0048
1	8	05/09/2014	Stipulation and Order Dismissing Ignacio Gutierrez without Prejudice	JA_0054
1	9	05/12/2014	Notice of Entry of Stipulation and Order	JA_0058
1	10	10/08/2014	Answer	JA_0064
1	11	07/21/2015	Nationstar Mortgage, LLC's Answer to SFR Investments Pool 1, LLC's Third-Party Complaint	JA_0069
1	12	08/01/2017	Transcripts of Proceedings of 07/19/2017 Status Check	JA_0076
1	13	11/15/2017	Nationstar Mortgage, LLC's Renewed Motion for Summary Judgment	JA_0082
2	13	Cont.	Nationstar Mortgage, LLC's Renewed Motion...	JA_0242

2	14	11/16/2017	SFR Investments Pool 1, LLC's Motion for Summary Judgment	JA_0357
3	14	Cont.	SFR Investments Pool 1, LLC's Motion for...	JA_0483
4	14	Cont	SFR Investments Pool 1, LLC's Motion for...	JA_0724
4	15	12/14/2017	Nationstar Mortgage, LLC's Response in Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	JA_0873
4	16	12/14/2017	SFR Investments Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgment and Counter Motion to Strike	JA_0885
4	17	12/28/2017	SFR Investments Pool 1, LLC's Reply in Support of its Motion for Summary Judgment	JA_0963
5	17	Contin.	SFR Investments Pool 1, LLC's Reply in Supp...	JA_0965
5	18	01/08/2018	Nationstar Mortgage LLC's Errata to Motion for Summary Judgment	JA_0971
5	19	01/10/2018	Nationstar's Reply in Support of Motion for Summary Judgment and to Oppose Countermotion to Strike	JA_0984
5	20	01/12/2018	SFR Investments Pool 1, LLC's Reply in Support of Counter Motion to Strike	JA_1082
5	21	01/23/2018	Transcript of Proceedings of 01/17/2018, All Pending Motion	JA_1100
5	22	01/31/2018	Minutes	JA_1127
5	23	04/11/2018	[Proposed] Order Granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment	JA_1131
5	24	04/11/2018	Notice of Entry of Order Granting Nationstar Mortgage LLC's Renewed Motion for Summary Judgment	JA_1141
5	25	05/14/2018	Notice of Appeal	JA_1155
5	26	05/14/2018	Amended Case Appeal Statement	JA_1158

5	27	01/29/2020	Nationstar Mortgage LLC's Supplemental Briefing Following Remand	JA_1164
6	27	Contin.	Nationstar Mortgage LLC's Supplemental...	JA_1206
6	28	01/29/2020	SFR Investments Pool 1, LLC's Supplemental Brief	JA_1229
6	29	02/12/2020	Nationstar Mortgage LLC's Response to SFR Investments Pool 1, LLC's Supplemental Briefing Following Remand	JA_1253
6	30	02/12/2020	SFR Investments Pool 1, LLC's Response to Nationstar Mortgage LLC's Supplemental Brief	JA_1260
6	31	07/17/2020	Nationstar Mortgage LLC's Summary Judgment Motion (Hearing Requested)	JA_1269
7	31	Contin.	Nationstar Mortgage LLC's Summary Judgme...	JA_1447
7	32	08/06/2020	SFR Investmetns Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgment, Renewed Countermotion to Strike or in the Alternative Countermotion for Rule 56(d) Relief	JA_1537
7	33	08/12/2020	SFR Investments Pool 1, LLC's Motion to Compel	JA_1555
7	34	08/12/2020	Errata to SFR Investments Pool 1, LLC's Opposition to Nationstar Mortgage, LLC's Motion for Summary Judgment, Renewed Countermotion to Strike or in the Alternative Countermotion for Rule 56(d) Relief	JA_1673
8	34	Contin.	Errata to SFR Investments Pool 1, LLC's...	JA_1688
9	34	Contin.	Errata to SFR Investments Pool 1, LLC's...	JA_1929
9	35	08/19/2020	Nationstar Mortgage LLC's Reply Supporting Summary Judgment and Opposition to Renewed Countermotion to Strike or in the Alternative, Countermotion for Rule 56(d) Relief	JA_2077
10	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2170

11	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2411
12	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2652
13	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_2893
14	35	Contin.	Nationstar Mortgage LLC's Reply Supporting...	JA_3134
14	36	08/25/2020	Reply in Support of SFR Investments Pool 1, LLC's Renewed Countermotion to Strike or in the Alternative Countermotion for Rule 56(d) Relief	JA_3190
14	37	08/26/2020	Nationstar Mortgage LLC's Opposition to Renewed SFR Investments Pool 1, LLC's Motion to Compel	JA_3201
14	38	10/06/2020	Notice of Entry of Order Granting Nationstar Mortgage LLC's Motion for Summary Judgment and Denying SFR's Motion to Strike	JA_3215
14	39	10/06/2020	[Proposed] Order Granting Nationstar Mortgage LLC's Motion for Summary Judgment and Denying SFR's Motion to Strike	JA_3232
14	40	11/05/2020	Case Appeal Statement	JA_3245
14	41	11/05/2020	Notice of Appeal	JA_3251
14	42	02/03/2021	Recorder's Transcript of Pending Motions	JA_3255
14	43	02/03/2021	Recorder's Transcript of Pending Motions	JA_3265

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.

<p>9:11;13:22;22:21;33:2,6, 17;37:11;46:2;63:11;64:4,10; 99:15,17</p> <p>local (1) 16:21</p> <p>located (7) 15:10,11;21:2;26:2;37:3; 43:24,25</p> <p>locating (1) 39:25</p> <p>Lomas (5) 15:7,10,12,15,23</p> <p>L-o-m-a-s (1) 15:9</p> <p>long (3) 7:5;11:8;28:24</p> <p>longer (2) 83:7;89:11</p> <p>look (29) 24:18;26:10;29:22;31:13, 20;37:6,19;39:21;41:22;42:6; 44:15;49:21;50:20;53:24; 59:21;61:11;72:2;74:12; 82:14;84:21;85:4;89:18; 90:20;94:5;96:8,21;99:17,19; 101:2</p> <p>looked (15) 24:19;30:8;31:14;32:3; 37:8;46:6,14;72:15;80:8; 82:18;85:13,24;96:5,17;99:3</p> <p>looking (18) 21:22;26:6;30:14,20,21,24; 31:8;35:2;38:16;63:6;64:12; 66:3;68:7;69:9;78:11,20; 83:19;99:5</p> <p>Lotus (3) 37:10;96:21;99:20</p> <p>LP (3) 54:16;58:23;75:5</p>	<p>managed (3) 9:18,22;11:17</p> <p>management (3) 7:21;9:16;11:20</p> <p>manager (3) 10:25;11:13,14</p> <p>managing (1) 9:19</p> <p>many (7) 8:4,18,20;16:25;17:10; 25:1;26:24</p> <p>March (3) 22:25;66:10,16</p> <p>mark (24) 19:9,25;22:4;23:5;32:13; 38:18;42:21;48:1,23;50:2; 51:4;52:2,23;54:3;57:25; 59:24;61:1;71:9;74:19;76:10; 80:11;81:11;83:21;88:17</p> <p>marked (39) 19:10;20:1;22:5;23:6;24:6; 32:15;38:20;42:22;43:11; 48:3,25;49:9;50:4,13;51:5; 52:4,25;54:5;55:17;58:2,10; 59:14;60:1;61:2;71:10;74:20; 76:11;77:10;80:13;81:13; 82:10;83:23;87:22,24;88:18; 92:12,16;96:3;97:6</p> <p>Master (3) 42:25;43:6,18</p> <p>matter (1) 6:18</p> <p>May (12) 16:8;23:8;35:24;36:11; 46:6,14;57:4;68:17;81:8; 82:6;83:9;88:20</p> <p>Maybe (5) 8:19;25:5;27:1,6;63:10</p> <p>mean (7) 10:12;25:15;28:12;45:11; 57:20;65:5;68:1</p> <p>meaning (1) 95:18</p> <p>means (3) 24:24;64:20;83:7</p> <p>meant (6) 94:12,14,21;95:4,16,17</p> <p>mediation (1) 10:25</p> <p>mediations (8) 11:13,18,19,23;12:1,2; 13:10,25</p> <p>Melanie (1) 38:2</p> <p>mention (1) 102:16</p> <p>mentioned (5) 10:1;33:9;36:15;40:8;</p>	<p>100:22</p> <p>mentions (1) 86:12</p> <p>merged (2) 10:24;47:4</p> <p>merger (8) 7:10;47:7;54:16;58:22; 61:25;64:7,10;75:5</p> <p>MERS (15) 12:20,22;13:2;34:3,5,7; 54:23;68:13,14,25;69:7,8,14; 73:9,14</p> <p>message (2) 30:4,4</p> <p>might (3) 14:4,6;21:25</p> <p>MIN (1) 33:21</p> <p>mind (2) 14:14;59:16</p> <p>misstates (2) 94:23;99:6</p> <p>modification (2) 13:11,12</p> <p>money (7) 33:2,6;43:17;44:11;45:7, 22;46:23</p> <p>monthly (1) 45:5</p> <p>more (6) 66:25;67:11;80:10;89:21; 92:22;105:22</p> <p>MORGAN (128) 12:23;13:4;18:8,19;19:5; 20:17;23:16;24:10;25:3,6; 28:10;29:7;31:7,17;33:3,13, 24;34:23;35:17;36:9;38:5,11, 14;39:9,16,23;40:5,15,20; 41:4,10,17,24;42:13;43:20; 44:2,12,19;45:1,10,23;46:8, 16,25;47:6,15;48:18;49:18; 50:16;51:23;54:24;55:12,25; 56:5,12,20;57:6,17;58:18; 59:6,10,19;61:20;62:6,13; 64:21;65:15;67:10;70:5,16; 71:12,22;72:18,24;73:4;74:7, 14;75:7,12,17,23;76:6;77:12, 21;78:3,24;80:25;83:4;87:6, 16;88:4,10;90:7,13;91:2,20; 92:1,21;93:6,18;94:16,23; 95:8;96:16;97:3,12,19,25; 98:3,8,11,21;99:6;100:13; 101:20;103:4,16,23;104:6,18; 105:4,10,20;106:14,21;107:5; 108:1,6</p> <p>morning (1) 6:17</p> <p>mortgage (17)</p>	<p>11:6;15:7,10,13;17:8;29:7, 7;33:8,10,16;54:14;58:21; 75:7,8;89:6,7;107:20</p> <p>mortgager (2) 27:21;48:13</p> <p>mortgage-related (1) 15:25</p> <p>move (1) 23:18</p> <p>MRT (3) 101:2,3,7</p> <p>much (4) 8:1;17:7;93:4,16</p> <p>multiple (3) 52:20;60:25;88:20</p>
M			N
<p>Mac (1) 102:6</p> <p>Mae (2) 101:25;102:4</p> <p>mail (2) 63:13,22</p> <p>mailed (3) 72:16;78:16,23</p> <p>mailroom (1) 65:13</p> <p>maintained (2) 62:22;63:4</p> <p>majority (1) 12:6</p> <p>making (2) 100:7,11</p>			<p>NA (12) 6:25;19:16,21;20:7,12; 39:15;54:15;55:10;58:22; 75:4;84:13;89:5</p> <p>nail (1) 89:13</p> <p>name (4) 6:19;11:8,9;37:9</p> <p>National (2) 39:12;75:6</p> <p>Nationstar (6) 20:18,21;28:3;31:11;89:7, 10</p> <p>necessarily (1) 17:24</p> <p>needed (3) 10:10;13:25;41:21</p> <p>NEVADA (9) 6:1,7;8:25;12:2,6;21:3; 50:11;58:8;75:2</p> <p>new (1) 71:7</p> <p>newspaper (1) 77:20</p> <p>next (4) 64:12;69:2,9,16</p> <p>nominee (1) 33:17</p> <p>normally (1) 81:5</p> <p>North (2) 7:3;16:18</p> <p>notated (4) 53:20;60:23;86:8;94:7</p> <p>notation (1) 53:25</p> <p>Note (26) 22:11,15,18,22;23:2;24:5,9, 15,21;31:12;32:5;37:10; 55:20,24;56:3,10,16,23;57:3;</p>

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.

71:14,19;90:1;91:19,25; 95:15;96:21 noted (3) 29:23;75:13;97:9 notes (26) 25:12,24;26:2,5,12,18;27:9; 29:24;42:4;50:22;53:20,21; 54:1;55:20;60:22;68:24;74:2; 82:18;85:1,6;96:9,11,14; 99:20,24;100:23 Notice (53) 19:15,25;20:6,9,13,24;49:6; 50:12;51:21;52:10,21;53:6,7, 21;54:1;57:20,23;60:8,16,19; 65:3,25;66:10,15,18,21;67:1; 69:18;70:3,11,14,19;72:13, 15;73:13,16,20,20;77:10,20; 78:1,8,11,16,21;79:10;80:2; 85:12,16;94:9;96:3;98:2; 104:5 notices (11) 18:17;67:9,16;73:16;79:14, 20,23;80:1;100:22,25;101:11 notifies (2) 35:14;36:4 November (4) 52:18;84:13;89:4,9 number (20) 17:13;24:23,25;33:21,23; 34:4,5;37:4,22;40:11,13;41:1; 42:6,11,12;59:5,9;91:10;96:2; 98:12 numbers (2) 64:25;65:1	20:92:1,21;93:6,18;94:16,23; 96:16;97:3,12,19,25;98:5,21; 99:6;100:13;101:20;103:4,16; 104:18;105:4,10,20;106:14, 21;107:5;108:1 objections (2) 56:12;103:23 Obligations (2) 35:3,4 obtain (1) 44:10 obtained (6) 36:16;47:11,21;75:21; 97:17;98:19 occurred (1) 15:1 October (10) 7:15;27:4;52:18;63:15; 64:1;65:3;66:1;68:6;92:18,25 Off (15) 7:16,17;23:15;49:12;51:1; 57:1;61:3;74:16,17;80:17; 91:4;98:15;102:10,11;103:19 office (7) 7:2;12:12,13,15,16,18; 83:11 officer (5) 10:17;12:20,22;13:2;14:25 offices (2) 12:8,15 off-the-record (1) 6:5 once (1) 99:2 one (31) 12:8;17:1;21:1;39:4;48:21; 52:21;59:1,19,22;60:9,12; 66:25;67:5,11;69:19;70:18; 77:17,23;78:4,18;79:1;80:19; 85:20;87:21;92:12,15,22; 97:6;98:17;105:22;106:3 ones (8) 16:22;23:13;30:17;48:21; 50:25;51:2;62:20;99:23 only (5) 46:17;90:5,10;96:17,18 oOo- (1) 6:3 open (5) 30:9,11,13,16;48:21 operations (5) 11:1;13:7,16;14:16;15:1 oppression (1) 106:20 order (10) 30:17;51:2;59:9;67:25; 68:2,4;71:13,17,20,23 ordered (2)	82:20;87:13 original (2) 23:1;31:12 originally (2) 23:12;27:12 originated (5) 28:23;32:23;36:17;37:18; 61:22 originating (1) 28:5 origination (6) 26:14;43:24;44:5,15;81:9; 103:10 others (3) 9:6;16:15,19 otherwise (2) 21:9;23:18 out (4) 12:16;84:21;85:4;94:5 outlined (3) 81:2;87:10;92:13 outside (5) 18:6,11;79:13;98:12; 101:10 over (5) 8:22,24;20:16;61:11;89:10 own (3) 40:4;87:8;91:25 owner (1) 71:7 Owners (2) 35:8,9	45:24;51:10;62:19;64:5,10; 80:16;81:25;84:18;95:13,17; 98:4 particular (10) 24:23;29:15,17,23;39:4; 41:12;46:22;47:19;68:24; 97:14 part-time (1) 15:24 Pass-Through (2) 29:8;75:8 Pause (1) 102:13 pay (15) 35:10,15,23,24;36:5,7,11; 45:3;49:12;73:19;80:3;93:4, 11,17,21 payment (9) 18:2,6,11;31:3;49:21;100:7, 12;102:21,23 payments (2) 26:14;49:16 pays (1) 45:4 penalty (1) 8:14 people (1) 14:10 perform (1) 35:4 period (9) 11:12;13:15;27:2,8;30:25, 25;49:24;62:4,10 perjury (1) 8:14 person (1) 19:20 personally (1) 78:9 place (5) 18:7;21:18;42:5;43:12; 71:21 placed (1) 29:6 places (2) 32:9;78:2 Planned (3) 23:25;34:14,21 Plano (3) 12:13,16,18 please (1) 6:19 pm (1) 108:7 point (1) 28:16 policies (3) 41:7;42:15;103:8
O		P	
oath (1) 8:11 object (2) 95:8;104:6 objecting (1) 98:11 Objection (108) 12:23;13:4;18:8,19;19:5; 24:10;25:3;28:10;31:7,17; 33:3,13,24;34:23;35:17;36:9; 38:11;39:16,23;40:5,15,20; 41:4,10,17,24;42:13;43:20; 44:2,12,19;45:1,10,23;46:8, 16,25;47:6,15;48:18;49:18; 50:16;51:23;54:24;55:12,25; 56:5,20;57:6,17;58:18;59:6, 10;61:20;62:6,13;64:21; 65:15;67:10;70:5,16;72:18, 24;74:7,14;75:12,17,23;76:6; 77:12,21;78:3,24;80:25;83:4; 87:6,16;88:4,10;90:13;91:2,	12:8;17:1;21:1;39:4;48:21; 52:21;59:1,19,22;60:9,12; 66:25;67:5,11;69:19;70:18; 77:17,23;78:4,18;79:1;80:19; 85:20;87:21;92:12,15,22; 97:6;98:17;105:22;106:3 ones (8) 16:22;23:13;30:17;48:21; 50:25;51:2;62:20;99:23 only (5) 46:17;90:5,10;96:17,18 oOo- (1) 6:3 open (5) 30:9,11,13,16;48:21 operations (5) 11:1;13:7,16;14:16;15:1 oppression (1) 106:20 order (10) 30:17;51:2;59:9;67:25; 68:2,4;71:13,17,20,23 ordered (2)	Page (28) 20:24;23:8,14;33:19;34:9; 35:2,21;43:3;51:1;63:6,9; 64:12,13,15,18;65:19,23;66:3, 4,7;68:7;69:2,9,16;73:7,81:3; 86:11;89:3 pages (2) 43:2;80:18 paid (4) 93:14;95:14;96:13;99:4 Paragraph (6) 35:3,22,25;36:4;49:11; 72:12 paraphrasing (1) 87:21 Parcel (1) 21:3 parcels (1) 34:19 Parkway (1) 7:3 part (15) 18:16,22;25:21;31:15;	perjury (1) 8:14 person (1) 19:20 personally (1) 78:9 place (5) 18:7;21:18;42:5;43:12; 71:21 placed (1) 29:6 places (2) 32:9;78:2 Planned (3) 23:25;34:14,21 Plano (3) 12:13,16,18 please (1) 6:19 pm (1) 108:7 point (1) 28:16 policies (3) 41:7;42:15;103:8

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.

<p>policy (10) 41:12;42:9;63:21;67:7,14,18;79:22,25;85:14;107:13</p> <p>Pool (1) 6:18</p> <p>Pooling (17) 36:22;37:6,12,14,20;38:3;39:8,11,14,20;40:9,25;42:6;86:13,18;96:23;107:8</p> <p>portfolio (3) 9:11;10:6;13:22</p> <p>portion (3) 39:1;42:24;43:10</p> <p>portions (1) 46:22</p> <p>position (1) 71:19</p> <p>positions (6) 7:19,20;10:23;15:15,16,18</p> <p>possession (1) 31:12</p> <p>possible (4) 40:23;48:20;57:9;65:16</p> <p>posted (4) 77:11,14;78:1;79:10</p> <p>practice (8) 63:22;67:8,15,18,21;85:14;107:19,25</p> <p>practices (1) 103:8</p> <p>preliminary (1) 87:2</p> <p>preparation (9) 22:13;24:3;25:11;30:1,5;37:1;51:12;76:21;82:15</p> <p>prepare (8) 94:8,22;95:4,5,11,19;96:2;104:4</p> <p>prepared (9) 41:22;55:4,6;57:5;75:11,14;81:20;84:7;87:4</p> <p>preparing (1) 41:8</p> <p>presale (5) 9:11,20;104:24;105:9,15</p> <p>present (1) 14:19</p> <p>president (4) 10:15,19,21;14:22</p> <p>pretty (2) 17:7;19:3</p> <p>prevented (2) 100:7,11</p> <p>previous (1) 64:15</p> <p>previously (1) 45:21</p> <p>price (2)</p>	<p>99:4,12</p> <p>principal (1) 49:13</p> <p>printed (2) 23:12;50:24</p> <p>prior (4) 6:5;19:17;94:23;99:6</p> <p>priority (1) 107:20</p> <p>privilege (3) 94:17;95:9;104:8</p> <p>probably (4) 8:5,19;16:20;25:4</p> <p>problem (3) 37:24;105:18,25</p> <p>Procedure (7) 6:8,9;42:9;67:15,18;79:22;85:14</p> <p>procedures (5) 41:8,12;42:15;67:8;103:9</p> <p>proceedings (4) 6:6;70:23;102:13;106:8</p> <p>proceeds (1) 15:19</p> <p>process (3) 18:17;19:4;65:17</p> <p>produced (6) 25:14,16,17;68:1;71:13;104:10</p> <p>Promissory (6) 24:15;55:24;56:3,10;90:1;95:15</p> <p>promptly (1) 35:10</p> <p>property (31) 21:1,2,4,5;22:15;24:1;32:21;43:23,25;44:11;45:7,9,21,22;46:6,14,15,24;47:5;71:7;76:4;77:11;79:11;87:14;92:5,11;102:18;103:3,9;105:19;106:1</p> <p>prosecuted (1) 88:14</p> <p>prospectus (4) 86:22,24;87:1,3</p> <p>protect (2) 103:1;107:20</p> <p>protected (1) 104:7</p> <p>protective (4) 71:13,17,20,23</p> <p>provided (1) 73:12</p> <p>provides (1) 107:23</p> <p>providing (1) 15:20</p> <p>provisions (3)</p>	<p>46:22;47:19;107:8</p> <p>PSA (2) 42:6;94:7</p> <p>public (2) 36:20;78:2</p> <p>published (1) 77:20</p> <p>PUD (2) 35:3,23</p> <p>PUD's (1) 35:4</p> <p>pull (1) 24:20</p> <p>pulled (1) 24:20</p> <p>pulling (2) 15:19;99:9</p> <p>purchase (2) 33:2,6</p> <p>purchased (2) 105:19;106:1</p> <p>purchaser (2) 104:17,21</p> <p>pursuant (2) 35:11;71:13</p> <p>purview (1) 71:16</p> <p>put (7) 29:17;36:20;40:18;41:2;74:11;85:22;87:14</p>	<p>realized (1) 50:25</p> <p>really (4) 17:15;18:15;29:13;89:18</p> <p>reason (12) 23:13;63:24;64:7;66:21;67:1,5;70:13;77:9,19;78:15,15;98:24</p> <p>recall (38) 10:22;12:3;13:14;15:2;18:15;25:22;26:17;27:4,7;30:7;31:8,9;32:11;39:1,10,17;40:6;41:11;44:9,14,21;52:22;57:18,24;60:20;63:19,23;65:17;74:3;82:2;85:3,20;88:11;94:15,18;95:22;99:13;101:1</p> <p>receipt (1) 65:3</p> <p>receive (6) 43:16;60:15;68:14;69:7,14;94:1</p> <p>received (27) 18:17;30:24;52:16,18,20;53:10,13,14,19;60:18;63:15,25;64:2,6;65:14,25;66:15;68:13,17;69:8,23;70:19;72:13;73:16;79:14,20;99:24</p> <p>receiving (1) 73:20</p> <p>Recess (2) 38:1;61:6</p> <p>Recitals (1) 86:12</p> <p>recognize (21) 19:12;20:3;22:8;23:21;32:17;38:25;48:5;49:3;50:7;52:7;53:3;54:8;58:4;60:5;68:9;74:23;76:14;80:15;81:16;84:2;88:24</p> <p>ReconTrust (9) 57:9,12;82:20,21;83:11,17;85:11,14;95:24</p> <p>Reconveyance (14) 81:19;82:9,19,24;83:1,18;84:6;85:2,5,9;87:24;88:2,9;95:25</p> <p>reconveyed (1) 87:23</p> <p>record (17) 6:19;7:16,17;36:20;38:7;42:24;51:13;61:4,8;74:16,17;80:16;85:8;98:15;102:10,11;103:19</p> <p>recorded (18) 41:22;45:9,18,21;46:5,13,18;50:15;60:13,14;76:3,4;82:12,14,17;83:18;85:11;</p>
		Q	
		<p>qualified (1) 74:13</p> <p>qualifying (1) 74:5</p> <p>quality (2) 42:10,16</p> <p>quick (2) 37:23;89:18</p> <p>Quitclaim (2) 80:22,23</p> <p>quite (1) 8:20</p>	
		R	
		<p>rarely (1) 62:18</p> <p>rather (2) 43:13;45:14</p> <p>read (2) 35:12;36:2</p> <p>ready (2) 60:3,4</p> <p>real (2) 17:4;21:1</p>	

<p>90:18 recording (3) 76:5;83:15;85:16 records (49) 24:16;25:21;37:16,19; 40:10,14,19;43:8,12;47:5; 48:16,21;51:11,15,20;52:14; 15:53;17,18;59:20;61:14; 62:12,19;63:3;67:25;68:3; 70:2,8;71:1,6;72:10;76:19,20; 77:6,19,23;79:6;81:6,23;82:1; 84:16,19;85:1;92:10;95:20; 96:6,7;97:2;101:25 refer (4) 21:4,9,13,25 reference (8) 29:9;44:7;63:13;64:17; 65:2;86:16;101:6;107:9 referenced (1) 91:19 references (4) 26:19,24;87:23;100:24 referral (1) 9:12 referred (2) 26:5;55:21 referring (3) 21:4,10,14 refers (3) 21:1;59:5,9 regarding (2) 34:18;71:5 Registration (5) 33:8,11,16;54:15;58:21 regulations (1) 35:9 relate (6) 22:15;24:5;49:8;50:12; 58:9;82:9 related (3) 13:11;62:12;63:3 relates (1) 102:17 relation (1) 101:11 relied (1) 46:21 rely (2) 47:19;62:24 remained (1) 61:18 remaining (1) 20:20 Remedies (2) 35:22;107:23 remember (9) 12:24;14:25;16:21;53:23; 60:23;65:4;69:1;84:20;92:17</p>	<p>remove (2) 23:9,11 repeat (1) 105:11 rephrase (1) 56:6 report (6) 44:10;45:25;46:18;85:15, 19;87:14 REPORTER (3) 56:2;92:24;105:24 reporter's (1) 6:7 represent (1) 6:18 reprint (1) 80:19 requested (2) 82:19;83:16 required (2) 80:3;107:14 requirements (1) 6:7 rescinded (1) 57:21 Rescission (9) 50:10,12,15;57:22;84:5; 85:2,5,9;95:24 resolution (9) 11:3,4,6,6;13:20,24;14:13, 15,23 respect (1) 71:15 responses (1) 104:11 responsibility (2) 45:3;89:6 Restrictions (7) 43:1,7,19;46:5,13;47:13,21 retain (1) 62:25 retrieved (1) 97:14 returned (1) 25:1 review (26) 20:8;25:11;27:13;29:12; 31:3,5;38:23;43:18;44:5;45:8, 20;47:5;53:17;59:13,19;61:4, 21;70:1,8;72:11;74:2;81:8; 85:7;88:7;99:21;101:24 reviewed (22) 17:11;19:17;22:12;24:2; 25:12,13,20,24;26:6,12;27:10, 11;36:25;37:15;47:12;59:19; 67:24;76:3;95:20;96:15;99:8; 104:9 reviewing (2)</p>	<p>26:8,18 Rider (3) 23:25;34:15,22 right (33) 9:15,25;11:25;12:8;14:16; 15:22;22:1;26:17;31:2;33:20; 36:17;51:2,2;53:23;55:18; 59:16;60:13;61:19,24;62:2; 68:20;80:4,8,9,18,24;85:25; 86:11;95:25;97:6;98:9,11; 106:9 right-hand (2) 63:15;66:7 rights (2) 28:15;93:12 role (5) 7:23;9:19;10:4;11:2;33:11 roles (1) 7:22 ROTHENBERG (2) 89:16;108:5 routed (2) 65:5;68:22 Roxanne (1) 82:7 Rule (4) 6:8,9;19:16;20:7 Rules (4) 6:8,9;8:7;35:8</p>	<p>15:24;16:3,4,5 schools (1) 16:21 scope (76) 12:23;13:4;18:8,19;19:5; 25:3;31:7,17;33:3,13,24; 35:17;36:9;38:11;39:16,23; 40:5,15,20;41:4,10,17;42:13; 43:20;44:2,12,19;45:1,10,23; 46:8,25;47:6,15;48:18;49:18; 50:16;51:23;54:24;55:12,25; 57:6,17;59:6,10;62:13;65:15; 67:10;70:5,17;72:18,24;73:4; 74:7,14;75:12,17,23;76:6; 77:12,21;78:3,24;87:7,16; 88:4,10;96:16;97:3,12,19,25; 98:12,21;100:13;108:1 screen (4) 29:15,19,23;41:1 sealed (2) 22:6;71:11 search (1) 25:2 searching (1) 91:6 SEC (1) 38:6 secgov (1) 97:8 Second (6) 20:6;32:21;61:16;65:24; 72:12;102:12 secretary (1) 54:22 secured (3) 32:22;36:1,7 securities (1) 39:15 Security (1) 36:1 seeing (1) 44:14 sell (8) 28:9,11,11;38:9;49:6; 52:11;78:22;85:12 send (1) 70:22 senior (5) 11:1;13:7,16;14:16;15:1 sent (7) 30:15,17;69:8;80:1,2; 88:25;92:11 sentence (1) 72:12 separate (3) 26:4;43:12;62:11 September (12) 21:18,23;49:14,17;69:21,</p>
		S	
		<p>sale (60) 9:13;18:7,12;21:18,21,22; 48:11;53:6,7;60:8,16,19; 66:10,16,18,22;67:2;69:18, 21;70:4,15;71:6;72:9,22;73:3, 13,17,21;76:17;77:10,20; 78:1,8;79:18;85:16,18;90:4,9, 24;91:16;92:7,14,15;100:18, 19;101:14,19;102:2;103:11, 15,22;105:2,8,19;106:1,8,13, 20;107:3,13 sales (2) 15:20;107:16 same (15) 8:11,14;20:25;24:9,13; 32:25;41:24;42:5;46:16; 56:12,14;67:25;73:12;102:22; 103:23 Sandra (2) 58:15;75:16 saw (7) 26:25;32:11,11;51:12; 57:20;65:20;71:4 schedule (3) 37:11;99:15,17 school (4)</p>	

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.

24;76:23;77:1,7;90:4,10,16 Series (2) 29:8;75:8 served (1) 78:9 service (3) 26:13;27:9;63:1 servicer (19) 27:21,24;28:7;34:8;41:20; 61:18,22,25;62:3;69:8,15; 87:18;89:11;90:5,11;93:14; 107:20,23,24 servicers (1) 107:14 servicing (58) 10:8;25:12,24;26:2,5;28:15, 20;29:24;31:11;36:22;37:7, 12,14,16,19,20,21;38:3;39:8, 11,14,20;40:9,10,25;42:3,7; 49:25;50:22;53:20,21,25; 54:16;58:23;60:22;62:7,8,23; 63:3;75:5;82:18;85:1,6;86:13, 19;89:2,5,10;93:12;95:20; 96:5,7,9,14,24;99:9;100:23; 107:9 set (1) 37:17 settlement (2) 10:13;13:12 SFR (8) 6:18;104:16;105:7,8,17,24; 106:3,7 SFR10 (1) 33:20 SFR26 (1) 34:10 SFR27 (1) 35:2 SFR28 (2) 23:10;35:22 SFR39 (1) 23:11 SFR9 (1) 23:9 SFR's (2) 92:4,10 shall (3) 35:3,9,25 short (3) 71:6;72:22;73:3 Shortly (2) 28:23;36:16 show (25) 19:8,24;22:3;23:4;32:13; 38:18;42:20;45:14;48:1,23; 50:2;51:3;52:2,23;54:3; 57:25;59:24;60:25;71:8; 74:18;76:9;80:10;81:11;	83:21;88:16 showing (1) 41:1 sic (1) 87:22 side (2) 10:9;63:15 signature (1) 23:1 Similarly (1) 100:10 site (3) 38:6;97:8,9 six (1) 85:8 someone (3) 55:3;84:9;98:24 sometime (7) 7:10;14:21;29:1,8;52:18; 53:14;61:25 sometimes (1) 70:21 somewhere (2) 36:20;50:22 Sorry (24) 16:5;25:23;34:11,12;41:18; 45:19;46:9;56:1,25;57:1; 60:13;64:2;66:25;67:11;76:3; 77:13;83:14;86:1,90:23;91:4, 10;92:22;104:13;105:23 sort (4) 26:15;30:24;63:10;69:7 sorted (1) 84:23 Southern (14) 21:8,10,11,14;43:1,7,19,25; 46:5,13,23;47:14,21;51:16 speak (2) 24:10;30:1 speaks (5) 35:18;36:10;58:18;80:25; 91:20 Specialist (2) 7:21;9:9 specific (5) 82:16;85:21;87:1,9;107:13 specifically (2) 45:25;96:7 specified (1) 21:9 speculate (1) 79:5 speculating (2) 46:17;68:22 speculation (9) 34:24;47:1,16;50:17;54:25; 57:7;64:21;70:16;78:25 spell (1)	15:8 split (1) 20:18 spouse (1) 80:24 stamp (10) 63:22;65:5,10,12,14,14,23; 66:6,13;68:16 stamped (25) 33:20;34:9;35:2,22;39:7; 43:2;45:15;61:9;63:7,14; 64:13;65:9,9,19;66:19,22; 67:2,4;69:2,16;73:8;80:12; 86:12;88:21;89:3 stamps (2) 63:18,20 start (5) 7:8,14;17:18,20;98:17 started (3) 7:9;9:10;23:14 starts (1) 49:12 state (7) 6:19;10:25;11:13,18,23; 89:4;107:21 stated (1) 95:3 states (2) 55:15;57:2 status (1) 9:11 stay (1) 102:11 still (3) 28:20;34:11,12 stop (1) 27:14 stopped (1) 99:5 stored (7) 24:16;68:2,4,5;97:1;98:4,8 stores (1) 97:10 storing (2) 67:8,15 strike (2) 25:23;40:23 subdivision (1) 34:19 successor (3) 54:16;58:22;75:5 suggest (1) 92:10 suggests (1) 106:7 sure (25) 18:9,20;20:17;22:2;37:24; 38:12;42:11;50:21;51:1;56:7,	13;64:16;65:17;71:22;91:14; 92:8;93:24;94:4,12;95:3; 96:12;102:3;104:3;105:12; 108:2 surprised (1) 42:18 surrounding (3) 106:12,19;107:2 sworn (1) 6:12 system (16) 24:19,21,22;25:1;26:3; 29:16;30:9,19;31:14;32:10, 12;37:3;43:13;61:14;65:21; 84:22 Systems (5) 33:8,11,16;54:15;58:21
T			
Table (1) 43:4 talk (4) 82:21,23;95:23;98:24 talked (1) 98:6 talking (3) 21:17;32:2;72:6 tax (1) 71:6 team (4) 11:4,17;12:4,5 teams (1) 9:18 Tech (1) 16:14 technically (1) 64:6 Tempe (1) 83:12 terms (7) 26:14;37:17;39:24;41:11; 71:22;87:2,2 testified (4) 6:14;8:16,21,25 testify (3) 6:12;19:21;20:12 testifying (1) 8:12 testimony (6) 8:10;71:15,23;91:24;94:24; 99:7 Texas (5) 7:3;12:16;15:11;16:14,18 therein (1) 55:21 thought (1) 91:5			

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.

<p>thousands (1) 17:14</p> <p>three (1) 78:1</p> <p>throughout (3) 14:3;17:24;18:20</p> <p>Tiffany (3) 54:19,21,21</p> <p>times (3) 8:4,6;17:22</p> <p>title (10) 14:25;33:20;43:3;44:10; 45:25;46:18;59:9;85:15,19; 87:14</p> <p>titled (2) 39:5;81:19</p> <p>today (8) 8:11;13:22;19:18;21:4; 23:17;51:12;76:21;83:13</p> <p>together (2) 55:20;56:23</p> <p>told (1) 53:18</p> <p>took (4) 18:7;21:18;85:8;89:10</p> <p>top (4) 59:4;64:18;66:6;86:22</p> <p>Topic (7) 94:9,22;95:6,19;96:2; 98:12;104:4</p> <p>topics (6) 19:22;20:8,13,18,20;87:7</p> <p>toward (2) 10:8;13:23</p> <p>trained (1) 14:10</p> <p>training (3) 14:6,9,10</p> <p>transaction (1) 98:19</p> <p>transfer (2) 36:19;38:9</p> <p>transferred (8) 31:11;55:10,24;56:3,11; 61:17;93:25;94:21</p> <p>transferring (3) 55:16;89:5;94:12</p> <p>trials (4) 8:16,19;13:10,25</p> <p>Trust (81) 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>trustee (8) 29:9;39:12;55:11;57:13; 61:17;62:22;75:6;93:17</p> <p>Trustee's (21) 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>truth (3) 6:12,13,13</p> <p>try (1) 18:6</p> <p>trying (1) 71:5</p> <p>TS (1) 59:5</p> <p>turn (1) 34:9</p> <p>Turning (1) 65:19</p> <p>two (3) 45:17;90:21,21</p> <p>type (4) 10:17;30:20;105:18,25</p> <p>types (7) 14:4;15:18;25:10;26:10; 30:13;31:23;62:21</p> <p>typical (1) 44:22</p> <p>typically (14) 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>unless (1) 21:9</p> <p>up (11) 9:12;15:19;24:20,20;30:9, 11;37:17;59:4;70:22;87:17; 107:12</p> <p>Upon (3) 76:17;92:7,15</p> <p>Urban (1) 23:25</p> <p>USA (2) 15:7,13</p> <p>USBANK000006 (1) 45:16</p> <p>USBANK000042 (1) 45:16</p> <p>USBANK000117 (1) 80:12</p> <p>USBANK000121 (1) 80:12</p> <p>USBANK000340 (2) 61:10;63:7</p> <p>USBANK000341 (1) 64:13</p> <p>USBANK000342 (1) 65:20</p> <p>USBANK000344 (3) 66:3,24;67:4</p> <p>USBANK000345 (2) 66:22;67:2</p> <p>USBANK000346 (1) 68:7</p> <p>USBANK000347 (1) 69:2</p> <p>USBANK000348 (1) 69:9</p> <p>USBANK000349 (1) 69:17</p> <p>USBANK000350 (2) 61:10;73:8</p> <p>USBANK000351 (1) 39:7</p> <p>USBANK000353 (1) 86:12</p> <p>USBANK000381 (1) 39:7</p> <p>USBANK000382 (2) 88:21;89:3</p> <p>USBANK351 (1) 86:9</p> <p>USBANK357 (1) 86:22</p> <p>used (2) 34:6,7</p>	<p>104:17</p> <p>various (8) 7:20;9:18;14:2;15:16,24; 16:21;88:25;89:1</p> <p>VEGAS (2) 6:1;21:2</p> <p>vice (4) 10:15,18,21;14:22</p> <p>viewed (1) 76:21</p> <p>voluminous (1) 43:3</p>
	U		W
	<p>unclear (1) 95:10</p> <p>under (12) 6:7;8:11;33:20;35:4,25; 37:17;49:7;52:11;55:17; 71:16;78:22;85:12</p> <p>underlying (1) 95:15</p> <p>unfair (1) 105:3</p> <p>unfairness (1) 107:3</p> <p>unit (5) 10:25;11:12,14;34:14,21</p> <p>university (3) 16:11,14,18</p>	<p>value (1)</p>	<p>Wait (1) 90:13</p> <p>Waites (1) 75:16</p> <p>waive (1) 6:7</p> <p>way (9) 67:5;70:18;77:17,23;78:5, 18;79:2;85:20;106:3</p> <p>web (3) 38:6;97:8,8</p> <p>WEDNESDAY (1) 6:1</p> <p>Wells (1) 39:14</p> <p>weren't (1) 91:5</p> <p>wet-ink (1) 23:1</p> <p>what's (5) 7:2;27:16;34:2;37:9;86:24</p> <p>Whenever (3) 21:3,8,20</p> <p>Whereupon (1) 6:4</p> <p>whole (3) 6:13;12:17;50:24</p> <p>within (14) 7:20;11:10;15:16;29:24; 30:18;32:9;39:25;40:1,43;25; 48:20;51:13;52:13;65:21; 67:23</p> <p>without (1) 38:16</p> <p>WITNESS (123) 12:24;13:5;18:9,20;19:6; 23:19;24:12;25:4,8;28:11; 31:8,18;33:4,15,25;34:25; 35:19;36:11;38:12;39:17,24; 40:6,16,21;41:5,11,18,25; 42:14;43:21;44:3,13,20;45:2, 11,24;46:9,17;47:2,7,17;49:1, 19;50:5,18;51:6,24;52:5;53:1;</p>

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.

54:6;55:1,13;56:1,6,13,22; 57:8,18;58:20;59:7,11;61:21; 62:7,14;64:22;65:16;67:11; 70:6,18;72:19;73:5;74:8,15, 21;75:13,18,24;76:7,12; 77:13,22;78:4;79:1;81:2,14; 83:6,24;87:8,17;88:5,11;91:4, 22;92:2,22;93:2,7,19;94:15, 18;95:10;96:17;97:4,13,20; 98:14,22;99:8;100:14;101:22; 103:6,18,24;104:9,20;105:5, 11,22;106:2,16,23;107:4; 108:2	8:5,19;9:3;25:5 10702 (1) 21:2 11 (4) 20:19;51:4,5;78:11 117 (1) 81:3 11th (1) 82:6 12 (6) 20:19;22:25;52:3,4,10; 78:20 12:42 (1) 108:7 120 (1) 80:16 121 (1) 80:17 13 (4) 20:19;52:24,25;53:6 14 (4) 20:19;54:4,5,11 14th (1) 69:19 15 (6) 6:1;20:19;58:1,2,7,20 15th (1) 68:18 16 (5) 20:19;59:25;60:1,8;77:10 16001 (1) 7:3 16th (1) 75:10 17 (11) 20:19;61:1,2,9;62:21;63:6, 9;73:7;99:23,23;104:4 176-36-619-021 (1) 21:3 17th (3) 68:16,19,23 18 (7) 20:20;71:9,10,13;72:3; 92:12;100:2 19 (6) 20:20;74:19,20;75:1;91:12, 13 1979 (1) 16:8 1987 (1) 17:6 1988 (1) 15:14 1994 (3) 7:15;12:17;15:14 19th (3) 63:15;64:1;65:3 1st (7)	39:6;49:14,17;85:25;86:3,8, 14 2 2 (10) 19:25;20:1,18,24,25;96:2,4; 98:2,4,12 20 (5) 20:20;76:10,11,17;92:16 2002 (1) 45:18 2007 (16) 22:25;29:1,9;39:6;74:8; 75:22;82:6;83:9,13,14;85:25; 86:3,8,14,23;94:4 2007-S3 (4) 29:7,8;75:7,8 2008 (2) 12:17;61:25 2009 (4) 12:18;49:14,17;62:1 2010 (16) 11:14,15;27:4;30:25;52:19; 53:22;63:15,23;64:1;65:3,17; 66:1;68:6;79:20;85:11,19 2011 (18) 13:19;27:6;30:25;53:15,19; 54:18;55:23;56:3;57:15; 58:14;66:10,14,16,17;67:7, 14;68:6;79:21 2012 (24) 13:19;14:18;21:18,23;27:6; 60:12,13,14;68:16,18,19,23; 69:19,21,24;76:23;77:1,7; 79:21;90:4,10,16;92:18,25 2013 (9) 27:17,18,22;75:10,21; 84:13;89:4,10;91:9 2016 (1) 6:1 20th (1) 66:1 21 (2) 80:11,13 21st (2) 66:14,17 22 (4) 81:12,13,19;87:24 23 (4) 83:22,23;84:5;87:20 23rd (5) 54:18;55:23;56:2;57:15; 59:2 24 (3) 87:22;88:17,18 24th (2) 58:13;59:1	26th (1) 86:23 29th (2) 92:18,25 3 3 (5) 22:4,5;24:6;35:21,21 30b4 (1) 6:8 30b5 (1) 6:9 30b6 (3) 19:16;20:7,19 30th (4) 66:10,16;89:4,9 344 (2) 66:5,20 345 (1) 66:19 346 (2) 68:12,15 349 (1) 69:18 4 4 (11) 20:18;23:5,6;33:19;34:11, 12;49:9;55:18;58:10;59:15; 82:10 5 5 (5) 32:14,15;94:9,10;95:6 5th (10) 21:18,23;69:21,24;76:23; 77:1,7;90:4,10,16 6 6 (9) 20:19;38:19,20;63:14; 85:25;86:1,25;95:19;97:7 7 7 (4) 20:19;42:21,22;43:11 75 (1) 8:19 75001 (1) 7:4 8
Y			
years (6) 7:7,23;9:23;18:21,24;85:8			
0			
000186 (1) 43:2 000193 (1) 43:2 000390 (1) 88:22 08 (1) 7:10 09 (1) 7:10			
1			
1 (3) 19:9,10;20:18 10 (4) 20:19;50:3,4,10 100 (4)			

8 (3)
20:19;48:2,3
8/15/2012 (1)
68:15
89141 (1)
21:3

9

9 (6)
20:19;48:24,25;50:13;
72:16;85:13
9:05 (1)
6:2

EXHIBIT H-3

Woodbridge Deposition Transcript

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.

Page 1

A P P E A R A N C E S

FOR THE PLAINTIFF AND COUNTERDEFENDANT:

Ms. Diana S. Ebron
HOWARD KIM & ASSOCIATES
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
702.485.3300
702.485.3301 (Fax)
diana@hkimlaw.com

FOR THE DEFENDANTS AND COUNTERCLAIMANTS:

Mr. Darren Brenner
AKERMAN, L.L.P.
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
702.634.5000
darren.brenner@akerman.com

Page 3

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.

Page 2

I N D E X	P A G E
Appearances.....	3
Exhibit List.....	5
Stipulations.....	---
JESSICA WOODBRIDGE Examination by Ms. Ebron.....	6
Signature and Changes.....	76
Reporter's Certificate.....	78

Page 4

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

EXHIBITS		
NO.	DESCRIPTION	PAGE
1	Second Amended Notice of 30(b)(6) Deposition of U.S. Bank, N.A.	7
2	Deed of Trust, October 11, 2007 SFR14-SFR17	19
3	Grant, Bargain, Sale Deed	19
4	Pooling and Servicing Agreement January 28, 2008	23
5	Substitution of Trustee and Full Reconveyance SFR38-SFR39	26
6	Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust SFR42-SFR43	27
7	Assignment of Deed of Trust November 26, 2010 SFR48	28
8	Assignment of Deed of Trust November 18, 2011 SFR50	29
9	Monthly Report, February 20, 2015	52
10	Certificate, State of Nevada Foreclosure Mediation Program SFR52	53
11	Notice of Trustee's Sale SFR53-54	53
12	Discharge of Assignment, November 25, 2014	54
13	First Amended Answer, Counterclaims, Crossclaims and Third-Party Complaint	61
14	Answers to SFR Investments Pool 1, LLC's First Set of Interrogatories	70

Page 5

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

Page 7

PROCEEDINGS

(Exhibits 1 through 8 were marked.)

JESSICA WOODBRIDGE,

4 having been first duly sworn, testified as follows:

EXAMINATION

6 BY MS. EBRON:

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.

Page 6

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. EBRON) 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

Page 8

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?

Page 9

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?

Page 11

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.

Page 10

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?

Page 12

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

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?

Page 13

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

Page 15

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

Page 14

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

Page 16

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

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?

Page 17

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?

Page 19

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.

Page 18

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?

Page 20

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

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

Page 21

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.

Page 23

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

Page 22

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.

Page 24

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

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

Page 25

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?

Page 27

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.

Page 26

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.

Page 28

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

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.

Page 29

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.

Page 31

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

Page 30

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.

Page 32

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

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

Page 33

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

Page 35

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

Page 34

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

Page 36

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

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

Page 37

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?

Page 39

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

Page 38

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

Page 40

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

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
Page 41

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.
Page 43

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?
Page 42

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
Page 44

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

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.

Page 45

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?

Page 47

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

Page 46

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?

Page 48

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

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

Page 49

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?

Page 51

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

Page 50

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

Page 52

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

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

Page 53

Q Do you know if she was an employee of Bank of America?

A Yes.

Q How long did she work there?

A I don't know how long she worked there.

Q Did you see the paragraph that starts off "I have been working at Bank of America since..."?

A That is what it says, but that's not accurate.

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]

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

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.
26 MR. BRENNER: Let's just get going so

Page 57

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

Page 59

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.

Page 58

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?

Page 60

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

Page 61

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

Page 63

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.

Page 62

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

Page 64

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

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

Page 65

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.

Page 67

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.

Page 66

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.

Page 68

30(b)(6) Jessica Woodbridge - 10/21/2015
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

Page 69

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

Page 71

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.

Page 70

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

Page 72

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

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.

Page 73

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

Page 75

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?

