

**In the Supreme Court of Nevada**

WYETH RANCH  
COMMUNITY  
ASSOCIATION,  
Appellant,

vs.

MARCHAI B.T, A NEVADA  
BUSINESS TRUST,  
Respondent.

**Supreme Court Case No. 83069**

District Court Case No. A68946-1  
Electronically Filed  
Nov 15 2021 01:01 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S APPENDIX OF DOCUMENTS**

**VOLUME III OF III**

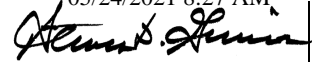
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*Attorneys for Appellant, Wyeth Ranch Community Association*

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CLERK OF THE COURT

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LAS VEGAS, NEVADA 89145  
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10 Attorney for Marchai, B.T.

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 MARCHAI, B.T., a Nevada business trust,

14 Plaintiff,

15 v.

16 CRISTELA PEREZ, an individual; *et al.*

17 Defendants.

Case No.: A-13-689461-C

Dept. No. XI

Consolidated with: A-16-742327-C

18 AND ALL RELATED CLAIMS AND AC-  
19 TIONS

20 **Order Denying Defendant Wyeth Ranch Community Association's Mo-**  
21 **tion for Attorney's Fees and Costs**

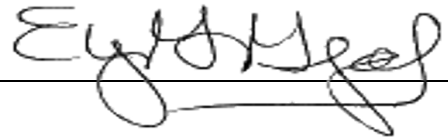
22 Defendant Wyeth Ranch Community Association's Motion for Attorney's Fees and  
23 Costs came before the Court, in chambers, on the 7th day of May 2021. The Court, having con-  
24 sidered the motion, Marchai, B.T.'s opposition, the reply, and good cause appearing therefor:

25 **It is ordered** that the motion is **denied**.

26 The Court declines to award attorney's fees to Wyeth Ranch as a prevailing party. Alt-  
27 hough the Court concluded that Wyeth Ranch prevailed on Marchai's claims, the Court declines  
28 to exercise its discretion to award attorney's fees because of issues related to the inconsistent evi-  
dence Wyeth Ranch presented about applying the homeowner's payments.

1 The Court also declines to exercise its discretion to award attorney's fees to Wyeth  
2 Ranch under N.R.C.P. 68. After considering the factors under *Beattie v. Thomas*, 99 Nev. 579,  
3 668 P.2d 268 (1983), the Court concludes Marchai brought its claims against Wyeth Ranch in  
4 good faith. Further, the Court concludes that Wyeth Ranch's offer of judgment was not reasona-  
5 ble in amount given the potentially preclusive effect of the offer of judgment. Moreover, Marchai  
6 reasonably refused to accept the offer of judgment given the potentially preclusive effect of ac-  
7 ceptance given the broad language of Wyeth Ranch's offer of judgment.

8 **Dated this 24th day of May, 2021**

9   
10

11  
12 **F6A B0C D054 C221**  
**Elizabeth Gonzalez**  
**District Court Judge**

13 Submitted by:

14 David J. Merrill, P.C.

15  
16 By: /s/ David J. Merrill  
17 David J. Merrill  
18 Nevada Bar No. 6060  
10161 Park Run Drive, Suite 150  
18 Las Vegas, Nevada 89145  
(702) 566-1935  
19 Attorney for Marchai, B.T.

20 Approved as to form:

21 Lipson Neilson P.C.

22  
23 By: /s/ David T. Ochoa  
24 David T. Ochoa  
25 Nevada Bar No. 10414  
9900 Covington Cross Drive, Suite  
120  
26 Las Vegas, Nevada 89144  
(702) 382-1500  
27 Attorneys for Wyeth Ranch Community Asso-  
28 ciation



David Merrill <david@djmerillpc.com>

---

**RE: Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Defendant Wyeth Ranch Community Association's Motion for Attorney's Fees**

1 message

---

**David Ochoa** <DOchoa@lipsonneilson.com>  
To: David Merrill <david@djmerillpc.com>

Thu, May 20, 2021 at 8:15 PM

David, you may use my e-signature.

David



**David Ochoa, Esq.**

**Lipson Neilson P.C.**  
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**Las Vegas, Nevada 89144**

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**OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO \*\*\*\*\***  
**\*\*\*\*\***

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---

**From:** David Merrill <david@djmerillpc.com>  
**Sent:** Thursday, May 20, 2021 7:26 AM  
**To:** David Ochoa <DOchoa@lipsonneilson.com>  
**Subject:** Marchai, B.T. v. Perez (Case No. A-13-689461-C): Order Denying Defendant Wyeth Ranch Community Association's Motion for Attorney's Fees

AA 488

David,

I have attached for your review and approval a draft of the Order Denying Defendant Wyeth Ranch Community Association's Motion for Attorney's Fees. I must submit to the Court tomorrow. Please review and advise if you have any changes or if I may submit to the Court with your electronic signature. Thank you.

--

David J. Merrill

David J. Merrill, P.C.

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

Office: (702) 566-1935

Mobile: (702) 577-0268

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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Marchai B T Bank Trust,  
Plaintiff(s)

CASE NO: A-13-689461-C

7 vs.

DEPT. NO. Department 11

8  
9 Cristela Perez, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/24/2021

15 David J. Merrill . david@djmerrillpc.com

16 Diana Cline Ebron . diana@kgelegal.com

17 E-Service for Kim Gilbert Ebron . eservice@kgelegal.com

18 Kaleb Anderson . kanderson@lipsonneilson.com

19 Michael L. Sturm . mike@kgelegal.com

20 Renee Rittenhouse . rrittenhouse@lipsonneilson.com

21 Susana Nutt . snutt@lipsonneilson.com

22 Tomas Valerio . staff@kgelegal.com

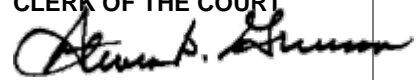
23 KGE Legal Staff staff@kgelegal.com

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*Attorneys for Defendant Wyeth Ranch Community Association*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

MARCHAI, B.T., a Nevada business trust  
Plaintiff,

v.

CRISTELA PEREZ, an individual, et al.  
Defendants.

Case No.: A-13-689461-C  
Dept. No.: XI

Consolidated with: A-16-742327-C

**NOTICE OF APPEAL**

AND ALL RELATED CLAIMS AND ACTIONS.

PLEASE TAKE NOTICE that Defendant WYETH RANCH COMMUNITY ASSOCIATION ("HOA" or "Wyeth Ranch"), hereby appeals from the following order or judgment:

1. Order Denying Defendant Wyeth Ranch Community Association's Motion for Attorney's Fees and Costs entered on May 24, 2021, notice of entry entered on June 2, 2021; and

///

///

///

///

///

2. All other orders made appealable thereby.

Dated this 11<sup>th</sup> day of June, 2021.

LIPSON NEILSON P.C.

*/s/ David T. Ochoa*

By: \_\_\_\_\_

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Nevada Bar No. 10414  
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*Attorneys for Defendant  
Wyeth Ranch Community Association*

**CERTIFICATE OF SERVICE**

I certify that on the 11<sup>th</sup> day of June, 2021, I electronically transmitted the foregoing **NOTICE OF APPEAL** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV & Serve registrants addressed to:

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[david@djmerillpc.com](mailto:david@djmerillpc.com)

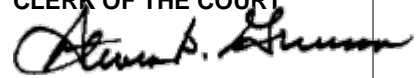
*Attorney for Plaintiff Marchai, B.T.*

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*Attorneys for SFR Investments Pool 1,  
LLC*

/s/ Juan Cerezo

An employee of LIPSON NEILSON P.C.



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[dochoa@lipsonneilson.com](mailto:dochoa@lipsonneilson.com)

*Attorneys for Defendant Wyeth Ranch Community Association*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

MARCHAI, B.T., a Nevada business trust  
Plaintiff,

v.

CRISTELA PEREZ, an individual, et al.  
Defendants.

Case No.: A-13-689461-C  
Dept. No.: XI

Consolidated with: A-16-742327-C

**CASE APPEAL STATEMENT**

AND ALL RELATED CLAIMS AND ACTIONS.

**CASE APPEAL STATEMENT**

**1. Name of appellant filing this case appeal statement:** WYETH RANCH  
COMMUNITY ASSOCIATION (“HOA” or “Wyeth Ranch”).

**2. Identify the judge issuing the decision, judgment, or order appealed  
from:** The Honorable Elizabeth Gonzalez

**3. Identify each appellant and the name and address of counsel for  
each appellant:**

Appellant: Wyeth Ranch Community Association

Counsel: Kaleb D. Anderson, Esq.  
David T. Ochoa, Esq.  
Lipson Neilson P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144



1           **10. Provide a brief description of the nature of the action and result in**  
2           **the district court, including the type of judgment or order being appealed and the**  
3           **relief granted by the district court:**

4           The case deals with a Homeowner's Association foreclosure that took place in  
5           2013. The district court originally found the purchaser at the sale, SFR Investment Pool  
6           1, LLC, took subject to the deed of trust. This Court remanded under 9352 *Cranesbill*  
7           *Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 459 P.3d 227 (2020), on the limited issue of  
8           whether the prior owner's partial payment of assessments satisfied the superpriority  
9           portion of the lien.

10          After remand and before trial, Wyeth Ranch served an Offer of Judgment on  
11          Marchai B.T. At trial Marchai failed to prevail on any of its remaining claims against  
12          Wyeth Ranch and failed to beat the offer of judgment. Wyeth Ranch sought attorney's  
13          fees and cost based on the offer of judgment (NRS 17.117 and NRCP 68) and NRS  
14          116.4117. The Court awarded Wyeth Ranch costs but denied attorney's fees, and  
15          Wyeth Ranch now appeals the Order denying Wyeth Ranch attorney's fees.

16           **11. Indicate whether the case has previously been the subject of an**  
17           **appeal to or original writ proceeding in the Supreme Court and, if so, the caption**  
18           **and Supreme Court docket number of the prior proceeding:**

19           SFR Investment Pool 1, LLC v. Marchai B.T., No. 77416.

20           SFR Investment Pool 1, LLC v. Marchai B.T., and Marchai B.T. v. Wyeth Ranch  
21           Community Association No. 82771 (related and pending).

22           **12. Indicate whether this appeal involves child custody or visitation:**

23           N/A

24           ///

25           ///

26           ///

27           ///

28           ///



1           **13. If this is a civil case, indicate whether this appeal involves the**  
2           **possibility of settlement:**

3           Wyeth Ranch is willing to address settlement, and has already provided a  
4           settlement statement to Settlement Judge Thomas J. Tanksley on related appeal: SFR  
5           Investment Pool 1, LLC v. Marchai B.T., No. 82771.

6  
7           Dated this 11<sup>th</sup> day of June, 2021.

8  
9           LIPSON NEILSON P.C.

10                               */s/ David T. Ochoa*  
11           By: \_\_\_\_\_  
12                               KALEB D. ANDERSON, ESQ.  
13                               Nevada Bar No. 7582  
14                               DAVID T. OCHOA, ESQ.  
15                               Nevada Bar No. 10414  
16                               9900 Covington Cross Drive, Suite 120  
17                               Las Vegas, Nevada 89144  
18                                 
19                               *Attorneys for Defendant*  
20                               *Wyeth Ranch Community Association*  
21  
22  
23  
24  
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26  
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28

**CERTIFICATE OF SERVICE**

I certify that on the 11<sup>th</sup> day of June, 2021, I electronically transmitted the foregoing **CASE APPEAL STATEMENT** to the Clerk's Office using the Odyssey eFileNV & Serve system for filing and transmittal to the following Odyssey eFileNV &

Serve registrants addressed to:

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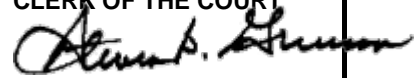
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*Attorneys for SFR Investments Pool 1,  
LLC*

/s/ Juan Cerezo

An employee of LIPSON NEILSON P.C.



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

MARCHAI B T BANK TRUST, )  
 )  
Plaintiff, )  
 )  
 )  
vs. )  
 )  
CRISTELA PEREZ, )  
 )  
 )  
Defendant. )  
 )  
AND RELATED CASES AND PARTIES )

CASE NOS. A-13-689461-C  
A-16-742327-C  
DEPT NO. XI

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE  
MONDAY, FEBRUARY 22, 2021

**BENCH TRIAL**

APPEARANCES:

FOR THE PLAINTIFF: DAVID J. MERRILL, ESQ.

FOR WYETH RANCH: DAVID T. OCHOA, ESQ.

FOR SFR INVESTMENTS: KAREN L. HANKS, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER  
TRANSCRIBED BY: JD REPORTING, INC.

**I N D E X**

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**W I T N E S S E S**

**WITNESSES FOR THE PLAINTIFF:**

SCOTT SAWYER

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YVETTE SAUCEDA

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RICHARD SCOTT DUGAN

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YVETTE SAUCEDA

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**WITNESSES FOR THE DEFENSE:**

CHRISTOPHER JOHN HARDIN

Direct Examination by Ms. Hanks	135
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**E X H I B I T S**

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142	70
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1 **LAS VEGAS, CLARK COUNTY, NEVADA, FEBRUARY 22, 2021, 10:42 A.M.**

2 \* \* \* \* \*

3 THE COURT: Okay. So we have electronic exhibits  
4 that IT has had a chance to do a check on.

5 Nick, are they all okay?

6 IT TECHNICIAN: Yes, Judge. We have evaluated the  
7 exhibits, and there are no issues.

8 THE COURT: All right. So give them to Dulce.

9 If anybody has additional exhibits you're going to  
10 try and offer, they have to be on separate drives, the same  
11 procedure that we've just followed, and then I have to have IT,  
12 Nick or one of his cohorts come and do their review.

13 Okay. Anything else from a procedural standpoint?  
14 Are we ready to go?

15 MR. MERRILL: Just from a procedural standpoint, Your  
16 Honor, I hope this is off the record.

17 THE COURT: This isn't off the record.

18 MR. MERRILL: It isn't?

19 THE COURT: I don't have any off the record.

20 MR. MERRILL: Okay. I have a medical issue, and --

21 THE COURT: So if you need to take a break, you wave  
22 at me, and you leave.

23 MR. MERRILL: Okay. That's exactly what it was.  
24 Thank you.

25 THE COURT: Yeah. And if we're in a middle of a

1 witness we'll try and all pause.

2 MR. MERRILL: Yeah.

3 (Pause in the proceedings.)

4 MR. MERRILL: Thank you, Your Honor.

5 THE COURT: Okay. So I have exhibits that have been  
6 proffered to the Court that are identified as 1 through 144.

7 Are there any stipulations to the admission of any of  
8 those?

9 MR. MERRILL: Yes, Your Honor. We would move for  
10 admission of all 144 with the exception of Numbers 2, 3, 111,  
11 113 --

12 THE COURT: Hold on. You've got to be slower.

13 MR. MERRILL: Sorry.

14 THE COURT: Okay. I caught up with you at 113.

15 MR. MERRILL: -- 115, 121 and 142.

16 THE COURT: Does that accurately reflect those that  
17 aren't stipulated to?

18 MS. HANKS: Correct. Yes. That accurately reflects  
19 it.

20 MR. OCHOA: That's correct, Your Honor.

21 THE COURT: Okay. So 1 will be admitted.

22 4 through 110 will be admitted.

23 112 will be admitted.

24 114 will be admitted.

25 116 through 120 will be admitted.

1 122 through 141 will be admitted.

2 And 143 and 144 will be admitted.

3 (Joint Exhibit Number(s) 1, 4-110, 112, 114, 116-120, 122-141,  
4 143-144 admitted.)

5 THE COURT: Okay. Any other housekeeping things we  
6 can do?

7 MR. MERRILL: I don't believe so, Your Honor.

8 THE COURT: I want to thank all of you for submitting  
9 your proposed findings ahead of time. I had an opportunity to  
10 look at them.

11 You ready? Do you want to make an opening statement?

12 MR. MERRILL: Yeah. Did Mr. Ochoa --

13 Did you submit proposed findings?

14 THE COURT: He did.

15 MR. OCHOA: Yes.

16 MR. MERRILL: I did not receive a copy of those by  
17 the way.

18 THE COURT: Could you send them to him?

19 MR. OCHOA: I may not have. I have a copy today that  
20 I can give to both parties.

21 THE COURT: They would love to get them.

22 Anything else?

23 MR. MERRILL: No, Your Honor.

24 THE COURT: All right. You're up.

25 MR. MERRILL: All right. Your Honor, I was going to



1 waive opening statements. I think you're very familiar with  
2 this. Are you okay with that?

3 THE COURT: Does anybody want to make an opening  
4 statement?

5 MS. HANKS: Your Honor -- I'm sorry. No. Because we  
6 submitted our -- if you've had time -- just a clarification,  
7 you did review the proposed findings of fact?

8 THE COURT: I did.

9 MS. HANKS: Since you have done that, Your Honor,  
10 then, no, I think that sufficiently covers anything I would say  
11 anyway.

12 MR. OCHOA: Wyeth Ranch waives opening, Your Honor.

13 THE COURT: Okay. Your first witness.

14 MR. MERRILL: Thank you, Your Honor. I'd like to  
15 call Mr. Scott Sawyer to the stand, please.

16 **SCOTT SAWYER**

17 [having been called as a witness and being first duly sworn,  
18 testified as follows:]

19 THE CLERK: Thank you. Please be seated. Please  
20 state and spell your name for the record.

21 THE WITNESS: Scott Sawyer. S-c-o-t-t, S-a-w-y-e-r.

22 THE COURT: Now, sir, I will tell you that we are all  
23 wearing masks, me included. And so it makes it sometimes  
24 difficult to hear us as we're talking. If you can't hear any  
25 of the lawyers, can you ask them to restate or speak louder. I

1 told them they'd need to use their outside voices. So if you  
2 can't hear us, tell us.

3 And then likewise, if they can't hear you, they'll  
4 ask you to repeat. Sometimes the words get garbled through the  
5 mask, and so it just doesn't make any sense, and they'll ask  
6 you to repeat. So don't be offended.

7 And then if you need a break at any time, you just  
8 let us know. Okay?

9 THE WITNESS: Thank you.

10 THE COURT: All right.

11 MR. MERRILL: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. MERRILL:

14 Q Mr. Sawyer, where are you currently employed?

15 A Sebastian Investments Corporation.

16 Q And what is Sebastian Investments Corporation's  
17 relationship with Marchai B.T.?

18 A We are the asset manager for Marchai B.T.

19 Q How long has Sebastian Investments acted as the asset  
20 manager for Marchai?

21 A Since May of 2016.

22 Q Where did you work before Sebastian Investments?

23 A Peak Loan Servicing.

24 Q And what did you do at Peak Loan Servicing?

25 A I was the vice president of loan servicing.

1 Q While at Peak Loan Servicing, were you responsible  
2 for the loan servicing and asset management of loans that  
3 Marchai acquired?

4 A Yes.

5 Q In your role as the asset manager for Marchai, are  
6 you familiar with property located at 7119 Wolf Rivers Avenue  
7 in Las Vegas, Nevada?

8 A Yes.

9 Q Mr. Sawyer, if you could please take a look at  
10 Exhibit 19. If we could put that up on the screen.

11 THE COURT: Can you see it, sir?

12 THE WITNESS: Yes.

13 THE COURT: Okay. If you need him to blow it up, you  
14 let him know.

15 THE WITNESS: Okay.

16 BY MR. MERRILL:

17 Q Mr. Sawyer, what is Exhibit 19?

18 A The promissory note.

19 Q And what is the principal amount of the note?

20 A The original was 442,000.

21 Q And what is the note dated?

22 A October 19, 2005.

23 Q Who is the borrower?

24 A Cristela Perez.

25 Q And who is the lender?

1 A CMG Mortgage, Inc.

2 Q If you can take a look at page 5 of the note.

3 Did CMG Mortgage endorse the note?

4 A Yes.

5 Q And to whom did CMG Mortgage endorse the note?

6 A City Mortgage, Inc.

7 Q And did City Mortgage endorse the note? Or do an  
8 allonge I should say?

9 A Yes, to U.S. Bank National Association.

10 Q As trustee for Stanwich Mortgage Loan Trust?

11 A That is correct.

12 Q Okay. And did U.S. Bank sign an allonge endorsing  
13 the note?

14 A Yes.

15 Q And to who was that?

16 A Marchai B.T.

17 Q Has Marchai endorsed the note to anyone else?

18 A Not to my knowledge.

19 Q Is Marchai the current holder of the note?

20 A Yes.

21 Q Is Marchai in possession of the original note?

22 A Yes.

23 Q Mr. Sawyer, if you could please take a look at  
24 Exhibit 20.

25 What is Exhibit 20?

1 A A deed of trust.

2 Q Okay. And what is the deed of trust dated?

3 A October 19, 2005.

4 Q And again, who was the borrower?

5 A Cristela Perez.

6 Q And the lender?

7 A CMG Mortgage, Inc.

8 Q Is this the deed of trust that secures the note,  
9 Exhibit 19?

10 A Yes.

11 Q Was this deed of trust recorded with the Clark County  
12 recorder?

13 A Yes, it was.

14 Q Was this deed of trust ever assigned?

15 A Yes.

16 Q Take a look at Exhibit 94, please.

17 What is Exhibit 94?

18 A Corporate assignment of deed of trust.

19 Q And did MERS as the nominee for CMG Mortgage assign  
20 this deed of trust?

21 A Yes, they did.

22 Q And to who did they assign it?

23 A CMG Mortgage, Inc.

24 Q To City Mortgage?

25 A Yeah, City Mortgage, Inc.

1 Q Okay. And was the assignment recorded?

2 A Yes.

3 Q Did City Mortgage ever sign the deed of trust?

4 A Yes.

5 Q Please take a look at Exhibit 97.

6 What is this document?

7 A The assignment of mortgage.

8 Q And is this an assignment by a City Mortgage to U.S.

9 Bank as trustee for Stanwich Mortgage Loan Trust?

10 A Yes, it is.

11 Q And was this assignment recorded?

12 A Yes.

13 Q Did U.S. Bank as trustee for Stanwich ever assign the  
14 deed of trust?

15 A Yes.

16 Q Please take a look at Exhibit 108.

17 What is Exhibit 108?

18 A Assignment of deed of trust.

19 Q Is this the assignment by which U.S. Bank as trustee  
20 for Stanwich assigned the deed of trust to Marchai?

21 A Yes, it is.

22 Q Okay. Was this assignment recorded?

23 A Yes.

24 Q Has Marchai ever assigned the deed of trust?

25 A Not to my knowledge.

1           Q     Is Marchai the current beneficiary of the deed of  
2 trust?

3           A     Yes.

4           Q     Is Marchai in possession of the original deed of  
5 trust?

6           A     Yes.

7           Q     At the time Marchai acquired the deed of trust, were  
8 there any prior in time unreconveyed deeds of trust recorded  
9 against the property?

10          A     Not to my knowledge.

11          Q     So the deed of trust was in first position when  
12 Marchai acquired it?

13          A     That is correct.

14          Q     Did Ms. Perez default under the terms of the note?

15          A     Yes.

16          Q     Was Ms. Perez given notice that she defaulted under  
17 the terms of the note?

18          A     Yes.

19          Q     Please take a look at Exhibit 99.

20                 What is Exhibit 99?

21          A     A notice of intent to foreclose.

22          Q     Was this sent to Ms. Perez?

23          A     Yes.

24          Q     And when did Ms. Perez default under the terms of the  
25 note?

1           A     October 1st, 2011.

2           Q     Has Ms. Perez made any payments towards the note  
3 after September of 2011?

4           A     No.

5           Q     What is the principal balance owed on the note?

6           A     430,113.48 I believe.

7           Q     Okay. And how much interest is owed on the note as  
8 of today?

9           A     Off the top of my head, I'm not sure. It's over a  
10 hundred thousand; I know that.

11           MR. MERRILL: Your Honor, I have a document to  
12 refresh his recollection. Can I --

13           THE COURT: No, you can't approach. Ramsey can help  
14 you.

15           MR. MERRILL: Okay.

16           THE COURT: But you can't go up there.

17           MR. MERRILL: I didn't think so. Thank you, Your  
18 Honor.

19           THE COURT: So what are you giving him to refresh his  
20 recollection?

21           MR. MERRILL: It's just a current payoff amount.

22           THE COURT: And have you provided a copy to the  
23 defendants' counsel?

24           MR. MERRILL: If they want to look -- do they want to  
25 look at it?



1 MS. HANKS: Yeah. Is it not in here?

2 MR. MERRILL: No. It's a current one. It has the  
3 current interest.

4 (Pause in the proceedings.)

5 THE COURT: Since the witness is using it to refresh  
6 his recollection, does anybody want it marked as an exhibit for  
7 record purposes?

8 MS. HANKS: Maybe, Your Honor. I'm trying to see  
9 where --

10 THE COURT: Well, that's why I'm asking the question.

11 MR. MERRILL: Yeah. Can I, yeah. Yes, Your Honor.  
12 Yes.

13 THE COURT: So that would be next in order, which is  
14 145 for identification purposes.

15 THE WITNESS: Thank you.

16 THE COURT: And, sir, since you're using this to  
17 refresh your recollection, I need you to look at it. When  
18 you're finished looking at it if it refreshes your  
19 recollection, look up and tell us, yes, my recollection is  
20 refreshed. And then Mr. Merrill will continue.

21 THE WITNESS: Yes, I'm good. Thank you.

22 BY MR. MERRILL:

23 Q Okay. Mr. Sawyer, did that document refresh your  
24 recollection?

25 A Yes.

1 Q Okay. And what is the interest owed on the note as  
2 of today?

3 A \$144,970.64.

4 Q And how much interest accrues on the note each day?

5 A Thirty-one, thirty-six.

6 Q And what is the amount of late fee charges on the  
7 note?

8 A 9,578.84.

9 Q Okay.

10 Now, Mr. Sawyer, at some point you learned that Wyeth  
11 Ranch Community Association had a foreclosure sale scheduled;  
12 correct?

13 A Correct.

14 Q And when did you learn that?

15 A The day before the sale was actually scheduled.

16 Q And what did you do in response?

17 A We reached out to see if we could get the, you know,  
18 the reinstatement obviously to pay it and also get a  
19 postponement. Because it being the day before, we didn't have  
20 time to get the funds and get it over to them to stop the sale.

21 Q Okay. And at that time, did you know whether the  
22 lien had any superpriority amounts?

23 A I did not believe it did.

24 Q Was Wyeth Ranch willing to postpone the sale?

25 A No.

1 Q When did you learn that Wyeth Ranch would not  
2 postpone the sale?

3 A The morning of the sale.

4 MR. MERRILL: I have no further questions, Your  
5 Honor.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MS. HANKS:

9 Q I missed the date that you indicated that Peak Loan  
10 Servicing, that you worked for Peak Loan Servicing. What were  
11 those dates?

12 A That I worked for them?

13 Q Correct.

14 A From 2005 through 2016.

15 Q Okay. And my understanding from your testimony is  
16 Peak Loan Servicing also serviced the loan in question that you  
17 were just talking about?

18 A Correct.

19 Q Okay. So if you would go to Exhibit 20.

20 THE COURT: He can't go to it. You have to show it  
21 on the screen.

22 MS. HANKS: Oh, I have to show it on the screen.  
23 Okay. Sorry. I thought they had their own binders.

24 THE COURT: No. That's why we have electronic  
25 exhibits.

1 MS. HANKS: Am I still allowed to approach the Elmo?

2 THE COURT: You are.

3 MS. HANKS: That's 6 feet away.

4 BY MS. HANKS:

5 Q Okay. So I'm going to direct your attention to  
6 paragraph 22 of the deed of trust in Exhibit 20.

7 And do you see where it says, Acceleration remedies?

8 A Yes.

9 Q Okay. I'm just going to read this, and you can  
10 double check my reading:

11 Lender shall give notice to borrower  
12 prior to acceleration following the  
13 borrower's breach of any covenant or  
14 agreement in the security instrument but not  
15 prior to acceleration under Section 18 unless  
16 applicable law provides otherwise.

17 Did I read that correctly?

18 A Yes.

19 Q Okay. And then the notice here I'll specify,

20 A, the default; B, the action required  
21 to cure the default; C, a date not less than  
22 30 days from the date the notice is given to  
23 borrower by which the default must be cured;  
24 and, D, that failure to cure the default on  
25 or before the date specified in the notice

1                   may result in acceleration of the sums  
2                   secured by the security instrument and sale  
3                   of the property.

4                   Did I read that correctly?

5           A     Yes.

6           Q     Okay. Now, I just understood your testimony about  
7 what was currently due as of February 2021, and it sounded like  
8 it was in the range of -- it was approximately 400 some odd  
9 thousand dollars; correct?

10          A     Correct.

11          Q     Okay. So that means the whole loan is currently due;  
12 correct?

13          A     Correct.

14          Q     In other words, to your understanding, the servicer  
15 has accelerated the debt due by this deed of trust; correct?

16          A     Correct.

17          Q     Okay. So you have essentially exercised your options  
18 in paragraph 22 of the deed of trust?

19          A     Correct.

20          Q     And do you know if the date of that acceleration --  
21 do you know the date of that acceleration?

22          A     I don't off the top -- no.

23          Q     Okay. Is there anything that you would be able to  
24 reference to determine that from the document that was used to  
25 refresh your recollection about balances owed?

1 A No. This just tells me when they defaulted.

2 Q Would that -- was that record exist in your -- in the  
3 records for -- is it Sebastian Asset Management?

4 A If we have a copy of the notice of default, that  
5 would be the first action that was filed in the foreclosure.

6 Q Is that your understanding of when the loan would've  
7 become wholly due, meaning all of those amounts that you just  
8 talked about from that Exhibit 145, just for identification  
9 purposes?

10 A Well, the notice of default would be when we actually  
11 just initiated the action.

12 Q Okay. So when you initiated the nonjudicial  
13 foreclosure.

14 I'm asking is there any, to your recollection, any  
15 letters, like paragraph 22 discussed, the prior notice to the  
16 borrower that you're aware of that said if you don't, here are  
17 the default. Here's your default. If you don't cure it, it's  
18 going to be wholly due.

19 Did you review anything like that?

20 A No. I'd have to go back and look at the notice that  
21 we sent out prior to the foreclosure filing.

22 Q Now, if you look at Exhibit 99, I think this is a  
23 letter that's dated October 3rd, 2012, and it says notice of  
24 intent to foreclose or notice of intent to foreclosure. Do you  
25 see that?

1           A     I do.

2           Q     Okay. It looks like -- let me just move it out a  
3 little bit.

4                               (Pause in the proceedings.)

5 BY MS. HANKS:

6           Q     It looks like from this letter -- I'll read the top  
7 paragraph on the second page:

8                               Failure to cure the delinquency within  
9                               30 days of the date of this letter may result  
10                              in acceleration of the sums secured by the  
11                              deed of trust or mortgage and in the sale of  
12                              the property.

13                   Did I read that correctly?

14          A     Yes.

15          Q     Now, once the lender exercises the option to  
16 accelerate, do interest and late fees get charged on that  
17 accelerated amount?

18          A     They get charged on the unpaid principal balance.

19          Q     Okay. And so if you accelerate the unpaid principal  
20 balance, then that means the interest and late fees are charged  
21 on that entire balance as opposed to just what the last  
22 installment was?

23          A     Well, the interest is -- when you say the last  
24 installment, do you mean the last payment that was defaulted  
25 on?

1 Q Correct.

2 A So that payment would be just applicable of the  
3 interest for that month. So correct, the interest is charged  
4 on the whole loan balance.

5 Q Okay. And I -- so would there be records within your  
6 business that would indicate at what point the borrower started  
7 paying interest and late fees on the balance as a total as  
8 opposed on just the last unpaid installment?

9 A Well, when you ask about a payoff or a total  
10 delinquency, that interest is always calculated on the full  
11 UPB.

12 Q No. I understand if someone requests a payoff.  
13 What I'm trying to figure out is, once you sent this  
14 letter out on October 3rd, 2012, my understanding is  
15 Ms. Perez did not cure the default; correct?

16 A Correct.

17 Q And I know you indicated that you would need to see  
18 the notice of default that you recorded to see about when the  
19 loan became wholly due.

20 I'm asking is there a secondary source we might be  
21 able to draw that from? In other words, is there an accounting  
22 record that would show when the servicer started charging  
23 interest and late fees on the balance as a total as opposed to  
24 just the last installment?

25 MR. MERRILL: Objection. Relevance. I don't know



1 how this is relevant to our case, Your Honor.

2 THE COURT: Overruled.

3 You can answer.

4 THE WITNESS: Again, the interest is calculated  
5 that's owed for a monthly payment is still based on the full  
6 UPB. They're paying interest based on the full principal  
7 balance regardless whether you're saying it's all due or it's  
8 just that month's payment.

9 BY MS. HANKS:

10 Q Okay. Are there any charges that get charged against  
11 the balance as a total when you have made it wholly due after a  
12 letter like this?

13 A No, not besides the legal fees for the foreclosure.

14 Q Okay. When Peak -- do you know the date that Peak  
15 Loan Servicing took over servicing the loan?

16 A Off the top of my head, I don't. I know that the  
17 letter that you provided was sent out by the prior servicer,  
18 Carrington.

19 Q So your best guess would probably be sometime after  
20 September 2012?

21 A Yes.

22 Q Okay. But my -- and am I correct to understand the  
23 sale in this case was August 28th, 2013; correct?

24 A Yes.

25 Q Actually, let me give you the exact date.

1           A     I think that's about the right time.

2           Q     Yes.

3                     During -- and at August 27th, 2013, Peak Loan  
4     Servicing was servicing the loan; correct?

5           A     It was -- if it was -- that's like within two weeks  
6     of the sale date, then, no. It would have been in the transfer  
7     process at that point.

8           Q     Transferring to who?

9           A     From the prior servicer to Peak Loan Servicing.

10          Q     Okay. So I guess I'm trying to --

11          A     There's a period of time there before you -- you  
12     can't just transfer a loan the day you buy it. It goes through  
13     a transfer process of notification going out.

14          Q     Okay. So that's what -- I was just trying to narrow  
15     down the timeline because I think you didn't remember when Peak  
16     Loan Servicing was servicing the loan. That's right; correct?

17          A     Correct.

18          Q     Okay. So we knew it had to be some time after  
19     September 2012 based on the letter we just reviewed?

20          A     Correct.

21          Q     Because Carrington Services sent out that letter?

22          A     Correct.

23          Q     And so am I correct to understand that between  
24     September 2012 and August 28, 2013, you're not entirely sure  
25     when Peak Loan Servicing took over servicing?

1           A     I don't have the exact transfer date, no.

2           Q     Okay. So then do you know who was servicing it on  
3 August 27th, 2013, the day before the foreclosure sale?

4           A     Peak was servicing it the day before the sale.

5           Q     Okay. And so from that, because you know it takes at  
6 least two weeks to transfer, they must have been at least  
7 servicing it at least two weeks prior to August 27th, 2013,  
8 is your understanding?

9           A     Within then, yes, within that range.

10          Q     Okay. During a servicing transfer like that, would  
11 Peak Loan Servicing get documents from the prior servicer?

12          A     Yes.

13          Q     And would that include any documents that were mailed  
14 to the servicer as part of the nonjudicial foreclosure being  
15 conducted by the association?

16          A     In my experience it would include notices that were  
17 already in the servicing file when they transferred that file  
18 to us and that the files don't always come as fast as the  
19 transfer does. And as far as notices, if the notices are more  
20 recent and haven't been necessarily received or put in the file  
21 yet, those would come as trailing documents at a later date.

22          Q     Okay. But certainly if they were issued in 2012, and  
23 you're getting a file service transfer in 2013, you would  
24 expect those records would be in the prior servicer's records  
25 and transferred to the new servicer; correct?

1           A     I would.

2           Q     Okay. So when you indicated that Peak Loan Servicing  
3 didn't learn about the foreclosure sale until August 27th,  
4 2013, do you know why that is? In other words, did they review  
5 the prior loan servicer's records and didn't find anything, or  
6 is that just something you know is the date that they contacted  
7 the association?

8           A     I know when the transfer came through the files took  
9 longer than normal to get. But from my recollection, there was  
10 nothing in the file. When we did eventually review that file,  
11 it reflected this foreclosure sale.

12          Q     Okay. So when you say it took longer, do you know  
13 the date that the transferring files came through to Peak Loan  
14 Servicing?

15          A     I don't know what day they were delivered to us, no.

16          Q     Okay. Do you know if you had them on August 27th,  
17 2013?

18          A     I do not.

19          Q     And again you don't know the specific date that Peak  
20 Loan Servicing took over servicing; correct?

21          A     No, not without going back and looking at the files.

22               MS. HANKS: Okay. Just a moment's indulgence, Your  
23 Honor.

24                               (Pause in the proceedings.)

25     / / /

1 BY MS. HANKS:

2 Q I'm going to show you Exhibit 112 and see if that  
3 might refresh your recollection as to when Peak Loan  
4 Servicing -- it's already admitted though.

5 I don't know why the light is not bright on this. I  
6 can't get that to be any brighter for you.

7 Do you see the date as July 10th, 2013?

8 A Yes, I do.

9 Q And then do you see the first paragraph? It's a  
10 letter to the borrower saying this letter is to inform you that  
11 effective July 3rd, 2013, the servicing of your mortgage  
12 loan, the right to collect payments from you has been  
13 transferred from FCI Lender Services, Inc., to Peak Loan  
14 Servicing?

15 A Correct.

16 Q Okay. So it would look like from the date of this  
17 letter we -- Peak Loan Servicing took over servicing the loan  
18 about just under two months prior to the foreclosure sale;  
19 correct?

20 A Right. There would have been probably 15 days within  
21 there of the transfer period. So it would have been closer to  
22 July 18th by the time we would have actually been fully  
23 servicing the loan.

24 Q Okay. And in that time period also received records  
25 from the prior servicer; correct?

1           A     Records from the prior servicer and also the transfer  
2 files would trail after that.

3           Q     Okay. And then showing you what's Exhibit 114.

4                     I'll represent that this is the operative notice of  
5 sale that the association recorded. And we see the recording  
6 stamp is July 31st, 2013?

7           A     Correct.

8           Q     I'm correct to understand that Peak Loan Servicing  
9 did not remit any money to the association; correct?

10          A     We did not.

11                     MS. HANKS: No further questions.

12                     THE COURT: Thank you.

13                     Cross-examination.

14                                     CROSS-EXAMINATION

15          BY MR. OCHOA:

16           Q     You testified about the superpriority and the date of  
17 the sale; however, at the time of the assignment, did Marchai  
18 or any of its servicers know the homeowner had defaulted on  
19 assessments?

20                     MR. MERRILL: I'm going to object with respect to  
21 knowledge of any of Marchai's servicers.

22                     THE COURT: They're agents.

23                     MR. MERRILL: Okay. I'll withdraw the objection.

24                     Okay.

25                     THE COURT: I was going to say overruled.

1           You can answer.

2           THE WITNESS: Not to my knowledge.

3 BY MR. OCHOA:

4           Q     And do you know if Marchai or any of its services --  
5           servicers inquired about whether the homeowner was in default  
6           on their assessments?

7           A     No, I do not.

8           MR. OCHOA: That's all, Your Honor.

9           THE COURT: Redirect.

10          MR. MERRILL: No questions, Your Honor.

11          THE COURT: All right, sir. You can step down.

12          Thank you very much for your time.

13          Ramsey, if you would wipe down the witness stand.

14          Our next witness.

15          And do we have that document? Don't leave with it.

16          Give it to Ramsey. He's got to give it to Dulce.

17          And that's 145, I believe.

18          THE CLERK: Yes.

19                   (Pause in the proceedings.)

20          THE COURT: You ready?

21          MR. MERRILL: I am, Your Honor. My next witness I  
22          guess is appearing remotely, which I wasn't aware of, but is  
23          going to be Yvette Saucedo.

24          THE COURT: Do we know that your next witness is  
25          appearing remotely?

1 MR. MERRILL: It's -- Mr. Ochoa is -- it's his  
2 witness, but I'm calling her. Apparently --

3 THE COURT: Do we know that that person -- is it  
4 scheduled?

5 MR. OCHOA: Your Honor, we submitted a form, and your  
6 JEA confirmed it at the beginning earlier today that they  
7 received it, and she has a copy of the exhibits.

8 THE COURT: So you sent it today?

9 MR. OCHOA: No. We --

10 THE COURT RECORDER: Yesterday.

11 MR. OCHOA: Thursday or Friday we --

12 THE COURT: Yesterday. Sunday.

13 MR. MERRILL: I found out this morning.

14 THE COURT: Sunday. You know we --

15 MR. OCHOA: No. It --

16 THE COURT: It comes in at 2:00 a.m. So that's  
17 pretty good for most people.

18 MR. OCHOA: It was submitted on Friday directly to  
19 your JEA, and he confirmed receiving it on Friday. Whether or  
20 not the service actually kicked back over the weekend, Your  
21 Honor, I don't know.

22 THE COURT: What's the time slot scheduled, Jill?

23 THE COURT RECORDER: Well, it says she's there, but  
24 nobody's there. So hold on a second.

25 (Pause in the proceedings.)



1 MR. MERRILL: And, Your Honor, if I can --

2 THE COURT: Jill can't do two things at once.

3 MR. MERRILL: I understand.

4 THE COURT RECORDER: She needs to unmute her video.

5 (Pause in the proceedings.)

6 THE JEA: It was Friday that I received it, and I set  
7 it up from -- I set it at 5:00 today.

8 THE COURT: Today?

9 THE JEA: Yes.

10 THE COURT: So it's on today. Okay, Dan. Thank you  
11 for being there and being here at the crack of dawn. Or I  
12 guess before the crack of dawn.

13 As soon as Jill finishes, then you can talk. But she  
14 can't do her thing when she's doing that.

15 MR. MERRILL: Understood.

16 THE COURT RECORDER: There she is.

17 THE COURT: Good morning, ma'am.

18 THE WITNESS: Hello.

19 THE COURT: It's my understanding you have agreed to  
20 be sworn over our video line. Is that correct?

21 THE WITNESS: That's correct.

22 THE COURT: Okay. Mr. Merrill.

23 THE CLERK: Hold on.

24 THE COURT RECORDER: Just --

25 THE COURT: Hold on a second.

1 Mr. Merrill had a question.

2 THE COURT RECORDER: Excuse me. Can she turn down  
3 her volume?

4 THE COURT: Can you turn down your volume, please.

5 THE WITNESS: Me?

6 THE COURT: Yes, please.

7 Is that better? Can you hear me?

8 THE WITNESS: Is that better?

9 THE COURT RECORDER: Not really.

10 THE COURT: A little more. We're getting feedback.

11 THE WITNESS: If I turn it down much more, I won't be  
12 able to hear you guys.

13 THE COURT RECORDER: Okay. Let me try.

14 THE COURT: Okay. We'll try on our end.

15 Hold on a minute.

16 THE COURT RECORDER: That's okay. You can --  
17 Mr. Merrill can go.

18 THE COURT: All right. Mr. Merrill, you had a  
19 question before the witness gets sworn.

20 MR. MERRILL: Yes, Your Honor. I don't know what  
21 time Your Honor wanted to break. I don't know if I'll finish  
22 Ms. Saucedo's examination, but I do have an expert who is going  
23 to have -- apparently he has an issue tomorrow. I don't think  
24 we're going to go into Wednesday. So can I start with  
25 Ms. Saucedo, break and then call the expert? Does the Court

1 have any problem with that?

2 THE COURT: How long is the expert going to be?

3 MR. MERRILL: The expert will be very short.

4 THE COURT: Okay. So when you say very short, what  
5 do you mean?

6 MR. MERRILL: My questioning of him will be 15  
7 minutes, half an hour maybe.

8 THE COURT: How long are you guys?

9 MS. HANKS: Oh, I'm objecting to the witness. So we  
10 might be able to obviate the need to hear from him.

11 THE COURT: Just because you're objecting doesn't  
12 mean that it's not going to happen.

13 MS. HANKS: I understand.

14 THE COURT: Assume he --

15 MS. HANKS: But we are --

16 THE COURT: Wait. Let me finish, please. Don't  
17 interrupt me.

18 Assume that I let the witness testify. How long?

19 MS. HANKS: Not very long, Your Honor.

20 THE COURT: Not very long is how long?

21 MS. HANKS: Not more than a half hour.

22 THE COURT: Okay. That's twice what he told me he  
23 was not very long.

24 MR. OCHOA: We would have limited cross, 10 to 15  
25 minutes if anything, Your Honor.

1 THE COURT: Okay. So how long is this witness?

2 MR. MERRILL: I think that this witness will probably  
3 be a half an hour to an hour for me.

4 THE COURT: Okay. So what I'm going to do is we're  
5 going to do this witness until we break for lunch.

6 And then, ma'am, when we break for lunch, I'm going  
7 to give you a time to come back that won't be right after our  
8 lunch break. So it'll be a little bit later in the afternoon.  
9 Okay?

10 THE WITNESS: Good.

11 THE COURT: All right. So let's start.

12 Raise your right hand, please, ma'am.

13 **YVETTE SAUCEDA**

14 [having been called as a witness and being first duly sworn,  
15 testified as follows:]

16 THE CLERK: Thank you. Please state and spell your  
17 name for the record.

18 THE WITNESS: Yvette Saucedo. Y-v-e-t-t-e, last name  
19 is S-a-u-c-e-d-a.

20 THE CLERK: Thank you.

21 THE COURT: Thank you, ma'am.

22 THE WITNESS: No problem.

23 THE COURT: And, ma'am, we're all wearing masks here  
24 in the courtroom. So sometimes it's a little hard to  
25 understand what we're saying.

1           If, for some reason, you don't understand us, please  
2 feel free to ask us to repeat it.

3           I have asked the lawyers to use their outside voices  
4 so that it will go through the mask. Okay?

5           THE WITNESS: Okay.

6           THE COURT: All right. Mr. Merrill, you're up.

7           MR. MERRILL: Thank you, Your Honor.

8                                 DIRECT EXAMINATION

9 BY MR. MERRILL:

10          Q     Ms. Saucedo, you work for Complete Association  
11 Management Company; is that correct?

12          A     That's correct.

13          Q     And Complete Association Management Company is also  
14 referred to as CAMCO?

15          A     Yes.

16          Q     And you are the accounting director of CAMCO?

17          A     Yes.

18          Q     You've worked for CAMCO for over 10 years?

19          A     (No audible response.)

20          Q     Is that --

21          A     Yes.

22          Q     Is that yes?

23          A     Yes.

24          Q     Okay. You oversee CAMCO's accounting department;  
25 correct?

1 A Yes, I do.

2 Q And CAMCO is the community management company for  
3 Wyeth Ranch Community Association; right?

4 A Correct.

5 Q And you're familiar with the property located at 7119  
6 Wolf Rivers Avenue?

7 A Yes.

8 Q And the Wolf Rivers property is in the Wyeth Ranch  
9 Community; right?

10 A Yes.

11 Q And from at least 2008 through 2013, Cristela Perez  
12 was the owner of the 7119 Wolf Rivers property; correct?

13 A Correct.

14 Q Now, for the Wolf Rivers property, Wyeth Ranch  
15 maintained two separate account ledgers; correct?

16 A Yes.

17 Q One of the account ledgers was for fines?

18 A Yes.

19 Q And the other account ledger was for assessments;  
20 correct?

21 A Correct.

22 Q And the fines account ledger was for things of  
23 violating the community CC&Rs, like having weeds, things like  
24 that; correct?

25 A Yes.

1 Q Ms. Saucedo, if you could please look at Exhibit 139.

2 A Okay.

3 Q And Exhibit 139 is the account ledger for fines;  
4 correct?

5 A Correct.

6 Q And according to the ledger from July of 2007 through  
7 August 27, 2013, Wyeth Ranch fined Ms. Perez \$20,620; correct?

8 A Yes.

9 Q And Wyeth Ranch did not apply any payments by  
10 Ms. Perez to this fine account; correct?

11 A Correct.

12 Q And after Wyeth Ranch foreclosed, it wrote off the  
13 fines; correct?

14 A Yes.

15 Q Now, the second account ledger Wyeth Ranch maintained  
16 was for assessments; correct?

17 A Yes.

18 Q And if you look at Exhibit 138, please.

19 A Okay.

20 Q And Exhibit 138 is the account ledger for the HOA  
21 dues, the assessments; correct?

22 A Yes, it is.

23 Q And unlike the fines ledger, Wyeth Ranch did apply  
24 payments to the assessment ledger?

25 A Correct.

1 Q Is that correct?

2 A Yes.

3 Q Thank you.

4 Now, Wyeth Ranch did not maintain separate  
5 superpriority or subpriority ledgers; correct?

6 A That's correct.

7 Q Now, from at least 2008 until 2013, Alessi & Koenig  
8 was Wyeth Ranch's collection agent; correct?

9 A Yes.

10 Q And I'm sorry. And Alessi & Koenig was involved in  
11 the collections with respect to the 7119 Wolf Rivers property?

12 A Yes.

13 Q And Alessi & Koenig kept their own accounting of  
14 their collection costs; correct?

15 A Yes.

16 Q Now, Wyeth Ranch did not have any general agreements  
17 with homeowners in the Wyeth Ranch Community that governed the  
18 application of payments or partial payments; correct?

19 MS. HANKS: Objection. Form.

20 THE COURT: Overruled.

21 You can answer.

22 THE WITNESS: Yes, that's correct.

23 BY MR. MERRILL:

24 Q If a homeowner was on a payment plan and made a  
25 payment consistent with that payment plan, the application of



1 the payment would be specified in a breakdown contained in that  
2 plan; correct?

3 A Correct.

4 Q And if the homeowner was not on a payment plan, Wyeth  
5 Ranch would apply the payment to the homeowners account  
6 generally; correct?

7 MS. HANKS: Objection. Form and --

8 THE WITNESS: That's correct.

9 MS. HANKS: -- leading.

10 THE COURT: Overruled.

11 BY MR. MERRILL:

12 Q And other than a written payment plan entered into  
13 between a homeowner and Wyeth Ranch, there's no written policy  
14 governing Wyeth Ranch's application of payments; correct?

15 A Correct.

16 Q And to your knowledge, Ms. Perez did not give any  
17 instructions on how she wanted her payments applied; correct?

18 A Correct.

19 Q Now, Ms. Saucedo, if you can take a look again at  
20 Exhibit 138.

21 Wyeth Ranch charged its HOA dues quarterly; correct?

22 A Yes.

23 Q And on January 1, 2008, Wyeth Ranch charged Ms. Perez  
24 \$420, which was its HOA dues for the quarter; correct?

25 A Yes.

1 Q And Ms. Perez did not timely pay those dues; right?

2 A No, she did not.

3 Q So she became delinquent on January 30, 2008?

4 A Yes.

5 Q And on January 30, Wyeth Ranch charged a \$75 late  
6 fee?

7 A Yes.

8 Q And also charged \$6.30 in interest?

9 A Yes.

10 Q And Wyeth Ranch charged interest only on the  
11 outstanding HOA dues, not on late fees; correct?

12 A Correct.

13 Q And Wyeth Ranch did not charge compound interest;  
14 correct?

15 A Correct.

16 Q Now, on February 29th, Wyeth Ranch charged another  
17 \$6.30 in interest; correct?

18 A Yes.

19 Q And on March 30th, another \$6.30 in interest;  
20 right?

21 A Yes.

22 Q And on April 1, Wyeth Ranch charged Ms. Perez the  
23 second quarters HOA dues of \$420; right?

24 A Yes.

25 Q Okay. Now, on April 16, 2008, there was a payment of

1 \$507.60 to Ms. Perez's account; right?

2 A Yes.

3 Q And Wyeth Ranch applied that payment first to the  
4 oldest association dues outstanding, which would be January  
5 of 2008, and the remainder to the next oldest association dues,  
6 which would be April 2008; correct?

7 MS. HANKS: Objection. Form and leading.

8 THE COURT: Overruled.

9 THE WITNESS: Oh, no. That payment would have  
10 actually would've been applied to the April quarter. And then  
11 the remainder would have been applied to the past due balance.  
12 BY MR. MERRILL:

13 Q Okay. And you said you -- and that's how you believe  
14 the system -- the computer system calculated it; correct?

15 A That's how we would apply it. The computer system  
16 doesn't necessarily apply things.

17 Q Okay.

18 A The computer system, we don't depend on the computer  
19 system for applying specific payments. It just posts the  
20 payment pretty much, and then if we need to go back and audit  
21 an account to see how many late fees there are or how many  
22 outstanding assessments, that's done by our accounting team.

23 Q Okay. And there's no written policy to apply  
24 payments in this manner that you just testified to; correct?

25 MS. HANKS: Objection. Form.

1 THE COURT: Overruled.

2 BY MR. MERRILL:

3 Q Ms. Saucedo, please take a look at Exhibit 45.

4 MS. HANKS: Did you say 145 or 45?

5 MR. MERRILL: 45.

6 THE WITNESS: Okay.

7 BY MR. MERRILL:

8 Q And this is a -- Exhibit 45 is a report that was run  
9 by CAMCO; correct?

10 A Correct.

11 Q And this report is also for the 7119 Wolf Rivers  
12 property; correct?

13 A Yes, it is.

14 Q And it was run on September 17 of 2008; correct?

15 A I believe so.

16 Q Okay. And this appears to -- what would you call  
17 this report?

18 A This is just one of the many accounting reports that  
19 our system runs. There's close to a hundred. I wouldn't call  
20 it a ledger. It's kind of more like a statement. We don't use  
21 it very often.

22 Q And Exhibit 45 shows the outstanding charges on  
23 Perez -- on Ms. Perez's account in the first part of 2008;  
24 correct?

25 A I mean, I'm not really sure. I would say it shows

1 the outstanding charges.

2 Like I said, we don't use this report very often.  
3 I'm honestly not sure why it was even ran and sent to the  
4 collection company.

5 Q Okay. So this is a document that would have -- a  
6 report that would have been run and then sent to Alessi &  
7 Koenig?

8 A Yeah. It looks like it was sent to them around the  
9 time the account was turned over.

10 Q Okay. So this would've been used in preparing maybe  
11 the notice of the -- the notice of lien?

12 A I'm not sure.

13 Q Okay. Do you see on -- do you see January of 2008  
14 HOA's dues on Exhibit 45 as being due?

15 A I don't see that listed on this document, no.

16 Q Okay. And so, but there are a list of other charges  
17 on there, interest, late fees and HOA dues; correct?

18 A Correct.

19 Q And it shows the amount of the charge?

20 A Correct.

21 Q It shows the payments applied to each charge?

22 A It does have a column for that, yes.

23 Q And it shows the remaining balance of each charge?

24 A Yes. It has a column for that.

25 Q And a running balance of all charges; correct?

1 A Correct.

2 Q Okay. And so this report does not show a balance  
3 owed for January of 2008; correct?

4 A This report does not, no.

5 Q And it shows a payment of \$87.60 applied to April  
6 of 2008's dues; correct?

7 A Yes, it does.

8 Q Okay. Your testimony was when the \$507.60 payment  
9 was made, it was applied to April 1st. That would be \$420;  
10 correct?

11 A Correct.

12 Q And then the remaining 87.60 was applied to January;  
13 correct?

14 A Correct.

15 Q Okay. And so it's your testimony that that's just  
16 what you do. That's your understanding of how it's done;  
17 right?

18 A That's correct.

19 Q Okay. But this document shows otherwise; correct?

20 A Yes. We don't use this document.

21 Q Well, but this is a document run from your computer  
22 system; correct?

23 A Correct. Our computer system runs hundreds of  
24 reports that we don't normally utilize.

25 Q Okay. But according to your computer system, this

1 report run from your computer system, the \$420 was applied to  
2 January of 2008, the oldest amount due. And then 87.60 was  
3 applied to April of 2008, the next oldest amount due; correct?

4 A According to this particular report, yes.

5 Q Exhibit 45 does not show the application of any  
6 payments to interest; correct?

7 A (No audible response.)

8 Q Did you answer? I'm sorry. I didn't hear you.

9 A Correct.

10 Q Okay. And Exhibit 45 does not show the application  
11 of any payments to late fees; correct?

12 A Correct.

13 Q Now, other than the \$507.60 payment Perez made in  
14 April of 2008, Perez did not make any other payments between  
15 January 1 and October 1, 2008; correct?

16 A I'm sorry. What exhibit number was the ledger that  
17 we were looking at?

18 Q It's Exhibit 138.

19 A Okay. And can you repeat the question, please.

20 Q Other than the \$507.60 payment Perez made in April  
21 of 2008, Perez did not make any other payments between  
22 January 1, 2008, and October 1, 2008; correct?

23 A Correct.

24 Q So the application of a payment as reflected in  
25 Exhibit 45 of \$87.60 to April of 2008 had to have come from

1 that \$507.60 payment in April of 2008; right?

2 A Correct.

3 Q And the balance which was 420 had to have been  
4 applied to January 2008 association dues according to  
5 Exhibit 45; correct?

6 A According to that report, yes.

7 Q Because that's how at least the computer shows it in  
8 this report; right?

9 A In that report, yes.

10 Q Ms. Saucedo, please take a look at Exhibit 47.

11 A Okay.

12 Q Exhibit 47 is the notice of delinquent assessment  
13 lien for the 7119 Wolf Rivers property; correct?

14 A Yes.

15 Q It was recorded and served on October 8th of 2008?

16 A Correct.

17 Q And it claims an amount due as of September 30 of  
18 \$1,425.17; correct?

19 A Correct.

20 Q And that amount included past-due assessments; right?

21 A Yes.

22 Q Including the October 1 assessment?

23 A I would assume so, but I did not prepare the  
24 document. So I'm not entirely sure.

25 Q Okay. So if we can go back to Exhibit Number 45.



1           Sorry, let me know when you're back at Exhibit 45.

2           A     Okay.

3           Q     Do you see that October 1 assessment of \$420 included  
4 on that report, Exhibit 45?

5           A     Yes.

6           Q     Okay. And do you see handwritten below 9, 8, 11,  
7 29 -- \$11.29 at interest?

8           A     Yes.

9           Q     Okay. So if you add the \$11.29 of interest for  
10 September of 2008 to the 14, 13, 88 balance that showed on  
11 Exhibit 45, you get 14, 25, 17; correct?

12          A     Yes.

13          Q     And that's what's reflected in the notice of lien;  
14 correct? Exhibit 47.

15          A     Correct.

16          Q     Ms. Saucedo, if you could please look at Exhibit 58.

17          A     Okay.

18          Q     Exhibit 58 is a money order for \$900 payable to  
19 Alessi and Koenig; correct?

20          A     Correct.

21          Q     And it was dated December -- or sorry, February  
22 12th, 2010?

23          A     Correct.

24          Q     And it's my understanding that once the homeowners'  
25 account is turned over to collections, Alessi & Koenig, then

1 they handle taking payments at that point in time; is that  
2 correct?

3 A Yes.

4 Q And this money order was from a gentleman by the name  
5 of Robert Rose; correct?

6 A Yes.

7 Q And Mr. Rose was Ms. Perez's spouse; correct?

8 A Yes.

9 Q And Exhibit 58 was a payment towards the HOA dues  
10 owed on 7119 Wolf Rivers; correct?

11 A It would have been a payment towards the entire  
12 balance due at that time.

13 Q Of the assessments; correct?

14 A Well, it would have been a payment towards the entire  
15 balance, which would have been assessments, late fees, interest  
16 and collection costs.