Page 74

1 CHANGES AND SIGNATURE
2 WITNESS NAME: Jessica Woodbridge DATE: October 21, 2015
3 PAGE LINE CHANGE REASON
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____

Page 76

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

Page 79

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

Page 78

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

Page 80

EXHIBIT H-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 H-5

Ortwerth Deposition Transcript

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

Katherine Ortwerth
April 5, 2016



Min-U-Script® with Word Index

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

L*4949*L*		Page 1	Page 3	
1	DISTRICT COURT		1	I N D E X
2	CLARK COUNTY, NEVADA		2	WITNESS PAGE
3			3	KATHERINE ORTWERTH
4	SFR INVESTMENTS POOL 1,)		4	Examination by Ms. Ebron 4
5	LLC a Nevada limited)	Case No. A-12-673418-C	5	
6	liability company,)		6	EXHIBIT INDEX
7	Plaintiff,)		6	EXHIBIT NO. 1 Marked, Notice Of 30(b)(6) Deposition
8	vs.)		7	Of HSBC Bank USA, N.A.....11
9			8	EXHIBIT NO. 2 Marked, HSBC000001 through HSBC000004....16
10	MORGAN STANLEY DEAN)		9	EXHIBIT NO. 3 Marked, HSBC000005 through HSBC0000022...16
11	WITTER CREDIT)		10	EXHIBIT NO. 4 Marked, HSBC0000031 through HSBC0000032..18
12	CORPORATION, a Delaware)		11	EXHIBIT NO. 5 Marked, Notice Of Claim of Lien For
13	corporation, HSBC BANK)		12	Solid Waste Service.....21
14	USA, N.A., a national)		13	EXHIBIT NO. 6 Marked, Notice Of Violation (Lien).....22
15	banking association, as)		14	EXHIBIT NO. 7 Marked, HSBC0000026.....23
16	Trustee for Sequoia)		15	EXHIBIT NO. 8 Marked, HSBC0000023.....23
17	Mortgage Trust 2007-3;)		16	EXHIBIT NO. 9 Marked, HSBC0000027.....24
18	NATIONAL DEFAULT)		17	EXHIBIT NO. 10 Marked, HSBC0000028 through HSBC0000029.25
19	SERVICING CORPORATION,)		18	EXHIBIT NO. 11 Marked, Copy of certified mail envelope
20	an Arizona corporation,)		19	addressed to National Default Servicing Corporation
21	REPUBLIC SILVER STATE)		20	and copy of an envelope addressed to Saxon Mortgage....27
22	DISPOSAL, INC., a)		21	EXHIBIT NO. 12 Marked, HSBC0000039 through HSBC0000040.29
23	Nevada corporation,)		22	EXHIBIT NO. 13 Marked, HSBC0000035.....34
24	SOUTHERN HIGHLANDS)		23	EXHIBIT NO. 14 Marked, HSBC0000036 through HSBC0000038.34
25	COMMUNITY ASSOCIATION,)		24	EXHIBIT NO. 15 Marked, Affidavit Of Debt.....40
	a Nevada non-profit)		25	EXHIBIT NO. 16 Marked, Saxon System Printout.....47
	cooperative corporation)			EXHIBIT NO. 17 Marked, LPS Screenshot.....49
	and MICHAEL K. SOMDAHL,)			EXHIBIT NO. 18 Marked, Scanned Collateral File.....50
	an individual, DOES I)			
	through X; and ROE)			
	CORPORATIONS I through)			
	X, inclusive,)			
	Defendants.)			
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.

Page 5

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.

Page 6

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

Page 7

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.

Page 8

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.

Page 9

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

Page 10

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.

Page 11

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

Page 12

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.**

Page 13

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

Page 14

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**

Page 15

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**

Page 16

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.**

Page 17

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**

Page 18

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?

Page 21	Page 23
<p>1 A. I do not.</p> <p>2 Q. And this was recorded after Ocwen serviced the</p> <p>3 loan?</p> <p>4 A. Yes.</p> <p>5 Q. So it could have been Ocwen?</p> <p>6 A. Could have been, yes.</p> <p>7 Q. Now I'm just going to go through some of the</p> <p>8 recorded documents --</p> <p>9 A. Okay.</p> <p>10 Q. -- with you. I'm trying to do them basically in</p> <p>11 date order. I will show you some documents that have</p> <p>12 been marked as Exhibit 5.</p> <p>13 (Notice Of Claim of Lien For Solid Waste Service</p> <p>14 was marked as Exhibit 5, for identification, as of this</p> <p>15 date.)</p> <p>16 Q. Do you recognize these documents?</p> <p>17 A. I don't know that I have seen all four of these,</p> <p>18 but I have seen at least some of them.</p> <p>19 Q. What are they?</p> <p>20 A. They are notice of claim of lien for solid waste</p> <p>21 services on the property.</p> <p>22 Q. Are these something that are contained in HSBC's</p> <p>23 business records?</p> <p>24 A. I don't know that they would have been unless</p> <p>25 they had been sent to the servicer.</p>	<p>1 Q. Let's look at this document that we will mark as</p> <p>2 Exhibit 7.</p> <p>3 (HSBC0000026 was marked as Exhibit 7, for</p> <p>4 identification, as of this date.)</p> <p>5 Q. Do you recognize this document?</p> <p>6 A. I believe so.</p> <p>7 Q. Is this something that was contained in HSBC's</p> <p>8 business records before counsel pulled publically</p> <p>9 recorded documents?</p> <p>10 A. No.</p> <p>11 Q. I'm going to show you a document that we will</p> <p>12 mark as Exhibit 8.</p> <p>13 (HSBC0000023 was marked as Exhibit 8, for</p> <p>14 identification, as of this date.)</p> <p>15 Q. Do you recognize this document?</p> <p>16 A. Yes.</p> <p>17 Q. What is it?</p> <p>18 A. It's a notice of default and election to sell</p> <p>19 for the property from Saxon at the time.</p> <p>20 Q. And this relates to the deed of trust that we</p> <p>21 marked as Exhibit 3?</p> <p>22 A. Yes.</p> <p>23 Q. On the page that is Bates stamped HSBC0000024,</p> <p>24 in the paragraph that is second from the bottom, it</p> <p>25 mentions that there was a "Failure to pay the installment</p>
Page 22	Page 24
<p>1 Q. Are these something that are contained in</p> <p>2 Ocwen's business records?</p> <p>3 A. I don't believe that we had copies of these. I</p> <p>4 think the only copies we got were when counsel pulled</p> <p>5 them from the recordings on the property.</p> <p>6 Q. Do you know when these were pulled?</p> <p>7 A. Sometime during the course of this litigation.</p> <p>8 I don't know when.</p> <p>9 Q. Do you know up in the upper left-hand corner</p> <p>10 what that stamp means, L 11/SPL1?</p> <p>11 A. I do not.</p> <p>12 Q. Look at what has been -- a document that we will</p> <p>13 mark as Exhibit 6.</p> <p>14 (Notice Of Violation (Lien) was marked as</p> <p>15 Exhibit 6, for identification, as of this date.)</p> <p>16 Q. Do you recognize this document?</p> <p>17 A. Again, I don't know if I recognize this one. I</p> <p>18 have seen -- I believe there were a couple, and I don't</p> <p>19 know if I have seen this particular one or not.</p> <p>20 Q. Do you recall seeing documents referencing</p> <p>21 Southern Highlands Community Association and Alessi &</p> <p>22 Koenig in HSBC's business records?</p> <p>23 A. Again, they weren't in our business records,</p> <p>24 they were provided to me by counsel who pulled them from</p> <p>25 the recording office.</p>	<p>1 of principal, interest and impounds which became due on</p> <p>2 November 1, 2009..." Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know if there were any payments made by</p> <p>5 the borrower on the loan after November 1, 2009?</p> <p>6 A. I don't know if he was making payments that</p> <p>7 weren't applied before that, but I do know he's still due</p> <p>8 for November 1, 2009.</p> <p>9 Q. I'm going to show you a document that we will</p> <p>10 mark as Exhibit 9.</p> <p>11 (HSBC0000027 was marked as Exhibit 9, for</p> <p>12 identification, as of this date.)</p> <p>13 Q. Do you recognize this document?</p> <p>14 A. I believe so.</p> <p>15 Q. What is it?</p> <p>16 A. "Notice Of Default and Election to Sell Under</p> <p>17 Homeowners Association Lien."</p> <p>18 Q. And is this something that was contained in</p> <p>19 HSBC's business records before counsel pulled the</p> <p>20 recorded documents?</p> <p>21 A. No.</p> <p>22 Q. Do you know when the first time was that HSBC</p> <p>23 obtained a copy of this notice of default and election to</p> <p>24 sell under homeowners association lien?</p> <p>25 A. I don't know that we ever received a copy</p>

Page 25

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

Page 26

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.

Page 27

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

Page 28

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.

Page 29

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?

Page 30

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**

Page 31

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.**

Page 32

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?

Page 33

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**

Page 34

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

Page 35

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**

Page 36

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**

Page 37

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.

Page 38

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."

Page 39

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,

Page 40

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?

Page 41

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.

Page 42

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?

Page 43

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.

Page 44

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.

Page 45

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.**

Page 46

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

Page 47

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.**

Page 48

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**

Page 49

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.**

Page 50

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.**

Page 51

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

Page 53

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**

Page 54

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:"

Page 55

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?

Page 56

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**

Page 61

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?

Page 62

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

Page 63

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

Page 64

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?

Page 65

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.)

Page 66

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.**

Page 67

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

Page 68

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?

Page 69

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?

Page 70

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.**

Page 71

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?

Page 72

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

4

5

6

7

8

9

10

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 KATHERINE ORTWERTH

23 Deponent

24 Subscribed and sworn to before me the

25 day of 2016.

 Notary Public

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 That I reported the taking of the deposition

10 of the witness, KATHERINE ORTWERTH, at the time and place

11 aforesaid;

12 That prior to being examined, the witness

13 was by me duly sworn to testify to the truth, the whole

14 truth, and nothing but the truth;

15 That I thereafter transcribed my shorthand

16 notes into typewriting and that the typewritten

17 transcript of said deposition is a complete, true and

18 accurate transcription of my said shorthand notes taken

19 down at said time to the best of my ability.

20 I further certify that I am not a relative

21 or employee of an attorney or counsel of any of the

22 parties, nor a relative or employee of any attorney or

23 counsel involved in said action, nor a person financially

24 interested in the action; and that transcript review NRC

25 30(e) was requested.

 IN WITNESS WHEREOF, I have hereunto set my

 hand in the County of Clark, State of Nevada, this 5th

 day of April 2016.

 LORI-ANN LANDERS, CCR 792, RPR

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

	41:18,20,22	appear (6) 9:24;27:7;29:7;43:4;45:21; 50:19	associations (2) 62:7;69:25
\$	advances (4) 41:13;42:11,11,16	appearance (2) 10:17,17	association's (2) 32:21;66:14
\$1,251.52 (1) 43:10	Affidavit (5) 40:20,24;41:2;42:2;43:15	appearances (1) 9:16	assume (1) 37:17
\$338,000 (1) 41:8	affidavits (1) 9:18	appearing (1) 9:12	assuming (1) 9:25
\$338,601.24 (1) 41:8	again (17) 6:22;22:17,23;30:19;36:24; 37:16;40:23;43:18;49:12; 50:18,18;53:14,23;54:4; 59:10;71:4;72:2	appears (17) 18:22;26:8,21;28:5,10; 32:11;36:8;40:17;43:23; 44:18;48:5,13,22;49:11;51:2; 52:23;57:24	attached (5) 27:21,23;39:22;54:10,20
\$8.75 (1) 44:24	against (4) 31:2;32:25;54:23;61:20	applicable (3) 62:2,7;67:4	attachment (1) 27:2
A	agents (3) 65:2,6,9	application (1) 32:10	attain (2) 17:20;38:24
ability (1) 40:14	agreement (6) 17:23;19:10;20:3;54:8,11; 59:2	applied (1) 24:7	attained (3) 56:6,10;60:21
able (5) 13:21;17:22;20:7;45:17; 54:5	agreements (1) 60:7	appointed (1) 61:1	attend (3) 7:20;65:3,6
above (3) 45:1,12,12	ahead (1) 15:5	appropriate (2) 8:21;68:6	attorney (1) 11:22
Absolutely (1) 37:25	Aid (2) 6:9,17	April (9) 5:25;6:12,24;14:7,9;15:11; 41:6;67:11;68:18	attorneys (2) 9:20;31:19
accepted (1) 61:24	Alessi (9) 12:17;13:1,2;22:21;27:3; 32:15;33:17;65:16;69:24	Arizona (1) 28:9	auction (1) 12:16
access (1) 59:1	allegation (3) 67:25;71:18,23	Aromatico (3) 12:1,4;17:10	August (4) 6:23;7:4;47:3;48:18
according (1) 68:11	allege (1) 65:19	around (10) 6:23;17:24;19:16;36:8; 45:16,19;68:7,8,11,16	Austin (1) 9:6
account (4) 44:5;45:23;48:6,21	alleges (2) 66:2;71:3	arrow (1) 50:10	authority (1) 8:20
across (2) 10:12,13	ALLISON (19) 17:7;19:25;20:15;26:19; 27:6;34:21;37:24;39:4;44:23; 53:21;64:2;65:22;66:1;71:11, 15,20;72:1,12,15	assessments (5) 38:23;39:8;40:3;63:16; 66:15	available (2) 60:7,10
acting (1) 26:23	allonge (1) 52:14	assign (1) 8:18	Aviles (1) 6:21
action (6) 31:6;32:20;33:5;65:10,19; 66:2	allowed (1) 69:2	assigned (6) 9:20;10:15,16,17,18,19	aware (21) 14:10;33:19;34:4;44:12; 52:24;59:24;61:6,10,12,14; 65:5,8,13,15,18;69:21;70:1, 14;71:12,16,21
activity (1) 61:3	along (1) 59:6	assignment (9) 17:25;18:6,15,25;20:10; 35:21,22;36:7,12	away (1) 31:7
actual (1) 14:23	always (3) 33:25;37:11,14	assistant (1) 6:16	B
actually (9) 12:8;32:12;42:4;45:22; 58:10,17;59:8;61:3;69:10	amount (4) 10:22;44:21;45:6;68:25	associated (1) 71:14	BA (1) 8:4
add (1) 40:14	amounts (6) 38:23;40:6;41:18,20,21; 71:5	association (48) 12:7,9,10,12,15,18,20,22; 22:21;24:17,24;33:6,9,10,17, 21;34:2;39:8;40:12,15;46:10; 47:11;53:1;61:10;62:7,8,11, 25;63:10,21;65:7,11,14,21; 66:15,16;67:4,5;68:1;69:18, 19,25;70:3,8,24;71:2,18;72:9	back (1) 34:19
additional (5) 38:4;40:7,15;43:16,18	analyst (3) 5:19;9:10;36:20		bailee (4) 51:20,21,22;57:5
address (3) 9:7;28:8,10	anymore (1) 14:3		balance (6) 41:7,10;47:1,1,2,2
addressed (3) 27:13,15;28:5	apart (3) 10:10;53:3;57:25		Bank (12) 5:23;8:16;9:1,5;11:2,9,14, 18,20,21;13:22;19:1
adjustable (1) 16:18			banking (1) 7:11
administrative (1) 65:10			bar (1)
advanced (3)			

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

<p>8:13</p> <p>based (5) 17:25;19:19;48:14;49:23; 53:2</p> <p>basically (10) 8:17;14:25;21:10;41:3; 46:18;51:7;52:5;56:16;60:24; 62:19</p> <p>basis (2) 36:5;67:24</p> <p>Bates (9) 19:5;23:23;25:25;27:2,20; 37:3;38:6;39:15;40:1</p> <p>bathroom (1) 37:22</p> <p>Beach (1) 9:9</p> <p>became (1) 24:1</p> <p>become (2) 14:6;40:7</p> <p>began (2) 32:23;47:7</p> <p>beginning (1) 10:19</p> <p>behalf (12) 9:12,24;11:15,23;12:17; 14:17;26:23;35:11;41:13,18; 42:12,17</p> <p>believes (2) 71:17,23</p> <p>besides (5) 6:3;13:17;14:9;20:17;61:17</p> <p>best (4) 28:24;29:10;53:16;56:24</p> <p>beyond (1) 69:18</p> <p>bill (1) 62:19</p> <p>blank (5) 18:24;19:4,4;47:3;52:16</p> <p>boarded (2) 30:13;31:1</p> <p>boarding (1) 30:3</p> <p>borrower (31) 15:15;24:5;31:10;32:1,7; 36:1;38:16,20;40:2,7,11,13; 41:13;42:17;44:6,7;47:6; 62:11,12,25;63:6,9,13,17,19, 22,24;64:10;66:11;69:6,9</p> <p>borrowers (1) 42:12</p> <p>both (11) 11:4;17:9;46:1,2;56:24; 59:5,5,14;60:1,5;61:2</p> <p>bottom (7) 23:24;41:14,15;44:14;</p>	<p>46:21;48:11,20</p> <p>BPO (1) 43:17</p> <p>BPOs (2) 14:24;15:23</p> <p>break (3) 5:10,13;37:24</p> <p>breakdown (2) 68:3;71:5</p> <p>bring (1) 66:12</p> <p>broken (4) 41:5;42:13;43:20;53:25</p> <p>bunch (3) 10:8,8;14:24</p> <p>burned (1) 66:6</p> <p>business (18) 9:7;15:12;20:11;21:23; 22:2,22,23;23:8;24:19;25:10; 26:4;27:24;28:13;29:22; 50:12;69:17;71:7,23</p> <p style="text-align: center;">C</p> <p>called (4) 14:24;26:13;62:19;67:16</p> <p>came (1) 8:17</p> <p>can (17) 11:4,17;15:5;29:5;37:24; 38:24;41:3;45:24;47:20;49:3; 50:21;53:2;55:7;59:7;64:2; 66:3,12</p> <p>capacity (1) 36:20</p> <p>case (7) 8:17;19:2;39:13;56:10; 58:14;60:18;61:1</p> <p>cases (1) 10:11</p> <p>cash (1) 69:6</p> <p>CCNRs (4) 53:5,9,12,17</p> <p>certain (1) 15:14</p> <p>certainly (1) 67:12</p> <p>certifications (1) 8:12</p> <p>certified (1) 27:13</p> <p>challenging (1) 65:11</p> <p>chance (2) 11:11;14:13</p> <p>charge (1)</p>	<p>47:2</p> <p>Charges (2) 38:11,12</p> <p>check (1) 67:20</p> <p>checked (1) 16:2</p> <p>checkmarks (1) 51:25</p> <p>checks (2) 30:14,24</p> <p>chooses (1) 40:14</p> <p>circumstances (4) 63:7;71:2,9,24</p> <p>civil (1) 65:10</p> <p>Claim (5) 21:13,20;61:6,22,24</p> <p>claimed (1) 61:11</p> <p>claims (1) 61:19</p> <p>clarification (1) 44:23</p> <p>clarify (1) 11:17</p> <p>close (1) 31:16</p> <p>code (1) 31:13</p> <p>collateral (11) 30:20;50:16;51:3,6,9,14,23; 52:5;55:15;56:5;57:11</p> <p>College (3) 7:1,3,20</p> <p>collusion (1) 71:14</p> <p>column (5) 43:12;44:13,20,20;45:6</p> <p>comment (1) 62:17</p> <p>comments (7) 14:21,22;15:17;25:12,13; 33:14;62:16</p> <p>communicate (7) 13:22;33:17,20;49:17; 62:11;65:14,16</p> <p>communications (5) 62:24;66:14;70:2,5;72:8</p> <p>Community (3) 12:9,11;22:21</p> <p>company (3) 6:16;54:21;66:20</p> <p>completed (1) 20:19</p> <p>concerned (1) 72:3</p>	<p>concluded (1) 72:19</p> <p>conclusion (5) 39:5;53:22;71:11,15,20</p> <p>condition (1) 37:6</p> <p>conditions (2) 55:5,17</p> <p>constitute (1) 71:10</p> <p>constitutes (1) 71:3</p> <p>contained (20) 16:8,8;21:22;22:1;23:7; 24:18;26:3,11;29:22;30:8; 48:7;50:12;51:2;56:5;59:9; 60:15;62:4;64:20;71:8,22</p> <p>continued (4) 42:24;43:1;66:4,8</p> <p>continuing (1) 66:10</p> <p>copies (6) 15:24,25;16:1;22:3,4;62:5</p> <p>copy (24) 16:18;17:2;24:23,25;25:9; 26:6,7,11;27:4,9,13,14;28:1,5, 12;29:6,24;52:9,18;53:5; 55:21;60:18;62:18;64:9</p> <p>corner (4) 22:9;46:21,25;48:11</p> <p>Corporation (12) 6:21;17:16;26:9,12,16,23; 27:5,14;28:11;32:16;34:14,20</p> <p>correctly (2) 30:15;31:1</p> <p>corresponding (1) 28:16</p> <p>counsel (9) 8:19;13:8,14,17;22:4,24; 23:8;24:19;25:1</p> <p>country (2) 10:12,13</p> <p>county (1) 48:6</p> <p>couple (4) 22:18;38:5;43:7;63:2</p> <p>course (1) 22:7</p> <p>Court (2) 12:1,5</p> <p>courtroom (1) 5:6</p> <p>covenant (1) 37:6</p> <p>covenants (3) 38:7;55:5,17</p> <p>create (1) 30:11</p>
--	---	--	--

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

Credit (1) 17:16 credited (1) 44:18 cross-referenced (1) 58:12 current (7) 9:7;42:13,15;43:21,22; 52:12;66:12 currently (4) 52:13;58:18;61:6,15 custodian (4) 52:6;56:17;57:3;59:25 cut (1) 55:7	6:2,4;8:15;23:18;24:16,23; 26:8,12,16,17,23;27:5,14; 28:11;29:2,3,6;32:16;34:14, 19,20;36:17;49:22;63:21; 64:1,4;66:19;70:21,23 defines (2) 11:25;12:7 definitely (1) 45:11 definition (1) 12:15 definitions (1) 11:25 degree (2) 8:1,8 degrees (1) 8:5 delinquent (4) 63:10,13,16;66:15 department (5) 67:15,16,17,19,21 departments (1) 8:21 depo (1) 71:6 depos (1) 9:13 deposition (12) 5:2;11:1,9;13:4,10,15,18, 23;14:2;67:20;68:2;72:18 depositions (2) 8:24;9:25 description (2) 43:3;44:13 designated (1) 14:16 detailed (1) 43:23 determine (3) 32:20;59:7;68:4 Development (3) 39:20,22;40:11 different (2) 36:25;58:12 digitizing (1) 6:22 disbursed (1) 40:6 disbursement (3) 45:2,6,13 Disbursements (5) 44:5,8,8;46:5,9 disclosed (1) 48:3 discovery (2) 13:7;15:2 discussed (1) 63:5	Doc (1) 57:21 docket (1) 10:7 docs (1) 15:23 document (38) 10:18,24;11:6;16:11,15,20, 24;18:12;22:12,16;23:1,5,11, 15;24:9,13;25:16,21,24; 27:11,18;28:1;29:13,18;34:5, 9,23;35:3;39:17;40:18;43:23; 47:13;49:8,14;51:22;57:10; 58:2,13 documentation (1) 19:3 documents (33) 8:20;9:17;10:18;13:7;15:1, 8,22;17:4;21:8,11,16;22:20; 23:9;24:20;25:2;27:21;30:17, 25;31:12;32:19,24;36:23; 38:4;48:3;50:18;51:1,25;52:2, 3;54:6;56:14,17,18 dollar (2) 45:10,11 done (5) 18:1,2;31:16;68:16;72:7 double-sided (3) 11:4;40:23;50:19 doubt (2) 20:13;48:10 down (5) 38:19;41:5;42:13;43:20; 66:6 drafted (1) 35:23 drink (1) 5:11 dual (1) 31:11 due (5) 24:1,7;38:21,23;40:3 dues (4) 34:2;40:3,12;63:10 during (3) 22:7;67:6,14 duties (2) 8:15;9:10	effect (1) 5:6 either (6) 9:16;33:16;56:7;60:3,17; 66:21 election (4) 23:18;24:16,23;26:17 Electronic (1) 72:13 electronically (1) 30:19 else (8) 5:11;9:22;13:14;15:3,5; 30:23;62:17;72:5 email (2) 13:17,25 employed (5) 5:16,22;6:6,17;7:5 employment (2) 5:24;6:10 encumbrance (1) 38:25 encumbrances (1) 37:8 end (1) 10:20 endorsed (1) 52:16 endorsement (3) 52:14;54:15,20 endorsements (1) 52:14 Engineering (1) 6:21 English (1) 8:4 enough (3) 10:11,24;37:2 ensures (1) 61:15 entered (1) 30:15 entities (2) 61:5,9 entity (3) 20:18;61:15;70:12 entries (1) 42:17 entry (1) 66:18 envelope (5) 26:9;27:13,15;28:5,12 Escrow (9) 38:11,17,20;41:10;45:2,6, 13;46:5;47:1 escrowed (6) 33:23,25;34:1,2;39:8,9 essentially (1)
D			
damage (1) 54:23 dash (1) 19:18 data (4) 30:8,8,13,15 date (36) 11:3;12:20,23;16:14,23; 17:18,23;18:11;19:17;20:20; 21:11,15;22:15;23:4,14; 24:12;25:20;27:17;29:17; 33:10;34:8;35:2,14;40:21; 45:24;46:2,20,22,24;47:16; 48:11,14;49:6;50:6,17;59:12 dated (3) 26:10;44:17;57:23 dates (5) 5:24;6:10;7:2,24;51:5 day (3) 10:8;13:12;38:21 day-to-day (2) 8:22;61:3 dealing (1) 9:2 Dean (3) 17:16;18:16;57:24 debt (8) 40:7,15,20,24;41:2,4;42:2; 43:16 December (4) 34:15;35:15;62:23;68:19 declarations (1) 9:18 deed (23) 17:2,9,13;18:15;23:20; 26:18;29:21,25;35:8;38:5; 39:23;40:16;52:18,21;55:22; 57:7;61:6,11,16;62:3;65:20; 66:4;67:25 Default (29)			
		E	
		earlier (2) 19:9;29:1 earn (1) 8:1 EBRON (6) 37:25;38:2;58:23,25;72:11, 14	

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

42:16 estimate (1) 6:11 evaluations (2) 68:13,16 even (2) 5:7;37:18 exactly (1) 43:22 example (2) 31:10;70:18 except (1) 69:24 exception (1) 55:18 executed (2) 18:21,22 Exhibit (58) 10:25;11:2;14:11;16:12,14, 21,23;17:12;18:8,10;21:12, 14;22:13,15;23:2,3,12,13,21; 24:10,11;25:17,19;26:18; 27:1,12,16;28:1,2,4;29:2,14, 16;34:6,7,24;35:1,9;36:7; 38:3;39:14,25,25;40:19,21; 47:14,16;48:16;49:4,5;50:15, 17;54:13,14;63:17,22;64:4,10 Exhibits (2) 17:4;57:8 exist (1) 14:3 existence (1) 54:24 Expense (2) 44:14,19 experience (1) 7:10 explained (1) 36:16 explanation (1) 45:17 express (1) 37:7 extent (1) 26:20 extinguished (1) 68:1	fall (2) 7:25,25 familiar (3) 5:1;36:22,24 Fannie (1) 59:16 far (4) 26:25;30:12;71:7;72:3 Fargo (3) 57:2,3;59:25 FCL (1) 28:23 February (2) 7:4;25:5 fee (1) 43:5 fees (9) 43:1,3,4,9,16,17,21;44:5; 68:3 few (1) 36:9 FHA (1) 59:23 Fidelity (1) 55:24 figure (1) 58:19 file (27) 8:18;10:19;18:25;30:21,22; 31:7,22;32:20;48:7,24;50:16; 51:3,6,9,14,23;52:5;53:6; 55:15;56:4,5;57:11;58:2; 66:13;68:14;69:12;72:8 files (9) 6:22;8:22;9:2,13,19;10:14, 16;15:24;56:25 fill (1) 62:19 filled (4) 18:25;20:9;32:9;52:7 financing (1) 69:3 find (6) 17:18,22;19:9;20:2;55:2; 58:16 fine (1) 13:3 firm (4) 26:14;31:14;37:19,19 first (14) 17:20;24:22;25:25;27:25; 29:24;34:20;38:3;40:24; 43:19;48:16;51:5,10,13;67:25 Five (1) 45:10 five-minute (1) 37:24 fixing (1)	45:23 flag (1) 32:14 flagged (1) 31:23 flew (1) 13:11 flopped (1) 60:11 Florida (3) 9:9;10:6,12 folder (3) 51:8,9,11 Follmer (1) 7:8 following (1) 54:25 force (1) 5:6 foreclosure (39) 12:16,20,22;26:14,15; 28:24;31:13,14,14,23;33:2,6, 10,18;37:12,19,19;49:17; 56:19;61:10;63:1;65:3,7,11, 21;66:16,21;67:5,6;68:1; 69:19,25;70:3,17,19,24;71:2, 18,25 foreclosures (3) 36:4;62:8;67:22 Forest (1) 7:17 forget (3) 62:19;66:20;68:19 form (1) 62:20 forward (2) 30:21;35:17 found (1) 41:22 four (1) 21:17 fraud (2) 71:3,10 Freddie (1) 59:21 front (2) 5:7;51:7 full (1) 38:22 funds (4) 38:16,19;47:2;66:7 Further (1) 66:1	Generally (7) 19:17,19;30:5;37:20;50:7; 56:8;69:1 given (1) 59:11 gives (1) 40:11 giving (1) 62:20 goes (1) 31:5 graduate (1) 7:14 Great (1) 5:10 ground (1) 5:1 guess (5) 28:24;29:10;53:16;56:24; 69:9 guidelines (1) 62:2
H			
			half (1) 9:15 handle (1) 67:8 handled (1) 67:21 handles (1) 67:18 handling (2) 31:19;67:4 handwritten (3) 19:7;28:23;50:9 happen (1) 46:2 happened (3) 12:21;15:10;63:4 hard (2) 15:24;45:8 hearings (1) 9:13 held (2) 5:20;12:16 hereby (1) 54:21 high (2) 7:14,17 Highland (1) 12:11 Highlands (4) 12:8,9;22:21;54:17 history (11) 14:21,23;15:17;33:14; 41:23;43:24;44:2,4;46:15,19;
F		G	
facts (3) 63:7;71:1,9 factual (1) 67:24 Failure (1) 23:25 Fair (3) 10:11,24;37:2		general (2) 36:24;60:23	

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

47:10 HOA (6) 12:8;62:14,21;67:18,22; 68:3 hold (3) 36:2,3,4 homeowner (1) 69:19 Homeowners (4) 24:17,24;46:9;52:25 housed (1) 60:17 Houston (1) 7:17 HSBC (56) 11:1,9,14,17,20,20;13:22; 14:16;17:20;18:16;19:1;20:7, 12;24:22;26:24;29:24;33:9, 16,20;35:11;53:11,14;59:6, 14;61:1,5,9;62:10;63:15,20, 25;64:3,8,12,15,19,23;65:2,6, 9,14,16,19;66:1;67:3;68:11; 69:16,22;70:10,15,19,22;71:3, 13,17;72:9 HSBC000001 (1) 16:13 HSBC0000018 (1) 39:15 HSBC0000019 (1) 40:2 HSBC0000022 (1) 16:22 HSBC0000023 (1) 23:13 HSBC0000024 (1) 23:23 HSBC0000026 (1) 23:3 HSBC0000027 (1) 24:11 HSBC0000028 (2) 25:18;26:1 HSBC0000029 (2) 25:18;27:3 HSBC0000031 (1) 18:9 HSBC0000032 (2) 18:9;19:6 HSBC0000035 (1) 34:7 HSBC0000036 (1) 34:25 HSBC0000037 (1) 37:3 HSBC0000038 (1) 34:25 HSBC0000039 (1) 29:15	HSBC000004 (1) 16:13 HSBC0000040 (1) 29:15 HSBC000005 (1) 16:22 HSBC000007 (1) 38:7 HSBC's (10) 21:22;22:22;23:7;24:19; 26:4;29:22;62:3;67:24;71:7, 22 Hudson (1) 52:6	54:22 indicate (1) 70:6 indicated (1) 47:10 indicating (1) 51:5 industry (1) 7:11 information (27) 12:21;13:18;19:6,7;20:9; 30:11;31:2,2;33:5;42:7,23; 44:3;48:23;50:10;60:4,16; 63:6;64:20;69:13,16,22; 70:15;71:6,7,13,17,22 in-office (1) 9:15 inquiry (1) 48:21 inside (1) 51:13 inspection (2) 43:4,16 installment (1) 23:25 Instructions (1) 57:21 Instrument (2) 38:24;40:8 insurance (6) 33:23,25;44:8,10,11;52:21 insured (3) 54:22,23;59:23 insures (1) 54:21 interest (15) 17:20,24;24:1;38:11;42:21, 24;43:1;53:20;59:16,21; 60:21;61:6,11;66:4,5 internal (1) 66:14 into (6) 9:20;15:11;19:15,22,24; 29:9 inventory (2) 51:22;57:11 Investment (1) 69:13 investor (9) 36:3,6,15;45:13,20;46:1; 58:3,11;59:19 investors (2) 9:12,25 is' (1) 37:6 Items (4) 38:11,17,20,23	J January (1) 5:17 JD (1) 8:6 Joanna (1) 69:10 job (1) 9:11 jobs (1) 6:20 John (1) 50:10 judge (1) 5:7 July (5) 12:17,23;65:7,12;67:11 June (1) 7:9 K Katherine (2) 72:19,23 keep (4) 20:5;31:17;63:4;69:9 Kent (1) 7:8 kind (12) 6:15,20;8:20,21;9:11;10:7; 20:4;30:11,25;31:4;42:4,7 Klein (1) 7:17 knew (2) 70:16,22 known (1) 53:17 Koenig (8) 12:17;13:1;22:22;27:4; 32:15;33:17;65:16;69:24 L label (2) 51:14;57:15 lag (1) 36:17 language (1) 37:13 Las (1) 12:1 last (1) 51:10 Late (4) 38:12;44:5;47:1;62:13 later (2)
--	---	---	---

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

18:25;19:24 Law (4) 7:1,3,8;8:6 Lawyer's (2) 6:9,17 learning (1) 65:20 least (4) 21:18;48:2;68:25;72:3 left-hand (2) 22:9;46:21 legal (6) 37:1;39:4;53:21;71:11,15,20 lender (7) 17:15;38:20;40:3,6,13; 52:24;53:8 letter (6) 51:19,20,21,22;57:5,24 letters (1) 15:15 level (2) 51:22;57:10 licenses (1) 8:12 Lien (14) 21:13,20;22:14;24:17,24; 33:6;38:25;55:6;62:11,12,25; 65:11;66:15,22 liens (3) 62:7;67:4,18 listed (1) 59:19 litigated (3) 8:22;9:13,19 litigation (15) 6:2,4;8:15,17;9:17;15:16; 22:7;25:2,4;30:2;31:18,20,20; 61:22;69:14 LLC (4) 12:17;13:1;69:13,24 Loan (50) 5:19;8:18;9:10;11:23;13:5, 6:15;10:17;5:17,21;19:21; 21:3;24:5;25:11;30:3,18;31:6, 9:32;10:17,23;33:24;34:3; 36:20;41:7,18;44:10,11;53:1, 9,13,15,18,20;54:2,9,10;57:2, 7;58:4,18;59:8,16,21,23; 60:13;61:4,68:25;69:2;72:9 loans (5) 9:2;53:15,25;54:12;60:24 located (3) 12:1;20:5;52:25 log (3) 15:17;25:12;62:16 logs (2) 25:13;33:15	long (2) 5:16;13:9 look (17) 11:4;18:7;19:5;20:2;22:12; 23:1;32:23;38:3;40:18;46:4; 47:13;49:3;50:15,21;58:3,9; 60:6 looked (4) 9:20;46:8;59:5;63:16 looking (5) 12:22;29:1;35:21;36:12; 42:19 looks (12) 27:25;28:22;40:23;43:24; 44:17;45:1,8,25;46:14;51:13; 54:14;55:21 loss (8) 31:10;32:1,3;36:1,14; 54:23;62:13;63:3 lot (1) 12:19 LPS (5) 49:5,11,15,20;50:8	50:15,16;55:16;57:8;63:22; 64:4,9 match (3) 28:10;30:25;31:2 matches (3) 30:15;42:9;43:22 May (6) 6:13;7:9;10:9;13:1;40:4; 48:2 maybe (4) 36:9,16;37:18;57:16 mean (7) 15:13;17:8;18:3;43:13; 45:19;51:14;52:4 means (5) 22:10;44:16;45:5;47:4;57:1 mediations (1) 9:13 memorialized (1) 18:1 mention (2) 62:6;66:14 mentioned (15) 9:24;14:19;15:19;18:18; 19:9;27:8;29:1;39:7;62:14; 63:3;66:21;68:10;70:2,9,19 mentions (1) 23:25 Michael (1) 69:10 might (1) 60:11 mind (2) 60:12;68:7 mit (1) 36:14 mitigation (6) 31:10;32:1,3;36:1;62:13; 63:3 MLS (3) 54:4,8;59:6 modification (2) 32:5,10 money (2) 45:16,19 More (3) 10:5;65:23;72:7 Morgan (3) 17:16;18:16;57:24 morning (1) 13:13 mortgage (18) 7:11;11:18;17:6;19:12; 27:8,15;28:6,14;35:22,22; 44:10,11;54:9,10,23;55:6; 58:18;60:13 mortgagor (1) 50:2	move (1) 38:4 moved (3) 45:16,19,24 much (5) 8:14;9:23;47:20;53:19; 68:25
N			
NA (4) 11:2,10,18;18:16 name (8) 11:20;15:20;17:25;19:17, 19,20;58:8;66:20 narrowed (1) 12:19 NA's (1) 11:14 National (12) 26:8,12,16,22;27:4,14; 28:10;32:15;34:14,19;49:22; 55:24 necessity (1) 37:1 need (3) 5:10,11;9:20 needed (1) 32:20 needs (3) 31:6;37:18,19 negative (1) 41:10 Nevada (3) 9:2;12:2;26:14 newspaper (1) 64:21 next (12) 41:16;43:23;46:14;48:1; 51:17;52:9,18;55:11;56:23; 57:5,20,23 night (1) 13:11 normal (1) 10:22 North (1) 28:8 note (12) 16:18;17:9,12;38:21,22; 47:1;52:10,13;57:7;61:13,16; 66:24 notes (4) 28:16,20;66:18;67:1 Notice (41) 11:1,9,24;21:13,20;22:14; 23:18;24:16,23;26:2,17;27:4, 9;28:17;29:2,3,6,7;32:14,21; 33:7;34:20;35:6,7,7;36:17,17;			

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

40:11;63:16,21;64:1,4,9,13, 15,20;66:19,22,23;70:20,23 notices (3) 36:19;37:14;70:19 noticing (2) 67:6;70:16 notified (1) 13:11 November (6) 5:25;24:2,5,8;46:22;57:23 Number (3) 57:2,7;58:11 numbered (1) 27:20	27:20 OneWest (9) 5:23;6:4,6;7:12;8:16,23; 9:1,5;49:20 only (4) 22:4;37:20;42:14,14 onto (1) 30:12 oOo- (1) 72:17 opened (1) 50:7 oppressive (1) 71:19 orally (1) 64:25 order (2) 21:11;55:14 original (6) 30:25;51:22;52:2,3,10,18 originally (1) 64:24 originated (5) 17:17;19:21,23;53:1,9 originating (3) 17:15;52:24;53:8 origination (7) 30:22;53:6;56:4,7,11; 59:12;68:22 Ortwerth (2) 72:19,23 others (1) 70:5 otherwise (2) 12:12;55:7 out (11) 20:6,7,9;32:9;45:15;52:7; 55:14;58:19;62:20;66:8;69:6 outside (4) 8:19;25:1,4;51:10 over (7) 10:9;25:7,11;28:14;31:5; 38:24;45:5 owed (1) 71:5 own (1) 69:17 owned (1) 70:13 owner (1) 54:22	42:2,3,19,20,23,25;43:15,24; 46:14,15;48:1,16;51:5,7,10, 10,13,17;52:9;54:20;55:2,10, 10,11,12,12,13,17;56:23; 57:20,23 pages (3) 40:24;41:19;51:4 paid (4) 38:22;46:6;53:19,24 Palm (1) 9:9 paragraph (8) 23:24;37:5;38:10;40:1,7; 42:8,10,15 Parcel (1) 12:2 part (12) 6:25;7:8;8:23;16:4;25:2; 30:1;33:1,2;41:14,15,15; 53:15 participate (1) 65:10 particular (4) 15:20;22:19;53:12;58:8 parts (1) 9:11 passed (1) 8:13 past (1) 51:21 Patricia (1) 52:6 pay (9) 23:25;38:16,16,20;40:3,4, 12,13,14 paying (2) 44:9;66:4 Payment (6) 38:10,22;41:23;46:15,18; 47:9 payments (9) 24:4,6;33:9;38:21;40:15; 44:6,7;47:6,10 pending (4) 5:12;31:9,18;68:2 people (6) 20:6;30:6,7;60:16;66:8; 69:10 percent (1) 69:3 period (3) 35:24;67:11,14 Periodic (1) 38:21 person (3) 14:16;20:17,18 personally (1) 60:15	Phoenix (1) 28:9 place (1) 35:8 places (1) 64:16 plaintiff (1) 66:2 Planned (3) 39:20,21;40:10 platform (1) 49:16 pm (1) 72:20 PMI (1) 44:9 point (2) 20:17;34:15 policies (4) 67:3,7,10,13 policy (7) 52:22;54:15,18,21;61:17, 20,22 pool (8) 45:20;53:15,18,24;54:3,12; 60:25;69:13 pool/pool (1) 45:13 pooled (1) 60:25 pooling (7) 17:22;19:10;20:3;54:8,11; 59:1;60:7 pools (1) 46:2 portion (1) 39:17 position (3) 5:18;6:1,14 positions (2) 5:20;6:3 possession (2) 30:20;37:7 possible (2) 59:8,10 posted (6) 64:1,5,13,16;66:19,22 postponed (2) 36:12;64:25 potentially (1) 32:5 power (1) 11:22 practices (1) 67:3 predated (1) 69:14 preliminary (1)
O			
oath (2) 5:5,5 Objection (13) 17:7;19:25;20:15;26:19; 27:6;34:21;39:4;53:21;65:22; 71:11,15,20;72:1 obtained (2) 24:23;29:24 obviously (1) 30:8 occupied (1) 66:10 October (4) 26:10;56:21;64:24;65:3 Ocwen (34) 5:16,20,22;7:11;9:7,12,24; 11:15;14:6;16:3;20:4,23,25; 21:2,5;25:7;28:13;31:5;32:4, 17,19,23;33:16;34:1;41:20; 42:14;44:2,7;47:7,23;48:8; 52:5;56:16;62:13 Ocwen's (6) 14:22;15:19;22:2;46:18; 67:10,13 off (2) 55:7;58:23 office (3) 9:4,4;22:25 Offices (1) 7:8 Ok (1) 50:10 one (38) 5:7;6:21;9:11;10:22;11:17; 19:4,4,23;22:17,19;26:17; 27:1,31;15;36:11;37:2;42:14; 43:24;44:16;45:1,20;53:23; 54:5;55:24;57:13;58:18;60:9; 63:18;64:4,6;65:23;66:18; 68:18,19,19,20,20;72:2,7 ones (1)			
	P		
	Page (48) 11:24;14:11,12;19:5;23:23; 25:25;27:2,25;28:2,4;37:2; 38:6;39:14;40:1;41:14,15,16;		

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

56:2 prep (1) 13:8 preparation (4) 13:15,22;14:1;67:20 prepare (1) 13:4 preparing (3) 9:16;13:9,12 Prepayment (1) 38:11 prepping (1) 61:21 president (1) 6:16 pretty (2) 8:14;9:23 previous (6) 13:25;14:1,4;30:16;41:21; 47:24 previously (1) 70:13 price (3) 53:24;54:1;68:6 principal (4) 24:1;38:11;41:7;47:1 printed (3) 19:6;48:12,13 Printout (3) 47:15,19;48:5 prior (14) 13:6;15:9,10,14,18;16:7; 30:20;31:3,8;42:13;43:9,20, 21;49:13 priority (1) 38:24 Probably (2) 9:3;55:14 procedure (1) 31:4 procedures (5) 67:3,8,11,12,14 proceeding (1) 31:11 process (5) 30:3,5;31:4;32:13;33:2 produced (1) 13:7 production (1) 27:21 professional (1) 8:11 promissory (3) 17:12;61:13,16 properties (2) 69:20,24 property (38) 11:25;12:1,3,4;14:25;15:1;	16:19;17:3,10;21:21;22:5; 23:19;32:25;33:21;38:25; 41:4;43:2,3,4,5,16;48:5,21; 52:25;60:22;63:4;64:1,5,13; 65:17;66:5,8,17;67:4;68:7,11, 21;70:12 protect (3) 65:20;66:3,5 provide (2) 31:12;38:22 provided (1) 22:24 provision (1) 53:12 provisions (2) 53:9;62:6 PSA (3) 54:4,7;62:4 PSAs (1) 20:5 public (1) 64:16 publically (1) 23:8 publicly (1) 32:24 published (1) 64:21 PUD (2) 40:3;53:3 pull (1) 8:19 pulled (5) 22:4,6,24;23:8;24:19 pulling (1) 25:1 purchase (3) 18:1;53:15;68:6 purchased (8) 53:12,14,18,23;54:3;60:24, 25;70:12 purchaser (1) 69:19 purchasing (1) 69:24 pursuant (1) 38:17 put (8) 19:15,22,24;30:18;36:1,3,4; 48:2	<div></div> <div>R</div> <div></div> rate (1) 16:18 reached (2) 20:6,7 read (2) 45:8;65:24 ready (3) 50:22,23,24 real (3) 11:25;12:4;37:22 really (8) 6:15;10:10,16;15:16;36:5; 39:24;57:25;68:4 REALServicing (4) 15:21;16:5,9;58:6 reason (16) 42:5;48:10;54:24;56:9,18; 63:12,15,20,25;64:3,8,12,15, 19,23;70:10 recall (1) 22:20 receipt (3) 28:17;33:6;70:20 receive (4) 26:6,7;29:5,9 received (13) 24:25;25:3,9;26:10;27:9; 28:13;29:10;32:15;47:23; 48:8;52:5,8;69:6 receiving (1) 52:3 recess (2) 38:1;58:24 recognize (16) 11:6;16:15,24;18:12;21:16; 22:16,17;23:5,15;24:13; 25:22;29:18;34:9;35:3;39:17; 49:8 record (5) 29:3;58:23;65:24;70:20,23 recorded (20) 15:1,23;18:4,5,18;21:2,8; 23:9;24:20;25:5,21,23;26:17; 32:24,25;34:20;35:11;36:8; 60:4;63:21 recording (1) 22:25 recordings (2) 22:5;25:1 records (32) 13:5,6;14:20,20;15:9,12; 16:3,7;20:11;21:23;22:2,22, 23;23:8;24:19;25:10;26:4; 27:24;28:13;29:22;32:11; 33:4,13;35:21;49:13;50:13;	69:16,17,22;71:8,8,23 recruiting (2) 6:25;7:2 rectangle (1) 50:2 refer (3) 11:19;13:1;50:6 reference (3) 25:12,13;33:14 referencing (1) 22:20 referred (1) 55:6 referring (2) 12:4,11 refers (2) 12:16;50:7 refi (1) 69:4 regarding (4) 37:7;61:22;62:13;72:9 r-e-g-p-m-t-b-a-l (1) 43:13 rejected (1) 61:25 relate (1) 17:10 related (6) 8:18;15:1;30:18;49:22; 53:17;57:17 relates (2) 23:20;66:16 relation (1) 33:5 relationship (5) 11:14;69:18,23;70:7,11 release (1) 56:14 Relevance (1) 53:22 relevant (1) 15:16 relied (1) 53:8 rely (1) 67:8 relying (1) 53:11 Remedies (1) 40:2 remember (1) 60:9 remind (1) 5:4 repeat (2) 64:2;65:23 report (2) 56:2,6

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

reporter (2) 65:25;72:13		38:24;40:8	several (1) 19:24
request (4) 27:21;36:6,15;56:13	S	seeing (1) 22:20	SFR (8) 69:13,17,23;70:7,9,10,15,22
requested (2) 56:24;59:5	sale (54) 12:16,20,22;26:2;27:4,9; 28:17;29:8,21,25;32:10,14, 21;33:10,18;35:6,7,8,14,17; 36:1,11,17,20;37:5,15;61:11; 62:14;63:7;64:9,13,16,20,24; 65:3,7,11,21;66:6,16,19,23; 67:5;68:6,8,17;70:16,17,24; 71:3,10,14,19,25	seems (1) 47:19	shall (5) 38:16,16,20;40:7;54:23
requesting (2) 56:16,18		sell (5) 23:18;24:16,24;26:18; 37:20	shared (1) 20:4
requires (1) 36:25		send (3) 56:16;62:18;66:8	sheet (1) 52:7
research (2) 8:19;9:19		sense (2) 55:11;59:11	shipped (1) 51:15
responses (1) 15:2	sales (2) 37:12;69:25	sent (5) 10:9;21:25;26:9;30:18; 48:25	shipping (3) 51:14;57:15,17
responsibilities (1) 8:23	same (15) 5:5;6:20;28:1,1;31:18;36:8; 42:7,16,18;46:2,18;51:17; 56:25;61:13;72:1	sentence (1) 38:15	short (1) 32:10
responsibility (1) 40:12		separate (1) 16:4	Shot (1) 49:5
restrictions (2) 55:5,18	Saxon (25) 14:5,9,22;23:19;25:9,11; 26:9,10;27:8,15;28:6,14;29:5; 32:4,14;33:16;41:23;46:14, 19;47:9,15,19;48:8;50:13; 65:19	separately (1) 48:13	show (13) 10:24;16:11,20;19:1;21:11; 23:11;24:9;25:16;27:11; 29:13;34:5,23;41:4
review (11) 11:11;14:13,20;15:18; 32:11,19;33:4;35:20;66:13; 69:12;72:8	Saxon's (6) 16:10;33:4;48:25;66:18; 67:1,12	September (4) 17:19;18:23;48:11,21	showing (3) 33:14;41:6;58:17
reviewed (15) 13:5,6,7;14:19,21,22,23,24, 25;15:2,19,22;16:1;53:7; 68:13	saying (1) 69:9	Sequoia (8) 11:18;19:12;58:18;59:2,9; 60:1,3,4	shown (1) 41:14
reviewing (1) 9:16	scan (1) 51:2	series (2) 30:14,24	shows (1) 58:3
RH (1) 50:10	scanned (3) 25:14;50:16;51:6	server (2) 20:4;30:12	sic (1) 11:19
Rider (4) 39:20,22;40:11;53:3	Schedule (7) 54:9,10;55:7,12,13,16; 60:13	Service (7) 6:9,17;11:22;17:23;21:13; 42:13;54:8	side (1) 48:20
right (34) 10:1;19:10;20:23;25:5; 27:9;29:11;31:7;32:7;34:16; 35:12;36:8,13;41:11,14; 43:10,12;45:1,3,12;46:12; 47:7;48:14,15,18;49:24;50:2; 51:6;52:10,22;57:18;58:1; 62:8,20;69:11	scheduled (2) 64:24;65:3	serviced (1) 21:2	sides (1) 11:5
right-hand (3) 46:25;48:11,20	school (2) 7:14,17	servicer (20) 13:25;14:1,4,6;15:14,18; 21:25;30:20;31:3,8;41:22; 42:14,15;43:9;47:24;49:13; 61:2;67:7,8;72:9	sign (2) 45:10,11
rights (1) 30:4	Screen (3) 49:5;58:8,11	servicers (6) 14:8;33:20;49:16;62:10; 65:2,9	signing (1) 9:17
Road (1) 9:8	screens (1) 49:19	servicer's (4) 13:6;15:9;16:7;30:16	similar (1) 49:19
rocket (1) 10:7	screenshot (5) 48:14,15;49:11,12;58:2	services (1) 21:21	sitting (1) 5:6
rules (1) 5:1	SEC (4) 60:4,6,10,14	servicing (32) 8:18;13:5;14:19,20;19:10; 20:3;25:7,11;26:8,12,16,23; 27:5,14;28:11,14,16,20;30:4; 31:5;32:16,23;34:1,14,19; 47:7;49:23;54:11;59:1;60:7; 62:2;67:1	situation (2) 43:19;66:12
run (2) 37:22;41:3	second (6) 23:24;28:2,4;37:2;38:15; 41:25	sessions (1) 13:8	six (2) 40:24;41:19
running (2) 6:20;33:3	seconds (1) 36:9	settlement (2) 8:20;69:7	skip (1) 38:19
	section (5) 38:15,17,19;42:16,17		solid (4) 62:14;66:6;68:8;72:4
	secured (4) 17:13;40:8,16;54:22		Solid (2) 21:13,20
	Security (2)		Somdahl (8) 32:7,9;69:10,10;70:3,6,6,11
			Sometime (3) 6:12;19:16;22:7
			somewhere (1) 41:19