17 Q Okay.

18 THE COURT: But not the fines?

19 BY MR. MERRILL:

20 Q But not the fines?

21 A Correct.

22 THE COURT: Thank you.

23 BY MR. MERRILL:

24 Q Please turn your attention back to Exhibit 138.

25 A Okay.

1 Q Exhibit 138 shows a payment of \$590.40 applied to the  
2 assessment ledger on March 2nd of 2010; correct?

3 A Correct.

4 Q And this \$590.40 came from the \$900 payment we just  
5 looked at in Exhibit 47; right?

6 A I believe so, yes.

7 Q Okay. And the difference between the \$900 paid to  
8 Alessi & Koenig and the \$590.40 Wyeth Ranch received, that was  
9 money Alessi & Koenig kept for collection costs; correct?

10 A Correct.

11 Q So once the homeowner was in collections, Alessi &  
12 Koenig applied sort of the firstfruits of the payment to  
13 collection costs; correct?

14 A Correct.

15 Q And then Alessi & Koenig, after deducting collection  
16 costs remitted the balance to Wyeth Ranch who applied it to  
17 Perez's account; correct?

18 A That's correct.

19 Q And Wyeth Ranch would have applied that payment again  
20 to the oldest HOA dues outstanding and then anything left over  
21 to the next oldest association dues; correct?

22 MS. HANKS: Objection. Form and misstates prior  
23 testimony.

24 THE COURT: Overruled.

25 THE WITNESS: I believe the owner was on a payment

1 plan at this time. So that payment would have been applied to  
2 the current -- the current quarter's assessment. And then the  
3 remainder of it would have been applied to the balance, the  
4 past due balance.

5 Q Okay. Ms. Saucedo, if you could go to  
6 Exhibit 4, please.

7 A Okay.

8 Q Okay. Exhibit 4 is a -- is a log from sort of a log  
9 of actions from Alessi & Koenig; correct?

10 A Correct.

11 Q And do you see on page 4 of Exhibit 4 on March 10 --  
12 sorry, March 22, 2010, it says 12-month-payment plan signed and  
13 approved?

14 A Yes.

15 Q Okay. Do you see before -- anywhere before March 22  
16 of 2010 a payment plan that was entered into between Alessi &  
17 Koenig and Ms. Perez?

18 A I see where it was drafted on March 11th.

19 Q Okay. Anything else? Any earlier payment plan than  
20 one that was approved on March 22nd, 2010?

21 A No.

22 Q Okay. And this payment was made in February of 2010;  
23 correct?

24 A (No audible response.)

25 Q Exhibit 58.

1 A Correct.

2 Q So there was no payment plan at the time this payment  
3 was made; correct?

4 A According to --

5 MS. HANKS: Objection to form.

6 THE WITNESS: -- the status report --

7 THE COURT: Overruled.

8 THE WITNESS: -- no.

9 BY MR. MERRILL:

10 Q Okay. Have you seen a payment plan that was entered  
11 into between Ms. Perez and Alessi & Koenig before March  
12 of 2010?

13 A No, I have not.

14 Q Okay. So again, if Ms. Perez was not on a payment  
15 plan in February of 2010 when Wyeth Ranch applied the \$590.40  
16 to Perez's account, it applied the payment first to the oldest  
17 outstanding association dues and any remainder to the next  
18 oldest association dues; correct?

19 MS. HANKS: Objection. Form. Misstates prior  
20 testimony.

21 THE COURT: Overruled.

22 THE WITNESS: No, that's not correct.

23 BY MR. MERRILL:

24 Q Okay. Is it your testimony Wyeth Ranch applied the  
25 payment to the current quarter's association dues and any

1 remainder to the oldest association dues?

2 A Yes.

3 Q But you have no document that supports your  
4 testimony; correct?

5 A There's no written policy regarding that, no.

6 Q Okay. But there's no document that shows how you  
7 applied it either; correct?

8 A That's correct.

9 Q Now, Ms. Saucedo, you're aware that the principal  
10 issue in this case is how Wyeth Ranch applied the payments from  
11 Ms. Perez; correct?

12 A Correct.

13 Q And you have access to Wyeth Ranch's computer system.

14 A I do.

15 Q And that computer system can show exactly how  
16 payments were applied, as it did in Exhibit 45; correct?

17 A I mean, it doesn't really, no. It just applies the  
18 payment to the account. Some reports show it different ways,  
19 but when it comes down to figuring out how a payment was  
20 applied, we always audit the account. I audit accounts. A few  
21 other people in my office audit accounts so that we can get an  
22 accurate breakdown of what's owed in assessments and late fees  
23 on an account. We do not rely on the computer system to do  
24 that.

25 Q Okay. But you use the computer system, and then you

1 audit the account; correct?

2 A Correct.

3 Q Okay. So the computer system, at least with  
4 Exhibit 45, showed that it applied payments to the oldest  
5 association dues and any remainder to the next oldest  
6 association dues; correct?

7 A That report did; correct.

8 Q Okay. And you have not produced a report like  
9 Exhibit 45 that shows payments received from 2008 through 2013  
10 for Ms. Perez, did you?

11 A I have not gone through our computer system and  
12 pulled the hundreds of reports that it generates.

13 Q I didn't ask you for the hundreds of reports. You  
14 did not pull the report, like Exhibit 45, that would show all  
15 of the payments from 2008 through 2013 and how those payments  
16 were applied, like Exhibit 45, did you?

17 A I have not pulled any reports that show that, no.

18 Q Okay. And that report is still in Wyeth Ranch is --  
19 or I'm sorry, CAMCO's computer system?

20 THE COURT: Do you mean the data?

21 THE WITNESS: The report that was in the collection  
22 file?

23 BY MR. MERRILL:

24 Q The data, yes. I'm sorry. The data -- basically  
25 would you be able to run a report like Exhibit 45 today?

1           A     No, I don't believe so because the account balance is  
2 zero.

3           Q     Okay.

4           A     So it's going to pull no outstanding charges.

5           Q     Okay. Could you do -- you can't run a report as a  
6 certain date?

7           A     I don't know. I'd have to look.

8           Q     Okay.

9           A     I don't use that report. So I'm not sure of the  
10 parameters.

11          Q     Okay. And you were aware in October of 2015 Marchai  
12 subpoenaed records from Wyeth Ranch that included an accounting  
13 of the purported unpaid debt on the property?

14          A     Correct.

15          Q     And Wyeth Ranch did not produce a report showing an  
16 accounting of how it applied Perez's payments like was done on  
17 Exhibit 45; correct?

18          A     We provided a ledger of the account.

19          Q     Okay. But you didn't provide a report like  
20 Exhibit 45 that showed how the payments were applied, at least  
21 according to your computer; correct?

22          A     I don't believe we have a report that would show  
23 that, when the balance is paid off.

24          Q     So once the balance is paid off, you can't run a  
25 report like Exhibit 45 anymore?



1           A     I don't believe so. I mean, I'd have to -- I've  
2 never been asked that before. So I've never looked at the,  
3 like I said, hundreds of reports that are in our computer  
4 system.

5           Q     Okay. Ms. Saucedo, please take a look at Exhibit 61.

6           A     Okay.

7           Q     Exhibit 61 is the \$300 money order payable to Alessi  
8 & Koenig from May of 2010; correct?

9           A     Correct.

10          Q     And this was a payment towards the assessment account  
11 on 7119 Wolf Rivers; correct?

12          A     The collection account, yes.

13          Q     When you -- the -- which doesn't include fines;  
14 correct?

15          A     Correct.

16          Q     Okay. Please turn your attention back to  
17 Exhibit 138.

18          A     Okay.

19          Q     Do you see on the ledger a payment of \$204.60 applied  
20 on June 8th of 2010?

21          A     Yes.

22          Q     And this \$204.60 came from the \$300 payment we just  
23 looked at in Exhibit 61; correct?

24          A     I believe so, yes.

25          Q     And the difference between the two amounts Alessi and

1 Koenig would've taken out for collection costs; right?

2 A Correct.

3 Q And would Wyeth Ranch apply that \$204.60 payment, it  
4 applied it to the oldest outstanding association dues; correct?

5 A No.

6 Q Okay. Is it your testimony you applied it from the  
7 current association dues?

8 A Yes.

9 Q Okay. And again you have no document that supports  
10 your testimony; correct?

11 A Correct.

12 Q Please look at Exhibit 64.

13 A Okay.

14 Q Exhibit 64 is a check for \$250 payable to Alessi &  
15 Koenig?

16 A Yes.

17 Q And it's dated August 2nd of 2010?

18 A Correct.

19 Q And this was again a payment towards the collection  
20 account, not fines; correct?

21 A Correct.

22 Q And back at Exhibit 138, it shows a payment of  
23 \$172.75 applied on August 20, 2010; correct?

24 A Correct.

25 Q And that came from the 172.75?

1 THE COURT: 250. It came from the 250.

2 MR. MERRILL: I'm sorry. Sorry. It came from the  
3 250. Thank you, Your Honor.

4 THE WITNESS: I believe so, yes.

5 BY MR. MERRILL:

6 Q Okay. And the difference is the collection costs  
7 that Alessi & Koenig took out; right?

8 A Yes.

9 Q Is it your testimony that was applied to the current  
10 month -- to current quarter association dues?

11 A Yes.

12 Q Okay. And again you have no document that supports  
13 that; correct?

14 A Correct.

15 MR. MERRILL: Your Honor, with the Court's  
16 indulgence, I'm going to group a bunch of checks together  
17 because I think the questions are going to be the same, and --

18 THE COURT: Then we're going to break for lunch.

19 MR. MERRILL: Okay.

20 THE COURT: So, ma'am, before we break, let me ask  
21 you a question, and if you need to do something over the lunch  
22 hour or hour lunch break with you, you let me know.

23 You've indicated several times that the payments that  
24 were received were applied to the most current association  
25 dues. Why do you believe that to be true?

1           THE WITNESS: Because I have audited a lot of  
2 accounts over the 10 years, and when I audit payments, that's  
3 how -- that's how I've learned. That's how we do it here. And  
4 also, a lot of times a homeowner will miss one payment and then  
5 maybe it got lost in the mail or something. And then we  
6 receive a payment the next month. If we applied that payment  
7 towards the missing month and we kept doing that every month  
8 when they were sending in a payment, then the homeowner would  
9 constantly be getting hit with a late fee every month because  
10 we're applying the payment that they just made towards the  
11 older assessment. And then they would just rake up a bunch of  
12 late fees. So when we receive a payment that month, we assume  
13 it's for that current month. And then if there's any extra, it  
14 would go towards their past due balance on the account.

15           THE COURT: All right. And you said you learned that  
16 from auditing many files as part of your job duties; is that  
17 right?

18           THE WITNESS: That's correct.

19           THE COURT: Now, when you say auditing many files,  
20 can you describe for me the circumstances under which you audit  
21 a file.

22           THE WITNESS: Sure. A lot of times, if somebody is  
23 requesting like a settlement, like they want to pay X amount of  
24 dollars to settle the account, we have to audit the file to  
25 tell the board exactly how many assessments are due on the

1 account, how many late fees, how much interest so that we give  
2 them a breakdown, and we never rely on our computer system to  
3 do that. We do it manually by calculations.

4 THE COURT: So you've been doing this analysis for  
5 many years and seen the way that it has actually been done  
6 reflected in the computer system, but there's never been a  
7 written policy approved by the board?

8 THE WITNESS: Correct.

9 THE COURT: And there's not a written policy that  
10 CAMCO has?

11 THE WITNESS: There's not.

12 THE COURT: Okay. So you just know from doing the  
13 review of many, many different accounts that that's the  
14 operation that was used?

15 THE WITNESS: (No audible response.)

16 THE COURT: Okay. Thank you, ma'am.

17 THE WITNESS: No problem.

18 THE COURT: So what --

19 MS. HANKS: I'm sorry. I didn't hear her answer,  
20 Your Honor.

21 THE COURT: She said, yes.

22 So we're going to take our break for lunch, ma'am.  
23 I'm going to give you two hours. So if you could rejoin us at  
24 2:00 o'clock or at least be live on your end. We may not be  
25 right there, but wait for us and I will have counsel

1 communicate with you if it looks like we're going to be much  
2 different from that 2:00 o'clock figure. We're going to resume  
3 with another witness and perhaps emotions at 1:00 o'clock, and  
4 hopefully we'll be able to get to you by 2:00. Okay?

5 THE WITNESS: Okay. Sounds good.

6 THE COURT: All right. Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: All right. So can I break for lunch now?

9 MR. MERRILL: Yes, Your Honor.

10 THE COURT: Did you want to tell me why you think the  
11 witness can't testify so you at least have an idea to prepare  
12 your cross-examination in case I rule against you?

13 MS. HANKS: Sure. Your Honor, my understanding is we  
14 did a 2.47. We brought a motion in limine, and my  
15 understanding is that Mr. Merrill is intending to call him  
16 outside the scope of what he drafted in his report. So my  
17 understanding is Mr. Dugan was disclosed when commercial  
18 reasonableness was still kind of one of those arguments being  
19 brought by lienholders. And the argument then was what was the  
20 value of the property on the day of the foreclosure sale and  
21 the price paid by SFR was low. That was the argument. That's  
22 my understanding of why he was disclosed.

23 Then, I spoke with Mr. Merrill to ask why are we  
24 still talking about Mr. Dugan at this point because my  
25 understanding that is not an issue for trial, and he indicated

1 he was calling him for the deficiency reason, for something to  
2 do with the deficiency judgment or showing the difference in  
3 the amount. And I raised, well, that's interesting because  
4 it's a 2013 retrospective appraisal, but nevertheless, that's  
5 not my understanding of the point of the report. So we brought  
6 the motion in limine, and I think, Your Honor, said let's take  
7 it up at trial.

8 So unless Mr. Merrill can tell me why he's calling  
9 him first, that's my understanding. So that's why I would  
10 object. It's just outside the scope of what he was called for.

11 THE COURT: So you're saying he's --

12 MR. MERRILL: I'm calling --

13 THE COURT: -- outside the scope of his designation  
14 as an expert?

15 MS. HANKS: Correct.

16 THE COURT: Okay. Mr. Merrill.

17 MS. HANKS: Yeah.

18 MR. MERRILL: Your Honor, he's -- the expert is  
19 being -- he's an appraiser. He's being called to testify as to  
20 the value of the property as of the date of foreclosure. It's  
21 highly relevant for two reasons. One, SFR filed this morning a  
22 trial brief saying that they are a bona fide purchaser. While  
23 I disagree with that, if the Court agrees with them and the  
24 foreclosure was wrongful, then I have damages against the  
25 homeowners association, and those damages are the fair market

1 value of the property as of the date of the foreclosure, which  
2 is what my expert is going to testify on.

3 It's also relevant because, as Your Honor has already  
4 seen this morning, there is a conflict in evidence as to how  
5 payments were applied. There is a document that shows one  
6 thing from their computer system and a witness who gets on the  
7 stand and says something absolutely different. So if there is  
8 a conflict, and the Court is not able to determine how the  
9 payments are applied, then under the *Cranesville* (phonetic)  
10 case that Your Honor needs to look at justice and equity. And  
11 I think the value of the property as of the time of the  
12 foreclosure what SFR bought it for and the huge windfall they  
13 will get and the harm to everyone else is highly relevant under  
14 the *Cranesville* analysis. And that's why we're calling the  
15 expert. It hasn't changed. His opinion is the value of the  
16 property. That's what we're using him for.

17 THE COURT: Okay. What's the date of your motion in  
18 limine?

19 MR. MERRILL: They didn't file one.

20 MS. HANKS: Oh, I thought --

21 THE COURT: There's not one in the file. That's why  
22 I'm asking.

23 MS. HANKS: Oh, I'm --

24 THE COURT: Because I didn't say something.

25 MS. HANKS: I'm sorry, Your Honor. I think we



1 requested to be able to file a motion in limine, and then you  
2 indicated you would take it up at trial. That's -- my memory  
3 is wrong. We came to the --

4 THE COURT: When did you request that?

5 MS. HANKS: It would have been at calendar call is my  
6 recollection. Because when we were setting the date, I asked  
7 if we could put on a motion calendar for motions in limine  
8 because that issue --

9 THE COURT: And I would've told you it's too late.

10 MS. HANKS: I'm sorry?

11 THE COURT: I would've said it's too late. You can  
12 raise it at trial.

13 MS. HANKS: I wasn't present at that hearing. I  
14 don't --

15 THE COURT: Well, I don't let people file motions in  
16 limine that late. I never set an OST for a motion in limine.

17 MS. HANKS: Right. But I think at that hearing I  
18 would have explained that I wasn't aware I needed to file one  
19 until after talking to Mr. Merrill because Mr. Dugan wasn't  
20 even on the radar when we were doing our joint pretrial memo.

21 THE COURT: Okay.

22 MS. HANKS: It came up. Because this was on remand.

23 THE COURT: Believe me --

24 MS. HANKS: And it's only on a homeowner payment  
25 issue. So...

1 THE COURT: -- we all know that. It was screwed up  
2 before it got reassigned.

3 MS. HANKS: Yeah.

4 THE COURT: So make sure that when you come after  
5 lunch you have a copy of your expert designation in case I have  
6 to address an issue as to the scope of the witness's testimony.

7 MR. MERRILL: Okay.

8 THE COURT: The value of the property is relevant,  
9 but there's got to be a limit to what he can testify.

10 MR. MERRILL: Okay.

11 THE COURT: Okay.

12 MR. MERRILL: Okay.

13 THE COURT: All right.

14 MR. MERRILL: Thank you, Your Honor.

15 THE COURT: Bye.

16 (Proceedings recessed at 11:59 a.m. until 12:58 p.m.)

17 (Pause in the proceedings.)

18 THE COURT: Where is your witness?

19 MR. MERRILL: I just texted him. I told him to be  
20 here at 1:00. He said okay.

21 THE COURT: Uh-huh.

22 MR. MERRILL: So...

23 (Pause in the proceedings.)

24 THE COURT: Good afternoon.

25 **RICHARD SCOTT DUGAN**

1 [having been called as a witness and being first duly sworn,  
2 testified as follows:]

3 THE CLERK: Thank you. Please be seated.

4 Please state and spell your name for the record.

5 THE WITNESS: Richard Scott Dugan. R-i-c-h-a-r-d.  
6 Scott, S-c-o-t-t. Dugan, D-u-g-a-n.

7 THE COURT: Sir, thank you for being here. As you  
8 noticed, we all have masks on. That means we need to use  
9 louder voices and sometimes our words are garbled because the  
10 mask is in front of us. So if counsel asks you to repeat,  
11 please don't be offended. If you can't hear or understand what  
12 they're saying, please ask them to repeat.

13 I've asked them to use their outside voices so  
14 everybody will be able to hear.

15 But if you need anything, you let us know. Okay?

16 THE WITNESS: I will, Your Honor. Thank you.

17 THE COURT: Okay.

18 DIRECT EXAMINATION

19 BY MR. MERRILL:

20 Q Mr. Dugan, how are you currently employed?

21 A I'm the owner of R. Scott Dugan Appraisal Company.

22 Q And you are a certified appraiser in the State of  
23 Nevada?

24 A I'm a certified general appraiser in the State of  
25 Nevada.

1 Q And you have a license as an appraiser from the State  
2 of Nevada?

3 A Yes. My license number is 166.

4 Q And how long have you been an appraiser in the State  
5 of Nevada?

6 A I've been appraising in Las Vegas since 1969.

7 Q And is your license in good standing?

8 A Yes.

9 Q And in your work as an appraiser, do you appraise  
10 residential properties?

11 A Specifically, yes.

12 Q Are you a member of any professional associations or  
13 organizations?

14 A Yes. I'm a member of the Appraisal Institute. I  
15 hold the SRA designation, and I'm also a member of the  
16 Las Vegas Board of Realtors.

17 Q Okay. Have you ever held any offices with any  
18 organizations regarding your work as an appraiser?

19 A Yes. I have held numerous positions with the  
20 Appraisal Institute, the local chapter.

21 I'm also the chairman of the Clark County Board  
22 Equalization, and I've been on that board since 1993.

23 And I'm also a member of the Nevada Appraisal  
24 Advisory Review Committee since 2017.

25 Q Have you ever been qualified as an expert witness to

1 testify as an appraiser in Nevada?

2 A Yes. In all -- all courts.

3 Q And about how many times?

4 A Several hundred.

5 Q Okay. Has a Court ever determined that you were not  
6 qualified to testify as an expert -- as an expert witness?

7 A No.

8 Q Mr. Dugan, you're familiar with the real property at  
9 7119 Wolf Rivers Avenue in Las Vegas; correct?

10 A Yes.

11 Q Okay. We're you asked to prepare an appraisal report  
12 for that property?

13 A Yes.

14 Q And did you do that?

15 A Yes.

16 Q And how did you do that?

17 A Well, what we did is we did an exterior inspection on  
18 the property. And estimated the market value as of August  
19 28th, 2013.

20 Q And when you prepare an appraisal, are there  
21 standards you must follow as an appraiser?

22 A Yes. We implement an extraordinary assumption,  
23 assume the property was in at least average condition in  
24 comparison to the competing properties located within the  
25 market area, came up with, let's see, six sales that we felt

1 would be the most appropriate for comparison purposes and  
2 adjusted them accordingly and made the appropriate adjustments  
3 and then correlated to the market value as of that day.

4 Q Okay. And you followed the standards you're required  
5 to follow as a certified appraiser; correct?

6 A Yes.

7 Q And did you reach an opinion on the fair market value  
8 of the 7119 Wolf Rivers property as of August 28, 2013?

9 A Yes. The value as of that date was \$360,000.

10 Q And did you prepare a report explaining the basis and  
11 reasons for your opinion?

12 A Yes.

13 THE COURT: Is the report admitted?

14 MS. HANKS: No, Your Honor.

15 THE COURT: Then don't show it to me.

16 MR. MERRILL: Okay. How do I get him to look at it  
17 to authenticate it?

18 THE COURT: I will turn away while you give it to him  
19 on the screen. I am not looking at the screen.

20 MR. MERRILL: Thank you, Your Honor.

21 THE COURT: You can show the exhibit to the witness,  
22 the proposed exhibit.

23 What number is it?

24 MR. MERRILL: 142.

25 THE COURT: Thank you.

1 BY MR. MERRILL:

2 Q Mr. Dugan, you've been showed -- you're being showed  
3 Proposed Exhibit 142. Have you seen 142 before?

4 A Yes. It's a front photo of the subject property.

5 Q I'm sorry. Say that again.

6 A It's the front photo. All I can see is the front  
7 photo of the subject property.

8 Q Okay. And is this the appraisal report that you  
9 prepared?

10 A Yes, it appears to be.

11 Q Okay.

12 A Correct.

13 MR. MERRILL: Your Honor, I'd ask for Exhibit 142 --  
14 move to admit Exhibit 142 in evidence.

15 THE COURT: And any objection?

16 MS. HANKS: Objection. Hearsay.

17 THE COURT: Sir, is this a true and accurate copy of  
18 your report?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: Will it help you illustrate the opinions  
21 you're going to give to me here in court and also help you  
22 refresh your recollection as to what you're looking at?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Okay. I'm going to admit it for those  
25 purposes.

1 (Joint Exhibit Number(s) 142 admitted.)

2 MR. MERRILL: Thank you, Your Honor.

3 BY MR. MERRILL:

4 Q And, Mr. Dugan, you reached a -- once you did the  
5 comparison, looked at the comparisons of different properties,  
6 you came to a conclusion as to the fair market value of the  
7 7119 Wolf Rivers property as of August 28, 2013; correct?

8 A Yes.

9 Q And what was that opinion?

10 A The value was \$360,000.

11 MR. MERRILL: I have nothing further, Your Honor.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MS. HANKS:

15 Q Mr. Dugan, if you could go to page -- never mind.  
16 Sorry. I'm not used -- this is my first COVID trial. So  
17 forgive me.

18 I'm going to have to put you -- page up here on the  
19 Elmo for you. I'm going to zoom in for you so you can try to  
20 see it a little bit better.

21 Is that good on that screen for you?

22 A I've got my original. A copy. So...

23 Q Oh, perfect. You have your original.

24 A Yeah.

25 Q Thank you.



1           Okay. So I'm directing your attention to page 2 of  
2 your report. And if you look at the first paragraph, you  
3 indicate in the last sentence of the first paragraph,

4                     Our analysis of the subject property was  
5                     based upon the property as defined within the  
6                     report and the economic, physical,  
7                     governmental and social forces affecting the  
8                     subject property as of the effective date of  
9                     this assignment.

10           Did I read that correctly?

11           A     Yes.

12           Q     Now, the effective date of the assignment that we see  
13 here in your letter is August 28th, 2013; right?

14           A     Yes.

15           Q     And you're aware that that is the same date of the  
16 association foreclosure sale of this property; right?

17           A     Yes.

18           Q     Okay. Now, when your sentence here says that you  
19 took into your analysis the social forces affecting the subject  
20 property as of the effective date, your report, however, did  
21 not take into effect that the association was foreclosing on  
22 the property; correct?

23           A     That is correct.

24           Q     In fact, your report took that assumption out. In  
25 other words as if the lien didn't exist and the property was

1 selling in a regular market transaction; right?

2 A Correct.

3 THE COURT: Counsel, will you pull your mask back up.

4 MS. HANKS: Sorry.

5 THE COURT: It's okay.

6 MS. HANKS: It slips a little bit.

7 BY MS. HANKS:

8 Q And, in fact, your letter, if we go to paragraph 4,  
9 pretty much states that. It says,

10 The opinion assumes the date and time of  
11 value to be prior to the HOA lien transfer on  
12 the same date and assumes the property to be  
13 an average to good condition and  
14 professionally marketed under normal terms.

15 Did I read that correctly?

16 A Yes.

17 Q And so when you're indicating professionally marketed  
18 under normal terms, am I correct to understand that means an  
19 individual who would list their property on the MLS and then  
20 get offers on it?

21 A Yes.

22 Q Okay. But you understand that is not how an  
23 association foreclosure sale works; correct?

24 A Yes.

25 Q And then I looked at page 3 -- sorry. Page 4 and

1 page 6. Both of these pages of your report list the properties  
2 you compared the subject property to in terms of doing your  
3 analysis; right?

4 A Yes.

5 Q And for all the properties that you list on  
6 page 4 and 6, they were all traditional sales. Am I correct in  
7 understanding that?

8 A Yes.

9 Q Okay. And the reason that you're doing that when  
10 you're doing a sales comparison approach, you want to compare  
11 like properties to the subject property that you're appraising;  
12 right?

13 A Correct.

14 Q In other words, I wouldn't want, as an appraiser, to  
15 compare a 20,000 square-foot house to a 1,000 square-foot  
16 house; correct?

17 A Yes.

18 Q Okay. And then when you do the comparables, it's  
19 highly unlikely you'll find a property that's exactly the same.  
20 So you might have to do adjustments; is that correct?

21 A Yes.

22 Q And we see that within your report. Sometimes you're  
23 doing upwards adjustments meaning you're increasing the price  
24 because the property you're comparing it to might have  
25 something better than the subject property; right?

1 A Yes.

2 Q And then we see some negative adjustments where maybe  
3 the subject property has something better than the comparable  
4 property, and that's why you're making a negative adjustment;  
5 correct?

6 A Yes.

7 Q Okay. So in other words, the whole purpose of the  
8 sales comparison approach is the properties that you're  
9 comparing the subject property to, you're trying to make them  
10 the most similar you can so that you get the proper value;  
11 correct?

12 A Within a reasonable range, yes.

13 Q Understood. And that's because we don't want to  
14 compare an apple to let's say a bicycle. We want to compare an  
15 apple to an apple; correct?

16 A Yes.

17 THE COURT: But you have deviations based on  
18 varieties of apples.

19 MS. HANKS: Yes.

20 THE WITNESS: I like that.

21 THE COURT: Now you know. I've never done one of  
22 these cases before. I don't know anything about appraisals.  
23 Never seen comps in my life.

24 BY MS. HANKS:

25 Q And because all the properties were traditional

1 sales, I'm correct to understand -- and you can tell me if I'm  
2 wrong because I don't see anything in the report -- you did not  
3 compare this property to similarly situated properties  
4 undergoing a foreclosure sale; correct?

5 A Absolutely not.

6 MS. HANKS: Okay. I have nothing further, Your  
7 Honor.

8 THE COURT: Thank you.

9 MR. OCHOA: No questions, Your Honor.

10 THE COURT: Thank you.

11 Anything else?

12 REDIRECT EXAMINATION

13 BY MR. MERRILL:

14 Q Mr. Dugan, why don't you compare it with other ones  
15 that are going into a foreclosure sale?

16 A Well, because foreclosure sales don't need a market  
17 value definition, and they're a forced situation by the HOA to  
18 sell the property for what's owed to the HOA for delinquent  
19 dues and so forth.

20 Q And it's so --

21 A In other words, it has -- those sales have nothing to  
22 do with the market value definition.

23 MR. MERRILL: Very good.

24 No questions, Your Honor.

25 THE COURT: Any more questions.

1 (No audible response.)

2 THE COURT: Anybody else have questions?

3 MS. HANKS: Yes, Your Honor, just a quick follow-up  
4 to that question.

5 RECROSS-EXAMINATION

6 BY MS. HANKS:

7 Q So if you were trying to analyze a forced sales  
8 price, you would do a completely different analysis than you  
9 did in your report; correct?

10 A To do a what?

11 Q If you were trying to figure out a forced sale  
12 analysis, in other words, what should this property or might go  
13 at a forced sale transaction, you would not use the analysis  
14 that you did?