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

<p>Sorry (4) 18:6;39:25;48:15;65:23</p> <p>sort (5) 31:10;32:5;44:19;62:20; 66:11</p> <p>Southern (5) 12:7,8,11;22:21;54:17</p> <p>speak (4) 13:14,21,25;71:4</p> <p>Special (1) 57:21</p> <p>specialist (3) 6:2,4;8:16</p> <p>specific (2) 10:19;67:21</p> <p>specifically (4) 39:13;49:14;53:16;67:10</p> <p>specifics (2) 53:17;63:5</p> <p>specified (1) 12:12</p> <p>speculate (1) 53:2</p> <p>Speculation (7) 19:25;20:15;26:19;27:6; 34:21;39:4;53:21</p> <p>Speculative (1) 65:22</p> <p>spend (1) 13:9</p> <p>spent (1) 13:12</p> <p>stack (1) 50:18</p> <p>stamp (2) 22:10;55:24</p> <p>stamped (8) 19:6;23:23;25:25;27:2; 37:3;38:6;39:15;40:1</p> <p>stands (1) 28:24</p> <p>Stanley (3) 17:16;18:16;57:24</p> <p>Start (3) 14:11;50:1,3</p> <p>started (3) 5:14;31:23;34:1</p> <p>starting (1) 52:9</p> <p>starts (1) 41:23</p> <p>state (4) 9:4;36:25;37:17,17</p> <p>statement (1) 69:8</p> <p>states (1) 35:14</p> <p>status (1)</p>	<p>31:20</p> <p>still (2) 24:7;54:14</p> <p>store (2) 16:3,6</p> <p>Street (1) 28:9</p> <p>stuff (3) 8:22;9:14,15</p> <p>subordinated (1) 55:7</p> <p>substituted (1) 34:13</p> <p>Substitution (2) 34:12,18</p> <p>suggest (2) 69:17,23</p> <p>suggests (1) 71:9</p> <p>Suite (2) 9:9;28:9</p> <p>sum (1) 38:22</p> <p>summary (1) 48:6</p> <p>supports (2) 71:18,23</p> <p>supposed (3) 31:8;42:12;43:20</p> <p>sure (15) 6:13;9:3;15:25;19:3;28:25; 29:5,11;30:14;31:1;37:23; 54:5;62:6;66:5,9;67:18</p> <p>surrounding (4) 63:7;71:2,10,24</p> <p>sustain (1) 54:24</p> <p>system (25) 14:23;15:19,23;16:1,2,4; 20:4;26:11;29:9;30:9,11,12, 13,16,19;31:1;41:4;46:19; 47:15,19;48:25;49:2;58:17; 59:20;60:18</p>	<p>30:6,6</p> <p>tells (1) 29:8</p> <p>testified (1) 10:3</p> <p>testify (3) 8:24;10:11;14:17</p> <p>testifying (2) 11:15;13:20</p> <p>Texas (4) 7:23;8:1,13;9:6</p> <p>third (3) 44:14,20,20</p> <p>though (1) 5:7</p> <p>thought (1) 70:6</p> <p>three (2) 45:10;64:16</p> <p>Thursday (2) 13:11;46:22</p> <p>times (1) 63:2</p> <p>title (15) 6:15,23;33:3;37:7;52:21; 54:15,17;55:24;56:2,6;57:21, 21;61:17,20,22</p> <p>titled (2) 40:24;46:14</p> <p>today (7) 5:5,7;11:12,16;12:3;13:20; 14:14</p> <p>together (6) 30:6,10;48:2,2;50:19;60:25</p> <p>took (4) 25:7,11;28:13;65:19</p> <p>top (5) 41:15;48:14,15;49:24;50:2</p> <p>topics (3) 12:19;14:11,14</p> <p>total (2) 44:21;45:6</p> <p>transaction (8) 14:21,22;15:17;33:13; 43:24;44:2,4;60:20</p> <p>transactions (1) 47:3</p> <p>transfer (4) 19:1;31:15;45:15,15</p> <p>transferred (3) 32:16;45:20,22</p> <p>translate (1) 30:7</p> <p>translation (2) 30:11,12</p> <p>trial (2) 8:24;10:1</p> <p>trials (2)</p>	<p>9:13;10:3</p> <p>tried (1) 61:21</p> <p>Trust (44) 11:18,19,21;17:2,10,13,25; 18:15,17;19:10,12,12,16,17, 22,24;23:20;26:18;35:8;36:4; 38:5;39:23;40:16;52:19,21; 53:14,19;55:22;57:8;58:18, 20,21;60:4,17,21,23,25;61:7, 11,16;62:3;65:20;66:4;67:25</p> <p>Trustee (11) 11:18,21;18:16;26:15; 34:12,13,19;59:14;61:1,2; 66:21</p> <p>trustees (1) 49:18</p> <p>Trustee's (16) 26:2;28:17;29:8,21,25; 32:14;35:6,7;36:19;37:15; 64:9,13,16,20;66:19,23</p> <p>trusts (2) 19:18;60:1</p> <p>try (2) 36:4;66:11</p> <p>trying (6) 17:18;21:10;35:22;45:16; 55:2;58:19</p> <p>turn (1) 39:14</p> <p>twice (2) 42:5,6</p> <p>two (5) 6:20;9:11;17:4;43:6;69:10</p> <p>type (2) 42:22;44:3</p> <p>types (4) 14:20;15:8;16:3;36:23</p> <p>typical (1) 10:21</p>
	T		U
	<p>talk (6) 12:3,10;30:7,10;62:13,20</p> <p>talked (2) 32:4,12</p> <p>talking (4) 32:6;35:25;48:16;63:3</p> <p>tax (6) 44:8;45:2,6,12;46:5;66:6</p> <p>taxes (7) 33:23,25;38:23;39:7;46:6; 48:6;66:4</p> <p>technical (2)</p>		<p>unapplied (1) 47:2</p> <p>under (8) 5:5;24:16,24;26:18;35:8; 38:21;40:6;55:6</p> <p>underneath (1) 50:2</p> <p>unfairness (1) 71:24</p> <p>uniform (1) 38:7</p> <p>Unit (3) 39:20,22;40:10</p> <p>University (6) 7:1,3,23;8:1,6,9</p>

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

unless (4) 12:12;21:24;31:16;33:1	68:3;71:4		45:2
up (12) 13:12;17:5;22:9;30:15,25; 31:2;42:9;43:22;50:7;53:25; 58:9;66:11	waive (1) 44:15	Y	2:51 (1) 72:20
uploaded (1) 30:12	warranty (1) 37:7	year (2) 8:8;19:20	2001 (2) 7:19,25
Upon (2) 29:21,25	Waste (2) 21:13,20	years (1) 19:24	2003 (1) 11:18
upper (2) 22:9;46:25	way (7) 26:6;43:12;44:14;48:3; 52:13;63:18;64:6	yesterday (2) 13:12,12	2004 (5) 7:25;17:19;18:2,23;57:23
USA (6) 11:2,10,14,18;13:22;19:1	website (3) 60:6,10,14	1	2004-10 (6) 58:18;59:2,9;60:1,3,10
use (2) 49:16,17	week (3) 10:6,8,21	1 (13) 10:25;11:2;14:11;24:2,5,8; 38:10;41:6;46:15;54:24;55:3, 11;69:13	2007 (4) 17:24;19:16,18,18
used (2) 46:19;49:20	Wells (3) 57:2,3;59:25	1/12/2015 (1) 45:25	2007-3 (5) 19:13;58:20;60:1,4,11
using (1) 31:15	weren't (4) 15:16;22:23;24:7;46:12	1/3/2011 (1) 50:3	2008 (1) 7:9
usually (8) 10:12;19:19;31:15;37:14, 16;39:12;60:17,17	West (1) 9:9	10 (5) 25:17,19;27:1;28:2;64:10	2009 (7) 6:23;7:4,9;8:10;24:2,5,8
V	WFLN (1) 57:1	100 (4) 9:9;10:5,9;69:3	2010 (6) 7:4;34:19;47:3;48:12,18,21
Vague (2) 17:7;65:22	What's (9) 5:18;9:7;42:3,6,22;44:3; 49:3;50:15;60:20	11 (8) 12:17,23;27:12,16;28:1,4; 65:7,12	2011 (6) 6:12,13,24;25:5;64:24;65:4
valuation (2) 43:5;68:21	Whenever (2) 12:3,10	11/SPL1 (1) 22:10	2012 (23) 5:25;6:12;12:17,23;14:7,9; 15:11;18:4,5,19;34:16;35:15; 46:23;56:21;57:13;62:13,22; 65:7,12;67:11,11;68:18,19
valuations (1) 14:25	Whereupon (4) 38:1;58:24;65:24;72:18	11th (1) 26:10	2013 (1) 5:25
value (2) 68:7,10	whole (3) 8:14;11:20;53:24	12 (2) 29:14,16	2014 (1) 5:17
vault (4) 16:6,8,8,10	whose (1) 28:8	13 (3) 34:6,7;44:17	2016 (1) 41:7
Vegas (1) 12:1	within (2) 41:19;52:25	14 (2) 34:24;35:1	22 (2) 48:11,21
vendor (1) 49:23	without (1) 37:6	15 (2) 40:19,21	229- (2) 68:20;72:3
vendors (2) 31:16;49:17	WITNESS (1) 44:25	16 (4) 17:19;47:14,16;48:16	230- (3) 68:7,20;72:4
verifications (1) 9:18	Witter (3) 17:16;18:16;57:25	1661 (1) 9:8	230,000 (1) 68:11
verified (1) 52:4	work (6) 9:1;10:14,17,18,21;66:10	16th (1) 28:8	24 (1) 18:23
version (2) 25:23,24	worked (3) 7:8;9:1,5	17 (3) 46:15;49:4,5	26 (3) 35:15;64:24;65:3
versus (1) 30:25	working (2) 10:22;20:19	176-36-417-040 (1) 12:2	3
vice (1) 6:16	Worthington (1) 9:8	18 (3) 50:15,17;54:14	3 (19) 14:11;16:21,23;17:4;23:21; 35:9;38:3,17,19;39:14;42:2, 20,20;45:9;55:10,13,17;57:8, 23
Violation (1) 22:14	W-o-r-t-h-i-n-g-t-o-n (1) 9:8	2	300 (1) 28:9
W	written (1) 20:21	2 (9) 11:24;16:12,14;17:4,12; 42:19;55:3,11;57:8	30b6 (2) 11:1,9
waiting (2)	wrong (1) 50:20	2/12/13 (1)	
	wrote (2) 20:17;50:9		

3s (1) 46:5			
4			
4 (5) 18:8,10;36:7;42:23;55:12			
5			
5 (4) 21:12,14;42:25;45:9 575.65 (1) 45:8 5s (1) 46:4			
6			
6 (4) 14:12;22:13,15;43:15 6,200 (2) 68:8;72:4 6023 (1) 12:1			
7			
7 (3) 23:2,3;63:17 7/26 (1) 50:10 7/29/15 (1) 44:17 7720 (1) 28:8			
8			
8 (4) 23:12,13;26:18;46:22 85020 (1) 28:9 875 (2) 44:18,21 89141 (1) 12:2			
9			
9 (6) 24:10,11;29:2;48:18;63:22; 64:4			

EXHIBIT H-6

Kovalic Deposition Transcript

In The Matter Of:

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

*Keith Kovalic
August 2, 2016*



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.

Page 1		Page 3	
1	UNITED STATES DISTRICT COURT	1	I N D E X
2	DISTRICT OF NEVADA	2	
3	DEUTSCHE BANK NATIONAL TRUST)	3	WITNESS PAGE
4	COMPANY, AS TRUSTEE FOR THE)	4	KEITH KOVALIC
5	BENEFIT OF THE HARBORVIEW 2004-8)	5	Examination by Ms. Ebron 5, 76, 79, ##
6	TRUST FUND,)	6	Examination by Mr. Jung 71, 77, 80, ##
7	Plaintiff,)	7	
8	vs.) Case No. 2:16-cv-	8	E X H I B I T S
9	SFR INVESTMENTS POOL 1, LLC, a) 00470-APG-CWH	9	NUMBER DESCRIPTION PAGE
10	Nevada limited liability)	10	Exhibit 1 Deposition Transcript of Keith Kovalic, December 15, 2015, Nationstar Mortgage v. Tierra De Las Palmas OA 6
11	company; CENTENNIAL POINT)	11	Exhibit 2 Notice of 30(b)(6) Deposition of Deutsche Bank National Trust Company, as Trustee for the Benefit of the Harborview 2004-9 Trust Fund 6
12	COMMUNITY ASSOCIATION, INC., a)	12	Exhibit 3 Declaration of Covenants, Conditions and Restrictions for Centennial Point, a Planned Community 10
13	Nevada non-profit corporation,)	13	Exhibit 4 Grant, Bargain and Sale Deed 12
14	Defendants.)	14	Exhibit 5 Deed of Trust 15
15	SFR INVESTMENTS POOL 1, LLC,)	15	Exhibit 6 Declaration of Homestead 22
16	Counter/Cross-Claimant,)	16	Exhibit 7 Notice of Default/Election to Sell under Deed of Trust 22
17	vs.)	17	Exhibit 8 Deed of Trust 23
18	DEUTSCHE BANK NATIONAL TRUST)	18	Exhibit 9 Pooling and Servicing Agreement 28
19	COMPANY, AS TRUSTEE FOR THE)	19	Exhibit 10 Corporation Assignment of Deed of Trust Nevada 34
20	BENEFIT OF THE HARBORVIEW 2004-8)	20	Exhibit 11 Substitution of Trustee Nevada 36
21	TRUST FUND; NATIONSTAR MORTGAGE,)		
22	LLC, a Delaware limited)		
23	liability company; MARK KITCHEN,)		
24	an individual; and NICOLE)		
25	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		Page 4	
1	Appearances:	1	E X H I B I T S (cont'd)
2	For the Plaintiff:	2	NUMBER DESCRIPTION PAGE
3	ROCK K. JUNG, ESQ.	3	Exhibit 12 Rescission of Election to Declare Default Nevada 38
4	Wright Finlay & Zak	4	Exhibit 13 Notice of Delinquent Assessment Lien 41
5	7785 West Sahara Avenue	5	Exhibit 14 Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien 44
6	Suite 200	6	Exhibit 15 Notice of Lien 48
7	Las Vegas, Nevada 89117	7	Exhibit 16 Notice of Trustee's Sale 49
8	(702) 475-7964	8	Exhibit 17 Substitution of Trustee 56
9	For the Defendant:	9	Exhibit 18 Notice of Violation (Lien) 56
10	DIANA CLINE EBRON, ESQ.	10	Exhibit 19 Trustee's Deed upon Sale 58
11	Kim Gilbert Ebron	11	Exhibit 20 Substitution of Trustee 60
12	7625 Dean Martin Drive	12	Exhibit 21 Assignment of Deed of Trust 60
13	Suite 110	13	Exhibit 22 Request for Notice Pursuant to NRS 116.31168 65
14	Las Vegas, Nevada 89139	14	Exhibit 23 Notice of Lis Pendens 66
15	(702) 485-3300	15	Exhibit 24 Title Insurance Policy 66
16		16	Exhibit 25 Chain of Letters from Miles, Bauer, Bergstrom & Winters 67
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	

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

Page 13

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

Page 14

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**

Page 15

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**

Page 16

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 --

Page 17	Page 19
<p>1 BY MS. EBRON: 2 Q. Do you know what the identification number 3 is used for? 4 A. As I've never been an employee of MERS, I 5 don't know everything that it's used for. But on a 6 surface level, it's essentially their loan number, 7 their record name for the loan -- or for this Deed of 8 Trust rather. 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 MR. JUNG: Objection. Form. And it calls 15 for speculation. 16 THE WITNESS: I can't -- I don't know. 17 BY MS. EBRON: 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 A. Yes, it does. 22 Q. -- page 3 of 16 and looking on page 6 of 16, 23 which is Bates-stamped SFR 10. 24 A. And your question was does it allow the 25 lender to create an escrow account?</p>	<p>1 THE WITNESS: I don't. Not that I recall. 2 BY MS. EBRON: 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 MR. JUNG: Objection. Form. Calls for 7 speculation. 8 THE WITNESS: 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 BY MS. EBRON: 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&Rs? 18 MR. JUNG: Objection. The document speaks 19 for itself. 20 THE WITNESS: I'm sorry. Could you read the 21 question back? 22 (Whereupon the pending question 23 was read by the reporter.) 24 THE WITNESS: The document says that the 25 borrower shall perform all the borrower's obligations</p>
Page 18	Page 20
<p>1 Q. Yes. 2 A. Yes, it does. 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 A. I'm sorry. Where are you looking at? 10 Q. Page 6 of 16, paragraph 4. Discharges and 11 liens. 12 MR. JUNG: It's the first sentence under 13 Section 4. 14 THE WITNESS: Yes, that is correct. 15 BY MS. EBRON: 16 Q. Do you know if there was an escrow set up 17 for taxes? 18 MR. JUNG: Objection. Calls for 19 speculation. 20 THE WITNESS: Yes, there was, I believe. 21 BY MS. EBRON: 22 Q. Do you know if there was an escrow set up 23 for homeowners association assessments? 24 MR. JUNG: 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 BY MS. EBRON: 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 MR. JUNG: Objection. The document speaks 14 for itself. 15 THE WITNESS: 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>

Page 21

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.**

Page 22

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?

Page 23

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

Page 24

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.

Page 25

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

Page 26

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?

Page 27

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 ///

Page 28

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.)

Page 29	Page 31
<p>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</p>	<p>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.</p>
Page 30	Page 32
<p>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</p>	<p>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,</p>

Page 33

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 ///

Page 34

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

Page 35

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

Page 36

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

Page 37

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**

Page 38

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

Page 39

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**

Page 40

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.

Page 41

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?

Page 42

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

Page 43

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?

Page 44

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.

Page 45

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?

Page 46

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.

Page 47

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?

Page 48

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 BY MS. EBRON: 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 BY MS. EBRON: 7 Q. Do you recognize this document? 8 A. Yes, I do. 9 Q. What is it? 10 A. A Notice of Trustee's Sale. 11 Q. Is this something that's contained in your 12 business records? 13 A. Yes, I believe so. 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 A. That is correct. 18 Q. Did you see any notes in the AS-400 report 19 about this Notice of Trustee's Sale? 20 A. I believe it was the same type of notes. 21 Once again, if they're in front of me, I could give 22 you a definite answer. 23 But between the Notice of Default and the 24 Notice of Sale, there were notes as to the file being 25 referred to outside counsel to tender the</p>	<p style="text-align: right;">Page 51</p> <p>1 be different. 2 BY MS. EBRON: 3 Q. Do you have any reason to believe that there 4 wasn't a delinquency? 5 MR. JUNG: Objection. Speculation. 6 THE WITNESS: 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 BY MS. EBRON: 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 MR. JUNG: Objection. Speculation. Form. 20 THE WITNESS: I don't know. 21 BY MS. EBRON: 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 A. Not necessarily.</p>
<p style="text-align: right;">Page 50</p> <p>1 super-priority amount of the lien. 2 Q. Do you know when that attempt happened? 3 A. If I had some documentation in front of me, 4 I could tell you an exact date. But I don't want to 5 speculate. It was prior to the sale date, the HOA 6 sale date. 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 MR. JUNG: Objection. Form. 12 THE WITNESS: 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 A. It's -- in my experience, I have never seen 3 where it says John Smith attended sale date at 4 blah-blah-blah address at blah-blah-blah time and the 5 date matches the date. And also the sale didn't even 6 happen on that date of May 18th, 2013. It happened 7 on September 11th, 2013. 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 MR. JUNG: Objection. Calls for 12 speculation. 13 THE WITNESS: I do not. 14 BY MS. EBRON: 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 A. Not that I recall seeing. 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 A. I do not. 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>

Page 53	Page 55
<p>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</p>	<p>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.</p>
Page 54	Page 56
<p>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</p>	<p>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?</p>

Page 57

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 ///

Page 58

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

Page 59

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

Page 60

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.)

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?

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

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.

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?

Page 69

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

Page 70

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 ///

Page 71

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

Page 72

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,

Page 73	Page 75
<p>1 Bergstrom & Winters did that in this situation?</p> <p>2 MS. EBRON: Form. Calls for speculation.</p> <p>3 THE WITNESS: 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 BY MR. JUNG:</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 MS. EBRON: Form. Calls for speculation.</p> <p>15 THE WITNESS: 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 BY MR. JUNG:</p> <p>23 Q. And going back to that first sentence. When</p> <p>24 was that demand for payoff dated?</p> <p>25 A. March 23rd, 2012.</p>	<p>1 THE WITNESS: Based on the information, yes,</p> <p>2 and based on my review in preparation.</p> <p>3 BY MR. JUNG:</p> <p>4 Q. And based on your experience working for</p> <p>5 Nationstar, Miles, Bauer, Bergstrom & 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 MS. EBRON: Calls for speculation. Form.</p> <p>10 THE WITNESS: Based on my experience, yes.</p> <p>11 BY MR. JUNG:</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 A. No.</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 A. Yes. Are you asking whether those questions</p> <p>24 were asked?</p> <p>25 Q. Yes.</p>
Page 74	Page 76
<p>1 Q. And when was the letter from Miles, Bauer</p> <p>2 Bergstrom & Winters with a copy of the tendered check</p> <p>3 dated?</p> <p>4 MS. EBRON: Calls for speculation.</p> <p>5 BY MR. JUNG:</p> <p>6 Q. If you look on the copy of the check --</p> <p>7 A. Right. You're just asking what date was the</p> <p>8 check dated?</p> <p>9 Q. Right.</p> <p>10 A. April 20th, 2012.</p> <p>11 Q. And is that prior to the HOA sale of 2013?</p> <p>12 A. Yes. The sale was in 2013.</p> <p>13 Q. Is that also prior to when Alessi & 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 A. According to Exhibit 17, that is dated</p> <p>18 January 10th, 2013, and notarized the same day. So,</p> <p>19 yes, it was prior to that.</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 & Winters to the HOA trustee, who was Asset</p> <p>23 Recovery Services at the time?</p> <p>24 MS. EBRON: Form. Calls for speculation.</p> <p>25 Calls for a legal conclusion.</p>	<p>1 A. Yes, they are.</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 A. That's correct.</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 MS. EBRON: Form.</p> <p>11 THE WITNESS: It's possible. Not with</p> <p>12 certainty, but it's possible.</p> <p>13 MR. JUNG: Thank you. No further questions.</p> <p>14</p> <p>15 FURTHER EXAMINATION</p> <p>16 BY MS. EBRON:</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 A. In my preparation for today's deposition, I</p> <p>21 didn't see anything that suggested that.</p> <p>22 Q. Right. Do you know if this check was</p> <p>23 accepted?</p> <p>24 A. The check was dated April 20th, 2012. And</p> <p>25 the last two pages of Exhibit 25 is another letter</p>

Page 77

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.

Page 78

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.

Page 79

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?

Page 80

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
3
4
5
6
7
8
9
10
11
12
13
14

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.

	actually (3) 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
\$	additional (5) 15:5;20:23;29:14;44:11; 76:8	amounts (2) 20:22;21:1	associated (3) 8:21;9:1,9
\$15,000 (2) 59:23;60:2	address (6) 17:10;47:24;48:3,3;52:4; 69:3	and/or (1) 42:14	association (35) 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
\$258,750 (1) 25:20	adds (1) 50:21	announcements (1) 58:25	
\$4,917.38 (1) 50:20	administrator (2) 30:19;64:17	answered (3) 27:22;46:9;48:19	assume (1) 59:15
\$558 (1) 73:5	advances (1) 50:19	apologize (3) 10:5;33:13,16	assumption (1) 59:16
\$57 (1) 42:13	advisory (2) 55:9,19	appear (1) 48:23	asterisks (1) 34:21
\$796.12 (2) 42:11,20	again (15) 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	appears (2) 35:22;73:4	attached (2) 33:4,9
/	against (3) 41:3;56:19;63:2	applicable (1) 29:9	attempt (5) 50:2;78:24;79:6,10;81:4
/// (5) 27:25;33:25;48:25;57:25; 70:25	agent (2) 27:14;42:15	applied (1) 44:9	attempted (2) 78:16;79:6
A	agents (1) 51:16	appropriate (1) 72:5	attempts (3) 45:20;70:11;79:24
abbreviations (1) 35:3	ago (1) 81:10	approximate (1) 10:6	attend (1) 58:18
ABC (1) 31:21	agree (3) 20:10,25;73:11	April (9) 24:20;39:6,22;42:4;54:15; 62:22;71:8;74:10;76:24	attended (3) 51:22;52:3;58:14
able (2) 12:4;46:2	agreement (8) 13:4;29:9,13,19;30:15; 32:23;37:12;64:7	arise (1) 13:8	attorney-in-fact (2) 68:11,13
above-referenced (1) 73:17	ahead (2) 23:24;77:9	around (2) 28:19;29:21	attorneys (1) 66:8
accept (2) 77:19;78:3	AJ (1) 68:4	articles (1) 20:3	attorneys/legal (1) 42:14
Acceptance (1) 30:16	Alessi (4) 7:14;53:21;60:1;74:13	AS-400 (8) 39:13,15,18;45:16,22;46:3; 49:18;70:1	attributable (1) 18:6
accepted (3) 76:23;77:4;78:11	a-l-i-c (1) 5:11	assessment (9) 41:17,18;42:9,18;44:24; 46:15,22;48:21;73:19	auction (3) 7:14;58:14,18
access (1) 30:23	allow (1) 17:24	assessments (8) 18:5,23;20:8,17;70:8;73:6; 78:4,10	audited (1) 15:1
accessible (1) 64:11	allows (2) 17:19;20:11	Asset (5) 71:13;73:6,13;74:14,22	August (2) 26:19,20
According (2) 59:13;74:17	America (34) 8:12;10:10,16;14:14;15:4; 24:19;27:19;39:5,11;45:2,9; 48:3;49:15;51:11;53:20; 54:10;55:3,7,13;58:10;61:10, 16,20;63:1,13,14;65:3;69:3; 71:10,12;72:12,21;79:13,17	assign (2) 33:20;63:14	authenticate (2) 69:12;72:4
account (5) 17:25;25:22,25;26:7,11	America's (6) 24:22;42:2;48:4;54:20; 55:1;77:6	assigned (3) 35:12;61:24;63:12	authenticity (1) 75:13
accurate (4) 8:4;13:15;17:18;58:13	amount (21) 25:19;42:8,11;50:1,8,14,16;	assigning (1) 61:16	authority (1) 63:14
acquire (1) 70:2		Assignment (14) 34:7;35:18;47:24;61:5,23; 62:2,6,11,24;63:9,11,16;65:2, 6	authorization (1) 25:22
acquired (1) 51:12		Assignments (1) 61:13	available (2) 13:16;38:1
across (2) 75:18;76:3		assigns (1)	aware (9) 10:20;47:17;54:13;58:16; 77:6,11,18;78:2;80:1
acting (5) 16:8,11,12;27:14;40:20			B
actual (1) 59:7			

back (16) 12:23;14:16,22;19:21; 22:16;23:13,21;26:21;27:20; 36:13;44:9;63:13;68:20; 71:18;73:23;80:16	62:19 beginning (1) 41:4 behalf (14) 7:15;8:13;13:2,5,9,11; 27:18;31:11,24;40:20;65:19; 69:24;72:20;75:7 beneficial (1) 36:1 beneficiary (5) 16:10,12,13;27:15;61:21 Benefit (2) 6:15;34:17 Bergstrom (7) 69:2;72:10,13;73:1;74:2, 22;75:5 besides (2) 10:16;61:13 best (1) 30:24 bid (2) 59:10;60:3 bidders (4) 58:22;59:19,22;75:21 blah-blah-blah (2) 52:4,4 blame (1) 13:25 blank (3) 21:17,19;25:3 Blue (3) 6:21;7:1;12:18 body (1) 42:16 Borrower (10) 18:4;19:17,25;20:7,12,16, 23,25;21:4;44:4 borrowers (10) 5:21;7:20;15:21;25:16; 42:22;43:12;46:8,16,23;53:7 borrower's (1) 19:25 bottom (1) 14:19 break (1) 36:10 breakdown (2) 42:19;50:20 brief (1) 36:12 Brokerage (1) 31:22 business (18) 12:21;13:17;22:14;23:6; 33:5;38:10;41:20,23;42:3; 49:12;51:24;58:9;69:8,13; 70:10;71:23;72:4;76:18 buyer (1)	59:14 bylaws (1) 20:5 C call (6) 37:9;39:19;43:5;54:11,17; 63:10 called (6) 5:3;8:4;9:3,17;53:21,23 calling (1) 38:1 Calls (31) 10:18;16:17;17:14;18:18, 24;19:6;30:9;32:5;34:25; 37:5;52:11;53:1,8,15;59:2,11; 63:4,18;71:16;72:15;73:2,14; 74:4,24,25;75:9;77:22;78:7, 17,18;80:10 came (2) 69:10;80:14 Can (13) 5:8;13:18;14:1;16:2;18:6; 29:18;36:9;37:14;39:23; 48:13;61:18;62:14;70:17 capacity (1) 65:23 Capital (2) 30:15,16 career (1) 35:25 Case (6) 5:19;7:20;24:14,17;31:3; 70:19 cases (4) 78:14,22;79:5,9 Cayman (1) 5:20 CC&Rs (1) 19:17 Centennial (5) 7:4,8;11:11,24;70:2 certain (1) 13:22 certainty (2) 39:23;76:12 Certificates (2) 8:6;29:11 chain (2) 63:22;69:1 chance (3) 6:16;8:8;29:7 change (2) 56:1;57:20 changed (1) 55:8 changes (2)	55:19,22 charges (2) 18:5;42:14 check (11) 57:14;70:8;73:3,4;74:2,6,8, 21;76:22,24;77:4 checks (1) 75:7 choose (2) 20:11,21 claims (1) 67:9 clarify (3) 23:22,25;24:11 clear (3) 8:3;24:4;25:3 close (1) 77:10 coincide (1) 27:9 collateral (2) 14:25;67:4 collection (1) 39:18 colluded (3) 59:22;60:1,6 collusions (1) 75:20 comments (2) 39:20,21 common (1) 78:4 commonly (1) 22:17 communications (1) 9:22 Community (2) 7:4,8 companies (1) 37:21 Company (7) 6:14;27:12;30:20;31:21; 34:17;36:21;67:16 complete (1) 32:22 comprised (1) 50:22 concluded (1) 81:22 conclusion (2) 74:25;78:18 conclusions (1) 72:7 conditions (3) 11:8,14,24 conducts (1) 13:4 confirm (1)
--	---	---	---

64:21 connection (1) 42:16 considered (1) 19:11 constituent (3) 20:1,2,8 contacting (1) 67:15 contained (14) 11:23;12:20;22:14;23:5; 41:19;45:1;48:4;49:11;53:13; 58:8;69:7;70:10;72:24;73:10 containing (1) 77:8 contains (2) 25:21;26:15 continues (1) 73:21 copies (1) 45:12 copy (17) 11:13;21:8,18;22:18;27:24; 29:8;32:22;33:2,4;44:13; 67:7;70:8;71:14;73:3;74:2,6; 81:15 corporation (3) 16:8;34:7;60:19 correctly (1) 18:8 correspondence (1) 54:1 costs (1) 50:18 counsel (12) 8:20;49:25;51:12;54:5,21; 58:12;69:9,14;71:22;72:25; 75:13,17 Countrywide (10) 25:2,15;27:18;30:6,21,22; 31:7,14,15,20 couple (3) 34:21;41:14;45:4 Court (3) 6:22;7:1;12:18 covenants (3) 11:8,14,23 create (3) 17:19,25;25:22 created (2) 30:4;37:25 creates (1) 20:4 cross-checked (1) 8:18 cure (1) 45:20 current (5)	8:19;13:8;17:13;43:16; 55:16 custodian (1) 30:20 customer (1) 54:19 customer-facing (1) 13:5 customers (1) 30:24 D Dallas (1) 28:6 date (21) 7:18;10:4,6;15:25;21:2,21; 24:14;27:6;28:21;33:9;44:8, 9;50:4,5,6;52:3,5,5,6;74:7; 81:8 dated (12) 15:24;26:19;27:15;29:19; 42:7;45:10;73:24;74:3,8,17; 76:24;77:1 dates (1) 23:23 day (3) 33:7;42:12;74:18 days (1) 21:22 deal (1) 72:17 dealing (1) 13:15 dealt (2) 78:15,21 debt (1) 20:23 December (4) 5:19;42:6;55:8;78:20 decision (1) 55:23 declaration (4) 11:14,23;20:3;22:12 declarations (1) 11:8 Declare (1) 38:20 Deed (48) 12:1,16;15:16,24;16:3,15; 17:7,11,18;19:12;21:7;23:4,8; 24:1,6;25:5,7,11,21,25;26:10, 15,24,24;27:15;30:7;31:13; 32:12,19,20;34:7,9;35:12; 36:25;40:22,25;41:4;44:5; 54:24;58:7;59:14;60:19;61:5, 6,16,21,24;75:8 Default (22)	23:14;26:23;27:5;38:21,22, 25;41:2;43:11,13;44:23; 45:13,17,19,25;46:21;47:3,7, 14,23;49:23;60:18;71:15 Default/Election (1) 23:3 defaulted (1) 54:19 Defendant (1) 5:3 Defendant's (25) 6:2,7;10:24;12:10;15:10; 22:3,22;23:18;28:24;34:1; 36:7;38:14;41:10;44:16;48:9; 49:4;56:5,12;58:1;60:11,24; 65:11;66:2,12;67:19 defines (2) 7:3;33:7 definite (1) 49:22 definition (1) 7:3 definitions (1) 6:20 delinquency (2) 27:6;51:4 delinquent (18) 41:17,18;42:9,18,22,23; 43:1,13;44:24;46:8,10,12,15, 22;48:20;51:7,9;80:25 demand (3) 73:11,17,24 demands (1) 77:20 depend (1) 80:13 deposition (20) 5:16,17,23;6:13,17,25;8:16, 18;13:12;14:9,17;15:3;29:8; 39:7;40:5;64:14;66:22;75:15; 76:20;81:22 depositions (2) 14:16;24:12 depositor (1) 30:16 designated (1) 8:12 details (1) 71:24 determine (1) 54:21 Deutsche (36) 6:14;8:1,11;11:13,25;12:6, 21,24,25;13:2,6,9,11,13;14:3, 7;30:19;34:16;36:23;40:20; 41:25;51:16;53:20;54:9,14; 57:11;58:14,18;61:24;62:4; 63:12,16,23;65:23;68:11,13	development (6) 19:4,11,13,16;20:17;26:16 development's (1) 20:1 Diana (5) 23:20;56:24;62:5;66:20; 68:15 Diane (1) 36:9 different (4) 30:23;41:16;51:1;80:22 digital (2) 21:8;27:24 directed (1) 65:22 directly (1) 67:16 disbursed (1) 20:22 disbursement (1) 21:2 Discharges (2) 18:4,10 discovery (1) 76:7 discussed (1) 5:17 discussion (1) 23:20 dispute (8) 42:8,21;46:6;47:13,19,22; 50:8;56:17 disputes (1) 72:14 document (63) 6:5,10;9:9;10:22;11:3;12:2, 8,13;14:24;15:8,13;17:10,12; 19:18,24;20:4,13;22:1,6,9,9, 20,25;23:16;24:8;28:22;29:2, 20;33:23;34:4,13;36:5,16; 38:12;39:8;41:8,13;43:20; 44:20;45:23;49:3,7;50:15; 56:3,8,10,15,20;57:23;58:4; 60:9,14,15,22;61:2;65:9,14, 25;66:5,10,15;67:17;69:5 documentation (4) 8:20;9:7;50:3;81:9 documents (37) 8:25;9:2,4;13:21,22,23; 14:1,3,7,13;15:5;20:2,2,8; 39:10,13;40:4,6;43:19;48:6, 15;63:2;67:23,25;68:22;69:7, 16,24;70:9;72:6,23,24;73:9; 75:13,14;80:8,81:2 dollar (1) 42:10 done (4) 57:16;64:1;72:14;81:13
---	---	--	---

doubt (3) 50:25;59:9;75:12 due (5) 20:7,17;44:10;78:9;81:1 dues (5) 19:10;20:7,11,17;26:12 duly (1) 5:4 During (2) 57:10;81:7 duty (1) 14:10	5:12 employee (3) 13:1,10;17:4 employer (1) 5:14 endorsement (3) 21:17,19;25:2 endorsements (1) 21:11 ensure (1) 33:16 entities (1) 64:19 entity (3) 35:11;40:16;64:20 envelopes (1) 45:13 equals (1) 42:20 equivalent (2) 20:4;73:5 error (1) 64:2 escrow (8) 17:19,25;18:16,22;25:22, 25:26;7:11 essentially (4) 17:6;30:2;32:7;69:1 estimate (1) 50:22 estimated (2) 50:18,24 e-tran (3) 81:14,18,19 even (4) 31:5,9,13;52:5 events (1) 59:7 evidence (2) 45:8;53:19 exact (7) 10:4;21:21;28:21;41:16; 45:5;46:1;50:4 exactly (3) 28:21;32:24;44:7 EXAMINATION (6) 5:6;71:1;76:15;77:15;79:3; 80:4 Exhibit (96) 6:1,2,6,7;10:23,24;12:9,10; 14:19;15:9,10;16:6;22:2,3,21, 22;23:9,17,18;24:9;25:8;26:1, 17,21,25;27:14;28:23,24; 32:25;33:24;34:1,10;36:6,7, 15;37:1;38:13,14,23;41:9,10; 43:10;44:6,16,19;45:4,4; 46:23;47:3,23,25;48:8,9,22; 49:3,4;50:13;56:4,5,11,12,24;	57:6,24;58:1;60:10,11,20,23, 24;61:7,14,21;62:6;65:10,11; 66:1,2,11,12,21;67:18,19; 68:20,23;71:18;72:2,24;73:4, 10,16;74:16,16,17;75:14; 76:25 existing (1) 12:5 exists (1) 15:2 Expect (1) 72:3 expected (1) 51:24 expenses (1) 50:18 experience (4) 52:2;75:4,10;78:8 explain (1) 37:14 explained (1) 55:17	25;26:10;28:11;33:17;39:8; 43:4,20;45:23;48:17;49:24; 52:15;61:12;63:11,12;64:7,8; 67:5;72:17;77:10;80:13 filed (1) 41:3 FileNet (7) 9:3,10;21:9;39:10,25;54:7; 69:16 files (4) 21:20;22:17;54:4;81:5 file's (1) 80:14 Financial (1) 30:17 find (8) 9:2;28:17,21;39:3;64:11; 67:12;72:18;80:25 fine (1) 81:20 finances (2) 18:5;56:18 Finlay (1) 65:16 firm (4) 65:16;69:3;72:9;75:6 first (12) 5:4;6:20;18:12;20:15; 27:13;36:2;42:12;56:22;69:5; 73:15,23;75:8 firsthand (1) 79:24 flagged (1) 81:6 Flamingo (1) 51:17 follows (2) 5:4;63:22 follow-up (2) 70:23;77:17 foreclosure (19) 7:12,13,17;10:12;21:24; 24:17,21;40:14,16,21,22,24, 25;41:4;42:17;51:23;54:15; 80:14,24 Form (23) 13:18;16:24;17:14;19:6; 29:17;31:17;37:13,25;38:3; 50:11;51:19;62:13;72:15; 73:2,14;74:24;75:9;76:10; 77:22;78:6,17;79:15;80:10 forms (1) 37:20 forth (1) 28:11 forward (2) 39:22;52:16 forwarded (2)
E			
earlier (4) 23:22;24:11;74:15;75:17 early (2) 42:6;45:11 easiest (1) 32:9 easily (2) 44:14;64:11 EBRON (110) 5:7,25;6:4,9;10:21;11:2,21; 12:7,12;14:5;15:12;16:21; 17:1,17;18:15,21;19:2,14; 20:9;21:5;22:5,24;23:11,13, 15,24;24:3;26:6;28:1,7;29:1, 23;30:13;32:1,10,18;33:22; 34:3,19;35:9,17;36:11,13,14; 37:8;38:16;40:17,19;41:12; 44:3,18;46:19;47:1,12;48:11; 49:1,6;51:2,15,21;52:14;53:4, 11,18;56:7,14;57:1,4,7,9; 58:3;59:5,17;60:13;61:1;62:7, 9,10,16;63:7,24;65:13;66:4, 14;67:1,8,21;68:17,19;70:21; 71:16,21;72:3,15;73:2,14; 74:4,24;75:9;76:10,16;77:13, 22;78:6,17;79:4,19;80:2,10; 81:13 efforts (1) 69:23 eighth (1) 30:4 either (1) 36:2 Election (6) 26:23;38:20;44:23;45:19; 46:21;47:7 Electronic (3) 16:3,6;34:15 else (6) 8:23;9:6,25;30:7;63:15,23 emphasis (1) 20:18 employed (1)			
		F	
		face (2) 22:9;72:6 facing (1) 31:24 fact (1) 50:24 factors (1) 80:13 fair (2) 17:9;19:15 fairly (1) 80:23 falls (1) 64:3 Fannie (8) 37:3,10,13,15,18,22,23;38:3 far (1) 42:25 Fargo (4) 30:17;31:20;35:6;64:15 FCLR (2) 35:5,7 February (3) 45:11;56:18;61:23 fees (6) 42:14,15;43:2,6;46:13; 51:10 few (1) 5:16 FHA (1) 38:7 file (26) 8:21;9:1,10;11:7;14:7,12,	

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

17:12;49:15 found (2) 22:17;80:15 four (1) 81:10 fourth (2) 29:20;73:21 frame (2) 29:15;80:16 Freddie (5) 37:15,18,23,24;38:4 front (7) 30:14;31:15,23;44:14;46:4; 49:21;50:3 front-facing (2) 13:4;54:18 Full (6) 15:19;21:16,19;32:8;73:20; 77:20 function (3) 31:24;33:20;54:18 functions (2) 13:4,5 Fund (6) 6:15;7:25;33:8;34:18,20; 35:19 funds (1) 32:2 further (7) 76:13,15;77:15;79:1,3; 80:4;81:12 furthest (1) 44:9	Gulley (1) 36:3	33:20 hundred (1) 63:21 husband (2) 15:22;25:18 hypothetical (2) 78:6;80:11	53:5,12,13;59:18;64:12; 67:13;69:22;75:1;76:4,8;77:3, 5 initial (1) 50:19 inquiry (1) 8:17 inspections (2) 57:16,17 instance (1) 14:19 instrument (5) 16:11;18:7;20:4,24;37:17 insurance (1) 66:18 insured (1) 38:7 intensive (1) 43:20 interest (11) 11:15;12:1;21:2,3;32:12; 36:1;37:3,10,24;38:4;42:14 interests (1) 54:24 interfacing (1) 32:3 internet (1) 29:5 interrogatories (2) 68:2,16 into (5) 21:20;29:15,25;32:8;64:25 introduced (2) 72:25;74:15 invalid (1) 63:10 investing (1) 31:1 Investments (2) 59:14;60:1 investor (6) 13:5;31:4,8,10,25;32:2 investors (1) 30:24 involve (1) 12:17 issue (2) 69:3;80:23 issued (1) 55:9 issues (1) 78:20
	H	I	
		half (1) 42:5 hand (1) 14:2 handle (1) 13:9 handling (2) 54:15;55:1 happen (1) 52:6 happened (7) 7:17;24:15,16,21;29:16; 50:2;52:6 Harborview (5) 6:15;7:25;8:5;29:10;34:18 hate (1) 14:16 heard (1) 72:9 heavy (1) 45:23 held (4) 7:14;9:4;24:17;81:8 helpful (1) 15:6 hereto (1) 33:9 highest (1) 60:3 hired (1) 53:20 history (7) 9:24;27:3,10;39:18;43:16, 22;44:14 HOA (20) 7:7;50:5;71:4,9,12;72:14; 73:12;74:11,14,22;75:7,19,20, 21;77:19;78:2,16,19;81:1,8 HOAs (2) 75:7;78:3 HOA's (1) 51:14 Home (1) 25:15 homeowner (2) 9:22;80:25 homeowners (15) 9:24;18:23;19:9;40:7,9,24; 43:2;46:12;51:10;69:4,20; 70:3;72:19;79:21,24 homestead (1) 22:12 honestly (1)	idea (1) 62:11 identification (27) 6:3,8;10:25;12:11;15:11; 16:19;17:2;22:4,23;23:19; 28:25;34:2;36:8;38:15;41:11; 44:17;48:10;49:5;56:6,13; 58:2;60:12,25;65:12;66:3,13; 67:20 identified (1) 81:6 identity (1) 59:19 imaged (1) 9:4 impositions (1) 18:5 improprieties (3) 75:19;76:9,18 Inc (5) 7:5,9;16:4;30:16,17 include (2) 17:11;39:13 included (3) 33:8;66:22;79:10 including (2) 19:3;75:19 Incomplete (2) 78:6;80:11 incorporate (1) 5:22 Incorporated (4) 15:20;16:7;25:15;34:16 incorporating (1) 5:18 incorporation (1) 20:3 increases (1) 42:12 incurred (1) 42:16 indicate (1) 75:18 industry (1) 37:20 information (23) 9:12;15:5;28:13,18;29:14; 33:21;40:5;50:7;52:9,19,23;
G			J
general (3) 9:21;55:11,12 ghost (1) 63:10 given (2) 13:8;42:19 gives (1) 50:13 goes (1) 66:21 governed (1) 19:9 Grant (1) 12:16 grass (1) 57:21 Great (1) 38:4 Greenwich (2) 30:15,16 guess (4) 14:6;32:9;41:1;61:18			January (3) 15:24;16:1;74:18 John (2)