15 A Well, what definition of market value do you want to  
16 talk about?

17 Q I'm asking the -- I'm following up with a question.  
18 If you want to determine what the price would likely be in a  
19 forced sales transaction, if someone was coming to you and  
20 saying, hey, what are these properties going for in these  
21 forced sale transactions --

22 A Well --

23 Q -- you would not use the comparison approach that you  
24 do with your report; correct?

25 A You would -- even if it's a forced sale, it has to

1 meet some type of definition of market value: Liquidation  
2 value, disposition value or one of the others. Otherwise, it's  
3 not considered an arms length market transaction.

4 THE COURT: You missed income.

5 THE WITNESS: You could use income --

6 THE COURT: Yeah.

7 THE WITNESS: -- you could look at the cost approach.

8 THE COURT: -- but you can't on a residential  
9 property. Yeah.

10 THE WITNESS: Yes.

11 MS. HANKS: Correct.

12 BY MS. HANKS:

13 Q And so what I'm asking is you would have to use a  
14 different definition. Your report would have been completely  
15 different if someone was asking you to give a forced sale  
16 transaction situation?

17 A Yes.

18 MS. HANKS: Thank you.

19 THE COURT: Anything else?

20 MR. MERRILL: No. Thank you, Your Honor.

21 THE COURT: Okay. Thank you, sir. We appreciate  
22 your time. Have a very nice afternoon.

23 THE WITNESS: You too.

24 THE COURT: Anybody want to tell the witness at  
25 2:00 o'clock that we can start any time she's ready.

1 Stay well, sir.

2 THE WITNESS: Yes. You too, Your Honor. Thank you.  
3 Be safe, everybody.

4 THE COURT: After this witness, how many more have  
5 you got, Mr. Merrill?

6 (Pause in the proceedings.)

7 MR. MERRILL: She will be my last witness, Your  
8 Honor.

9 THE COURT: Okay. And you said you had about another  
10 hour?

11 MR. MERRILL: No. No. I don't have much longer at  
12 all with her.

13 THE COURT: Okay.

14 How many witnesses have you got?

15 MS. HANKS: Your Honor, I will only have one  
16 depending on what happens after a motion I intend to bring.

17 THE COURT: Okay. Well, he has to rest before you  
18 can bring that motion.

19 MS. HANKS: Yes.

20 (Pause in the proceedings.)

21 THE COURT: Thank you, Mr. Ochoa, for trying.

22 MR. OCHOA: No response yet.

23 THE COURT: It's okay. That's what happens when we  
24 try and do this. It's not the first time. We told her 2:00.  
25 So anything early is a gift.



1           How long is your when witness if you don't win your  
2 motion?

3           MS. HANKS: Ten, 15 minutes tops.

4           THE COURT: How long are your witnesses, Mr. Ochoa?  
5 Or is she the only one, Ms. Saucedo?

6           MR. OCHOA: She's going to be the only one. I would  
7 think 20 minutes, probably less.

8           THE COURT: Okay. So we might be done today.

9           MS. HANKS: Yes.

10          THE COURT: Sweet.

11          MS. HANKS: Yes.

12          THE COURT: Okay. My staff feels good about that.

13          MS. HANKS: I always thought we would be done today.

14          THE COURT: I never believe we'll get done in a day.

15          MS. HANKS: I know. I know.

16          MR. MERRILL: I don't either.

17          THE COURT: Unless it's a contempt trial.

18                   (Pause in the proceedings.)

19          THE COURT: Yay. Good afternoon, ma'am.

20          THE WITNESS: Hi.

21          THE COURT: Let me see if I can get Mr. Ochoa back.  
22 Thank you for rejoining us early.

23          THE WITNESS: No problem.

24          THE COURT: And I understand we're going to be done  
25 with you pretty quick.

1 Mr. Merrill, you're up.

2 And you're still under oath, ma'am.

3 THE WITNESS: Okay.

4 THE COURT: Because it's the same day we don't have  
5 to swear you again.

6 Come on, Mr. Merrill. Move.

7 MR. MERRILL: Sorry, Your Honor.

8 I just want to figure out where I left off, Your  
9 Honor.

10 THE COURT: You were grouping together a bunch of  
11 checks.

12 MR. MERRILL: I was.

13 THE COURT: Okay.

14 **YVETTE SAUCEDA**

15 (having been recalled as a witness and previously sworn,  
16 testified as follows:)

17 BY MR. MERRILL:

18 Q Ms. Saucedo, I'm going to show you several checks now  
19 and ask kind of your testimony about them as opposed to doing  
20 one at a time.

21 If you can look at Exhibit 66, please.

22 A Okay.

23 Q And this is a money order for \$220 in September  
24 of 2010; correct?

25 A Yes.

1 Q And this was a payment applied to the Wolf Rivers  
2 property; correct?

3 A Correct.

4 Q If you'd look at Exhibit 67, please.

5 A Okay.

6 Q And again, this was another money order in the amount  
7 of \$175 payable to Alessi & Koenig in November of 2010, and  
8 this was also applied to the assessment account or collection  
9 account on the Wolf Rivers property; correct?

10 A Correct.

11 Q Exhibit 72, please.

12 A Okay.

13 Q Exhibit 72 is also a money order in the amount of  
14 \$160 payable to Alessi & Koenig for March of 2011, and this was  
15 also applied to the HOA dues collection account on the Wolf  
16 Rivers property; correct?

17 A Correct.

18 Q Exhibit 75.

19 A Okay.

20 Q Exhibit 75 is also a money order from May of 2011 to  
21 Alessi & Koenig in the amount of \$160; correct?

22 A Correct.

23 Q Exhibit 78.

24 A Okay.

25 Q Exhibit 78 was a money order from August of 2011 in

1 the amount of \$165, and this was payable to Alessi & Koenig and  
2 was used to -- was applied to the 7119 Wolf Rivers collection  
3 account; correct?

4 A Correct.

5 Q Exhibit 91.

6 A Okay.

7 Q Exhibit 91 was a money order for \$300 payable to  
8 Alessi & Koenig from March of 2012; correct?

9 A Yes.

10 Q And this was also applied to the 7119 Wolf Rivers  
11 collection account; correct?

12 A Yes.

13 Q Exhibit 93.

14 A Okay.

15 Q It was a money order for \$295 payable to Alessi &  
16 Koenig from May of 2012, and this was also applied to the 7119  
17 Wolf Rivers collection account; correct?

18 A Yes.

19 Q Exhibit 98.

20 A Okay.

21 Q It's a money order for \$165 payable to Alessi &  
22 Koenig from July of 2012, and this was also applied to the  
23 collection account for 7119 Wolf Rivers; correct?

24 A Yes.

25 Q And Exhibit 107.

1 A Okay.

2 Q This was a check in the amount of \$300 payable to  
3 Alessi & Koenig from November of 2012; correct?

4 A Yes.

5 Q And this was also applied to Ms. Perez's collection  
6 account on 7119 Wolf Rivers; correct?

7 A Yes.

8 Q So for each of those checks we looked at, which were  
9 Exhibits 66, 67, 72, 75, 78, 91, 93, 98 and 107, each of those  
10 payments were made to Alessi & Koenig, and then Alessi & Koenig  
11 took out a portion for its collection costs; correct?

12 A Yes.

13 Q And the balance of those payments were applied to  
14 Perez's assessment account as reflected on Exhibit 138;  
15 correct?

16 A Correct.

17 Q And that would be the \$152.02 applied on October 15,  
18 2010, in Exhibit --

19 A That would be one of the payments, yes.

20 Q Correct. Yes.

21 A Yeah.

22 Q And then the \$126.18 applied on December 16, 2010?

23 A Yes.

24 Q The \$119.52 applied on March 22nd, 2011?

25 A Yes.

1 Q The \$124.32 applied on June 16, 2011?

2 A Yes.

3 Q The \$127.71 applied on August 18, 2011?

4 A Yes.

5 Q The \$212.70 applied on April 3rd, 2012?

6 A Yes.

7 Q The \$209.16 applied on May 23rd, 2012?

8 A Yes.

9 Q The \$121.28 applied on August 27, 2012?

10 A Yes.

11 Q And the \$221.10 applied on December 14, 2012;

12 correct?

13 A Yes.

14 Q For each one of those payments that we looked at in  
15 Exhibit -- the checks, and then we looked at the payments in  
16 Exhibit 138, each one of those payments were applied to the  
17 oldest association dues?

18 A No.

19 Q Okay. Is it your testimony that those were all  
20 applied to the current quarter association dues?

21 A Yes.

22 Q But you have no documents that support that correct?

23 A Correct.

24 Q Now, you raised an issue with the late fee. Do you  
25 recall that?

1 A I'm not really sure.

2 Q Okay. That you applied the payments because it would  
3 create multiple -- it could create multiple late fees?

4 A Yes.

5 Q Okay. And if you'd go to Exhibit 138, please.

6 A Okay.

7 Q And if you'd look on October 1, 2010. Do you see  
8 that?

9 A Yes.

10 Q And October 1, 2010, there was an HOA assessment of  
11 \$478.50; correct?

12 A Yes.

13 Q October 15 of 2010, there was a payment of 152.02.  
14 Do you see that?

15 A I do.

16 Q Did that payment satisfy the current quarter's  
17 association dues?

18 A Not fully, no.

19 Q Okay. Was there a late fee charged?

20 A No, there was not.

21 Q If we go back up to March 2nd, 2010, do you see the  
22 payment of \$590.40?

23 A Yes.

24 Q Under your testimony, did that satisfy the January 1,  
25 2010, quarterly association dues?

1 A Yes.

2 Q Was there a late fee applied?

3 A For January?

4 Q Yes.

5 A Yes.

6 Q For that -- for that quarter. Sorry. Late fees are  
7 applied by quarter; correct?

8 A Correct.

9 Q And was there a late fee applied to that quarter?

10 A Yes, there was.

11 Q Now, you mentioned before a payment plan. Do you  
12 recall that?

13 A Yes.

14 Q Okay. Can you take a look at Exhibit 59, please.

15 A Okay.

16 Q And 59 is the payment plan detail of a payment plan  
17 entered into between Wyeth Ranch and Ms. Perez; correct?

18 A Correct.

19 Q And this was -- this required monthly payments of  
20 \$669.87; correct?

21 A Correct.

22 Q Okay. So if Ms. Perez paid \$669.87, the first  
23 portion of that payment would go to Alessi & Koenig for its  
24 collection costs; correct?

25 A Correct.



1 Q And then they would submit the balance to Wyeth  
2 Ranch; correct?

3 A Correct.

4 Q Did that payment of 669.87 include late fees?

5 A According to this, yes, it did.

6 Q Okay. And when the balance was submitted to Wyeth  
7 Ranch, was the full amount applied to the current quarter's  
8 association dues?

9 A I'm sorry. Can you repeat that.

10 Q Sure. After Alessi takes its collection costs, would  
11 they apply the full amount -- would Wyeth Ranch apply the full  
12 amount of the rest of the payment to the current quarter's  
13 association dues?

14 A Yes. In this case the owner never made a payment  
15 that was that amount.

16 Q No. I appreciate that. But under this payment plan,  
17 if a payment is submitted under the payment plan, is the  
18 current quarter's association's dues paid first?

19 A Yes.

20 Q Okay.

21 A It's broken out monthly on the payment plan though.  
22 So the full quarter wouldn't really be paid until all three  
23 payments were made that month.

24 Q Correct. So --

25 A For that quarter.

1           Q     The money was not applied first to the first  
2     quarter -- to the current quarter's association's dues;  
3     correct?

4                     It was applied part to the month, part to late fees,  
5     part to an admin fee, and part to collection fees and also  
6     parts to the old assessments; correct?

7           A     The admin fee isn't our fee. No. We would post the  
8     payment, and it would be applied to the current quarter.

9           Q     Okay. So you would post a payment different than  
10    what the payment plan says?

11          A     Well, the late fees aren't even accurate on this  
12    payment plan. And we never received a payment that was enough  
13    to cover everything mentioned in this payment plan.

14          Q     And I appreciate that, but what I'm asking you is the  
15    payment plan does not require -- or does not provide for  
16    application of the payment, the entire payment, to the current  
17    quarter's association's dues; correct?

18          A     I'm sorry. Can you repeat that.

19          Q     I can try. The -- no, it's okay. It's me.

20                     The payment plan did not provide for when, Ms. Perez,  
21    if she made a payment of 669.87, Alessi would take a cut of  
22    collection fees, which was two, eighteen, fifteen; correct?

23          A     Correct.

24          Q     Okay. And then the rest of that amount --

25          A     Well, I mean, I don't know that they follow that

1 necessarily.

2 Q You don't know that they follow the payment plan that  
3 they've entered into with the homeowner?

4 A Well, I mean, as far as what they hold back towards  
5 collection costs.

6 Q Okay. So if -- but whatever they sent to Wyeth  
7 Ranch, they would withhold some money for collection costs;  
8 correct?

9 A Correct.

10 Q Okay. And they would send the rest of it to Wyeth  
11 Ranch; correct?

12 A Correct.

13 Q And under this payment plan, the entire amount of  
14 what is sent to Wyeth Ranch is not applied to the current  
15 quarter's association's dues, is it?

16 A Correct.

17 Q And you're aware that this payment plan terminated in  
18 July of 2010; correct?

19 A No.

20 Q Okay. Let's look at Exhibit 4, please.

21 A Okay.

22 Q Okay. We looked at this earlier. This was the  
23 Alessi & Koenig's log of actions taken on the account.

24 Do you see July 2, 2010, payment plan breach letter  
25 sent via regular mail?

1 A Yes.

2 Q And then on July 12, they started up with the  
3 foreclosure process again by sending a prenotice of trustee  
4 sale; correct?

5 A Yes.

6 Q Ms. Saucedo, if you could please take a look at  
7 Exhibit 125.

8 A Okay.

9 Q And if you can go to the second page of Exhibit 125.

10 A Okay.

11 Q And this was an email from Naomi Eden on the morning  
12 of August 28th, 2013; correct?

13 A Yes.

14 Q And she emailed Brittany O'Connor and you; right?

15 A Correct.

16 Q And Naomi Eden worked for Alessi & Koenig?

17 A Yes.

18 Q And Brittany O'Connor was your assistant; correct?

19 A Correct.

20 Q And Naomi told you that the mortgage company was  
21 asking for a postponement of the foreclosure scheduled that day  
22 so it could pay off anything that it owed; correct?

23 A Correct.

24 Q And Naomi asked if it was okay to postpone; right?

25 A Yes.

1 Q Brittany responded asking how many oral postponements  
2 were left; correct?

3 A Yes.

4 Q And Naomi advised they had three more postponements  
5 available; right?

6 A Yes.

7 Q And then Brittany emailed Michelle Weaver and  
8 Samantha Michaels; correct?

9 A Correct.

10 Q And Michelle is the association manager?

11 A Yes.

12 Q And Samantha Michaels was Ms. Weaver's assistant;  
13 correct?

14 A That's correct.

15 Q And at this time it was CAMCO's policy to postpone  
16 foreclosure sales until the third postponement unless  
17 instructed otherwise by the board; is that correct?

18 A That's correct.

19 Q Okay. And in this case, Wyeth Ranch did not want to  
20 postpone; correct?

21 A Correct.

22 Q And the foreclosure proceeded on August 23rd --  
23 sorry, August 28, 2013; correct?

24 A Yes.

25 Q Okay. Now, before the sale, CAMCO provided Alessi &

1 Koenig with a ledger of the account; right?

2 A We usually do, yes.

3 Q Okay. And that --

4 A When they request it.

5 Q And that ledger did not break down any superpriority  
6 or subpriority amounts; correct?

7 A Correct.

8 Q If you could look at Exhibit 126, please.

9 A Okay.

10 Q Exhibit 126 is the trustee's deed upon sale; correct?

11 A Yes.

12 Q And according to that trustee's deed, SFR Investments  
13 Pool 1 submitted the winning bid of \$21,000 at the foreclosure;  
14 correct?

15 A Correct.

16 Q If you can go back to Exhibit 138, please.

17 A Okay.

18 Q At the time of the foreclosure, Wyeth Ranch's  
19 assessment account showed that there was \$10,679.12 owed;  
20 correct?

21 A Yes.

22 Q And if you can look at Exhibit 129, please.

23 A Okay.

24 Q Wyeth Ranch received a payment from Alessi & Koenig's  
25 trust account in the amount of 10,679.12; correct?

1 A Yes.

2 Q So Wyeth Ranch received payment of its entire  
3 assessment lien as reflected on its ledger; correct?

4 A Correct.

5 MR. MERRILL: I have nothing further, Your Honor.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MS. HANKS:

9 Q Ms. Saucedo, do you have all the exhibits or just  
10 select exhibits? Do you know?

11 A (No response.)

12 Q Do you have all the exhibits or just the certain  
13 exhibits?

14 A I believe I have all. There's 144.

15 Q Okay. Then you have all of them. Great. If you  
16 could turn to Exhibit 46.

17 A Okay.

18 Q Okay. Do you see how -- this is the date of -- on  
19 the letter --

20 MS. HANKS: Oh. Do you -- can I not do it for you,  
21 Your Honor?

22 THE COURT RECORDER: Huh-uh.

23 MS. HANKS: Okay.

24 THE COURT: You can't.

25 MS. HANKS: Do you --

1 THE COURT: That's because I've got video. No, you  
2 can't give me paper.

3 MS. HANKS: No. No. No. I don't want to give you  
4 paper. Do you have a copy of the exhibits yourself?

5 THE COURT: No. Not right now I don't. But keep  
6 going.

7 BY MS. HANKS:

8 Q Okay. So I'll just make sure it's clear. This is  
9 Exhibit 46. The date of the letter that Alessi & Koenig has on  
10 there is September 30th, 2008. Do you see that?

11 A Yes.

12 Q Okay. But if we actually look at the U.S. Postal  
13 Service kind of copy of the return receipt, it looks like it's  
14 stamped October. We can't read the day. But then it says  
15 2008.

16 Is that you are -- is that how it appears for you?

17 A Yes.

18 Q Okay. So and then when we actually look at  
19 Exhibit 47, it looks like the notice of delinquent assessment  
20 lien was recorded on October 8th, 2008. Do you see that?

21 A Yes.

22 Q So while we don't know the exact day in October that  
23 the notice of delinquent assessment was sent to the homeowner,  
24 it appears to be sometime in October of 2008. Is that your  
25 understanding?



1 A It appears to be, yes.

2 Q Okay. And then do you see on the letter the first  
3 paragraph? It's the second sentence where Alessi & Koenig  
4 indicates -- or actually never mind. Sorry. Strike that.

5 Now, if you can turn to Exhibit 51.

6 A Okay.

7 Q You see this is a document titled delinquent  
8 collection policy, Wyeth Ranch CA?

9 A Yes.

10 Q And it's dated September 10th, 2009. Do you see  
11 that?

12 A Yes.

13 Q Okay. I want to highlight a few things about this  
14 policy. It looks like in the first paragraph it indicates,

15 Timely payment of regular and special  
16 assessments is of critical importance to the  
17 association. The failure of any owner to pay  
18 assessments when due creates a cash flow  
19 problem for the association and causes those  
20 owners who make timely payment of their  
21 assessments to bear a disproportionate share  
22 of the association's financial obligations.

23 Did I read that correctly?

24 A Yes.

25 Q And then the next paragraph I want to draw your

1 attention to is Number 2. It says late charges. It indicates  
2 that,

3                   When an installment payment of a regular  
4                   assessment or a special assessment becomes  
5                   delinquent, the owner's account with the  
6                   association shall be charged with a late  
7                   payment of \$75 after 30 days past due.

8                   Did I read that correctly?

9           A     Yes.

10          Q     So am I correct to understand that based on what this  
11 policy says in 2009, if I have a quarterly assessment due on  
12 April 1st, 2008, if the association does not receive a  
13 payment by the 30th of April 2008, according to this policy, a  
14 \$75 charge will be incurred on the account?

15          A     That's correct.

16          Q     And then if we go to paragraph 4 for interest, it  
17 indicates,

18                   If an assessment payment is delinquent  
19                   for more than 30 days, interest shall be  
20                   imposed on all delinquent assessments at the  
21                   annual percentage rate of 1.5 percent.

22                   Did I read that correctly?

23          A     Yes.

24          Q     And then with respect to interest, am I correct to  
25 understand that works the same way, that if let's say we have a

1 quarterly assessment due on April 1st, 2008, and the  
2 association does not receive a payment by the 30th of April,  
3 interest will start to accrue after April 30th, 2008, on the  
4 balance; correct?

5 A Correct.

6 Q And am I correct to also understand that interest  
7 accrues on the total balance due, not just on that current  
8 assessment?

9 A It's the current amount of the past due assessments,  
10 yes.

11 Q Past due assessments. Yes. Okay. So in other  
12 words, the interest will be higher if let's say a homeowner  
13 goes three months and doesn't pay quarterly assessments versus  
14 only going one quarter and not paying in terms of the interest  
15 being charged?

16 A That's correct.

17 Q Okay. Now I understand this is, at least as far as  
18 I'm concerned, in the 145 exhibits we have, I don't see a 2008  
19 collection policy that's written like this. But is it your  
20 understanding that in 2008 Wyeth Ranch Association followed the  
21 same policy that we see here in 2009 with in terms of when late  
22 fees were charged and interest was charged?

23 MR. MERRILL: Objection. Calls for speculation.

24 THE COURT: Overruled.

25 You can answer.

1 THE WITNESS: Yes. I don't recall any changes in our  
2 standard collection policy until around 2012.

3 BY MS. HANKS:

4 Q Okay. And I think we have the 2012 one. So let's  
5 look at that.

6 If you'd go to Exhibit 104.

7 A Okay.

8 Q Can you tell me by looking at this document what  
9 changed from the 2009 collection policy we just referenced?

10 A The interest is a bit higher on this one.

11 Q Okay. Anything else?

12 A Let me see.

13 What exhibit was the other collection policy?

14 Q Exhibit 51.

15 A Okay. I think that is it.

16 Q Okay. So other than the interest rate increasing, it  
17 appears that even that collection policy from 2009 stayed  
18 pretty stagnant all the way till 2012?

19 A Correct.

20 Q Correct?

21 A (No audible response.)

22 Q I'm sorry. I didn't hear your answer.

23 A Correct. Yes.

24 Q Okay. I'm sorry.

25 And then if you'd turn to Exhibit 76 -- excuse me,

1 79.

2 A Okay.

3 Q This is the collection policy dated November 10th,  
4 2011. Do you see that?

5 A Might be on the wrong exhibit. Sorry. What was the  
6 exhibit number again?

7 Q Exhibit 79.

8 A Oh, okay.

9 Okay. I'm there.

10 Q This it looks like to be the November 10th, 2011,  
11 signed collection policy. Do you see that?

12 A Yes.

13 Q And it looks, as far as I can tell, and you can  
14 correct me if I'm wrong, it looks pretty much the same as the  
15 2009 collection policy other than the date of effective  
16 changing and some signatures; is that correct?

17 A That's correct.

18 Q Okay. So now let's talk about Exhibit 45.

19 A Okay.

20 Q With respect to this document, I want to make sure I  
21 understood your testimony on direct correctly.

22 This is a report that can be run from the -- the  
23 several reports that can be run from the system; is that right?

24 A That's correct.

25 Q By looking at it, do you know what report this even

1 is?

2 A I know it's referred to as a type of statement in our  
3 system.

4 Q Would you know what the person clicked to actually  
5 get this particular printout?

6 A Yeah. I know it's called a statement of some sort.  
7 So I'm sure I could find it.

8 Q Is this a -- do you use this type of statement when  
9 you're auditing an entirety of an account from let's say 2008  
10 all the way through 2013?

11 A No.

12 Q Okay. And so with respect to determining how the  
13 homeowner payments at issue in this case were applied to the  
14 count, should we rely at all on Exhibit 45?

15 MR. MERRILL: Object.

16 THE WITNESS: No.

17 MR. MERRILL: That really calls for a legal  
18 conclusion --

19 THE COURT: Overruled. She can explain.

20 MR. MERRILL: Okay.

21 THE WITNESS: No.

22 BY MS. HANKS:

23 Q And why is that?

24 A We never use this document because the way our  
25 computer system works, there's no real setting in it for us to

1 tell it specifically how we want the payment to be applied. So  
2 we rely on our knowledge and physically auditing the account  
3 and calculating it the way we know it should be done in order  
4 to ever give anybody a breakdown of their account and what is  
5 due and what payments might have been missed.

6 Q Okay. And with respect to that audit, is Exhibit 138  
7 the type of ledger that you would use to do what you just  
8 discussed in terms of telling how payments were applied, what  
9 payments were missed and what's due and owing?

10 A Yes.

11 Q Okay. So let's take a look at Exhibit 138 for a  
12 little bit.

13 A Okay.

14 Q If we look at Exhibit 138, it appears that as of  
15 April -- excuse me, January 1st, 2008, the homeowner failed  
16 to pay that quarterly assessment; right?

17 A Correct.

18 Q And because of that, consistent with the policy  
19 you've both testified to and the later written one we see in  
20 2009, on January 30th, 2008, the homeowner was assessed with  
21 a late fee; correct?

22 A Correct.

23 Q Of \$75.

24 A Yes.

25 Q Now, if you see -- and then we also see consistent

1 with that written policy that we saw written in 2009, on  
2 January 30th, 2008, \$6.30 was assessed to the homeowner; is  
3 that right?

4 A Correct.

5 Q And I see that it looks like it's in at least the  
6 memo line, it's processed as a late fee, but is that the  
7 interest payment, or is that another late fee?

8 A It's the interest.

9 Q Okay. And then if we look to the other interest  
10 charged during that time period, it looks like 2, 29, '08,  
11 which we know would be the last day in February of that year,  
12 another payment for interest was assessed consistent with that  
13 policy of assessing interest on the 30th day of the month;  
14 correct?

15 A Correct.

16 Q And then the last interest we see is March 30th,  
17 2008. Additional interest is assessed because again,  
18 consistent with the policy, as long as the payment is unpaid  
19 for the quarterly assessment, interest will keep on accruing at  
20 the 30th of each of those months in that quarter; correct?

21 A Correct.

22 Q Okay. Now we see April 1st, 2008, was the next  
23 quarterly assessment. And again the homeowner fails to pay it,  
24 at least on that date; correct?

25 A Correct.



1 Q But it looks like the association does get a direct  
2 payment on 4/16/2008, in the amount of five, oh, seven, sixty.  
3 Correct?

4 A Yes.

5 Q Now, we don't see, however, after that payment is  
6 received, we don't see any late payment for 4/1/2008; correct?

7 MR. MERRILL: Objection. Leading.

8 THE COURT: Overruled.

9 THE WITNESS: There is no late fee. No.

10 BY MS. HANKS:

11 Q And is that because consistent with the policy the  
12 association would've taken the five, oh, seven, sixty, and  
13 first applied it to the four, twenty, of the April 1st, 2008,  
14 delinquent assessment, the most current delinquent assessment?

15 A Correct.

16 Q Had the association applied that amount fully to the  
17 oldest debt, the oldest delinquency, January 1st, 2008, would  
18 the homeowner have incurred a late payment for the April 1st,  
19 2008, quarterly assessment?

20 A They should have, yes.

21 Q Okay. And my understanding from your testimony and  
22 what we kind of saw from the written policy, that's the idea of  
23 why the association pays the most current -- or excuse me, the  
24 most recent delinquent assessment first with any payment so  
25 that the homeowner is not continuing to rack up higher interest

1 and late fees and never catching up. Is that correct?

2 A That's correct.

3 Q It also supports what the first paragraph of that  
4 policy talked about, the cash flow problem for the association.  
5 In other words, if an association is receiving a payment and  
6 let's say of 2010, it supports the cash flow to apply it to the  
7 most current delinquent assessment versus applying it to a 2008  
8 debt; correct?

9 A I'm not really sure I follow that one.

10 Q Sure. What I'm saying is --

11 A Sorry.

12 Q That's okay. I can repeat it. And if you don't  
13 know, you can just tell me you don't know.

14 A Okay.

15 Q What I'm saying is let's suppose we have a 2010 --  
16 and we can go with this ledger because we have a lot of them on  
17 here. Let's just go with the next payment that you get. We  
18 have a late -- January 1st, 2010, the homeowner fails to pay  
19 the quarterly assessment of 4, 78, 50, at that time. Do you  
20 see that?

21 A Yes.

22 Q So it looks like the quarterly assessments increased;  
23 right, from 420 to 4, 78, 50?

24 A Yes.

25 Q Okay. And my question to you is we see on March

1 2nd, 2010, a partial payment of 5, 90, 40. And my question  
2 was that applying the 5, 90, 40 to the most current delinquent  
3 quarterly assessment of January 1st, 2010, not only could  
4 potentially avoid the homeowner for getting more interest and  
5 an additional late fee, but it also resolves the problem of the  
6 association's need for immediate cash flow during this time  
7 period. Is that correct?

8 A Not really because the way that the association does  
9 their financials is on an accrual basis. So I don't know if  
10 you really want me to get into it, but they show the assessment  
11 as income when it's billed even if it's not paid. And that's  
12 the way we're required to do the financials per NRS. So it  
13 wouldn't really have a bearing on their financial summary or  
14 outlook I guess.

15 Q Okay. Okay. Maybe not on their outlook but  
16 certainly on the current condition of getting money in it would  
17 have an effect?

18 A Not necessarily the way we posted the payment. Just  
19 getting the payment in would help out the association.

20 Q Okay. Fair enough.

21 And so then going back to the 4/1/2008, quarterly  
22 assessment -- or excuse me, the 4/16/2008, payment, because the  
23 homeowner paid a little bit more than 4, 20, my understanding  
24 is the \$87 -- I think it was 8750 that was left over, would  
25 have then applied to the oldest delinquency of January 1st,

1 2008; correct?

2 A Correct.

3 Q Okay. Now we see that there's no payment made by the  
4 homeowner for almost another two years. The next payment we  
5 would see is March 2nd, 2010. Is that your understanding?

6 A Yes.

7 Q Okay. And based on the policy, you would have taken  
8 that 590 40 and first applied it to the January 1st, 2010,  
9 delinquency of 4, 78, 50; correct?

10 A Correct.

11 Q And then I think that leaves a balance of \$111.90,  
12 and you can check me if my math. I'm not really concerned with  
13 the exact number. It leaves on approximate balance of \$111.

14 If it did that, the policy would then dictate that  
15 that approximate \$111 remainder would go back to the January  
16 1st, 2008, oldest delinquency; correct?

17 A Correct.

18 Q Okay. Now, if we look at the payments that go --  
19 that come after March 2nd, 2010, there's one for 6/8/2010,  
20 two, oh, four, 60. That was not enough to cover the most  
21 current quarterly delinquent assessment on 4/1/2010; correct?

22 A Correct.

23 Q And if we go down to the next payment of 8/20/2010,  
24 the partial payment of 172, 75, that was not enough to fully  
25 cover the most recent delinquent quarterly assessment; correct?

1 A Correct.

2 Q And if we can go -- I can go through every payment  
3 since that date, and I won't belabor it, but if you can look at  
4 the ledger and go through all the partial payments that I think  
5 counsel went through with you, am I correct to understand that  
6 no payment made after March 2nd, 2010, was ever enough to  
7 fully satisfy the most current delinquent amount to leave any  
8 remainder to go to an older balance?

9 A Yes. That's correct.

10 Q Now, based on your experience in auditing accounts  
11 and the testimony you're giving, are you aware of any report in  
12 your system that would show something different than what  
13 you're testifying about the application of these payments?

14 A No.

15 Q Counsel seemed to suggest on direct examination that  
16 if you had gone into the system and run the same report that we  
17 see in Exhibit 45 you would get a different ledger showing you  
18 a different application. Is that true?

19 MR. MERRILL: Objection. Calls for speculation. She  
20 hasn't run it.

21 THE COURT: Overruled.

22 You can explain.

23 THE WITNESS: I am not even able to run a report that  
24 resembles the one that we were looking at earlier because  
25 there's no balance due on the account. That report will only

1 show if there's a balance due. If I try to run that report and  
2 there's no balance due, it says something like no data or  
3 something to that affect.

4 Q Okay. If I were to say -- if I could transport you  
5 back in time on let's say July 1st, 2013, for this account,  
6 one month before the association foreclosure sale where there  
7 still would have been a balance, is it true that if you had  
8 printed the same report that we see in Exhibit 45 that we would  
9 see something different about the application of payments that  
10 you've testified to here today?

11 MR. MERRILL: Objection. Calls for speculation.

12 THE COURT: Overruled.

13 You can answer.

14 THE WITNESS: It would probably be all over the  
15 place. That's why we don't use that report, to be honest.

16 BY MS. HANKS:

17 Q Okay. Now, if you could turn to Exhibit 59.

18 A Okay.

19 Q This looks to be, at least from the records we have,  
20 a payment plan from March 11th -- or it was prepared on March  
21 11th, 2010. Do you see that?

22 A Yes.

23 Q Now, there were some questions about how this was  
24 created in terms of what was being paid. And what I want to  
25 try to understand from your testimony is unlike the ledger that

1 we see at Exhibit 138, the payment plan does it in a monthly  
2 payment; correct? It's not a quarterly payment?

3 A Correct.

4 Q But despite that, there is still within the payment  
5 plan the idea that with each monthly payment the current  
6 monthly assessment amount within that quarter is going to be  
7 paid before any old debt is paid; is that right?

8 A Correct.

9 Q And so I understand with the payment plan you might  
10 be breaking out the quarterly assessment, but the idea is still  
11 you always want to pay the most current delinquent assessment  
12 first and then any remainder of the payment from that payment  
13 plan would go to the older debt; is that right?

14 A Correct.

15 Q Now, despite this plan being prepared and approved by  
16 the board, the homeowner in this case never made a payment  
17 under this March 2010 payment plan; is that correct?

18 A I never saw a payment for that, for the amount  
19 specified in the payment plan.

20 Q Neither -- neither did I. So that's why want to make  
21 sure I wasn't wrong.

22 So from your -- from your examination of the accounts  
23 and your audit, you did not see any payment in the amount of 6,  
24 69, 87 ever made by the homeowner after March 11th, 2010;  
25 correct?

1 A Correct.

2 Q And am I correct to understand the idea behind the  
3 payment plan, really any payment plan, but particularly this  
4 payment plan that we see in Exhibit 59, is it's set up in a way  
5 so that eventually the homeowner is going to get to a zero  
6 balance; correct?

7 A Correct.

8 Q So that's the idea of why the, whatever payment  
9 they're coming up with what the homeowner can afford each  
10 month, it's both accounting for current assessments and also  
11 applying to past due amounts; correct?

12 A That's correct.

13 Q Okay. Now going back to Exhibit 138, I think counsel  
14 asked you that there's no -- that there was a ledger sent to  
15 Alessi or presumably there would be a ledger sent to Alessi  
16 shortly before this sale, and he asked you a question about  
17 would there be a breakdown of the superpriority amount versus  
18 the subpriority amount. Do you recall that questioning?

19 A Yes.

20 Q Okay. And I think your answer when he asked is  
21 there -- if he was correct to understand that within the ledger  
22 there is no breakdown, you said yes. I want to clarify that.

23 Am I able to look at the ledger and compare it to the  
24 date that the notice of delinquent assessment lien was issued  
25 and then look back nine months and see what was due from the



1 homeowner when I look at Exhibit 38? Am I able to do that?

2 MR. MERRILL: Objection. Calls for a legal  
3 conclusion.

4 THE COURT: Overruled.

5 THE WITNESS: I guess it would depend on what date  
6 you're looking at the ledger. Because I don't know if like  
7 somebody that doesn't know how we apply the payments would be  
8 able to determine what was unpaid and what was not from looking  
9 at the ledger.

10 BY MS. HANKS:

11 Q Okay. So what I would be able to see is I would see  
12 a running balance between that time, and I can see what  
13 assessments were incurred by the homeowner. But if there were  
14 maybe subsequent payments, I wouldn't be able to tell if those  
15 amounts were actually cured, so to speak?

16 A Correct.

17 Q Okay. But I would be able to see the amount on the  
18 ledger; correct?

19 A Yes.

20 Q And with respect to counsel's questions, and I think  
21 you answered him, but I just want to clarify. With respect to  
22 the payments that we talked about that after March 2nd, 2010,  
23 that were never enough to cure the current delinquency, am I  
24 also correct to understand that all of those payments, because  
25 we talked about the April 16, 2008, payment, and we talked

1 about the March 2nd, 2010, payment, but rather than go  
2 through each payment, every payment after March 2nd, 2010, am  
3 I correct to understand that the association followed its  
4 policy of applying that partial payment to the most current  
5 delinquency first?

6 A Yes.

7 Q Okay. Now, with respect to the application that  
8 you've discussed at length here today, if my client SFR, who  
9 ultimately purchased the property at the foreclosure sale would  
10 have called the association prior to the sale, would you have  
11 released information about payments made by the homeowner to  
12 this account and how they were applied to him?

13 MR. MERRILL: Objection. Calls for speculation --

14 THE COURT: Overruled.

15 MR. MERRILL: -- it's a hypothetical.

16 THE COURT: You can answer.

17 THE WITNESS: No.

18 BY MS. HANKS:

19 Q Do you know if Alessi & Koenig, the collection agent,  
20 would be allowed to release that information to my client if he  
21 had inquired?

22 A No, they would not.

23 Q And is that because the association would have  
24 instructed them not to release that account information to  
25 third parties not associated with the account?

1 A That's correct.

2 Q Now, I think you indicated on direct that when we  
3 were -- counsel was talking about the March 10, 2010, payment,  
4 you had believed that the homeowner was under a payment plan at  
5 that time. Do you recall testifying to that effect?

6 A Yes.

7 Q If you'd look at Exhibit 4, and I'll refer you to the  
8 page that's Bates stamped 4-004, and just let me know when  
9 you're there.

10 A Okay.

11 Q Do you see where it says February 5th, 2010,  
12 requested to be put on a 12-month payment plan?

13 A Yes.

14 Q And then on February 12th, 2010, there indicates a  
15 note payment plan to be drafted. Do you see that?

16 A Yes.

17 Q Okay. I understand there's no entry in between  
18 February 5th and February 12th that Alessi spoke to the  
19 association, but when a homeowner requests a payment plan  
20 directly of a collection agent, would you have expected some  
21 communication from Alessi to the HOA before it started drafting  
22 up the payment plan?

23 A No.

24 Q Okay. So you would not have seen anything until the  
25 payment plan was drafted, or the association wouldn't have?

1 A Correct.

2 Q Do you know if in between February 12th, 2010, and  
3 March 11th, 2010, there was any payment plan sent?

4 A I don't believe there was.

5 Q Okay. So the March 11, 2010, is the first payment  
6 plan that was seen and approved by the association?

7 A Yes.

8 Q Despite the fact that you believe that she was in a  
9 payment plan in or around that time, am I correct to understand  
10 that the payment still went to the most current delinquent  
11 assessment of January 1st, 2010?

12 And if you need to go back to 138, you can.

13 A Yes. Hold on.

14 Which payment are we talking about now?

15 Q The March 2nd, 2010.

16 A Oh, okay.

17 Q Right.

18 A Yes. Yes. That's correct.

19 Q If you could go -- stay with Exhibit 138, just to  
20 clarify, by the time of July 31st, 2013, so the month before  
21 the sale, the total delinquent monthly assessments plus late  
22 fees and interest was \$10,848.68. Am I reading that correctly?

23 A Correct.

24 Q And if we go to Exhibit 139, the total fine balance  
25 as of June 27, 2013, was \$20,590; correct?

1 A Correct.

2 Q Between -- I understand there's an email in the  
3 system either a day before or the day of the sale where the  
4 servicer was requesting a postponement of the sale. Do you  
5 recall seeing that email?

6 A I don't recall seeing the email from the servicer to  
7 Alessi. I just recall seeing the email between Alessi and  
8 CAMCO.

9 Q Yes. And that email was on the day of the sale;  
10 correct?

11 A Correct.

12 Q And my next question with respect to that is between  
13 the date of the NODAL, October 8th, 2008, and August 28th,  
14 2013, the day of the sale, had you received any other  
15 communication from a servicer on behalf of a lender asking to  
16 postpone the sale or anything like that other than that August  
17 28th, 2013, email?

18 A Not that I saw in the file.

19 MS. HANKS: I have nothing further, Your Honor.

20 THE COURT: So, ma'am, isn't it typical back in those  
21 days to give the extension to the servicer so they can pay it  
22 off?

23 THE WITNESS: I know what we usually would do is just  
24 ask the board if they would like to postpone it. And if we  
25 didn't hear back from the board, we would automatically

1 postpone it. I think that a lot of collection agencies maybe  
2 would have just postponed it on their own without even asking  
3 the board, but I don't recall seeing very many requests to  
4 postpone a sale because the lender was asking for a payoff. So  
5 it might have been something that they would do on their own at  
6 the collection agency, but it just didn't come to us as a  
7 request very often, but I wouldn't really know about that.

8 THE COURT: So why did the sale go forward?

9 THE WITNESS: Because the board was adamant about no  
10 postponements.

11 THE COURT: So in this case, the board was asked and  
12 declined to approve the postponement?

13 THE WITNESS: Correct.

14 THE COURT: Okay. Thank you.

15 Mr. Ochoa.

16 MR. OCHOA: Yeah. Just a couple of questions.

17 CROSS-EXAMINATION

18 BY MR. OCHOA:

19 Q In your review of this account, did you see any  
20 documents reflecting that an announcement was made at the sale  
21 regarding superpriority?

22 A No.

23 Q Are you aware of HOAs making announcements at  
24 foreclosure sales in 2013 regarding superpriority?

25 A No.

1 MR. OCHOA: That's all, Your Honor.

2 THE COURT: Mr. Merrill.

3 REDIRECT EXAMINATION

4 BY MR. MERRILL:

5 Q Ms. Saucedo, Ms. Hanks asked you some questions about  
6 the cash flow, and I just wanted to clarify that issue.

7 If you've got the cash, how it's applied doesn't  
8 affect your cash flow; correct?

9 A Correct. Not having it would affect the cash flow.

10 Q Exactly. But if you get the money in, how it's  
11 applied or what HOA due it's applied to doesn't impact cash  
12 flow; correct?

13 A Correct.

14 Q Okay. Are the late fees and the interest  
15 automatically posted by the computer?

16 A Yes.

17 Q So again, if you'd go to Exhibit 138.

18 A Okay.

19 Q And we looked at this before, the October 15, 2010,  
20 payment. Do you see that?

21 A Yes.

22 Q Okay. There was no late fee posted for October  
23 of 2010; correct?

24 A Correct.

25 Q And no interest for October of 2010; correct?

1           A     Correct.

2           Q     So the computer didn't post one after it received a  
3 payment of 152, zero two, even though that payment was not  
4 enough to cover the current quarter's association's dues;  
5 right?

6           A     That appears to be the case, yes.

7           Q     Okay. Now you've mentioned a couple times this  
8 audit, this audit that you do. In the audit do you go through  
9 the computer system and change how the computer has applied  
10 payments?

11          A     No, that's not a capability that our software has.

12          Q     Okay. So in the audit, when you said you do an  
13 audit, you just provide a ledger; correct?

14          A     No. Like if we're actually auditing an account, we  
15 use the ledger.

16          Q     Okay.

17          A     And then we -- some of the girls will create a  
18 spreadsheet. I tend to just calculate it out. And if I'm  
19 e-mailing the board or a homeowner the breakdown of their  
20 account, I'll just list it in an email, what payments were  
21 missing, the total assessment balance, the total late fee  
22 balance.

23          Q     And when you -- so when you do that, all you're doing  
24 is you're adding up the total of HOA dues, the total of late  
25 fees, the total of interest essentially; correct?



1           A     Correct. And if the homeowner is wondering what  
2 payments were missed or something to that affect, we would also  
3 give them that information.

4           Q     Okay. But you don't provide any breakdown of the  
5 superpriority and subpriority; correct?

6           A     Correct.

7           Q     Okay. And the ledger that's been produced and  
8 provided, Exhibit 138, doesn't show where payments are applied;  
9 correct?

10          A     Correct.

11          Q     Okay. And we know that according to your computer  
12 system payments can be applied different than how you're  
13 testifying to in your computer system; correct?

14          A     Yeah. There's no -- there's no way for us to tell  
15 our computer program how we want it to apply the payments.

16          Q     Okay.

17          A     It's -- yeah.

18          Q     But the computer program does apply payments?

19          A     Yeah.

20          Q     Okay. We saw that in Exhibit 45. It applied the  
21 payment; correct?

22          A     Correct.

23          Q     Now, Ms. Hanks asked you about Exhibit 59 again,  
24 which was the payment plan. Do you recall that?

25          A     Yes.

1 Q And I believe your testimony was the payment goes to  
2 the current monthly payment before the older debt I think is  
3 what you said. Is that correct?

4 A I don't know word for word, but, yes.

5 Q Okay. Well, the payment -- the money first goes to  
6 the collection costs, does it not?

7 A Yes. I was speaking to the payment that the HOA  
8 receives.

9 Q Okay. And the payment the HOA receives, if it's in  
10 the amount of 669.87 after the collection costs, that was set  
11 forth how it's supposed to be applied in that payment plan;  
12 correct?

13 A I believe the 669.87 includes the collection costs.  
14 So what the HOA would receive would actually be less than that  
15 had they made the proper payment amount.

16 Q Correct. No, I understand that. So had they, after  
17 taking out the collection costs, the payment plan specifies how  
18 it's supposed to be applied; correct?

19 A I mean, yeah, according to Alessi & Koenig.

20 Q Okay. And it doesn't say that the current months  
21 assessments are first; correct?

22 A No.

23 Q That's not correct?

24 A No, it does not.

25 Q Okay.

1 MR. MERRILL: I've got nothing further, Your Honor.

2 THE COURT: Anything further, Ms. Hanks?

3 RECROSS-EXAMINATION

4 BY MS. HANKS:

5 Q With respect to -- I understand no payment plan was  
6 ever entered into by this borrower. Correct?

7 THE COURT: Do you mean by this homeowner?

8 MS. HANKS: Homeowner. Borrower. Correct. Yeah.  
9 Whatever you want to call the -- Ms. Perez.

10 THE WITNESS: That no payment plan was entered into?

11 BY MS. HANKS:

12 Q Correct. Meaning she never actually paid under any  
13 payment plan that was ever approved by the association.

14 A Correct. She never paid the proper amount.

15 Q Right. She just continued to --

16 A For the payment plan. Yeah.

17 Q She just continued to send whatever payment she could  
18 afford or felt was necessary. And then Alessi had to parse it  
19 out with what was due for collection and then give the  
20 association a partial payment each time; correct?

21 A That's correct.

22 Q Despite that though, even with a payment plan, at  
23 least well the one that we see here that was approved in March  
24 of 2010, the idea is always to keep the homeowner paying the  
25 current assessment and then paying down the older debt over

1 time so that they eventually get to a balance of zero; correct?

2 A That's correct.

3 Q The idea is never to apply all payments to the oldest  
4 debt so that the homeowner can keep accruing late fees and  
5 interest on current delinquencies; correct?

6 A That's correct.

7 MS. HANKS: Okay. I have no further questions.

8 THE COURT: Mr. Ochoa?

9 MR. OCHOA: No questions, Your Honor.

10 THE COURT: Mr. Merrill.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. MERRILL:

13 Q I'm confused by that last testimony. So if the  
14 purpose is of a payment plan is so that they would catch up and  
15 not incur late fees. Is that what you just testified to?

16 A Yeah. So usually in our office, if a homeowner is on  
17 a payment plan and they stick to it, the system might  
18 automatically charge late fees to the account. But once they  
19 fulfill their obligation of the payment plan, we'll go back and  
20 remove any late fees that were assessed during the term of the  
21 payment plan.

22 Q Okay. But the payment plan in Exhibit 59 shows a  
23 charge for late fees; correct?

24 A It does.

25 Q Okay. So if Ms. Perez had complied with the payment

1 plan, she still would've been paying late fees; correct?

2 A I did not prepare this payment plan. Alessi & Koenig  
3 did.

4 Q No. I appreciate that.

5 A We don't -- we don't include late fees in our payment  
6 plans here when we prepare them.

7 Q Okay. I appreciate that. But Alessi & Koenig was  
8 the collection agent for Wyeth Ranch; correct?

9 A Correct.

10 Q And under Alessi & Koenig's payment plan, they had a  
11 late fee built into it; correct?

12 A Correct.

13 Q So Ms. Perez still would've been paying a late fee  
14 even if she had complied with the terms of the payment plan;  
15 correct?

16 A She probably would have just finished her late -- her  
17 payment plan early after we removed the late fees or would've  
18 had a credit.

19 Q Okay. But it doesn't say that anywhere in this  
20 payment plan detail; correct?

21 A No, it doesn't.

22 MR. MERRILL: Okay. I've got nothing further, Your  
23 Honor?

24 THE COURT: Anything further, Counsel?

25 MS. HANKS: No, Your Honor.

1 THE COURT: Ma'am, thank you very much. We got you  
2 done by 2:41. Have a nice day. Thank you for attending.

3 THE WITNESS: Thank you.

4 THE COURT: Bye-bye.

5 THE WITNESS: Thank you.

6 THE COURT: Mr. Merrill, before I ask you the next  
7 question, will you please confirm with the clerk that all the  
8 exhibits you think are admitted are, in fact, admitted. The  
9 ones I show not admitted, and we'll go with my list for a  
10 minute, is 2, 3, 111, 113, 115, 121.

11 I think that's all.

12 THE CLERK: That's correct.

13 MR. MERRILL: That is correct, Your Honor.

14 THE COURT: So do you rest?

15 MR. MERRILL: Yes, I do, Your Honor.

16 THE COURT: Okay. We're going to take a short rest  
17 room break, and then somebody might have a motion, or they  
18 might want to call a witness.

19 MR. MERRILL: Okay. Thank you, Your Honor.

20 (Proceedings recessed out 2:42 p.m., until 2:47 p.m.)

21 (Pause in the proceedings.)

22 THE COURT: You ready?

23 Ms. Hanks, are you ready to proceed in some format?

24 MS. HANKS: Yes, Your Honor. Yes. I'd like to at  
25 this time bring a Rule 52(c) motion.

1 THE COURT: Okay.

2 MS. HANKS: And I'm just going to go ahead and  
3 provide -- I'm going to be using a demonstrative exhibit. So  
4 I'm just going to hand it to counsel, and I know I have to put  
5 it on the Elmo for Your Honor.

6 THE COURT: Well, and you also have to email a  
7 copy --

8 MS. HANKS: Yes.

9 THE COURT: -- to the clerk for her to mark it as D1.

10 MS. HANKS: And we will do that now. And my  
11 cocounsel might have to walk out to get out of this vortex of  
12 no Internet.

13 THE COURT: You mean to get service?

14 MS. HANKS: Yeah.

15 THE COURT: We're under the vault. So we have no  
16 service in this room.

17 MS. HANKS: Oh, okay.

18 THE COURT: It's not that it's you guys. It's that  
19 is a reinforced ceiling.

20 MS. HANKS: Okay. Your Honor, we are moving for  
21 52(c) that there are no basically no issues of fact as to how  
22 the payments were applied in this case. The only payments  
23 relevant to the Court's analysis is the April 16, 2008, and I  
24 just want to first get us there of why we're looking at that  
25 area.

1           We know from the Supreme Court of Nevada telling us  
2 that the nine months superpriority is determined by what was  
3 incurred in the nine months before the notice of delinquent  
4 assessment lien. I'm going by the recording date here of the  
5 notice of delinquent assessment lien because it's October  
6 8th, 2008, but I think we can even go as early as the 1st of  
7 October if you go by the date that that letter was mailed to  
8 the homeowner. Under either scenario, we're in October.

9           And we know from the ledger that the following  
10 assessments were incurred prior to October 1st, 2008.

11           THE COURT: I'm looking at it. So you don't have to  
12 show it on the Elmo.

13           MS. HANKS: Okay. Sorry.

14           THE COURT: Dulce sent it to me.

15           MS. HANKS: So you have -- here's October 2008. We  
16 know a monthly quarterly assessment four, twenty, was incurred  
17 on October 1st. That would be in the SP.

18           We move up. We know another quarterly assessment was  
19 incurred during that nine-month period on July 1st, 2008. So  
20 that four, twenty, would be included in the superpriority.

21           And then we know the following quarterly assessment  
22 on 4/8/2008, was incurred. So now we have the four, twenty  
23 from that quarterly assessment.

24           So essentially, according to the Nevada Supreme  
25 Court's decision, we have the April 1st, 2008, quarterly



1 assessment; July 1st, 2008, quarterly assessment; and the  
2 October 1st, 2008, quarterly assessment that was incurred  
3 prior to the NODAL. So that's our superpriority amount, three  
4 quarterly assessments.

5 And this is the chart I want to use that kind of  
6 breaks that out so that we can see it. There are some  
7 assessments that are due outside of the superpriority amount.  
8 So what I've done here is shown -- I've taken the ledger, and  
9 I've boxed out the red. This is the superpriority amount that  
10 we're dealing with. This is what captures the superpriority  
11 based on what the Supreme Court has said. And we know there's  
12 some assessments due in January, February and March, but  
13 they're not captured in that superpriority net.

14 So then we look at the ledger, and we take  
15 Ms. Saucedo's testimony, we know on 4/16/2008, the homeowner  
16 made a payment of five, oh, seven, sixty. And because the  
17 policy was to apply it to the most current delinquent  
18 assessment, we know when that April 16, 2008, payment was  
19 made -- I'm just going to come out here real quick and show you  
20 the ledger again. I know you're looking at it -- it was  
21 applied to the most recent quarterly past-due assessment, the  
22 April 1st, 2008, assessment. That's within the SP. We  
23 acknowledge that. So that means that one payment paid April,  
24 May and June. It covered the full quarterly assessment.

25 But we're left with July, August, September, October,

1 November and December.

2           And then if we go to the ledger, the next payment  
3 made by the homeowner is not until March 2nd, 2010. But  
4 based on Ms. Saucedo's testimony, that payment would have first  
5 gone and paid January 1st, 2010's, quarterly delinquent  
6 assessment of four, seventy-eight, fifty. It leaves a balance  
7 of roughly \$111, which means that would've gone to the January  
8 balance and covered even a little bit of February. But that's  
9 the oldest balance, and that's outside the superpriority  
10 amount. So that's why the only relevant payment for this  
11 Court's *Cranesville* analysis is the April 16th, 2008,  
12 payment.

13           And then we know all the other payments after March  
14 2nd, 2010, not one of them was enough to cover the most  
15 recent delinquent assessment and leave any remainder to come  
16 back to this older debt. So we know based on the ledger and  
17 Ms. Saucedo's testimony, because only one quarterly assessment  
18 was covered by the homeowner's payments at the time of the  
19 association sale, the superpriority amount for July, August,  
20 September, October, November and December were still due and  
21 owing.

22           So on the date of August 20 -- sorry. I just lost  
23 track of the sale date -- August 28th, 2013, that lien  
24 included \$840 of superpriority amount. It wasn't paid by the  
25 bank. We're only talking about homeowner payments in this

1 case. So we know from the SFR decision, because the lien still  
2 included superpriority amounts, the lien was extinguished. The  
3 deed of trust was extinguished, and SFR took free and clear of  
4 the deed of trust.

5 Now I know Mr. Merrill spent considerable time in  
6 trying to establish there's no written policy. There's no  
7 written policy. There is no document that says literally if we  
8 receive a payment from you, we will apply it to the most  
9 current delinquent assessment and then an older balance. That  
10 is true.

11 But there are a written collection policies that  
12 explain what happens when you don't make a payment. And the  
13 idea from Ms. Saucedo was saying if we took a payment and  
14 consistently applied it to old debt, the homeowner is going to  
15 continually incur interest at a higher rate because the balance  
16 is still going to be at a higher rate, and continue to incur a  
17 \$75 late fee for every quarter. They would almost never catch  
18 up.

19 So while we might not have a policy that says  
20 literally this is how we're going to apply your payment, we do  
21 have collection policies that are consistent with them.

22 We also have the payment plan despite the fact that  
23 the homeowner didn't enter into it. It's really not relevant  
24 for any other purpose other than to look at that when they do  
25 draft up a payment plan it's the same idea. The idea is to get

1 the current assessment paid, then take the balance and pay any  
2 past-due assessments so that eventually you work yourself to a  
3 zero balance. Nevertheless though, this homeowner never  
4 actually abided by any of the payment plans. She just  
5 continued to send whatever partial payments she deemed that she  
6 could make or what was necessary, and they got applied the way  
7 that we see on the -- from Ms. Saucedo's testimony.

8 I also want to highlight that was in my last point,  
9 nowhere in Cranesville does it say there must be a written  
10 policy. It just simply says if the debtor did not direct how  
11 the payments would be applied, the creditor may determine how  
12 to allocate the payment. And we heard from Ms. Saucedo in the  
13 10 years that she's been with CAMCO this has always been the  
14 policy. This is how they apply the payments, and this is how  
15 they applied them in this case. So under the Cranesville case,  
16 you have the testimony.

17 There's nothing to suggest that the law required a  
18 written policy or that it had to be literal. It just simply  
19 says they had the right to determine how they wanted to  
20 allocate it. They did, and we know there was a sound reason  
21 for the policy that favored the homeowner and the association.

22 So with that, Your Honor, we would ask that you grant  
23 52(c) and find that the sale did extinguish the deed of trust  
24 and that SFR took free and clear of it.

25 THE COURT: Mr. Merrill.

1 MR. MERRILL: Ms. Hawkins, could you put up my  
2 computer. I'm sorry.

3 THE COURT RECORDER: Sure.

4 MR. MERRILL: Thank you.

5 THE COURT: So, Ramsey, can you wipe down before he  
6 gets up there.

7 THE MARSHAL: Yes.

8 MR. MERRILL: Well, I can sit here if that's -- I'll  
9 stay here. That's fine.

10 THE COURT: Okay.

11 MR. MERRILL: If that's okay with you, Your Honor.

12 THE COURT: It doesn't matter to me. I am looking at  
13 45 too. I've got 45 and 138 right here.

14 MR. MERRILL: Okay. Very good.

15 Your Honor, I need to correct a few things from  
16 Ms. Hanks' presentation.

17 Ms. Hanks said there was a nine-month superpriority.  
18 That is not true. In 2008, when this was done, it was a  
19 six-month superpriority. So her chart and her calculations are  
20 wrong to begin with because it was only a six-month  
21 superpriority. The nine months didn't go into effect until  
22 2009.

23 Second, I found Ms. Saucedo's testimony amazing.  
24 Ignore our documents. Ignore exactly what our documents tell  
25 you, how we applied them and listen to me. But she never ran

1 this report. She never checked to see if she could run this  
2 report for everything. And the only document that's  
3 produced -- and we're not talking about policies here of how  
4 they're going to apply documents. I'm talking about a document  
5 that shows specifically how payments were applied.

6 It shows in Exhibit 45 no January HOA dues. And this  
7 is the document that was used to create the notice of  
8 delinquent lien. It shows nothing due from January 2008 of the  
9 HOA dues. And that's because it was paid off. It was paid off  
10 by the April 2008 payment of \$507.60. It was in the amount --  
11 so the \$420 on January 1 was paid off. What's the balance?  
12 \$87.60.