31:21;52:3 joint (1) 25:18 July (1) 77:1 jumped (3) 40:2,2;57:17 JUNG (76) 10:18;11:19;13:18;16:17, 24:17;14:18;12,18,24;19:6, 18;20:13;23:20;26:3;27:22; 28:4;29:17;30:9;31:17;32:5, 15;34:13;25;35:13;36:9;37:5; 40:15;44:1;46:17,24;47:10; 48:19;50:11;51:5,19;52:11; 53:1,8,15;56:24;57:2,5,8; 59:2,11;62:5,8,13;63:4,18; 66:20,24;68:15;70:23;71:2, 17,25;72:8,22;73:8,22;74:5; 75:3,11;76:13;77:16,24; 78:13;79:1,15;80:5,18;81:11, 16,17,19	latter (1) 42:5 law (4) 65:16;69:2;72:9;75:6 lawsuit (1) 13:7 lead (1) 50:7 learn (1) 9:11 leave (1) 50:25 ledger (1) 73:20 legal (2) 74:25;78:17 legitimate (1) 45:7 lend (1) 32:4 lender (20) 15:18,19;16:9,12;17:19,25; 20:11,18,21,25;21:4,25;14; 30:6;31:9,14,16,19;32:3; 57:18,19 lender's (1) 16:9 Lending (3) 15:20;21:16,20 lent (1) 31:23 less (1) 77:19 letter (5) 70:6;74:1;76:25;77:8,8 letters (1) 69:1 level (1) 17:6 lien (18) 40:10;41:18;44:25;46:15, 22;48:18,21;50:1;51:14; 54:23;57:3;69:5,20;72:20; 78:11,20;79:21;81:1 lienholders (3) 47:9,16;75:8 liens (7) 18:4,11;41:17;48:23,24; 55:2;79:25 likely (1) 43:1 limited (1) 75:20 line (3) 24:2;27:13;64:3 list (1) 33:8 listed (9)	17:10;33:14;42:9;43:24; 50:8;53:21;54:12;64:16; 66:21 litigation (1) 13:9 LLC (6) 5:15;7:15;59:14;60:1,2; 61:11 LLP (1) 65:16 Loan (39) 8:5,5;10:3;13:16,23;15:23; 17:6,7;24:18,20,24;25:11; 26:8;28:15;29:10,10,14,25; 30:7,22;31:1,4,15,19,24;32:9; 33:7,11,11,19;37:4,24;38:5,7; 44:4;58:10;64:5,25;71:7 Loans (6) 25:15;31:5,7,8;33:8,14 loan's (1) 13:22 located (3) 6:21;12:17;54:4 location (2) 9:2;28:9 locks (1) 57:20 log (2) 39:20,21 Loll (1) 68:4 look (11) 7:16;9:11,13,14;28:17; 39:3;44:19;48:13;64:21; 67:12;74:6 looked (8) 9:2,19,21,24;26:10;38:23; 43:22;67:6 looking (17) 7:18;17:20,22;18:9;30:14; 32:24;33:10,15,16;36:15; 38:9;40:4,5,6;43:10;69:15; 80:17 loss (1) 68:7 lot (1) 81:9 LSAMS (4) 9:18,20;28:14;54:7 L-S-A-M-S (1) 9:18	mailed (6) 46:15,23;47:8,14,24;53:6 mails (1) 17:9 maintain (1) 14:7 maintaining (1) 57:11 majority (1) 31:5 management (1) 42:16 many (5) 21:13;33:14;45:24;78:14, 23 March (3) 45:11;71:15;73:25 mark (27) 5:25;6:6;7:21;10:23;12:9; 15:9,22;22:2,21;23:17;25:16; 28:23;33:24;36:6;38:13;41:9; 48:7;49:3;56:3,11;57:24;60:9, 22;65:9,25;66:10;67:17 marked (40) 6:3,8;10:25;12:11;15:11; 22:4,23;23:9,19;24:8;25:8; 26:1,25;28:25;34:2,10;36:8; 38:15;41:11;44:5,17;46:23; 47:3,23,24;48:10;49:5;56:6, 13;58:2,60:12,20,25;61:6,14, 21;65:12;66:3,13;67:20 master (3) 30:18;64:16,18 match (1) 65:7 matches (1) 52:5 may (9) 19:10,10;20:18,18,20; 51:18;52:6,16;76:8 maybe (1) 31:14 mean (16) 9:13;13:20;14:12;16:25; 29:21;30:3,11;31:1,22;32:25; 35:2;37:9,23;42:10,23;63:8 meaning (1) 54:9 means (5) 31:14;34:24;35:4,5,23 meant (1) 43:9 Medlocks (1) 5:20 Melva (3) 6:21;7:1;12:18 mental (1) 70:13
K			
KEITH (4) 5:2,10;13:19;23:21 K-e-i-t-h (1) 5:10 Khadija (1) 36:3 kind (1) 37:19 Kitchen (5) 7:21,21;15:22;25:16,17 Kleenex (1) 38:2 knowledge (15) 46:14,20;47:2,6,18,20; 52:19,23;53:5,12,23;58:21, 24;59:6;79:24 Koenig (4) 7:15;53:21;60:2;74:13 K-o-v (1) 5:11 KOVALIC (4) 5:2,10;71:3;77:17			
L			
language (2) 34:22;77:8 Las (2) 6:22;51:17 Last (5) 5:10;33:1;50:8;76:25;80:6 late (1) 42:13			
		M	
		Mac (4) 37:15,18,23;38:4 Mae (7) 37:3,10,13,15,18,22;38:3	

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

mention (2) 45:18;55:18		21;28:3;35:22,23;40:10; 69:19;70:13	18:6;54:20
mentioned (3) 27:2;67:1;72:11	N	notes (21) 9:21;39:13,16,18;40:1,9,13; 41:6;45:16,22,24;46:3;49:18, 20,24;52:15;57:22;70:1,12; 72:12;80:7	obtained (5) 11:15;12:1;51:12;66:19; 69:3
mentions (1) 27:5	NA (7) 27:12,14;30:18;36:22; 61:10,20;64:16	Notice (47) 6:13;8:18;14:9;21:3;23:3, 13;26:23;27:5;35:6,6;38:22, 25;41:2,17,18;42:9,17;43:11, 13;44:23,24;45:12,17,18,25; 46:15,21,22;47:3,7,14,23; 48:20;49:10,19,23,24;50:20; 52:20,24;53:6,13,22;54:12; 56:21;57:2;71:14	obtaining (1) 24:23
merged (1) 27:19	name (4) 5:8;17:7;30:3;35:25	noticed (1) 51:22	obviously (2) 35:2;43:18
MERS (8) 16:6,7,10,19;17:4,10;62:3,4	name's (1) 5:10	notices (4) 27:17;48:18,21;54:15	occurred (1) 56:19
might (3) 31:10;70:12,13	National (4) 6:14;30:19;34:17;60:18	notifies (1) 19:16	October (2) 29:19;62:19
Miles (10) 69:2;70:1,6;72:9,13,25; 74:1,21;75:5;77:1	Nationstar (41) 5:15;9:3,23,23;10:2,9,11; 12:24,25;13:1,3,10;14:1,2,11, 14,20;24:19,23;39:5;49:16; 58:10;61:11,17;62:19;64:4,8; 65:17,20,22;68:9,10;71:6; 75:5;79:6,14,17,20,23;80:8; 81:3	November (2) 42:6,12	Off (6) 23:11,12;29:4,5;36:11; 42:25
MIN (2) 16:16;17:12	Nationstar's (8) 8:19;9:15;13:17;28:6,10; 39:15,18;42:3	NRED (1) 55:9	offer (1) 30:25
mind (1) 55:25	nature (3) 13:21;27:17;57:22	NRED's (1) 55:19	office (1) 54:11
minimum (1) 54:23	necessarily (4) 30:25;31:22;51:25;65:7	Number (26) 5:19;6:22;7:3;16:14,20,23; 17:2,6,12;28:11;33:12,15; 46:1;50:13,21,25;51:17; 53:21;54:11;56:25;58:21; 62:6;66:21;71:18;72:24; 73:10	oftentimes (1) 39:15
missing (2) 14:22;15:1	need (2) 39:4;71:23	numbered (2) 30:5;33:1	ombudsman's (1) 54:11
Misstates (1) 35:13	neighborhood (1) 19:9	numbers (1) 33:19	onboard (1) 80:15
mistake (1) 63:17	Nevada (8) 6:22;34:8;36:20;38:21; 51:18;78:3,15;80:15	numerous (1) 57:17	onboarding (1) 81:7
mitigation (1) 68:8	new (1) 14:20		Once (11) 35:6,7,22;37:16;39:23; 44:13;45:22;49:21;51:11; 54:17;80:16
money (3) 31:15,23;78:11	newspaper (1) 53:14	O	one (22) 6:20;13:7;14:17;19:4; 21:14;24:14,15;25:17;26:1, 17;32:3;33:3,18;41:16;45:5; 58:13;61:13,13;72:18;77:17; 78:1;80:6
money's (1) 78:24	next (1) 63:22	Objection (43) 10:18;11:19;13:18;16:17, 24;17:14;18:18,24;19:6,18; 20:13;26:3;27:22;28:4;29:17; 30:9;31:17;32:5,15;34:13,25; 35:13;37:5;40:15;44:1;46:17, 24;47:10;48:19;50:11;51:5, 19;52:11;53:1,9,15;59:2,11; 62:13;63:4,18;66:20;79:15	ones (2) 69:7;79:6
month (2) 42:13,13	Nicole (3) 7:21;15:22;25:17	obligation (2) 20:20;50:17	ongoing (1) 76:7
monthly (1) 73:19	nine (4) 70:7;73:6;78:4,10	obligations (2) 19:17,25	only (4) 14:1,11;33:3;39:21
months (4) 24:23;70:7;73:6;78:10	NOD (1) 43:24	obtain (2)	onto (1) 73:21
months' (1) 78:4	nominee (2) 16:8,11		open (2) 39:8,25
more (3) 33:18;77:17;78:10	None (1) 79:5		opened (1) 69:17
Mortgage (16) 5:15;8:5,5;16:3,6;29:10,10; 31:21;33:7,8,12;34:15;37:20; 42:24;46:10;61:11	nor (1) 64:12		opening (1) 40:6
mortgages (1) 64:22	normally (3) 22:14,15;31:3		opinion (2) 55:9,19
most (3) 37:20;43:1;81:5	notarized (3) 15:25;26:20;74:18		opportunity (1) 23:22
mow (1) 57:20	note (14) 21:2,7,19;25:2,2,19;27:20,		orally (1) 52:10
much (3) 25:19;32:11,17			order (4)
multiple (6) 24:12;30:23;48:6,21;51:7; 80:13			

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

<p>30:24;54:22;64:13;81:3</p> <p>original (2) 27:21;28:2</p> <p>originals (1) 70:20</p> <p>originated (5) 13:22;15:23;31:2,19;37:18</p> <p>originating (5) 15:18,19;25:14;31:6,24</p> <p>origination (3) 28:20;32:8;67:15</p> <p>otherwise (1) 7:6</p> <p>out (11) 26:18;28:17;33:2;39:3; 40:2,2;57:17;67:13;71:12; 72:18;80:25</p> <p>outside (6) 46:11;49:25;51:8,12,12; 54:21</p> <p>over (2) 18:7;80:14</p> <p>owing (2) 42:11;44:10</p> <p>own (2) 14:12;31:8</p> <p>owners (3) 20:5,6;51:7</p>	<p>past (2) 75:6;80:8</p> <p>pay (16) 18:4;20:7,11,12,16,18,19, 21;32:17;60:2;70:11;79:6,7, 11,20,24</p> <p>payable (1) 21:3</p> <p>payment (13) 9:24;21:1,4;27:2,10;43:15, 22;44:9,14;51:13;72:20;77:7; 81:4</p> <p>payments (7) 43:23;44:2,4,7,8,11;69:23</p> <p>payoff (6) 70:2;73:11,17,24;77:20; 78:11</p> <p>pending (1) 19:22</p> <p>per (2) 23:20;42:13</p> <p>percent (3) 63:21;78:25;79:10</p> <p>perform (1) 19:25</p> <p>period (2) 55:12;57:10</p> <p>person (1) 8:11</p> <p>pertained (1) 8:21</p> <p>place (3) 13:25;63:1;71:4</p> <p>places (1) 52:25</p> <p>planned (7) 19:4,11,12,15;20:1,16; 26:16</p> <p>please (3) 5:8;70:24;81:17</p> <p>plus (2) 42:13,14</p> <p>pm (2) 51:18;81:23</p> <p>Point (13) 7:4,8;11:11,24,25;26:18; 46:5;63:22;64:2;70:3;71:18; 76:3,6</p> <p>policies (6) 54:20;55:4,7,15;77:7;80:21</p> <p>policy (5) 54:14;55:1;56:1;62:25; 66:18</p> <p>Pool (2) 59:14;60:1</p> <p>pooling (8) 13:3;29:9,13,18;30:14; 32:23;37:11;64:6</p>	<p>poorly (1) 58:17</p> <p>portion (2) 54:23;72:19</p> <p>possibility (2) 46:11;51:9</p> <p>possible (5) 14:13,15;76:7,11,12</p> <p>possibly (2) 42:6;48:21</p> <p>posted (3) 47:3;52:21,24</p> <p>postponed (2) 52:10,17</p> <p>practice (2) 77:18;78:2</p> <p>preparation (6) 13:12;15:3,6;42:17;75:2; 76:20</p> <p>prepare (2) 8:15;64:13</p> <p>prepared (3) 39:7;62:12,17</p> <p>presented (1) 75:13</p> <p>president (1) 68:7</p> <p>previous (2) 45:3;47:15</p> <p>previously (1) 55:3</p> <p>primary (1) 54:24</p> <p>printed (2) 29:4;33:2</p> <p>prior (12) 10:14;14:18;24:23;35:13; 50:5;74:11,13,19;75:14; 79:22;80:7;81:2</p> <p>priority (1) 18:7</p> <p>probably (5) 25:4;31:5;54:10;78:21,25</p> <p>procedure (4) 54:14;55:1,19;63:1</p> <p>procedures (5) 55:4,8,16;77:7,18</p> <p>proceed (1) 35:6</p> <p>process (2) 80:24;81:7</p> <p>product (1) 31:12</p> <p>production (2) 67:23,24</p> <p>Products (1) 30:17</p> <p>profile (1)</p>	<p>39:19</p> <p>promissory (5) 21:6,18;27:20,21;28:2</p> <p>promptly (1) 20:7</p> <p>properties (1) 78:14</p> <p>property (34) 5:20;6:20,21,24;7:1;11:16; 12:17;15:17;18:6;19:8,12; 25:12;36:1;40:14,16;41:3; 44:24;46:21;47:4,7,9;50:17; 51:8;52:21;56:19;57:12,15, 16,17;59:23;63:3;69:24; 73:18;81:1</p> <p>protect (1) 54:24</p> <p>provide (3) 32:2;73:18,19</p> <p>provided (11) 31:11;39:5;43:19;54:5; 58:11;69:9,14;70:3,8;73:12; 77:21</p> <p>provisions (2) 11:23;26:17</p> <p>public (3) 32:4;38:1;52:25</p> <p>publication (1) 50:19</p> <p>published (1) 53:14</p> <p>purchase (1) 59:23</p> <p>purchased (2) 30:8;59:15</p> <p>purpose (2) 16:14;19:3</p> <p>purposes (1) 6:25</p> <p>pursuant (1) 20:8</p> <p>put (2) 29:15,25</p>
P			Q
<p>page (23) 6:19;8:9,9;14:20;15:25; 16:5;17:22,22;18:3,10;19:5; 29:20,22,22;33:1,6,18;68:16; 69:17;70:4;73:16,20,21</p> <p>pages (3) 14:21;33:1;76:25</p> <p>paid (3) 32:11;43:6;59:10</p> <p>paired (1) 45:13</p> <p>paragraph (6) 17:11;18:3,10;19:16;20:10; 50:9</p> <p>Parcel (1) 6:22</p> <p>part (11) 14:25;28:15;35:11;41:22, 24;42:2;67:4,22;71:22;75:20; 80:6</p> <p>particular (8) 9:1,19;11:22;13:16;25:25; 26:4;28:12;37:24</p> <p>party (1) 40:23</p> <p>Pass-Through (2) 8:6;29:11</p>			<p>quick (4) 36:25;48:13;69:6;70:23</p> <p>quicker (1) 81:10</p> <p>quite (1) 5:16</p>
			R
			<p>rare (1) 31:7</p> <p>rate (2)</p>

21:3;42:13 rates (1) 30:25 rather (3) 17:8;26:1;33:13 reach (1) 71:12 read (3) 18:7;19:20;23 real (5) 6:21;44:23;46:21;47:7;69:6 reality (1) 65:7 really (2) 39:19;56:23 realm (2) 46:11;51:9 reason (14) 24:13;42:8;21;45:6;46:6; 47:13;22;51:3;56:17;59:9;21, 25;60:5;75:12 reasonable (1) 50:18 recall (21) 10:1,4;19:1;22:18;39:14, 14;40:2,13;41:7,15;44:7;45:5; 46:1;48:23;52:18;56:9;57:13, 19,21;66:25;78:9 receipt (2) 45:17;73:16 receive (1) 14:21 received (8) 39:11;45:2,9;49:15;58:9; 71:22;72:23;80:7 receiving (1) 71:14 recess (1) 36:12 Recision (2) 38:20;43:11 recognize (24) 6:10;11:3;12:13;15:13; 22:6,8;25;24:8;29:2;34:4; 36:15;38:17;41:13;44:20; 49:7;56:8,15;58:4;60:14; 61:2;65:14;66:5,15;68:22 recollection (2) 43:15,21 Reconstrust (4) 27:12,14;36:21,24 reconveyed (1) 25:8 record (19) 5:9;8:19;9:14,16;12:3,5,6; 17:7;23:11,12,21;28:11; 36:11;48:1;62:5;67:3,14; 71:3;74:20	recorded (7) 13:21;41:3;46:7;65:19; 66:7;71:14,15 recording (2) 42:17;63:2 records (22) 12:21;13:17;22:14;23:6; 33:5;38:10;39:4;41:20,23; 42:3;45:2;48:4;49:12;51:24; 58:9;69:8,13;70:10;71:23; 72:4;75:18;76:18 Recovery (5) 71:13;73:7,13;74:14,23 refer (4) 7:7;14:16;39:4;62:6 reference (6) 7:12,20;24:7;28:9;39:15; 56:22 referenced (2) 64:18;67:6 references (3) 37:12;39:17;40:7 referencing (2) 26:9;69:20 referred (1) 49:25 referring (1) 68:15 refers (1) 6:20 regarding (6) 9:22;55:4;57:18;66:24; 70:1;73:17 Registration (3) 16:4,6;34:16 regulations (1) 20:6 rejected (1) 77:9 relate (3) 34:9;38:22;70:10 related (1) 25:25 relates (2) 23:8;26:24 relation (1) 60:6 relationship (3) 12:23,25;16:2 relative (1) 22:15 relied (1) 11:25 rely (1) 12:4 relying (1) 14:4 remarks (1)	23:23 Remedies (1) 20:11 remember (1) 24:13 rephrase (4) 35:15;61:18;62:14;77:23 report (1) 49:18 reporter (3) 19:23;81:15,18 represent (1) 59:15 request (2) 14:22;81:9 requested (1) 81:2 requesting (1) 21:4 requests (2) 67:23,24 require (1) 19:10 rescinded (2) 39:1;43:14 response (2) 68:16;70:7 responses (2) 67:22,24 responsive (1) 14:8 restrictions (3) 11:9,15,24 restroom (1) 36:9 retained (2) 65:17;72:17 retaining (1) 70:2 review (13) 6:17;8:8;14:1;26:10;29:7; 32:22;48:17;61:12;63:11; 64:7;67:23;68:2;75:2 reviewed (11) 8:17,20,25;9:5,15;11:13; 27:2;32:24;64:13;73:10; 75:14 reviewing (1) 11:7 rider (4) 19:4,13,16;26:16 right (27) 13:8;16:15;24:6;27:3; 34:20;35:20;37:10;41:5; 43:24;47:20;52:8;53:24; 61:25;62:22;63:8,10;64:15; 65:6;68:20;69:18;71:25;72:1; 74:7,9;76:19,22;79:23	rights (1) 24:24 rise (1) 80:23 Road (1) 51:17 rogue (1) 65:2 role (1) 72:14 roughly (2) 28:19;55:13 rules (1) 20:6 S sale (46) 7:12,13,17;10:13,14;12:16; 21:24;24:15,17,21;40:24; 49:10,19,24;50:5,6,20;51:23; 52:3,5,10,16,20,24;53:6,14, 22;54:12;58:7,22;59:1,7,19, 22;60:7;71:4,9;74:11,12; 75:19,21;76:9,19;78:12,12; 81:8 same (6) 15:25;26:16;41:16;49:20; 74:18;77:8 Satisfy (3) 44:24;46:22;54:22 saw (12) 27:9,23;33:3,10;39:21; 41:14,17;45:6;48:20;54:6; 64:12;67:4 saying (4) 32:16;39:24;52:16;70:16 scanned (1) 21:20 schedule (6) 33:7,9,10,11,14;64:22 schedules (1) 33:4 screen (2) 9:11;28:12 screens (1) 9:19 SEC (1) 29:5 second (3) 16:5;23:14;73:16 second-to-last (1) 50:15 Section (2) 18:13;20:15 secured (5) 20:23;21:7;25:11;44:5; 50:17
---	--	--	--

securities (2) 30:18;64:17 security (3) 16:10;18:7;20:24 seeing (7) 22:18;37:17;48:23;52:18; 56:9;57:22;66:25 Self (1) 44:23 Sell (8) 23:3;26:23;30:7,11,11; 45:19;46:21;47:7 seller (1) 30:17 sent (5) 27:17;35:6;47:17;48:2; 57:14 sentence (5) 18:12;20:15;50:15;73:15, 23 separate (1) 16:7 September (12) 7:14,18;10:13;24:18;27:6; 43:25;52:7;55:23;58:14,19; 71:5,9 Series (2) 8:6;29:11 service (4) 21:22;24:13,15;42:4 served (1) 24:19 servicer (20) 8:19;9:23;10:2,8,12;13:8; 14:10,18,21;17:13;30:18; 31:10;39:17;54:10;57:11; 64:16,18;65:23;71:10;80:7 servicers (4) 10:15;67:14;79:22;81:2 Services (5) 71:13;73:7,13;74:15,23 servicing (22) 9:21;13:3;23:23;24:20,24; 29:9,13,19;30:15;31:11; 32:23;37:12;39:6;49:16; 58:10;60:19;62:19;64:6,19; 71:6;72:12;80:6 set (4) 18:16,22;26:7,11 seven (1) 24:23 sewer (2) 48:23,24 SFR (14) 16:1;17:23;19:5,5;48:12; 55:22;59:9,14,22,22,25;60:5; 75:21,21 shall (6)	18:4;19:25;20:7,22;21:1,3 Shop (1) 31:22 Shortly (1) 45:10 shots (1) 9:11 show (19) 6:5;10:22;12:8;15:8;22:1, 20;23:16;28:22;33:23;36:5; 38:12;41:8;48:6;49:2;56:3, 10;57:23;60:22;76:9 showing (6) 60:9;65:9,25;66:10;67:17; 80:8 shown (1) 77:20 signed (1) 26:19 similar (1) 48:7 Similarly (1) 66:7 single (2) 31:1,4 situation (1) 73:1 situational (1) 80:12 Smith (1) 52:3 Smith's (1) 31:21 SND (1) 35:3 SOB (1) 70:3 sold (2) 50:18;81:1 solely (2) 16:8;79:16 somebody (3) 35:25;51:22;63:23 somehow (2) 48:2,5 someone (3) 17:9;30:7;53:19 sometime (3) 21:23;30:1;43:24 sorry (13) 9:7;10:7;11:5;18:9;19:20; 47:15;56:24;58:17;68:12,18; 77:25;79:8;80:16 sort (1) 81:7 speak (2) 13:13;15:4 speaking (1)	13:10 speaks (3) 19:18;20:13;34:13 specific (1) 41:7 specifically (2) 55:20;67:2 specified (1) 7:6 Spectrum (3) 15:19;21:16,19 speculate (6) 35:4,5,8;50:5;56:23;72:1 speculation (41) 10:19;11:19;16:18;17:15; 18:19,25;19:7;28:4;30:10; 31:6,17;32:6,15;35:1;37:6,9; 46:17,24;47:10;51:5,19; 52:12;53:2,8,16;59:3,12;63:5, 19,21;71:16;72:15;73:2,14; 74:4,24;75:9;77:22;78:7,18; 80:10 speculative (1) 42:25 spoke (1) 8:20 standard (1) 37:19 start (2) 8:9;71:6 started (1) 24:19 state (6) 5:8;17:18;34:8;36:19; 38:21;71:3 stated (3) 9:15;16:5;27:23 states (2) 20:16;27:13 step (2) 57:20;63:22 still (8) 43:13;46:8,10,12;51:7,9; 76:7;77:1 stopped (3) 35:19;44:8;78:12 Street (1) 5:20 strike (1) 52:9 subject (2) 15:16;71:7 subordinate (2) 47:8,16 subsequent (2) 25:11;39:16 subsequently (2) 27:18;42:3	sub-servicer (3) 64:4,8,20 substituted (1) 74:14 substitutes (1) 60:18 substituting (2) 36:21,24 Substitution (3) 36:19;57:5;60:17 successors (1) 16:9 suggested (2) 76:18,21 Suite (1) 51:17 super-priority (14) 50:1;51:13;54:21,23;55:10; 69:4;70:5;72:18,19;74:21; 75:6;78:5,15,20 supposed (1) 35:11 sure (8) 24:6;36:11;64:24;67:1,7; 77:25;80:19;81:20 surface (2) 17:6;76:8 sworn (1) 5:4 system (10) 8:19;9:3,5,14,16;12:3,5; 28:10;39:15;48:1 Systems (4) 16:4,7;34:16;67:14
T			
			talk (5) 6:24;7:11,24;55:6,21 talked (5) 14:15;48:22;50:12;51:6; 55:16 talking (10) 6:25;7:7,13,21,25;40:21,23; 41:25;55:3;79:9 taxes (3) 18:4,17;26:12 technically (1) 70:4 tenants (1) 25:18 tender (7) 49:25;51:13;54:22;72:20; 78:24;80:9;81:4 tendered (5) 74:2,20;75:6;78:16,24 term (1) 22:15

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

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

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

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

EXHIBIT H-7

"Freddie Mac's "Borrower Notifications FAQs"

Borrower Notifications FAQs

Q: Why did I receive this notification letter from Freddie Mac?

A: By law, we're required to notify you that your mortgage was sold to us. The letter includes more information about your mortgage as part of our continued efforts to promote long-term, successful homeownership.

Q: Why did my lender sell my mortgage to Freddie Mac?

A: We provide funds to lenders by purchasing mortgages from them. This creates a continuous source of mortgage funds that allows homebuyers to obtain financing. We maintain requirements for the mortgages we purchase through lenders/Servicers. These activities allow us to fulfill our mission of providing liquidity, stability and affordability to the nation's residential housing market. The selling of your mortgage to Freddie Mac has no bearing, in any way, to the homeowner, your loan, or your specific loan obligations.

Q: Do I need to take action on this notice?

A: No. This notice requires no action on your part. It is for informational purposes only. We recommend that you file your borrower notification letter with your other mortgage documents.

Q: Should I send my mortgage payments to Freddie Mac?

A: No. There is no change to the way you make your mortgage payment. You must continue to send your payments to the company listed on your mortgage statement.

Q: Do I contact Freddie Mac if I have questions about my mortgage payment?

A: No. If you have questions about your mortgage or mortgage payment, please contact your Servicer using the contact information in the notification letter you received from Freddie Mac or on your mortgage statement.

Q: Why is the balance in the letter different than the balance on my mortgage payment?

A: The original principal balance reflected on the notice was provided by your mortgage originator to Freddie Mac when your mortgage was originally sold to us. Any subsequent payments are not reflected in this notice. For more information on your current unpaid principle balance or your mortgage, please contact your Servicer using the contact information in the notification letter you received from Freddie Mac or on your current mortgage statement.

Q: Does Freddie Mac allow making or applying partial payments to my mortgage?

A: Your mortgage Servicer can answer any questions you have about your mortgage or mortgage payment. You can reach your Servicer using the contact information in our notification letter or on your mortgage statement.

Q: Will I continue to receive correspondence from Freddie Mac?

A: Freddie Mac relies on our Servicers to keep borrowers informed on issues related to their mortgage. However, if there is a regulatory requirement or government mandate, Freddie Mac may be required to notify you.

TRUST NOTIFICATION LETTERS (ex. Guaranteed Senior Subordinate)

- Q: Freddie Mac has already sent me a similar borrower notification letter. Why am I receiving another?**
- A: You received a second borrower notification letter because your mortgage was sold into a trust after it was sold to us. Section 404 of the *Helping Families Save Their Homes Act of 2009* requires certain mortgage purchasers to notify borrowers in writing of the sale, transfer, or assignment of their mortgage.
- Q: Do I need to take action on this notice?**
- A: No. This notice requires no action on your part. The sale of your mortgage to a trust does not affect any terms or conditions of the mortgage, deed of trust, or note. The notification letter is for your information. We do recommend that you file your borrower notification letter with your other mortgage documents.
- Q: Why did Freddie Mac sell my mortgage to a trust?**
- A: We sell mortgages into trusts to reduce the potential risk to Freddie Mac and taxpayers. The sale will also help bring private capital back into the mortgage credit markets. The trusts issue securities backed by similar mortgages to an underwriter for sale to investors. The proceeds from the sale are transferred to Freddie Mac, which uses those funds to purchase additional mortgages. The sale of your mortgage to Freddie Mac does not affect your loan or your specific loan obligations.
- Q: What is a trust?**
- A: A trust is a legal relationship created to hold and protect property for the benefit of others. Freddie Mac routinely creates trusts to hold and protect the loans backing its mortgage-backed securities.
- Q: Can I have my mortgage removed from the trust?**
- A: No. Freddie Mac's transfer of your mortgage to a trust does not, in any way, change your mortgage rights or obligations. Your Servicer must continue to service your mortgage in accordance with Freddie Mac's servicing requirements and applicable law. If you have questions about the ownership, your mortgage, or a trust, please contact your Servicer using the contact information in the notification letter you received from Freddie Mac or on your mortgage statement.
- Q: Who actually owns my mortgage, Freddie Mac or the trust?**
- A: The trust indicated on your notification letter owns your mortgage. Freddie Mac is the trustee of that trust. A trustee is an individual or organization who manages assets for the benefit of another.
- Q: What does your letter mean where it states that Freddie Mac is no longer the owner of my mortgage but is a trustee of the trust?**
- A: The trust owns your mortgage, but authorizes Freddie Mac to act on behalf of the trust in certain matters.

EXHIBIT H-8

No. 12-56737

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

BANK OF MANHATTAN, N.A.,

Plaintiff-Appellee,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for
First Heritage Bank, N.A.,

Defendant-Appellant.

On Appeal From The United States District Court For The Central District Of
California, Case No. 2:10-cv-04614-GAF-AGR

**THE FEDERAL DEPOSIT INSURANCE CORPORATION'S
PRINCIPAL BRIEF**

COLLEEN J. BOLES

Assistant General Counsel

LAWRENCE H. RICHMOND

Senior Counsel

J. SCOTT WATSON

Counsel

MINODORA D. VANCEA

Counsel

FEDERAL DEPOSIT INSURANCE CORPORATION

3501 Fairfax Drive, VS-D7014

Arlington, VA 22226-3500

(703) 562-2049

Counsel for the Federal Deposit Insurance Corporation

Date: April 5, 2013

JA_0828

CORPORATE DISCLOSURE STATEMENT

The Federal Deposit Insurance Corporation is a federal corporation established under 12 U.S.C. § 1811.

Date: April 5, 2013

Respectfully submitted,

s/ Minodora D. Vancea
Minodora D. Vancea
Counsel For FDIC

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iv
STATEMENT REGARDING ORAL ARGUMENT	1
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS	3
SUMMARY OF ARGUMENT	4
STANDARD OF REVIEW	4
ARGUMENT	9
I. FDIC’s Transfer Without PBB’s Consent Did Not Breach PBB’s Contractual Rights	9
A. The Plain Language Of Section 1821(d)(2)(G) Renders Unenforceable Against The Receiver “Any” Transfer Restrictions, Whether Statutory Or Contractual	9
B. The Statutory Context, History, And Purpose Of Section 1821(d)(2)(G) Reinforce Its Plain Meaning	14
C. Adherence To The Plain Language of Section 1821(d)(2)(G) Would Not Be Unfair To Contractual Counterparties, Nor Would It Create A Constitutional Problem	23
D. Even If There Were Any Lingering Ambiguity In The Statutory Language, FDIC’s Interpretation Must Prevail Because It Is The Most Reasonable One In Light Of The Statute Construed As A Whole	30

CONCLUSION	31
CERTIFICATE OF COMPLIANCE	33
STATEMENT OF RELATED CASES	33
ADDENDUM OF STATUTORY PROVISIONS	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

CASES

	Page(s)
<i>Ali v. Fed. Bureau of Prisons</i> , 552 U.S. 214 (2008).....	5, 10
<i>City of Houston v. Hill</i> , 482 U.S. 451 (1987).....	24
<i>Concrete Pipe & Prods. of Ca., Inc. v. Construction Laborers Pension Trust for S. Ca.</i> , 508 U.S. 602 (1993).....	25, 27
<i>Connolly v. Pension Benefit Guaranty Corp.</i> , 475 U.S. 211 (1986).....	passim
<i>Deutsche Bank Nat’l Trust v. FDIC</i> , 784 F.Supp.2d 1142 (C.D. Cal. 2011).....	2
<i>Deutsche Bank Nat’l Trust v. FDIC</i> , 854 F.Supp.2d 756 (C.D. Cal. 2011).....	2
<i>FDIC v. Bank of Boulder</i> , 911 F.2d 1466 (10th Cir. 1990) (en banc).....	passim
<i>FDIC v. Shain, Schaffer & Rafanello</i> , 944 F.2d 129 (3d Cir. 1991).....	21
<i>Freeman v. Allstate Life Ins. Co.</i> , 253 F.3d 533 (9th Cir. 2001).....	8
<i>Gunter v. Hutcheson</i> , 674 F.2d 862 (11th Cir. 1982).....	23
<i>Home Bldg. & Loan Assoc. v. Blaisdell</i> , 290 U.S. 398 (1934).....	26

TABLE OF AUTHORITIES
(Continued)

	Page(s)
<i>In re Crow Winthrop Operating P'ship</i> , 241 F.3d 1121 (9th Cir. 2001)	21
<i>Louisville & Nashville R. Co. v. Mottley</i> , 219 U.S. 467 (1911).....	25, 27, 30
<i>MBIA Ins. Corp. v. FDIC</i> , 708 F.3d 234 (D.C. Cir. 2013).....	19, 30
<i>McAndrews v. Fleet Bank</i> , 989 F.2d 13 (1st Cir. 1993).....	28, 29
<i>NCNB Texas Nat'l Bank v. Cowden</i> , 895 F.2d 1488 (5th Cir. 1990)	11, 14, 21
<i>Norfolk & W. Ry. v. Am. Train Dispatchers' Ass'n</i> , 499 U.S. 117 (1991).....	5, 12, 13, 27
<i>Norman v. Baltimore & Ohio R.R. Co.</i> , 294 U.S. 240 (1935).....	16, 25, 28
<i>NVMercure Ltd. P'ship v. RTC</i> , 871 F. Supp. 488 (D.D.C. 1994).....	12
<i>O'Melveny & Myers v. FDIC</i> , 512 U.S. 79 (1994).....	15, 16, 18
<i>Reno v. ACLU</i> , 521 U.S. 884 (1997).....	24
<i>RTC v. Charles House Condominium</i> , 853 F. Supp. 226 (E.D. La. 1994).....	12
<i>Sahni v. Am. Diversified Partners</i> , 83 F.3d 1054 (9th Cir. 1996)	11, 12

TABLE OF AUTHORITIES (Continued)

	Page(s)
<i>Skidmore v. Swift & Co.</i> , 323 U.S. 134 (1944).....	8, 30, 31
<i>Sharpe v. FDIC</i> , 126 F.3d 1147 (1997)	16, 17, 18
<i>United States v. Gonzales</i> , 520 U.S. 1 (1997).....	5, 9, 10
<i>Waterview Management Co. v. FDIC</i> , 105 F.3d 696 (D.C. Cir. 1997).....	passim
<i>Wells Fargo Bank v. FDIC</i> , 310 F.3d. 202 (D.C. Cir. 2002).....	31
<i>Whitman v. Am. Trucking Assoc’n</i> , 531 U.S. 457 (2001).....	20

STATUTES

11 U.S.C. § 365(f)(1)	22
12 U.S.C. § 1821(d)(2)(A)(i)	6, 14-15, 18
12 U.S.C. § 1821(d)(2)(B)(iii)	17
12 U.S.C. § 1821(d)(2)(G).....	passim

MISCELLANEOUS

<i>Webster’s Third New International Dictionary</i> 97 (1976)	9
---	---

STATEMENT REGARDING ORAL ARGUMENT

Appellee Federal Deposit Insurance Corporation, as receiver for First Heritage Bank, N.A. (“FDIC”), respectfully requests oral argument. This case involves a question of statutory interpretation of vital importance to FDIC’s performance of its statutory duties.

JURISDICTIONAL STATEMENT

The district court, which had jurisdiction under 12 U.S.C. § 1819(b)(2)(A), entered a final judgment against FDIC on August 28, 2012. Record Excerpts (“R.”) 20. FDIC timely filed a notice of appeal on September 24, 2012. R.1. This Court has jurisdiction under 28 U.S.C. § 1291 over the final judgment of the district court.

STATEMENT OF THE ISSUES

Whether Section 1821(d)(2)(G), which provides that FDIC may transfer “any assets” without “any approval . . . or consent,” renders unenforceable contractual provisions such as rights of first refusal that require a counterparty’s consent or approval before FDIC may transfer a receivership asset.

An addendum of relevant statutes is provided at the end of this brief.

STATEMENT OF THE CASE

This lawsuit arises from a Loan Purchase Agreement (“LPA”) entered into between First Heritage Bank (“Heritage”) and Professional Business Bank (“PBB”), under which Heritage acquired from PBB a 50% interest in a secured

commercial loan that PBB made to one of its customers. R.26. Within a year, Heritage failed and was placed into FDIC receivership, and the receiver sold the LPA at a discount to Commerce First Financial, Inc. (“CFF”) as part of the liquidation of Heritage’s assets. R.26.

PBB sued FDIC, claiming that the transfer to CFF without obtaining PBB’s approval or consent breached the LPA, which conferred on PBB a right of consent and of first refusal with respect to the sale of Heritage’s interest in the loan. R.29.

FDIC moved to dismiss PBB’s suit on the basis of Section 1821(d)(2)(G), which allows FDIC to transfer “any assets” without “any approval . . . or consent.” The district court denied the motion to dismiss, consistent with the decision it issued a month earlier in *Deutsche Bank National Trust v. FDIC*, 784 F.Supp.2d 1142, 1155-57 (C.D. Cal. 2011). There, as here, the district court held that Section 1821(d)(2)(G) only frees FDIC from statutory restrictions on its ability to transfer assets, not from contractual transfer restrictions such as those here. R.23-24. FDIC moved for reconsideration in the *Deutsche Bank* case. The district court denied reconsideration on the Section 1821(d)(2)(G) issue. *See Deutsche Bank Nat’l Trust v. FDIC*, 854 F. Supp. 2d 756, 759 (C.D. Cal. 2011).

FDIC moved for summary judgment on PBB’s claims for equitable and declaratory relief, which the district court granted. R.39-42. FDIC also informed the district court that in order to expedite the proceedings in this case, it did not intend

to pursue any defenses to liability on PBB's breach of contract claim other than the Section 1821(d)(2)(G) defense, which the district court had already denied at the motion to dismiss stage, and which FDIC intended to pursue on appeal from the final judgment in this case. Accordingly, the district court held that FDIC was liable for breach of contract damages, and that the only issue remaining to be decided was the amount of damages. R.37. On May 31, 2012, Bank of Manhattan acquired PBB, and was substituted in the case. Because the amount of damages arising from PBB's breach of contract claims was undisputed (\$1,557,289.28), the district court entered final judgment in favor of PBB/Bank of Manhattan in the sum of \$1,557,289.28 on August 28, 2012. R.20. FDIC timely filed a notice of appeal on September 24, 2012. R.1.

STATEMENT OF FACTS

In 2007, PBB loaned Al's Garden Art, Inc. \$6 million, which was secured by assets identified in the loan documents. R.28. For \$3 million, Heritage then acquired from PBB a 50% interest in that loan, which included an undivided 50% interest in the loan collateral, in a transaction documented in the Loan Purchase Agreement ("LPA"). R.28. The LPA obligated Heritage to seek PBB's consent to any transfer of its LPA interest to another entity, retained for PBB a right of first refusal on any bona fide offer to purchase the interest made by any third party, and further conferred on PBB the right to reacquire the 50% interest upon Heritage's

insolvency. R.28.

In late July 2008, Heritage failed, and FDIC was appointed receiver. R.28. PBB took no steps at that time to reacquire Heritage's 50% interest in the Al's Garden loan. R.28. In the meantime, FDIC promptly commenced liquidation of the institution. R.28. In January 2009, relying on its statutory power under Section 1821(d)(2)(G) to transfer assets without any approval or consent, FDIC entered into a Loan Sale Agreement ("LSA") to sell a pool of loans, including the 50% interest in Al's Garden loan, to CFF, without seeking PBB's consent or offering it the opportunity to repurchase the 50% interest. R.28. This lawsuit followed.

SUMMARY OF ARGUMENT

Section 1821(d)(2)(G) permits FDIC to "transfer any asset or liability of the institution in default (including assets and liabilities associated with any trust business) without any approval, assignment, or consent with respect to such transfer." 12 U.S.C. § 1821(d)(2)(G). By its plain terms, this Section frees FDIC of "any" kind of transfer restrictions, whether statutory or contractual.

The district court's contrary belief—that Section 1821(d)(2)(G) only frees FDIC of statutory, and not contractual transfer restrictions—has no support in the text of the statute, nor in its statutory context, history, and purpose.

A. Congress's use of the word "any" demonstrates that all transfer restrictions are foreclosed, "of whatever kind," without exception for those arising

from contract. *See United States v. Gonzales*, 520 U.S. 1, 5 (1997) (defining “any” as “of whatever kind”) (citation omitted). There is no support for the district court’s conclusion that contractual transfer restrictions do not fall within the purview of the statute because they were not expressly mentioned in Section 1821(d)(2)(G). Congress does not need to enumerate every “kind” of transfer restrictions that are barred in order to include them within the purview of the statute—“any” already includes “whatever kind” of transfer restrictions.

Moreover, the statute is clear, broad, and unqualified. The absence of any restrictive language in the text of Section 1821(d)(2)(G) leaves “no basis in the text for limiting” the statutory freedom from “any” transfer restrictions to mean only those restrictions imposed by statute, not by contract. *Gonzales*, 520 U.S. at 5. The Court should give effect to the text Congress enacted, which exempts FDIC from “any, not just some” transfer restrictions. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 228 (2008) (citation omitted).

In any event, the district court’s distinction between statutory and contractual transfer restrictions is flawed because, as the Supreme Court has held, an exemption from statutory obligations necessarily includes an exemption from contractual obligations, since contractual obligations have no independent legal force outside of the statutes that serve to enforce them. *Norfolk & W. Ry. v. Am. Train Dispatchers’ Ass’n*, 499 U.S. 117, 130 (1991). Similarly here, because Section

1821(d)(2)(G)’s exemption from statutory transfer restrictions “suspend[s] application of the law that makes the contract binding,” *id.*, the exemption from statutory restrictions necessarily includes an exemption from contractual restrictions.

Finally, that Section 1821(d)(2)(G) frees FDIC from “any” transfer restrictions, whether statutory or contractual, is underscored not only by Section 1821(d)(2)(G)’s language providing FDIC the power to transfer without “any consent . . . or approval,” but also by Section 1821(d)(2)(G)’s language providing FDIC the power to transfer “any assets.” Two other federal courts of appeal have interpreted the “any assets” language in similar statutes as giving FDIC the power to transfer even assets that would otherwise not be transferrable because of contractual transfer restrictions.

B. The statutory context, history, and purpose of Section 1821(d)(2)(G) do not support the district court’s departure from the plain text of the statute. Section 1821(d)(2)(A)(i) does not provide, as the district court believed, that the receiver can never have any greater rights than the failed bank. Section 1821(d)(2)(A)(i) only says that the receiver has the rights and powers of the bank; it does not say that the receiver has no additional rights, powers, or defenses beyond those available to the failed bank. Indeed, there would have been no need for any provision in FIRREA other than Section 1821(d)(2)(A)(i) if FDIC only had the rights and powers of the failed bank. Yet there are numerous provisions in FIRREA beside Sec-

tion 1821(d)(2)(A)(i). Not surprisingly, the Supreme Court expressly recognized that FDIC can have greater rights and powers than those available to the failed bank when, as with Section 1821(d)(2)(G) here, FIRREA gives FDIC such rights.

Nor is there any statutory support for the district court's view that FIRREA only authorizes FDIC to repudiate, and not to breach contracts, or that FIRREA conditions the availability of the transfer powers in Section 1821(d)(2)(G) on repudiation. To the contrary, the district court's interpretation violates established principles of statutory construction, as requiring FDIC to repudiate in order to be able to transfer renders the transfer powers in Section 1821(d)(2)(G) largely meaningless because there is nothing left to transfer once a contract is repudiated (a repudiated contract has no value to a purchaser).

In addition, requiring FDIC to determine assignability on a contract-by-contract basis so that it can repudiate the contracts containing transfer restrictions defeats the entire purpose of rules allowing free transferability, which is to "eliminate[] the need for detailed examination of the failed bank's assets and of varying laws." *FDIC v. Bank of Boulder*, 911 F.2d 1466 (10th Cir. 1990) (en banc). "A need by the FDIC to determine assignability on an asset-by-asset basis would surely slow a rescue operation down, when dispatch was required." *Id.*

Moreover, traditional insolvency law bars the enforcement of contractual transfer restrictions because they hinder the trustee's ability to liquidate the assets

of the bankruptcy estate. Given that the purpose of FIRREA was to enhance, not diminish, the powers available to FDIC, there is no reason why Congress would have wished to give FDIC receivers lesser powers than those given to trustees in bankruptcy.

C. The principle of constitutional avoidance does not require a different result. Under basic contract law, parties have no right to enter into contracts that are contrary to Section 1821(d)(2)(G), *i.e.*, contracts that impose restrictions on FDIC's ability to transfer assets. And since no such rights existed, no rights were taken, and there is no taking at all, much less an unconstitutional taking.

D. But even if there were any lingering doubt, FDIC's interpretation should be accorded deference under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), because it is the most reasonable interpretation of a statutory provision FDIC is charged with administering.

STANDARD OF REVIEW

The question of statutory interpretation at issue in this case presents purely legal issues that are reviewed *de novo*. *Freeman v. Allstate Life Ins. Co.*, 253 F.3d 533, 536 (9th Cir. 2001).

ARGUMENT

I. FDIC's Transfer Without PBB's Consent Did Not Breach PBB's Contractual Rights

A. The Plain Language Of Section 1821(d)(2)(G) Renders Unenforceable Against The Receiver "Any" Transfer Restrictions, Whether Statutory Or Contractual

In Section 1821(d)(2)(G), Congress explicitly authorized FDIC, acting as receiver, to “transfer *any asset* or liability of the institution in default . . . *without any approval, assignment, or consent* with respect to such transfer.” 12 U.S.C. § 1821(d)(2)(G)(i)(II) (emphases added). This language is clear, broad, and unqualified. It includes absolutely no limitations on FDIC's power to transfer. Rather, it removes all limitations, of any kind, on FDIC's power to transfer.

Congress's use of the word “any” refutes the district court's conclusion that Section 1821(d)(2)(G) frees FDIC only from statutory transfer restrictions, not from contractual transfer restrictions. As the Supreme Court has explained, “[r]ead naturally, the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’” *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting *Webster's Third New International Dictionary* 97 (1976)). Thus, Congress's use of the word “any” demonstrates that all transfer restrictions are foreclosed, “of whatever kind,” without exception for those arising from contract. If Congress wished to except some transfer restrictions (namely contractual ones) from this rule, it would not have utilized a broad word such as “any,” which does

not admit any exceptions for some kinds of transfer restrictions.

The absence of any restrictive language in the text of Section 1821(d)(2)(G) leaves “no basis in the text for limiting” the statutory freedom from “any” transfer restrictions to mean only those restrictions imposed by statute, not by contract. *Gonzales*, 520 U.S. at 5. The statute does not say that FDIC may transfer “without any . . . consent . . . *except when consent is required by contract.*” If Congress wished to add this limiting language to Section 1821(d)(2)(G), it could have easily done so. Instead, it used the word “any.” This Court should give effect to the words Congress actually used, and reject the lower court’s invitation to read the italicized limitation into the limitation-free language of the statute. Courts “are not at liberty to rewrite the statute to reflect a meaning we deem more desirable. Instead, we must give effect to the text Congress enacted,” including text like Section 1821(d)(2)(G), which exempts FDIC from “any, not just some” transfer restrictions. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 228 (2008) (citation omitted).

That Section 1821(d)(2)(G) frees FDIC from “any” transfer restrictions, whether statutory or contractual, is underscored not only by Section 1821(d)(2)(G)’s language conferring on FDIC the power to transfer without “any consent . . . or approval,” but also by Section 1821(d)(2)(G)’s language conferring on FDIC the power to transfer “any assets.” At least two other federal courts of

appeal have interpreted the “any assets” language in similar statutes as giving FDIC the power to transfer even assets that would otherwise not be transferrable because of contractual transfer restrictions. *NCNB Texas Nat’l Bank v. Cowden*, 895 F.2d 1488, 1499-1501 (5th Cir. 1990) (statute allowing FDIC to transfer “any assets” permitted FDIC to transfer assets that were not transferrable under state law or contract); *FDIC v. Bank of Boulder*, 911 F.2d 1466, 1472-73, 1475 (10th Cir. 1990) (en banc) (“the federal FDIC statute authorizes the transfer of assets—nontransferable under state law—from FDIC/Receiver to FDIC/Corporation,” even though the contract at issue contained a provision making it “subject to the UCP, . . . [which] contains a blanket restriction on transfer”). The identical “any assets” language in Section 1821(d)(2)(G) should therefore be similarly interpreted.

This Court’s prior decision interpreting Section 1821(d)(2)(G) further confirms that “Congress specifically exempted the FDIC from having to obtain any consent when effectuating the sale or transfer of receivership assets.” *Sahni v. Am. Diversified Partners*, 83 F.3d 1054, 1059 (9th Cir. 1996). To be sure, *Sahni* invalidated a consent requirement imposed by state statute. However, the analysis in *Sahni* was not limited to its particular facts. Nothing in this Court’s analysis supports a distinction between a statutory consent requirement and a contractual consent requirement. To the contrary, this Court announced a broad rule under which “any” consent requirements are invalidated, and cited with approval two reported

decisions that expressly held that Section 1821(d)(2)(G) bars enforcement of contractual rights of consent or of first refusal. *Sahni*, 83 F.3d at 1059 (citing *RTC v. Charles House Condominium Ass’n*, 853 F. Supp. 226, 230 (E.D. La. 1994), and *NVMercure Ltd. P’ship v. RTC*, 871 F. Supp. 488, 491 (D.D.C. 1994)).

Sahni’s reliance on decisions invalidating contractual consent requirements underscores the conclusion that the rule announced by *Sahni*—that FDIC is not required to obtain *any* consent before transferring an asset—means what it says: That the statute bars any consent restrictions, whether statutory or contractual.

In any event, the district court’s distinction between statutory and contractual transfer restrictions is flawed because, as the Supreme Court has held, an exemption from statutory obligations necessarily includes an exemption from contractual obligations, since contractual obligations have no independent legal force outside of the statutes that serve to enforce them: “A contract has no legal force apart from the law that acknowledges its binding character. As a result, the exemption in § 11341(a) from ‘all other law’ effects an override of contractual obligations . . . by suspending application of the law that makes the contract binding.” *Norfolk & W. Ry. Co. v. Am. Train Dispatchers’ Ass’n*, 499 U.S. 117, 130 (1991) (statute exempting certain railroad mergers from obligations imposed by “all other law” exempted them from both statutory and contractual obligations).

The Supreme Court also stressed that where, as in Section 1821(d)(2)(G) here, a statute “is clear, broad, and unqualified,” the statute “does not admit of the distinction” between statutory and contractual obligations drawn by the lower court there. *Norfolk*, 499 U.S. at 128. In the case before the Supreme Court, the exemption of certain railroad mergers from obligations imposed by “all other law” was “broad enough to include laws that govern the obligations imposed by contract,” as the “obligation of a contract is ‘the law which binds the parties to perform their agreement,’” and a “contract depends on a regime of common and statutory law for its effectiveness and enforcement.” *Id.* at 129-130 (citations omitted). Similarly here, because the exemption from statutory transfer restrictions in Section 1821(d)(2)(G) “suspend[ed] application of the law that makes the contract binding,” *id.* at 130, the exemption from statutory restrictions necessarily included an exemption from contractual restrictions.

The Supreme Court’s reasoning in *Norfolk* also refutes the district court’s view that Section 1821(d)(2)(G) does not free FDIC of contractual consent obligations because Congress did not *explicitly* list contractual consent obligations in the statutory language.¹ In *Norfolk*, just as here, the statute at issue did not explicitly exempt the carriers from contractual obligations. The Supreme Court nonetheless

¹ Order denying reconsideration on the Section 1821(d)(2)(G) issue in *Deutsche Bank Nat’l Trust Co. v. FDIC*, Case No. 2:09-cv-03852-GAF, Docket No. 77 at 6 (C.D. Cal. May 2, 2011).

found that the statute's broad language exempting the carriers from obligations imposed by "all other law" included all subcategories of "all other law," whether explicitly listed or not, including contractual obligations. Indeed, the ordinary meaning of "any" obviates the need for an explicit listing of each and every subcategory. *See also, e.g., NCNB*, 895 F.2d at 1499-1501 (federal statute allowing FDIC to transfer "any assets" permitted FDIC to transfer assets that were not transferrable under state law or contracts relating to fiduciary appointments, even though federal statute did not "explicitly" refer to the transfer of fiduciary appointments).

In sum, there is simply no textual support for the district court's distinction between statutory and contractual transfer restrictions, and its effective reading of "any" as "some."

B. The Statutory Context, History, And Purpose Of Section 1821(d)(2)(G) Reinforce Its Plain Meaning

The statutory context, history, and purpose of Section 1821(d)(2)(G) do not support the district court's departure from the plain text of the statute. To the contrary, all these sources reinforce the plain text of the statute, which frees FDIC of any transfer restrictions, whether statutory or contractual.

Statutory Context. The district court's interpretation is bereft of any statutory support. The main decision on which the district court relied, *Waterview Management Co. v. FDIC*, 105 F.3d 696 (D.C. Cir. 1997), believed that Section 1821(d)(2)(A)(i) supported its reading of Section 1821(d)(2)(G) because it suppos-

edly provided that the receiver can never have any greater rights than the failed bank. Under this theory, if a contractual transfer restriction is valid against the failed bank, it must be valid against the receiver. But 1821(d)(2)(A)(i) does not provide that the receiver can never have any greater rights than the failed bank. Section 1821(d)(2)(A)(i) only says that the receiver has the rights and powers of the bank. It does not say that the receiver has no additional rights, powers, or defenses beyond those available to the failed bank.

Indeed, there would be no need for any provision in FIRREA other than Section 1821(d)(2)(A)(i) if FDIC only had the rights and powers of the failed bank. Not surprisingly, the Supreme Court expressly recognized that FDIC can have greater rights and powers than those available to the failed bank: “[FIRREA] places the FDIC in the shoes of the insolvent S&L, to work out its claims under state law, *except where* some provision in the extensive framework of FIRREA provides otherwise. *O’Melveny & Myers v. FDIC*, 512 U.S. 79, 87 (1994) (emphasis added).

By noting that FDIC typically stands “in the shoes” of the failed bank “except where some provision in the extensive framework of FIRREA provides otherwise,” the controlling *O’Melveny* decision clearly conflicts with *Waterview’s* holding that FDIC must *always* stand “in the shoes” of the failed bank and thus can never have greater rights than those of the failed bank. *Waterview* erroneously

omitted the “except where” language in its citation of *O’Melveny*’s stand-in-the-shoes analysis. 105 F.3d at 701.

The district court also relied on dicta in *Sharpe v. FDIC*, 126 F.3d 1147 (9th Cir. 1997), which stated without any elaboration or support that “FIRREA does not authorize the breach of contracts.” *Id.* at 1155.² But *Sharpe* never analyzed or discussed Section 1821(d)(2)(G), and thus never had an opportunity to decide whether Section 1821(d)(2)(G) authorizes FDIC to breach contracts.

Moreover, focusing on whether Section 1821(d)(2)(G) authorizes FDIC to breach contracts is the wrong inquiry—as discussed in Part C below, there is no right in the first place to enter into a contract that is contrary to Section 1821(d)(2)(G), *i.e.*, a contract that imposes restrictions on FDIC’s ability to transfer assets. *See* Part C *infra* (citing, *inter alia*, *Norman v. Baltimore & Ohio R.R. Co.*, 294 U.S. 240, 307-08 (1935) (“Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them”). Under traditional principles of contract law, any contractual transfer restrictions

² The conclusory statement that “FIRREA does not authorize the breach of contracts” was not *Sharpe*’s holding, which was much narrower: “We hold that the FDIC did not act within its statutorily granted powers in breaching the Sharpes’ settlement agreement *because recording of the reconveyance* of the debtor’s deed of trust for which it did not pay full consideration cannot be considered a statutorily authorized function of the FDIC.” 126 F.3d at 1155 (emphasis added). And because it was made without any support or analysis, *Sharpe*’s conclusory statement lacks persuasive authority as well.

that seek to limit FDIC's ability to transfer assets are invalid and unenforceable because they are contrary to Section 1821(d)(2)(G), the law in existence when they were made. *See id.* And because such contractual transfer restrictions are invalid and unenforceable, there can be no breach in the traditional sense of the word. The district court thus erred in searching for an authority to breach contracts. There is no breach here because there is no right to enter into such contracts in the first place.

In any event, FIRREA does authorize the breach of contracts. *Sharpe* would have presumably cited any statutory prohibition against the breach of contracts if it believed there was one. The lack of such citation demonstrates that *Sharpe* thought that FIRREA was silent as to whether FDIC may breach contracts. But the statute is in fact not silent. Far from prohibiting FDIC from breaching contracts, FIRREA actually empowers FDIC to perform any acts that the failed bank was entitled to perform (12 U.S.C. § 1821(d)(2)(B)(iii) (FDIC authorized to “perform all functions of the institution”)). Because banks, like any other parties, are allowed to breach contracts under traditional contract law, and FDIC may perform any acts that the failed bank could, FDIC necessarily has the power to breach contracts.

Section 1821(d)(20) further confirms that Congress did not wish to upset the traditional rule under state law that any parties, including a bank or its receiver, may breach contracts: “*Nothing in this paragraph shall be construed to limit the*

power of a receiver or conservator to exercise *any rights under contract or law*, including to *terminate, breach*, cancel, or otherwise discontinue such agreement.” 12 U.S.C. § 1821(d)(20) (emphases added). The Supreme Court’s decision in *O’Melveny* reinforces this very point: “§ 1821(d)(2)(A)(i) places the FDIC in the shoes of the insolvent [bank], to work out its claims under state law, except where some provision in the extensive framework of FIRREA provides otherwise.” *O’Melveny*, 512 U.S. at 87. Because no “provision in the extensive framework of FIRREA” removes the preexisting right to breach a contract, FDIC retains that preexisting right.

In addition, as discussed, the plain text of Section 1821(d)(2)(G) does allow FDIC to transfer assets notwithstanding contractual transfer restrictions. Thus, even if the statute were silent as *Sharpe* assumed about FDIC’s power to breach contracts in general, it is not silent about FDIC’s power to breach the specific contractual provisions at issue here (although “breach” is somewhat of a misnomer since the contractual transfer restrictions are invalid and unenforceable in the first place). Unless there is a statutory prohibition against the breach of contracts (and there is none cited by *Sharpe* or the district court), there is nothing that can contradict the plain language of Section 1821(d)(2)(G) freeing FDIC from any transfer restrictions, whether statutory or contractual. Mere silence is not enough to over-

ride a specific statutory provision allowing FDIC to transfer assets without any consent, whether statutory or contractual.

Finally, FIRREA's repudiation provisions do not support the district court's conclusion, either. Relying on *Waterview*, the district court held that FIRREA's repudiation provisions in Section 1821(e) provide that FDIC may only transfer without consent if it first repudiates the contractual restrictions at issue.³ That is simply not true. Section 1821(e) nowhere provides that FDIC may only exercise any rights that it has under provisions such as Section 1821(d)(2)(G) only if it first repudiates. Section 1821(e) merely provides that repudiation is a *right* “[i]n addition to any other rights a conservator or receiver may have” (12 U.S.C. § 1821(e)(1)), not that it is a precondition to the exercise of other rights.

Moreover, as the D.C. Circuit recently explained, FIRREA attaches one single consequence to the failure to repudiate: a possible increase in the amount (not priority) of damages (12 U.S.C. § 1821(e)(3)(A)). *MBIA Ins. Co. v. FDIC*, 708 F.3d 234, 243 (D.C. Cir. 2013) (the repudiation provisions “do not change the priority of damages,” but only “serve to limit the [amount of] damages available to a counterparty,” and this limitation on the amount of damages is the “only conse-

³ See *Waterview*, 105 F. 3d at 701 (“Section 1821(e) explains how this [Section 1821(d)(2)(G)] power works with regard to contracts entered into pre-receivership: if the [receiver] prefers to transfer an asset without pre-existing limitations, then the [receiver] can abrogate a contract containing limitations, such as a purchase option or marketing rights, but it must pay damages to the option holder.”).

quence[] Congress attached to repudiation”). If FDIC breaches a contract, it must still pay damages, but the damages are not limited to actual compensatory damages as with repudiation, but may include the three categories of damages that are excluded in repudiation (expectation damages, punitive damages, and emotional damages), if such categories are otherwise available under state law. *Id.*

Because Congress imposed only one consequence (related to the amount of the damages) on the failure to repudiate, courts are without authority to impose additional consequences, such as a withdrawal of the powers provided by Section 1821(d)(2)(G). In addition, given that the free assignability of assets is crucial to FDIC’s ability to enter into the Purchase and Assumption (“P&A”) transactions that transfer, usually overnight after the bank failure, the bulk of the failed bank’s assets to an acquiring institution, and that such transactions have helped safeguard the stability of the banking system, it is simply inconceivable that Congress would have wished to condition FDIC’s ability to transfer on its exercise of repudiation rights without explicitly saying so anywhere in the statute. Inasmuch as Congress would not have imposed this significant consequence by implication, it is inconceivable that Congress would have actually hidden it by putting it in a provision that deals with repudiation as an additional “right” (not obligation) of the receiver. Congress does not “hide elephants in mouseholes.” *Whitman v. Am. Trucking Assoc’n*, 531 U.S. 457, 468 (2001).

Thus, there is nothing in the statute, construed as a whole, supporting the district court's interpretation. In fact, the overall statutory context further underscores that Congress wished to eliminate contractual transfer restrictions. For example, there are two other provisions, at issue in *NCNB* and in *Bank of Boulder*, that allow FDIC to transfer assets without any transfer restrictions, whether statutory or contractual. *See NCNB*, 895 F.2d at 1499-1501 (statute allowing FDIC to transfer "any assets" permitted FDIC to transfer assets that were not transferrable under state law or contract); *Bank of Boulder*, 911 F.2d at 1472-73, 1475 ("the federal FDIC statute authorizes the transfer of assets—nontransferable under state law—from FDIC/Receiver to FDIC/Corporation," even though the contract at issue contained a provision making it "subject to the UCP, [which] contains a blanket restriction on transfer").

Statutory History and Purpose. Nor is there anything in the statutory purpose or history that supports the district court's interpretation. FIRREA's declared purpose is to "enhance" FDIC's ability to efficiently resolve failed banks and "to eliminate impediments to the efficient resolution of failed financial institutions." *FDIC v. Shain, Schaffer & Rafanello*, 944 F.2d 129, 131 (3d Cir. 1991). Traditional insolvency law bars contractual transfer restrictions because they prevent the trustee from liquidating the assets of the bankruptcy estate. *See, e.g., In re Crow Winthrop Operating P'ship*, 241 F.3d 1121, 1124 (9th Cir. 2001) (invalidating con-

tractual transfer restrictions because they would prevent the bankruptcy estate “from realizing the full value of its assets, in conflict with a fundamental bankruptcy policy”); 11 U.S.C. § 365(f)(1) (“notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease”). The district court’s interpretation, which withdraws from FDIC this traditional insolvency power to be free from contractual transfer restrictions, is completely inconsistent with Congress’s intent to enhance FDIC’s powers. Given the unprecedented banking crisis that FDIC was confronting at the time the statute was enacted, and given that the purpose of FIRREA was to “enhance,” not diminish, the powers available to FDIC, there is no reason why Congress would have wished to give FDIC receivers lesser transfer powers than those given to trustees in bankruptcy.

Moreover, the district court’s interpretation, under which FDIC can be free of contractual transfer restrictions only if it repudiates the contract, frustrates the Congressional intent behind Section 1821(d)(2)(G). Requiring FDIC to repudiate in order to be able to transfer renders the statute largely meaningless since there is nothing left to transfer once a contract is repudiated (a repudiated contract has no value to a purchaser). In addition, requiring FDIC to go contract by contract to determine which contracts have consent provisions and to repudiate those contracts

defeats the entire purpose of rules allowing free transferability, which is to “eliminate[] the need for detailed examination of the failed bank’s assets and of varying laws. Cost estimates can be made quickly and with greater accuracy, and P&A’s [which involve sales of the bulk of a failed bank’s assets to an acquiring institution, usually done overnight after the bank failure] can thereby be implemented with fewer risks and with the necessary speed.” *Bank of Boulder*, 911 F.2d at 1475.

The “free assignability of assets from failing insured banks . . . realistically addresses the frequent need of the FDIC to operate under emergency conditions in rescue situations.” *Id.* “A need by the FDIC to determine assignability on an asset-by-asset basis would surely slow a rescue operation down, when dispatch was required.” *Id.* Because “decisions concerning the appropriate method of dealing with a bank failure must be made with extraordinary speed” (*Gunter v. Hutcheson*, 674 F.2d 862, 869 (11th Cir. 1982)), subjecting FDIC to the additional burden of considering assignability on an asset-by-asset basis would cripple the FDIC’s ability to enter into the overnight P&A transactions that have helped safeguard the stability of the banking system over the past few decades.

C. Adherence To The Plain Language of Section 1821(d)(2)(G) Would Not Be Unfair To Contractual Counterparties, Nor Would It Create A Constitutional Problem

Despite the absence of any textual support for exempting contractual transfer restrictions from the purview of Section 1821(d)(2)(G), the *Waterview* court be-

lieved that such reading was required in order to avoid rendering the statute unconstitutional. But *Waterview* performed no constitutional analysis, and neither did the district court. Instead, *Waterview* rewrote the statute, in a manner not supported by its plain text, based on the simple belief that it would have been “astonishing” if Congress intended to take away preexisting contractual rights. 105 F.3d at 701. *Waterview* had it exactly backwards.

First, the principle of constitutional avoidance is plainly inapposite here. That principle allows a court to choose between two plausible interpretations of a statute, not to choose an implausible interpretation of the statute that is contrary to its plain text as *Waterview* did. *Reno v. ACLU*, 521 U.S. 844, 884-85 (1997) (the court “may impose a limiting [constitutional] construction . . . only if [the statute] is ‘readily susceptible’ to such a construction,” and may “not rewrite a . . . law to conform it to constitutional requirements”); *City of Houston v. Hill*, 482 U.S. 451, 468 (1987) (“This ordinance is not susceptible to a limiting construction because, as both courts below agreed, its language is plain and its meaning unambiguous.”).

Second, there were no preexisting contractual rights whatsoever either here or in *Waterview*. It is Section 1821(d)(2)(G) that is preexisting to the contracts, not the contracts that are preexisting to Section 1821(d)(2)(G). The contract here was entered into in 2007 and that in *Waterview* in 1992, well after the enactment of FIRREA in 1989.

Because Section 1821(d)(2)(G), which predates the contracts, allows FDIC to transfer without consent, parties cannot contract for the opposite result. “Contracts, however express, cannot fetter the constitutional authority of the Congress. . . . Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.” *Norman*, 294 U.S. at 307-08. “If the regulatory statute is otherwise within the powers of Congress”—as the regulation of banking is—“its application may not be defeated by private contractual provisions.” *Connolly v. PBGC*, 475 U.S. 211, 224 (1986).

Because the contractual transfer restrictions here were contrary to preexisting law to the extent they applied to FDIC, they are invalid and unenforceable: “That no contract can properly be carried into effect, which was originally made contrary to the provisions of law . . . [is a] proposition[] which admit[s] of no doubt.” *Louisville & Nashville R. Co. v. Mottley*, 219 U. S. 467, 485 (1911); *see also id.* (agreeing with “Pomeroy on Contracts, § 280 . . . [which] observ[ed] that an illegal contract cannot be made the basis of any judicial proceeding and that no action in law or equity could be maintained upon it”). *See also Connolly*, 475 U.S. at 223-24 (parties cannot use private contracts to avoid liability imposed by statute); *Concrete Pipe & Prods. of Ca., Inc. v. Construction Laborers Pension Trust for S. Ca.*, 508 U.S. 602 (1993) (same).

Accordingly, *Waterview*'s concern about preexisting contract rights misapprehends basic contract law. As discussed, any contractual provision requiring consent or approval for an FDIC transfer was invalid or unenforceable on the date it was made—and being invalid and unenforceable, it never provided any contractual “right” at all, let alone one preexisting the statute. Since no rights existed, no rights were taken, and there can be no taking, much less an unconstitutional one.

In sum, there is no unfairness here and no deprivation of any contract rights, because there were no valid contract rights in the first place. Banking is a regulated industry, and sophisticated banking institutions such as PBB certainly knew or should have known that under the law existing at the time when it entered into the contract, the right of first refusal would be invalid against FDIC should its counterparty be placed in receivership. And it also knew or should have known the basic principle that the “application” of a statutory section such as Section 1821(d)(2)(G) “may not be defeated by private contractual provisions.” *Connolly*, 475 U.S. at 224. Moreover, the laws applying to federally-insured banks such as Section 1821(d)(2)(G) are an implied part of contracts between the banks and parties doing business with them, and thus a party's contractual rights and obligations are limited by these laws. See *Home Bldg. & Loan Assoc. v. Blaisdell*, 290 U.S. 398, 435 (1934) (“existing laws [are] read into contracts in order to fix obligations

as between the parties”).⁴

If anything, unfairness and mischief come from the approach proposed by *Waterview* and the district court: The “result would be that individuals and corporations could, by contracts between themselves . . . render of no avail the exercise by Congress, to the full extent authorized by the Constitution, of its power to regulate [banking]. No power of Congress can be thus restricted. The mischiefs that would result from a different interpretation of the Constitution will be readily perceived.” *Louisville*, 219 U. S. at 485-86.

Finally, even if the contracts here had existed prior to the enactment of Section 1821(d)(2)(G) (and they did not), there would still be no Takings Clause violation. The Supreme Court has repeatedly held that in a highly regulated industry such as banking here, there is no constitutional violation under either the Takings Clause or the Due Process Clause when Congress enacts new legislation adjusting the burdens and benefits of public life, even if such legislation has the effect of completely nullifying certain contractual provisions that were valid when made. *See Connolly*, 475 U.S. at 224-27 (finding no taking even if statute invalidated preexisting contract rights); *Concrete Pipe*, 508 U.S. at 645-46 (same). The reason

⁴ *See also Norfolk*, 499 U.S. at 130 (“Laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it . . . This principle embraces alike those laws which affect its construction and those which affect its enforcement or discharge.”) (citation omitted).

for such decisions is manifest: “To subordinate the exercise of the Federal authority to the continuing operation of previous contracts would be to place to this extent [federal regulatory matters] in the hands of private individuals and to withdraw from the control of the Congress so much of the field as they might choose by ‘prophetic discernment’ to bring within the range of their agreements. The Constitution recognizes no such limitation.” *Norman*, 294 U.S. at 310.

Applying these principles, the First Circuit held that FIRREA’s invalidation of prior contract rights related to certain transfer restrictions (ipso facto clauses) did not effect an unconstitutional taking because the statute “adjust[ed] the benefits and burdens of economic life to promote the common good.” *McAndrews v. Fleet Bank*, 989 F.2d 13, 17-19 (1st Cir. 1993). FIRREA “is altering the future operation of landlords’ and tenants’ preexisting contractual rights in order to stem the disruption of banking services within communities, lessen the costs of bank liquidation, and restore public confidence in the nation’s banking system.” *Id.*

The district court dismissed *McAndrews*, noting that it involved a different FIRREA provision, Section 1821(e)(12)(A), not Section 1821(d)(2)(G).⁵ But the reasoning of *McAndrews* is equally applicable here. In performing the constitutional analysis, the First Circuit applied the three-factor test adopted by the Su-

⁵ Order denying reconsideration on the Section 1821(d)(2)(G) issue in *Deutsche Bank Nat. Trust Co. v. FDIC*, Case No. 2:09-cv-03852-GAF, Docket No. 77 at 7 (C.D. Cal. May 2, 2011).

preme Court in *Connolly*. With respect to the first factor, the First Circuit held that it did not favor a taking, as FIRREA was enacted to “adjust the benefits and burdens of economic life to promote the common good,” “in order to stem the disruption of banking services within communities, lessen the costs of bank liquidation, and restore public confidence in the nation’s banking system.” *Id.* This rationale equally applies here, as it describes the purpose and effect of the entire statute, not only of the provision at issue in *McAndrews*. With respect to the second factor, the First Circuit held that rendering the ipso facto clause unenforceable against FDIC only takes away a small portion of the entire bundle of rights provided by the contract. This analysis equally applies here. The right of consent and of first refusal is only a small part of the bundle of contractual rights at issue here, and it is in any event not completely invalidated with respect to parties other than FDIC. For example, the right of first refusal would be valid against FDIC’s assignee should that assignee wish to transfer its interest in the LPA. Finally, as to the last takings factor, the First Circuit held that in a highly regulated industry such as banking, parties can have no reasonable expectation that some of their contractual rights will not be affected, modified and even possibly nullified by future legislation. *Id.* This equally applies here. Indeed, as the Supreme Court explained, “[t]here can, in the nature of things, be no vested right . . . in the omission to legislate upon a particular subject which exempts a contract from the effect of subsequent legislation

upon its subject matter by competent legislative authority.” *Louisville*, 219 U. S. at 484. Thus, under the three-factor test established by the Supreme Court, Section 1821(d)(2)(G) effects no unconstitutional taking.

D. Even If There Were Any Lingering Ambiguity In The Statutory Language, FDIC’s Interpretation Must Prevail Because It Is The Most Reasonable One In Light Of The Statute Construed As A Whole

As shown above, FDIC’s interpretation of Section 1821(d)(2)(G) is the only interpretation of that statute that is reasonable in light of its plain language, the statutory context, and the history and purpose of Section 1821(d)(2)(G). But even if there were other reasonable interpretations of the statute, FDIC’s interpretation is the most reasonable one because it does not render meaningless the word “any,” and it does not frustrate Congress’s purpose of allowing FDIC to dispose quickly of the assets of failed institutions, without the significant delay caused by an asset-by-asset analysis of state transfer restrictions.

As the D.C. Circuit recently explained in deferring to FDIC-receiver’s interpretation of another FIRREA provision, “[a]t the very least” FDIC is “entitled to *Skidmore* deference” because it was “charged with administering this highly detailed regulatory scheme.” *MBIA*, 708 F.3d at 245. In according *Skidmore* deference, the court examined the purpose of the statutory scheme and concluded that just as in prior cases awarding FDIC *Skidmore* deference, FDIC’s interpretation was persuasive because contrary readings of the text “would frustrate Congress’s

. . . purpose” in enacting the provision “and would render the statutory scheme largely meaningless.” *Id.* See also *Wells Fargo Bank v. FDIC*, 310 F.3d 202, 208-09 (D.C. Cir. 2002) (according *Skidmore* deference to FDIC). Similarly here, *Skidmore* deference is appropriate because FDIC, which is charged with administering Section 1821(d)(2)(G) and rest of FIRREA, interpreted the statute in a manner that is consistent with the statutory text and purpose. By contrast, the district court’s interpretation enfeebls the word “any,” cripples FDIC’s ability to effectuate the overnight P&A transactions that have proved so vital to the continued stability of the banking system, and frustrates the statutory purpose of allowing FDIC to transfer assets “without any” restrictions.

CONCLUSION

For the foregoing reasons, the decision of the district court should be reversed.

Respectfully submitted,

COLLEEN J. BOLES
Assistant General Counsel
LAWRENCE H. RICHMOND
Senior Counsel

s/ Minodora D. Vancea
MINODORA D. VANCEA
J. SCOTT WATSON
Counsel

Federal Deposit Insurance Corporation
3501 Fairfax Drive, VS-D7014
Arlington, VA 22226-3500
(703) 562-2049

Counsel for the Federal Deposit Insurance Corporation

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). This brief contains 7,276 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Fed. Cir. R. 32(b). Microsoft Word 2003 was used to calculate the word count.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14-point, Times New Roman font.

STATEMENT OF RELATED CASES

FDIC is not aware of any related cases pending in this Court.

s/ Minodora D. Vancea
Minodora D. Vancea
Counsel For FDIC

ADDENDUM OF STATUTORY PROVISIONS

INDEX

STATUTORY PROVISIONS

12 U.S.C. § 1821(d)(2)(A) & (G) 1a

12 U.S.C. § 1821(e)(1), (2) & (3) 2a

12 U.S.C. § 1821(e)(13)(A) 3a

STATUTORY PROVISIONS

Sections 1821(d)(2)(A) & (G) provide

(d) POWERS AND DUTIES OF CORPORATION AS CONSERVATOR OR RECEIVER.--

....

(2) GENERAL POWERS.--

(A) SUCCESSOR TO INSTITUTION.--The Corporation shall, as conservator or receiver, and by operation of law, succeed to--

(i) all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution; and

(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

....

(G) MERGER; TRANSFER OF ASSETS AND LIABILITIES.--

(i) IN GENERAL.--The Corporation may, as conservator or receiver--

(I) merge the insured depository institution with another insured depository institution; or

(II) subject to clause (ii), transfer any asset or liability of the institution in default (including assets and liabilities associated with any trust business) without any approval, assignment, or consent with respect to such transfer.

(ii) APPROVAL BY APPROPRIATE FEDERAL BANKING AGENCY.--No transfer described in clause (i)(II) may be made to another depository institution (other than a new depository institution or a bridge depository institution established pursuant to subsection (m) or (n)) without the approval of the appropriate Federal banking agency for such institution.

Sections 1821(e)(1), (2) & (3) provide:

(e) Provisions relating to contracts entered into before appointment of conservator or receiver

(1) Authority to repudiate contracts

In addition to any other rights a conservator or receiver may have, the conservator or receiver for any insured depository institution may disaffirm or repudiate any contract or lease--

(A) to which such institution is a party;

(B) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs.

(2) Timing of repudiation

The conservator or receiver appointed for any insured depository institution in accordance with subsection (c) of this section shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) Claims for damages for repudiation

(A) In general

Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be--

(i) limited to actual direct compensatory damages; and

(ii) determined as of--

(I) the date of the appointment of the conservator or receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) No liability for other damages

For purposes of subparagraph (A), the term “actual direct compensatory damages” does not include--

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) Measure of damages for repudiation of financial contracts

In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be--

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (i) of this section except as otherwise specifically provided in this section.

Section 1821(e)(13)(A) provides:

(A) In general

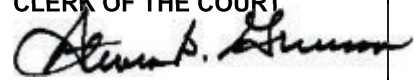
The conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or a depository institution bond, entered into by the depository institution notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a conservator or receiver.

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2013, an electronic copy of the foregoing Principal Brief for Appellant was filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Court's CM/ECF system and was served electronically by the Notice of Docket Activity upon counsel of record for the Appellee.

s/ Minodora D. Vancea
Minodora D. Vancea
Counsel For FDIC

TAB 15



OMSJ
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
TENESA S. SCATURRO, ESQ.
Nevada Bar No. 12488
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: melanie.morgan@akerman.com
Email: tenesa.scaturro@akerman.com

*Attorneys for Bank of America, N.A., as Successor
by Merger to BAC Home Loans Servicing, LP fka
Countrywide Home Loans, Inc., incorrectly sued
as Countrywide Home Loans, Inc. and Nationstar
Mortgage, LLC*

DISTRICT COURT
CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC; NEVADA
ASSOCIATION SERVICES, INC.; HORIZON
HEIGHTS HOMEOWNERS ASSOCIATION;
KB HOME MORTGAGE COMPANY, a foreign
corporation; DOE Individuals I through X; ROE
Corporations and Organizations I through X,

Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada
Limited Liability Company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;
NATIONSTAR MORTGAGE, LLC, a Delaware
limited liability company; COUNTRYWIDE
HOME LOANS, INC., a foreign corporation;
DOES I through X; and ROES 1-10, inclusive,

Counter-Defendant and Third Party Defendants.

Case No.: A-13-684715-C

Dept. No: XVII

**NATIONSTAR MORTGAGE, LLC'S
RESPONSE IN OPPOSITION TO SFR
INVESTMENT POOL 1, LLC'S MOTION
FOR SUMMARY JUDGMENT**

Hearing Date: January 3, 2018
Hearing Time: 8:30 a.m.

AKERMAN LLP
1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 Nationstar Mortgage LLC files this response in opposition to SFR Investment Pool 1, LLC's
2 (SFR) motion for summary judgment. Nationstar incorporates by reference the arguments and
3 evidence in support of its own motion for summary judgment.

4 **I. INTRODUCTION**

5 At the time of the HOA Sale, Freddie Mac had a property interest by virtue of its ownership
6 of the Deed of Trust encumbering the Property.¹ The Federal Foreclosure Bar protected that interest
7 from extinguishment, precluding SFR from taking an interest in the Property free and clear of the
8 Deed of Trust.

9 Nationstar's arguments supporting summary judgment were recently endorsed fully by the
10 Ninth Circuit in three cases: *Berezovsky*, *Elmer*, and *Flagstar*. The first two affirmed summary
11 judgment to FHFA, Freddie Mac, and Freddie Mac's servicers. Those cases are two of ten related
12 cases in which this Court has granted nearly identical summary judgment motions. Here, just as in
13 those ten related cases, Nationstar has submitted ample, admissible evidence of Freddie Mac's
14 property interest. SFR has presented no contradictory evidence, only arguments that misconstrue
15 governing law and misinterpret this evidence in ways that contradict controlling authority. Courts
16 have already rejected these arguments, and SFR offers no plausible basis to distinguish this case.
17 Accordingly, the Court should deny the SFR's motion and grant summary judgment in favor of
18 Nationstar.

19 **II. STATEMENT OF FACTS**

20 Nationstar incorporates by reference the statement of facts set forth in its motion for
21 summary judgment. Nationstar disputes SFR's statement of fact that the foreclosure sale complied
22 with all requirements of law. MSJ at 5. As set forth in Nationstar's motion, NAS did not mail a copy
23 of the notice of sale to Nationstar. Nationstar's MSJ at 20.

24 . . .

25 . . .

26 . . .

27
28 ¹ Terms not defined herein shall take on the definition in Nationstar's Motion for Summary Judgment (MSJ).

1 **III. ARGUMENT**

2 Nationstar incorporates by reference its arguments in its renewed motion for summary
3 judgment, and more specifically opposes SFR's motion on the following additional grounds.

4 **A. Nationstar is Not Seeking to Enforce a Right of Redemption.**

5 SFR first claims title vested in SFR without equity or right of redemption. MSJ at 6-7. The
6 argument is red herring. Nationstar is not seeking to enforce any kind of statutory redemption right.
7 Rather, as set forth in its motion for summary judgment, Nationstar is relying on a federal statute to
8 show that the HOA's foreclosure sale could not have extinguished the deed of trust. *See* 12 U.S.C. §
9 4617(j)(3); *see also* Nationstar MSJ at 10-20.

10 **B. The Nevada Supreme Court rejected SFR's deed recitals argument.**

11 SFR argues this Court should look no further than the trustee's deed recitals because
12 foreclosure sales and the resulting deeds are presumed valid, and the recitals contained within the
13 trustee's deed are conclusive. MSJ at 7-8. This argument ignores the Nevada Supreme Court's
14 decision in *Shadow Wood* when making this argument. In *Shadow Wood*, 132 Nev. Adv. Op. at 21,
15 the Court noted that the deed recitals outlined in NRS 116.3116 only concern "default, notice, and
16 publication of the" notice of sale, and thus do not provide any presumption regarding other aspects
17 of the foreclosure. *Id.*, at 10. As to those issues, Nevada courts "retain the power, in an appropriate
18 case, to set aside a defective foreclosure sale on equitable grounds." *Shadow Wood*, 132 Nev. Ad.
19 Op. 5 at 11, 2016 WL 347979, at *5 (quoting *Golden v. Tomiyasu*, 387 P.2d 989, 995 (Nev. 1963)).
20 To the extent Nationstar has the burden to produce evidence of the kind of unfairness necessary to
21 set aside a sale, it has more than met that burden. As set forth in Nationstar's motion for summary
22 judgment, several defects in the foreclosure process warrant relief from the HOA foreclosure sale,
23 including the HOA trustee's failure to provide Nationstar notice of the sale. MSJ at 20-24.

24 **C. SFR Fails to Raise Any Meaningful Challenge to the Evidence Here.**

25 The Court should not credit SFR's objection to the evidence or to judicial notice of the facts
26 in the public record because it alleges there has been some "serious misconduct" on the part of
27 Nationstar. SFR MSJ at 16-17. SFR's aspersions are grounded in allegations of mistakes made by
28 *other servicers in other actions*, and SFR does not point to any fact casting doubt on the accuracy of

1 the evidence here. SFR cannot use guilt-by-association to refute presumptively valid property
2 records from the county recorder's office. Similarly, the HUD report that SFR cites concerns the
3 mortgage foreclosure practices of *other* servicers in connection with foreclosures conducted prior to
4 2012 on Federal Housing Administration insured loans.² See SFR MSJ Ex. H-1. The HUD report
5 has nothing to do with this case: the Loan here is owned by an Enterprise under FHFA
6 conservatorship, not one of the loans insured by the FHA described in the report; Nationstar is not
7 mentioned in the HUD report; and the Loan here was not foreclosed upon, prior to 2012 or
8 otherwise, so any concerns about foreclosure-related conduct has no bearing on the issues here. SFR
9 fails to explain how the issues discussed in the report relate to any document or fact concerning the
10 Loan here. SFR cannot create an issue of material fact by making allegations of misconduct by
11 others in contexts completely different from those here.

12 Nationstar did produce testimony, and documents, from Freddie Mac regarding its ownership
13 of the Loan. MSJ at Ex. B. The evidence is attached to and explained in Nationstar's motion for
14 summary judgment. *Id.* To the extent SFR argues Nationstar cannot rely on this evidence because it
15 was not produced with its disclosures, SFR is mistaken. Nationstar produced the documents Mr.
16 Meyer relied on with its third and fourth supplemental disclosures. MSJ at Ex. D. Nevada's Rules of
17 Civil Procedure also do not mandate supplements to initial disclosures must be made before the
18 discovery cutoff date. NRCP 16.1, 26(e). In fact, a party is permitted to disclose witnesses it
19 intends to present at trial up to thirty days before trial. NRCP 16.1(a)(3). Nationstar served its sixth
20 supplemental initial disclosures, disclosing Freddie Mac's corporate representative as an individual
21 with knowledge of the Freddie Mac's ownership of the Loan, on November 29, 2017. Nationstar's
22 Sixth Supplemental Disclosures, **Ex. A**. Nationstar's disclosure was timely. See *id.*

23 SFR argues Nationstar never told the Court it owned the Deed of Trust, specifically
24 referencing statements made in an October 14, 2015 motion to dismiss, and points to Nationstar's
25 interrogatory responses from 2015 where it inadvertently failed to respond to two questions. MSJ at
26 14-15. SFR's arguments are disingenuous. Nationstar is unaware of any motion to dismiss filed on
27

28 ² The Federal Housing Administration ("FHA") is not the same entity as FHFA.

1 October 14, 2015. To the extent SFR is referring to Nationstar's motion to dismiss its third party
2 complaint filed September 18, 2013, over four years ago, SFR is simply nitpicking semantics. True,
3 Nationstar did characterize the mortgage as "its loan" in the motion, but the reasons for doing so are
4 easy to understand. Nationstar is the beneficiary of record of the Deed of Trust. MSJ at Ex. D. This
5 does not mean Nationstar owns the Loan. SFR's arguments are even more insincere due to the fact
6 that it clearly had notice of Freddie Mac's ownership claims as early as September 28, 2015, when
7 Nationstar opposed SFR's motion for summary judgment. SFR also should not be permitted to take
8 advantage of Nationstar's inadvertent failure to answer two out of thirty interrogatories SFR served
9 back in 2015. This is the first time the mistake was brought to Nationstar's attention.³ Had
10 Nationstar been aware, it would have corrected the issue long ago. SFR has waived any argument
11 the responses are deficient.

12 **D. Securitization of the Loan Is Irrelevant to the Protection of the Federal**
13 **Foreclosure Bar.**

14 SFR also contends that the Loan here was securitized, and that the Federal Foreclosure Bar
15 does not apply because FHFA as Conservator does not succeed to the ownership of securitized loans,
16 unlike all other assets of the Enterprises. SFR MSJ at 17-20. These arguments fail both as a matter
17 of law and fact. The Loan was not securitized at the time of the HOA Sale. Even if it had been
18 securitized, it would have no bearing on the Federal Foreclosure Bar's protection because Freddie
19 Mac owns the mortgage loans it securitizes, and FHFA as Conservator succeeds to that ownership
20 interest during the conservatorship.

21 **1. The Loan Was Not Securitized at the Time of the HOA Sale.**

22 SFR's securitization argument is irrelevant to this case because the Loan was *not* securitized
23 at the time of the HOA Sale. While Freddie Mac placed the Loan into a securitization trust after
24 acquisition, it was removed from that trust and transferred to Freddie Mac's unsecuritized portfolio
25 of loans January 15, 2009, more than four years before the HOA Sale in April 2013. **Ex. B**, Supp.

27 ³ SFR's argument is also disingenuous because it omits the fact that Nationstar clearly stated that it was acting as Freddie
28 Mac's servicer at least five times in responses to SFR's second set of discovery requests. SFR also deposed Nationstar
twice and each time testified repeatedly that Freddie Mac owned the loan.

1 Decl. of Dean Meyer, ¶ 8. The Loan has not been securitized since. *Id.*

2 SFR cites no evidence to the contrary demonstrating that the Loan was securitized at the time
3 of the HOA Sale. Rather, SFR merely contends that the Loan may have been securitized. Given
4 that SFR’s speculation is incorrect, this should end any inquiry into securitization. Indeed, the only
5 time securitization could possibly matter is at the time of the HOA Sale—that is the time that
6 Freddie Mac’s property interest either existed or did not, and thus was protected by the Federal
7 Foreclosure Bar, or was not. The evidence confirms the Loan was not securitized at the time of the
8 HOA Sale, so SFR’s remaining arguments on the issue are not relevant here.

9 2. Freddie Mac Owns the Loans It Securitizes

10 Even if the Loan had been securitized at the time of the HOA Sale, SFR’s argument is
11 premised on the flawed assumption that Freddie Mac does not own the loans it securitizes. As a
12 matter of law, the Enterprises own the loans that they securitize, because those loans are deposited
13 into common-law trusts of which the Enterprise is the trustee. The Enterprises then sell certificates
14 that entitle the certificate-holders to a contractually specified portion of the payments borrowers
15 make on the mortgages in that pool. *See, e.g.,* March 2013 PC Master Trust Agreement,
16 “Definitions” (defining Freddie Mac as the trustee).⁴

17 As the Seventh Circuit explained in a case involving securitized assets, “[i]n American law, a
18 trustee is the legal owner of the trust’s assets.” *Paloian v. LaSalle Bank, N.A.*, 619 F.3d 688, 691
19 (7th Cir. 2010). Courts in New York—the jurisdiction governing the execution of Freddie Mac trust
20 agreements—confirm that a common-law trust is not a legally cognizable entity capable of owning
21 property, but instead can act only through a trustee, which holds legal title to trust property. *S.E.C.*
22 *v. Am. Bd. of Trade, Inc.*, 654 F. Supp. 361, 366 (S.D.N.Y.), *aff’d*, 830 F.2d 431 (2d Cir. 1987) (“A
23 trustee . . . holds legal or equitable title to the property placed in his possession.”). Indeed, it is well
24 established that “a traditional common law trust is a legal relationship between legal entities, not a
25 legal entity in-and-of-itself A trust is not a legal ‘person’ which can own property” *Lane*

26
27
28 ⁴ A copy of the March 2013 PC Master Trust Agreement that was in effect at the time of the September 7, 2013 HOA Sale is publicly available at http://www.freddiemac.com/mbs/docs/pcagreement_032213.pdf.

1 *v. Wells Fargo Bank, N.A.*, No. 3:12-cv-00015-RCJ-VPC, 2012 WL 4792914, at *6 (D. Nev. Oct. 8,
2 2012); *see also* 76 Am Jur. 2d Trusts § 3 (2005) (“[T]he general rule is that ‘[a] trust is not an entity
3 distinct from its trustees and capable of legal action on its own behalf, but merely a fiduciary
4 relationship with respect to property.’”).

5 Thus, Freddie Mac’s common-law securitization trusts are not legal entities that have the
6 capacity to own property, and the beneficiaries of those trusts are not the owners of the trust
7 property. Pursuant to blackletter trust law, Freddie Mac maintains ownership of the assets of the
8 trust as trustee.

9 SFR also cites to a Freddie Mac FAQ, SFR MSJ at 20, leaving out context which
10 demonstrates it is not relevant here. That particular FAQ discusses “Senior Subordinate” trusts that
11 have been used by Freddie Mac to securitize only certain mortgage loans purchased since 2015, and
12 thus do not pertain to any of the Loan at issue here—or any other Freddie Mac loans at issue in
13 related HOA-sale litigation, all of which were purchased before 2015. *See* Bulletin at 4-5 (Apr. 15,
14 2015), <http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bl11505.pdf>. That FAQ is
15 relevant to only that subset of mortgage loans, and those that Freddie Mac owns. Indeed, other
16 FAQs provided to borrowers of Freddie-Mac owned loans, such as the one here, makes clear that
17 Freddie Mac owns those mortgage loans. *See, e.g.*, Borrower Notification Letter FAQs,
18 http://myhome.freddiemac.com/own/borrower_notification_letter_faqs.html (“your mortgage was
19 sold to us [Freddie Mac]”).

20 3. FHFA Succeeds to Mortgages Held in Trust

21 SFR argues, seemingly in the alternative, that even if Freddie Mac owns securitized loans,
22 FHFA does not succeed to that ownership interest. SFR relies on a provision of HERA that says
23 securitized loans “shall be held” by the Conservator. SFR MSJ at 17-20 (citing 12 U.S.C.
24 § 4617(b)(19)(B) (the “Trust Protection Provision”). SFR contends that this means FHFA did not
25 succeed to mortgages “held in trust,” as it did to all Enterprise assets pursuant to 12 U.S.C.
26 § 4617(b)(2)(A)(i) (the “Succession Provision”), which provides that FHFA “by operation of law,
27 immediately succeed[s] to ... all rights, titles, powers, and privileges of the [entity in
28 conservatorship] with respect to ... [its] assets” SFR’s argument thus is rooted in an assertion

1 that the word “holding” must be read as an exception to “succession,” an assertion unsupported by
2 the statute itself.

3 Indeed, the Ninth Circuit in *Elmer* gave this argument short shrift, holding that the plain
4 language of the Trust Protection Provision “prohibits creditors from drawing on assets held in trust
5 to satisfy creditors’ claims; it does not bar the Agency from succeeding to [an Enterprise’s] interest
6 in the assets.” *Elmer*, 2017 WL 3822061, at *2. This plain-language interpretation by the Ninth
7 Circuit lays bare that the logic of SFR’s argument breaks down swiftly: “to succeed” and “to hold”
8 are not mutually exclusive.

9 SFR’s proffered reading of the Trust Protection Provision also makes no practical sense. The
10 provision as a whole specifies that securitized mortgages are off-limits to the Enterprises’ general
11 creditors, that the Conservator must hold them according to the terms of the trust agreements
12 underlying the particular securitization pool, and that FHFA can promulgate reasonable regulations
13 to cabin the damages available on claims relating to such mortgages.⁵ This reflects sound policy by
14 Congress aimed at stabilizing the nation’s housing-finance system.

15 Yet SFR contends that this unrelated HERA provision—one to which the Succession
16 Provision makes no reference, and which itself makes no reference to the Succession Provision—
17 somehow supersedes and nullifies the Succession Provision as it would apply to the Enterprises’
18 securitized loans, thereby leaving that class of asset, and *only* that class, subject to the impairments
19 against which the Federal Foreclosure Bar protects. That is wrong. SFR’s interpretation would
20

21 ⁵ 12 U.S.C. § 4617(b)(19)(B) reads as follows:

22 (i) In general

23 Any mortgage, pool of mortgages, or interest in a pool of mortgages held in trust, custodial, or
24 agency capacity by a regulated entity for the benefit of any person other than the regulated entity shall not
25 be available to satisfy the claims of creditors generally, except that nothing in this clause shall be construed
26 to expand or otherwise affect the authority of any regulated entity.

27 (ii) Holding of mortgages

28 Any mortgage, pool of mortgages, or interest in a pool of mortgages described in clause (i) shall
be held by the conservator or receiver appointed under this section for the beneficial owners of such
mortgage, pool of mortgages, or interest in accordance with the terms of the agreement creating such trust,
custodial, or other agency arrangement.

(iii) Liability of conservator or receiver

The liability of the conservator or receiver appointed under this section for damages shall, in the
case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in
accordance with the regulations of the Director.

1 leave securitized mortgages with *less* protection than that afforded to unsecuritized loans under the
2 Federal Foreclosure Bar, flouting Congress’s intent to preserve the Enterprises’ securitization
3 function—and thereby destabilizing the secondary mortgage market.

4 If, as SFR contends, Congress intended the Trust Protection Provision to negate the
5 Succession Provision (which it positioned some 17 subsections and 4,000-plus words away) one
6 might have expected Congress to say so, or to at least offer some perceptible hint. For example,
7 Congress might have combined the two provisions, positioned them adjacently, or included some
8 cross-reference between them. But Congress did none of those things, which leads to the opposite
9 conclusion: Congress used different language in two different parts of HERA with different purposes
10 to achieve different results. In contrast to the broad terms of the Succession Provision, the Trust
11 Protection Provision articulates a narrow directive concerning the management and extra protection
12 of securitized loans from the Enterprises’ creditors.

13 SFR places much reliance on the heading “General Exceptions” to suggest an intention to
14 override all other provisions of Section 4617, including the Succession Provision. *See* SFR MSJ at
15 18. “But headings and titles are not meant to take the place of the detailed provisions of the text” of
16 a statute. *N.L.R.B. v. Fresh & Easy Neighborhood Mkt., Inc.*, 805 F.3d 1155, 1160 (9th Cir. 2015)
17 (quoting *Bhd. of R.R. Trainmen v. Balt. & O.R. Co.*, 331 U.S. 519, 528 (1947)). SFR ignores that the
18 text of the Trust Protection Provision does not fully exempt *any* property from *all* powers articulated
19 in the preceding sections, but rather delineates a far more limited exception: it directs the
20 Conservator to manage securitized mortgages according to the terms of the underlying trust
21 instruments, and places those mortgages off-limits to the Enterprises’ general creditors.

22 SFR’s argument seems to be based in the fact that the Trust Protection Provision does not
23 state that the Conservator is the successor to, specifically, the Enterprises’ securitized loans. But
24 why would it? The fact that the Conservator succeeded to *all* assets of the Enterprises is established
25 in the Succession Provision, while the Trust Protection Provision addresses particular rules for the
26 Conservator’s management of one type of asset—securitized loans.⁶

27
28 ⁶ SFR’s reliance on Section 4617(b)(19)(B)(iii) is especially puzzling. *See* SFR MSJ at 20. After all, if the Conservator
does not succeed to mortgages held in trust, as SFR contends, then it cannot be subject to damages relating to those

1 In sum, this Court should follow *Elmer* by reading the Succession and Trust Protection
2 Provisions according to their plain text and the clear Congressional intent to provide more protection
3 to securitized asserts during the conservatorship, not less. SFR's argument fails; the Federal
4 Foreclosure Bar protects securitized loans, just as it does other assets of the Enterprises.

5 **IV. CONCLUSION**

6 Pursuant to 12 U.S.C. § 4617(j)(3), the HOA Sale did not extinguish Freddie Mac's interest
7 in the Property. Accordingly, Nationstar respectfully requests that the Court deny SFR's motion and
8 grant summary judgment to Nationstar.

9 DATED this 14th day of December, 2017.

10 AKERMAN LLP

11 /s/ Tenesa S. Scaturro

12 MELANIE D. MORGAN, ESQ.

13 Nevada Bar No. 8215

14 TENESA S. SCATURRO, ESQ.

15 Nevada Bar No. 12488

16 1160 Town Center Drive, Suite 330

17 Las Vegas, NV 89144

18 *Attorneys for Nationstar Mortgage LLC*

19
20
21
22
23
24
25
26
27 mortgages. In any event, the fact that certificate-holders may bring claims against FHFA for breach of the trust
28 agreements does not help SFR, which is not a certificate-holder and which seeks to extinguish these mortgages, not
ensure they are managed pursuant to the terms of the trust agreements.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 14th day of December, 2017 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE, LLC'S RESPONSE IN OPPOSITION TO SFR INVESTMENT POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

P. Sterling Kerr, Esq.
LAW OFFICES OF P. STERLING KERR
2450 St. Rose Parkway, Suite 120
Henderson, NV 89074

Attorneys for Ignacio Gutierrez

Diana S. Ebron, Esq.
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 200
Las Vegas, Nevada 89139

Attorneys for Nevada Association Services, Inc.

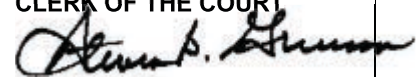
Richard J. Vilkin, Esq.
LAW OFFICES OF RICHARD J. VILKIN, P.C.
1286 Crimson Sage Ave.
Henderson, NV 89012

Attorneys for Nevada Association Services, Inc.