13 How was it applied? Exhibit 45 tells us in black and  
14 white. It was applied to April 1, 2008.

15 Cranesville is very clear; you cannot change how you  
16 applied payments once they're applied. And their computer  
17 system applied the payment in April of 2008, to the January  
18 dues and then the remainder to the April dues. And that's how  
19 their computer did it. Their computer system applied it in the  
20 way of the oldest association dues first and then the next  
21 oldest association dues. And that's consistent with how things  
22 are done on a running account, when you have a running account  
23 and the amounts come in. It goes to the oldest one typically.

24 Ms. Saucedo says, well, no, we don't really do that.  
25 We do this audit. This kind of -- I don't use this report.

1 It's kind of a mess. Well, they did use this report. They  
2 used the report for the document that gave rise to the  
3 superpriority lien. That's what it was based off of. And for  
4 them to come in and say, well, just ignore our report, just  
5 listen to me when we don't have a written policy, we don't have  
6 any other document that supports it is just incredible.

7 Ms. Hanks did not also address at the time of the  
8 foreclosure. This is also very important. After the  
9 foreclosure, \$10,619.12 I think around there was sent to Wyeth  
10 Ranch. There is a presumption under the law that money paid is  
11 owed. Well, that can only be the case if they foreclose as a  
12 subpriority lien because we know if there was superpriority  
13 amounts, they would only get, under Ms. Hanks' calculation the  
14 \$840, and the rest would've gone to Marchai. That's not what  
15 happened here.

16 There's also a presumption that the law has been  
17 followed. Again, that can only be true if it was a subpriority  
18 foreclosure because they would have had to have only taken the  
19 \$840 and paid the rest to Marchai. Again, that's not what  
20 happened here. And it didn't happen here because, again,  
21 Exhibit 45 shows how they applied their payments, and it shows  
22 they applied their payments to the oldest association dues  
23 first and then to the next oldest association dues.

24 And the issue of the late fee for every quarter, we  
25 see on all the documents they charged a late fee essentially

1 every month, and again their computer did not charge a late fee  
2 when a payment was made of less than even the monthly, let  
3 alone the quarterly amount. So for them to say, oh, well, no  
4 late fee was charged here, this just shows how it was applied.  
5 Well, no, because their own documentation Exhibit 138, in the  
6 October 2010 time frame shows that that's not what happened.  
7 It didn't always do that.

8 And even their own payment plan showed -- contradicts  
9 Ms. Saucedo's testimony. Under Ms. Saucedo's testimony, the  
10 payment plan would say you make this payment, and we take this  
11 out of collection costs. The first chunk goes to the current  
12 quarter's association dues. And then the next month it would  
13 go to a past due amount, but that's not what the payment plan  
14 says. It says we're going to apply a little bit to the current  
15 month, and then we're going to apply a big chunk to prior  
16 months. So the payment plan contradicts Ms. Saucedo's  
17 testimony.

18 So, Your Honor, in this case there are issues of  
19 fact. The documentation, particularly Exhibit 5 -- sorry,  
20 Exhibit 45 shows how they applied the payment. They're now  
21 trying to change it -- come in and change how they applied  
22 payments by testimony, and they're simply not allowed to do  
23 that under Cranesville.

24 Thank you, your Honor.

25 THE COURT: Thank you. The motion is denied based



1 upon the conflict between the testimony of Ms. Saucedo and the  
2 written document Exhibit 45.

3 Okay. Let's go to your case.

4 MS. HANKS: Your Honor, at this time we call  
5 Christopher Hardin.

6 THE COURT: Okay.

7 **CHRISTOPHER JOHN HARDIN**

8 [having been called as a witness and being first duly sworn,  
9 testified as follows:]

10 THE CLERK: Thank you. Please be seated.

11 Please state and spell your name for the record.

12 THE WITNESS: My name is Christopher John Hardin.  
13 That's spelled C-h-r-i-s-t-o-p-h-e-r. John, J-o-h-n. Hardin,  
14 H-a-r-d-i-n.

15 THE COURT: And, sir, you've heard me say about the  
16 masks and how it's hard to hear and everything. If you have  
17 any trouble, please let us know, and we'll be happy to speak up  
18 or rephrase. And again hopefully nobody will ask you too many  
19 times to repeat yourself.

20 THE WITNESS: Thank you.

21 THE COURT: All right. You may proceed.

22 **DIRECT EXAMINATION**

23 BY MS. HANKS:

24 Q Where are you currently employed?

25 A I am currently employed at SFR Investments or SFR

1 Investments Pool 1, LLC, for this courtroom.

2 Q And what is your position?

3 A I'm its manager.

4 Q How long have you been manager of SFR Investments  
5 Pool I, LLC?

6 A Since approximately October 2012.

7 Q Did you personally attend the August 28, 2000 (sic),  
8 association foreclosure sale held by a lessee for the Wolf  
9 Rivers Avenue property?

10 A Yes, I did.

11 Q Now, if you could just walk me a little bit through  
12 your general process prior to attending an association  
13 foreclosure sale. What type of research, if any, do you do  
14 into a particular property?

15 A I typically research -- I get information off of the  
16 recorder's site, which is very important for when you're doing  
17 any kind of foreclosure sale. I'll look at ForeclosureRadar,  
18 which is a private website that tracks foreclosures. I'll look  
19 at Nevada Legal News, their website, what they have posted.  
20 I'll look at sometimes the collection (indiscernible) will send  
21 me a list of what's going to sale. I'll look at that.  
22 Sometimes I'll look at the assessor site just to make sure that  
23 what I'm buying -- I know what I'm buying. I'm not buying -- I  
24 need to know if I'm buying a house or mobile home or a piece of  
25 land. So the assessor site will clarify that.

1 Q Okay.

2 A Sometimes it's hard to know the difference at the  
3 foreclosure sale.

4 Q Now, you indicated when you look at the recorder's  
5 site, do you, after looking at the recorder's site actually  
6 print off any documents listed, or is it possible to look at  
7 the documents at the recorder's site?

8 A It's possible to do it; however, there are so many  
9 sales going on it would be almost impossible to print off all  
10 the documents. You'd have to print off a thousand documents a  
11 week. So you simply look at the recorder's site and look for  
12 the titles of what's been done.

13 In the case of an HOA sale, you're looking for  
14 obviously the foreclosure recordings. You're looking for the  
15 bank liens, any other kind of liens. And to see the headline  
16 is enough to know what's going on with the property.

17 Q Is there a way though for Clark County when you see a  
18 header for a document to click on it and see it immediately?

19 A No. You have to either go down to county and pull it  
20 one by one or have a title company do it. And if you're  
21 looking at 200 properties going to sale a week, it's -- there's  
22 no possible way to pull all the documents.

23 Q Okay. Now, prior to the August 28th, 2013, sale in  
24 this case, did you have any knowledge that the homeowner  
25 Cristela Perez made any payments to her delinquent account?

1 A No.

2 Q If you -- would you have expected to see anything  
3 with respect to that on the recorder's website or any other  
4 thing that you were looking at prior to the sale?

5 A No. It's always been my belief the homeowner already  
6 can't make a payment. This was designed for the bank only.

7 To the extent that even if something was done, it  
8 should be noticed or recorded. You surely can't do something  
9 in secret.

10 Q Okay.

11 A So that's not the way foreclosures or any kind of  
12 property sales work.

13 Q When you say --

14 MR. MERRILL: I'm sorry. Ms. Hanks, I'm sorry.

15 If he could speak up a little bit, I'm just having a  
16 hard time hearing him.

17 THE COURT: Sir, use your outside voice, please.

18 THE WITNESS: Yes, ma'am.

19 MR. MERRILL: Sorry. Thank you.

20 THE COURT: Okay.

21 THE WITNESS: I'll speak up.

22 THE COURT: Yep.

23 BY MS. HANKS:

24 Q And did you indicate in your answer that during this  
25 time frame, and we'll just stick with the August 2013 time

1 frame since the sale was at the end of the month, that you  
2 didn't really even believe a homeowner could pay I think you  
3 said pay the superpriority? Did I hear you correctly?

4 A Yes. So it's always been my belief even today that a  
5 homeowner is really not supposed to pay the priority payment.  
6 It's designed for the bank. And we know that because I've been  
7 involved with the legislation -- legislator -- legislation  
8 every two years up at Carson City.

9 MR. MERRILL: Your Honor --

10 THE COURT: Sustained.

11 MR. MERRILL: Thank you.

12 THE COURT: Okay. Let's keep going.

13 THE WITNESS: Okay. So --

14 BY MS. HANKS:

15 Q I was going to ask you what led you to that belief in  
16 August 2013? Is that just something you believed, or did you  
17 have reason to believe that?

18 A Right. So my information came from I was at the  
19 legislative session.

20 MR. MERRILL: Your Honor. Objection.

21 THE COURT: Sustained.

22 MR. MERRILL: Thank you.

23 THE COURT: All right. We're not going to what he's  
24 listened about at legislative hearings.

25 MS. HANKS: No. No. No.

1 THE COURT: That's not part of what we're talking  
2 about.

3 MS. HANKS: Your Honor, if I could just be heard for  
4 a moment as to where I'm going with this.

5 THE COURT: Okay. Maybe you could ask your question  
6 differently.

7 MS. HANKS: Well, I'm just going to -- I'm not asking  
8 for --

9 THE COURT: Counsel, please ask your question  
10 differently.

11 BY MS. HANKS:

12 Q In any -- did you review the NRS 116 prior to  
13 attending these sales? Did you review the statute?

14 A Yes, I did.

15 Q Did you review the part where it talks about an  
16 association cannot judicially foreclose on its lien?

17 A Yes.

18 Q Did you see anything in that statute in 2013 that led  
19 you to believe a homeowner could pay the superpriority portion?

20 MR. MERRILL: Objection.

21 THE WITNESS: No.

22 MR. MERRILL: Relevance.

23 THE COURT: Overruled.

24 BY MS. HANKS:

25 Q Did you see anything in terms of legislative minutes

1 that suggested that a homeowner could pay the superpriority  
2 amount in 2013?

3 A (Indiscernible) has spoke opposite of that.

4 Q Now, during the time period of August 2013, did you  
5 even think a lien holder were making superpriority payments in  
6 2013, August?

7 A No. No bank was even hinting that they were. They  
8 were, in fact, making opposite arguments. So one would assume  
9 they were not making payments back then.

10 Q Now, by August of 2013, how many properties had SFR  
11 purchased at association foreclosure sales?

12 A Approximately 400.

13 Q Now, as a homeowner of approximately 400 properties,  
14 what was your understanding of whether an association could  
15 release account-specific information to third parties?

16 A HOAs would not release any information to bidders  
17 except for what was cried at the sale itself, which is very  
18 minimal.

19 Q And with respect to an HOA's collection agent, did  
20 you have an understanding of whether they could release account  
21 specific information to you as a third-party purchaser?

22 A They would not do so, no.

23 MS. HANKS: I have nothing further, Your Honor.

24 THE COURT: Mr. Ochoa?

25 MR. OCHOA: A couple of questions.

1 CROSS-EXAMINATION

2 BY MR. OCHOA:

3 Q When you attended the sale, was there an announcement  
4 made at the sale regarding superpriority?

5 A I don't recall, but I can tell you if there was I  
6 would not have bought it.

7 Q And prior to attending the sale, did you have  
8 communications with the HOA regarding the property at all?

9 A I don't recall on this case if I asked for a list or  
10 not. But if there's any communication with the HOA, it would  
11 only be for my collection company to get a list of properties  
12 on the sale, and that would be it.

13 MR. OCHOA: Okay. That's all.

14 THE COURT: Mr. Merrill.

15 CROSS-EXAMINATION

16 BY MR. MERRILL:

17 Q Mr. Hardin, if you could please take a look at --

18 THE COURT: You've got to look up if you want us to  
19 hear you.

20 MR. MERRILL: Sorry. I apologize, Your Honor.

21 BY MR. MERRILL:

22 Q I'm going to have you take a look at Exhibit 47,  
23 please.

24 A I have no exhibits in front of me.

25 Q Yeah. I'm pulling it up.



1           A     Oh, okay.

2           THE COURT:   Because we're not allowed to give you  
3 paper.

4           THE WITNESS:   I understand.   Thank you.

5 BY MR. MERRILL:

6           Q     Mr. Hardin, this is the notice of delinquent  
7 assessment lien; correct?

8           A     Yes.

9           Q     And this is a recorded document?

10          A     Yes.

11          Q     So when you did your research on the recorder's site,  
12 this document would have showed up; correct?

13          A     Yes.

14          Q     Exhibit 49, the notice of default and election to  
15 sell under homeowners association lien, this is January 5th,  
16 2009; correct?

17          A     Yes.

18          Q     And this would have also been in the recorder's  
19 information when you were looking at the titles of the  
20 documents; correct?

21          A     Yes.

22          Q     And again, back to 47, that was back in October  
23 of 2008; correct?

24          A     Yes.

25          Q     Okay.   Exhibit 53, it's a notice of trustee sale;

1 correct?

2 A Yes.

3 Q And this was in January 14 of 2010; correct?

4 A Yes.

5 Q This document also would have reflected on the  
6 recorder's website; correct?

7 A Yes.

8 Q So when you did your research, you would have seen  
9 this?

10 A Yes.

11 Q Exhibit 71, another notice of trustee sale; correct?

12 A Yes.

13 Q This was March 29, 2011; correct?

14 A Yes.

15 Q So this document also would have shown up in your  
16 research of the Clark County Recorder's website; right?

17 A Yes.

18 Q Exhibit 82, another notice of delinquent lien;  
19 correct?

20 A Yes.

21 Q This time from December 20, 2011; right?

22 A Yes.

23 Q And that also would have been listed in the county  
24 recorder's list of information; correct?

25 A Yes.

1 Q Exhibit 84, another notice of default. This time now  
2 we're up to February 28, 2012; correct?

3 A Yes.

4 Q And this document also would have shown when you did  
5 your research in the Clark County Recorder's website; right?

6 A Yes.

7 Q Exhibit 100. We have yet another notice of trustee  
8 sale dated October 31, 2012; correct?

9 A Yes.

10 Q And this document also would have shown up in the  
11 Clark County Recorder's list when you did your research;  
12 correct?

13 A Yes.

14 Q And Exhibit 114, we have another notice of trustee  
15 sale, this one July 31, 2013; correct?

16 A Yes.

17 Q And this also would have shown up in your research of  
18 the Clark County Recorder's website; right?

19 A Yes.

20 Q Okay. So looking at those multiple documents we  
21 looked at, I think there was four or five notices of trustee  
22 sale, two notices of default and two notices of delinquent  
23 assessment lien; correct?

24 A Yes.

25 Q Okay. And they spanned over a period of almost five

1 years; correct?

2 A I've lost track of the dates, but I'll take your  
3 word --

4 Q Okay. Well, we know the foreclosure was August 28,  
5 2013; correct?

6 A I see. It -- yes, five years.

7 Q Okay. So just sort of five years; correct?

8 A Yes. Yes.

9 Q But your testimony is that you wouldn't have -- you  
10 wouldn't have expected any payments by the homeowner during  
11 that time?

12 MS. HANKS: Objection. Misstates prior testimony.

13 THE COURT: Overruled.

14 THE WITNESS: That's not what I said.

15 BY MR. MERRILL:

16 Q Okay. So you expected the homeowner probably was  
17 making payments during that time; correct?

18 A That's not what I said.

19 Q Okay. Did you expect a homeowner to be making  
20 payments during that five year process?

21 A I wouldn't know if they would or wouldn't. It's not  
22 my concern at the foreclosure sale.

23 Q I see. Okay. So you wouldn't have -- you thought  
24 the association could have just waited around five years before  
25 it foreclosed?

1           A     They can do what they want. They have their own  
2 reasons.

3           Q     Okay. Did you ask in this case whether there was any  
4 superpriority amounts at the foreclosure?

5           A     We're not allowed to ask questions. No.

6           Q     SFR had a good relationship with Alessi & Koenig;  
7 right?

8           A     Well, we had a professional relationship.

9           Q     Okay.

10          A     I wouldn't call it good or bad, just professional.

11          Q     When you show up to the sale, you have to bring  
12 cashiers checks; correct?

13          A     Yes, you do. Yes.

14          Q     And you have to show that when you bid you have  
15 enough money in cashiers checks to pay for the property;  
16 correct?

17          A     Well, yes; however, after you -- after some period of  
18 time, once they got to know you and trust you, they would --  
19 they would give you a little bit of a cushion. They knew we  
20 were -- we had the money and we could afford to pay.

21          Q     Gotcha.

22          A     It was a trust issue.

23          Q     Okay. So after a while, SFR was trusted and didn't  
24 necessarily have to have cashiers checks at the sale; correct?

25          A     We always did as a matter of policy. But if you --

1 and by then we had bought hundreds of properties. So nobody is  
2 doubting we had the money.

3 Q So, but if I went in and they didn't know me, I would  
4 have to have the actual cashiers checks that showed the amount  
5 that I had what I was bidding on; correct?

6 A Yes.

7 Q And at the end of the sale, they would take those  
8 cashiers checks. And let's say I had a \$20,000 cashier check  
9 and the amount I bid and won was 15,000, they would still take  
10 it, and then they would refund me the difference; correct?

11 A Yes. However, I believe the way Alessi worked,  
12 they -- I think the sales were on Wednesdays, and they wanted  
13 you to pay by Friday for accounting reasons. That's what their  
14 policy, and it was fine; it worked.

15 Q Okay. But typically they would collect the money  
16 right then and there; right?

17 A No. I think everybody had till Friday to pay.

18 Q Oh. So everybody who did an Alessi one, Alessi just  
19 gave them days to pay?

20 A I think so, yeah.

21 Q All right. Okay. And that's what happened in this  
22 case; right? You didn't have to pay at the foreclosure sale,  
23 did you?

24 A Correct.

25 Q You, in fact, were allowed another day to come up

1 with the funds; correct?

2 A Not to come up with the funds. We had the money.  
3 But as long as we paid by Friday, noon, they were fine with it.

4 Q Okay. To tender the funds?

5 A Correct.

6 Q Okay. And again, you didn't have to have those  
7 cashiers checks with you because with Alessi there was a trust  
8 issue with you; right?

9 A Yes. I did have them on me at all times, but, yes.

10 MR. MERRILL: I've got nothing further, Your Honor.

11 THE COURT: Okay. Anything further, guys?

12 MS. HANKS: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. HANKS:

15 Q Going backwards so we can pick up where we left off,  
16 am I correct to understand that you brought a sufficient amount  
17 of cashiers check on the date of August 28th, 2013, to  
18 purchase the properties that you bid on?

19 A Yes. I always had a very large amount of cashiers  
20 checks on me.

21 Q And am I --

22 A The reason that you wait until Friday is so you can  
23 give them the exact amount so there's no refunds. Just an  
24 accounting issue.

25 Q That was going to be my next question.

1 I'm going to refer you to Exhibit 124. This is an  
2 email with George Bates. And do you see where they're  
3 indicating the fee? It says the amount for Wolf Rivers is  
4 21,000?

5 A Yes.

6 Q And then you see the tax is \$1,568.25. And then  
7 there's a fee for \$17.

8 A Yes.

9 Q What is that fee for \$17?

10 A That's the recording fee.

11 Q Okay. So am I correct to understand that you had a  
12 sufficient amount of cashiers check to qualify the bid on all  
13 the properties listed on this email for the day of the sale?

14 A Yes. I had them all in hand the day of the sale.

15 Q But afterwards, you would send an exact check for  
16 \$124,307.05 so that the fees for recording and the trustee's  
17 deed would be paid?

18 A Yes. So on that day we had 500,000 in cashiers  
19 checks on me and in \$20,000 increments each. But for  
20 accounting reasons, it's very difficult going by \$20,000 checks  
21 and then to give me a refund. So it's easier to come back a  
22 day later and give them the exact amount. So accounting for  
23 both sides is much easier.

24 Q Now, just to clarify, because there was some terms  
25 used, and I just want to make sure that the Judge understands.



1 We went through the various notices, and there was terms like  
2 you would have seen this document. Would you have seen the  
3 actual notice if you went to the recorder's website?

4 A No.

5 Q What would you have seen on the recorder's website?

6 A I would have seen the title of the document and the  
7 date it was recorded and the first and second parties to the  
8 document.

9 Q And that's true for all the notices that counsel went  
10 through with you for all those exhibits?

11 A Yes.

12 THE COURT: Sir, how many properties has SFR bought  
13 at HOA foreclosure sales over the years?

14 THE WITNESS: The total -- I would phrase it a little  
15 differently. We bought about 650 properties that have gone  
16 through HOA foreclosure sales. Some percentage of that we  
17 bought directly from HOAs.

18 THE COURT: I remember that agreement.

19 THE WITNESS: Yes.

20 THE COURT: Okay.

21 THE WITNESS: Which we bought -- (Indiscernible), but  
22 we do quite a bit actually, maybe, 70, 80.

23 THE COURT: Well, I remember a case involving that  
24 agreement.

25 THE WITNESS: Well, we have lots of those.

1 THE COURT: Yeah.

2 THE WITNESS: And it's good for the HOA because it  
3 helps them get rid of the property.

4 THE COURT: Yeah. Right.

5 THE WITNESS: So and then we buy other properties off  
6 of investors who had bought so that other investors can unload  
7 as well. So I would say we bought through three different  
8 doorways, one direct at foreclosure sales, one direct from  
9 HOAs; they're REO properties or reverted properties because  
10 they didn't want the properties and then others from investors.  
11 So the total number is about 650. I don't know if I can break  
12 it down at how many I bought at the HOA foreclosure sales.

13 THE COURT: That's all I want to know is how many you  
14 bought at the actual HOA foreclosures.

15 THE WITNESS: Oh.

16 THE COURT: Because, I mean, the name SFR is on  
17 hundreds of cases in this jurisdiction. You know that; right?

18 THE WITNESS: Sadly, yes.

19 THE COURT: Yeah. Yeah.

20 THE WITNESS: I don't know. Maybe 500.

21 THE COURT: Okay. The majority of the 600 something  
22 that you have bought?

23 THE WITNESS: Yes.

24 THE COURT: Thank you.

25 All right. Any more, guys?

1 Mr. Ochoa.

2 MR. OCHOA: Just a brief question.

3 RECROSS-EXAMINATION

4 BY MR. OCHOA:

5 Q Mr. Merrill seemed to make an issue of the fact that  
6 you were given time to pay the purchase price. Is it your  
7 understanding that your payment was guaranteed the date of the  
8 sale, that you were going to be required to make that payment?

9 A Oh, yeah. I have never reneged on a payment ever.

10 Q It wasn't a suggestion that you may purchase the  
11 property in the future; right?

12 A I don't understand the question. Repeat it.

13 Q It wasn't a suggestion that you may purchase the  
14 property in the future. You thought your payment was  
15 guaranteed, and you purchased the property at the date of the  
16 sale; correct?

17 A Oh, yeah. When I bid and I win, I absolutely am  
18 bound to pay, period. I -- it's a guaranteed payment.

19 Q Okay.

20 A Yes.

21 MR. OCHOA: That's all, Your Honor.

22 THE COURT: Mr. Merrill, anything else?

23 MR. MERRILL: No, Your Honor.

24 THE COURT: Ms. Hanks, anything else?

25 MS. HANKS: No.

1 THE COURT: All right. Thank you, sir. You can  
2 return to your table.

3 THE WITNESS: Thank you.

4 THE COURT: Your next witness.

5 MS. HANKS: That's -- Your Honor, SFR rests.

6 THE COURT: Before you tell me that, we went through  
7 earlier with Mr. Merrill the exhibits that were not admitted.  
8 Did you have any additional exhibits that you want admitted?  
9 We did mark D1, which was your demonstrative for the 52(c)  
10 motion. And as you all know, we marked earlier 145 that was  
11 used to refresh the recollection of the witness.

12 MS. HANKS: Yeah. I don't have any additional  
13 exhibits, Your Honor.

14 THE COURT: Okay. So?

15 MS. HANKS: SFR rests their case.

16 THE COURT: All right. Now I'm at Wyeth.

17 MR. OCHOA: We have no further witnesses, Your Honor.  
18 We rest.

19 THE COURT: So you have no further evidence to  
20 present at this time?

21 MR. OCHOA: No, Your Honor.

22 THE COURT: Mr. Merrill, do you have a rebuttal case?

23 MR. MERRILL: No, Your Honor.

24 THE COURT: All right. So the evidence is closed.  
25 Do you want a few minutes to prep your thoughts, or are you

1 ready to argue?

2 MR. MERRILL: A few minutes to prep my thoughts would  
3 be great, Your Honor.

4 THE COURT: All right. We'll take a 10-minute break,  
5 and then we'll come back to do closing arguments.

6 It's 3:30. We'll be back at 3:45. And then you guys  
7 can get your arguments done by 4:30 and be out of here.

8 MR. MERRILL: Perfect, Your Honor. Thank you.

9 THE COURT: Right?

10 MS. HANKS: Oh, yes.

11 MR. MERRILL: Yes.

12 THE COURT: Okay. Because I'm breaking at 4:45 even  
13 if you're not done.

14 (Proceedings recessed at 3:28 p.m., until 3:31 p.m.)

15 (Pause in the proceedings.)

16

17 THE COURT: All right. Mr. Merrill, are you ready?

18 MR. MERRILL: I am, Your Honor.

19 THE COURT: All right. Are you using a PowerPoint?

20 MR. MERRILL: No, Your Honor.

21 THE COURT: Okay. Remember to use your outside voice  
22 and look up when you're talking as opposed to looking down.

23 MR. MERRILL: Okay.

24 **CLOSING ARGUMENT FOR THE PLAINTIFF**

25 MR. MERRILL: Your Honor, we know that the notice of

1 lien in this case was done on October 8th, 2008. We also know  
2 that the superpriority portion of that lien was six months  
3 before that time. So there would be two charges within that  
4 time. That would be July 1 and October 1 of 2008. Each of  
5 those charges was \$420. So the total superpriority lien that  
6 existed in this case was \$840.

7           After the action to enforce the lien, Ms. Perez did  
8 not walk away from the property. She tried to stay in it. And  
9 she paid \$3,390 to Wyeth Ranch or to Alessi & Koenig for her  
10 association dues. That left -- when Alessi & Koenig took that  
11 money, they then took out -- the firstfruits of their payments  
12 went to collection costs. They had a separate account for  
13 collection costs. They took out money for collection costs,  
14 and that was \$1,008.25, which left \$2,381.75 going to Wyeth  
15 Ranch.

16           The only credible evidence here, Your Honor, shows  
17 that the payments were applied to the oldest association dues  
18 first and then the next oldest association dues. They did not  
19 apply payments to late fees. They did not apply payments to  
20 interest. They applied it to the oldest dues and then the next  
21 oldest dues. And that's exactly what Exhibit 45 shows us.

22           Now, Ms. Saucedo comes in and asked the Court to  
23 ignore Exhibit 45. She testifies completely contrary to what  
24 Exhibit 45 shows. And Exhibit 45 comes from their very own  
25 computer system. And she says, Well, that's not the way it's

1 done. But their document shows, yes, that is the way it's  
2 done.

3 Her testimony conflicts with the payment plan. The  
4 payment plan that was entered into did not call for the  
5 firstfruits to go to the current quarter's association dues.  
6 It broke it down by month. So the payment plan contradicts her  
7 testimony. Exhibit 45 contradicts her testimony.

8 And, remarkably, she says, Well, I didn't even go  
9 look. I didn't even go look and see if I could run this  
10 report, but I don't think I can. This report from their  
11 computer system is, I mean, it shows how payments are applied.  
12 The ledgers that they have don't show how payments were  
13 applied. It showed payments coming in and charges going out,  
14 and that's it. So we have one running account in that  
15 situation.

16 But Exhibit 45, again, contradicts her testimony and  
17 shows exactly how payments were applied.

18 Exhibit 45 is also consistent with what actually  
19 happened in this case. And what happened in this case was on  
20 at the date of the foreclosure the entire assessment lien was  
21 paid off from the foreclosure proceeds. That could only have  
22 happened if it was a subpriority foreclosure. And there is a  
23 presumption that the law was followed. The law could only have  
24 been followed if it was a subpriority foreclosure, meaning the  
25 superpriority portions was already paid off, as Exhibit 45

1 would show.

2           There's also a presumption that money paid is owed.  
3 That money was only owed to Wyeth Ranch if it foreclosed as a  
4 subpriority lien, which is what happened.

5           So under *Cranesville*, the first thing the Court looks  
6 at is was there a direction of payment by the debtor, by Perez,  
7 by the homeowner? There is not in this case. The testimony on  
8 that has been consistent.

9           Then the Court looks at, well, was there an  
10 application of payments by the homeowners association? What  
11 was it applied to? We know that a certain amount was applied  
12 to Alessi & Koenig's collection account, about \$1,008. That's  
13 not disputed. We know that none of the money was applied to  
14 the fines, the fine account. That's not disputed. So we know  
15 that the money was applied all to the assessment account.

16           So under *Cranesville* and under the *Able Electric*  
17 case, which *Cranesville* cites, there's kind of two situations  
18 happening here, which is on one circumstance you have a  
19 situation where you maybe have two notes or two deeds of trust,  
20 to separate debts, and a payment is made, and there's no  
21 specific application. And the Court has to take testimony on  
22 that and consider that. That's not what we have here. We know  
23 it was all applied to one running account, and the running  
24 account was the assessment account.

25           Now, under Exhibit 45, if they applied it



1 consistently there, it was applied to the oldest amounts first  
2 and then the next oldest HOA dues. So that would be \$2,381.75  
3 payment would have more than satisfied the \$840 superpriority  
4 lien, and the foreclosure was a subpriority foreclosure.

5 But because of the conflicting evidence, let's assume  
6 that the Court cannot determine exactly how Wyeth Ranch applied  
7 these payments. In that case, then the Court has to be guided  
8 by what the Supreme Court said: Basic principles of justice  
9 and equity so that a fair result can be achieved. And the  
10 Court said that may depend upon whether this is a running  
11 account or whether these are two separate accounts. Well, this  
12 was a running account. The assessment account, all payments to  
13 Wyeth Ranch went to this assessment account. And under the  
14 law, when you have a running account, the payments are applied  
15 to the oldest amount first, the oldest debts first.

16 And in this situation, even if the Court includes the  
17 late fees and the interest, which under their documentation  
18 show were not -- the payments were never applied to that. They  
19 were applied to association dues in the order they were  
20 received. But even if the Court says I'm going to apply them  
21 in order and include in that order the late fees and interest,  
22 that total amount is one -- and in the notice of default was  
23 \$1,425. Again, \$2,200 was paid. So that would have wiped out  
24 everything before October of 2008, which includes the  
25 superpriority portion of the lien. And that conclusion would

1 be consistent with the interests of justice and equity.

2 If the Court concludes that Wyeth Ranch foreclosed  
3 upon a superpriority lien, that the amounts were not paid, then  
4 Wyeth Ranch owes Marchai \$9,839.12, plus interest, costs and  
5 potentially attorneys' fees.

6 Perez, who did not abandon the property but for five  
7 years struggled to pay Wyeth Ranch, she would not receive the  
8 benefit of having any deficiency reduced by the fair market  
9 value. She would be responsible for the entire debt. And SFR,  
10 who paid a mere \$21,000 for its interest in a piece of property  
11 that's worth -- that was worth in 2013, almost eight years ago,  
12 \$360,000 and has had the right and the ability to collect rent  
13 on that property for the last seven years, they would have an  
14 incredible windfall, and that would not be just, and that would  
15 not be equitable; whereas if the Court concludes Perez's  
16 payments did satisfy the superpriority portion of the lien,  
17 then Wyeth Ranch would walk out with no liability. Perez would  
18 be subject to liability only for the deficiency, and SFR  
19 wouldn't receive the windfall but would have still had  
20 collected the rent for the last seven years.

21 Your Honor, after they argue, will I get another  
22 chance to come up?

23 THE COURT: (No audible response.)

24 MR. MERRILL: Okay. Then they are going to make an  
25 argument, but I'll wait until they do that.

1 THE COURT: All right.

2 MR. MERRILL: Thank you, Your Honor.

3 THE COURT: Who's next?

4 **CLOSING ARGUMENT FOR SFR INVESTMENTS POOL 1, LLC**

5 MS. HANKS: I want to address first the argument that  
6 it's a six-month superpriority. That doesn't help Marchai at  
7 all. I put the line right here. That takes out the only  
8 portion that the April 16, 2018, it went to. That leaves the  
9 superpriority amount still at \$840 because July, August,  
10 September, October, November, December is the six-month  
11 superpriority portion, \$840. So it looks like that's a point  
12 that we agreed on when it was incurred, and it includes that.  
13 That's the net based on the date of the notice of delinquent  
14 assessment lien of October 8th, 2008. So it changes nothing.

15 Now, what Mr. Merrill wants you to do though is  
16 ignore, without any basis to do it, Ms. Saucedo's testimony  
17 because he has an exhibit of a statement that was printed by we  
18 don't know who; we don't know why. We don't even know what  
19 information was put in to get it printed out. All we know is  
20 that someone did something in September of 2008.

21 And we know from Ms. Saucedo that she said --

22 THE COURT: And we know what happened about that  
23 time; right? We sent the file -- someone sent the file to  
24 Alessi & Koenig.

25 MS. HANKS: Yeah, we do know that Alessi & Koenig,

1 yes.

2 THE COURT: I mean, we know what happened.

3 MS. HANKS: Well, I don't know that though, Your  
4 Honor.

5 THE COURT: Yeah. Okay.

6 MS. HANKS: I think you can't really presume that.  
7 You see that there's a --

8 THE COURT: I can draw a reasonable inference of  
9 that. Yes.

10 MS. HANKS: Yes. Sure you could, but we still don't  
11 know that that is what actually was sent to Alessi & Koenig.  
12 We don't know -- we don't have Alessi & Koenig's file here to  
13 cross reference that that's the statement they operated off of.  
14 We don't know if they asked for an updated one. We just don't  
15 know. So I would be cautious to make huge assumptions about  
16 that.

17 What we don't know though is why it was -- who was  
18 printing it and what actual report they told the system to  
19 print. She said there's hundreds of reports you can get that  
20 system to print.

21 Well, what I really want to highlight though is that  
22 we're focusing on what a system does versus what the  
23 association testified they do, and that's what you can't do.

24 Mr. Merrill wants you to say you have to rely on what  
25 a computer system did on one report that was printed,

1 Exhibit 45 and use that as the policy, despite Ms. Saucedo  
2 testifying otherwise. And there's just no basis in the  
3 *Cranesville* decision or any decision that I'm aware of that  
4 would let you do that, to say take a --

5 THE COURT: Absolutely there is, Counsel. Don't you  
6 think the factfinder is allowed to assess the credibility of  
7 the witness and compare it to the documents that are admitted  
8 in the trial?

9 MS. HANKS: That's not what Mr. Merrill is asking you  
10 to do.

11 THE COURT: Okay.

12 MS. HANKS: That's what I'm arguing. He's arguing  
13 take a report that was printed of the many reports that can be  
14 printed and take what the computer system automatically does  
15 because that's what the computer system does. It does that,  
16 which he even said, defaults to paying the latest amount.  
17 Because the application has to be applied somewhere in a  
18 computer system on, like, an XL spreadsheet. But that is  
19 different than what the association testified their intent was  
20 with the application, and that's what *Cranesville* tells you to  
21 look at. So I'm saying, no, it's not a matter of credibility.  
22 It's a matter of he's asking you to use the system default that  
23 we see on one report and supplant it with all the testimony you  
24 saw about the HOA's policies and procedures with all the other  
25 payments, and we only see that report for -- it only

1 encompasses one payment.

2 I specifically asked Ms. Saucedo is there any way  
3 where you could print a report that would be contrary to what  
4 you're testifying to, and she said no because we manually do  
5 it. We're the ones who decide on how it's applied. It's not  
6 the system. So that's why I'm asking that -- he's asking you  
7 to supplant it, and there's no basis. It doesn't make what  
8 she's saying unbelievable.

9 The payment plan is irrelevant in the sense that it  
10 was never entered into. And what an association can decide to  
11 do with a homeowner in terms of deciding what they'll take as a  
12 minimum payment, how much it will apply, how long it will take  
13 that in particular homeowner to pay their balance to zero still  
14 doesn't change the fact that the policy, according to  
15 Ms. Saucedo, was to pay the most current delinquency so that  
16 additional interest and late fees wouldn't accrue and then pay  
17 any older balance.

18 Now, with respect to distribution -- well, with  
19 respect to that, as we take her testimony, we know that none of  
20 the payment from April 16, 2008, would hit what we now concede  
21 or I guess don't dispute is the superpriority amount. They  
22 have \$840 that spans July through December of 2008. No  
23 payments whatsoever touched that balance at any time prior to  
24 the sale because the April 16th, 2008, payment resolved the  
25 April 1st, 2008, quarterly assessment. And then any of the

1 next payment in 2010 of March 2nd, 2010, only went to --  
2 there was in excess to go to an older balance in January, which  
3 apparently Mr. Merrill agrees would not be the superpriority.

4 And so the other argument that Mr. Merrill argues --  
5 or that argues with respect to distribution, and I have to  
6 highlight this because it seems that we have a fundamental  
7 disagreement. If you go to NRS 116.31164, it explains the  
8 order of payment for the lien. And I don't fault Mr. Merrill,  
9 but I know banks try to argue this, and it might just be  
10 because of how we think about this lien.

11 It is not two liens, and that's the fundamental  
12 problem with Mr. Merrill's argument. It is not a superpriority  
13 lien and a subpriority lien. It is one lien. It has  
14 components to it. It is split when we're talking about that  
15 superpriority mechanism that makes it superior to a first deed  
16 of trust, but that does not make the association have two  
17 separate liens.

18 And it's important to understand that fundamental  
19 problem with his argument because when we see the distribution  
20 under 31164, it's paid as follows. You pay the reasonable  
21 expenses of sale, the reasonable expenses of securing  
22 possession of the property before sale and then satisfaction of  
23 the association's lien. That's what you satisfy, the entirety  
24 of the lien. You do not satisfy only the superpriority  
25 portion. You do not satisfy then the junior liens. You

1 satisfy the entirety of the lien.

2           Mr. Merrill would have you completely rewrite 3164  
3 (sic) to say reasonable expenses of sale, reasonable expenses  
4 of securing possession, satisfaction of the superpriority  
5 portion, satisfaction to junior liens, and then I guess  
6 satisfaction of subpriority portion, and then if there's any  
7 remainder, remittance of the excess to the unit owner. You  
8 cannot rewrite 31164. It does not say that.

9           It says, number three, after expenses and possession  
10 expenses are satisfied, it's then satisfaction of the  
11 association lien. That's exactly what Alessi & Koenig did here  
12 when they remitted the check for the 10,000-odd amount to the  
13 association to satisfy the full lien. Only then, if there is  
14 excess, will a junior lien, like Marchai, because it was wiped  
15 out by the superpriority amount still being included in the  
16 lien at the time of the sale, would they ever get any amounts.

17           Now, with respect to 30164, another thing you have to  
18 take into mind is that 116.311669, and mind you, Your Honor --  
19 forgive me, I'm citing the 2013 version of the statute. 2015 I  
20 did not check to see if the Subsection 9 is still Subsection 9,  
21 but it does provide that, quote, the receipt for the purchase  
22 money contained in such a deed is sufficient to discharge the  
23 purchaser from obligation to see the proper application of the  
24 purchase money.

25           Now, the association applied the money correctly



1 under 30164 and its agent Alessi. It did. But even if it  
2 didn't, even if there was some problem with the application,  
3 that does not inure to the detriment of SFR, the purchaser.  
4 Once they pay the money, they are absolved under the statute  
5 from any responsibility as to how that money is distributed.

6 And most definitely how that money is distributed  
7 does not change the effect of the sale. There is nothing in  
8 the statute of 116 that would suggest that payment of the  
9 association's full lien somehow changed the effect of the sale.  
10 They did it exactly like they were supposed to do.

11 So that leaves us with Mr. Merrill's argument of  
12 equity that somehow you should get to equity because you don't  
13 have sufficient testimony to determine how the association  
14 meant to apply the funds. Obviously we disagree. I don't  
15 think there's any basis on a partial statement that was printed  
16 from a system to then negate everything Ms. Saucedo testified  
17 to. In fact, now that we look at the distribution statute, she  
18 has no reason to testify differently. There's nothing driving  
19 testimony and to suggest it was applied any way besides the  
20 policy because there's no harm to the association whether there  
21 was a superpriority sale or a subpriority sale. We know that  
22 how the Supreme Court has decided these cases. So there's  
23 nothing even driving her to change something when she knows  
24 that that's always been the policy.

25 And contrary to Mr. Merrill, I believe you do have

1 documentary evidence that supports it because those collection  
2 policies, while they don't explicitly state we will apply your  
3 payment to the most current delinquency and then any remainder  
4 to any older debt, they do discuss cash flow is the reason  
5 behind collections. We're going to assess your account with a  
6 late fee after 30 days, and you're going to have interest on an  
7 unpaid balance. And Ms. Saucedo confirmed those two points of  
8 the interest in the late fees. That is one of the driving  
9 forces behind paying the most current delinquency.

10 She even gave an example of I think a lot of times we  
11 might get a little bit jaded in a lot of these cases because in  
12 all the cases we're doing, at least I think Mr. Merrill and  
13 myself, we have accounts that have a lot of years of  
14 delinquency. But Ms. Saucedo gave a perfect example of where  
15 we might not even be dealing with a homeowner that is  
16 delinquent for several years. It may be simply the payment was  
17 mailed, not received by the association. If I get another  
18 payment the next month, I'm going to apply it to the most  
19 current. Because if I didn't for this mistake that happened  
20 that maybe we don't get aware of until a couple of months down  
21 the road, the homeowner in the meantime has had racked up  
22 interest and late fees. So she gave a prime example as to why  
23 the policy would be supported even in the context where we  
24 don't have a homeowner going delinquent month after month after  
25 month.

1           So, but even if you thought that there wasn't enough  
2 testimony before you to know how the association applied the  
3 payments, which I think there is, and that means you don't get  
4 to equity under *Cranesville*, Mr. Merrill again confuses the  
5 equity balancing. *Cranesville* makes it very clear the equity  
6 balancing is not between the bank and the association. It's  
7 not between the bank and the homeowner, and it's not even  
8 between SFR and the bank. It's between the association as  
9 creditor and the homeowner as debtor. That's the only two  
10 equities that you're weighing.

11           And we know the only party that testified here today  
12 was the association about their policy of how to apply the  
13 payments, and they had a policy to do it for cash flow, late  
14 fees against the homeowner and interest. Their policy was  
15 actually to favor the homeowner, but they did not want the  
16 homeowner to get so far behind and always be in a phase where  
17 they could never catch up, but if they always apply the payment  
18 to the oldest balance, you would always have a current  
19 delinquency, current late fees and interest accruing and  
20 mounting on a continuing mounting balance. And we know from at  
21 least the 2012 policy the interest increased quite considerably  
22 from 1 percent to 5.8 percent.

23           THE COURT: From eleven, twenty-nine, to a lot  
24 higher.

25           MS. HANKS: Right. So that's even more reason why we

1 look at the equities. It was more equitable and favorable for  
2 a homeowner to have any of their partial payments applied to  
3 more current delinquencies as opposed to older, particularly  
4 when we have a homeowner like Ms. Perez, which unfortunately  
5 obviously had some problems paying her assessments for a long  
6 period of time. This is not someone who fell behind for a  
7 couple of months, association raced to foreclosure. I think we  
8 can tell and we can infer from all the notices and all the  
9 payment plans and the communications that they were trying to  
10 work with the homeowner, but it just didn't come to fruition.

11 So they waited a very long time before they finally  
12 foreclosed on this property, and at five years of delinquencies  
13 racking up in the account. So the equity to her, the  
14 homeowner, is there about the policy, but even so, the  
15 *Cranesville* decision, and this is at page 81 of the decision in  
16 the *Able Electric*:

17 This Court determined that, quote,  
18 "equity and justice would be best served by a  
19 disposition that is most favorable to the  
20 creditor at the time the appropriation is  
21 made."

22 The creditor is the association. You don't even have  
23 to concern yourself of what would be fair to Marchai, what  
24 would be fair to SFR or what would be even fair to Ms. Perez,  
25 although I believe the association's policy does favor

1 Ms. Perez.

2           *Cranesville* tells you it's what would favor the  
3 creditor, and Ms. Saucedo is the only person you've heard from  
4 that indicated the long-held policy was to apply it to the most  
5 current delinquency and then any older debt.

6           THE COURT: Are you done? Because I don't want to  
7 interrupt you.

8           MS. HANKS: I have one more point to make, Your  
9 Honor.

10           THE COURT: Go.

11           MS. HANKS: And then I'll be punished. But if you  
12 want to interrupt me on that point.

13           THE COURT: No, no. It's okay. Go.

14           MS. HANKS: Finally, Your Honor, we do have a little  
15 bit I would say of something you might not have heard recently  
16 since we have been off for quite a time, some time with COVID,  
17 but we have the issue of bona fide purchaser status of SFR, and  
18 I understand that *Diamond Spur* says where there is a tender  
19 it's considered a void sale, and the status of bona fide  
20 purchaser is irrelevant.

21           The problem with that decision, Your Honor, or at  
22 least in my mind, it has a limited application. And the  
23 limited application is to sales occurring before July 1st,  
24 2013. And the reason for that is explained in our trial brief.  
25 I won't belabor it because the trial brief does explain it.

1 Because the legislature made a conscious decision to codify  
2 bona fide purchaser status. It's been recognized in Nevada for  
3 150 plus years. It's not a novel concept.

4 But in 2013 there were people from the title  
5 companies that were generally concerned about this long-held  
6 principle not really applying like it should, and they wanted  
7 to strengthen it. And in so doing they said, well, if we  
8 codify it, if we put this definition in the statute, we don't  
9 have this problem of only a few of the statutes, such as NRS  
10 111.325 discussing it. It'll be an overarching cloak of all  
11 real estate transactions.

12 And that where you have a bona fide purchaser the  
13 legislative minutes make it very clear. They should be  
14 insulated from any challenge to a foreclosure sale. The idea  
15 is for their sales to be final and that the BFP should not be  
16 marred in litigation or even threat of losing their title.

17 This sale occurred on August 28th, 2013, which is  
18 after NRS 111.1801 became effective, and we would submit that  
19 *Diamond Spur* in that regard would have a limited application  
20 and that it would not apply here because the legislative  
21 minutes make it very clear there is no distinction between void  
22 or voidable. Bona fide purchaser status is a status that  
23 applies whole cloth to every foreclosure transaction and any  
24 real estate transaction, frankly, and it does not matter. And,  
25 in fact, we know that even from Subsection 2 that insulates a

1 BFP in the instances of fraud. Certainly if a BFP is insulated  
2 if someone committed fraud, it is not out of the realm of  
3 possibility that a BFP would be insulated from homeowners  
4 paying payments over time and a bank coming in 2021 and trying  
5 to claim that somehow it benefited them.

6 *So our argument, Your Honor, is you have enough*  
7 *testimony before you to show under Cranesville that the*  
8 *association applied the payments in a way that never, because*  
9 *we are agreeing that it's a six-month superpriority, none of*  
10 *the payments ever touched the superpriority amount of \$840.*

11 Nevertheless, the equity also shows that it favors  
12 the association, and it happens to favor the homeowner for that  
13 type of application.

14 But finally, even if you do find a homeowner tender  
15 in this case, *Diamond Spur* has limited application, and SFR is  
16 a bona fide purchaser. They had no notice that the homeowner  
17 made any payments. They couldn't have even inquired as to a  
18 homeowners making payments because the association testified we  
19 don't release that account specific information. And there is  
20 no question they paid value because the case law in Nevada has  
21 said value does not mean equivalent value or market value. It  
22 means not free, and SFR bid and paid \$21,000 for the property.  
23 There being no dispute that SFR is a bona fide purchaser, it  
24 would override any issue of a homeowner payment.

25 With that, Your Honor, I have no --

1 THE COURT: So before you leave, I've got a question.

2 MS. HANKS: Sure.

3 THE COURT: So I am troubled by the testimony we had  
4 from Ms. Saucedo because of Exhibit 45. And let me see if I  
5 can get you to address the issue with me because I want to give  
6 you that opportunity.

7 She said that she -- because we know she was not  
8 employed there at the time. She knows what she knows from  
9 auditing files. In my mind, the testimony she gave me means  
10 that Exhibit 45 is how the payments were always applied, but  
11 then they would go through, and to be fair to the homeowner,  
12 redate them and reallocate them and write off certain late fees  
13 and interest as a result of that. That is the information I  
14 pulled from her after trying to ask for those questions, and  
15 since that is an inference I am drawing from her testimony and  
16 the way she explained the audits that she went through and  
17 that's how she got her information, I want you to have an  
18 opportunity to address it. Because *Cranesville* says I'm  
19 supposed to look at it at the time the payments were made, not  
20 when an audit is made and people make adjustments several years  
21 later.

22 MS. HANKS: Right. But here's where I -- this is  
23 where I think the difference is, and maybe I'm not explaining  
24 it right. My understanding from Ms. Saucedo's testimony is  
25 that whatever report, because that's the problem. We don't



1 know what report was run. But the system is always going to do  
2 that; right? The system has to take a payment, and it has a  
3 running account balance. It can't apply it any other way to  
4 the balance as a whole. That's the functional limitations of a  
5 computer system. That's where I think Mr. Merrill is trying to  
6 go.

7           Where do you -- why would you have any need to just  
8 rely on what a computer system did with a report that was  
9 printed versus what the association is saying this is how we  
10 apply it. In other words, she could have printed a report in  
11 2013, and if there -- and she just wanted to print a report  
12 that just showed a running balance and just payment, it's  
13 always going to do that because that's the limitations of the  
14 actual computer system. That's not the same as what the HOA  
15 intended to do or does or wants to do. That's where I'm seeing  
16 the disconnect.

17           And I don't think *Cranesville* requires you to defer  
18 to a computer system because someone so happened to print out a  
19 partial report on a specific day.

20           I also don't think Ms. Saucedo is doing it after the  
21 fact. This ledger was printed on 2015, Exhibit 138.

22           THE COURT: The second one.

23           MR. MERRILL: That was a full because that's the --

24           THE COURT: Yeah, the full one.

25           MS. HANKS: Right. Because we're printing it after

1 the sale; right? And we're printing it probably in response to  
2 a subpoena for records while we were in discovery. So --

3 THE COURT: It has a print date of October 16, 2015.

4 MS. HANKS: 2015. Right. So I don't know what the  
5 reason for that print date is. I'm surmising based on the fact  
6 that the sale was August 28, 2013, we were probably in  
7 litigation then. I know the first case was filed in 2013. So  
8 I can only imagine it was printed in 2015 in response to, hey,  
9 give us your ledgers.

10 Regardless, the point is though what is preventing  
11 Ms. Saucedo from printing that on August 28th, 2013, and  
12 saying this is the same ledger you would see. You're going to  
13 see partial payments coming in, but this is how we applied  
14 them.

15 But he wants you to supplant one report that someone  
16 chose to run -- it's not even the report she would choose to  
17 run -- and say because the system did that, and I have no idea  
18 why a person -- why they printed that report that way or what  
19 the purpose of it was. Maybe that's the point, that I should  
20 take the system, what a computer system naturally does, and I  
21 can't force it to do anything else and ignore what my intent  
22 was and how we would do it. And so that's where I see the  
23 difference.

24 She didn't testify this is the policy we do after the  
25 fact. She said this is the policy of when these payments came

1 in at the time. That's what she said. She didn't say we did  
2 this in 2015. She's not saying we do this to benefit the  
3 homeowner after the fact.

4 When she was talking about my missing out late fees,  
5 she was talking about the payment plan. Because the payment is  
6 so late under the payment plan because they're breaking up the  
7 quarterly assessments into monthly assessments. So what she  
8 was saying was we build it in that way, and we say, as long as  
9 you are consistent with the payment plan at the end of that  
10 payment plan, then we'll waive those late fees. Don't confuse  
11 that with now we're changing how we apply payments. Those are  
12 two different discussions she was having.

13 The thing is the system is still going to keep on  
14 running those late fees because the homeowner is late. So they  
15 don't want to lose that in case the homeowner defaults on the  
16 payment plan, or like here never actually enters into the  
17 payment plan. So now they have all those late fees running.  
18 So that's different than, oh, I changed it. So she never  
19 testified that Exhibit 45 was a reflection of how they always  
20 do it, and now I'm just testifying about how we changed it.  
21 That's how I understood your question of what you might think  
22 she would be saying. She did not say that. She merely said  
23 this is just one report of a hundred you can run from the  
24 system, and it's the limitations of the computer system itself.  
25 I can't make it show the payments being applied the way we do

1 it.

2 What she did testify to is that that's always how  
3 she's understood it's been done. She has never done an audit  
4 where she said anything different.

5 Being able to minus out late fees and interest,  
6 that's one thing. But she never said, yes, it's done this way  
7 normally, but then we adjust it. No, she said the system  
8 doesn't apply the payments. We can't make the system do it.  
9 It just keeps the balance, shows the payment. We're the ones  
10 that apply it. That's what she testified to. So I don't think  
11 there's anything inconsistent there, Your Honor.

12 THE COURT: Okay. Thank you.

13 Mr. Ochoa.

14 **CLOSING ARGUMENT FOR WYETH RANCH**

15 MR. OCHOA: From the HOA's perspective, this was an  
16 unremarkable sale, Your Honor, unremarkable except for maybe  
17 that it took from 2008 to 2013 to actually foreclose on the  
18 property.

19 This case was remanded for the limited issue of  
20 applying the partial payments. It wasn't remanded for  
21 unfairness of whether the lender or their services needed more  
22 time from 2008 to 2013 to make a tender themselves. It wasn't  
23 remanded for whether or not they received notice. They did.  
24 It was remanded on the partial payments.

25 The *Cranesville* case lays out the Court's analysis on

1 those partial payments. There's no legal requirement for the  
2 HOA to apply payments to the oldest balance first, right. The  
3 HOA's witness explained how the HOA applied those payments.

4 Despite the unremarkable sale and the limited issue  
5 on remand, plaintiff has included the HOA in this trial  
6 requesting alternative damages in hundreds of thousands of  
7 dollars.

8 On plaintiff's first claim for wrongful foreclosure,  
9 the key issue is whether or not there was a delinquency at the  
10 time of the foreclosure sale. It's undisputed that there was a  
11 delinquency on when the HOA foreclosed.

12 The plaintiff has argued that a wrongful foreclosure  
13 could be if the HOA foreclosed on a superpriority amount when  
14 there was none; however, that argument is illogical. If it  
15 wasn't there, they didn't foreclose on it. The argument  
16 assumes that prior to the sale or at the time of the sale that  
17 the HOA declared that it was superpriority, and the testimony  
18 from both SFR's witness and the HOA's witness was that there  
19 was no announcement at the sale. The HOA didn't declare for  
20 sure that it was superpriority. So whether it was super or  
21 subpriority, the HOA could foreclose on that delinquency. It  
22 wasn't a wrongful foreclosure.

23 The plaintiff's next claim is for breach of good  
24 faith. Good faith from the statute doesn't create extra  
25 statutory duties to the HOA. The statutory duties that are

1 required of the HOA listed in that statute include noticing the  
2 sale, and it's been established that all those notices were  
3 sent.

4 There isn't a separate legal requirement in the  
5 statute that the HOA applied payments a certain way. So the  
6 HOA's actions is however they applied the payments, is not a  
7 violation of good faith.

8 Plaintiff's third and final remaining claim against  
9 the HOA is for tortious interference of contract. Plaintiff  
10 argues that the foreclosure sale interfered with their deed of  
11 trust if, in fact, it was extinguished. By law, plaintiff  
12 can't contract around NRS 116. NRS 116 allows for a  
13 superpriority foreclosure. So the HOA conducting an NRS 116  
14 foreclosure that allows for the extinguishment of a deed of  
15 trust cannot be a tortious interference of contract, and the  
16 Nevada Supreme Court has already said the same.

17 Plaintiff's alternative claims for hundreds of  
18 thousands of dollars against the HOA fail, Your Honor.

19 Thank you.

20 THE COURT: Thank you.

21 Mr. Merrill, do you want to wrap up?

22 MR. MERRILL: Yes. Thank you, Your Honor, I'll try  
23 to be brief.

24 **REBUTTAL ARGUMENT FOR THE PLAINTIFF**

25 MR. MERRILL: Addressing Ms. Hanks' argument,

1 Ms. Hanks said, well, you know, the difference between the six  
2 months and the nine months doesn't really help Marchai. Well,  
3 that's true, that the amount is still \$840, but I felt it was  
4 important to be accurate to the Court and make sure that the  
5 Court had the correct information. So that's why I did raise  
6 that issue.

7 And, you know, Ms. Hanks said with respect to  
8 Exhibit 45, and Your Honor clearly picked up on this, well, we  
9 don't know who prepared this. We don't know why it was  
10 prepared. Well, we do know who prepared it. It was prepared  
11 by CAMCO, and they prepared it in a connection with the notice  
12 of default -- the notice of delinquent lien. I'm sorry. The  
13 notice of delinquent lien.

14 THE COURT: NODA. NODA.

15 MR. MERRILL: Yeah. Which is what gives rise to the  
16 superpriority.

17 THE COURT: And it's delinquent assessments.

18 MR. MERRILL: Correct. Correct. Notice of  
19 delinquent assessment. Right.

20 THE COURT: Because I've never done one of these  
21 cases before. That's sarcasm --

22 MR. MERRILL: I'm not sure.

23 THE COURT: -- because it doesn't show up on the  
24 record.

25 MR. MERRILL: Your Honor, you hit on it exactly. You

1 use the computer and the report prepared by the computer  
2 because *Cranesville* and all of these cases are clear: You  
3 cannot change, once a dispute arises, you cannot go back and  
4 change how it was applied. And Exhibit 45 shows how they  
5 applied payments. And so by her coming in and trying to  
6 testify and change, well, gee, I do these audits, and I look at  
7 everything, and this is kind of how we do it, she's trying to  
8 change how they applied the payments. And Exhibit 45 shows  
9 precisely how they applied payments, to the oldest association  
10 dues first.

11 Now, Ms. Hanks said Mr. Merrill doesn't understand.  
12 It's not two liens. It's one lien. I completely understand  
13 that. But there are --

14 THE COURT: Do you?

15 MR. MERRILL: I do.

16 THE COURT: Come on.

17 MR. MERRILL: But there are two priorities. There's  
18 a superpriority and a subpriority, and you don't satisfy the  
19 entirety of the lien. The Supreme Court in *Bank of America*  
20 *versus Las Vegas Rental and Repair*, again it's an unpublished  
21 opinion, but, 451 P.3d 547, precisely said that from the sale  
22 you would get the superpriority, and then the balance would go  
23 to the holder of the first deed of trust. That's not what  
24 happened here.

25 Ms. Hanks tries to say, well, under the statute



1 they're not responsible for the receipt of the -- or the  
2 practical application of the purchase money. I'm not asking  
3 them to be responsible for the proper application of the  
4 purchase money. What I'm saying is that is evidence as to what  
5 happened here, as to what Ms. Perez's payments were applied to,  
6 and it's evidence that shows that they were applied to the  
7 superpriority portion, and it was foreclosed on its subpriority  
8 lien.

9 Ms. Hanks says, well, this is not between the bank  
10 and the association. You can't consider equitably the rights  
11 of third parties. That's not true. The case is clear. You  
12 should look at justice and equity to all.

13 And the distinction that *Cranesville* makes is first  
14 the Court has to first make a determination as to whether it's  
15 a running account or not or whether we're dealing with separate  
16 accounts. And again it is a running account. And in that  
17 situation, it would go to the oldest amount first.

18 Ms. Hanks read you a portion from *Cranesville* and  
19 said, well, gee, *Cranesville* says you have to do what benefits  
20 the creditor. She didn't read the footnote right after that  
21 which says that this assumption that you should benefit the  
22 creditor, it says,

23 That assumption that you should benefit  
24 the creditor may not apply in NRS Chapter 116  
25 payment allocation cases since it seems

1           likely that a homeowner would prefer to cure  
2           the default on the superpriority lien before  
3           satisfying any other debts owed to the HOA to  
4           avoid a superpriority lien foreclosure and  
5           the consequent loss of security to satisfy  
6           the obligation secured by the first deed of  
7           trust.

8           Which would be the delinquency in this case.

9           So *Cranesville* says, yeah, this is typically what's  
10          done, but that may not apply here. District Court, go figure  
11          it out is essentially what the Court said. So to say that that  
12          is -- that this Court has to under *Cranesville* determine what,  
13          you know, what benefits the association is simply not true.

14          The bona fide purchaser argument that the Supreme  
15          Court in their brief they've noticed that they've said it's  
16          irrelevant. It is irrelevant. Even if somehow BFP argument  
17          was not irrelevant, as I asked Mr. Hardin, this was a five-year  
18          stretch of time. He had to have known payments were being made  
19          during this period of time. And, you know, he doesn't know how  
20          those payments are applied. I understand there's no  
21          announcement. There's no announcement at these sales or not.  
22          But that's not the issue. The issue is is how were the  
23          payments applied. And if the payments were applied to the  
24          superpriority portion, then it was a subpriority sale, and  
25          that's consistent with the documents, and that's consistent

1 with what happened at the foreclosure.

2 With respect to the other three claims, real briefly,  
3 the wrongful foreclosure, if the Court somehow buys the bona  
4 fide purchaser argument, then it was a -- and it was a wrongful  
5 foreclosure of the superpriority amount, then Wyeth Ranch  
6 wouldn't be responsible for the fair market value of the lien,  
7 which is \$360,000 because it would have been a wrongful  
8 foreclosure on the superpriority.

9 THE COURT: Isn't it just that SFR takes subject to  
10 the first deed of trust?

11 MR. MERRILL: It is absolutely just --

12 THE COURT: Okay.

13 MR. MERRILL: -- that SFR takes subject to the first  
14 deed of trust.

15 THE COURT: That's all it is if it's subpriority.

16 MR. MERRILL: Correct.

17 THE COURT: Okay.

18 MR. MERRILL: Right. It's a subpriority sale that  
19 takes subject to it--

20 THE COURT: I was just checking to see if I had  
21 forgotten during the last year of not doing these.

22 MR. MERRILL: I already addressed the good faith. If  
23 it's not -- if the amount was not applied correctly, they would  
24 owe us the money. But again I think it was a subpriority sale.  
25 So the Court doesn't even have to get there.

1           And I have nothing further, Your Honor.

2           THE COURT: Thank you.

3           All right. The matter will stand submitted.

4           Dulce, if you'll put it on the chambers calendar a  
5 week from Friday, I'll have a written decision for you. Thank  
6 you very much.

7           MR. MERRILL: Thank you, Your Honor.

8           THE COURT: Be well.

9                   (Proceedings concluded at 4:23 p.m.)

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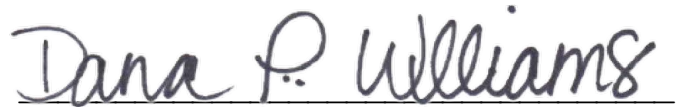
**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**DANA L. WILLIAMS**  
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

03/21/2021

DATE

	154/21 178/15	\$	\$87.60 [3] 44/5 45/25	39/20 45/18 48/24 49/1
<b>BY MR. MERRILL:</b>	<b>MS. HANKS: [98]</b> 5/18	\$1,008 [1] 158/12	132/12	55/17 56/22 83/14
<b>[26]</b> 8/13 9/16 15/22	7/5 7/9 15/1 15/8 17/22	\$1,008.25 [1] 156/14	<b>\$9,839.12 [1]</b> 160/4	84/16 85/5 92/16 101/6
35/9 38/23 39/11 41/12	18/1 18/3 26/22 28/11	<b>\$1,425 [1]</b> 159/23	<b>\$900 [3]</b> 47/18 49/4	101/11 101/14 109/1
42/2 42/7 48/19 48/23	33/9 33/13 33/15 33/19	<b>\$1,425.17 [1]</b> 46/18	49/7	110/13 114/12 114/19
51/9 51/23 53/23 57/5	33/21 38/19 39/7 39/9	<b>\$1,568.25 [1]</b> 150/6		117/17 119/8 131/13
65/19 69/1 70/3 75/13	41/7 41/25 42/4 49/22	<b>\$10,619.12 [1]</b> 133/9		134/5 175/21
80/17 117/4 122/12	51/5 51/19 59/19 60/13	<b>\$10,679.12 [1]</b> 92/19	<b>'08 [1]</b> 102/10	<b>139 [3]</b> 37/1 37/3
142/16 142/21 143/5	61/15 61/17 62/20	<b>\$10,848.68 [1]</b> 114/22		114/24
146/15	62/23 62/25 63/5 63/10	<b>\$11.29 [2]</b> 47/7 47/9	<b>0</b>	<b>14 [4]</b> 47/10 47/11
<b>BY MR. OCHOA: [5]</b>	63/13 63/17 63/22	<b>\$111 [3]</b> 106/13 106/15	<b>004 [1]</b> 113/8	84/11 144/3
28/15 29/3 116/18	63/24 64/3 68/14 69/16	128/7	<b>03/21/2021 [1]</b> 187/18	<b>141 [2]</b> 6/1 6/3
142/2 153/4	72/4 72/6 74/19 75/6	<b>\$111.90 [1]</b> 106/11	<b>1</b>	<b>142 [7]</b> 5/15 68/24 69/3
<b>BY MS. HANKS: [26]</b>	76/3 77/11 77/18 78/15	<b>\$119.52 [1]</b> 83/24	<b>1 percent [1]</b> 169/22	69/3 69/13 69/14 70/1
17/8 18/4 21/5 23/9	78/19 79/3 79/9 79/11	<b>\$121.28 [1]</b> 84/9	<b>1 through [1]</b> 5/6	<b>143 [1]</b> 6/2
27/1 70/14 72/7 74/24	79/13 79/15 93/20	<b>\$124,307.05 [1]</b> 150/16	<b>1 will [1]</b> 5/21	<b>143-144 [1]</b> 6/4
76/6 77/12 93/8 94/7	93/23 93/25 94/3	<b>\$124.32 [1]</b> 84/1	<b>1,000 [1]</b> 73/15	<b>144 [5]</b> 5/6 5/10 6/2 6/4
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108/16 111/10 112/18	123/25 124/24 125/2	<b>\$127.71 [1]</b> 84/3	<b>10 [6]</b> 33/24 35/18	<b>145 [6]</b> 15/14 20/8
121/4 121/11 135/23	125/8 125/10 125/14	<b>\$144,970.64 [1]</b> 16/3	50/11 58/2 113/3	29/17 42/4 97/18
138/23 139/14 140/11	125/17 125/20 126/13	<b>\$152.02 [1]</b> 83/17	130/13	154/10
140/24 149/14	126/15 135/4 139/25	<b>\$160 [2]</b> 81/14 81/21	<b>10,000-odd [1]</b> 166/12	<b>15 [7]</b> 27/20 33/6 33/24
<b>IT TECHNICIAN: [1]</b>	140/3 140/7 141/23	<b>\$165 [2]</b> 82/1 82/21	<b>10,679.12 [1]</b> 92/25	79/3 83/17 85/13
4/6	146/12 149/12 153/25	<b>\$17 [2]</b> 150/7 150/9	<b>10-minute [1]</b> 155/4	117/19
<b>MR. MERRILL: [123]</b>	154/5 154/12 154/15	<b>\$172.75 [1]</b> 56/23	<b>100 [1]</b> 145/7	<b>15,000 [1]</b> 148/9
4/15 4/18 4/20 4/23 5/2	155/10 161/5 161/25	<b>\$175 [1]</b> 81/7	<b>104 [1]</b> 98/6	<b>150 [1]</b> 172/3
5/4 5/9 5/13 5/15 6/7	162/3 162/6 162/10	<b>\$2,200 [1]</b> 159/23	<b>107 [2]</b> 82/25 83/9	<b>152 [1]</b> 118/3
6/12 6/16 6/23 6/25	163/9 163/12 169/25	<b>\$2,381.75 [2]</b> 156/14	<b>108 [2]</b> 12/16 12/17	<b>152.02 [1]</b> 85/13
7/14 8/11 14/11 14/15	171/8 171/11 171/14	159/2	<b>10:42 [1]</b> 4/1	<b>16 [9]</b> 40/25 83/22 84/1
14/17 14/21 14/24 15/2	174/2 174/22 175/25	<b>\$20,000 [3]</b> 148/8	<b>10th [4]</b> 27/7 95/10	111/25 125/23 127/18
15/11 17/4 22/25 28/20	176/4	150/19 150/20	99/3 99/10	161/8 164/20 176/3
28/23 29/10 29/21 30/1	<b>THE CLERK: [8]</b> 7/19	<b>\$20,590 [1]</b> 114/25	<b>11 [2]</b> 47/6 114/5	<b>166 [1]</b> 66/3
30/13 31/1 31/3 31/15	29/18 31/23 34/16	<b>\$20,620 [1]</b> 37/7	<b>110 [2]</b> 5/22 6/3	<b>16th [2]</b> 128/11 164/24
32/20 33/3 33/6 34/2	34/20 65/3 124/12	<b>\$204.60 [3]</b> 55/19	<b>111 [2]</b> 5/10 124/10	<b>17 [2]</b> 42/14 47/11
35/7 42/5 57/2 57/15	135/10	55/22 56/3	<b>111.1801 [1]</b> 172/18	<b>172 [1]</b> 106/24
57/19 60/9 61/12 61/18	<b>THE COURT</b>	<b>\$209.16 [1]</b> 84/7	<b>111.325 [1]</b> 172/10	<b>172.75 [1]</b> 56/25
62/19 64/7 64/10 64/12	<b>RECORDER: [11]</b>	<b>\$21,000 [3]</b> 92/13	<b>112 [3]</b> 5/23 6/3 27/2	<b>18 [2]</b> 18/15 84/3
64/14 64/19 64/22	30/10 30/23 31/4 31/16	160/10 173/22	<b>113 [3]</b> 5/11 5/14	<b>18th [1]</b> 27/22
68/16 68/20 68/24	31/24 32/2 32/9 32/13	<b>\$212.70 [1]</b> 84/5	124/10	<b>19 [5]</b> 9/10 9/17 9/22
69/13 70/2 70/11 75/23	32/16 93/22 131/3	<b>\$220 [1]</b> 80/23	<b>114 [4]</b> 5/24 6/3 28/3	11/3 11/9
77/20 78/7 78/11 79/16	<b>THE COURT: [286]</b>	<b>\$221.10 [1]</b> 84/11	145/14	<b>1969 [1]</b> 66/6
80/7 80/12 93/5 97/23	<b>THE MARSHAL: [1]</b>	<b>\$250 [1]</b> 56/14	<b>115 [2]</b> 5/15 124/10	<b>1993 [1]</b> 66/22
100/15 100/17 100/20	131/7	<b>\$295 [1]</b> 82/15	<b>116 [7]</b> 5/25 140/12	<b>1:00 [1]</b> 64/20
103/7 107/19 108/11	<b>THE WITNESS: [82]</b>	<b>\$3,390 [1]</b> 156/9	167/8 180/12 180/12	<b>1:00 o'clock [1]</b> 60/3
111/2 112/13 112/15	7/21 8/9 9/12 9/15	<b>\$300 [4]</b> 55/7 55/22	180/13 183/24	<b>1st [26]</b> 14/1 44/9
121/1 123/22 124/13	15/15 15/21 23/4 29/2	82/7 83/2	<b>116-120 [1]</b> 6/3	96/12 97/1 101/15
124/15 124/19 131/1	31/18 31/21 32/5 32/8	<b>\$360,000 [4]</b> 68/9	<b>116.31164 [1]</b> 165/7	102/22 103/13 103/17
131/4 131/8 131/11	32/11 34/10 34/18	70/10 160/12 185/7	<b>116.311669 [1]</b> 166/18	103/18 104/18 105/3
131/14 138/14 138/19	34/22 35/5 38/22 39/8	<b>\$420 [7]</b> 39/24 40/23	<b>11:59 a.m [1]</b> 64/16	105/25 106/8 106/16
139/9 139/11 139/20	41/9 42/6 49/25 51/6	44/9 45/1 47/3 132/11	<b>11th [5]</b> 50/18 108/20	108/5 114/11 126/10
139/22 140/20 140/22	51/8 51/22 53/21 57/4	156/5	108/21 109/24 114/3	126/17 126/19 126/25
142/20 149/10 153/23	58/1 58/18 58/22 59/8	<b>\$478.50 [1]</b> 85/11	<b>12 [1]</b> 90/2	127/1 127/2 127/22
154/23 155/2 155/8	59/11 59/15 59/17 60/5	<b>\$507.60 [6]</b> 41/1 44/8	<b>12-month [1]</b> 113/12	128/5 164/25 171/23
155/11 155/18 155/20	60/7 65/5 65/16 69/19	45/13 45/20 46/1	<b>12-month-payment [1]</b>	<b>1st of [1]</b> 126/6
155/23 155/25 160/24	69/23 74/20 77/5 77/7	132/10	50/12	<b>2</b>
161/2 175/23 180/22	77/10 77/23 78/2 79/20	<b>\$590.40 [5]</b> 49/1 49/4	<b>120 [2]</b> 5/25 6/3	<b>2.47 [1]</b> 60/14
180/25 181/15 181/18	79/23 80/3 98/1 100/16	49/8 51/15 85/22	<b>121 [2]</b> 5/15 124/10	<b>20 [9]</b> 10/24 10/25
181/22 181/25 182/15	100/21 103/9 107/23	<b>\$6.30 [4]</b> 40/8 40/17	<b>122 [1]</b> 6/1	17/19 18/6 56/23 79/7
182/17 185/11 185/13	108/14 111/5 112/17	40/19 102/2	<b>122-141 [1]</b> 6/3	105/23 128/22 144/21
185/16 185/18 185/22	115/23 116/9 116/13	<b>\$669.87 [2]</b> 86/20	<b>124 [1]</b> 150/1	<b>20,000 [1]</b> 73/15
186/7	121/10 124/3 124/5	86/22	<b>125 [2]</b> 90/7 90/9	<b>200 [1]</b> 137/21
<b>MR. OCHOA: [24]</b> 5/20	135/12 135/20 138/18	<b>\$75 [5]</b> 40/5 96/7 96/14	<b>126 [2]</b> 92/8 92/10	<b>2000 [1]</b> 136/7
6/15 6/19 7/12 29/8	138/21 139/13 140/21	101/23 129/17	<b>129 [1]</b> 92/22	<b>2005 [3]</b> 9/22 11/3
30/5 30/9 30/11 30/15	143/4 146/14 151/14	<b>\$840 [10]</b> 128/24	<b>12:58 p.m [1]</b> 64/16	17/14
30/18 33/24 75/9 78/22	151/19 151/21 151/25	133/14 133/19 156/6	<b>12th [4]</b> 47/22 113/14	<b>2007 [1]</b> 37/6
79/6 116/16 117/1	152/2 152/5 152/15	159/3 161/9 161/11	113/18 114/2	<b>2008 [83]</b> 36/11 38/7
122/9 141/25 142/13	152/18 152/20 152/23	164/22 173/10 181/3	<b>13 [1]</b> 47/10	39/23 40/3 40/25 41/5
153/2 153/21 154/17	154/3	<b>\$87 [1]</b> 105/24	<b>138 [24]</b> 37/18 37/20	41/6 42/14 42/23 42/16 87

<p><b>2</b></p> <p><b>2008... [73]</b> 44/3 45/2 45/3 45/14 45/15 45/21 45/22 45/22 45/25 46/1 46/4 46/15 47/10 53/9 53/15 94/10 94/15 94/20 94/24 96/12 96/13 97/1 97/3 97/18 97/20 100/9 101/15 101/20 102/2 102/17 102/22 103/2 103/6 103/13 103/17 103/19 104/7 105/21 105/22 106/1 106/16 111/25 115/13 125/23 126/6 126/10 126/15 126/19 126/22 126/25 127/1 127/2 127/15 127/18 127/22 128/11 131/18 132/8 132/10 132/14 132/17 143/23 156/1 156/4 159/24 161/14 161/20 164/20 164/22 164/24 164/25 178/17 178/22</p> <p><b>2008's [1]</b> 44/6</p> <p><b>2009 [10]</b> 95/10 96/11 97/21 98/9 98/17 99/15 101/20 102/1 131/22 143/16</p> <p><b>2010 [59]</b> 47/22 49/2 50/12 50/16 50/20 50/22 51/12 51/15 55/8 55/20 56/17 56/23 80/24 81/7 83/18 83/22 85/7 85/10 85/13 85/21 85/25 89/18 89/24 104/6 104/15 104/18 105/1 105/3 106/5 106/8 106/19 106/19 106/21 106/23 107/6 108/21 109/17 109/24 111/22 112/1 112/2 113/3 113/11 113/14 114/2 114/3 114/5 114/11 114/15 117/19 117/23 117/25 121/24 128/3 128/14 134/6 144/3 165/1 165/1</p> <p><b>2010's [1]</b> 128/5</p> <p><b>2011 [12]</b> 14/1 14/3 81/14 81/20 81/25 83/24 84/1 84/3 99/4 99/10 144/13 144/21</p> <p><b>2012 [21]</b> 20/23 22/14 23/20 24/19 24/24 25/22 82/8 82/16 82/22 83/3 84/5 84/7 84/9 84/11 98/2 98/4 98/18 136/6 145/2 145/8 169/21</p> <p><b>2013 [53]</b> 23/23 24/3 24/24 25/3 25/7 25/23 26/4 26/17 27/7 27/11 28/6 36/11 37/7 38/7 53/9 53/15 61/4 67/19 68/8 70/7 71/13 90/12 91/23 100/10 108/5</p>	<p>114/20 114/25 115/14 115/17 116/24 128/23 137/23 138/25 139/16 140/18 141/2 141/4 141/6 141/10 145/15 146/5 149/17 160/11 166/19 171/24 172/4 172/17 175/11 176/6 176/7 176/11 178/17 178/22</p> <p><b>2015 [7]</b> 54/11 166/19 175/21 176/3 176/4 176/8 177/2</p> <p><b>2016 [2]</b> 8/21 17/14</p> <p><b>2017 [1]</b> 66/24</p> <p><b>2018 [1]</b> 161/8</p> <p><b>2021 [5]</b> 1/12 4/1 19/7 173/4 187/18</p> <p><b>21,000 [1]</b> 150/4</p> <p><b>22 [7]</b> 1/12 4/1 18/6 19/18 20/15 50/12 50/15</p> <p><b>22nd [2]</b> 50/20 83/24</p> <p><b>23rd [2]</b> 84/7 91/22</p> <p><b>25 [1]</b> 47/11</p> <p><b>250 [3]</b> 57/1 57/1 57/3</p> <p><b>27 [3]</b> 37/7 84/9 114/25</p> <p><b>27th [5]</b> 24/3 25/3 25/7 26/3 26/16</p> <p><b>28 [8]</b> 24/24 68/8 70/7 91/23 136/7 145/2 146/4 176/6</p> <p><b>28th [11]</b> 23/23 67/19 71/13 90/12 115/13 115/17 128/23 137/23 149/17 172/17 176/11</p> <p><b>29 [3]</b> 47/7 102/10 144/13</p> <p><b>29th [1]</b> 40/16</p> <p><b>2:00 [2]</b> 60/4 78/24</p> <p><b>2:00 a.m [1]</b> 30/16</p> <p><b>2:00 o'clock [3]</b> 59/24 60/2 77/25</p> <p><b>2:41 [1]</b> 124/2</p> <p><b>2:42 p.m [1]</b> 124/20</p> <p><b>2:47 p.m [1]</b> 124/20</p> <p><b>2nd [14]</b> 49/2 56/17 85/21 105/1 106/5 106/19 107/6 111/22 112/1 112/2 114/15 128/3 128/14 165/1</p> <p><b>3</b></p> <p><b>30 [8]</b> 18/22 21/9 40/3 40/5 46/17 96/7 96/19 168/6</p> <p><b>30164 [2]</b> 166/17 167/1</p> <p><b>30th [8]</b> 40/19 94/10 97/3 101/20 102/2 102/13 102/16 102/20</p> <p><b>30th of [2]</b> 96/13 97/2</p> <p><b>31 [2]</b> 145/8 145/15</p> <p><b>31164 [2]</b> 165/20 166/8</p> <p><b>3164 [1]</b> 166/2</p> <p><b>31st [2]</b> 28/6 114/20</p> <p><b>38 [1]</b> 111/1</p> <p><b>3:28 p.m [1]</b> 155/14</p> <p><b>3:30 [1]</b> 155/6</p> <p><b>3:31 p.m [1]</b> 155/14</p>	<p><b>3:45 [1]</b> 155/6</p> <p><b>3rd [4]</b> 20/23 22/14 27/11 84/5</p> <p><b>4</b></p> <p><b>4 through [1]</b> 5/22</p> <p><b>4-004 [1]</b> 113/8</p> <p><b>4-110 [1]</b> 6/3</p> <p><b>4/1/2008 [2]</b> 103/6 105/21</p> <p><b>4/1/2010 [1]</b> 106/21</p> <p><b>4/16/2008 [2]</b> 103/2 105/22</p> <p><b>40 [3]</b> 105/1 105/2 106/8</p> <p><b>400 [3]</b> 19/8 141/12 141/13</p> <p><b>420 [2]</b> 46/3 104/23</p> <p><b>430,113.48 [1]</b> 14/6</p> <p><b>442,000 [1]</b> 9/20</p> <p><b>45 [51]</b> 42/3 42/4 42/5 42/8 42/22 43/14 45/5 45/10 45/25 46/5 46/25 47/1 47/4 47/11 52/16 53/4 53/9 53/14 53/16 53/25 54/17 54/20 54/25 99/18 100/14 107/17 108/8 119/20 131/13 131/13 132/6 132/13 133/21 134/20 135/2 156/21 156/23 156/24 156/24 157/7 157/16 157/18 157/25 158/25 163/1 174/4 174/10 177/19 181/8 182/4 182/8</p> <p><b>451 [1]</b> 182/21</p> <p><b>46 [2]</b> 93/16 94/9</p> <p><b>47 [7]</b> 46/10 46/12 47/14 49/5 94/19 142/22 143/22</p> <p><b>49 [1]</b> 143/14</p> <p><b>4:23 p.m [1]</b> 186/9</p> <p><b>4:30 and [1]</b> 155/7</p> <p><b>4:45 even [1]</b> 155/12</p> <p><b>5</b></p> <p><b>5.8 percent [1]</b> 169/22</p> <p><b>50 [3]</b> 104/19 104/23 106/9</p> <p><b>500 [1]</b> 152/20</p> <p><b>500,000 [1]</b> 150/18</p> <p><b>51 [2]</b> 95/5 98/14</p> <p><b>52 [4]</b> 124/25 125/21 130/23 154/9</p> <p><b>53 [1]</b> 143/25</p> <p><b>547 [1]</b> 182/21</p> <p><b>58 [4]</b> 47/16 47/18 48/9 50/25</p> <p><b>59 [6]</b> 86/14 86/16 108/17 110/4 119/23 122/22</p> <p><b>590 [1]</b> 106/8</p> <p><b>5:00 today [1]</b> 31/7</p> <p><b>5th [3]</b> 113/11 113/18 143/15</p> <p><b>6</b></p> <p><b>6 feet [1]</b> 18/3</p>	<p><b>6/8/2010 [1]</b> 106/19</p> <p><b>60 [1]</b> 106/20</p> <p><b>600 [1]</b> 152/21</p> <p><b>61 [3]</b> 55/5 55/7 55/23</p> <p><b>64 [2]</b> 56/12 56/14</p> <p><b>650 [2]</b> 151/15 152/11</p> <p><b>66 [2]</b> 80/21 83/9</p> <p><b>669.87 [4]</b> 87/4 88/21 120/10 120/13</p> <p><b>67 [2]</b> 81/4 83/9</p> <p><b>69 [1]</b> 109/24</p> <p><b>7</b></p> <p><b>70 [1]</b> 151/22</p> <p><b>71 [1]</b> 144/11</p> <p><b>7119 [16]</b> 9/6 36/5 36/12 38/11 42/11 46/13 48/10 55/11 67/9 68/8 70/7 82/2 82/10 82/16 82/23 83/6</p> <p><b>72 [3]</b> 81/11 81/13 83/9</p> <p><b>75 [4]</b> 81/18 81/20 83/9 106/24</p> <p><b>76 [1]</b> 98/25</p> <p><b>78 [6]</b> 81/23 81/25 83/9 104/19 104/23 106/9</p> <p><b>79 [2]</b> 99/1 99/7</p> <p><b>8</b></p> <p><b>8/20/2010 [1]</b> 106/23</p> <p><b>80 [1]</b> 151/22</p> <p><b>81 [1]</b> 170/15</p> <p><b>82 [1]</b> 144/18</p> <p><b>84 [1]</b> 145/1</p> <p><b>87 [1]</b> 109/24</p> <p><b>87.60 [2]</b> 44/12 45/2</p> <p><b>8750 [1]</b> 105/24</p> <p><b>88 [1]</b> 47/10</p> <p><b>89183 [1]</b> 187/12</p> <p><b>8th [7]</b> 46/15 55/20 94/20 115/13 126/6 156/1 161/14</p> <p><b>9</b></p> <p><b>9,578.84 [1]</b> 16/8</p> <p><b>90 [2]</b> 105/1 105/2</p> <p><b>91 [3]</b> 82/5 82/7 83/9</p> <p><b>93 [2]</b> 82/13 83/9</p> <p><b>94 [2]</b> 11/16 11/17</p> <p><b>97 [1]</b> 12/5</p> <p><b>98 [2]</b> 82/19 83/9</p> <p><b>99 [3]</b> 13/19 13/20 20/22</p> <p><b>A</b></p> <p><b>a.m [3]</b> 4/1 30/16 64/16</p> <p><b>abandon [1]</b> 160/6</p> <p><b>abided [1]</b> 130/4</p> <p><b>ability [1]</b> 160/12</p> <p><b>able [19]</b> 19/23 22/21 32/12 33/10 53/25 60/4 62/8 63/1 65/14 107/23 110/23 111/1 111/8 111/11 111/14 111/17 158/16 170/16 178/5</p> <p><b>about [56]</b> 17/17 19/6 19/25 20/8 22/9 22/18 24/1 26/3 27/18 28/16 29/5 60/24 67/3 74/22</p>	<p>76/16 78/9 79/12 80/19 95/13 99/18 104/4 107/13 108/9 108/23 110/16 111/22 111/25 112/1 112/11 113/3 114/14 116/7 116/9 117/5 119/23 128/25 132/3 132/4 135/15 139/24 140/2 140/15 151/15 152/11 158/12 161/22 162/15 163/24 165/10 165/14 169/12 170/14 172/5 177/4 177/5 177/20</p> <p><b>ABOVE [1]</b> 187/4</p> <p><b>ABOVE-ENTITLED [1]</b> 187/4</p> <p><b>absolutely [5]</b> 62/7 75/5 153/17 163/5 185/11</p> <p><b>absolved [1]</b> 167/4</p> <p><b>accelerate [2]</b> 21/16 21/19</p> <p><b>accelerated [2]</b> 19/15 21/17</p> <p><b>acceleration [7]</b> 18/7 18/12 18/15 19/1 19/20 19/21 21/10</p> <p><b>access [1]</b> 52/13</p> <p><b>according [14]</b> 37/6 44/25 45/4 46/4 46/6 51/4 54/21 87/5 92/12 96/13 119/11 120/19 126/24 164/14</p> <p><b>accordingly [1]</b> 68/2</p> <p><b>account [79]</b> 36/15 36/17 36/19 36/22 37/3 37/10 37/15 37/20 39/5 41/1 41/21 42/23 43/9 47/25 49/17 51/16 52/18 52/20 52/23 53/1 54/1 54/18 55/10 55/12 56/20 58/14 58/24 59/1 81/8 81/9 81/15 82/3 82/11 82/17 82/23 83/6 83/14 89/23 92/1 92/19 92/25 96/5 96/14 100/9 101/2 101/4 107/25 108/5 112/12 112/24 112/25 116/19 118/14 118/20 122/18 132/22 132/22 137/25 141/15 141/20 156/12 157/14 158/12 158/14 158/15 158/23 158/24 158/24 159/11 159/12 159/12 159/13 159/14 168/5 170/13 173/19 175/3 183/15 183/16</p> <p><b>account-specific [1]</b> 141/15</p> <p><b>accounting [13]</b> 22/21 35/16 35/24 38/13 41/22 42/18 54/12 54/16 110/10 148/13 149/24 150/20 150/22</p> <p><b>accounts [9]</b> 52/20 52/21 58/2 59/13 107/10 109/22 154/1 168/8</p>
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