/s/ Carla Llarena

An employee of AKERMAN LLP

TAB 16



OPPN
DIANA S. EBRON, ESQ.
Nevada Bar No. 10580
E-mail: diana@KGElegal.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: jackie@KGElegal.com
KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
E-mail: karen@KGElegal.com
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC;
NEVADA ASSOCIATION SERVICES, INC.;
HORIZON HEIGHTS HOMEOWNERS
ASSOCIATION; KB HOME MORTGAGE
COMPANY, a foreign corporation, DOE
Individuals I through X, ROE Corporations and
Organizations I through X,

Defendants.

And Related Claims

Case No. A-13-684715-C

Dept. No. XVII

**SFR INVESTMENTS POOL 1, LLC'S
OPPOSITION TO NATIONSTAR
MORTGAGE, LLC'S MOTION FOR
SUMMARY JUDGMENT AND COUNTER
MOTION TO STRIKE**

Hearing Date: January 3, 2018

Hearing Time: 8:30 a.m.

SFR Investments Pool 1, LLC ("SFR") opposes Nationstar Mortgage, LLC's ("Nationstar" or "Bank") Motion for Summary Judgment. Further, SFR moves to strike Exhibit B to Bank's motion, "Federal Home Loan Mortgage Corporation's ["Freddie Mac's"] Declaration in Support of Nationstar Mortgage, LLC's Renewed Motion for Summary Judgment" because neither Freddie Mac nor Dean Meyer were disclosed within the original or the extended discovery period. This opposition and countermotion are based on the following memorandum of points and authorities, the declaration of Diana S. Ebron, Esq. ("Ebron Decl.") attached as **Exhibit 1**, the papers and pleadings on file herein, including SFR's motion for summary judgement, and oral argument heard by the Court at the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Bank had one job after remand from the Nevada Supreme Court—prove Freddie Mac’s interest in the Deed of Trust and the Bank’s servicing relationship with FHFA. But during the discovery period, it failed to disclose the appropriate documents and witnesses needed to do this. The Bank is not entitled to summary judgment because the Bank has not presented admissible evidence as to the Bank’s and Freddie Mac’s purported interests in the Deed of Trust. Even if there were admissible evidence of Freddie Mac’s/FHFA’s purported “property interest” in the Deed of Trust, which there is not, the Bank has not produced admissible evidence of any contractual relationship with Freddie Mac or FHFA that would allow it to invoke 12 U.S.C. 4617(j)(3) on behalf of the FHFA. And even if the Bank *could* invoke 4617(j)(3) to save itself from its inaction that caused the Deed of Trust to be extinguished by the Association foreclosure sale, the Bank’s claims still fail because stripping SFR’s property interest without notice and an opportunity to be heard would violate SFR’s due process rights. Further, the Bank’s arguments that price alone is enough to set aside the sale and that the sale was commercially unreasonable have been squarely rejected by the Nevada Supreme Court. Thus, the Bank’s motion must be denied and judgment entered in favor of SFR.

II. COUNTERMOTION TO STRIKE

The entirety of Exhibit B to the Bank’s motion—the declaration of Dean Meyer on behalf of Freddie Mac—and any argument related to it, must be stricken because the Bank failed to disclose Freddie Mac and/or Dean Meyer during the original or extended discovery period. NRCPC 16.1(a)(1)(A) required the Bank to provide the “name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information” within 14 days after the Rule 16.1(b) conference, which in this case was held on November 6, 2014.

Pursuant to NRCPC 16.1(e)(3), the Court “shall impose upon the party or a party’s attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following: (A) Any of the sanctions available pursuant to Rule 37(b)(2) and Rule 37(f); (B) An

1 **order prohibiting the use of any witness, document or tangible thing which should have**
2 **been disclosed, produced, exhibited or exchanged pursuant to Rule 16.1(a)."** (emphasis
3 added). In addition, NRCP 37(c)(1) provides that:

4 A party that without substantial justification fails to disclose information required by
5 Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery as required by
6 Rule 26(e)(2), **is not, unless such failure is harmless, permitted to use as evidence**
7 **at a trial, at a hearing, or on a motion any witness or information not so**
8 **disclosed.**

NRCP 37(c)(1)(emphasis added).

9 **The Bank never disclosed Freddie Mac of Dean Meyer** as witnesses in its initial
10 disclosures made on July 10, 2015 or any of its supplemental disclosures through the last day of
11 discovery after remand—October 17, 2017. See Ebron Decl. It was not until the Bank filed its
12 motion for summary judgment on November 15, 2017 that any mention of Dean Meyer made it
13 into this case through his post-discovery declaration on behalf of Freddie Mac. Id.

14 **SFR will be severely prejudiced if any portion of Exhibit B is considered by the**
15 **Court at this point in the litigation.** Id. Bank has consistently taken the position that Freddie
16 Mac is completely unnecessary to this litigation, and won on that point at the Nevada Supreme
17 Court. When the Bank listed Nationstar as the only witness that would provide information about
18 Freddie Mac's ownership interest and the purported servicing relationship, SFR presumed the
19 Bank was maintaining that same position. SFR's position is that Freddie Mac does not actually
20 have an interest in the loan or any relevant information related to this case, which is why SFR
21 did not name Freddie Mac as a witness. Id. **The only reason SFR did not depose Freddie Mac**
22 **was because the Bank failed to list Freddie Mac as a witness** as required by Rule 16.1. Id.
23 Instead, it appeared that the Bank would rely on its own witness to attempt to prove both Freddie
24 Mac's purported ownership and its servicing/agency relationship with Freddie Mac/FHFA.

25 SFR should have been afforded the opportunity during the discovery period to depose
26 Freddie Mac on the declaration and documents the Bank now intends to rely upon for its
27 summary judgment motion. SFR attempted to obtain information from Nationstar about the
28 documents, but Nationstar took the position that it could not and would not authenticate or

1 explain the documents. Id. It seems Nationstar is using gamesmanship to try to deprive SFR of
2 its right to properly challenge its purported evidence by waiting until well after the time SFR
3 could have subpoenaed Freddie Mac to even claim Freddie Mac had any relevant information to
4 this litigation.

5 To be clear, Freddie Mac's documents and declaration are questionable on their face and
6 require further inquiry, if not outright rejection. For example, Freddie Mac's cryptic screen shots
7 are partially illegible and have blanks where there should not be blanks, leaving one to question
8 if some type of incriminating information was simply redacted without a privilege log. See Ex. 1
9 to Bank's Ex. B. Further, these screen shots are dated July 26, 2017—nowhere near the time of
10 the 2013 Association foreclosure sale. One screen shot identifies Bank of America as being
11 "active" with a power of attorney. See Ex. 2 to Bank's Ex. B. Dean Meyer uses this screen to
12 purportedly prove that Freddie Mac purchased the loan in 2005 from Bank of America, N.A. Ex.
13 B, ¶5(e). But this allegation contradicts the purported assignment of the deed of trust attached as
14 Bank's Ex. C, which indicates that Bank of America, N.A. did not become involved in the loan
15 until it was the successor by merger to BAC Home Loans Servicing, LP FKA Countrywide
16 Home Loans Servicing LP. This merger did not happen until July 2011, so Freddie Mac could
17 not have purchased the loan from Bank of America, N.A. The idea that Bank of America, N.A.
18 serviced the loan since August 22, 2005 is equally problematic, given the language in the
19 assignment. The screen shot purporting to show Nationstar as the current servicer is also
20 questionable because it contradicts Nationstar's sworn testimony that it has a written power of
21 attorney with Freddie Mac. See Ex.4 to Bank's Ex. B (noting "NO" next to "Power of Attorney").
22 The purported "Loan Status~~Manager~~ Mortgage Payment History Report" attached as Ex. 5 to
23 Bank's Ex. B, has disappearing columns, numbers that simply do not add up and was also
24 generated in July 2017. Further, the same document shows the loan as "inactive" in November
25 2012, before the foreclosure sale and shortly after Nationstar was supposed to have become the
26 servicer. It was at that point that all of a sudden, the "Interest Due" column began registering
27 \$0.00. It is unclear what, if any, information Nationstar was "reporting" on the "inactive" loan
28 from then to July 2017. Ex. 5 to Bank's Ex. B.

1 Because the Bank's failure to comply with Rule 16.1 would prejudice SFR if the
2 "evidence" were to be considered by the Court, the declaration of Freddie Mac and all of the
3 arguments based upon the purported evidence must be stricken. To the extent the Court intends
4 to consider any of the information contained in or attached to Bank's Exhibit B, which it should
5 not, SFR must be allowed to conduct a deposition.

6 **III. STATEMENT OF DISPUTED FACTS**

7 **Disputed Facts # 1-5:**

- 8 1. A Deed of Trust listing Ignacio Gutierrez as the borrower ("Borrower"); KB Home
9 mortgage company ("KB Home") as the lender ("Lender"); and MERS, as beneficiary solely as
10 nominee for Lender and Lender's successors and assigns, was executed on July 6, 2005, and
11 recorded on July 20, 2005. **Ex. A.** The Deed of Trust granted Lender a security interest in real
12 property known as 668 Moonlight Stroll Street, Henderson, Nevada (the "Property") to secure the
13 repayment of a loan in the original amount of \$271,638.00 to Borrowers (the "Loan"). **Id.**
14 2. Freddie Mac purchased the Loan and thereby obtained a property interest in the Deed of
15 Trust on or about August 22, 2005. Freddie Mac Decl., **Ex. B** at ¶5(d). Freddie Mac maintained that
16 ownership at the time of the HOA Sale on April 5, 2013. **Id.** at ¶5(i).
17 3. On April 23, 2012, MERS, as nominee for Lender and Lender's successors and assigns,
18 assigned the Deed of Trust to Bank of America, N.A. **Ex. C.**
19 4. On November 28, 2012, Bank of America, N.A. recorded an assignment of the Deed of Trust
20 to Nationstar. **Ex. D.**
21 5. At the time of the HOA Sale on April 5, 2013, Nationstar was the servicer of the Loan for
22 Freddie Mac. See **Ex. B** at ¶5(i); see also Nationstar Decl., **Ex. E** at ¶¶ 5,6.

23 As explained in SFR's motion, which SFR incorporates fully as if restated herein, SFR
24 challenges that the Freddie Mac ever purchased this particular deed of trust and note and the
25 purported servicing relationship. As explained above, the Bank cannot rely on Exhibit B to its motion
26 because, according to the Bank's 30(b)(6) witness, the only entity that could possibly authenticate or
27 explain the documents is Freddie Mac or its employees. Freddie Mac and Dean Meyer were never
28 disclosed as a potential witness during discovery. Moreover, Nationstar's declaration attached as
Exhibit E does not include any of the documents it purports to rely on and references as exhibits.
Even if it had, as explained in SFR's motion, the documents and the Bank's conclusion based on
them are questionable at best. In addition, SFR has demanded to see the original of many of these
documents, but instead, the Bank has only produced copies. NRS 52.245 states that admissible
copies will only be treated as originals when there is no genuine question of material fact is raised as
to the authenticity of the copies. NRS 52.245(1)(a).

Disputed Fact #6: *“The relationship between Nationstar as the servicer of the Loan, and, on the other hand, Freddie Mac as owner of the Loan, is governed by Freddie Mac’s Singles Family Seller/Servicer Guide (“Guide”). The Guide serves as a central governing document for Freddie Mac’s relationship with servicers nationwide.”*

The Bank has not provided admissible evidence to establish that this purported fact is true. See Disputed Facts #1-5. There is nothing tying this document directly to the subject Property or loan. SFR further objects to any attempt the Bank may make to request the Court take judicial notice of this website and/or these purported documents. The purported “facts” of these documents are not “generally known within the territorial jurisdiction of this court, nor “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” NRS 47.130(2). Additionally, while the Bank purports to be the servicer for this loan, the recorded documents state that the Bank is the owner of the note and beneficiary of the deed of trust. For these reasons, the Court should not consider the Freddie Mac Servicing Guide as evidence for purposes of determining whether or not to grant summary judgment. SFR intends to file a Motion in Limine to exclude this evidence in the event this matter goes to trial.

Disputed Fact #7: *“At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing Freddie Mac’s interest in Property.”*

The Bank has not provided admissible evidence to establish that this purported fact is true. The April 2015 press release upon which the Bank relies, is a hearsay document which is neither a statute nor regulation and does not meet the standard for any hearsay exception. This document is not authenticated and does not qualify as a “public record.” Moreover, this hearsay statement was made well after the foreclosure for the purposes of litigation, thus calling into question the relevance and authenticity of this statement.

In addition, Freddie Mac’s own servicing guidelines require the servicer to pay, and allow it to be reimbursed for, association dues to protect the deed of trust. The servicing guidelines contemplate an association’s right to a lien and to foreclose on that lien. These provisions in the servicing guide were made while Freddie was in conservatorship, with authority supposedly granted by the FHFA.

Tellingly, the Bank does not call 4617(j)(3) the “Federal Extinguishment Bar”—this is because the statute does not mention “extinguishment”, only foreclosure. The FHFA has taken

1 the position at the Nevada Supreme Court that it does not have a problem with an association
2 foreclosing on its lien, only the results of the foreclosure. But once it allowed the foreclosure to
3 go forward, it should have looked for its remedy with its servicer instead of SFR.

4 It is undisputed that the FHFA has never set up procedures to seek consent—for
5 association sales or bank foreclosure sales. FHFA, through Fannie Mae and Freddie Mac, have
6 interests in second deeds of trust, as evidenced by the servicing guide provisions related to
7 second deeds of trust. It would be disingenuous to say that an association must seek consent
8 through a non-existent procedure, but a first deed of trust holder would not have to seek consent
9 through the same non-existent procedure. Instead, it is more likely that the FHFA approved of
10 the foreclosures by both associations and banks by allowing them to go forward, with the
11 expectation that the servicer would follow the guidelines and protect the deed of trust. It was not
12 until the FHFA decided to lie in bed with the servicers instead of invoking its remedy of
13 repurchase by the servicer that it issued this informal “withdrawal of consent” in the form of a
14 press release.

15 Further, there is evidence that the FHFA through Fannie Mae has consented to an
16 association foreclosure during the conservatorship. In Trademark Properties of Michigan, LLC v.
17 Federal National Mortgage Association, 308 Mich.App.132 (Mich.App.), property owned by
18 Fannie Mae was foreclosed upon by an association, and not once throughout the litigation did
19 Fannie Mae raise 4617(j)(3). In Trademark, Fannie Mae had purchased the property on May 11,
20 2010 at a lender foreclosure sale. Thereafter, Fannie Mae failed to pay its assessments. As a
21 result, the association foreclosed on February 15, 2011. This foreclosure was upheld, and at no
22 time did Fannie Mae allege 4617(j)(3) prohibited the foreclosure.

23 **Disputed Fact #8:** *Nationstar’s expert opines that the fair market value of the Property at*
24 *the time of the HOA sale was \$138,000.”*

25 SFR does not dispute that the Bank’s expert opined this. However, SFR disputes the
26 valuation as it calls for a legal conclusion. In addition, SFR contests the manner in which the
27
28

valuation is calculated, as set forth in its rebuttal expert report.¹ Additionally, the Bank's Exhibit J is hearsay and unauthenticated and should not be considered in resolving the Bank's motion.

I. LEGAL ARGUMENT

A. The Bank has the Burden of Proving its Defenses (or Claims Masquerading As Defenses)

The Bank's argument is wholly premised on the notion that Freddie allegedly purchased the purported "loan" and obtained a property prior to the subject foreclosure sale. And since Freddie was under conservatorship of the FHFA, the so-called "Federal Foreclosure Bar" under 12 U.S.C.(j)(3) allegedly precluded SFR from acquiring free and clear interest in the Property. *See* Bank's MSJ p. 13. This argument requires the Bank to prove that the purported loan is "property of" FHFA for purposes of 4617(j)(3), which in turn requires the Bank to prove that Freddie owned the purported loan at the time of the sale and that FHFA succeeded to the loan rather than it being held in trust. *See Breliant v. Preferred Equities Corp.*, 918 P.2d 314, 318 (Nev. 1996)(Evidence of a superior interest must be enough to overcome the "presumption in favor of the record titleholder" who is, in this case). Unfortunately for the Bank, here the evidence shows that the Bank, Freddie, or FHFA lacks any interest in the Property. Moreover, FHFA and the Enterprises have already admitted that as "[a] threshold matter, of course, [Plaintiff] must have a property interest in order for [4617(j)(3)] to apply." *Danser*, No. 2:13-cv-01420-RCJ-GWF (ECF No. 54, 2:12-13). Herein, the Bank, Freddie, and FHFA have exclusive access to and possession of facts concerning securitization, whether the mortgage was "held in trust." *Adobe*, 809 F.3d at 1080. Thus, the Bank is possession of all the information to meet its burden of proving quiet title if what it alleged is true.

B. The Bank Did Not Prove Standing to Enforce or that the Purported Loan is the Property of Freddie Mac or the FHFA.

The Bank carries the burden to show its presumptively extinguished deed of trust should be reinstated. *Velazquez v. Mortgage Electronic Registration Systems, Inc.*, No. 2:11-CV-576, slip op., 2011 WL 1599595, at *2 (D.Nev. Apr. 27, 2011) (quoting *Breliant v. Preferred Equities Corp.*, 918 P.2d 314, 318 (Nev.1996)). The Bank does not have and has never had title to the Property. It has the

¹ It should be noted that SFR's previously disclosed rebuttal expert, Michael L. Brunson, SRA, MNAA, disagrees that assessed value should be used as a reliable benchmark to determine a property's value in this context. *See Exhibit 2.*

1 burden of proof to demonstrate that the note and deed of trust were properly transferred to it. Because
2 the Bank attempts to claim it is entitled to relief under 12 U.S.C. § 4716(j)(3), it must demonstrate that
3 FHFA allegedly “succeed[ed] to” the mortgage, causing it to be “property of” FHFA for purposes of
4 4617(j)(3), which in turn requires it to prove that Freddie purchased and had ownership of the
5 purported loan at all relevant times, including the time of the sale. It cannot do so on the record before
6 the Court. Thus, if the Bank cannot show a property interest held by Freddie, summary judgment in the
7 Bank’s favor is inappropriate. See Dansker, 2017 WL 1380414, at *2 (denying summary judgment
8 after finding a genuine issue of material fact as to whether Fannie owned the note and deed of trust at
9 the time of sale); See also Berezovsky v. Moniz, 869 F.3d 923, 929 n.5 (9th Cir. 2017).

10 Here, the Note and Deed of Trust were split at origination because Mortgage Electronic
11 Registration Systems (“MERS”) is the named nominee/beneficiary identified in the Deed of Trust. See
12 Edelstein v. Bank of New York Mellon, 128 Nev. Adv. Op. 48, 286 P.3d 249 (Nev. Sept. 27, 2012).
13 This split prevents “enforcement of the deed of trust through foreclosure unless the two documents are
14 ultimately held by the same party.” Id. at 260 citing Cervantes v. Countrywide Home Loans, Inc., 656
15 F.3d 1034, 1039 (9th Cir. 2011). While this is not a foreclosure action, the Bank seeks to strip SFR of
16 its property rights, similar to a borrower under a note and deed of trust. The Bank must prove standing
17 to enforce by providing evidence that both the note and Deed of Trust were reunified and validly
18 transferred to it, and that Freddie owned the note and had standing to enforce at all relevant times. It
19 has failed. This raises many questions of material fact, and on similar records, summary judgment has
20 been rightfully denied by multiple courts.²

21 The proper method of transferring a mortgage note is governed by Article 3 of the Uniform

22
23 ² See D’Andrea Cmty. Ass’n, No. 3:15-cv-00377-RCJ-VPC, 2017 WL 58582, at *4 (D. Nev. Jan. 4,
24 2017) (denying summary judgment asserted under the auspices of 4617(j)(3) based on the existence of an
25 assignment that identifies the holder of the note to be entity other than Fannie, and rejecting the notion
26 asserted here—that the bank / servicer was permitted to service the loan while Fannie was owner of the
27 loan and deed of trust—because the bank / servicer failed to provide evidence that such a relationship
28 even existed by way of documentary evidence.); see, e.g., Kielty, No. 2:15-cv-00230, 2016 WL 1030054,
at *3 (Jones, J.); Dansker, No. 2:13-cv-01420, 2015 WL 5708799, at *3 (D. Nev. Sept. 29, 2015) (Jones,
J.); LN Mgmt. LC Series 5271 Lindell v. Estate of Piacentini, No. 2:15-cv-00131, 2015 WL 6445799, at
*4 (D. Nev. Oct. 8, 2015) (Dorsey, J.); LN Mgmt. LLC Series 2543 Citrus Garden v. Gelgotas, No. 2:15-
cv-00112, 2016 WL 1071005, at *6 (D. Nev. Mar. 16, 2016) (Du, J.) (“[N]either the Curcio Declaration
nor the SIR Exhibits establishes that there is no genuine dispute of material fact as to when Fannie Mae
acquired the requisite interest in the Property, and what the contours of that interest are.”)

1 Commercial Code—Negotiable Instruments because a mortgage note is a negotiable instrument.³
2 Leyva v. Nat'l Default Servicing Corp., 255 P.3d 1275, 1279-81 (2011). The obligor on the note has
3 the right to know the identity of the entity that is “entitled to enforce” the mortgage note under Article
4 3, see NRS 104.3301, see also In re Veal, 450 B.R. 897, 920, at *16 (B.A.P. 9th Cir. June 10, 2011).
5 Similarly, in a case like this one, a lender must show that it is the party entitled to enforce the mortgage
6 note. UCC § 3–203(a); UCC § 3–203(b). While the failure to obtain the endorsement of the payee or
7 other holder does not prevent a person in possession from being the “person entitled to enforce” the
8 note, the possessor does not have the presumption of a right to enforce. Branch Banking & Trust Co. v.
9 Smoke Ranch Dev., LLC, No. 2:12-CV-00453-APG-NJK, 2014 WL 4796939, at *4 (D. Nev. Sept.
10 26, 2014). The possessor of the note must demonstrate both the fact and the purpose of the delivery of
11 the note to the transferee in order to qualify as the “person entitled to enforce.” Leyva, 255 P.3d at
12 1281. The Bank has completely failed to prove it has standing to enforce the note and deed of trust
13 which precludes it from quiet title.

14 A written assignment of a deed of trust is an instrument that sets forth the chain of title. Kono
15 v. Wells Fargo Bank, N.A., No. 59928, 2013 WL 7158570, at *2 (Nev. Dec. 17, 2013). A written
16 assignment’s purpose is to complete the chain of title of the person seeking to enforce the note. See Cf.
17 Einhorn, 128 Nev. Adv. Op. 61, 290 P.3d 249, 254 (2012). The Bank must provide a certified copy of
18 the assignment of mortgage and provide proof that the assignment was made by a party that itself held
19 the mortgage. See U.S. Bank N.A. v. Ibanez, 941 N.E.2d 40, 52 (Mass.App. 2011)(citing In re
20 Samuels, 415 B.R. 8, 20 (Bankr.D.Mass.2009)). The Bank may provide a complete chain of
21 assignments linking it or Freddie/FHFA to the record holder of the mortgage, or a single assignment
22 from the record holder of the mortgage. Id. (citing In re Parrish, 326 B.R. 708, 720 (Bankr.N.D.Ohio
23 2005)). Where MERS has been involved, the deed of trust may have been transferred among members
24 without having abided by Nevada’s recording statutes to put the public on notice of who the actual

25
26 ³ See NRS 104.3102; NRS 104.3109; 104.3201; 104.3204. A party wishing to enforce a note must
27 demonstrate it was validly negotiated or transferred by proper endorsement or proving the transaction
28 through which the note was acquired. Leyva, 255 P.3d at 1281 citing NRS 104.3203(2) and U.C.C. § 3-
202 cmt 2.

beneficiary is, not just the nominee beneficiary.

The Bank failed to produce the original, wet-ink endorsed note, a certified copy of the promissory note, a certified copy of the assignment, and the chain of ownership of the note and the deed of trust. Thus, the Bank has not demonstrated it or Freddie/FHFA has standing to enforce the loan.

The Bank claims that In re Montierth, 354 P.3d 648 (Nev. 2015) stands for the proposition that that Freddie Mac does not have to record its so-called interest, but this is wrong. The Montierth case dealt with two certified questions from the U.S. Bankruptcy Court: (1) what occurs when a note and deed of trust remain split at the time of foreclosure; and (2) whether the recordation of an assignment constitutes a ministerial act that does not violate the automatic stay. Id. at 649. What is more, the Montierth case involved a lender/creditor and borrower/debtor; it never addressed the validity of a property interest or what was required to prove ownership, particularly as it pertains to a subsequent third party like SFR. See Nationstar Mortgage LLC v. D'Andrea Community Association, 2017 WL 58582 *4 (January 4, 2017) (rejecting Nationstar's interpretation of Montierth that Fannie Mae's purported interest need not be recorded; and noting the recorded documents facially contradicted any claim of ownership on the part of Fannie Mae).

C. Even if Freddie Mac had a Property Interest, if such a Property Interest is Held in Trust, the Bank Cannot Prevail.

As fully explained in SFR's motion, even if Freddie Mac had the loan on its books and Nationstar was transferring it information about the loan, if the loan is "held in trust" the Bank cannot prevail. Normally, with the Enterprises – specifically Freddie and Fannie Mae ("the regulated entities"), the Agency is deemed to "succeed to" the assets of the regulated entities. 12 USC 4617(b)(2)(A)(i). And when this succession happens, the Agency ("FHFA") is given several powers as the conservator of these properties held by the regulated entities. 12 U.S.C. 4617(b). Succession is so basic that it is described under the Agency's "General Powers." Id. Succession is also fundamental to any allegation that NRS 116 is preempted by state law, as only "property of the agency" is protected from "levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency." 12 USC 4617(j)(3).

Not a single document has been disclosed that proves Freddie's alleged mortgage interest.

Besides, if Freddie actually holds a property interest, it is held in trust.

And as Freddie has expressly told borrowers:

Q: Who actually owns my mortgage, Freddie Mac or the trust?

A: **The trust** indicated on your notification letter owns your mortgage. Freddie Mac is the trustee of that trust. **A trustee is an individual or organization who manages assets for the benefit of another.**

Q: What does your letter mean where **it states that Freddie Mac is no longer the owner of my mortgage** but is a trustee of the trust?

A: **The trust owns your mortgage**, but authorizes Freddie Mac to act on behalf of the trust in certain matters.

See Ex. H-7 to SFR's MSJ (emphasis added). Because the mortgage is not "property of" FHFA, FHFA does not have power to make a decision concerning consent that supposedly "preempts" SFR's interests. Without "preemption," the Bank does not have an interest superior to SFR's, preventing it from being "entitled to judgment as a matter of law." 56(a). At bottom, 4617(b)(19)(B) precludes summary judgment.

D. Purported DOT Assignments are Inconsistent with the Bank's "Ownership" Evidence

In addition to the Loan potentially being "held in trust" by the FHFA, the recorded documents speak against any alleged interest in the property held by Freddie. The Bank is telling this Court to disregard language in recorded deed of trust assignments. The Bank has developed this "trust us" approach to evidence because some of the language in the purported deed of trust assignment contradicts the Bank's narrative about what they supposedly own. Here, the Deed of Trust "together with the note(s) and obligations therein described" was purportedly assigned to Bank of America, N.A. as successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP on April 17, 2012 and then to Nationstar. These assignments demonstrates that Freddie did not own the note at the time of the foreclosure sale. The Bank's insistence that the language in these documents should be disregarded and not believed is patently ridiculous. Such a position begs the question why the Bank relies on the validity of the deed of trust transfer in the first instance, and why *that document should be honored for what it states on its face*. At a minimum, the deed of trust transfer is inconsistent with the Bank's contentions about Freddie's "ownership." This inconsistency is

1 yet another reason why the Bank cannot satisfy its burden of proof. Also, as explained above, if this
2 Court were to consider Freddie Mac's declaration, which it should not, the assignment showing
3 Countrywide as a previous servicer/beneficiary/owner belies that assertion that Freddie Mac purchased
4 the loan from Bank of America, N.A. in 2005, when Bank of America, N.A. did not become
5 "successor by merger" until 2011.

6 E. **The Supreme Court's Analytical Approach to Due Process Precludes the Defense the**
7 **Bank Seeks under 12 U.S.C. § 4617(i)(3).**

8 The Supreme Court's analytical approach to due process—the principles used to determine
9 whether a "property" interest exists and whether a "deprivation" has occurred—prevents relief. If an
10 issue of law precludes relief, then dismissal is proper. Neitzke v. Williams, 490 U.S. 319, 326 (1989);
11 Somers v. Apple, Inc., 729 F.3d 953, 961 (9th Cir. 2013).

12 **The first principle** is that "[p]rocedural due process imposes constraints on governmental
13 *decisions* which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due
14 Process Clause of the Fifth or Fourteenth Amendment." Mathews v. Eldridge, 424 U.S. 319, 332
15 (1976) (emphasis added). **The second principle** is that "property" interests "[a]ttain ... constitutional
16 status by virtue of the fact that they have been initially recognized and protected by state law" Paul
17 v. Davis, 424 U.S. 693, 710 (1976). State law's recognition of an individual's interest establishes the
18 existence of constitutionally protected "property." Id. And, if state law recognizes a property interest,
19 then "[i]n the usual case, the fact that the property interest is recognized under state law is enough to
20 trigger the protections of the Due Process Clause." Ralls Corp. v. CFIUS, 758 F.3d 296, 316 (D.C. Cir.
21 2014). **The third principle** is that "deprivation" occurs when a government actor's decision alters or
22 extinguishes a state-recognized property interest:

23 In each of these cases, as a result of the state action complained of, a right or status
24 previously recognized by state law was distinctly altered or extinguished. It was this
25 alteration, officially removing the interest from the recognition and protection
previously afforded by the State, which we found sufficient to invoke the procedural
guarantees contained in the Due Process Clause of the [Fifth and] Fourteenth
Amendment.

26 Paul, 424 U.S. at 711. Notably, courts apply the Supreme Court's analytical approach to cases where
27 state and federal law interact. United States v. James Daniel Good Real Prop., 510 U.S. 43, 53-54
28

(1993); Ralls, 758 F.3d at 316. Interaction typically occurs between state-recognized property interests and a federal law that authorizes a government actor to make decisions that nullify those interests. *Id.*

Here, the Bank's claims/defenses implicate these principles, precluding relief. The Bank identifies a government actor's **decision**: FHFA allegedly decided not to consent to extinguishment. Such a decision is constrained by due process. Next, the Bank claims Freddie has ownership in the property despite SFR's claim to ownership pursuant to NRS 116. See SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408, 419 (Nev. 2014). Finally, a **deprivation** would take place if FHFA's decision not to consent "distinctly altered or extinguished" SFR's state-recognized interests by making Freddie's alleged interests superior to SFR's. *Id.* In light of the Supreme Court's analytical approach, FHFA's decision would have had to satisfy due process. As is elaborated below, this did not occur. At bottom, the Supreme Court's analytical approach to due process precludes relief.

F. **The Bank's Claims Transform Deprivation into "Preemption"**

The Bank's claims are governed by a particular due process context, one involving the interplay between state and federal law. James Daniel Good, 510 U.S. 43; Brock v. Roadway Express, Inc., 481 U.S. 252 (1987); Ralls, 758 F.3d 296; United States v. Bacon, 546 F. App'x 496 (5th Cir. 2013); Nat'l Council of Resistance of Iran v. Dep't of State, 251 F.3d 192 (D.C. Cir. 2001); Pillsbury Co. v. FTC, 363 F.2d 757 (5th Cir. 1966). Within this context, what the Bank calls "preemption" is, instead, "deprivation" that must satisfy due process. *Id.* The context consists of cases that concern: (i) state-recognized property interests, (ii) a federal law that authorizes a government actor to make decisions that nullify those interests, and (iii) a government actor's decision nullifies those interests without due process. *Id.* Such decisions do not "preempt" state law; they *deprive* individuals of property. *Id.*

For example, in Ralls an American corporation (Ralls Corp.), owned by two Chinese nationals, purchased four Oregon LLCs and their assets, including easements and several contracts; Oregon property law recognized and protected these interests. Pursuant to the Defense Production Act of 1950 ("DPA"), a federal agency analyzed the sale and referred it to the President due to national security concerns. The DPA authorized the President to nullify Ralls's property interests if the President decided there was a threat to national security. After reviewing the transaction, the President decided a

1 threat to national security existed, thus nullifying Ralls’s interests. Ralls, 758 F.3d at 306. Yet, the
2 DPA did not afford Ralls constitutionally sufficient notice or an opportunity to be heard before the
3 President made his decision; the statute had a dearth of procedural participation and protections. Id. at
4 320. The D.C. Circuit determined “[t]his lack of process constitutes a clear constitutional violation,
5 notwithstanding the Appellees’ substantial interest in national security and despite our uncertainty that
6 more process would have led to a different presidential decision.” Id. The same deficiencies plague
7 4617(j)(3), which does not afford SFR notice or an opportunity to be heard before FHFA purportedly
8 decided not to consent.

9 Like Ralls, there are other cases where a government actor’s decision deprived—not
10 “preempted”—state-recognized property interests without due process. In Brock, the Secretary of
11 Labor decided a trucking company fired one of its drivers for whistleblowing in violation of the
12 Surface Transportation Assistance Act of 1982. This decision deprived the trucking company of its
13 state-recognized property interest in being able to fire employees. Due process was violated because
14 the trucking company did not receive sufficient notice before the Secretary’s decision. Brock, 481 U.S.
15 at 257, 268. National Council of Resistance of Iran (“NCRI”) dealt with the Secretary of State’s
16 decision to designate an entity as an alias of a foreign terrorist organization consistent with the Anti-
17 terrorism and Effective Death Penalty Act of 1996 (“AEDPA”). This decision deprived the entity of an
18 interest in a bank account without due process of law because the AEDPA did not provide notice or an
19 opportunity to be heard before the Secretary’s decision. NCRI, 251 F.3d at 208. In Pillsbury, the
20 Federal Trade Commission (“FTC”) decided that the Pillsbury Company’s acquisition of two
21 companies and their assets “lessen[ed] competition” under the Clayton Act. This decision nullified
22 Pillsbury’s state-recognized property interests in the companies. Due process was violated because a
23 United States Senate subcommittee hearing had improperly intruded into the FTC’s then still-pending
24 review of Pillsbury’s acquisitions. Pillsbury, 363 F.2d at 963. James Daniel Good concerned the
25 United States’ decision to *ex parte* seize a house and land that belonged to a person who had pled
26 guilty to drug charges; at the time, the house was being rented. The government’s decision—made
27 pursuant to civil forfeiture laws—deprived the owner of state-recognized property interests. Due
28 process was violated because the owner was not given notice or an opportunity to be heard. James

1 Daniel Good, 510 U.S. at 46. A similar situation occurred in Bacon, where the United States Customs
2 and Border Protection decided to destroy electronics that belonged to an individual convicted of
3 possessing child pornography. This decision ran afoul of due process because Customs did not give the
4 owner of the electronics constitutionally sufficient notice. *Bacon*, 546 F. App'x at 501.

5 Ralls, Brock, NCRI, Pillsbury, James Daniel Good, and Bacon are due process cases where a
6 government actor's decision deprived individuals of state-recognized interests. The Bank seeks to
7 change all of this, mutating due process *deprivation* cases into "preemption" precedent, where a
8 government actor's decision "preempts" state-recognized interests. No longer will decisions *deprive*
9 people of property; they will, instead, "preempt" rights from materializing in the first place—
10 effectively doing away with due process.

11 The Bank disagrees, acting as though 4617(j)(3) is an absolute prohibition compelling
12 preemption. But 4617(j)(3)'s phrase "without the consent of the Agency" indicates that 4617(j)(3)
13 does not absolutely prohibit extinguishment. If FHFA consents, then extinguishment can occur.
14 Indeed, the Bank's treatment of 4617(j)(3) as an absolute prohibition impermissibly erases language
15 from a statute, with the Bank going so far as pretending that a press release from 2015 from can
16 somehow *nunc pro tunc* address FHFA's consent to the April 2013, foreclosure sale herein; Williams
17 v. Duke Energy Int'l, Inc., 681 F.3d 788, 805 (6th Cir. 2012); Hesperos v. Sandaa, 265 F. 921, 923
18 (4th Cir. 1920). Congress gave the FHFA the directive to exercise discretion as to consent. The
19 FHFA's ignoring of this discretion and its treatment of 4617(j)(3) as an absolute prohibition violates
20 Congress's intent and SFR's due process rights.

21 Assuming *arguendo* that 4617(j)(3) is an absolute prohibition—which it is not—due process
22 would still preclude the defense. Consider that Brock, Pillsbury, and James Daniel Good's pertinent
23 statutes contained absolute prohibitions. James Daniel Good, 510 U.S. at 47 n.1; Brock, 481 U.S. at
24 258; Pillsbury, 363 F.2d at 953. Consistent with the Complaint's view of "preemption," these statutes
25 would have prevented the litigants in these cases from obtaining state-recognized interests. Such an
26 approach would not only contravene those cases' due process analyses, but it would also drain due
27 process of any continued vitality; the Bank's approach would "preempt" due process from a familiar
28 context involving state and federal law.

Besides, a similarly bloated version of “preemption” was rejected by the Supreme Court in the Taking Clause context. Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1012 (1984). The Environmental Protection Agency (“EPA”) claimed it had “preempted”—instead of taken—a pesticide registration applicant’s state-recognized interests. The Supreme Court determined EPA’s argument “proves too much” because “[i]f Congress can ‘pre-empt’ state property law in the manner advocated by EPA, then the Taking Clause has lost all vitality.” Id. The same holds here; if FHFA can “preempt” state-recognized interests as the Bank alleges, then due process “[h]as lost all vitality.” Id. The Bank’s claims transform deprivation into “preemption.”

G. Mischaracterizing 4617(j)(3) does not Defeat SFR’s Claims

It is a common mischaracterization by the Bank that 4617(j)(3) as a self-executing law that triggers the legislative acts doctrine. These mischaracterizations create the illusion that 4617(j)(3) in and of itself—and not FHFA’s decision—“preempted” Nevada law. In reality, if the Bank had proved Freddie Mac’s interest, any decision by FHFA would nullify, rather than “preempt,” SFR’s interests.

1. *4617(j)(3) is not Self-executing*

Self-executing laws function on their own, without the involvement of a government actor; they uniformly impact all citizens by articulating the circumstances under which property interests will lapse. Tulsa Prof’l Collection Services, Inc. v. Pope, 485 U.S. 478, 486 (1988); Texaco, Inc. v. Short, 454 U.S. 516, 530, 533-37 (1982). Meanwhile, a statute is not self-executing when it authorizes a government actor—other than the legislature—to make individualized decisions that nullify property interests, ensuring that “[t]he property interest was taken only after a specific determination that the deprivation was proper.” Texaco, 454 U.S. at 537. Within non-self-executing laws, government actors have a “role to play beyond enactment” of the statute. Tulsa, 485 U.S. at 486.

Here, 4617(j)(3) is not self-executing for three reasons. **First**, 4617(j)(3)’s reference to “the Agency” means a government actor (*i.e.*, FHFA)—other than Congress—is involved. **Second**, 4617(j)(3) authorizes FHFA to make a “specific determination,” whether to “consent.” This is confirmed by 4617(j)(3)’s coupling of the words “consent” and “Agency” in the phrase “consent of the Agency.” Such coupling links “the Agency” with the decision to “consent,” denoting that 4617(j)(3) authorizes FHFA to make a “determination.” And, FHFA’s “determination” is “specific” because

1 4617(j)(3) focuses on “*the* consent” of FHFA. Congress’s use of the word “the” demonstrates that
2 FHFA’s decision is individualized, to be made on a case-by-case, mortgage-by-mortgage, foreclosure-
3 by-foreclosure basis. See generally In re Cardelucci, 285 F.3d 1231, 1234 (9th Cir. 2002) (Congress’s
4 use of definite article “the” in a statute connotes individualization). **Third**, the Bank avers that FHFA’s
5 decision nullified SFR’s state-recognized interests. The Bank also alleges FHFA’s decision prevents
6 extinguishment of the Bank’s purported interests, thereby altering (*i.e.*, nullifying) SFR’s state-
7 recognized interests. Id. at Bank’s MSJ 13-14. All told, 4617(j)(3) is not self-executing because it: (i)
8 involves a government actor (FHFA) other than Congress, (ii) authorizes FHFA to make “a specific
9 determination,” and (iii) FHFA’s determination nullifies state-recognized property interests.

10 **2. *The Legislative Acts Doctrine is Inapplicable***

11 Under the legislative acts doctrine, due process is satisfied if a legislature properly enacts a
12 generally applicable law that impacts a large group of people, covers considerable amounts of land,
13 and does not target specific individuals. Hotel & Motel Ass’n of Oakland v. City of Oakland, 344 F.3d
14 959, 969 (9th Cir. 2003). The doctrine is limited to “a legislatively mandated substantive change in the
15 scope of [an] entire program.” Atkins v. Parker, 472 U.S. 115, 129 (1985); Ortiz v. Eichler, 794 F.2d
16 889, 894 (3d Cir. 1986). It does not, however, apply to “the procedural fairness of individual eligibility
17 determinations.” *Id.*

18 Here, FHFA’s decision not to consent is individualized, concerning individual mortgages,
19 houses, associations, foreclosure sales, and purchasers. If Congress intended an outright ban to
20 foreclosures of FHFA properties, it would have legislated as such. Instead, it authorized the FHFA to
21 execute sound judgment and to consent on any individual situation. Thus, the legislative acts doctrine
22 is inapplicable because FHFA’s decision is an “individual ... determination[.]” the “procedural
23 fairness” of which is dictated by due process. *Atkins*, 472 U.S. at 129.

24 **3. *The Ninth Circuit Rejected a Legislative Acts Doctrine Argument***

25 The Ninth Circuit recently rejected a legislative acts doctrine argument concerning the
26 Financial Institutions Reform, Recovery, and Enforcement Act (“FIRREA”). Bank of Manhattan, N.A.
27 v. FDIC, 778 F.3d 1133, 1137 (9th Cir. 2015). The recent decision, Bank of Manhattan, determined
28 that FIRREA did not preempt state contract law. *Id.* at 1136. At issue was whether a conflict existed

1 between: (i) a provision in FIRREA that authorized the Federal Deposit Insurance Corporation
2 (“FDIC”) (as receiver) to transfer assets without having to get “consent” and (ii) a pre-receivership
3 contract that effectively required FDIC to obtain another party’s written “consent” before FDIC could
4 transfer an asset.

5 One of FDIC’s arguments invoked the legislative acts doctrine to show that its decision to
6 transfer an asset without obtaining “consent” did not deprive anyone of state-recognized interests (*i.e.*,
7 contract rights). Specifically, FDIC asserted that no deprivation occurred because FIRREA was
8 enacted before the contract; Congress’s enactment of FIRREA prevented the contracting parties from
9 having interests.

10 As discussed, any contractual provision requiring consent or approval for an FDIC
11 transfer was invalid or unenforceable on the date it was made—and being invalid and
12 unenforceable, it never provided any contractual “right” at all, let alone one
13 preexisting the statute. Since no rights existed, no rights were taken, and there can be
14 no taking, much less an unconstitutional one. In sum, there is no unfairness here and
15 no deprivation of any contract rights, because there were no valid contract rights in
16 the first place.

17 SFR’s MSJ, Exhibit H-8 p. 26. After calling this argument “novel,” the Ninth Circuit refused to adopt
18 FDIC’s reasoning because it was irrelevant that FIRREA was enacted before the contract, and no
19 conflict between state and federal law existed. Bank of Manhattan, 778 F.3d at 1136. The Ninth
20 Circuit determined that FDIC’s decision—rather than Congress’s enactment of FIRREA—deprived
21 individuals of state-recognized interests. *Id.* Such a determination should apply here.

22 **H. Claims are Implausible because of Due Process**

23 Claims for quiet title and “permanent injunction” necessitate allegations about superior title.
24 NRS 40.010; see also Chapman v. Deutsche Bank Nat’l Trust Co., 302 P.3d 1103, 1106 (Nev. 2013).
25 But, if allegations of superior title reveal an impediment or bar to relief, then the corresponding causes
26 of action are facially implausible NRCP 8(a)(1). Here, the Bank’s allegations reveal a constitutional
27 barrier to relief; FHFA’s decision not to consent to extinguishment, if the Bank had proved Freddie
28 Mac’s ownership, would deprive SFR of its state-recognized property interests without due process of
law.

...

1. SFR's Property Interests

Due process' first element is the existence of a property interest. Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972). If state law recognizes an interest, then that interest is "property" for Fifth Amendment purposes, and due process is triggered. James Daniel Good, 510 U.S. at 53-54. Here, SFR claims its property interest via NRS 116 foreclosure sale in which it was the highest bidder at auction. SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408, 419 (Nev. 2014). Thus, the fact that SFR claims an interest in the property that is recognized by Nevada law cannot be disputed.⁴

2. FHFA Would Deprive SFR of its Property

Due Process' second component is a deprivation of property by a government actor. Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001). Deprivation occurs when "a right or status previously recognized by state law was distinctly altered or extinguished" by a government actor. Paul, 424 U.S. at 711. Here, the Bank avers that FHFA's decision to not consent to foreclosures defeats SFR's state-recognized property interests by making the Enterprises' alleged interests superior to SFR. Thus, it is plain to see how the FHFA's lack of consent delineates how the FHFA would deprive SFR of its property if the Bank had proved Freddie Mac's interest.

3. FHFA is a Government Actor

In order to implicate due process, there must be a government actor. Brentwood, 531 U.S. at 295. Within the 4617(j)(3) context, FHFA has conceded that it is a government actor in at least two lawsuits. Nationstar Mortg. LLC v. SFR Investments Pool 1, LLC, No. 2:15-cv-00267-RFB-NJK (D. Nev. May 26, 2015) (Dkt. No. 43); Fed. Nat'l Mortg. Ass'n v. SFR Investments Pool 1, LLC, No. 2:14-cv-02046-JAD-PAL (D. Nev. Mar. 3, 2015) (Dkt. No. 41). Due to this concession, SFR need not conduct a government actor analysis. Nevertheless, if this Court believes such analysis is necessary,

⁴ It is irrelevant that the Bank disputes the validity of SFR's interests because due process "[h]as never been interpreted to safeguard only the rights of undisputed ownership. Rather, it has been read broadly to extend protection to 'any significant property interest[.]'" Fuentes v. Shevin, 407 U.S. 67, 86 (1972) (quoting Boddie v. Connecticut, 401 U.S. 371, 379 (1971)). Here, the Bank concede SFR purchased the Property, at foreclosure for \$6,300. Thus, SFR has "significant property interests," triggering due process. Fuentes, 407 U.S. at 86; Roth, 408 U.S. at 577.

then SFR will provide one forthwith.

4. FHFA Would Deprive SFR of its Property without Due Process of Law

Due Process' last element is that deprivation occurred without due process of law. Zinermon v. Burch, 494 U.S. 113, 125 (1990). This factor focuses on the constitutional sufficiency of procedures, often described as "notice and an opportunity to be heard." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). More precisely, when a statute is challenged on due process grounds, a court determines whether that law's procedures comport with due process. Lujan v. G & G Fire Sprinklers, Inc., 532 U.S. 189, 195 (2001).

Here, 4617(j)(3) is bereft of any procedures. Though it speaks of FHFA's "consent," 4617(j)(3) lacks a process to request "consent." 12 U.S.C. § 4617(j)(3). Similarly, there is no procedure for challenging FHFA's decision not to "consent." Id. As such, there is no opportunity to be heard. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985). This "lack of process constitutes a clear constitutional violation ... despite our uncertainty that more process would have led to a different ... decision." Ralls, 758 F.3d at 320.

Importantly, due process' "root requirement" is "an individual be given an opportunity for a hearing *before* he is deprived of any significant protected interest[.]" Loudermill, 470 U.S. at 542. The contours of a "hearing" are flexible, focusing on fairness. In this case, FHFA did not give SFR an "opportunity for a hearing" before FHFA deprived SFR of its interests; FHFA simply decided not to "consent." To make matters worse, 4617(j)(3) does not give SFR a post-deprivation remedy, an opportunity to contest FHFA's decision. 12 U.S.C. § 4617(j)(3). Rather, FHFA believes 12 U.S.C. § 4617(f) insulates its decisions from judicial review. Cnty. of Sonoma v. FHFA, 710 F.3d 987, 992 (9th Cir. 2013) (construing 4617(f) within property-assessed clean energy context). The absence of pre-deprivation procedures coupled with the lack of a post-deprivation remedy establishes FHFA deprived SFR of its property interests without due process of law. Zinermon, 494 U.S. at 132, 139.

Regarding the issue of notice, if procedures for protecting property interests are arcane or not publicly available, then due process requires notice of such procedures. City of W. Covina v. Perkins, 525 U.S. 234, 242 (1999). Here, no procedures for requesting FHFA's "consent" are "publicly available." Thus, due process requires FHFA to provide notice of procedures for protecting one's

1 interests. *Id.* As no such notice was given, due process was violated. *Id.*

2 Furthermore, if a government actor impacts a person's property interests, then the government
3 actor must provide notice "reasonably calculated ... to apprise interested parties of the pendency of the
4 action[.]" Mullane, 339 U.S. at 314. When a government actor knows notice is insufficient, it must
5 take additional reasonable steps to provide notice. Jones v. Flowers, 547 U.S. 220, 230, 234 (2006);
6 Greene v. Lindsey, 456 U.S. 444, 453-56 (1982); Robinson v. Hanrahan, 409 U.S. 38, 40 (1972);
7 Covey v. Town of Somers, 351 U.S. 141, 146-47 (1956). Here, FHFA's decision impacted SFR's
8 interests. Hence, FHFA had to provide notice to SFR. Yet, no such notice was given. For instance, the
9 Enterprises' alleged "purchase" (and purported "ownership") of mortgages were not recorded, failing
10 to notify SFR that: (i) the Enterprises had purported "interests" in the mortgages, (ii) FHFA allegedly
11 succeeded to those "interests," (iii) 4617(j)(3) supposedly applied, and (iv) FHFA had authority to
12 nullify SFR's interests. And, because the Enterprises' supposed "interests" were unrecorded, FHFA
13 knew notice was insufficient, requiring it to take additional reasonable steps to provide SFR with
14 notice. Jones, 547 U.S. at 230, 234; Greene, 456 U.S. at 453-56; Robinson, 409 U.S. at 40; Covey, 351
15 U.S. at 146-47. One reasonable step would have been to record Freddie's "purchases" (and supposed
16 "ownership") with the Clark County Recorder. But this step was not taken, thereby violating due
17 process. *Id.*

18 **I. "Reasoned Decisionmaking" Defeats the Bank's Claims**

19 If FHFA's decision not to consent is "[c]ontrary to, its statutorily prescribed, constitutionally
20 permitted, powers[.]" then the Bank's arguments as to § 4617(j)(3) fail. Sonoma, 710 F.3d at 992
21 (quoting Sharpe v. FDIC, 126 F.3d 1147, 1155 (9th Cir. 1997)). The Bank alleges that FHFA's
22 decision concerning consent is premised on its power to "preserve and conserve" Enterprise assets.
23 Bank's MSJ p. 16. The "statutorily prescribed" scope of this power is confined to making decisions
24 that are "**appropriate.**" 12 U.S.C. § 4617(b)(2)(D)(ii). (emphasis added). If FHFA's decision is not
25 "appropriate," then it is "[c]ontrary to, its statutorily prescribed . . . powers[.]" precluding relief.
26 Sonoma, 710 F.3d at 992. Though some provisions authorize FHFA to establish what is
27 "appropriate"—such as when FHFA-as-conservator decides to "prescribe . . . regulations . . . regarding
28 the conduct of conservatorships" 12 U.S.C. § 4617(b)(1)—the power to "preserve and conserve" is not

one of them. Instead, external considerations influence the meaning of “appropriate.” One such consideration is “reasoned decisionmaking.” Pursuant to “reasoned decisionmaking,” the process a government actor uses to make a decision “must be logical and rational.” Michigan v. EPA, 576 U.S. ___, 135 S.Ct. 2699, 2706 (2015) (internal citation omitted).

Here, the process that FHFA uses in deciding whether to consent is not “logical and rational.” In part, this is so because no such process exists; 4617(j)(3) lacks a procedure to request FHFA’s consent or an opportunity to contest FHFA’s decision. Additionally, if an Enterprise’s supposed “purchase” of a mortgage is unrecorded, then the public in general and SFR, in particular, have no notice of that purchase or of 4617(j)(3)’s applicability. Years will elapse before an Enterprise discloses its alleged “purchase” and so-called interest, keeping the public in the dark about the involvement of the Enterprises, 4617(j)(3), or FHFA. And when this involvement finally comes to light, 4617(j)(3) offers not a single procedural protection. Such secrecy is hardly “logical and rational,” all in contravention of “reasoned decisionmaking.” Because FHFA’s decision violated “reasoned decisionmaking,” it is not “appropriate,” making it “contrary to . . . [FHFA’s] permitted powers[.]” Sonoma, 710 F.3d at 992.

J. 4617(j)(3)’s Unconstitutionality Bars Preemption

The bottom line is that if the FHFA’s implementation of 4617(j)(3) violates SFR’s due process rights, this law cannot be used to preempt NRS 116. For the above reasons, SFR’s due process defense defeats the Bank’s argument of preemption of NRS 116.

K. In Nevada, the Golden Rule Applies for Analyzing Foreclosure Sales, Not “Commercial Reasonableness”

This Court has already found the sale proper and the Nevada Supreme Court remanded solely to allow the Bank to try to prove Freddie Mac’s ownership and Nationstar’s purported servicing relationship to FHFA. Despite that, the Bank argues that it should prevail based on arguments squarely rejected by the Nevada Supreme Court in Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon, 133 Nev. Adv. Op. 91, 2017 WL 5633293 at *5 (Nov. 22, 2017). The Nevada Supreme Court has held that

‘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

1 fraud, unfairness or oppression **as accounts for and brings about the inadequacy of price**’ (internal citations omitted) (emphasis added).

2 Golden v. Tomiyasu, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963). Just recently, the Nevada
3 Supreme Court stated that [i]f this court had adopted the Restatement, we would have overruled
4 Golden rather than cite favorably to it.” Nationstar Mortgage, LLC v. Saticoy Bay LLC Series
5 2227 Shadow Canyon, 133 Nev. Adv. Op. 91, 2017 WL 5633293 at *5 (Nov. 22, 2017). The
6 Nevada Supreme Court made itself clear by saying “[n]or do we believe that we should adopt a 20-
7 percent standard and abandon *Golden*.” Id. Therefore, the Restatement 20 percent argument on
8 price alone is dead. The Court also rejected a commercial reasonableness standard for association
9 foreclosure sale, since NRS 116.3116 et seq. provides the framework in which a foreclosure sale
10 must proceed. Id. at *4.

11 Instead, an analysis must be done under the Golden Rule, with actual evidence of fraud,
12 unfairness, or oppression to consider setting aside the sale, with the Bank “has the burden to show
13 that the sale should be set aside in light of [SFR’s] status as the record title holder.” Id. (citing
14 Brelliant v. Preferred Equities Corp., 918 P.2d 314, 318 (Nev. 1996); NRS 47.250(16)(rebuttable
15 presumption law has been obeyed); and NRS 116.31166(1)-(2) (“[C]onclusive presumption that
16 certain steps in foreclosure process have been followed.”).

17 As explained by SFR’s rebuttal expert, the price paid at auction was adequate because fair
18 market value has no applicability to a forced sale situation. BFP v. Resolution Trust Corp., 511
19 U.S. 531, 537-538 (1994). This is because foreclosure redefines the market in which the
20 property is offered for sale” as opposed to the free market. Id. at 548-49. So long as the state
21 statutes include requirements for public noticing of the auction and provisions for competitive
22 bidding, then the price obtained is the reasonable equivalent value of the property. See In re
23 Tracht Gut, LLC, 836 F.3d 1146 (9th Cir. 2016)(extending BFP’s analysis to California tax
24 sales because they afford the same procedural safeguards as a mortgage foreclosure sale); T.F.
25 Stone v. Harper, 72 F.3d 466 (5th Cir. 1995); Kojima v. Grandote Int’l Ltd. Co., 252 F.3d 1146
26 (10th Cir. 2001). Regardless of the type of sale, the analysis still aptly explains how market
27 value cannot be compared to a forced sale transaction.

28 While the Bank may complain about the total amount received during the auction, the

1 market conditions that existed—largely created by the Bank—significantly lowered the value of
2 the property. As stated in BFP “the only legitimate evidence of the property's value at the time it
3 is sold is the foreclosure-sale price itself.” BFP, 511 U.S. at 549. But given that this was a public
4 auction, if the Bank disagreed with the collective public’s valuation of the property, it should
5 have bought the property at the auction itself. Instead, it was aware of the foreclosure
6 proceedings, but did nothing.

7 Here, the Bank admits that Bank of America, the previous beneficiary of the Deed of Trust
8 received foreclosure notices from the Association. Yet, the Bank claims the sale was “unfair and
9 oppressive because the HOA failed to provide notice to Nationstar.” **It is important to note that**
10 **the Bank is careful not to say that it did not receive the notice** before the sale. Nor does it claim
11 that it would have done anything differently if the notice had been mailed directly to Nationstar
12 instead of multiple entities required to forward the document to Nationstar. Accordingly, the Bank
13 has not demonstrated “unfairness” or “oppression.”

14 **L. SFR is a Bona Fide Purchaser for Value; Equity Liens in SFR’s Favor.**

15 Here, as the Bank provided no admissible evidence that SFR had any knowledge
16 precluding it from bona fide purchaser (“BFP”) status, SFR has the valid defense of being a
17 BFP. As a result, the sale cannot be unwound; nor can SFR be said to have taken the Property
18 subject to the Deed of Trust.⁵

19 **First**, while SFR is a BFP as to this Property, nothing under Nevada law requires a buyer
20 at an NRS 116 sale to be a BFP. Put simply, SFR being a BFP is not a condition precedent.

21 **Second**, the Bank bears the burden to disprove SFR’s BFP status as SFR is presumed to
22 be a BFP. “Where a party is claiming equitable title, burden is on party claiming such equity to
23 allege and prove that the person holding legal title is not a bona fide purchaser.” First Fidelity
24 Thrift & Loan Assn v. Alliance Bank, 60 Cal.App.4th 1433 (1998). The Bank did not meet this
25 challenge.

26 ...

27 _____
28 ⁵ To the extent the Bank suggests, even by inference, that taking title subject to the deed of trust
is an option, the statute does not provide such an option.

1 **1. Bona Fide Purchaser Status Trumps Equitable Challenges.**

2 The Nevada Supreme Court recognized the superiority of a BFP when it stated,

3 When sitting in equity, however, courts must consider the entirety of the
4 circumstances that bear upon the equities...This includes considering the status
5 and actions of all parties involved, including whether an innocent party may be
6 harmful by granting the desired relief.

7 Shadow Wood, at 1114 (Nev. 2016) citing Smith v. United States, 373 F.2d 419, 424 (4th Cir.
8 1966) (“Equitable relief will not be granted to the possible detriment of innocent third parties.”);
9 In re Vlasek, 325 F.3d 955, 963 (7th Cir. 2003) (“[I]t is an age-old principle that in formulating
10 equitable relief a court must consider the effects of the relief on innocent third parties.”); Riganti
11 v. McElhinney, 56 Cal. Rptr. 195, 199 (Ct. App. 1967) (“[E]quitable relief should not be granted
12 where it would work a gross injustice upon innocent third parties.”)

13 The Court further exhorted that “[c]onsideration of harm to potentially innocent third
14 parties is especially pertinent here where [the Bank] did not use the legal remedies available to it
15 to prevent the property from being sold to a third party, such as seeking a temporary restraining
16 order and preliminary injunction and filing a lis pendens on the property.” Shadow Wood, 366
17 P.3d at 1114 fn. 7 citing Cf. Barkley’s Appeal. Bentley’s Estate, 2 Monag. 274, 277 (Pa. 1888)
18 (“in the case before us, we can see no way of giving the petitioner the equitable relief she asks
19 without doing great injustice to other innocent parties who would not have been in a position to
20 be injured by such a decree as she asks if she had applied for relief at an earlier day.”).

21 In other words, the Nevada Supreme Court recognized that when a bona fide purchaser
22 has no notice of a pre-sale dispute, such as an attempted tender, equity cannot be granted to the
23 tendering party, particularly when the tendering party was in a position to seek relief earlier and
24 defeat any bona fide purchaser status by putting the world on notice of that party’s attempts to
25 pay. In emphasizing “the legal remedies available to prevent the property from being sold to a
26 third party,” the Court placed the burden on the party seeking equitable relief to prevent a
27 potential purchaser from attaining BFP status. If that party’s inaction allows a purchaser to
28 become a BFP, then equity cannot be granted to the detriment of the innocent third party. Put
29 another way, BFP status trumps equitable relief.

30 This result is reinforced by the fact that not even a due process violation is sufficient to

1 overcome an individual's status as a BFP. Swartz v. Adams, 93 Nev. 240, 245–46, 563 P.2d 74,
2 77 (1977) (finding that where notice of sale was not given to owners, property still could not be
3 returned to owners because property was purchased by a BFP). The Swartz Court remanded the
4 case to allow the owners to seek compensatory relief against the person who initiated the sale
5 rather than harm an innocent third party. Id. Therein lies the correct form of relief. The so-called
6 harmed party (Bank) can seek money damages against the party who caused the harm
7 (Association/Agent). But under no set of circumstances can equitable relief, to the detriment of
8 the innocent purchaser, be granted to a party (Bank) who ignored earlier remedies and allowed a
9 BFP to purchase the property.

10 The Nevada Supreme Court summed up this idea when it stated:

11 Where the complaining party has access to all the facts surrounding the
12 questioned transaction and merely makes a mistake as to the legal
13 consequences of his act, equity should normally not interfere, especially where
14 the rights of third parties might be prejudiced thereby.

15 Shadow Wood, at 1116.

16 This is not a novel idea of jurisprudence. One of the most fundamental principles of law
17 whether is that only the party that caused the harm can be held responsible. If BFP status is
18 treated as a mere consolation, then all sales lack finality and all statutory foreclosures schemes
19 are jeopardized; effectively morphing a non-judicial foreclosure into a judicial foreclosure. See
20 Moeller v. Lien, 25 Cal. App. 4th 822, 830, 30 Cal. Rptr. 2d 777, 782 (1994); Melendrez v. D &
21 I Investment, Inc., 26 Cal.Rptr.3d 413, 428 (Cal.Ct.App. 2005)(Creating finality to BFPs 'was to
22 promote certainty in favor of the validity of the private foreclosure sale because it encouraged
23 the public at large to bid on the distressed property...')(internal citation omitted); 6 Angels, Inc.
24 v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d 711 (2011); McNeill
25 Family Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2003); In re Suchy, 786 F.2d 900 (9th Cir.
26 1985); and Miller & Starr, California Real Property 3d §10:210.

27 What is more, by treating BFP status as a consolation, it effectively rewards the alleged
28 harmed party who failed to protect itself by either invoking earlier remedies or defeating a BFP
from purchasing the Property. It is a maxim, "he who seeks equity must do equity." No one is

1 entitled to the aid of the court when that aid is only made necessary by that party's own inactions
2 or self-created hardship. Equity was not created to relieve a person of consequences of his own
3 inactions. This maxim holds true in this case.

4 In the present case, the Bank failed to adequately protect its interest. Having failed to avail
5 itself of earlier remedies (i.e. injunction, lis pendens, etc.) and allowing a BFP to purchase the
6 property, equitable relief is no longer available to the Bank. This is not to say the Bank has no
7 recourse; it simply means it has no recourse against SFR. In contrast, it still potentially has
8 recourse against the Association/Agent i.e. the parties who caused the alleged harm in the first
9 place. Therefore, the only appropriate remedy, money damages, not equitable relief that harms
10 SFR, the innocent purchaser. This is consistent with Swartz noting:

11 ...the ideal remedy would be to return that property to the former owner
12 pending constitutionally sufficient proceedings. Unfortunately, this may no
13 longer be done without injury to innocent third parties who are bona fide
14 purchasers of the property. However, Violet has also sought compensatory
15 relief in her complaint. We therefore reverse and remand the case to the court
16 below for appropriate proceedings consistent with this opinion.

17 93 Nev. at 245–46, 563 P.2d at 77.

18 If a homeowner, who was not afforded due process and therefore could not even avail
19 herself of earlier remedies or prevent a BFP from purchasing the property, was not entitled to
20 equitable relief, then certainly the Bank who did have notice and opportunity to invoke any
21 number of remedies, and allowed a BFP to purchase the property, is not entitled to equity.

22 This is consistent with the Restatement's commentary: the wronged junior lienholder
23 must seek a remedy from someone other than the purchaser. *See* Restatement (Third) Property:
24 Mortgages, §8.3, Comment *b*. Other courts have also consistently found that a BFP is protected
25 even when there is a wrongful rejection of tender. Moeller, 25 Cal. App. 4th at 831–32, 30
26 Cal.Rptr.2d at 783 (precluding an attack by the trustor on the trustee's sale to a bona fide
27 purchaser even where the trustee wrongfully rejected a proper tender of reinstatement by the
28 trustor); see also, Munger v. Moore, 11 Cal. App. 3d 1, 7, 89 Cal. Rptr. 323 (Ct. App. 1970) (“a
trustee or mortgagee may be liable to the trustor or mortgagor for damages sustained where
there has been an illegal, fraudulent or willfully oppressive sale of property under a power of

1 sale contained in a mortgage or deed of trust”)(citations omitted).

2 Protecting BFPs by making a Bank’s remedy against the Association/Agent who acted
3 wrongfully is sound policy. In a foreclosure proceeding with wrongful conduct, the only party
4 with clean hands is the BFP. Every other party – i.e., the Bank and the foreclosure agent – was
5 directly involved in the alleged wrongful conduct. It was the Bank who chose not to inform
6 potential buyers of its attempts to protect its lien or avail itself of other remedies such as seeking
7 an injunction or attending the sale.

8 To grant equitable relief in the form of SFR taking subject to the Bank’s deed of trust,
9 only punishes SFR, an undisputed BFP. All the while, the Association/Agent, who allegedly
10 acted wrongfully, escapes liability (and never has to worry about being held accountable) and the
11 Bank who created its own hardship (and never has an incentive to do equity) is rewarded. This
12 cannot be the law in Nevada.

13 **2. The Bank comes to Court with unclean hands.**

14 Another maxim of equity: “equity aids the vigilant, not those who slumber on their
15 rights.” If the evidence in this case shows anything, it shows that the Bank slept on its rights; it
16 did not do equity, and therefore it is not entitled to equity. While the Court should never get this
17 far, if it were to weigh equities, the equities lie in favor of SFR.

18 In the present case, the Bank never availed itself of any number of earlier remedies. Most
19 importantly, the Bank allowed a BFP to purchase the Property. The Bank did not pay or attempt
20 to pay any portion of the Association’s lien. The Bank did not contact the Association or Agent
21 regarding the Association’s lien. The Bank did not foreclose on its own deed of trust. There is no
22 evidence suggesting that the Bank filed a complaint with NRED, nor that the Bank sought an
23 injunction to prevent the sale. The Bank did not record a lis pendens against the Property.
24 Finally, the Bank did not attend the sale. One who fails to do equity cannot claim equity.

25 Title should be quieted in SFR’s name and the Bank enjoined from taking any further
26 action to enforce its extinguished lien against the Property or further clouding SFR’s title.

27 ...

28 ...

V. CONCLUSION

Based on the above, the Bank's Exhibit B and related argument should be stricken. Further, the Bank's Motion for Summary Judgment should be denied in its entirety and judgment entered in favor of SFR.

Dated this 13th day of December 2017

KIM GILBERT EBRON

By: /s/ Diana S. Ebron, Esq.
DIANA S. EBRON, ESQ.
Nevada Bar No. 10580
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139-5974
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
*Attorney for Defendant/Counterclaimant/
Cross-Claimant,
SFR Investments Pool 1, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December 2017, pursuant to NRCP 5(b)(2)(D), I caused service of a true and correct copy of the foregoing **SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGMENT AND COUNTER MOTION TO STRIKE** to be made electronically via the Eighth Judicial District Court's electronic filing system upon

"Darren T. Brenner, Esq." .	darren.brenner@akerman.com
Akerman Las Vegas Office .	akermanlas@akerman.com
Diana Cline Ebron .	diana@kgelegal.com
E-Service for Kim Gilbert Ebron .	eservice@kgelegal.com
Michael L. Sturm .	mike@kgelegal.com
P. Sterling Kerr .	psklaw@aol.com
Richard J. Vilkin .	richard@vilkinlaw.com
Tomas Valerio .	staff@kgelegal.com

the following parties at the e-mail addresses listed below:

/s/ Diana S. Ebron
an employee of
KIM GILBERT EBRON

Ex. 1

EXHIBIT 1

Ex. 1

DECLARATION OF DIANA S. EBRON

I, Diana S. Ebron, 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 ("SFR") in this action.

3. I make this declaration in support of SFR's Opposition to Nationstar Mortgage, LLC's ("Bank" or "Nationstar") motion for summary judgment and Countermotion to Strike.

4. 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.

5. I am knowledgeable about how Kim Gilbert Ebron maintains its records associated with litigation, including litigation in this case. In connection with this litigation concerning 668 Moonlight Stroll Street, Henderson, Nevada 89002; Parcel No. 179-31-714-046 (the "Property").

6. I reviewed Nationstar's initial disclosures and each supplement thereto.

7. Based on my review, Nationstar never disclosed Freddie Mac of Dean Meyer as witnesses in its initial disclosures made on July 10, 2015 or any of its supplemental disclosures through the last day of discovery after remand which was October 17, 2017.

8. It was not until the Bank filed its motion for summary judgment on November 15, 2017 that any mention of Dean Meyer made it into this case through his post-discovery declaration on behalf of Freddie Mac.

9. The Bank subsequently made its sixth supplemental disclosure on November 29, 2017 at 6:33 pm, for the first time naming Freddie Mac as a potential witness, but without providing a phone number. The late disclosure states the following:

12. Corporate Representative for Federal Home Loan Mortgage Corporation

(Freddie Mac)

8200 Jones Branch Drive

McLean, VA 22102-3110

This witness is expected to testify concerning his/her knowledge of the facts and circumstances arising in connection with this lawsuit. In particular, Freddie Mac is expected to testify as to its ownership of the subject loan and Nationstar's servicing of the loan.

10. Before that, the only witness identified by Nationstar as having information about Freddie Mac's purported ownership was Nationstar. The disclosure stated:

1. Corporate Representative for Nationstar Mortgage, LLC

c/o AKERMAN LLP

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

Telephone: (702) 634-5000

This witness will testify regarding relevant facts and information relating to the third-party defendants' lien on the subject property and Freddie Mac's ownership.

11. Nationstar has consistently taken the position that Freddie Mac is completely unnecessary to this litigation, and won on that point at the Nevada Supreme Court.

12. When Nationstar listed itself as the only witness that would provide information about Freddie Mac's ownership interest and the purported servicing relationship, I presumed the Bank was maintaining that same position.

13. SFR's position is that Freddie Mac does not actually have an interest in the loan or any relevant information related to this case, which is why I did not name Freddie Mac as a witness in SFR's disclosures.

14. The *only* reason I did not attempt to depose Freddie Mac in this case was because Nationstar failed to list Freddie Mac as a witness as required by Rule 16.1.

15. It appeared that the Bank would rely on its own witness to attempt to prove both Freddie Mac's purported ownership and its servicing/agency relationship with Freddie Mac/FHFA.

16. I attempted to obtain information from Nationstar about the documents Freddie Mac is now attempting to authenticate and explain through Dean Meyer's declaration, but Nationstar took the position that it could not and would not authenticate or explain the documents.

17. After the late disclosure by Nationstar, I spoke with Melanie Morgan, Esq. and requested she withdraw the disclosure, as well as Freddie Mac's declaration and attached

1 documents filed as Exhibit B to Nationstar's motion for summary judgment.

2 18. Even though I explained SFR's prejudice and inability to depose Freddie Mac due
3 to the late disclosure, she refused to withdraw the disclosure or the Exhibit. She did not offer to
4 allow SFR any discovery into Freddie Mac, but instead insisted that the late disclosure was
5 "harmless."

6 19. In my opinion, Nationstar is using gamesmanship to try to deprive SFR of its right
7 to properly challenge the purported evidence by waiting until well after the time SFR could have
8 subpoenaed Freddie Mac to even claim Freddie Mac had any relevant information to this
9 litigation.

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

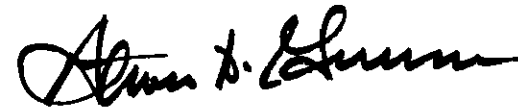
12 DATED this 13th day of December, 2017.

13 /s/ Diana S. Ebron
14 Diana S. Ebron
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Ex. 2

EXHIBIT 2

Ex. 2



CLERK OF THE COURT

KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
E-mail: Karen@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: jackie@hkimlaw.com
HOWARD KIM & ASSOCIATES
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC;
NEVADA ASSOCIATION SERVICES, INC.;
HORIZON HEIGHTS HOMEOWNERS
ASSOCIATION; KB HOME MORTGAGE
COMPANY, a foreign corporation, DOE
Individuals I through X, ROE Corporations and
Organizations I through X,

Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada
limited liability company,

Counter-Claimant and Third Party Plaintiff,
vs.

IGNACIO GUTIERREZ, an individual;
NATIONSTAR MORTGAGE, LLC, a
Delaware limited liability company;
COUNTRYWIDE HOME LOANS, INC., A
FOREIGN CORPORATION; DOES I-X; and
ROES 1-10, inclusive,

Counter-Defendant/ Third Party Defendants.

Case No. A-13-684715-C

Dept. No. XVII

**SFR INVESTMENTS POOL 1, LLC'S
REBUTTAL EXPERT WITNESS
DISCLOSURE**

Defendant/Counter-Claimant/Third Party Plaintiff, SFR Investments Pool 1, LLC
("SFR"), by and through its counsel of record, Howard Kim & Associates, hereby designates the
following rebuttal expert witness in the above-entitled matter as follows:

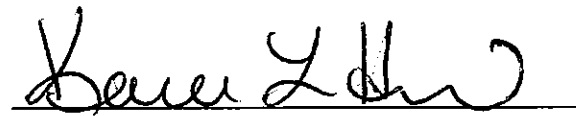
1. Michael L. Brunson, MNAA
Brunson Jiu, LLC
8670 W. Cheyenne Avenue, Ste 120
Las Vegas, Nevada 89129
702-641-5657

Mr. Brunson is a Nevada certified residential appraiser and AQB certified USPAP Instructor. He is expected to provide testimony regarding rebuttal opinions to Matthew Lubawy's initial expert report.

A true and correct copy of the rebuttal expert report is attached hereto as **Exhibit 1**. The expert report contains Mr. Brunson's curriculum vitae, fee schedule, and index of cases and published materials. The parties making this disclosure reserve the right to supplement this disclosure as allowed by the Nevada Rules of Civil Procedure.

DATED this 15th day of June, 2015.

HOWARD KIM & ASSOCIATES



KAREN L. HANKS, ESQ.

Nevada Bar No. 9578

DIANA S. CLINE, ESQ.

Nevada Bar No. 10580

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

1055 Whitney Ranch Drive, Suite 110

Henderson, Nevada 89014

Attorneys for SFR Investments Pool 1, LLC

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of June, 2015, pursuant to NCRP 5(b), I served via e-service, **SFR INVESTMENTS POOL 1, LLC'S REBUTTAL EXPERT WITNESS DISCLOSURE**, to the following parties:

Akerman

Contact

Email

Akerman Las Vegas Office

akermanlas@akerman.com

Akerman e-service

akermanlas@akerman.com

Allison R. Schmidt

allison.schmidt@akerman.com

Attorneys for Nationstar Mortgage, LLC and Countrywide Home Loans, Inc.

Law Offices of P. Sterling Kerr

Contact

Email

Select

P. Sterling Kerr

psklaw@aol.com

Law Offices of Richard Vilkin, P.C.

Contact

Email

Richard J. Vilkin

richard@vilkinlaw.com

Attorneys for Nevada Association Services, Inc.

/s/ Jody Foote

Employee of Howard Kim & Associates

June 13, 2015

SFR Investments Pool 1, LLC, represented by attorneys Jacqueline A. Gilbert and Diana S. Cline of Howard Kim & Associates
1055 Whitney Ranch Dr., Suite 110
Henderson, NV 89014

RE: Ignacio Gutierrez v SFR Investments Pool 1, LLC, et al (Case No. A-13-684715-C)

Dear Misses Gilbert and Cline:

Per your request, I have examined the expert appraisal report completed by Mr. Gary Hardy and Mr. Matthew Lubawy of Valbridge Property Advisors, Inc. (Hardy/Lubawy report or Hardy/Lubawy appraisal). The Hardy/Lubawy report is a retrospective, fair market value appraisal of the fee simple interest of the subject as of March 08, 2013. Communication is via a general-purpose residential form with numerous narrative and graphic addenda. The Hardy/Lubawy report contains 17 pages in total. It includes development of the sales comparison approach, utilizing three comparable sales. The signed date is May 14, 2015.

Appraisers are mandated, by federal law and/or state law, to comply with the edition of the Uniform Standards of Professional Appraisal Practice (USPAP) in effect as of the effective date of their work. The USPAP require specific professional ethics, disclosure, and performance when an appraiser is engaged to perform a service requiring his or her appraisal expertise. The USPAP are promulgated by the Appraisal Foundation and are the recognized measure of professional due diligence for all licensed or certified appraisers.

This assignment falls under the category of Appraisal Review as defined by the USPAP and is developed in compliance with the current edition of that document. This is a desktop assignment. No inspection of the subject is necessary for credible assignment results. All opinions, conclusions, and analysis have been developed and communicated without advocacy or bias. They are communicated in a manner that is meaningful and not misleading within the context of the intended use, intended users, and scope of work for this assignment.

It is assumed under an Extraordinary Assumption that the factual data presented in the Hardy/Lubawy report is accurate. The independent opinion of value is based on the assumption that the subject was in average condition as of the retrospective effective date. Use of these assumptions is reasonable but may have affected the assignment results. In the case of conflicting data, additional research will be conducted (if necessary) to determine which information is most reliable in order to allow my report to arrive at credible assignment results.

Brunson-Jiu, LLC
8670 W. Cheyenne Avenue Suite 120, Las Vegas, NV 89129
702-641-5657 Phone 702-939-9080 Fax
www.redamages.com

The client for this assignment is SFR Investments Pool 1, LLC. The Intended Use is for litigation in the case noted above. Intended Users include the Client represented by Howard Kim & Associates. The Scope of Work for my assignment includes an appraisal review (as defined) of the Hardy/Lubawy report and an independent opinion of the retrospective disposition value. My review emphasizes compliance with the USPAP and generally accepted appraisal methodology. I have examined the techniques and methodology of the Hardy/Lubawy appraisal in order to determine the completeness, adequacy, relevance, appropriateness, and reasonableness of the work under review, developed in the context of the requirements applicable to that work.

The accompanying appraisal review report is completed in compliance with USPAP Standards Rules 3-4, 3-5 and 3-6, containing statements and summary discussions of the data, reasoning, and analyses that were used in the process of developing my opinions. Supporting documentation concerning the data, reasoning and analyses is retained in my work file.

The depth of discussion within this report is specific to the client and intended use stated below. Neither I, nor Brunson-Jiu, LLC is responsible for unauthorized use of this review.

Conclusions – Hardy/Lubawy Expert Appraisal Report

The appraisal report completed by Hardy/Lubawy contains numerous errors, violations of the Uniform Standards of Professional Appraisal Practice, and fails to use generally recognized appraisal methodology. These errors of omission and commission cause the overall appraisal report to be misleading and to lack credibility.

Conclusions – Independent Opinion of Value

HOA foreclosure properties have limitations on their bundle of rights. These limitations preclude the use of traditional owner-equity sales, and limit the use of traditional foreclosure sales in an analysis of value. Similar HOA foreclosure sales and consideration of “current” market conditions provide the best measure of value for this type of transaction.

As an HOA foreclosure property, the retrospective disposition value as of March 08, 2013 was:

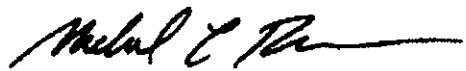
\$11,000

Eleven Thousand Dollars

Specific findings in support of these conclusions are noted in the individual sections of the report that follows this letter. Readers of this report should refer to appropriate versions of the USPAP or relevant cited documents for proper understanding of this appraisal review report. Your attention is invited to the accompanying report, from which the above opinions were derived.

Documents relevant to my opinions and conclusions, including but not limited to the workfile for the Hardy/Lubawy report, have not been produced. While I can properly review the report, I cannot fully evaluate whether the analyses, opinions and conclusions were properly *developed*. Additional findings may apply once the workfile is made available. Future stages of the assignment may include additional valuation services, including but not limited to an independent retrospective appraisal. I reserve my right to amend my findings based on future production of relevant documents.

Respectfully submitted,



Michael L. Brunson, SRA, MNAA
AQB Certified USPAP Instructor #10796
Nevada Certified Residential Appraiser #A.0002794-CR
June 13, 2015

Assumptions and Limiting Conditions

The submitted report is subject to underlying assumptions and limiting conditions qualifying the information it contains as follows:

1. Possession of this review or copy thereof does not carry with it the right of publication.
2. The purpose of the assignment is to review the appropriateness of the conclusions and the compliance with the USPAP determined within the submitted report.
3. This review is intended solely for the use of the identified Client and Intended User(s). Neither all nor any part of the contents of this review shall be disseminated to the public through advertising, public relations, news, sales or other media without the prior written consent of the reviewer.
4. Unless stated otherwise in the review, the analyses, opinions and conclusions in this review are based solely on the data, analyses and conclusions contained in the appraisal report, appraisal review report, and/or the workfile under review.
5. All analyses, opinions and conclusions expressed by the reviewer are limited by the scope of the review process as defined herein.
6. The conclusions apply only to the property specifically identified and described herein and in the reviewed, appraisal review reports, appraisal reports and/or associated workfiles.
7. The reviewer has made no legal survey, nor has he commissioned one to be prepared; therefore, reference to a sketch, plat, diagram or previous survey appearing in the report is only for the purpose of assisting the reader to visualize the property.
8. No responsibility is assumed for legal matters existing or pending outside of the existing case.
9. Disclosure of the contents of this review is governed by the Nevada Commission of Appraisers and the USPAP.
10. The compensation received for this assignment is in no manner contingent upon the conclusion of the review.
11. Reviewer Competency: Michael L. Brunson is an AQB Certified USPAP Instructor and is fully competent in regard to the proper interpretation and application of the USPAP. He is also a Certified Residential Appraiser in Nevada and has the geographic competency to appraise the subject and similar properties within the Southern Nevada area.

Appraiser Certification

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the properties that are the subject of the work under review and no personal interest with respect to the parties involved.
- I have performed no other services, as an appraiser or in any other capacity, regarding the properties that are the subject of the work under review within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the properties that are the subject of the work under review or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- My compensation for completing this assignment is not contingent upon the development or reporting of predetermined assignment results or assignment results that favors the cause of the client, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal review.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have made no inspection of the subject of the work under review.
- No one provided significant professional appraisal review assistance to the person signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I have completed the continuing education program for Designated Members of the Appraisal Institute.



Michael L. Brunson, SRA, MNAA
AQB Certified USPAP Instructor #10796
NV Certified Residential Appraiser #A.0002794.CR
June 13, 2015

DEFINITIONS

For the purpose of this report, the following definitions apply:

Appraisal¹

(noun) The act or process of developing an opinion of value; an opinion of value.
(adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

Comment: An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., assessed value, collateral value).

Appraisal Review²

the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal or appraisal review assignment.

Comment: The subject of an appraisal review assignment may be all or part of a report, workfile, or a combination of these.

Assumption³

That which is taken to be true.

¹ USPAP 2014-2015 Edition, The Appraisal Foundation.

² Ibid.

³ Ibid.

Disposition Value⁴

The most probable price that a specified interest in real property should bring under the following conditions:

1. Consummation of a sale within a future exposure time specified by the client.
2. The property is subjected to market conditions prevailing as of the date of valuation.
3. Both the buyer and seller are acting prudently and knowledgeably.
4. The seller is under compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider to be their best interests.
7. An adequate marketing effort will be made during the exposure time specified by the client.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. 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.

Extraordinary Assumption⁵

An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Fair Market Value⁶

The price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includible in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate.

⁴ The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

⁵ USPAP 2014-2015 Edition, The Appraisal Foundation.

⁶ IRS Regulation §20.2031-1.

Fee Simple Estate⁷

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

Highest and Best Use⁸

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

Hypothetical Condition⁹

That which is contrary to what exists but is supposed for the purpose of analysis.

Comment: Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Impaired Value¹⁰

The indicated value of a property with a detrimental condition reached upon the application of one or more of the three approaches to value.

Market Area¹¹

The area associated with a subject property that contains its direct competition.

⁷ The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

⁸ Ibid.

⁹ USPAP 2014-2015 Edition, The Appraisal Foundation.

¹⁰ Randall Bell with Orell C. Anderson and Mike V. Sanders, Real Estate Damages: Applied Economics and Detrimental Conditions – 2nd Edition (Chicago: Appraisal Institute, 2008), p. 378.

¹¹ The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

Market Value¹²

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

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and each is acting in what they consider their own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and,
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.

Neighborhood¹³

A group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises.

Sales Comparison Approach¹⁴

The process of deriving a value indication for the subject property by comparing market information for similar properties with the property being appraised, identifying appropriate units of comparison and making qualitative comparisons with or quantitative adjustments to the sale prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison.

¹² Title XI, Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), [Pub. L. No. 101-73 103 Stat. 183 (1989)], 12 U.S.C. 3310, 3331-3351, and Section 5 (b) of the Bank Holding Company Act, 12 U.S.C. 1844 (b); Part 225, Subpart G: Appraisals; Paragraph 225.62(f).

¹³ The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

¹⁴ Ibid.

Appraisal Review

INTRODUCTION

File No.: 1505.2093

Client:

SFR Investments Pool 1, LLC. Engaged by attorneys Jacqueline A. Gilbert and Diana S. Cline of Howard Kim & Associates.

Review Appraiser:

Michael L. Brunson, SRA, MNAA
AQB Certified USPAP Instructor #10796
Nevada Certified Residential Appraiser #A.0002794-CR
Brunson-Jiu, LLC

Intended User(s):

Client only. Use of this report by others is not intended. It is understood that parties to this litigation other than the Client may be granted access to the report and related workfile. However, as noted in Statement 9 of the USPAP,

Parties who receive a copy of an appraisal, appraisal review, or appraisal consulting report as a consequence of disclosure requirements applicable to an appraiser's client do not become intended users of the report unless they were specifically identified by the appraiser at the time of the assignment.

Intended Use:

Litigation in the matter of Ignacio Gutierrez v SFR Investments Pool 1, LLC, et al (Case No. A-13-684715-C). This report is not intended for any other use or in any other case.

Appraisers Who Completed the Work Under Review:

Gary N. Hardy, Nevada Registered Intern Appraiser #A.0206955-INTR
Matthew J. Lubawy, MAI, Nevada Certified General Appraiser #A.0000044-CG

Identification of the Work under Review:

The Hardy/Lubawy report is a general-purpose form report that includes 17 pages. It is a retrospective appraisal with an effective date of March 08, 2013 and a signed date of May 14, 2015.

Subject Property Address:	668 Moonlight Stroll Street Henderson, Nevada 89002
APN:	179-31-714-046
Location:	Horizon Heights, Henderson
Property Type:	Detached single-family residential
Owner of Record:	SFR Investments Pool 1, LLC
Interest Appraised:	Fee Simple.

Purpose and Scope of Assignment:

The purpose of this assignment is to develop a credible and reliable opinion as to the completeness, adequacy, relevance, appropriateness, and reasonableness of the work under review. This opinion is developed in the context of compliance with the USPAP and generally accepted appraisal methodology. An independent value opinion is part of the scope of this assignment. The following scope of work was developed in accordance with the objective of the assignment and in compliance with the USPAP.

- Collected and analyzed pertinent background information about the subject property.
- Examined various documents provided and requested of the client.
- Examined the expert report completed by Hardy/Lubawy.
- Verified relevant data from the work under review with the cited source when available or other reliable source as applicable.
- Noted compliance and lack of compliance with relevant sections of the USPAP.
- Noted compliance or lack of compliance with generally accepted appraisal methodology
- Developed opinions of the quality of the work under review.
- Developed an independent opinion of retrospective value.
- Concluded to final opinions.

My Appraisal Review Report is a summary report of the data, analysis, and conclusions. Supporting documentation is retained in the work file. Future stages of the assignment may include additional valuation services, including but not limited to additional analysis, consulting, deposition, and/or testimony.

Relevant Dates:

Transmittal date of Hardy/Lubawy appraisal:	May 14, 2015
Effective date of Hardy/Lubawy appraisal:	March 08, 2013
Date subject viewed by Hardy/Lubawy:	May 13, 2015
Date subject acquired at auction:	April 05, 2013

Additional relevant dates noted in the body of the review.

Effective date of appraisal review:

The effective date of this appraisal review is March 08, 2013¹⁵ corresponding to the effective date of the work under review. The 2014-2015 version of the USPAP is relevant to both the Hardy/Lubawy appraisal and this review.

Reviewer Competency and Professional Assistance:

The Competency Rule of the USPAP states in part that, “Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently...” As an AQB Certified USPAP Instructor, I am competent concerning the Uniform Standards and their application. As a Certified Residential Appraiser, I am competent in regard to the type of property and the analytical methods necessary to produce credible assignment results. My primary area of practice is Southern Nevada. I am competent concerning the geographic area and market.

USPAP Background:

The Uniform Standards of Professional Appraisal Practice, promulgated by the Appraisal Foundation, are the recognized measure of professional due diligence for all licensed or certified appraisers. The preamble of the USPAP provides a brief overview as to the purpose and intent of the Uniform Standards, stating in part:

The purpose of the *Uniform Standards of Professional Appraisal Practice* (USPAP) is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to **intended users** of their services in a manner that is **meaningful** and **not misleading**...
(Bold added for emphasis).

¹⁵ The effective date of the Hardy/Lubawy report does not relate to either the auction date (04/05/2013) or the recording date of the auction deed (04/08/2013).

The following excerpt from the Preamble helps the reader understand the relevance and applicability of the specific portions of the USPAP referenced in the report that follows.

USPAP addresses the ethical and performance obligations of appraisers through DEFINITIONS, Rules, Standards, Standards Rules, and Statements.

- The DEFINITIONS establish the application of certain terminology in USPAP.
- The ETHICS RULE sets forth the requirements for integrity, impartiality, objectivity, independent judgment, and ethical conduct.
- The RECORD KEEPING RULE establishes the workfile requirements for appraisal, appraisal review, and appraisal consulting assignments.
- The COMPETENCY RULE presents pre-assignment and Assignment Conditions for knowledge and experience.
- The SCOPE OF WORK RULE presents obligations related to problem identification, research and analyses.
- The JURISDICTIONAL EXCEPTION RULE preserves the balance of USPAP if a portion is contrary to law or public policy of a jurisdiction.
- The ten Standards establish the requirements for appraisal, appraisal review, and appraisal consulting service and the manner in which each is communicated.
 - STANDARDS 1 and 2 establish requirements for the development and communication of a real property appraisal.
 - STANDARD 3 establishes requirements for the development and communication of an appraisal review.
 - (Note: STANDARDS 4 and 5 have been retired)
 - STANDARD 6 establishes requirements for the development and communication of a mass appraisal.
 - STANDARDS 7 and 8 establish requirements for the development and communication of a personal property appraisal.
 - STANDARDS 9 and 10 establish requirements for the development and communication of a business or intangible asset appraisal.
- Statements on Appraisal Standards clarify, interpret, explain, or elaborate on a Rule or Standards Rule.
- Comments are an integral part of USPAP and have the same weight as the component they address. These extensions of the DEFINITIONS, Rules, and Standards Rules provide interpretation and establish the context and conditions for application.

It is important to note that the USPAP make a significant distinction between the *Development* of an appraisal or appraisal review and the *Communication* (reporting) of an appraisal or appraisal review. Standards Rule 1 (SR-1) applies to the *Development* of an appraisal of real property whereas SR-2 applies to the *Communication* of the appraisal. SR-3 is one of two Standards Rules where both development and communication are addressed in the same rule. However, the sections of SR-3 that apply to the development of an appraisal review are clearly labeled and the sections that apply to communication are clearly labeled.

This review focuses on compliance with generally accepted appraisal methodology and the USPAP – specifically the Preamble, Definitions, General Rules, Standards Rule 1 and Standards Rule 2 for the Development and Reporting of a Real Property Appraisal.

The table on the following page provides a summary of the Standards Rules applicable to the Hardy/Lubawy appraisal and a brief summary of my findings related to each specific USPAP rule. Green cells indicate compliance. Red cells indicate a lack of compliance. Yellow cells indicate either; technical violations of USPAP that do not significantly influence the overall credibility of the appraisal; or issues that are subject to interpretation.

Documents relevant to my opinions and conclusions, including but not limited to the workfile for the Hardy/Lubawy report, have not been produced. While I can properly review the report, I cannot fully evaluate whether the analyses, opinions and conclusions were properly *developed*. Additional findings may apply once the workfile is made available. Future stages of the assignment may include additional valuation services, including but not limited to an independent retrospective appraisal. I reserve my right to amend my findings based on future production of relevant documents.

Appraisal Report: SFR Referral Credit (2014-2015 USPAP)				
USPAP Reference	Item	Location	Notes	Compliance
2-1(a)	Clear, Accurate, Not Misleading		Utilized definition of Market Value is inappropriate.	N
2-1(b)	Sufficient Information for Understanding		Failure to indicate how the utilized definition applies to the problem to be solved.	N
2-1(c)	Disclose all Assumptions & Limiting Conditions	Form, Addenda		Y
2-2	Report Type Prominently Disclosed	Form		Y
Identify Problem and Determine Adequate Scope of Work				Compliance
2-2(a)(vi)	Transmittal Date	3	Reported effective date is neither the auction date, nor the recording date of the auction deed.	Y
	Effective Date 1-2(d)			
	Report Date			
2-2(a)(i) 1-2(a)	Client Identity	1		Y
2-2(a)(i); 1-2(a)	Intended User(s)	1		Y
2-2(a)(ii); 1-2(b)	Intended Use	1	Statement-9	Y
2-2(a)(iii); 1-2(e)	Legal Description or Other Property ID	1		Y
2-2(a)(iv); 1-2(e)(ii)	Property Interest	1		Y
2-2(a)(v) 1-2(c)	Type of Value	1, 4, 13	Utilized definition is not disclosed, but is recognized as the IRS definition. It is not applicable to the appraisal problem in this case.	N
	Definition of Value	13		
	Source of Definition	No		
	Applicability/Application of Definition	No		
	Reasonable Exposure Time (if developed)	1		
2-2(a)(vi) 1-2(h)	Scope of Work	4, 11	Proper disclosure.	Y
Analysis and Development				Compliance
2-2(a)(ix); 1-3(a)(b)	Use Existing, Use Appraised	3		Y
2-2(a)(x)	Summarize HABU (if developed)	3		Y
2-2(a)(xi) 1-2(f) 1-2(g)	Standard Assumptions and Limiting Conditions	7		Y
	- Extraordinary Assumptions	1, 12		
	Disclosure of Affect	1		
	- Hypothetical Conditions	-		
	Disclosure of Affect	-		
2-2(a)(viii)	1-4	Collect/Verify/Analyze Info for Credible Results	No indication of consideration for conditions of sale/motivation. Sale 1 is an FHA REA. Sale 3 is a short-sale. No disclosure/consideration for type of transaction. Sale 2 is more than 500sqft smaller.	N
		(a) Sales Comparison Approach		
		(b) Cost Approach		
		(c) Income Approach		
	1-5(a)&(b)	Sales, Contracts and Listing History		Y
	1-6	Reconcile Data/Analysis and Approaches	Generic reconciliation comment.	Y
1-1(a)	Be Aware of, Understand, Correctly Employ	-	Fair Market Value is not applicable.	N
1-1(b)	Substantial Error, Omission or Commission	-	Fair Market Value is not applicable.	N
1-1(c)	Carelessness or Negligence		Errors. Potentially negligent performance	Y
Certification				Compliance
2-2(a)(xii)	Include a Signed Certification (SR 2-3)	13		Y
2-3	USPAP Certification	13		Y
General Rules				Compliance
ETHICS RULE	Conduct	Avoid Bias or Advocacy; Gross Negligence; Disclosure of Prior Work	-	Y
	Management	Disclosure of Payment to Procure; Contingent Compensation; Proper Advertising; Signature Issues	-	
	Confidentiality	Protect Appraiser-Client Relationship	-	
RECORD KEEPING RULE		Prepare and maintain a workfile. Must exist prior to issuance of any report. Must contain name of client/intended users; true copies of all reports; summaries of oral reports; and all data, info, docs to support opinions/conclusions and show compliance with USPAP.	workfile	Unknown. Workfile not provided.
COMPETENCY RULE		Applies to factors such as, but not limited to, an appraiser's familiarity with a specific type of property or asset, a market, a geographic area, an intended use, specific laws and regulations, or an analytical method.		Lack of competent performance.
SCOPE OF WORK RULE	Problem Identification	4, 12	Failure to properly identify the problem. Failure to use an appropriate type/definition of value. Results are not credible in context of Intended Use.	N
	SOW Acceptability	4, 12		
	Disclosure	4, 12		
JURISDICTIONAL EXCEPTION RULE			-	N/A

Ignacio Gutierrez v SFR Investments Pool 1, LLC, et al
668 Moonlight Stroll Street

FINDINGS - Hardy/Lubawy Appraisal**Finding No. 1:**

The Hardy/Lubawy report lacks credibility and is misleading. It purports to measure fair market value, but does not. The analysis fails to properly apply recognized appraisal methodology and uses sales that do not qualify under the utilized type and definition of value.

Key Observations:

The definition of market value used is from the Internal Revenue Service. It appears below for clarification.

Fair Market Value¹⁶

The price at which the property would change hands between a willing buyer and a willing seller, *neither being under any compulsion to buy or to sell* and both having reasonable knowledge of relevant facts. The *fair market value* of a particular item of property includible in the decedent's gross estate *is not to be determined by a forced sale price*. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate. (*Emphasis added*)

Arm's-length transactions and typical buyer/seller motivation are key components of any appraisal using this definition of value. Yet two of the three comparable sales in the Hardy/Lubawy report are non-traditional. Sale 1 is an FHA REO and Sale 3 is a short sale. Both facts are conspicuously absent in the Hardy/Lubawy report.

The use of non-traditional sales in a market value appraisal has been a significant topic in the appraisal community following the bursting of the housing bubble. This topic is so significant that The Appraisal Practices Board of The Appraisal Foundation has issued a Valuation Advisory regarding the proper way to appraise in a declining market.¹⁷

¹⁶ IRS Regulation §20.2031-1.

¹⁷ APB Valuation Advisory #3: Residential Appraising in a Declining Market, (The Appraisal Foundation, May 7, 2012).

Best practices and generally recognized appraisal methodology indicate that market value appraisals should avoid the use of non-traditional sales when possible, because they do not meet the requirement for *typical buyer and seller motivation*. In the instance where non-traditional sales are used, analysis of any difference in *market value* (typical motivation) and *disposition value* (atypical motivation) is necessary to determine an appropriate adjustment for conditions of sale. The guidance by the Foundation focuses on valuation for lending in a declining market but is applicable to any market value assignment that uses non-traditional transactions as sale comparables.

The Hardy/Lubawy analysis uses the sales comparison approach to value. This approach is based on the economic principal of Substitution. This principal states that when comparably equivalent goods or services are available, a buyer in an open market will choose the one with the lowest price. The sales comparison approach also considers the secondary principals of Supply and Demand, Balance, and Externalities. Development of an indicated value occurs by analyzing closed sales, listings, and/or pending sales of properties similar to the subject, using relevant units of comparison.

Hardy/Lubawy use three comparable sales in the sales comparison analysis. As noted, two are non-traditional sales that lack typical buyer and seller motivation. Because the subject is an HOA auction sale, the argument might be made that the analysis adheres to the principal of Substitution by comparing sales of similar distressed properties. However, the argument would fail for several reasons. First, there is no referenced analysis or adjustment for conditions of sale. Second, the sales utilized do not conform to the type and definition of value that the assignment claims to measure.

A key factor in the validity of the sales comparison approach is that the comparables are truly similar to the subject. In this case, the subject is a HOA foreclosure acquired at auction. It is distinctly different from a traditional, owner-seller, equity sale. Because of the unique circumstances associated with a property acquired at an HOA auction, it is also distinctly different from a typical foreclosure sale or short sale.

A professional appraisal report *must* be “*meaningful and not misleading*.” If a non-traditional sale is used, it *must* be adjusted for conditions of sale and it *must* be applicable to the definition of value used in the report. In the Hardy/Lubawy report, the non-traditional sales contain no adjustment for type of transaction or conditions of sale. Despite proper disclosure in the MLS, the sales are not even *identified* by Hardy/Lubawy as non-traditional sales.

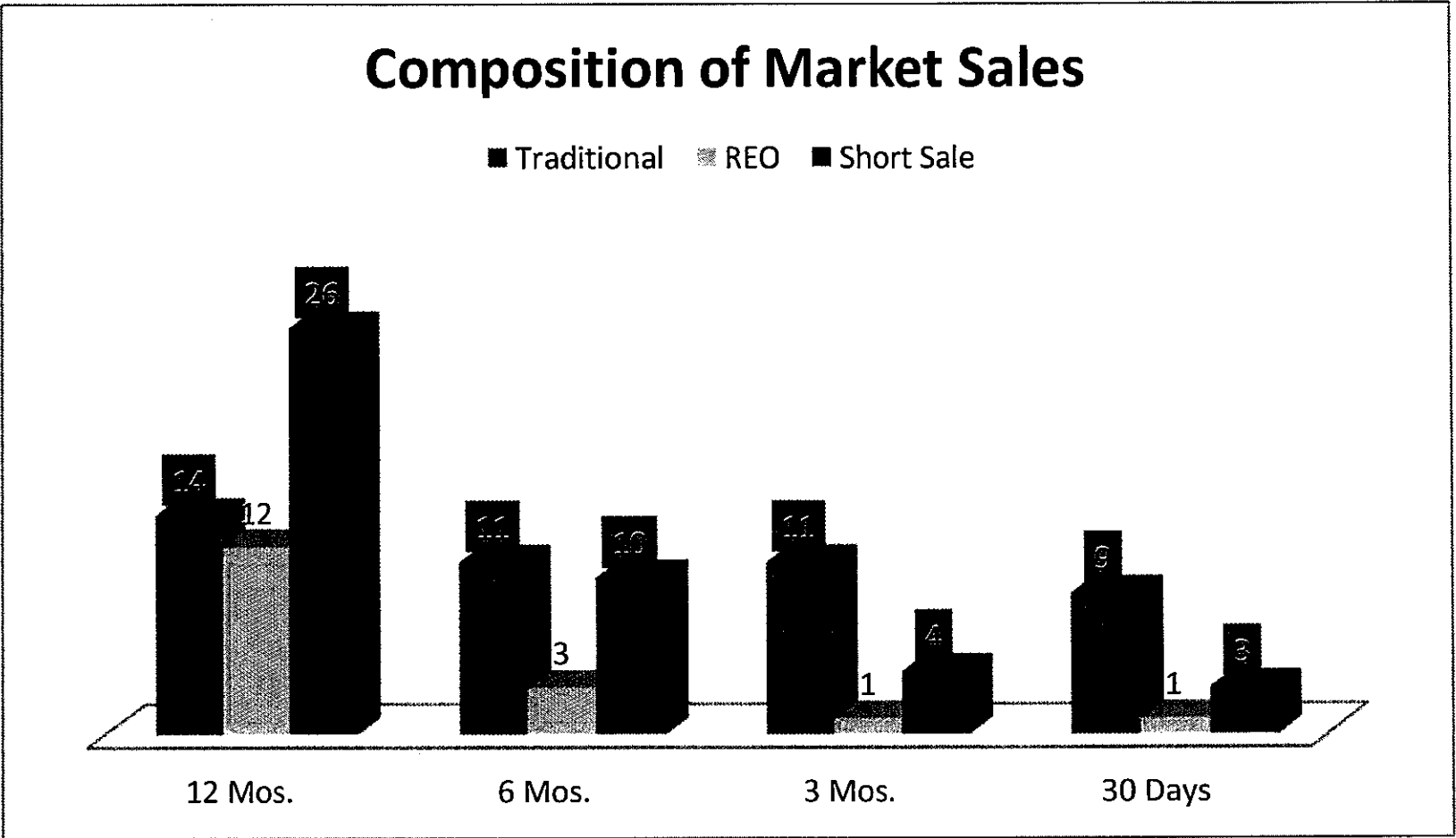
The remaining transaction (Sale 2) is over 500 square feet (27%) smaller than the subject. While similar in bed and bath count, it is unlikely that the typical buyer would consider this property a viable market alternative to the subject property.

Ultimately, not one of the Hardy/Lubawy sales are comparable to the subject. All are different in the bundle of rights conveyed. Sales 1 and 3 are non-traditional transactions that would require adjustment for conditions of sale in order to measure fair market value. Sale 2 is significantly smaller than the subject - to the degree that it is simply not a viable comparable. This represents numerous violations of the USPAP and causes the analysis to lack credibility.

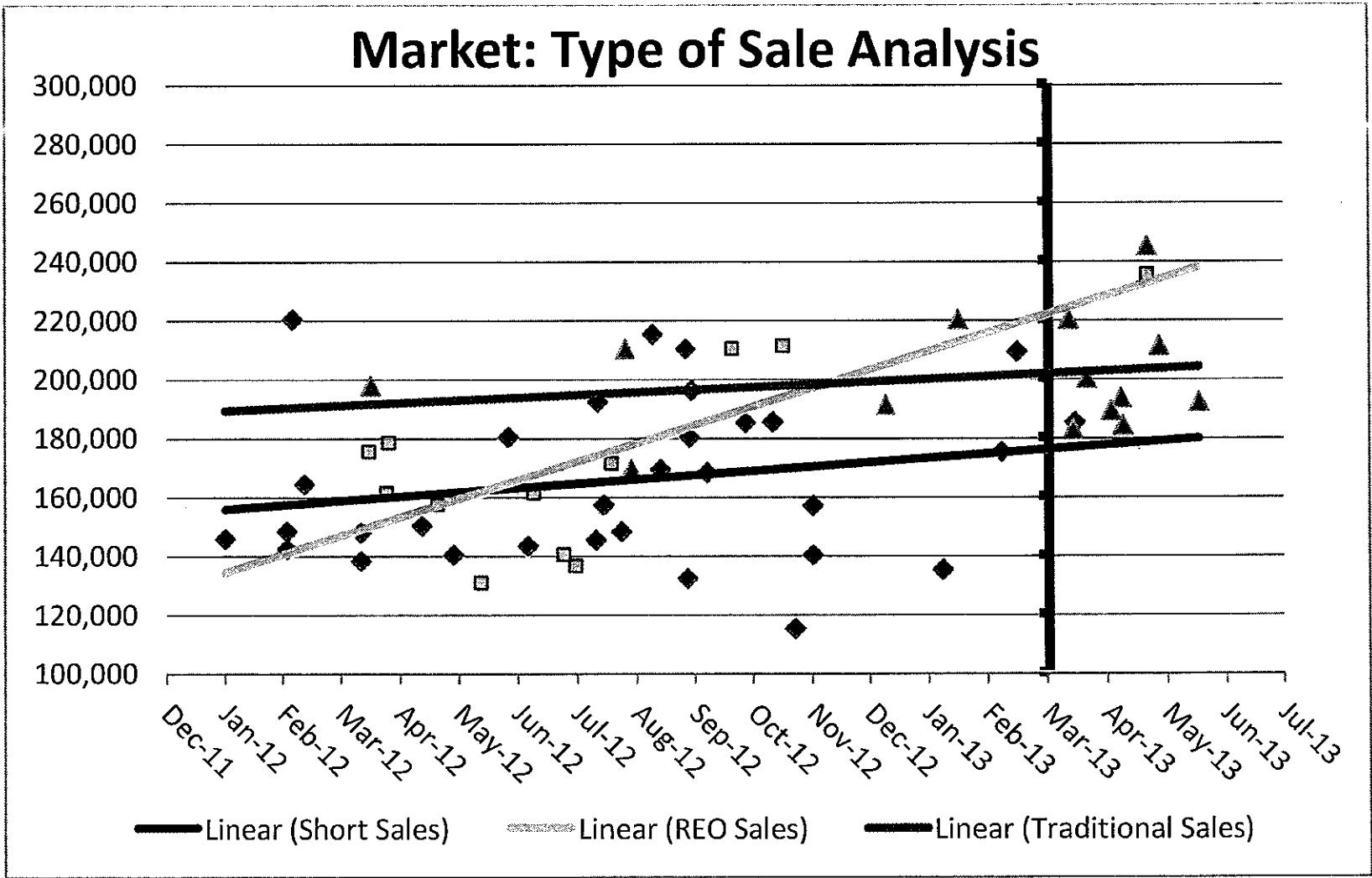
Independent analysis, using the parameters stated and implied in the Hardy/Lubawy report resulted in the table and graphs shown on the following pages.

Market Output								
	Sale Price	List Price	YearBlt	Concessions	DOM	Concessions	Sales to List Price Ratio	
				\$		%	% less than 90 days	
mean	175,195	170,859	2004	1,036	67	0.6%	103.8%	
median	175,000	169,900	2005	0	24	0.0%	101.2%	
mode	220,000	179,900	2005	0	8	0.0%	100.0%	
min	115,000	107,900	2000	0	0	0.0%	92.6%	
max	245,000	249,900	2007	7,300	367	3.5%	144.1%	
	Analysis Date:	3/3/2013						
	12 Mos.		6 Mos.		3 Mos.		30 Days	
Sales	#	%	#	%	#	%	#	%
Traditional	14	26.9%	11	45.8%	11	68.8%	9	69.2%
REO	12	23.1%	3	12.5%	1	6.3%	1	7.7%
Short-Sale	26	50.0%	10	41.7%	4	25.0%	3	23.1%
Total	52	100.0%	24	100.0%	16	100.0%	13	100.0%

The upper portion of the table above shows point statistics of some transactional characteristics. The lower portion shows the composition of the types of sale in the market in the prior year. Non-traditional sales were dominating this market overall. However, their influence was declining. The most current comparable data was 68.8% traditional. Clearly, traditional sales did exist for comparison. If one determined that the use of a non-traditional sale was necessary, there is adequate data available to determine an adjustment. The chart on the following page shows the same information from the lower portion of the table in a graph.

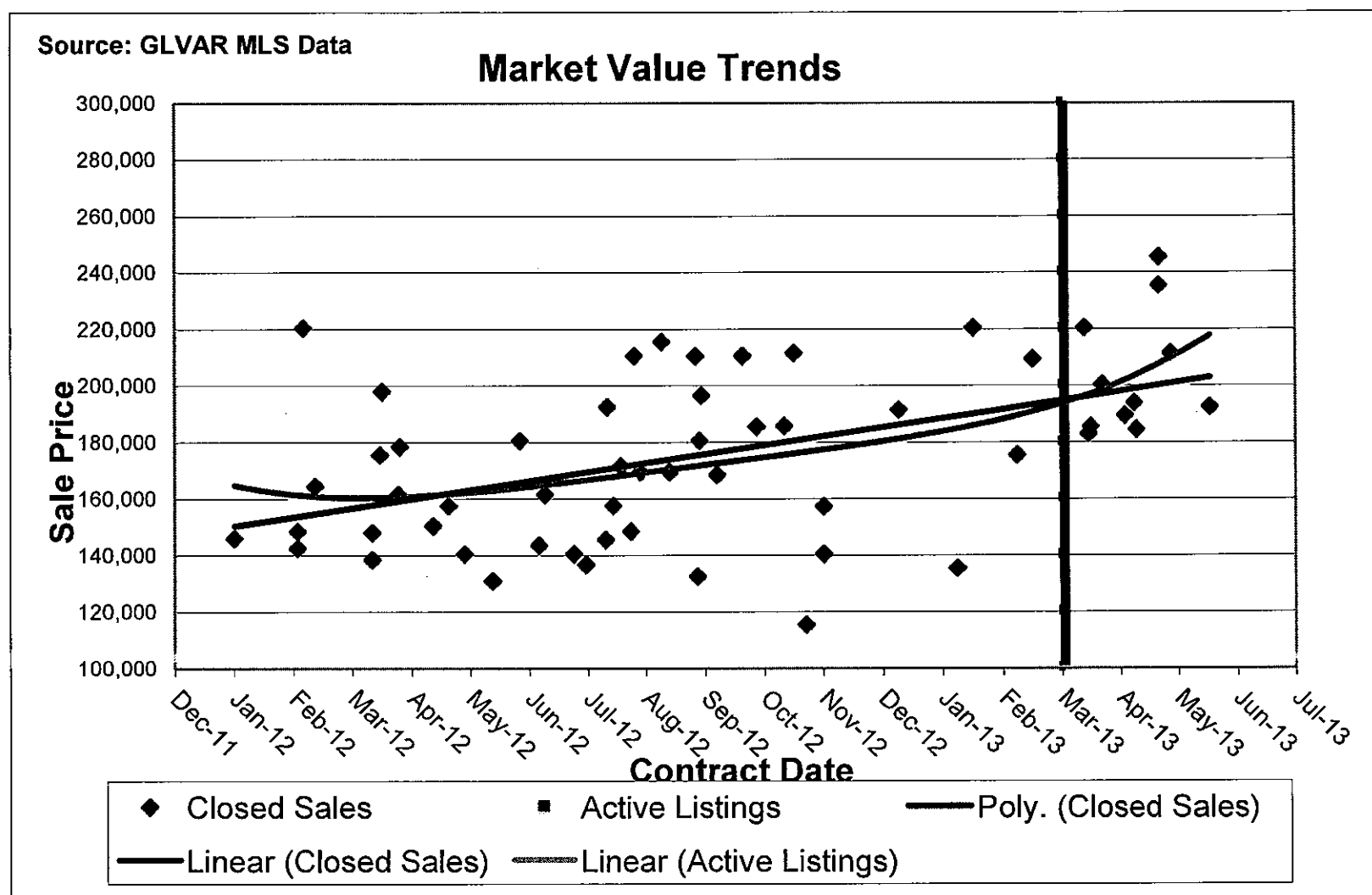


Clearly, there were traditional sales that could have and should have been used either as comparables or for comparison/analysis and adjustment. Lacking any evidence of an analysis in the Hardy/Lubawy report, the graph below shows the trends for the various types of transactions present in the retrospective subject market.



The graph separates the data by type of transaction. The trend for REO is skewed by the both the number and frequency of REO sales and would require additional analysis. However, it clearly demonstrates the need for an adjustment to the non-traditional sales.

In addition to the failure to properly analyze the non-traditional sales, Hardy/Lubawy incorrectly report a stable market. The graph below demonstrates an increasing market (~22% y-o-y) as opposed to a *stable* market as reported by Hardy/Lubawy.¹⁸



¹⁸ Hardy/Lubawy Report, p. 1.

Conclusion:

By failing to distinguish the types of transactions in the market, Hardy/Lubawy fail to recognize that the subject existed in a segmented market. Traditional sales were available for comparison and analysis. They represented 68.8% of the available sales 3-months prior to the effective date. REO sales were erratic and limited in number. The influence and number of short sales was declining. In either case, an adjustment was warranted if they were going to be utilized.

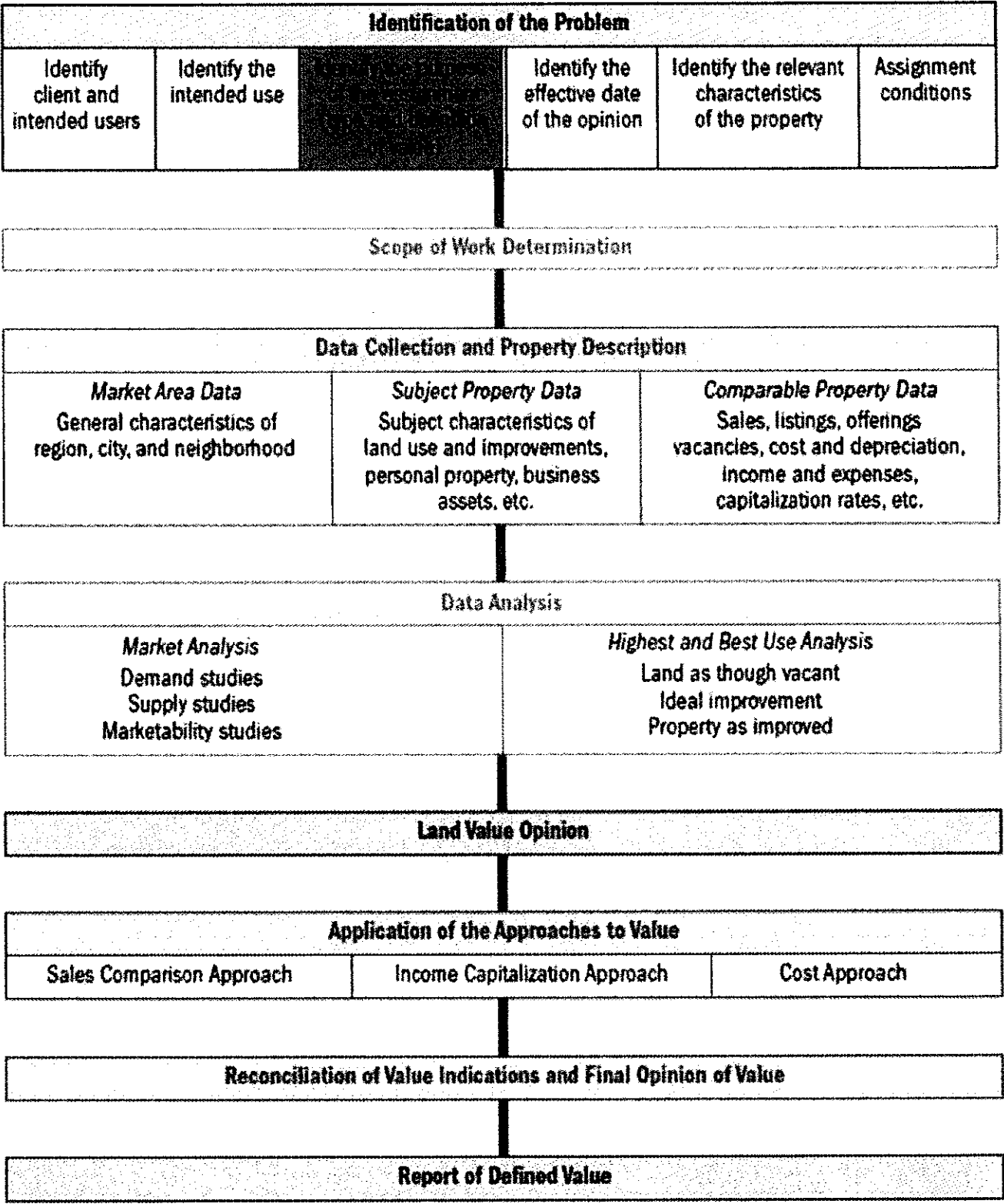
A proper analysis of the defined market value in this retrospective market requires analysis and adjustment of non-traditional sales. Failing to do either, the Hardy/Lubawy appraisal lacks credibility and is misleading.

Finding No. 2:

Failing to identify the type and definition of value applicable to the assignment demonstrates a lack of competent performance. It also causes the Hardy/Lubawy report to be misleading and to lack credibility.

Key Observations:

The diagram below comes from The Appraisal of Real Estate, 14th Edition. It shows the 8-step valuation process. The added highlight in step-1 shows that the type and definition of value are part of the first step.¹⁹



The definition appears on the following page for clarification.

¹⁹ The Appraisal of Real Estate, 14th Edition, p 37 (Chicago: Appraisal Institute, 2013).

Fair Market Value²⁰

The price at which the property would change hands between a willing buyer and a willing seller, *neither being under any compulsion to buy or to sell* and both having reasonable knowledge of relevant facts. The *fair market value* of a particular item of property includible in the decedent's gross estate *is not to be determined by a forced sale price*. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate. (*Emphasis added*)

The IRS definition of Fair Market Value is applicable to assignments with an Intended Use of probate and/or estate tax where the IRS is an Intended User. It is not applicable to the circumstances of this case. The subject sold in accordance with NRS 116 at a forced auction because of unpaid HOA dues. Even if one overlooks the proper application of the IRS value definition, one must ignore the requirement that neither party be under compulsion and the requirement that the value is not to be determined by a forced sale.

The last clause of the IRS definition emphasizes the importance of identifying the appropriate market in which an HOA Foreclosure property will sell. Certainly, a property lacking insurable clear title, will not commonly sell in the same market as traditional owner-equity houses. Neither will it commonly sell in the same market as non-HOA foreclosure (REO) or short sale properties.

It is possible that the client imposed the utilized definition of market value upon Hardy/Lubawy. If that were the case, that information would require disclosure within the report to ensure USPAP compliance and to ensure the trier-of-fact is not misled. Lacking such disclosure, it follows that Hardy/Lubawy selected the type and definition of value.

²⁰ IRS Regulation §20.2031-1.

The 14th Edition states:

*One essential task that the appraiser must complete at the very onset of the valuation process is identifying and defining the type of value that will be the focus of the appraisal assignment. The type of value should be one of the terms of engagement between the client and appraiser. The appraiser should be certain of this at the time the assignment is accepted, notwithstanding certain unusual situations.*²¹

It continues:

*Properties in distressed markets often do not meet the conditions specified in the definition of market value. Other types of value might be more appropriate for properties when a forced sale or some other form of distress is influencing the decisions of the buyer or seller.*²²

In 1Q 2013, the Las Vegas market was still recovering from the bursting of the housing bubble. Nevada's robo-signing law (AB284) was under scrutiny leading into the 2013 legislature. Appraisers working in this retrospective market were balancing a market showing rapid appreciation due to a lack of supply - with the issue of an undetermined number of houses that were abandoned or technically abandoned. The potential of 12+ months of *shadow* inventory had many real estate professionals questioning the sustainability of the market. Following the most significant rise and fall of any housing market in the nation, Las Vegas was most certainly a distressed market.

*"The intended use of an appraisal dictates which definition of market value is applicable."*²³ Hardy/Lubawy notes the intended use is for "*litigation*."²⁴ The Hardy/Lubawy appraisal uses *Fair Market Value*. The definition is provided, but the source is not disclosed and there is no comment indicating how the definition is being applied. Numerous other issues and errors are noted.²⁵ However, they are deemed secondary in light of the use of an inapplicable type and definition of value.

Conclusion:

Based on the above information and the purpose and intended use of the assignment, an alternate definition of value was warranted. Failure to utilize an appropriate type and definition of value and numerous other errors and inconsistencies cause the report to lack credibility and to be misleading.

²¹ The Appraisal of Real Estate, 14th Edition, p 57 (Chicago: Appraisal Institute, 2013).

²² The Appraisal of Real Estate, 14th Edition, p 65 (Chicago: Appraisal Institute, 2013).

²³ The Appraisal of Real Estate, 14th Edition, p 60. (Chicago: Appraisal Institute, 2013).

²⁴ Hardy/Lubawy Report, p. 1 and 4.

²⁵ See the table "Appraisal Report Std-3 Review Checklist" on page 15 of this report.

Finding No. 3:

The most logical type and definition of value for the assignment would be Disposition Value or a custom definition that incorporates the property rights and risk associated with the purchase of an HOA auction property. The most reasonable sales would be similar HOA auction sales.

Key Observations:*Type and Definition of Value*

*“The intended use of an appraisal dictates which definition of market value is applicable.”*²⁶ Hardy/Lubawy notes the intended use is *“litigation.”*²⁷ As noted in the prior finding, *“Other types of value might be more appropriate for properties when a forced sale or some other form of distress is influencing the decisions of the buyer or seller.”*²⁸ The current definition of Disposition Value is shown below.

Disposition Value²⁹

The most probable price that a specified interest in real property should bring under the following conditions:

1. Consummation of a sale within a future exposure time specified by the client.
2. The property is subjected to market conditions prevailing as of the date of valuation.
3. Both the buyer and seller are acting prudently and knowledgeably.
4. The seller is under compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider to be their best interests.
7. An adequate marketing effort will be made during the exposure time specified by the client.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. 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.

This definition most closely captures the circumstances of a HOA foreclosure sale under NRS 116.

²⁶ The Appraisal of Real Estate, 14th Edition, p 60. (Chicago: Appraisal Institute, 2013).

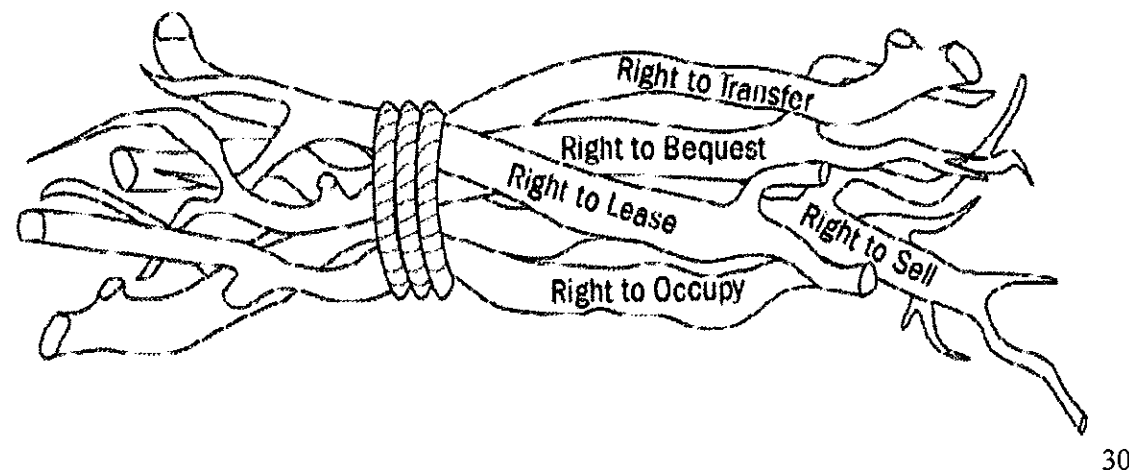
²⁷ Hardy/Lubawy Report, p. 1 and 4.

²⁸ The Appraisal of Real Estate, 14th Edition, p 65 (Chicago: Appraisal Institute, 2013).

²⁹ The Dictionary of Real Estate Appraisal, 5th Edition, (Chicago: Appraisal Institute, 2010).

Proper Selection of Comparable Sales

The bundle of rights is a common way of referencing the components of interest in real property. A proper understanding of the bundle of rights is foundational to a properly developed and communicated appraisal. The interest or rights associated with real estate ownership are the right to: use the real estate; sell it; lease it; enter it; and give it away. They are often illustrated as a bundle of sticks. Each stick has value and can be separated and traded in the market.



30

Buyers of HOA foreclosures can face limitations on any or all of these rights. Use and occupancy can be limited by pending litigation and/or prior owners/tenants that refuse to vacate. Transferability is limited by the inability to obtain insurable clear title. Clearly, these properties contain a measure of risk not present in a traditional sale, a short-sale, or a non-HOA foreclosure.

These risks and their associated costs will likely reduce the number of potential buyers. The most likely buyer is an investor. The investor's decision to buy will be affected by these risks and costs.

The 14th Edition states:

The real property rights to be appraised are singled out among the relevant characteristics of the property because, like the appropriate type and definition of value for the assignment, the property rights appraised are a fundamental element of the assignment. An oversight in the analysis of some other characteristic of the property may or may not have a noticeable effect on the ultimate opinion of value, but a poor understanding of what precisely is being valued guarantees a critical error in the development of the appraisal.¹ ... Real property appraisal involves not only the identification and valuation of a variety of different rights, but also the analysis of the many limitations on those rights, and the effect that the limitations have on value.³¹

³⁰ The Appraisal of Real Estate, 14th Edition, p 5 (Chicago: Appraisal Institute, 2013).

³¹ The Appraisal of Real Estate, 14th Edition, p 69-70. (Chicago: Appraisal Institute, 2013).

¹ See David Lennhoff, "You Can't Get the Value Right If You Get the Rights Wrong," *The Appraisal Journal* (Winter 2009): 60-65.

The cited Appraisal Journal article deals solely with commercial property. However, the concept, that the bundle of rights is fundamental to an appraisal assignment, applies.

Conclusion

Based on the above analysis, the most logical definition of value would be Disposition Value. The most similar transactions, and therefore the best comparable sales, are other HOA foreclosures. Traditional sales are so different that they should not be used. Short-sales and typical foreclosure sales require analysis of the conditions of sale and appropriate adjustment in order for their use to be meaningful and not misleading.

Conclusion – Hardy/Lubawy Expert Appraisal Report

The appraisal report completed by Hardy/Lubawy contains numerous errors, violations of the Uniform Standards of Professional Appraisal Practice, and fails to use generally recognized appraisal methodology. These errors of omission and commission cause the overall appraisal report to be misleading and to lack credibility.

Documents relevant to my opinions and conclusions, including but not limited to the workfile for the Hardy/Lubawy report, have not been produced. While I can properly review the report, I cannot fully evaluate whether the analyses, opinions and conclusions were properly *developed*. Additional findings may apply once the workfile is made available. Future stages of the assignment may include additional valuation services, including but not limited to an independent retrospective appraisal. I reserve my right to amend my findings based on future production of relevant documents.

-- END OF REVIEW --

Appraisal Report

All assignment characteristics from the review are extended to the independent opinion of value. Information from the Hardy/Lubawy appraisal regarding physical characteristics are assumed accurate. The retrospective condition is assumed to have been average. *The use of these assumptions is reasonable but may have affected the assignment results.*

As noted, the most logical definition of value would be Disposition Value (as defined). The subject is appraised in fee simple interest. However, there are limitations on the bundle of rights that must be considered. As noted in the original report, buyers of HOA foreclosures can face limitations on any or all of the rights. Use and occupancy can be limited by pending litigation and/or prior owners/tenants that refuse to vacate.

As of the retrospective effective date, there was no title company in Southern Nevada willing to issue title insurance following an HOA foreclosure. The lack of insurable clear title would have limited traditional financing options and the ability to sell/transfer the property.

An additional risk in the purchase of HOA lien properties is the likelihood of litigation. The typical buyer would have been aware of numerous district court cases that ended with decisions both against and in favor of a buyer's position. As of the retrospective effective date, the typical buyer would have been aware that the Nevada Supreme Court case regarding HOA liens was still undecided.

The risks noted above are not present in the purchase of a traditional foreclosure property. They demonstrate the problem of using traditional foreclosures to measure disposition value of a HOA lien foreclosure.

My independent analysis uses an effective date of March 08, 2013, the date of the HOA auction. Research of historical foreclosures and trustees deeds in the MLS tax assessor's database revealed 13,965 transactions in Clark County that recorded between April 1, 2012, and August 1, 2013. Restricting the search criteria to detached, single-family houses between 1,800 and 2,500 square feet of GLA and built between 2000 and 2010 reduced the number of transactions to 565. Further restricting the search to properties located in MLS areas 601 through 605 reduced the number to 38. Some HOA foreclosures in this period were classified by the assessor as a traditional "recorded value." Therefore, this final search was expanded to included "recorded value" transactions resulting in 443 possible transactions.

Based on the above analysis, the best comparable sales will be similar HOA foreclosures. Reading of the recorded deeds revealed that 10 transactions (including the subject) were HOA foreclosures under NRS 116. Those transactions appear in the table below sorted by auction date with the most current transactions on top. The subject is highlighted in green.

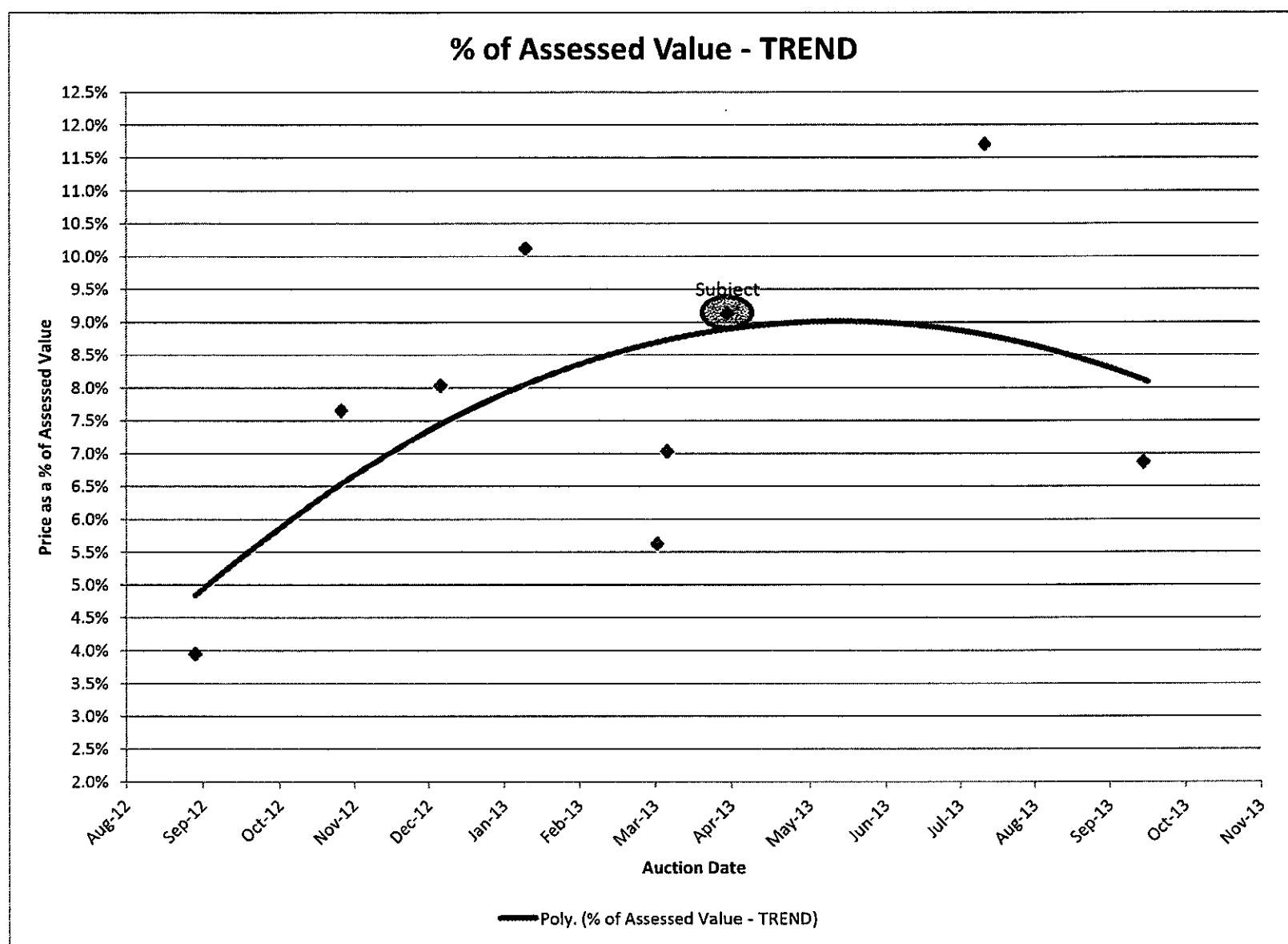
Area	Address	Typestyle	GLA	Beds	Baths	Year Built	Lot SqFt	Garage	Assessed Value	Auction Price	% of Assessed Value	Auction Date	Buyer
601	731 EMERALD IDOL PL	2 STORY	1909	3	2.5	2005	3485	438	\$135,786	\$9,300	6.8%	9/17/2013	SATICOY BAY LLC
601	767 EASTER LILY PL	2 STORY	1909	3	2.5	2009	3485	438	\$145,446	\$17,000	11.7%	7/16/2013	SFR INVESTMENTS POOL
605	668 MOONLIGHT STROLL ST	2 STORY	2161	3	2.5	2005	3485	380	\$120,703	\$11,000	9.1%	4/5/2013	SFR INVESTMENTS POOL
601	644 PALM WASH LN	2 STORY	1909	4	2.5	2008	3049	438	\$142,574	\$10,000	7.0%	3/12/2013	SFR INVESTMENTS POOL
604	139 KAVA KAVA ST	2 STORY	2470	4	2.5	2003	6098	635	\$160,543	\$9,000	5.6%	3/8/2013	PREMIER ONE HOLDING
601	650 TALIPUT PALM PL	2 STORY	1915	3	2.5	2008	3920	447	\$156,363	\$15,800	10.1%	1/15/2013	SFR INVESTMENTS POOL
605	297 JESSICA GROVE ST	2 STORY	2334	4	3	2006	6098	623	\$149,674	\$12,000	8.0%	12/12/2012	SFR INVESTMENTS POOL
605	682 POINT BLUFF ST	2 STORY	2052	3	2.5	2005	3485	410	\$123,157	\$9,400	7.6%	11/2/2012	THREE PALMS INV GRP
604	1010 PECOS RIVER AV	2 STORY	2260	4	3	2005	3920	456	\$152,654	\$6,000	3.9%	9/5/2012	SFR INVESTMENTS POOL

Mean	7.8%
Median	7.6%
Mode	#N/A
St. Deviation	2.3%
Min	3.9%
Max	11.7%

Outlier

601	1423 ORANGE JUBILEE RD	2 STORY	1972	3	2.5	2006	1307	424	\$103,340	\$24,100	23.3%	6/20/2013	SATICOY BAY LLC
-----	------------------------	---------	------	---	-----	------	------	-----	-----------	----------	-------	-----------	-----------------

During the verification, it was discovered that in later HOA lien transactions the assessed value was utilized to calculate the real property transfer tax. Assessed value becomes a constant point of reference that can be used for comparison. Analysis of the auction price as a percentage of the assessed value for similar transactions reveals a range from 3.9% to 23.3%. The transaction at 1423 Orange Jubilee is considered an outlier and is removed from the analysis. The trend indicated by the data appears on the following page.



Logically one would expect the disposition value to fall somewhere within the range indicated by the most current data.

Conclusion:

The subject auction price of \$11,000 is 9.1% of the retrospective assessed value. This figure falls within the range of contemporaneous transactions and is just above the trendline. The conditions of the auction sale meet the conditions of the definition of disposition value. Therefore, my professional opinion is that the subject's acquisition price is equivalent to the retrospective disposition value.

As an HOA foreclosure property, the retrospective disposition value as of March 08, 2013 was:

\$11,000
Eleven Thousand Dollars

-- END OF APPRAISAL --
 -- END OF REPORT --

Addenda

- A. Qualifications of Michael Brunson
- B. Expert Disclosure for Michael Brunson

Addendum A: Qualifications of Michael Brunson**Michael L. Brunson, SRA, MNAA**

AQB Certified USPAP Instructor

Nevada Certified Residential Appraiser #A.0002794-CR

Member of the Nevada Real Estate Division Appraisal Advisory Review Committee

Collateral Valuation Specialist

mike@REdamages.com www.REdamages.com

VALUATION BUSINESS BACKGROUND

Brunson-Jiu, LLC (Partner, 2011 – Present) Founding partner of a firm providing real property valuations, consulting and expert witness services. Areas of specialty include: real estate damages analysis for residential, commercial, vacant land and multi-family properties; and business valuation and exit planning strategies.

Bell Anderson & Sanders LLC (Contract Appraiser, 2008 – 2014) Engagement involved studying the economic impact of detrimental conditions, including issues such as environmental contamination, construction defects, legal conditions such as eminent domain, and proximity effects.

Columbia Institute (Instructor, 2009-Present) Approved to teach pre-licensing and continuing education courses related to residential appraisal

Ascent Appraisal, Inc. (Principle/Chief Appraiser, 1997 – 2011) An independent real estate valuation and consulting firm providing a comprehensive range of professional valuation products and services. We specialize in expert witness services; litigation support and consulting; forensic review; and complex valuation assignments.

Institute for Real Estate and Appraisal Studies (Instructor, 2003 – 2009) Approved to teach both pre-licensing and continuing education courses related to residential appraisal.

Ascent Inspection, Inc. (Owner/Primary Inspector, 2001 – 2003) An independent residential and commercial inspection firm providing both pre-purchase and pre-listing property inspections.

Berry & Associates (Registered Intern/Office Manager, 1995 – 1997) Performed single and multi-family residential appraisal assignments in form reports on various property types; conducted extensive market research & due diligence; performed internal appraisal review function; and appraisal office management.

EXPERT WITNESS / CONSULTING

AQB Certified USPAP Instructor The Uniform Standards of Professional Appraisal Practice (USPAP) are the recognized standard of care for professional appraisers. Michael is one of only six certified appraisers qualified as an AQB Certified USPAP Instructor in Nevada. He teaches USPAP courses and provides USPAP consultation to attorneys, appraisers, and lending clients. Michael has completed assignments for civil, probate, real estate damages, and divorce cases. He has qualified as an expert witness in real estate valuation in the 8th Judicial District Court of Clark County, Nevada.

Assignments in which an expert has provided deposition or court testimony are disclosed in compliance with state/federal law. Cases lacking such testimony are confidential.

Cases with Court Testimony: Johnson et al v Stanpark, 09A606013

Santos Probate, 10P068058

Dennett v Miller, A-459131

Cases with Deposition:

FDIC v CoreLogic, SACV11-704 DOC

Nguyen v Taylor, 11A644936C

Aguirre (et al) v American Nevada (et al), 09A600566

Copper Sands HOA, Etal v Copper Sands Realty, LLC, A-560139

Deutsche Bank National Trust Co. v Mha, A-532836

Carlisle v Pardee, A-421939

Demby v Chamberlin, A-443513

INTERVIEWS, PUBLICATIONS AND PUBLIC TESTIMONY

Local and national media recognize Michael as an expert in the Las Vegas Real Estate market.

- Panel Member, Spring 2015 Housing Outlook, Homebuilders Research (May 29, 2015)
- Panel Member, Lied Institute and Nevada Department of Business and Industry - Nevada Housing Forum (September 22, 2014)
- Panel Member, Using the Cost Addendum for High Performance Homes (October, 16, 2013)
- Panel Member, The Green Home Valuation Summit, Phoenix, AZ (September 23, 2013)
- Appraisal Industry Representative, Special City Council Meeting of the City of North Las Vegas, Regarding the underwater mortgage crisis (June 11, 2013)
- Panel Member, Spring 2013 Housing Outlook, Homebuilders Research (April 12, 2013)
- Interviewed by Diana Olick of CNBC (March 5, 2013 published on cnbc.com and aired on the NPR Nightly Business Report)
- Panel Member and Presenter, 2012 High Performance Home & Building Summit (August 15-16, 2012)
- Panel Member, Spring 2012 Housing Outlook, Homebuilders Research (April 27, 2012) Quoted by Hubble Smith of the Las Vegas Review Journal.
- Real Estate Panel Member, Spring 2011 Economic Outlook, UNLV Center for Business and Economic Research, (June 20, 2011)
- Interviewed by Jason Morgan of *Valuation Review*, Appraisers caught in the middle of Las Vegas housing market tensions, Online: March, 31, 2011, Print: April 25, 2011
- Interviewed by Calvert Collins of KLAS-TV (aired March 28, 2011)
- Author, Growing Business: Giving Clients What They Need, Vol. 217, February 16, 2011, *Working RE Magazine*
- Interviewed by Hubbel Smith of the Las Vegas Review-Journal (August 5, 2010).
- Interviewed by Calvert Collins of KLAS-TV (aired May 5, 2010)
- Interviewed by Dana Gentry of Las Vegas 1 (aired March 27, 2009)
- Interviewed by Chris Saldana of KLAS-TV (aired March 9, 2009)
- Interviewed by Stephanie Dhue of the Nightly Business Report (aired October 12, 2007).
- Interviewed by Hubbel Smith of the Las Vegas Review-Journal (June 7, 2007).

Michael has provided public comment and testimony before the Nevada Commission of Real Estate Appraisers, the Nevada Assembly Committee on Commerce and Labor and the Nevada Senate Committee on Commerce and Labor on numerous occasions.

MEMBERSHIPS

National Association of Appraisers: 2013, 2014 President; 2010-2012 Vice President,

Coalition of Appraisers in Nevada: 2011, 2010 President; 2009 Vice President; Government Relations Committee Chair 2009-2014.

SRA Designated Member, Appraisal Institute

National Association of Realtors

Greater Las Vegas Association of Realtors

TEACHING EXPERIENCE

Approved by the State of Nevada to teach both pre-licensing and continuing education appraisal courses. Michael has also been approved to teach courses in California, Arizona, Indiana, Michigan, Wisconsin, and Utah. A partial list of classes includes:

Fundamentals of Real Estate Appraisal	7 and 15 Hour National Uniform Standards of
Applied Residential Appraisal Techniques I	Professional Appraisal Practice
Appraisal Law in Nevada	How Finance affects Value
Highest & Best Use Analysis I	Advanced Neighborhood and Market Area
Appraising Small Residential Income	Analysis
Properties	Appraising 2-4 & Multi-Family Properties
Cost Approach Revisited	Foreclosures & Short Sales: Dilemmas and
Communicating the Appraisal I, II, III and IV	Solutions

Private seminars authored and instructed by Mr. Brunson:

Neighborhood and Market Analysis I and II
 Cost Approach – The Square Foot Method
 Mortgage Fraud – An Appraiser’s Perspective (NV CLE Seminar)
 Residential Real Estate Appraisal (For Brokers/Agents)
 How to Select & Evaluate an Expert Witness (NV CLE Seminar)

EDUCATION

Professional Education

University of Nevada, Las Vegas, Introductory and Intermediate Statistics
 Clark County Community College, Principles of Real Estate Appraisal
 Appraisal Institute, Standards of Professional Practice, Part A (410)
 Appraisal Institute, Standards of Professional Practice, Part B (420)
 Appraisal Institute, Standards of Professional Practice, Part C (430)
 Appraisal Institute, Nevada Appraisal Statutes
 Appraisal Institute, FHA and the Appraisal Process
 Appraisal Institute, Complex Litigation Appraisal Case Studies
 Appraisal Institute, Analyzing the Effects of Environmental Contamination on Real Estate
 Appraisal Institute, Advanced Income Capitalization
 Appraisal Institute, Advanced Spreadsheet Modeling for Valuation Applications
 Appraisal Institute, General Appraiser Site Valuation and Cost Approach
 Appraisal Institute, General Appraiser Sales Comparison Approach
 Appraisal Institute, General Appraiser Market Analysis and Highest and Best Use
 Appraisal Institute, Real Estate Finance, Statistics, and Valuation Modeling
 Appraisal Institute, Advanced Residential Report Writing, Part I and II
 Nevada Commission of Appraisers, Valuing Residential Energy Efficiency
 Chicopee Group, Impact of Financing on Appraisals
 TWI Systems, 50 hours of Professional Inspection Training
 Clark County Community College, 60 hours of home Inspectors Training
 Institute for Real Estate and Appraisal Studies, Applied Residential Appraisal Techniques I
 Institute for Real Estate and Appraisal Studies, Highest and Best Use Analysis I
 Institute for Real Estate and Appraisal Studies, Introduction to Business Appraisal
 Institute for Real Estate and Appraisal Studies, Small Residential Income Properties I
 Institute for Real Estate and Appraisal Studies, Introduction to Commercial Appraisal
 Institute for Real Estate and Appraisal Studies, Income Capitalization I and II
 IRWA, Principles of Real Estate Engineering
 IRWA, Understanding Environmental Contamination in Real Estate
 IRWA, Environmental Due Diligence and Liability
 (Current Continuing Education course list available upon request)

Other Education

University of Nevada at Las Vegas, Las Vegas, NV - 1991
 B.A. in Psychology. Emphasis on experimental psychology and methodology.

 Chaparral High School, Las Vegas, NV - 1987
 Graduated with High Honors.

REFERENCES

- Available upon request

Addendum B: Expert Disclosure Requirements

Compensation for Study and Testimony:

Michael L. Brunson charged an hourly rate of \$300 per hour for this stage of the assignment. Michael's hourly rate is \$300 for non-testimony time and \$350 for testimony time. Non-testimony time is billed for research, consultation, meetings, field inspections, travel, analysis, deposition preparation, and court preparation.

Publications:

Author, Growing Business: Giving Clients What They Need, February 16, 2011, Vol. 217, *Working RE Magazine*

National Association of Appraisers, Appraisal 4-1-1 e-newsletters

Summary of Recent Testimony:

Court testimony: Johnson et al v Stanpark, 09A606013

Santos Probate, 10P068058

Dennett v Miller, A-459131

Deposition Testimony: FDIC v CoreLogic, SACV11-704 DOC

Nguyen v Taylor, 11A644936C

Aguirre (et al) v American Nevada (et al), 09A600566

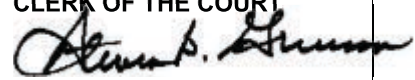
Copper Sands HOA, Etal v Copper Sands Realty, LLC, A-560139

Deutsche Bank National Trust Co. v Mha, A-532836

Carlisle v Pardee, A-421939

Demby v Chamberlin, A-443513

TAB 17



RIS
DIANA S. EBRON, ESQ.
Nevada Bar No. 10580
E-mail: diana@KGElegal.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: jackie@KGElegal.com
KAREN L. HANKS, ESQ.
Nevada Bar No. 9578
E-mail: karen@KGElegal.com
KIM GILBERT EBRON
7625 Dean Martin Drive, Suite 110
Las Vegas, Nevada 89139
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

IGNACIO GUTIERREZ, an individual,
Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC;
NEVADA ASSOCIATION SERVICES, INC.;
HORIZON HEIGHTS HOMEOWNERS
ASSOCIATION; KB HOME MORTGAGE
COMPANY, a foreign corporation, DOE
Individuals I through X, ROE Corporations and
Organizations I through X,

Defendants.

SFR INVESTMENTS POOL 1, LLC, Nevada
limited liability company,

Counter-Claimant and Third Party Plaintiff,

vs.

IGNACIO GUTIERREZ, an individual;
NATIONSTAR MORTGAGE, LLC, a
Delaware limited liability company;
COUNTRYWIDE HOME LOANS, INC., A
FOREIGN CORPORATION; DOES I-X; and
ROES 1-10, inclusive,

Counter-Defendant/ Third Party Defendants

Case No. A-13-684715-C

Dept. No. XVII

**SFR INVESTMENTS POOL 1, LLC'S
REPLY IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT**