

1 MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
2 mbohn@bohnlawfirm.com
LAW OFFICES OF
3 MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circle, Suite 480
4 Henderson, Nevada 89074
(702) 642-3113 / (702) 642-9766 FAX
5 Attorney for plaintiff/appellant
Saticoy Bay LLC Series 4641 Viareggio Ct
6

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8 SUPREME COURT
9 STATE OF NEVADA

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11 SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

CASE NO.: 82449

12 Appellant,

13 vs.

14 NATIONSTAR MORTGAGE LLC,

15
16 Respondent.
17

18 **APPELLANT'S APPENDIX 8**
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20

21 Michael F. Bohn, Esq.
Law Office of Michael F. Bohn, Esq., Ltd.
22 2260 Corporate Circle, Suite 140
Henderson, Nevada 89074
23 (702) 642-3113/ (702) 642-9766 FAX
Attorney for Appellant Saticoy Bay LLC
24 Series 4641 Viareggio Ct
25
26
27
28

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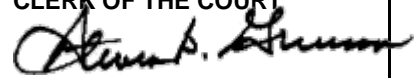
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MICHAEL F. BOHN, ESQ.

Nevada Bar No.: 1641

mbohn@bohnlawfirm.com

ADAM R. TRIPPIEDI, ESQ.

Nevada Bar No.: 12294

atrippiedi@bohnlawfirm.com

LAW OFFICES OF

MICHAEL F. BOHN, ESQ., LTD.

376 East Warm Springs Road, Ste. 140

Las Vegas, Nevada 89119

(702) 642-3113/ (702) 642-9766 FAX

Attorneys for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT

Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC; and
MONIQUE GUILLORY

Defendants.

CASE NO.: A-13-689240-C

DEPT NO.: XIV

NATIONSTAR MORTGAGE, LLC

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; DOES 1
through X; and ROE CORPORATIONS I
Through X, inclusive,

Counter-defendants

REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Plaintiff/counterdefendant Saticoy Bay LLC Series 4641 Viareggio (hereinafter "Saticoy Bay")
replies to the opposition to the motion for summary judgment as follows:

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1 FACTS

2 In Section III (A) at page 6 of its opposition, defendant identifies as “undisputed facts” statements
3 that are directly contradicted by the recorded documents and that are not supported by any admissible
4 evidence.

5 For example, in paragraph 3 at page 6 of defendant’s opposition, defendant cites paragraph 5(c)
6 in the declaration by Dean Meyer as evidence that “Freddie Mac purchased the Loan and thereby obtained
7 a property interest in the Deed of Trust on or about March 29, 2007.” Dean Meyer, however, is not
8 competent to testify to Freddie Mac’s compliance with Nevada law for the purchase of the Loan because
9 he does not have personal knowledge of the proper execution and delivery of the documents required by
10 Nevada law for the Guillory note and deed of trust to be transferred to Freddie Mac.

11 In paragraph 6 at page 6 of defendant’s opposition, defendant cites paragraph 5(i) of the
12 declaration by Dean Meyer to prove that defendant was the servicer for the Guillory note on August 22,
13 2013. The declaration proves, however, that Mr. Meyer does not have personal knowledge of facts to
14 support his the statement in paragraph 5(i) of his declaration.

15 POINTS AND AUTHORITIES

16 **A. The evidence of the alleged ownership of the loan does not comply with Nevada law**

17 In Berezovsky v. Moniz, 869 F.3d 923 (9th Cir. 2017), the court found that Freddie Mac had
18 introduced database printouts “showing it acquired the Monizes’ loan secured by the property in 2007”
19 and identifying BANA as Freddie Mac’s loan servicer. In footnote 8 to the opinion, the court cited U-
20 Haul Int’l, Inc. v. Lumbers Mutual Casualty Co., 576 F.3d 1040 (9th Cir. 2009), as authority that
21 “Freddie Mac’s database printouts are admissible business records.”

22 In U-Haul Int’l, Inc., the court identified four (4) elements that must be proved to meet the
23 business records exception in Federal Rules of Evidence 803(6):

24 In this case, the exhibits summarizing loss adjustment expense payments for each claim
25 fit squarely within the business records exception of Rule 803(6). As the district court
26 found (1) the underlying data was entered into the database at or near the time of each
27 payment event; (2) **the persons who entered the data had knowledge of the payment**
event; (3) the data was kept in the course of Republic Western's regularly conducted
28 business activity; and (4) **Mr. Matush was qualified and testified as to this**
information. The record does not indicate that any of these factual findings is clearly

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1 erroneous. (emphasis added)

2 Id. at 1044.

3 NRS 51.135 imposes similar requirements to fit within the exception to hearsay rule:

4 A memorandum, report, record or compilation of data, in any form, of acts, events,
5 conditions, opinions or diagnoses, **made at or near the time by, or from information**
6 **transmitted by, a person with knowledge**, all in the course of a regularly conducted
7 activity, as shown by the testimony or affidavit of the custodian or other qualified person,
8 is not inadmissible under the hearsay rule unless the source of information or the method
9 or circumstances of preparation indicate lack of trustworthiness. (emphasis added)

10 In the present case, Mr. Meyer based his declaration entirely upon six print-outs from Freddie
11 Mac's systems and databases printed on February 22, 2017.

12 Mr. Meyer, however, did not prove that the persons who entered the data upon which Mr. Meyer
13 based his declaration had knowledge of the proper execution and delivery of the documents required by
14 Nevada law for Freddie Mac to be the owner of the Guillory loan before entering that information in
15 Freddie Mac's Loan Status Manager and MIDAS system. Likewise, Mr. Meyer did not state that any
16 person employed by Freddie Mac confirmed that a written servicing agreement existed that appointed
17 defendant to service the Guillory loan for Freddie Mac before entering that information in Freddie Mac's
18 Loan Status Manager and MIDAS system.

19 As proved by paragraph (C) at the bottom of page 1 of the deed of trust recorded on January 25,
20 2007 (Exhibit B in defendant's request for judicial notice, filed on December 19, 2017), First Magnus
21 Financial Corporation was identified as the Lender. As proved by paragraph (E) at page 2 of the deed
22 of trust, MERS was identified as the the beneficiary of the deed of trust "acting solely as nominee for
23 Lender and Lender's successors and assigns."

24 Paragraph (J) at page 2 of the deed of trust and Paragraph 16 at page 11 of the deed of trust both
25 state that the rights of the beneficiary under the deed of trust are governed by Nevada law.

26 Under Nevada law, a deed of trust is a conveyance of land that must comply with the statute of
27 frauds. In Leyva v. National Default Servicing Corp., 127 Nev. 470, 255 P.3d 1275, 1279 (2011), the
28 Nevada Supreme Court stated:

A deed of trust is an instrument that "secure[s] the performance of an obligation or the
payment of any debt." NRS 107.020. This court has previously held that a deed of trust

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1 “constitutes a conveyance of land as defined by NRS 111.010.” Ray v. Hawkins, 76 Nev.
2 164, 166, 350 P.2d 998, 999 (1960). The statute of frauds governs when a conveyance
creates or assigns an interest in land:

3 No estate or interest in lands, ... nor any trust or power over or concerning lands, or in any
4 manner relating thereto, shall be created, granted, *assigned*, surrendered or declared ...,
5 unless ... by deed or conveyance, in writing, subscribed by the party creating, granting,
assigning, surrendering or declaring the same, or by the party’s lawful agent thereunto
authorized in writing.

6 NRS 111.205(1) (emphases added). Thus, to prove that MortgageIT properly assigned
7 its interest in land via the deed of trust to Wells Fargo, Wells Fargo needed to provide a
signed writing from MortgageIT demonstrating that transfer of interest.

8
9 Because a deed of trust and an assignment of a deed of trust are both “conveyance(s)” of land as
10 defined by NRS 111.010(1), defendant was required to produce a signed writing proving its claim that
11 the deed of trust was assigned to Freddie Mac in a way that complies with Nevada law. In the present
12 case, defendant has not produced any document that assigned to Freddie Mac any interest in the deed of
13 trust and that satisfies Nevada’s statute of frauds. In addition no assignment of the deed of trust to
14 Freddie Mac has ever been recorded

15 Defendant has also not produced admissible evidence that satisfies the statute of frauds and proves
16 that the underlying note was properly transferred to Freddie Mac. The Nevada Supreme Court has stated
17 that “[t]he proper method of transferring the right to payment under a mortgage note is governed by
18 Article 3 of the Uniform Commercial Code – Negotiable instruments, because a mortgage note is a
19 negotiable instrument.” Leyva v. National Default Servicing Corp., 127 Nev. 3, 255 P.3d 1275, 1279
20 (2011). The Court also stated: “Thus, a mortgage note is a negotiable instrument, and any negotiation
21 of a mortgage note must be done in accordance with Article 3.” Id. at 1280.

22 In order to negotiate a note, NRS 104.3201(1) requires: “[I]f an instrument is payable to an
23 identified person, negotiation requires **transfer of possession** of the instrument **and its endorsement by**
24 **the holder.**” (emphasis added) NRS 104.3204(1) provides that an “endorsement” is a signature “made
25 on an instrument for the purpose of negotiating the instrument.”

26 A note may also be transferred without an endorsement, but NRS 104.3203(2) requires that the
27 party seeking to establish its right to enforce the note “**must account for possession of the unendorsed**
28

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1 **instrument** by proving the transaction through which the transferee acquired it.” (emphasis added)

2 The declaration by Dean Meyer is based entirely on the computer records attached to his
3 declaration, and Mr. Meyer does not state that he has ever personally reviewed the documents that must
4 exist for Freddie Mac to have complied with Nevada law to transfer the Guilllory note to Freddie Mac.

5 **B. The declaration and exhibits do not comply with Nevada law regarding admissibility of evidence**

6 The declaration by Mr. Meyer instead proves that the screenshots attached to his declaration were
7 “prepared for purposes of litigation” and are “not a business record.” Paddack v. Dave Christensen, Inc.,
8 745 F.2d 1254, 1259 (9th Cir. 1984). As stated by the court of appeals, “where the only function that
9 the report serves is to assist in litigation or its preparation, many of the normal checks upon the accuracy
10 of business records are not operative.” Id. (quoting McCormick on Evidence § 308, at 877 n. 26 (E.
11 Cleary 3d ed. 1984)).

12 Unlike Mr. Matush in U-Haul Int’l, Inc., Mr. Matush does not describe the process used to input
13 data into the computer used to create the printouts from SIR upon which Mr. Meyer bases his affidavit.
14 In particular, plaintiff has not proved that the person(s) who entered the data in SIR regarding the Sakuma
15 loan had personal knowledge that plaintiff had complied with Nevada law to become the owner of the
16 underlying note on the “Acquisition Date” of November 15, 2006 identified in Exhibit A to Mr. Meyer’s
17 declaration. (ECF 21-1, filed 10/25/17, pg. 7 of 107) Mr. Meyer also does not state that he has personal
18 knowledge of these facts.

19 In American Express Travel Related Services Company, Inc. v. Vinhee (In re Vinhee), 336 B.R.
20 437, 446-447 (9th Cir. Bankr. 2015), the court discussed the eleven steps that are required to lay a
21 foundation for the admission of computer records:

22 Indeed, judicial notice is commonly taken of the validity of the theory underlying
23 computers and of their general reliability. IMWINKELRIED § 4.03[2]; RUSSELL §
24 901.9. Theory and general reliability, however, represent only part of the foundation.

25 Professor Imwinkelried perceives electronic records as a form of scientific evidence and
discerns an eleven-step foundation for computer records:

- 26 1. The business uses a computer.
- 27 2. The computer is reliable.
- 28 3. The business has developed a procedure for inserting data into the computer.

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4. The procedure has built-in safeguards to ensure accuracy and identify errors.
5. The business keeps the computer in a good state of repair.
6. The witness had the computer readout certain data.
7. The witness used the proper procedures to obtain the readout.
8. The computer was in working order at the time the witness obtained the readout.
9. The witness recognizes the exhibit as the readout.
10. The witness explains how he or she recognizes the readout.
11. If the readout contains strange symbols or terms, the witness explains the meaning of the symbols or terms for the trier of fact.

IMWINKELRIED § 4.03[2].

Although this is a generally serviceable modern foundation, the fourth step warrants amplification, as it is more complex than first appears. The "built-in safeguards to ensure accuracy and identify errors" in the fourth step subsume details regarding computer policy and system control procedures, including control of access to the database, control of access to the program, recording and logging of changes, backup practices, and audit procedures to assure the continuing integrity of the records.

The declaration by Mr. Meyer does not include statements based on personal knowledge that prove the required steps for admission of the exhibits to his declaration.

In United States v. Salgado, 250 F.3d 438, 450 (6 th Cir. 2001), the court identified four (4) requirements in order to satisfy Fed. R. Evid. 803(6):

A business record must satisfy four requirements in order to be admissible under Rule 803(6):

- (1) it must have been made in the course of a regularly conducted business activity; (2) it must have been kept in the regular course of that business;
- (3) the regular practice of that business must have been to have made the memorandum; and (4) the memorandum must have been made by a person with knowledge of the transaction or from information transmitted by a person with knowledge.

United States v. Weinstock, 153 F.3d 272, 276 (6th Cir.1998) (quoting Redken Laboratories, Inc. v. Levin, 843 F.2d 226, 229 (6th Cir.), cert. denied, 488 U.S. 852, 109 S.Ct. 137, 102 L.Ed.2d 110 (1988)). This information must be presented through "the testimony of the custodian or other qualified witness[.]" Fed.R.Evid. 803(6). Business records meeting these criteria are admissible "unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness." Id.

Dean Meyer has testified in HOA foreclosure trials in Clark County. On January 11, 2017 he testified on behalf of the defendant bank in the case of 6119 Magic Mesa St. Trust v. Chase, case number A687837. Portions of his transcript are attached as Exhibit 1. On page 13, the following question and answer are found:

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1 Q. Okay. So we've talked a little bit about the information that you receive and all of
2 these systems and how it goes into it, but let's go into the records a little bit further. So
what are the main systems that Freddie Mac uses to keep track of the loans it possesses?

3 A. Well, the main system is called Midas. That is our mainframe. That's where we house
4 all the information that came from the seller and information from the servicer that they
transmit to us on a monthly basis.

5 At the end of page 13, the following question is found, with the answer on page 14:

6 Q. Okay. And you described, I think, two parties there. Where does the information for
7 Midas actually come from?

8 A. It comes from the servicer.

9 From Dean Meyer's own testimony, in court, under oath, the information contained in the "screen
10 shot" records are input by third parties. Dean Meyer or anyone else at Freddie Mac are not competent
11 to testify about the input of the information in the computer records. His affidavit and the exhibits
12 attached to the affidavit should therefore not be considered by the court.

13 In Edelstein v. Bank of New York Mellon, 128 Nev., Adv. Op. 48, 286 P.3d 249 (2012), the
14 Nevada Supreme Court adopted the Restatement approach that "[a] transfer of an obligation secured by
15 a mortgage also transfers the mortgage unless the parties to the transfer agree otherwise." 286 P.3d at 257-
16 258 (quoting Restatement (Third) of Prop.: Mortgages § 5.4(a) (1997)).

17 In Leyva v. National Default Servicing Corp., 127 Nev. 3, 255 P.3d 1275, 1279 (2011), the
18 Nevada Supreme Court held that conveyances must comply with the statute of frauds. The court also
19 stated that "[t]he proper method of transferring the right to payment under a mortgage note is governed
20 by Article 3 of the Uniform Commercial Code – Negotiable instruments, because a mortgage note is a
21 negotiable instrument." The Court also stated: "Thus, a mortgage note is a negotiable instrument, and
22 any negotiation of a mortgage note must be done in accordance with Article 3." 255 P.3d at 1280.

23 In order to negotiate a note, NRS 104.3201(1) requires: "[I]f an instrument is payable to an
24 identified person, negotiation requires **transfer of possession** of the instrument **and its endorsement by**
25 **the holder.**" (emphasis added) NRS 104.3204(1) provides that an "endorsement" is a signature "made
26 on an instrument for the purpose of negotiating the instrument." A note may also be transferred without
27 an endorsement, but NRS 104.3203(2) requires that the party seeking to establish its right to enforce the
28

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1 note “**must account for possession of the unendorsed instrument** by proving the transaction through
2 which the transferee acquired it.” (emphasis added)

3 The declaration by Mr. Meyer does not contain any statements regarding defendants possession
4 of the note or the endorsement of the note. The declaration by Mr. Meyer also does not contain any
5 statements verifying that before a person enters an “Acquisition Date” in SIR, the person must follow an
6 established procedure that verifies transfer of possession and endorsement of the underlying note in
7 accordance with Nevada law. Mr. Meyer does not state who had possession of the note on the date of
8 the foreclosure sale, and he does not identify any documents that prove how Freddie Mac “acquired
9 ownership” of the loan. As noted above, defendant’s failure to produce written evidence of defendants
10 compliance with Article 3 of Nevada’s Uniform Commercial Code violates Nevada’s statute of frauds
11 and makes the defendants claim of ownership prior void as to the plaintiff.

12 **C. The Berezovsky decision is not binding and is contrary to Nevada law**

13 The defendant has cited to the case of Berezovsky v. Moniz 869 F.3d 923 (9th Cir. 2017) to
14 supports its position that Freddie Mac is the owner of the deed of trust. The Berezovsky decision makes
15 two points, one involving federal law, and the other on state law. The federal law issue decided in the
16 three cases is that the provisions of 12 U.S.C. § 4617(j)(3) apply to an HOA foreclosure sale held under
17 NRS Chapter 116. The other issue is a non-binding opinion regarding whether or not Freddie Mac
18 complied with Nevada law to be the owner of the deed of trust on the date of the foreclosure sale. As an
19 interpretation of the requirements under Nevada law for Freddie Mac to own the deed of trust, all three
20 decisions are not binding.

21 In Blanton v. North Las Vegas Municipal Court 103 Nev. 623, 748 P.2d 494 (1987), the Nevada
22 Supreme Court stated:

23 We note initially that the decisions of the federal district court and panels of the federal
24 circuit court of appeal are not binding upon this court. United States ex rel. Lawrence v.
25 Woods, 432 F.2d 1072, 1075–76 (7th Cir.1970), cert. denied, 402 U.S. 983, 91 S.Ct.
26 1658, 29 L.Ed.2d 140 (1971). Even an en banc decision of a federal circuit court would
27 not bind Nevada to restructure the court system of this state. Our state constitution binds
the courts of the State of Nevada to the United States Constitution as interpreted by the
United States Supreme Court. Nev. Const. art. I, § 2. See Bargas v. Warden, 87 Nev. 30,
482 P.2d 317, cert. denied, 403 U.S. 935, 91 S.Ct. 2267, 29 L.Ed.2d 715 (1971). Further,
we have respectfully concluded that Bronson, and the decisions of the 9th Circuit panels

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1 upon which the federal district court relied, represent an unnecessary and unwarranted
2 expansion of the Supreme Court's holding in Baldwin.

3 In addition, the Nevada Supreme Court has stated that the Ninth Circuit's interpretation of Nevada
4 statutes on a matter of state law does not constitute mandatory precedent, but may be construed as
5 persuasive authority. See In re Nevada State Engineer Ruling No. 5823, 128 Nev., Adv. Op. 22, 277 P.3d
6 449, 456 (2012); Custom Cabinet Factory of New York, Inc. v. District Ct., 119 Nev. 51, 54, 62 P.3d 741,
7 742-743 (2003).

8 In Butner v. United States, 440 U.S. 48 (1979), the Supreme Court stated that "[p]roperty interests
9 are created and defined by state law." Id. at 55.

10 The Supreme Court also stated:

11 The justifications for application of state law are not limited to ownership interests; they
12 apply with equal force to security interests, including the interest of a mortgagee in rents
13 earned by mortgaged property.

14 Id.

15 In United States v. View Crest Garden Apts., Inc., 268 F.2d 380 (9th Cir. 1959), the Court of
16 Appeals held that federal law would govern the appointment of a receiver for a mortgage that was
17 assigned by National Bank of Commerce of Seattle to the Freddie Mac and then to FHA. The court stated
18 that it was appropriate to select state law as "the applicable federal rule." Id. at 382. The court explained
19 in further detail:

20 **Thus state recording acts interfere with no federal policy as there is no federal**
21 **recording system for the type of mortgages here involved.** It is commercially
22 convenient to adopt existing state systems as it saves the expense of setting up a whole
23 new federal recording system and it enables persons checking ownership interests in
24 property to refer to one set of record books rather than two. (emphasis added)

25 Id. at 383.

26 In Miller v. Gammie, 335 F.3d 889, 893 (9th Cir. 2003), the court stated that "where the reasoning
27 or theory of our prior circuit authority is clearly irreconcilable with the reasoning or theory of intervening
28 higher authority, a three-judge panel should consider itself bound by the later and controlling authority
and should reject the prior circuit opinion as having been effectively overruled."; United States v.
Swisher, 771 F.3d 514, 524 (9th Cir. 2014); CRST Van Expedited, Inc. v. Werner Enterprises, Inc., 479

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1 F.3d 1099, 1106 n.6 (9th Cir. 2007); High v. Ignacio, 408 F.3d 585, 590 (9th Cir. 2005) (“This court
2 accepts a state court ruling on questions of state law.”); Rotec Indus., Inc. v. Mitsubishi Corp., 348 F.3d
3 1116, 1122 n.3 (9th Cir. 2003); Cal. Teachers Ass’n v. State Bd. of Educ., 271 F.3d 1141, 1146 (9th Cir.
4 2001); Pershing Park Villas HOA v. United Pac. Ins. Co., 219 F.3d 895, 903 (9th Cir. 2000).

5 In Owen v. United States, 713 F.2d 1461, 1464 (9th Cir.1983), the court of appeals recognized
6 that its interpretation of Cal. Civ. Proc. Code § 877.6 (West Supp. 1983) was “only binding in the absence
7 of any subsequent indication from the California courts that our interpretation was incorrect.” The Ninth
8 Circuit has also stated that “a state supreme court can overrule us on a question of state law” (Henderson
9 v. Pfizer, Inc., 285 F. App’x 370, 373 (9th Cir. 2008)), and that “we are required to follow intervening
10 decisions of the California Supreme Court that interpret state law in a way that contradicts our earlier
11 interpretation of that law” (Bonilla v. Adams, 423 F. App’x 738, 740 (9th Cir. 2011)).

12 In O’Brien v. Skinner, 414 U.S. 524, 531 (1974), the Supreme Court stated that “[i]t is not our
13 function to construe a state statute contrary to the construction given it by the highest court of a State.”

14 In Berezovsky, the court acknowledged that its determination of whether Freddie Mac held an
15 interest in the deed of trust was controlled by Nevada law. The court stated:

16 Berezovsky maintains that even if the Federal Foreclosure Bar applies to his case and is
17 preemptive, the district court should not have granted summary judgment to Freddie Mac
18 because Freddie Mac did not prove beyond dispute that it holds an enforceable property
19 interest. Berezovsky faults Freddie Mac for never recording its interest, for “splitting” the
note from the deed of trust, and for pointing to insufficient evidence to establish its
interest for purposes of summary judgment.

20 **Here, we look to the Nevada Supreme Court's resolution of these issues.** *See Erie R.*
21 *Co. v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 82 L.Ed. 1188 (1938) (“Except in matters
governed by the Federal Constitution or by acts of Congress, the law to be applied in any
case is the law of the state.”). (emphasis added)

22 869 F.3d at 931.

23 The Berezovsky case failed, however, to examine Nevada’s statute of frauds, the case of Leyva
24 v. National Default Servicing Corp. 127 Nev. 470, 255 P.3d 1275 (2011), the public policy proclaimed
25 by the Nevada Supreme Court in Edelstein v. Bank of New York Mellon 128 Nev. Adv. Op. 48, 286 P.3d
26 249 (2012), or the construction of recorded instruments as stated in the Edelstein case.

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1 **D. Nevada law is contrary to the holding in Berezovsky**

2 Under Nevada law, a deed of trust is a conveyance of land that must comply with the statute of
3 frauds. In Leyva v. National Default Servicing Corp., 127 Nev. 470, 255 P.3d 1275, 1279 (2011), the
4 Nevada Supreme Court stated:

5 A deed of trust is an instrument that “secure[s] the performance of an obligation or the
6 payment of any debt.” NRS 107.020. **This court has previously held that a deed of**
7 **trust “constitutes a conveyance of land as defined by NRS 111.010.”** Ray v. Hawkins,
76 Nev. 164, 166, 350 P.2d 998, 999 (1960). The statute of frauds governs when a
conveyance creates **or assigns** an interest in land:

8 **No estate or interest in lands**, ... nor any trust or power over or
9 concerning lands, or in any manner relating thereto, shall be created,
10 granted, **assigned**, surrendered or declared ..., **unless ... by deed or**
11 **conveyance, in writing, subscribed by the party** creating, granting,
12 **assigning**, surrendering or declaring **the same**, or by the party’s lawful
agent thereunto authorized in writing.

13 NRS 111.205(1) (emphases added).

14 As stated in NRS 111.205(1), both the deed of trust and any assignment of the deed of trust must
15 be in writing and SUBSCRIBED BY THE PARTY assigning in order to comply with the statute of
16 frauds.

17 NRS 107.070 provides:

18 **Recording of assignments of beneficial interests and instruments subordinating or**
19 **waiving priority of deeds of trust.** The provisions of NRS 106.210 and 106.220 apply
20 to deeds of trust as therein specified.

21 NRS 106.210 requires that “any assignment of the beneficial interest under a deed of trust **must**
22 be recorded.” (emphasis added).

23 In Edelstein v. Bank of New York Mellon, 128 Nev., Adv. Op. 48, 286 P.3d 249, 259 (2012), the
24 Nevada Supreme Court stated:

25 Second, it is prudent to have the recorded beneficiary be the actual beneficiary and not just
26 a shell for the “true” beneficiary. In Nevada, the purpose of recording a beneficial
27 interest under a deed of trust is to provide “constructive notice ... to all persons.” NRS
28 106.210. **To permit an entity that is not really the beneficiary to record itself as the**
beneficiary would defeat the purpose of the recording statute and encourage a lack
of transparency. (emphasis added)

Plaintiff’s claim that it held an unrecorded ownership of the subject deed of trust is contrary to
the requirements of Nevada’s recording statute.

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1 Nevada is a race notice state. See Buhecker v. R.B. Petersen & Sons Const. Co., Inc., 112 Nev.
2 1498, 929 P.2d 937 (1996).

3 NRS 111.325 provides:

4 **Unrecorded conveyances void as against subsequent bona fide purchaser for value**
5 **when conveyance recorded.** Every conveyance of real property within this State
6 hereafter made, which shall not be recorded as provided in this chapter, shall be void as
7 against any subsequent purchaser, in good faith and for a valuable consideration, of the
8 same real property, or any portion thereof, where his or her own conveyance shall be first
9 duly recorded.

10 NRS 111.180 provides:

11 **Bona fide purchaser: Conveyance not deemed fraudulent in favor of bona fide**
12 **purchaser unless subsequent purchaser had actual knowledge, constructive notice**
13 **or reasonable cause to know of fraud.**

14 1. Any purchaser who purchases an estate or interest in any real property in good faith
15 and for valuable consideration and who does not have actual knowledge, constructive
16 notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title
17 or interest to, the real property is a bona fide purchaser.

18 2. No conveyance of an estate or interest in real property, or charge upon real
19 property, shall be deemed fraudulent in favor of a bona fide purchaser unless it appears
20 that the subsequent purchaser in such conveyance, or person to be benefited by such
21 charge, had actual knowledge, constructive notice or reasonable cause to know of the
22 fraud intended.

23 Dean Meyer's trial testimony acknowledges that there is a contract between Freddie Mac and the
24 seller of the loans. This is a document, which presumably is in writing and subscribed, yet it has never
25 been produced. Dean Meyer's testimony is located on page 11 of the transcript:

26 Q. Okay. And from a mechanical viewpoint, how do these sellers – these authorized
27 sellers that you mentioned convey the loans to Freddie Mac? How does that work?

28 A. Well, so there'd be a contract. So they would contract to sell us a certain number of
loans. It could be an individual loan or a pool of loans they would agree to sell us. There
would be a contract, and then we would transfer funds, and in this case they would then
assign the deed of trust to MERS because that's our process and have it registered with
MERS, and in theory they would deliver the original note to a organization which is called
a custodian to – they would validate that the original note is consistent with what they're
telling us they're selling us, and we would compare that to validate that what they're
selling is accurate.

For whatever reason, the defendant has refused to produce the contract, which would comply with
the Nevada evidentiary statutes and the statute of frauds. However, the defendant has not produced it,

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1 and without it, their defense of the federal foreclosure bar fails, because they have not proven with a
2 writing that Freddie Mac ever had an interest in the loan. And because Nevada law determines whether
3 or not plaintiff held an interest in the Property on the date of the foreclosure sale, the decision in
4 Berezovsky v. Moniz, 869 F.3d 923 (9th Cir. 2017), do not control the outcome of the present case.

5 **E. The bona fide purchaser doctrine defeats the defendant's claim**

6 The bona fide doctrine protects a purchaser's title against competing legal or equitable claims of
7 which the purchaser had no notice at the time of the conveyance. 25 Corp. v. Eisenman Chemical Co.,
8 101 Nev. 664, 709 P.2d 164, 172 (1985); Berge v. Fredericks, 95 Nev. 183, 591 P.2d 246, 247 (1979).

9 As far back as 1880, the Nevada Supreme Court, in the case of Moresi v. Swift, 15 Nev. 215
10 (1880), stated:

11 The rule that a man who advances money bona fide and without notice, will be protected
12 in equity, applies equally to real estate, chattels, and personal estate.

13 Defendant cites the declaration of Dean Meyer as proof of Freddie Mac's alleged purchase of the
14 Loan, and thereby acquired ownership of both the promissory note and the Deed of Trust." However, the
15 defendant has failed to submit any documents which are in writing and "subscribed by the party creating,
16 granting, assigning, surrendering or declaring the same."

17 Additionally, Mr. Meyer's declaration, however, does not include any statements made on
18 personal knowledge proving that Freddie Mac complied with the requirements of Nevada law to acquire
19 ownership of either the note or the deed of trust. Without a proper transfer of either the underlying note
20 or the deed of trust, Freddie Mac cannot hold an enforceable interest in the Property.

21 The declaration by Dean Meyer contain no statements regarding Freddie Mac's possession of the
22 note or the endorsement of the note by the borrowers. As a result, the court cannot conclude that the
23 note has been transferred to Freddie Mac in compliance with NRS 104.3201(1).

24 The declaration by Dean Meyer also contain no statements regarding Freddie Mac's possession
25 of the unendorsed note signed by the borrowers. Consequently, the court cannot conclude that the note
26 has been transferred to Freddie Mac in compliance with NRS 104.3203(2).

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1 NRS 107.070 provides:

2 **Recording of assignments of beneficial interests and instruments subordinating or**
3 **waiving priority of deeds of trust.** The provisions of NRS 106.210 and 106.220 apply
to deeds of trust as therein specified.

4 NRS 106.210 requires that “any assignment of the beneficial interest under a deed of trust **must**
5 be recorded.” (emphasis added).

6 In Edelstein v. Bank of New York Mellon, 128 Nev., Adv. Op. 48, 285 P.3d 249, 259 (2012), the
7 Nevada Supreme Court stated:

8 Second, it is prudent to have the recorded beneficiary be the actual beneficiary and not just
9 a shell for the “true” beneficiary. In Nevada, the purpose of recording a beneficial
10 interest under a deed of trust is to provide “constructive notice ... to all persons.” NRS
11 106.210. **To permit an entity that is not really the beneficiary to record itself as the**
beneficiary would defeat the purpose of the recording statute and encourage a lack
of transparency. (emphasis added)

12 Defendant’s claim that Freddie Mac holds an unrecorded ownership of the subject deed of trust
13 is contrary to the requirements of Nevada’s recording statute.

14 Furthermore, case law establishes that when MERS acts as the agent for the beneficiary of a deed
15 of trust, MERS has the power to transfer both the note and deed of trust. In In re Mortgage Electronic
16 Registration Systems, Inc., 754 F.3d 772, 776-777 (9th Cir. 2014), the court of appeals described the
MERS system as follows:

17 Use of the MERS System typically begins when a borrower from a MERS member signs
18 a promissory note and a deed of trust. **The MERS member takes possession of the note,**
19 **and MERS is recorded as the beneficiary under the deed of trust.** The note is almost
20 always assigned to others, often several times over. If the note is assigned to a MERS
21 member, MERS remains the beneficiary under the deed of trust. MERS contends that
there is no need to record the assignment of the note so long as the assignee is a MERS
member. However, **when an assignment is made to a nonmember of MERS, the**
identity of the assignee is recorded. (emphasis added)

22 Later in its opinion, the court of appeals observed that the Nevada Supreme Court’s opinion in
23 Edelstein v. Bank of New York Mellon, 128 Nev., Adv. Op. 48, 285 P.3d 249 (2012), “makes clear that
24 MERS does have the authority, for purposes of NRS § 107.080, to make valid assignments of the deed
25 of trust to a successor beneficiary in order to reunify the deed of trust and the note.” 754 F.3d at 785.

26 In the Edelstein case, the Nevada Supreme Court reviewed how MERS works, and the roles
27 assigned to MERS according to the language used in the deed of trust designating MERS as both

1 “nominee” and “beneficiary.” Regarding the “nominee” language, the court stated:

2 We agree with the reasoning of these jurisdictions and conclude that, in this case, MERS
3 holds an agency relationship with New American Funding and its successors and assigns
4 with regard to the note. **Pursuant to the express language of the deed of trust**, “MERS
5 (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any
6 or all of those interests, including, but not limited to, the right to foreclose and sell the
7 Property,' and to take any action required of Lender....” **Accordingly, MERS, as an agent
8 for New American Funding and its successors and assigns, had authority to transfer
9 the note on behalf of New American Funding and its successors and assigns. See
10 generally Leyva, 127 Nev. at —, 255 P.3d at 1279–80 (discussing “[t]he proper method
11 of transferring ... a mortgage note”).** (emphasis added)

12 286 P.3d at 258.

13 Regarding the designation of MERS as beneficiary, the Nevada Supreme Court stated:

14 The deed of trust also expressly designated MERS as the beneficiary; a designation we
15 must recognize for two reasons. First, it is an express part of the contract that we are not
16 at liberty to disregard, and it is not repugnant to the remainder of the contract. *See Royal
17 Indem. Co.*, 82 Nev. at 150, 413 P.2d at 502. In *Beyer v. Bank of America*, the United
18 States District Court for the District of Oregon examined a deed of trust which, like the
19 one at issue here, stated that “MERS is the beneficiary under this Security Instrument.”
20 800 F.Supp.2d 1157, 1160–62 (D.Or.2011). After examining the language of the trust
21 deed and determining that the deed granted “MERS the right to exercise all rights and
22 interests of the lender,” the court held that “MERS [is] a proper beneficiary under the trust
23 deed.” *Id.* at 1161–62. **Further, to the extent the homeowners argued that the lenders
24 were the true beneficiaries, “the text of the trust deed contradicts [their] position.”**
25 ***Id.* at 1161; accord Reeves v. ReconTrust Co., N.A., 846 F.Supp.2d 1149 (D.Or.2012).**
26 **Similarly here, the deed of trust's text, as plainly written, repeatedly designated**
27 **MERS as the beneficiary, and we thus conclude that MERS is the proper**
28 **beneficiary.** (emphasis added)

29 286 P.3d at 258-259.

30 Here, the assignment to Nationstar bank clearly shows that it was the beneficiary of the deed of
31 trust as of the date of the recorded assignment on October 18, 2012.

32 In the case of *In re Montierth* (*Montierth v. Deutsche Bank*), 131 Nev. Adv. Op. 55, 354 P.3d 648,
33 649 (2015), the court noted the importance of recording documents stating:

34 “[A]n unrecorded deed is valid immediately between the mortgagor and the mortgagee.”
35 59 C.J.S. Mortgages § 256 (2009). In Nevada, “perfection of a deed of trust occurs upon
36 proper execution and recordation.” In *re Madrid*, 725 F.2d 1197, 1200 (9th Cir.1984),
37 superseded by statute on other grounds, Bankr. Amendments & Fed. Judgeship Act of
38 1984, Pub.L. No. 98–353, 98 Stat. 333, as recognized in *In re Ehring*, 900 F.2d 184, 187
39 (9th Cir.1990). Thus, a security interest attaches to the property as between the mortgagor
40 and mortgagee upon execution and as against third parties upon recordation.

41 Therefore, under Nevada law, third parties are not affected by unrecorded documents, such as the

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1 alleged agreements between the defendant and Freddie Mac, which have never even been produced, let
2 alone recorded.

3 **F. Defendant has not produced admissible evidence of any servicing relationship**
4 **between defendant and Freddie Mac for the note and deed of trust.**

5 In the case of Nationstar Mortgage v. SFR Investments Pool 1, LLC, 133 Nev. Adv. Op. 34, 396
6 P.3d 754 (2017), the Supreme Court held that the servicer had standing to assert the federal foreclosure
7 bar. However, in that case, the court remanded the case for the district court to determine “whether
8 Nationstar is such a servicer.” The defendant here has failed to produce a written and signed servicing
9 agreement.

10 Additionally, while the defendant has submitted hundreds of pages of guidelines for its servicers,
11 the defendant has failed to produce any document signed by an authorized representative of Freddie Mac
12 and defendant Nationstar in which both parties agree to be bound by the terms of the guidelines.

13 Defendant cites Restatement (Third) of Property: Mortgages §5.4 cmt. c, for the proposition that
14 a note and mortgage can be owned by Freddie Mac even though the trust deed may be assigned to a
15 servicer.

16 Under the holdings in Edelstein, however, the note and trust deed are assigned together. The
17 Nevada Supreme Court stated:

18 Under the Restatement approach, a promissory note and a deed of trust are automatically
19 transferred together unless the parties agree otherwise. Specifically, “[a] transfer of an
20 obligation secured by a mortgage also transfers the mortgage unless the parties to the
21 transfer agree otherwise.” Restatement (Third) of Prop.: Mortgages § 5.4(a) (1997).
22 Similarly, “[e]xcept as otherwise required by the Uniform Commercial Code, a transfer
of a [deed of trust] also transfers the obligation the [deed of trust] secures unless the
parties to the transfer agree otherwise.” *Id.* § 5.4(b). Thus, unlike the traditional rule, a
transfer of either the promissory note or the deed of trust generally transfers both
documents. The Restatement also diverges from the traditional rule in that it permits the
parties to separate a promissory note and a deed of trust, should the parties so agree.

23 The Restatement notes that “[i]t is conceivable that on rare occasions a mortgagee will
24 wish to disassociate the obligation and the [deed of trust], but that result should follow
25 only upon evidence that the parties to the transfer so agreed. The far more common intent
26 is to keep the two rights combined.” *Id.* § 5.4 cmt. a. This is because, as we have
discussed, both the promissory note and the deed must be held together to foreclose; “[t]he
[general] practical effect of [severance] is to make it impossible to foreclose the
mortgage.” *Id.* § 5.4 cmt. c; *see also Cervantes*, 656 F.3d at 1039.

27 286 P.3d at 257-258.

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1 Defendant's argument that Freddie Mac had the ability to require defendant to assign the rights
2 under the deed of trust to Freddie Mac are contrary to the language in the corporate assignment of deed
3 of trust recorded on October 18, 2012. The assignment expressly assigns to defendant "all beneficial
4 interest under that certain Deed of Trust dated: January 17, 2007. . . . with all moneys now owing or that
5 may hereafter become due or owing in respect thereof and also all rights accrued or to accrue under said
6 deed of trust" Similarly, the Supreme Court in *Edelstein* stated at 259:

7
8 After examining the language of the trust deed and determining that the deed granted
9 "MERS the right to exercise all rights and interests of the lender," the court held that
10 "MERS [is] a proper beneficiary under the trust deed." *Id.* at 1161–62. **Further, to the**
11 **extent the homeowners argued that the lenders were the true beneficiaries, "the text**
12 **of the trust deed contradicts [their] position." *Id.* at 1161; accord *Reeves v.***
13 ***ReconTrust Co., N.A.*, 846 F.Supp.2d 1149 (D.Or.2012). Similarly here, the deed of**
14 **trust's text, as plainly written, repeatedly designated MERS as the beneficiary, and**
15 **we thus conclude that MERS is the proper beneficiary. (emphasis added)**

16
17 Here to, the court needs to give meaning to the assignments text, which is plainly written,
18 designating Nationstar Bank as the assignee of the deed of trust and the beneficiary of the deed of trust.

19
20 Moreover, the language in the assignment makes it clear that even if Freddie Mac did purchase
21 "the Loan" both the note and the deed of trust were owned by the defendant as of the date of the
22 assignment, and continued to be held by defendant Nationstar by the time of the public auction held on
23 August 22, 2013.

24
25 Plaintiff requests that the court take note that no document has ever been recorded that assigns
26 to Freddie Mac or FHFA any interest in the Property or in the deed of trust recorded against the Property.
27 Defendant cannot dispute that defendant owned the note and held all beneficial interest under the deed
28 of trust on the date of the HOA foreclosure sale. Under Nevada law, the HOA foreclosure sale
extinguished the deed of trust assigned to plaintiff. *SFR Investments v. U.S. Bank*, 130 Nev. Ad. Op. 75,
334 P.3d 408 (2014).

The exhibits to the declaration by Dean Meyer include "screen shots" of a computer screen that
purports to show that Freddie Mac was the owner of the note and trust deed. This screen shot is not
admissible evidence that Freddie Mac ever acquired an interest in either the note or the deed of trust.

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1 In order to prove the existence and content of the required documents, the best evidence rule requires that
2 defendant produce the promissory note and the necessary endorsement showing that the note was in fact
3 assigned to Freddie Mac. Even if the promissory note itself was assigned to Freddie Mac, the recorded
4 documents show that the beneficial interest was held by defendant at the time of the foreclosure sale. The
5 foreclosure sale and extinguishment of the deed of trust does not affect the validity of the promissory
6 note, which is still a valid obligation between borrowers and the holder of the note.

7 Defendant has not identified or produced any recorded document that reveals any interest in the
8 Property being retained by Freddie Mac. The property interests assigned to defendant are clearly not
9 “property of the Agency” protected by 12 U.S.C. § 4617(j)(3).

10 Defendant nevertheless claims that the comment to §5.4 of the Restatement (Third) of Prop.:
11 Mortgages (1997) “acknowledges that the assignment of a deed of trust to a servicer does not alter the
12 fact that the purchaser of the loan remains the owner of the note and deed of trust.” Defendant also quotes
13 from comment c to §5.4 that “[t]his follows from the express agreement to this effect that exists among
14 the parties involved.” Defendant, however, has not alleged or identified the express agreement that exists
15 among the parties regarding the Massis note and deed of trust.

16 The declaration by Dean Meyer states that the Freddie Mac Single-Family Servicing Guide
17 “serves as a central document governing the contractual relationship between Freddie Mac and its loan
18 servicers nationwide.” This statement is not a statement of fact based on personal knowledge. In
19 particular, the declaration does not identify what documents exist to create a “relationship” between
20 Freddie Mac and Nationstar regarding the loan, and the declaration does not state that Mr. Meyer has
21 even seen or read any of the required documents. Again, a data entry on a computer screen does not
22 prove an agency relationship between Freddie Mac and defendant relating to a particular loan. And
23 again, the parties have failed to provide a signed writing wherein Nationstar has agreed to be bound by
24 the terms of the servicing guidelines.

25 In In re Montierth (Montierth v. Deutsche Bank), 131 Nev. Adv. Op. 55, 354 P.3d 648, 649
26 (2015), the Nevada Supreme Court stated that “[t]he note was subsequently transferred to Deutsche
27 Bank,” but the opinion does not discuss in detail how this transfer occurred. In the present case,
28

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1 defendant has not produced admissible evidence proving that the note was transferred to Freddie Mac
2 in a way that complied with Nevada law.

3 Defendant also cites Montierth as authority that “where the record beneficiary of the deed of trust
4 has contractual or agency authority to foreclose on the note owner’s behalf, the note owner maintains a
5 property interest in the collateral.” In Montierth, however, the recorded deed of trust designated MERS
6 as the beneficiary of the deed of trust “solely as nominee for Lender and Lender’s successors and
7 assigns.” The Nevada Supreme Court noted that the deed of trust provided:

8 MERS holds only legal title to the interests granted by Borrower in this Security
9 Instrument; but, if necessary . . . , MERS (as nominee for Lender and Lender’s successors
10 and assigns) has the right: to exercise any or all of the interests, including, but not limited
to, the right to foreclose and sell the Property; and to take any action required of Lender
including, but not limited to, releasing and canceling this Security Instrument.

11 354 P.3d at 649.

12 Based on these publicly disclosed provisions in the deed of trust, the Court held that it was only
13 a “ministerial” act for MERS to assign the deed of trust to Deutsch Bank without violating the automatic
14 stay. The Court did not approve the “concealed” ownership of a note or deed of trust in the name of an
15 undisclosed agent after MERS publicly assigned the note and deed of trust to a third party.

16 The defendant has failed to show any contractual or agency authority for Nationstar to act on
17 behalf of Freddie Mac because there is no signed writing in which Nationstar is designated as the servicer
18 for Freddie Mac.

19 In the present case, at the time of the HOA foreclosure sale, MERS no longer held rights under
20 the deed of trust because MERS had exercised its authority to assign both the note and the deed of trust
21 to defendant. Defendant has not identified or produced any documents proving that defendant was acting
22 “solely as nominee” for Freddie Mac or that defendant held “only legal title to the interests” granted by the
23 borrowers in the deed of trust.

24 In the present case, defendant has not produced competent evidence of such a “specific contractual
25 relationship” between Freddie Mac and defendant relating to the note. No document has ever been
26 identified or recorded that assigned to Freddie Mac any interest in either the note or the deed of trust
27 signed by the borrowers. The assignment of mortgage recorded on October 12, 2011 assigned both the
28

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1 note and the deed of trust to defendant. The assignment does not mention any agency relationship
2 between Freddie Mac and defendant.

3 Defendant also argues that pursuant to NRS 104.3301, a transfer of a note has no bearing on the
4 ownership of the instrument transferred. As discussed above, however, under the holding in Edelstein
5 v. Bank of New York Mellon, 128 Nev., Adv. Op. 48, 286 P.3d 249, 252 (2012), the proper transfer of
6 the note to Freddie Mac is critical to defendant's argument that Freddie Mac acquired an interest in the
7 deed of trust because the deed of trust has never been assigned to Freddie Mac.

8 Defendant asserts that 12 U.S.C. § 4617(j)(3) prevented the HOA foreclosure sale from
9 extinguishing "property of the Agency," but Nevada's real property laws clearly establish that Freddie
10 Mac did not hold any interest in the Property foreclosed by the HOA. Defendant's property interests are
11 without question not "property of the Agency" covered by 12 U.S.C. § 4617(j)(3). Because Freddie Mac
12 held no recorded interest in the Property, the Agency did not succeed by law to any interest in the
13 Property pursuant to 12 U.S.C. § 4617(b)(2)(A)(I).

14 **G. 12 U.S.C. § 4617(b)(19)(B) specifically excludes MBS loans held in trust as property of the**
15 **government**

16 12 U.S.C. § 4617(b)(19)(B) provides:

17 **(B) Mortgages held in trust**

18 **(i) In general**

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

24 **(ii) Holding of mortgages**

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

The FHFA does not – by statutory definition -- "succeed to" the assets of Freddie with respect to
properties held in a pool of mortgages in which Fannie acts as trustee. These properties are an
"exception" to the general rule of 'succession' and thus the so-called "federal foreclosure bar" does
not apply to these properties because they are not Freddie assets – by statutory definition.

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1 Dean Meyer, in his trial testimony, acknowledged that most of Freddie's loans are held in
2 mortgage back security (MBS) trusts. On page 5 of the transcript, the following questions and
3 answers are found.

4 Q. What does Freddie Mac do with the loans that it acquires?

5 A. Well, it usually goes down one of two paths. We retain the loan as an investment,
6 and we collect the payments from the servicer who collected from the homeowner, or
7 we would take those cash flows that the borrower makes and securitize them and sell
8 those as investment opportunities for third parties.

9 Q. Okay. And can you describe the –when you say when you securitize the loans,
10 what about those loans?

11 A. So loans that we purchased that we own the loans, we contract to guarantee the
12 cash flows to other investors that are associated with those loans.

13 On page 6, the following exchange takes place:

14 Q. Okay. Now, earlier a few moments ago you were discussing the securitization and
15 mortgage-backed securities. What is a mortgage-backed security?

16 A. Well, what it says. So it is a security that's backed by the underlying mortgages
17 that we own. So we own the mortgage, and the cash flow t hat the investors are
18 invested in come from those mortgages.

19 Q. And I'm going to use the abbreviation MBS for mortgage backed securities. Just so
20 if I use that, everyone's clear. And what's Freddie Mac's role in MBSes?

21 A. That we're the trustee. So we are the trustee that manages the cash flows that come
22 in from the servicer to use, and we manage distributing those funds to the ultimate
23 investor who had purchased an interest in that security.

24 The United States Supreme Court noted the securitization of these loans in the case of
25 Lightfoot v. Cendant Mortgage Corporation 137 S.Ct.553 (2017), where the court stated:

26 This general structure remains in place. Fannie Mae continues to participate in the
27 secondary mortgage market. It purchases mortgages that meet its eligibility criteria,
28 packages them into mortgage-backed securities, and sells those securities to investors,
and it invests in mortgage-backed securities itself. One of those mortgage purchases
led to Fannie Mae's entanglement in this case.

As these loans are held in trust by Freddie Mac, they are statutorily exempted from the
definition of "property." The so called "federal foreclosure bar" does not apply to this loan.

AA001338

1 **H. 12 U.S.C. § 4617(j)(3) does not preempt Nevada’s recording laws that make Fannie**
2 **Mac’s alleged unrecorded interest in the Property void as it relates to plaintiff.**

3 NRS 111.325 expressly protects plaintiff from defendant’s claim that Freddie Mac held an
4 unrecorded interest in the Property. Instead, plaintiff was entitled to rely upon the recorded
5 assignment of the deed of trust proving that defendant owned the deed of trust on the date of the HOA
6 foreclosure sale. If there is an unrecorded conveyance of the deed of trust to Freddie Mac, it has no
7 effect under Nevada law.

8 As noted by the court in Tai-Si Kim v. Kearney, 838 F. Supp 2.d 1077 (D. Nev. 2012):

9 The priority of competing claims to real property generally is governed by Nevada's
10 recording statute, which provides that a recorded interest in property “impart [s] notice
11 to all persons of the contents thereof; and subsequent purchasers and mortgagees shall
12 be deemed to purchase and take with notice.” Nev.Rev.Stat. § 111.320. However, an
unrecorded property interest is “void as against any subsequent purchaser, in good
*1088 faith and for a valuable consideration” if the subsequent purchaser's interest is
“first duly recorded.” Id. § 111.325.

13 As a result, under Nevada law, which was specifically incorporated by Paragraph 16 of the
14 deed of trust, the unrecorded interest claimed by Freddie Mac was void as to plaintiff.

15 It is undisputed that no interest in the deed of trust (real property) has ever been publicly
16 assigned to Freddie Mac. It is also undisputed that MERS had the authority to assign the real property
17 interest (deed of trust) to Nationstar. In re Mortgage Electronic Registration Systems, Inc., 754 F.3d
18 772, 785 (9th Cir. 2014). There is no conflict between 12 U.S.C. § 4617(j)(3) and NRS Chapter 116
19 regarding the extinguishment of defendant’s deed of trust recorded against the real property.

20 No conflict exists between federal law and Nevada’s HOA foreclosure statute because
21 defendant was required to protect the Property from the HOA’s superpriority lien. Extinguishing the
22 deed of trust assigned to defendant due to defendant’s failure to observe Freddie Mac’s guidelines and
23 make the required HOA payments will not cause any loss to Freddie Mac, FHFA, or any agency of
24 the federal government. Defendant is attempting to hide behind Freddie Mac to obtain relief from this
25 court for its failure to protect its own interest in the deed of trust that was owned by defendant and
26 which was extinguished by the HOA foreclosure sale.

27 AA001339

1 **I. The declaration of Dean Meyer should be stricken as untimely**

2 The court is considering this motion for summary judgment upon reconsideration after counsel
3 failed to timely file an opposition. In support of the motion for reconsideration, counsel presented
4 some evidence of an attempt to file an opposition on August 9, 2017.

5 The declaration of Dean Meyer is dated December 4, 2017, almost 4 months after the
6 defendant attempted to file its opposition. The defendant is essentially taking a 4 month extension of
7 the filing deadline to include a document which did not exist before the filing deadline. The
8 declaration should be stricken and not considered.

9 **CONCLUSION**

10 By reason of the foregoing, plaintiff respectfully requests that the court enter an order granting
11 the plaintiff's motion for summary judgment.

12 DATED this 11th day of January, 2018

13 LAW OFFICES OF
14 MICHAEL F. BOHN, ESQ., LTD.

15 By: /s/ Michael F. Bohn, Esq.
16 Michael F. Bohn, Esq.
17 Adam R. Trippiedi, Esq.
376 E. Warm Springs Rd., Ste. 140
Las Vegas, NV 89119
Attorney for plaintiff/counterdefendants

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of the Law Offices of Michael F. Bohn, Esq., Ltd., and on the 11th day of January, 2018, an electronic copy of the REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT was served on opposing counsel via the Court’s electronic service system to the following counsel of record:

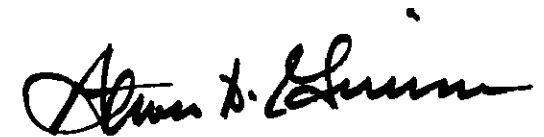
Dana Jonathon Nitz, Esq.
Regina A. Habermas, Esq.
Wright, Finlay & Zak, LLP
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89148

/s/ Marc Sameroff/
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

EXHIBIT 1

EXHIBIT 1

AA001342



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

6119 MAGIC MESA ST. TRUST,)

Plaintiff,)

vs.)

CHASE HOME FINANCE LLC,)

Defendant.)

AND OTHER PARTIES)

CASE NO. A-13-687837-C
DEPT NO. XXXI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 1 - EXCERPT

TESTIMONY OF DEAN MEYER

WEDNESDAY, JANUARY 11, 2017

APPEARANCES:

FOR MAGIC MESA:

MICHAEL F. BOHN, ESQ.
ADAM R. TRIPPIEDI, ESQ.

FOR JP MORGAN CHASE BANK:

CHRISTOPHER L. BENNER, ESQ.

FOR CHASE HOME FINANCE:

KATIE M. WEBER, ESQ.

RECORDED BY: RACHELLE HAMILTON, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

I N D E X
W I T N E S S E S

WITNESSES FOR THE DEFENSE:

DEAN MEYER

Direct Examination by Mr. Benner	3
Cross-Examination by Mr. Bohn	50
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E X H I B I T S

EXHIBITS ADMITTED:

4	Freddie Mac Investor reporting documents	43
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1 **LAS VEGAS, CLARK COUNTY, NEVADA, JANUARY 11, 2017, 1:17 P.M.**

2 *** * * * ***

3 (Defense witness, Dean Meyer, sworn.)

4 THE CLERK: Please be seated. State your name,
5 spelling your first and last name for the record, please.

6 THE WITNESS: My name is Dean Meyer. D-e-a-n,
7 M-e-y-e-r.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. BENNER:

11 Q Good afternoon now, Mr. Meyer. Are you employed?

12 A Yes.

13 Q By whom?

14 A I work for Freddie Mac.

15 Q How long have you been a Freddie Mac employee?

16 A 18 years.

17 Q What is your current employment position at Freddie
18 Mac?

19 A Director of loss mitigation.

20 Q And how long have you held that position?

21 A Six years.

22 Q And what are your duties and responsibilities in that
23 position?

24 A My duties are basically helping manage the litigation
25 related to loans that we own.

AA001345

JD Reporting, Inc.

1 Q And how well would you say you understand Freddie
2 Mac's overall business?

3 A Very well.

4 Q So in overview, what is Freddie Mac's business?

5 A We buy mortgages and either invest them ourselves or
6 sell off cash flows to other investors and manage the servicers
7 that collect the payments from the homeowner on our behalf.

8 Q When you say you acquire or buy loans, what kind of
9 loans does Freddie Mac acquire?

10 A We buy first lien mortgages on one to four unit
11 properties.

12 Q And what makes mortgage loans different from other
13 types of loans, like credit cards or car loans or the like?

14 A We only purchase loans that are secured by a
15 collateral as the house.

16 Q And in what geographic market does Freddie Mac
17 purchase loans?

18 A All 50 states and U.S. territories.

19 Q How often does Freddie Mac purchase loans?

20 A Every day.

21 Q And just can you give the parties a sense of the
22 scale that Freddie Mac purchases loans.

23 A We currently own a little over 11 million mortgages.

24 Q And how does Freddie Mac's level of activity in
25 Nevada compare to the level of activity in other states?

1 A Similar.

2 Q What does Freddie Mac do with the loans that it
3 acquires?

4 A Well, it usually goes down one of two paths. We
5 retain the loan as an investment, and we collect the payments
6 from the servicer who collected from the homeowner, or we would
7 take those cash flows that the borrower makes and securitize
8 them and sell those as investment opportunities for third
9 parties.

10 Q Okay. And can you describe the -- when you say when
11 you securitize the loans, what about those loans?

12 A So loans that we purchased that we own the loans, we
13 contract to guarantee the cash flows to other investors that
14 are associated with those loans.

15 Q Okay. So just practically speaking, how does that
16 guarantee arrangement work?

17 A So say an investor in one of our securities, they're
18 guaranteed to get their monthly principal and interest payments
19 associated with the underlying loan, and if the borrower
20 doesn't pay and therefore the servicer doesn't transfer --
21 transmit that funds to us, we guarantee those investors that
22 they will be paid.

23 Q Okay. So just as a practical matter then, who bears
24 the financial risk when a borrower defaults?

25 A Freddie Mac completely.

1 Q Okay. So let's talk about some of the loan
2 documents. How would you describe your understanding of notes
3 and deeds of trust that relate to mortgage loans on properties
4 here in Nevada?

5 A Fairly good.

6 Q And how important is it for Freddie Mac to acquire
7 and maintain the ownership of a security interest in the loan
8 it purchases?

9 A Well, the security interest is basically the
10 collateral that we'll support. If the borrower defaults on the
11 note, we would have the right to collect the -- and recover the
12 collateral, which would be the property, to offset our loss.
13 It is very important.

14 Q Okay. And what, if any, part of Freddie Mac's
15 business practices involves separating notes from deeds of
16 trust?

17 A None whatsoever.

18 Q Okay. Now, earlier a few moments ago you were
19 discussing the securitization and mortgage-backed securities.
20 What is a mortgage-backed security?

21 A Well, what it says. So it is a security that's
22 backed by the underlying mortgages that we own. So we own the
23 mortgage, and the cash flow that the investors are invested in
24 come from those mortgages.

25 Q And I'm going to use the abbreviation MBS for

1 mortgage-backed securities. Just so if I use that, everyone's
2 clear. And what's Freddie Mac's role in MBSes?

3 A That we're the trustee. So we are the trustee that
4 manages the cash flows that come in from the servicer to us,
5 and we manage distributing those funds to the ultimate investor
6 who had purchased an interest in that security.

7 Q Okay. And just for practical purposes, who owns the
8 loans in those mortgage-backed securities?

9 A Freddie Mac does.

10 Q Let's move on to a relationship set of questions
11 regarding Freddie Mac and FHFA. Is Freddie Mac a government
12 agency?

13 A No.

14 Q Okay. Do you know what the Federal Housing Finance
15 Agency -- I refer to it as FHFA -- is?

16 A Yes.

17 Q Okay. And what is the FHFA?

18 A FHFA is an entity that was created by Congress to
19 oversee the GSE, so Freddie Mac and Fannie Mae, and basically
20 manage our day-to-day operations.

21 Q Okay. And so when you say they manage it, what's the
22 relationship there? Is it --

23 A They're our conservator. So it means they ultimately
24 have the authority to dictate how we govern our business.

25 Q Okay. I'm going to have you pick up Volume 1 of the

1 exhibits before you, and we're going to go through a few. If
2 you can take a look at Exhibit 2 in the Volume 1 binder,
3 please. Do you have that one in front of you? It should be a
4 copy of the deed of trust.

5 A Yes, I do.

6 Q And I'll just have you take a look at the front page
7 and just confirm that this is the deed of trust where Maria
8 Gutierrez is listed and that on the next page it has 6119 Magic
9 Mesa?

10 A Yes.

11 Q Okay. Thank you.

12 A Yeah.

13 Q And I'll have you look at the second page. Section E
14 has MERS in quotation marks and says Mortgage Electronic
15 Regulation -- or Registration System, okay?

16 A Yes.

17 Q Okay. In practical terms, what does it mean for MERS
18 to be the nominee for the lender and its successors?

19 A Well, MERS is basically a registration system. So
20 when Freddie Mac purchases a loan, typically the seller will
21 have the deed of trust in this case assigned to MERS, and MERS
22 is holding an interest in the capacity as a registration system
23 for the ultimate investor.

24 Q Okay. And you said in practical terms. So how can a
25 successor to the original lender come into the picture?

1 A Well, the original lender originated a loan, and then
2 subsequent we purchased that loan. So we are in theory the
3 lender.

4 Q Okay. And what's the relationship between the deed
5 of trust and a note?

6 A Well, they usually go together. So a note is an
7 obligation to pay for money that was borrowed to them, and the
8 deed of trust is basically the secured interest in a piece of
9 property to provide collateral for the note.

10 Q And so again as a practical business matter, who owns
11 the note and the deed of trust?

12 A In this case Freddie Mac.

13 Q In taking a look at this overall, how did Freddie Mac
14 come to own this particular note and deed of trust?

15 A We purchased it, I believe, on April 24th in 2007.

16 Q And generally how do you know that?

17 A Well, I know that. I look at our system of records.
18 So we have systems that maintain historical information on
19 every loan that we purchase, and I would look in our system to
20 say when did we purchase it and from who.

21 Q Okay. And before we get into those particular
22 systems, let's go back and talk a little bit about how Freddie
23 Mac acquires loans. From whom does Freddie Mac acquire
24 mortgage loans?

25 A So we buy mortgages from mortgage companies and/or

1 banks that either own them themselves or they originated them
2 and subsequently wish to sell their interest in that note. We
3 purchase them either individually or in bulk from -- depending
4 on the size of the number of loans the debt seller is looking
5 to sell.

6 Q Okay. So just in general or is there a certain cadre
7 of as you said lenders and banks?

8 A It could be multiple. That lender-seller would have
9 to be someone that is authorized and has been vetted by Freddie
10 Mac to be eligible to sell us loans.

11 Q Okay. And in the life of a mortgage loan, when does
12 Freddie Mac typically make its purchase of the loan?

13 A In most cases within -- if not instantly, but within
14 a month or two of when the loan was originated.

15 Q Okay. And so why does Freddie Mac acquire loans
16 instead of originating them itself? You just said it's a large
17 entity?

18 A Well, our charter doesn't allow us to originate
19 mortgages. In fact of the matter, we don't have the
20 relationship nor the capacity to originate loans directly.

21 Q Okay. And earlier you mentioned a moment ago about
22 authorized. What documents govern Freddie Mac's relationship
23 with these -- with the authorized sellers?

24 A Well, we have a contract, which is the seller
25 servicer guide. So it's a contract that sets forth the terms

1 under which we would purchase mortgages from entities that have
2 been authorized to sell loans to us.

3 Q Okay. And where can I find that seller servicer
4 guide?

5 A The guide is online. So you can find it at
6 allregs.com is the entity that hosts the -- hosts the guide.

7 Q Okay. And from a mechanical viewpoint, how do these
8 sellers -- these authorized sellers that you mentioned convey
9 the loans to Freddie Mac? How does that work?

10 A Well, so there'd be a contract. So they would
11 contract to sell us a certain number of loans. It could be an
12 individual loan or a pool of loans they would agree to sell us.
13 There would be a contract, and then we would transfer funds,
14 and in this case they would then assign the deed of trust to
15 MERS because that's our process and have it registered with
16 MERS, and in theory they would deliver the original note to a
17 organization which is called a custodian to -- they would
18 validate that that original note is consistent with what
19 they're telling us they're selling us, and we would compare
20 that to validate that what they're selling us is accurate.

21 Q Okay. And you mentioned the contract, and we've got
22 some written documents here, but when you say they're telling
23 us information about it, do they just pick you up on the phone,
24 or is there a system by which they enter the information that
25 you then validate?

1 A All right. So most loans including this one was sold
2 through our selling system. So it's a system where the seller
3 would -- their system would basically transmit loan level
4 information about that loan that they're wishing to sell to us,
5 and then it would be delivered through that system to us.

6 Q Okay. And what type of information is included, and
7 what type of information is transmitted I should say?

8 A So everything related to the loans, from the
9 borrower's name, their financial information, the property
10 address, the amount of the loan, the property address -- I
11 think I said that, property address -- details of the loan
12 itself would be transmitted to us.

13 Q And what does Freddie Mac do with that information?

14 A Well, we store it, and so we maintain a system that
15 tracks and keeps track of every loan that we sell -- that we
16 purchase, and we use that to monitor the performance of those
17 loans.

18 Q Okay. And what if any part of Freddie Mac's business
19 involves acquiring loans in a way that would leave Freddie Mac
20 without ownership of the note and the deed of trust? You say
21 that you don't separate them, but would you acquire one without
22 the other?

23 A No, we would not purchase -- loans are not eligible
24 to sell to us that don't have a note and a mortgage or deed of
25 trust associated with it.

1 Q Okay. And what's the business rationale for not
2 accepting separated loans?

3 A You'd be purchasing unsecured debt and not have any
4 collateral to support the risk of lending those funds.

5 Q Okay. So we've talked a little bit about the
6 information that you receive and all of these systems and how
7 it goes into it, but let's go into the records a little bit
8 further. So what are the main systems that Freddie Mac uses to
9 keep track of the loans it possesses?

10 A Well, the main system is called Midas. That is our
11 mainframe. That's where we house all the information that came
12 from the seller and information from the servicer that they
13 transmit to us on a monthly basis.

14 Q Okay. So when you say the seller and the servicer,
15 what kinds of information are tracked in the Midas system?

16 A Well, the origination information of when we
17 purchased a loan from the selling system would feed into Midas.
18 So we would have all the information of who the seller was, the
19 amount of the principal balance of the loan, when we purchased
20 it, who the servicer is. That would come from the selling
21 system, and then monthly the servicer would report to us status
22 of that loan, and that information would feed into that system
23 as well.

24 Q Okay. And you described, I think, two parties there.
25 Where does the information for Midas actually come from?

1 A It comes from the servicer.

2 Q Okay.

3 A Or the seller at the time when the loan was sold to
4 us.

5 Q And when is the information included into the Midas
6 system?

7 A Once we purchase the loan.

8 Q Okay. And then for the servicing?

9 A Yeah. So whoever the servicer is is required to
10 report to us at least monthly standard information, but they
11 could report information to us daily depending on the nature of
12 that information.

13 Q Okay. And who inputs the information actually into
14 the Midas system?

15 A No one actually inputs it. It is a data feed from
16 the servicer in this case. They would feed -- report to us
17 electronically. That goes into our -- what's called our
18 corporate data warehouse. So it's a warehouse that manages the
19 data, and that data automatically feeds to Midas.

20 Q Okay. And how important is it to Freddie Mac's
21 business that that information be accurate and reliable?

22 A Critical.

23 Q And if for some reason inaccurate information had
24 been entered into the Midas system, how likely is it that that
25 error would be detected?

1 A Fairly rare. Again, there is some data elements that
2 are in there that are not critical, such as the -- you know,
3 there could be information about who the seller and servicer
4 was at one point in time, but critical data is such as the date
5 we purchased it, the loan amount, the property address. That's
6 critical, and if there was ever an error detected in that,
7 there's a rigorous process to go through to correct that.

8 Q How often do you use Midas in your work?

9 A Every day.

10 Q And for what purpose do you use it?

11 A Well, again it's our mainframe. So it's the system
12 record. We look to that to -- at any point in time to see a
13 status of a loan, the servicer reports information to us, to
14 look at who the servicer is, to look at the principal balance,
15 to look to see when the last payment was made by the borrower
16 to the servicer is all housed in that system.

17 Q Okay. And what have you done to query the Freddie
18 Mac system Midas for information about the loan in this case
19 regarding the 6119 Magic Mesa property?

20 A So we pulled screenshots of that system to verify
21 that it is a loan that we own, the date that we purchased it,
22 who the seller was, who the servicer was, what the outstanding
23 balance of the loan was.

24 Q Okay. And when you reviewed the information in the
25 Midas system, what did you determine?

1 A Oh, it was consistent with what the -- it says the
2 date we purchased it, that we still own the loan. We've owned
3 it since the date it was sold to us back in 2007, and it is
4 still on our books as an asset.

5 Q Okay. I'm going to have you -- speaking of these
6 screenshots and on the books, let's take a look at Exhibit 4 in
7 Volume 1 before you. These are -- the first two pages are
8 Bates stamped -- sorry -- Bates stamped Chase 635 and 636. Do
9 you have those in front of you?

10 A Yes, I do.

11 Q And do those look familiar?

12 A Yes, they are. They're screenshots of our Midas
13 system.

14 Q Okay. So let's see here. Let's start with just the
15 first page. If you take a look at the -- both of those on the
16 first page, they start and have loan basic inquiry in the top
17 center.

18 A Yes.

19 Q Do you see that?

20 A Yes.

21 Q Okay. And can you place these two screens in
22 relation to the Midas system; what are these?

23 A So these are -- the first one is really the main
24 screen within Midas. It tells us information about a loan we
25 own.

1 Q Okay. So where did this information reflected in
2 these two screens come from?

3 A It came from Midas. So someone went into the Midas
4 system and just screen printed that particular page for this
5 loan.

6 Q And how does Freddie Mac make use of the information
7 in the Midas system presented in these screenshots?

8 A Well, again it memorializes every loan, status of a
9 loan that we either own or in some cases we owned at one point
10 in time.

11 Q Okay. And how's the information in Midas organized?
12 Does it --

13 A By loan number. By loan number.

14 Q Okay. Now, let's walk through these two screenshots
15 because they're a little bit dense with information. You
16 mentioned these relate to the loan on 6119 Magic Mesa. How do
17 you know that from these two?

18 A Well, the first part is -- the top left-hand side has
19 a loan number. So it would reflect the loan number associated
20 with that particular property. If you go down, it tells us who
21 the servicer is, who the seller was. It is their ID with us,
22 and if you go over onto the right-hand side, again it has the
23 servicer's loan number associated with it, the original
24 principal of the loan, the principal balance that we purchased,
25 its current principal balance as of the date of the screenshot,

1 information as far as the -- how much -- what percentage of
2 loan we own all the way to the date we actually purchased it,
3 which is called our funding date. That's a Freddie Mac term.
4 The funding date is the date we purchased the loan from the
5 seller.

6 Q Okay. And when you say funding date, so where --
7 where is it on the screenshots that indicate Freddie Mac's
8 acquisition of this loan?

9 A So on the left-hand side -- I mean the right-hand
10 side about a little less than halfway down it says funding
11 date, and again the method we do is the seventh day of the
12 fourth month -- excuse me -- the year. So 2007, the 4th month
13 the 24th day. So April 24th, 2007, is the date we purchased
14 it.

15 Q Okay. And let's take a look at the next set of
16 screenshots on the next page, the ones captioned S, slash, S,
17 profile inquiry near the top. What are these images of?

18 A So the first screenshot is -- S, slash, S, is seller
19 servicer profile. So that's a screen that would show who and
20 what entity sold us the loan and their associated number. So
21 in this case the seller servicer ID number is 122373 I believe
22 that number is, and then it goes to list who that was at the
23 time we purchased the loan.

24 Q So S, slash, S, stands for Seller Servicer?

25 A Correct.

1 Q Okay. Thanks. And what business use does Freddie
2 Mac make of this information?

3 THE WITNESS: Well, it tells us who we bought it
4 from, and depending on the relationship, if we have any
5 (unintelligible) warrants that that seller has taken on any
6 (unintelligible) warrants for default. It would memorialize
7 who that was.

8 Q And I think you mentioned a number there a moment
9 ago, 122373 in the top panel regarding a seller-servicer
10 number. What does that number mean?

11 A That's the ID number associated with that seller.

12 Q Okay. So if you combine these screenshots to the two
13 on the prior page, both in the Midas system, what does that
14 tell you about the seller of the loan as reported to Freddie
15 Mac's might assist him?

16 A Well, on the first screen, if you look on the
17 left-hand column, the third row down, it would tell us the
18 seller number, and it would have the 122373. The second screen
19 would identify who that was.

20 Q Okay. And earlier we discussed about the transfer of
21 the notes and the deeds of trust. Now, what happens to notes
22 between the time a borrower and a lender execute the note and
23 the deed of trust and the time that Freddie Mac acquires them?

24 A Well, they would be owned by the seller. So they
25 would own it from the time the borrower executed the note and

1 deed of trust until the time they sold it. So they would be --
2 they'd own the note and the mortgage or deed of trust in this
3 case and be the owner of the cash flows from that loan until
4 they sell it to us.

5 Q Okay. And earlier you testified that usually the
6 purchase by Freddie Mac happens somewhat later. Why is there a
7 little bit of a lag between --

8 A Well, in most cases the seller wants to determine who
9 will -- they'll get their best price from. So in most cases
10 it's whether I'm going to sell the loan to Freddie Mac or
11 Fannie Mae. So once they originate a loan, they would look to
12 say who is going to pay me the best price for this loan, and
13 then they have to negotiate whatever that price is and then
14 ultimately agree on it and then actually do the paperwork to
15 transfer funds. That takes a period of time.

16 Q And also earlier we discussed that the Midas system
17 updates itself. What happens if an authorized seller changes
18 or merges with another company as sometimes occurs?

19 A Well, our system always reflects who the current name
20 of that, in this case seller. So if a merger occurred at some
21 point in time between a seller and they merged or changed their
22 name, our system would reflect the current name.

23 Q Okay. And what if anything does the Midas system
24 reflect about the date that Freddie Mac acquired the loan?

25 A Well, on the first page, again on the right-hand

1 side, it identifies the funding date, and that's the date we
2 use to purchase a loan.

3 Q Okay. And after a loan's purchased, it's owned by
4 Freddie Mac, correct?

5 A Right. So once we purchase a loan, we own the note.
6 We own the deed of trust, and then the servicer, whoever that
7 is, would be obligated to send the cash flows from that loan to
8 Freddie Mac.

9 Q And looking at these screenshots, what if anything do
10 they tell you about whether Freddie Mac presently owns this
11 loan?

12 A So the two things I look at is the funding date. So
13 it says we purchase on that date. If we had sold the loan, it
14 would have a date that we sold it, and about four lines down,
15 five lines down, it says payoff date. So in the Freddie Mac
16 system, once we've sold a loan or liquidated it or the borrower
17 paid it off, that date would be in that field. So since there
18 is no date, it shows that we still own the loan.

19 Q Okay. So how would these screenshots differ if
20 Freddie Mac did not own the loan?

21 A Well, you could still see that this information is
22 available for every loan we've ever owned, but it would have a
23 date in there reflective of the date that we no longer owned
24 that loan, whether through liquidation as a foreclosure or we
25 sold it or the borrower paid it off.

1 Q Okay.

2 A It would have that date in there.

3 Q So did you encounter anything when you were reviewing
4 the Midas system or anywhere else in Freddie Mac's
5 record-keeping systems that indicate that Freddie Mac ever
6 conveyed its interest in the property 6119 Magic Mesa loan to
7 any other party?

8 A So there's nothing that would show that we would have
9 sold an interest in this loan to any other party. If we had,
10 then again there would be a payoff date in there, and there is
11 not one.

12 Q Okay. Let's turn to the third page of Exhibit 4,
13 another screenshot, Chase 0637. At the very top it says Loan
14 Status Manager TOS Summary Report I think?

15 A Yes.

16 Q Do you have that?

17 A Yes, I do.

18 Q Okay. So what does this screenshot show?

19 A So loan status manager basic is a reporting tool, and
20 this particular screenshot is a report that shows the servicing
21 history of this loan, and so that says TOS summary. TOS is
22 Transfer of Servicing. So this is a report of the history of
23 any entity that was servicing this loan since we purchased it.

24 Q Okay. Well, let's take a look at the next page, too.
25 This one that says Loan Status Manager Payment History Report.

1 A I see that.

2 Q Okay. And what is this screenshot or several
3 screenshots it looks like?

4 A So this is what the title says. It is a mortgage
5 payment history report. So this is a history of all the cash
6 flows for this loan that the servicer had transmitted to
7 Freddie Mac over the life of the loan.

8 Q Okay. So and let's take a little bit of a step back.
9 So these are two -- the loan status manager, what is that
10 overall?

11 A Excuse me?

12 Q What is the loan status manager overall?

13 A It is -- it's a reporting tool that I could generate
14 reports based on a loan number. So I could pull up a loan
15 number and get various reports related to that loan. That data
16 comes from the corporate data warehouse as well.

17 Q Okay. And what do you need this information for?

18 A So again I use this not on a daily basis, but often
19 to show the funds that the servicer has remitted to Freddie Mac
20 over the course of our ownership of the loan. It tracks the
21 due date of the last paid installment, which means the month
22 that the borrower last -- the last payment that they made,
23 tells us when the actual date they last -- the servicer last
24 received a payment. It tracks the existing outstanding
25 principal balance, and it reflects the interest rate of the

1 note and the interest rate that the servicer has to transmit
2 funds to us.

3 Q And in your experience, how reliable is the
4 information in the loan status manager?

5 A Very reliable.

6 Q Okay. And can you take a look through these and tell
7 me how you know that this applies to the 6119 Magic Mesa loan?

8 A At the very top of the page it has the FHLMC. So
9 that's Freddie Mac's loan number, and that loan there coincides
10 with the loan we're here to speak about today.

11 Q And what did these loan status manager screenshots
12 tell you about whether or not Freddie Mac owns the loans today?

13 A Well, it reflects that -- if you go to the third page
14 of the payment history report, it shows the first accounting
15 cycle, so the first month in which a servicer started reporting
16 information on a loan, and it shows that the servicer reported
17 information to us every month on that loan up until the date of
18 this report. So there was no break in time when the servicer
19 was reporting information on this loan to Freddie Mac which
20 tells me we owned it throughout that period.

21 Q Okay. So how would these screenshots be different if
22 Freddie Mac did not own this loan?

23 A There would -- well, there would be no reporting by
24 the servicer after the time we sold the loan, and if we never
25 owned it, there would be no information.

1 Q Okay. So I'll make the representation through other
2 evidence previously presented that the 6119 Magic Mesa was the
3 subject of an HOA foreclosure sale on or about February 1st,
4 2013, and here in the Midas system and the loan status manager,
5 there appears to be fields that have been filled in past
6 February of 2013. So how does -- how does this -- what does
7 this system tell you about whether Freddie Mac owned the loan
8 as of the date of the HOA sale and thereafter?

9 A Well, for Midas it shows the funding date, and it
10 shows that it's still an active loan in our system, and the
11 mortgage payment history report reflects that the servicer was
12 reporting information on that loan throughout that period of
13 time. Both of those together reflect that we were the investor
14 on this loan.

15 Q Okay. Now let's talk a little bit about how Freddie
16 Mac actually manages the mortgage after it acquires them, and
17 can you explain what mortgage servicing is and how your job
18 relates to mortgage servicing?

19 A Well, mortgage servicing is really the management of
20 the functions of the loan, so collecting the payments from the
21 homeowner, paying taxes if the loan has an escrow account,
22 paying the insurance, working with the homeowner if they have
23 issues related to their payments. It's really just the
24 administration of the deed of trust and the note. So it
25 governs that and how they manage it. Our responsibility there

1 is we oversee the servicers that actually service the loans on
2 our behalf.

3 Q Okay. You oversee them. So who actually services
4 the loans for Freddie Mac?

5 A Well, in this case Chase is our servicer that's
6 servicing the loans that we -- this loan that we own.

7 Q Okay. So why does Freddie Mac contract with
8 servicers instead of servicing the loans itself?

9 A Mostly efficiencies. We are not big enough to manage
10 11 million loans, to have relationships with the 11 million
11 different borrowers. The servicers have that relationship.
12 They have the capacity, and they have the systems and people to
13 manage that on a day-to-day basis.

14 Q Okay. And you said previously that one of the
15 activities is if the borrower has an issue. So when a loan
16 that Freddie Mac owns has defaulted to the point that a
17 foreclosure may be necessary, who typically conducts the
18 foreclosure?

19 A Well, the servicer will. So we require the servicer
20 to foreclose in their name on every loan that we own. They do
21 the foreclosure in their name, and then ultimately if through a
22 foreclosure sale we acquire through the foreclosure sale, then
23 they would deed the property to us, and then we would sell the
24 property.

25 Q Okay. So why -- why take that approach?

1 A Well, again, mostly administrative. The servicer has
2 the expertise, and we require them to know every -- know the
3 laws in the jurisdictions where the properties are. They are
4 required to hire the local counsel to manage a foreclosure and
5 execute any documents that are necessary to perfect that
6 interest in the property through the foreclosure. We don't
7 have the capacity nor the expertise to do that.

8 Q Okay. And what documents lay out or govern the
9 relationship between Freddie Mac and these servicers?

10 A Well, the seller servicer guide. So Volume 2 of that
11 is the servicing section of that contract.

12 Q Okay. Seller servicer guide.

13 A Right.

14 Q Okay. And where can we find a copy of that?

15 A It's online, so at allregs.com.

16 Q Okay. And so earlier you said the servicers will
17 foreclose in their name. Why do Freddie Mac servicers
18 sometimes show up as the record beneficiary when the loans are
19 owned by Freddie Mac?

20 A Well, we require it. So we require it to be in their
21 name mainly to put the public on notice because it's recorded
22 at the county courthouses that if anybody has an inquiry
23 related to that lien that's recorded at the county, that they
24 would contact that entity because we require them to manage
25 that relationship and manage any activities that come up

1 related to that piece of property which is secured by our lien.

2 Q Okay. And you mentioned the recording. So from the
3 borrower's perspective at least, wouldn't it be easier to deal
4 with mortgage issues if Freddie Mac showed up as the
5 beneficiary of the deed of trust?

6 A No. Again, we don't have the capacity or the
7 expertise to manage that relationship. We contract that out to
8 our servicers to manage that relationship.

9 Q Okay. So with all the -- with all this regarding
10 servicing, let's take a look at servicing in this case. So
11 let's take a look at the Midas information on that. Let's turn
12 back to the loan basic inquiry screenshots, the Chase 635. In
13 the top left-hand corner, what is listed next to servicer NBR
14 on the top screenshot?

15 A Again, so servicer -- NBR is number. So it shows who
16 this servicer is and their associated ID.

17 Q Each servicer has its own ID number, correct?

18 A Each servicer has their unique ID number, yes.

19 Q So if we turn to the next page, the, S, slash, S
20 profile inquiry, the bottom panel, what does that tell us about
21 the servicer number?

22 A So it shows the servicer number is -- if I can read
23 that -- 140127, and the servicer that's assigned that number is
24 J.P. Morgan Chase.

25 Q Okay. And as of what date does this document refer

1 to it?

2 A This screenshot was generated on July 11th, 2016.

3 Q And where if anywhere in Freddie Mac's information
4 systems does prior servicer information appear?

5 A Well, that would be on the loan status manager TOS
6 report. So Midas always reflects who the current servicer is.
7 That other report would show who the servicer was and what
8 period of time they were our servicer.

9 Q Okay. You referred to the loan status manager TOS
10 summary report. It's the third page here, right?

11 A Correct.

12 Q Okay. And have you seen this document before?

13 A Yes.

14 Q What does TOS stand for?

15 A TOS stands for Transfer of Servicing.

16 Q Okay. So what's servicing transfer?

17 A So when -- whether the servicer or Freddie Mac
18 changes who is going to have that relationship with the
19 homeowner and who's going to manage the collection of payments
20 from that homeowner, we could transfer that from one entity to
21 another.

22 Q Okay. And why would there be a servicing transfer?

23 A Many reasons. It could be that they don't wish to
24 service the loans. We may not think they're adequate at doing
25 that, and it could just be a business decision to transfer that

1 servicing.

2 Q Okay. And how important is it that the historical
3 servicer information be accurate and reliable as Freddie Mac
4 maintains it?

5 A It's very important. The seller during that time
6 retains (unintelligible). So if anything they did during that
7 time -- anything that happened during that time frame that they
8 were servicing was done inaccurately, we would know who was
9 servicing the loan at the time and be able to go back to them
10 to understand what happened.

11 Q Okay. So does Freddie Mac have any role in
12 transferring the servicers?

13 A Every transfer has to be approved by Freddie Mac. So
14 if any transfer they would ask us to transfer the loan, or we
15 would direct it to be transferred.

16 Q Okay. So in this TOS, Transfer of Servicing summary
17 report, where did this information, these two lines come from?

18 A Ultimately the information came from our CDW, so our
19 Corporate Data Warehouse is where the data gets pulled from.

20 Q Okay. And how does Freddie Mac make use of the
21 information pertaining to the servicing?

22 A Well, again, we use that information to understand
23 who was servicing the loan under what periods of time in case
24 there were any issues that come up retrospectively, that
25 happened during that time to who -- what entity we'd go talk

1 to.

2 Q Okay. Okay. And it looks like this is a fairly
3 small table. It has three rows, eight columns, and what's the
4 first -- with the first row being all the headers for the
5 columns.

6 THE COURT: Counsel, are we on -- did we move a page?

7 MR. BENNER: Oh, sorry.

8 THE COURT: Are we now on Bates stamp 637 by chance
9 or --

10 MR. BENNER: Yes. Sorry.

11 THE COURT: Okay. Thank you.

12 MR. BENNER: Chase 637.

13 BY MR. BENNER:

14 Q So what does the first row under the column headers
15 mean?

16 A Well, other than the header, the first row would
17 be -- again, if I could read the dates -- so it says May
18 16th, 2007, was a request. So that was a request to transfer
19 servicing. So either the servicer or Freddie Mac -- there was
20 a request to transfer the servicing. The status date -- the
21 status would be approved. So we approved the transfer.

22 And they would have a status date, which is typically
23 the same date as the effective date. So the effective date is
24 when the transfer of the responsibility to service that loan
25 went from one entity to another. Request from would be who the

1 current servicer was at the time to who the new servicer was
2 going to be on the loan.

3 Q Okay. And then that's the first row under the
4 header, so the center -- the center row. What's the bottom
5 row, that second row mean?

6 A So the second row would be -- every row would be a
7 transfer of the servicing. In this case, that transfer was in
8 2009, and it was really just a transfer within J.P. Morgan
9 Chase's organization. Many of the larger servicers have
10 multiple servicer ID numbers. So they transferred the
11 servicing from one of their IDs to another ID. That's all that
12 reflects.

13 Q So even though the boxes say J.P. Morgan Chase Bank,
14 the servicer from has one number. The servicer to has another
15 number. It looks like it's 140127. So that's just another
16 Chase --

17 A Right. Again, Chase has multiple IDs for servicing
18 on loans that they service for us, and they just transferred
19 this loan from one ID to another.

20 Q And as you said before, each line is a servicing
21 transfer. What can you tell me, if anything, about whether
22 there was another transfer?

23 A Well, this shows that in this case the originator of
24 the loan serviced that loan up until -- if the date's right --
25 from the effective date, which I think is 7/14/2007, and since

1 that point in time, J.P. Morgan Chase has been servicing the
2 loan.

3 Q Okay. And what do all these screenshots tell you
4 about how long Chase has been servicing the loan for Freddie
5 Mac?

6 A Well, it shows that they've been servicing loans
7 since July 16th, 2007, through at least the date of this
8 report, but currently they're still our servicer.

9 Q Okay. And recall earlier that I mentioned an HOA
10 foreclosure sale in February of 2013. What document governs
11 Chase's servicing relationship with Freddie Mac as of that
12 date?

13 A Well, the document of government is the seller
14 servicer guide.

15 Q Okay. So and as a practical business matter, can
16 Freddie Mac require its loan servicer to assign the deed of
17 trust to Freddie Mac?

18 A Under certain circumstances they are allowed to
19 assign the deed of trust directly to Freddie Mac.

20 Q Okay. And who makes the decision whether to
21 authorize that transfer?

22 A We do.

23 Q So if Freddie Mac had at any point sold or
24 transferred the interest in the loan to Chase, how would all of
25 the screenshots we looked at be different? How would they

1 reflect that?

2 A Well, this wouldn't reflect anything because
3 it's just of the servicing, but Midas would be different.
4 Midas would have the date we transferred ownership of the loan
5 to Chase in this case. It would have a payoff date in that
6 payoff field, and it would have a status of, in this case 5,
7 which means closed, meaning it's no longer on our books.

8 Q To your knowledge, has Chase ever claimed that it
9 rather than Freddie Mac owned the loan on 6119 Magic Mesa?

10 A Never.

11 Q And as a practical Freddie Mac business matter
12 between Freddie Mac and Chase, who owned the loan on 6119 Magic
13 Mesa as of February of 2013?

14 A Freddie Mac, okay.

15 Q So I'm going to have you take a look back at
16 Exhibit 2 in Volume 1, the deed of trust, and I want you to
17 take a look and see that the deed of trust indicates MERS is
18 the beneficiary, correct?

19 A Correct.

20 Q Okay. And when I say MERS, it's Mortgage Electronic
21 Registration Systems, Inc. That's laid out there, but I'm just
22 going to say MERS.

23 A Uh-huh.

24 Q What is MERS?

25 A MERS is a registration system for the purposes

1 because of the volume they track the ownership of loans, and
2 for Freddie Mac they track who owns the loans and ultimately
3 who the servicer is as well. It's just a tracking system.

4 Q Okay. And what relationship does Freddie Mac have
5 with MERS?

6 A Well, we're a member of MERS. So we're a member of
7 MERS, and we have read access to their systems to monitor the
8 loans that they have registered with them that we own.

9 Q And then from Freddie Mac's perspective, why use
10 MERS?

11 A Again, administratively it is easier to have it
12 registered with MERS. So if there is a transfer of servicing,
13 typically that would mean for Freddie Mac that we would have to
14 have the existing servicer execute an assignment of the deed of
15 trust, record it, pay for that, and transfer it to the new
16 servicer. If it's registered with MERS, all we have to do is
17 have MERS update their registration system on who the current
18 servicer is.

19 Q So --

20 A All for administrative purposes.

21 Q Okay. So you stated for administrative purposes
22 though, but as a practical matter, where MERS is listed as the
23 record beneficiary on the deed of trust corresponding with the
24 loan that -- or that Freddie Mac has acquired and retained, who
25 owns the deed of trust? Is it Freddie Mac, MERS, someone else?

1 A Freddie Mac owns the deed of trust.

2 Q Okay. And why do you say that?

3 A Well, so we -- when we purchase a loan, we purchase
4 the deed of trust. We purchase the note, and again, in this
5 case here, we authorize MERS to be the recorded beneficiary
6 mainly for administrative purposes.

7 Q Okay. And have you ever heard or seen in your
8 experience of Freddie Mac buying or selling a loan to MERS?

9 A Never.

10 Q Has Freddie Mac in your experience ever considered
11 MERS to be the owner of a loan that Freddie Mac's acquired?

12 A No.

13 Q Okay. And to your knowledge has MERS ever
14 communicated to Freddie Mac or otherwise claimed that MERS
15 rather than Freddie Mac owns the loan on this property?

16 A Never.

17 Q Okay. Let's take a look at -- let's take a look at
18 Exhibit 3, the Assignment of Deed of Trust. Do you have that
19 in front of you?

20 A Yes, I do.

21 Q Okay. And it's dated December 16th, 2010, from
22 MERS to Chase and relates to the 6119 Magic Mesa. So what was
23 MERS' relationship to Freddie Mac at that time?

24 A At that time they were the recorded beneficiary of
25 the deed of trust, and they were tracking in their system the

1 ownership which is Freddie Mac and who the servicer was.

2 Q Okay. So if you take a look at that, at the bottom
3 of the assignment there, you'll note that the -- at the bottom
4 of the bolded paragraph, the middle of the page, the -- of the
5 assignment, the MERS interest in the deed of trust says,
6 Together with a promissory note secured by said deed of trust.
7 Do you see that on there?

8 A Yes.

9 Q Okay. And what if anything in Freddie Mac's records
10 indicates that MERS has or had any ownership interest in this
11 note?

12 A They've never had an interest in the note.

13 Q Okay.

14 A They were just the recorded beneficiary of the deed
15 of trust.

16 Q And is there anything in Freddie Mac's interest --
17 Freddie Mac's records that indicate MERS has ever claimed any
18 ownership in this matter?

19 A None.

20 Q So how if in any way does the language in the
21 assignment referring to MERS interest in the deed of trust,
22 quote, Together with the promissory note secured by said deed
23 of trust, end quote, affect your testimony that MERS -- that
24 Freddie Mac owned the loan as of February 2013, the date of the
25 HOA sale for this?

1 A Again, that's just the language that MERS used, but
2 all this shows is that they transferred the interest they had,
3 which was only the deed of trust, to Chase.

4 Q And when if ever has MERS or anyone else ever
5 contacted Freddie Mac to assert that the MERS rather than
6 Freddie Mac owned the loan?

7 A Never.

8 Q When if ever has MERS or anyone else contacted
9 Freddie Mac to assert that someone acquired the loan from MERS?

10 A Never.

11 Q Okay. What about the -- what about Chase, the
12 assignee? When if ever has Chase contacted Freddie Mac to
13 assert that Chase acquired the loan from MERS?

14 A Never.

15 Q Okay. And when if ever has anyone ever contacted
16 Freddie Mac to assert that someone other than Freddie Mac ever
17 owned this loan after the date that Freddie Mac acquired it?

18 A Never.

19 Q Okay. Mr. Meyer, did Freddie Mac ever release its
20 lien on 6119 Magic Mesa?

21 A No.

22 Q Okay. And to your knowledge did anyone ever approach
23 Freddie Mac about securing FHFA's consent to the extinguishment
24 of Freddie Mac's lien on the property?

25 A We've had no contact.

1 Q And to your knowledge, did FHFA ever communicate to
2 Freddie Mac that FHFA would consent to the extinguishment of
3 Freddie Mac's interest on 6119 Magic Mesa if asked?

4 A So FHFA has not communicated to Freddie Mac that
5 they've received any such inquiry.

6 Q So if FHFA had contacted and had communicated that,
7 would you expect to see it reflected somewhere in Freddie Mac's
8 records?

9 A Yes.

10 Q Okay. And what if anything has FHFA indicated to
11 Freddie Mac about FHFA's willingness to consent to
12 extinguishment of Freddie Mac liens in connection with these
13 Nevada HOA foreclosure sales?

14 A FHFA and not directly to Freddie Mac, but they have
15 issued public statements and letters stating that just to
16 clarify that they have never given consent, they have not, will
17 not and they will never give consent to an HOA extinguishing
18 Freddie Mac's lien on a property.

19 MR. BENNER: And, Your Honor, we've previously
20 stipulated, I believe, to these, but I'm going to move to admit
21 the screenshots based on the testimony of Mr. Meyer.

22 MR. BOHN: First of all, it was -- those were not
23 admitted.

24 MR. BENNER: Oh.

25 THE COURT: Oh, wait. Okay --

1 MR. BOHN: We didn't stipulate to the admission.

2 THE COURT: Let me be clear because I previously had
3 said and even before I had the Rule 52 motion I thought you all
4 had said Exhibits 1 through 20 were stipulated for all
5 purposes, only 21 because that was the one that was provided
6 today that counsel for defense hadn't looked at. So is that
7 not --

8 MR. BOHN: That was an error on my part, Your Honor,
9 and I believe even the pretrial memorandum which was submitted
10 last week specifically excludes the Fannie Mae documents from
11 being stipulated to.

12 MR. BENNER: Okay. So I'm still going to move to --

13 THE COURT: Okay. Wait. Let me go back a step.

14 MR. BENNER: Sorry.

15 THE COURT: Because I've got to make things clean and
16 clear because even, you know, when I was asking, remember,
17 whether the clerk was going to have to revise the exhibit list
18 because of 21 and because it was all stipulated to. It was --

19 THE CLERK: I have everything in except for 21.

20 THE COURT: Right. Okay.

21 So our official records currently show based on the
22 representation of counsel that everything was in other than 21.
23 Is that not the case? Is that what you're saying?

24 MR. BOHN: That's correct, Your Honor, and I
25 apologize for the error, but like I -- again, the joint

1 pretrial memorandum last week specifically excluded Exhibits 4,
2 5 and 6 as being stipulated to. With that being said, part of
3 our objection was we needed someone to come in and authenticate
4 the documents, which the witness has done. So if you'll allow
5 me to withdraw my stipulation and object, I would object on the
6 basis of relevance and authenticity.

7 THE COURT: Okay. Sorry. The reason why I need to
8 go back is because of course -- you know what I mean -- we do
9 day of trial, and so anything that parties have subsequently
10 stipulated to, even if it wasn't in the pretrial memo, you
11 know, we would take the stipulation in open court, but you're
12 saying there was an error in that oral representation?

13 MR. BOHN: That is correct, Your Honor.

14 THE COURT: Counsel, for your position did you have
15 the same recollection that it wasn't 4, 5 and 6, and so you
16 understood that that was an error, or --

17 MR. BENNER: And I wanted to confirm that by moving
18 now to admit them just in case that was an error. I'll
19 understand that there was the objection, and it's actually --
20 we went through the documents to establish so that we could
21 have them admitted as it still --

22 THE COURT: Okay. So let's do one thing. Prior to
23 this witness's testimony, the clarification was -- well, it's
24 in the midst of this witness's testimony but close enough --
25 the clarification is that the parties had stipulated to the

1 admission of 1 through 20, but not 4, 5 and 6; is that correct,
2 just so our record is clear?

3 MR. BOHN: Correct.

4 THE COURT: Okay. But now 4, 5 and 6 -- I have 4,
5 5 and 6. Which one are you --

6 MR. BENNER: This would be the exhibits in Exhibit 4.

7 THE COURT: Okay.

8 MR. BENNER: Listed as Freddie Mac Investor Reporting
9 documents.

10 THE COURT: Okay. So what's now Proposed
11 Exhibit 4 you're now seeking to move, and we're doing these one
12 by one as he's moving them.

13 So, Counsel, your objection was authenticity and
14 relevance; was that correct?

15 MR. BOHN: Yes.

16 THE COURT: Okay. Well, I have support --
17 Counsel, would you like to respond?

18 MR. BENNER: You've heard the testimony regarding the
19 authenticity. You've mentioned they're business records kept
20 in the ordinary course of business, and the relevancy is
21 ownership of the loan, servicing of the loan, went into a
22 little bit of depth on both of those issues for 4.

23 THE COURT: I was going to pull up your -- one
24 moment, please. Okay.

25 The Court's going to overrule the objections and

1 allow the introduction. Exhibit 4 is admitted.

2 (Trial Exhibit No. 4 admitted.)

3 MR. BENNER: And Mr. Meyer also testified to the
4 Freddie Mac single-family servicing guide and specifically the
5 sections attached. We didn't go through those particular ones,
6 but he did reference the seller servicing guide -- and sorry
7 this is -- this is Exhibit 6, Your Honor. I selected the
8 relevant sections from that as previously addressed in other
9 motions for summary judgment, and we didn't reference during
10 his testimony specific sections, but those are the relevant
11 sections from the selling servicing guide, which he's testified
12 to as the agreements and the written agreements regarding how
13 sellers and services are to respond, what qualifies as an
14 authorized seller servicing, so forth. So I anticipated the
15 same objection.

16 THE COURT: Let me hear if there is one.

17 MR. BOHN: Same objection, authenticity and
18 relevance, Your Honor.

19 THE COURT: The authenticity, I have a reference
20 that, you know, you can find things at allregs.com, right? But
21 I don't have that your Exhibit 6 is what can be found at
22 allregs.com, at least from my notes. So I'm going to --

23 MR. BENNER: Okay.

24 THE COURT: So I'm going to -- currently, I mean, I
25 can rule right now or if you'd like me to defer because you're

1 planning on laying some more foundation for the authenticity of
2 this particular exhibit. The Court can do either. What do you
3 want?

4 MR. BENNER: I believe we usually reference this as
5 saying and as Mr. Meyer's stated that these were the publicly
6 available documents. I can ask if there's been, and I will ask
7 with the Court's permission if there has been any significant
8 changes in the relevant sections of the seller servicing guide
9 since 2013 understanding that -- and I'll make the
10 representation as an officer of the court that I drew this from
11 the allregs site that Mr. Meyer had mentioned previously.

12 THE COURT: Okay. You need to ask him follow-up
13 questions before you seek its admission; that's fine.

14 BY MR. BENNER:

15 Q Okay. So for the seller servicing guide, you
16 previously represented -- or you previously testified that
17 these documents are publicly available on the allregs site,
18 correct?

19 A Yes.

20 Q Okay. And does that site retain archival information
21 regarding the prior seller servicing guides?

22 A So the seller service guide is a living contract. So
23 allregs maintains at minimum the current form of the contract.
24 It does retain some historical versions of the guide for
25 certain things, such as the bulletins -- so those are the

1 notification of changes -- are reflected on allregs as well,
2 and sometimes you can look at certain sections, and it will
3 give you a link to prior sections as well.

4 Q Okay. And you testified that you use the Midas
5 systems on a regular basis. What's your familiarity with the
6 seller servicing guide?

7 A Well, so seller service guide is the contract
8 (unintelligible) servicer. Prior to this position, I was
9 responsible for -- my group was responsible for writing the
10 guide. So for 10 years my job was to write the words that go
11 into this guide.

12 Q Okay. And I'm going to have you take a look at
13 Exhibit 6, which has several -- several sections. I'll have
14 you review through those. Since you were one of the members
15 who wrote this guide, if you can take a look through those and
16 make sure they're an accurate representation of the servicing
17 guide. It's the seller servicing guide. Sorry.

18 A Yeah, I mean, I reviewed this before, and these are
19 in fact excerpts of that contract, yes.

20 Q Okay. That written -- sorry -- that written contract
21 between Freddie Mac and the authorized sellers that you
22 mentioned earlier and the servicers, correct?

23 A And the authorized servicers, yes.

24 Q Okay. Thank you.

25 MR. BENNER: So those were my -- those were my

1 follow-up questions, Your Honor.

2 MR. BOHN: Your Honor, my additional objection would
3 be the servicing guide is effective as of March 2nd, 2016. So
4 there's portions of this which were not in effect at the time
5 of the foreclosure sale on February 1st, 2013. If they had a
6 backdated or one that was current as of February 1st, 2013, it
7 might be a different story, but to look at changes to the
8 servicing guide that has happened in almost three years since
9 the foreclosure sale, I think it would be improper and for that
10 reason object to the admission of Exhibit No. 6.

11 BY MR. BENNER:

12 Q And you had stated that you had both drafted these
13 and you use them on a daily basis. Can you look through the
14 sections and see if there's been any change in the seller
15 servicer guide to the sections between 2013 and 2016?

16 A So I've reviewed these, and there have been no
17 material changes. There are a lot of changes to wording or
18 adding additional requirements, but in general these were
19 consistent with what they were at the time of the HOA sale.

20 Q So if someone had referred to these sections in 2013,
21 they would've seen this. If they referred to them in
22 preparation for today's hearing, they would've seen the same
23 sections. So even if someone was not familiar with the
24 archival allregs site, any review of these documents would've
25 presented the same information, correct?

1 A Yes.

2 THE COURT: Do you still have the -- he has a
3 follow-up question. I just need to know if you still have the
4 same objections. It's fine one way or another. I just need to
5 rule.

6 MR. BOHN: Same objection, Your Honor. Without
7 specific detail as to what changes were made, I think it would
8 be improper to admit this or rely upon it.

9 THE COURT: And that's really where the Court has the
10 concern because it does say -- I appreciate the testimony of
11 this witness that says there's not been any material changes,
12 but we don't know what changes have or have not been made and
13 were in effect back in February 2013. So to admit the exhibit
14 specifically in this 2016 excerpted format, the Court's not
15 going to allow, but -- and the Court's ruling is not saying
16 it's precluding the oral evidence that's been presented as to
17 what's in the guide, what was impacted by the guide, et cetera.
18 It's just it can't come in as an exhibit in its 2016 format.

19 MR. BENNER: Okay. Then I would make the follow-up
20 of the witness testified that this is a publicly available
21 document, basically a public record available on the --
22 available on the website in both the archival and the current
23 version for the allregs site, and so I'd shift gears a little
24 bit to say, well, this is a public record.

25 THE COURT: Do I have that it's a public record for

1 the relevant sections for 2013? Because I heard limited
2 archival information, but do we know if the limited archival
3 information is completely the same sections that are currently
4 under Proposed Exhibit 6?

5 MR. BENNER: With your permission I'll pose that
6 question to the witness.

7 THE COURT: That's perfectly fine.

8 THE WITNESS: So the answer is the part of the online
9 version that would have historical information more than likely
10 would not reflect any changes to this. So were there changes
11 to these sections between that period of time and the date this
12 is effective? There could've been minor changes, and a lot of
13 that was administrative changes, but you could not go online
14 and see word for word what was effective at the date of the HOA
15 foreclosure sale to what is here today.

16 THE COURT: In light of that subsequent testimony I
17 have to deny, and the objections raised by counsel I'd have to
18 deny because if I -- if I can't find it, I can't address the
19 public record's argument. I'm addressing it, but I can't
20 sustain it.

21 Counsel, did you wish to be heard? That was the
22 Court's inclination in light of the follow-up question, but --

23 MR. BOHN: I don't really have anything to add, Your
24 Honor.

25 THE COURT: Since I'm ruling in your favor, you're

1 just bound to leave it alone.

2 MR. BOHN: Exactly.

3 THE COURT: Perfectly fine, okay. So.

4 MR. BENNER: Well, I -- and let me take a look at the
5 remaining. Okay. I believe the first couple pages of
6 Exhibit 5 will be addressed separately, and the other ones are
7 a copy. So we'll leave that one for -- we'll leave that one
8 for later.

9 THE COURT: Are you going through a different
10 witness?

11 MR. BENNER: Yes, through a different witness.

12 THE COURT: Oh, okay. No worries. Okay.

13 MR. BENNER: I just saw that there was a duplication
14 there. So that's -- I'll pass.

15 THE COURT: Cross-examination, Counsel?

16 MR. BOHN: If we can, Your Honor, we've been at this
17 almost 90 minutes, and I'd like a couple minutes to organize my
18 notes so I can have a more --

19 THE COURT: Perfectly fine. You want to reconvene at
20 10 minutes to 3? You need 10 or 15 minutes? What do you want?

21 MR. BOHN: 15 if you would.

22 THE COURT: Okay. Sure. Five minutes to 3 we'll
23 reconvene. Thank you so very much.

24 (Proceedings recessed 2:38 p.m. to 2:57 p.m.)

25 THE COURT: Okay. Thank you so much.

1 Counsel, do you want to commence with your
2 cross-examination.

3 MR. BOHN: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. BOHN:

6 Q Mr. Meyer is it?

7 A Yes.

8 Q Okay. Good afternoon. My name is Michael Bohn.

9 A Good afternoon.

10 Q I'm the attorney for the plaintiff in this matter.
11 I'd like to start by asking you some questions about Exhibit
12 No. 4, the screenshots?

13 A Okay.

14 Q The top window, if you will, on the right side it
15 appears to say Orig and Pr. I guess it's original amount of
16 the loan?

17 A Correct.

18 Q Underneath, it says purchase it UPB. What does UPB
19 stand for?

20 A The unpaid principal balance.

21 Q Okay. So it was the same as the original loan
22 amount?

23 A Correct.

24 Q Okay. Does it show on this what the outstanding
25 balance is?

1 A Right below that it says, Interest-bearing UPB. So
2 that's the current principal balance of the loan.

3 Q The current principal balance would be 161,000?

4 A No, it says -- yeah, \$161,794.23 I believe.

5 Q Okay. And what is the date of this printout?

6 A The date of the printout is -- it's reflected on
7 here -- right above -- a few lines before that, right above it
8 it says 7/11/16, so July 11th, 2016.

9 Q Okay. And there's a number after that with initials
10 DFRD UPB. What does DFRD stand for?

11 A So it has deferred UPB. So this mortgage was
12 modified at one point in time, and we deferred a portion of the
13 principal balance.

14 Q I'm looking at the loan status manager with Bates
15 stamp 638 on it, and it shows for July 2016 ending UPB
16 \$240,578.75. Why is that number different from the UPB on the
17 front page of the screenshot on Chase 635?

18 A Well, the -- it won't be exact because these were
19 printed at different times, but if you take the deferred
20 principal balance and the outstanding principal balance in
21 Midas, add those together, it would equate to the \$240,000 and
22 change there.

23 Q Okay. This second screenshot on page Chase 636, the
24 top screen shows name. That would be the originator of the
25 loan?

1 A Correct.

2 Q That's First National Bank of Nevada?

3 A Well, that states the name associated with that
4 seller ID, the last name that our system reflected for that
5 particular entity.

6 Q So it would be in this case the originator of the
7 loan?

8 A Yes.

9 Q Okay. But the Bank of Nevada has an address in
10 Tempe, Arizona?

11 A Correct.

12 Q Okay. If you look at Exhibit 2, the deed of trust,
13 it says on the first page that the lender is First National
14 Bank of Arizona?

15 A Correct.

16 Q Why is there a discrepancy between the First National
17 Bank of Nevada and the First National Bank of Arizona?

18 A I would assume there was a merger, a name change.

19 Q Could it be an error?

20 A No.

21 Q Okay. Do you think that a bank in Nevada has an
22 address somewhere in Tempe, Arizona?

23 A At the time that the information was provided to us
24 by the seller, that's the address they gave us for that entity.

25 Q Okay. You testified that when -- well, before

1 Freddie will buy a loan, there's a number of requirements that
2 have to be met by the originating lender before Freddie will
3 purchase the loan; isn't that correct?

4 A Correct.

5 Q You want the trustee to be on one of your forms; is
6 that correct?

7 A It's not required, but, yes. In general, people use
8 the form that we provide.

9 Q Okay. And that form has certain requirements that
10 you require to be in your trust deeds before you will acquire
11 them; isn't that correct?

12 A Now, the -- so the form of the deed of trust has to
13 be enforceable within that jurisdiction. The seller dictates
14 the language that goes into that deed of trust because they
15 have to ensure that it is legally enforceable.

16 Q Okay. But I'm saying that Fannie Mae has to agree
17 with all the terms of the deed of trust before you will
18 purchase it; isn't that correct?

19 A So I work for Freddie Mac, but --

20 Q Excuse me. Freddie Mac.

21 A -- yes.

22 Q Yes.

23 A We would --

24 Q Same question, but for Freddie Mac.

25 A No, we would -- all we would require is that the lien

1 is enforceable using the terms of which they put in there.

2 Q Okay. So if someone had a two-page trust deed that
3 was very brief, you would accept that or --

4 A If we felt that it would be -- well, first, if they
5 would guarantee that it would be enforceable, that could be
6 acceptable, yes.

7 Q Okay. And the fact that this trust deed -- well,
8 that any trust -- rephrase that. Have you found that lending
9 institutions will use the Fannie-Freddie form, but never
10 request Fannie or Freddie to purchase the loan?

11 A Yes.

12 Q Okay. And with the deed of trust, there's also a
13 planned unit development rider which is also a Fannie Freddie
14 uniform instrument; is that correct?

15 A I would have to look at it.

16 Q That would be Exhibit 2, page 0084, the Bates stamp.

17 A So, yes, in this case.

18 Q Okay. Would Freddie require this form rider to be
19 part of the trust deed before it would be accepted for
20 purchase?

21 A If there was a planned unit development or an HOA in
22 this case that would -- had a -- that was associated with that
23 property, yes, we would require it.

24 Q Okay. So if a -- does Freddie review the packet of
25 the loan documents before agreeing to purchase them?

1 A The only document we review is the note.

2 Q Okay. And is the note a form that Freddie also puts
3 out?

4 A We do have a uniform version of the note, but again
5 we ensure -- the seller has to ensure that is legally
6 enforceable with the exact language that's in it.

7 Q Okay. I believe you testified that when the loan is
8 made by the originating lender, they will usually shop the loan
9 between Fannie and Freddie to determine who's going to give
10 them a better price. Was that your testimony?

11 A That can occur, yes.

12 Q Okay. And then you also testified that once you
13 agree to purchase it then the paperwork gets done for the
14 transfer; do you recall that testimony?

15 A Correct.

16 Q Okay. What paperwork has to get done?

17 A So there would be -- for better -- it's a funding
18 detail report. So it's a report that would list all the loans
19 or loan if it's -- it is your loan, but the loans that we're
20 purchasing from that seller at a certain date it would have
21 information of the Freddie Mac loan number, the property
22 address and the amount we were purchasing the loan for. It
23 would have a schedule that would list all the loans that we
24 purchased.

25 Q So is it more times than that more than one loan on

1 the funding detail report?

2 A Yes.

3 Q Okay. And so with this particular loan on Magic Mesa
4 Drive, this would be included or on an exhibit to the funding
5 detail report?

6 A Correct.

7 Q Okay. Is there any contract or assignment signed
8 between the originating bank and Freddie?

9 A I don't understand your question.

10 Q Okay. Is there a contract of sale that is signed by
11 a representative of the originating bank and/or a
12 representative from Freddie Mac?

13 A So an actual contract for sale of that pool of loans
14 we'll call it, no, there wouldn't be a contract. There is a
15 master agreement that dictates under which terms we would
16 purchase loans from an individual seller that's signed by both
17 parties, and there would be a master commitment, which is
18 another document that says Freddie Mac -- the seller has
19 committed to sell certain volume of loans under certain terms
20 to Freddie Mac within a certain period of time, which would be
21 executed by both the seller and Freddie Mac.

22 Q And how often is that agreement prepared or drafted?

23 A Typically a year or less in duration. So once one
24 was created, the seller could sell loans under that contract
25 for that period of time of that contract, which is typically a

1 year.

2 Q Okay. So would it be correct to say then that there
3 is not any contract other than the funding detail report which
4 evidences the transfer from First National Bank of Arizona to
5 Freddie Mac?

6 A So I think that for purposes of looking, we would
7 look to that report to show the loans that were sold to us by
8 that seller on a certain date for a certain amount. That would
9 be the governing document.

10 Q Okay. And where is this funding detail report to be
11 located?

12 A Our legal department would have a copy of it.

13 Q Where would the original be?

14 A It may be with the seller, and it may be something
15 that we hold, but we would certainly at least have a copy of
16 that document.

17 Q So you're not even -- sitting here today, you could
18 not tell me where the funding detail report for the purchase of
19 this loan regarding the property at 6119 Magic Mesa Court is;
20 is that correct?

21 A No. I stated we would have a copy, possibly the
22 original, within our legal department that manages those
23 contracts.

24 Q Okay. Did you review the funding detail report
25 before you testified today?

1 A For this particular loan, no.

2 Q Okay. So you don't know if this funding detail
3 report even exists?

4 A Again, every loan that we've sold, that we've
5 purchased through that process, we would retain a copy of that
6 report.

7 Q Now, you also testified that you require the servicer
8 to put the property into its name; is that correct?

9 A No, we require the servicer --

10 MR. BENNER: Objection. Misstates the prior
11 testimony.

12 MR. BOHN: Well, I asked him if it was correct. So.

13 THE COURT: So I'm going to overrule it because he's
14 asking if that is correct. So.

15 THE WITNESS: So that's not correct.

16 BY MR. BOHN:

17 Q Okay. I believe you did testify though that you do
18 require the servicer to foreclose in its name; is that correct?

19 A That's correct.

20 Q Okay. And in this particular -- well, you also
21 testified that MERS -- if the loan gets transferred within the
22 MERS system, you don't require MERS to prepare an assignment
23 over to Freddie Mac; is that correct?

24 A Correct.

25 Q Okay. But in this particular case there was, in

1 fact, an assignment of the deed of trust from MERS to Chase.
2 That's Exhibit No. 3, correct?

3 A Correct.

4 Q And can you tell us why that was done.

5 A So we require servicers to foreclose in their name,
6 and in order to do so, they are required to have the deed of
7 trust in this case assigned from MERS as a beneficiary to Chase
8 as a beneficiary for purposes of enforcing the deed of trust.

9 Q And this assignment was done December 23rd, 2010,
10 correct?

11 A Correct.

12 Q And is it your testimony that the assignment is only
13 done when anticipation of foreclosure is -- when you're
14 anticipating foreclosure on the trust deed?

15 A Well, initially from MERS, correct.

16 Q And why does MERS require the servicer foreclose in
17 its name -- excuse me. Why does Freddie require the servicer
18 to foreclose in its name as opposed to MERS or even Freddie?

19 A Well, that's our business requirement, but there has
20 been litigation prior to that where there was questioned that
21 MERS had the capacity to initiate a foreclosure. So both MERS
22 and Freddie Mac require the deed of trust to be signed from
23 them to the servicer for purposes of enforcing it.

24 Q Okay. There have been instances, have there not,
25 where the deed of trust was transferred to Freddie, and Freddie

1 would conduct its own foreclosure, correct?

2 A There are limited circumstances where we would
3 require or allow the deed of trust to be assigned to Freddie
4 Mac for purposes of foreclosure, yes.

5 Q Okay. And what are some of the circumstances?

6 A The main reason is if the servicer also holds a
7 second mortgage or a second deed of trust where they would be a
8 not only plaintiff, but a defendant in the same property. So
9 we require them to assign it to Freddie Mac and then conduct a
10 foreclosure on that first lien mortgage in our name.

11 Q When you say they would be a plaintiff and the
12 defendant, you're referring to the states in which you have to
13 judicially foreclose, correct?

14 A Well, judicially and/or nonjudicially. For purposes
15 of execution, we require it anywhere where they have a second
16 lien interest in the property.

17 Q On the page 637 part of Exhibit No. 4, the TOS
18 summary report, what is the first date that the servicing
19 was -- according to this the servicing was transferred to J.P.
20 Morgan?

21 A The effective date, I believe, is July 16th, 2007.

22 Q And yet there was another transfer within Chase on --
23 it's kind of blurry -- it looks like August 10th, 2009; is
24 that --

25 A It looks like October 16th, 2009, but, correct.

1 Q Okay. Now, the next page, which is the mortgage
2 payment history report, from here can you tell us when the loan
3 would've gone into default?

4 A It went into default on different occasions, but if
5 you look at the third column, that is the due date of the last
6 paid installment. So that means the month in which the last
7 payment the borrower was obligated to pay made a payment, and
8 if you trace that compared to the very last column on the
9 right, that's the actual date of the reporting. If that date
10 in 2000 in the third column gets behind the date, at least in
11 that month, then that loan would have been in delinquency, and
12 at some point they would have initiated foreclosure.

13 This report does not say anything where a foreclosure
14 was ever initiated. It just shows the reporting of the
15 information about when the loan was due and what the principal
16 balance was at the time. Nowhere here will you see that
17 foreclosure was initiated by, in this case, Chase.

18 Q Okay. The second page, page 2 of 3, there's two
19 notations of inactive loan. What does that mean?

20 A So when a loan -- when the borrower stops paying, the
21 servicer is obligated to continue to pass through the interest
22 that's due Freddie Mac every month up until a point in time
23 where they can -- it says they're allowed to transmit a code to
24 us to inactivate the loan, meaning they're -- at that point in
25 time, they've determined the loan's in default. The borrower's

1 not going to pay it, and we wish to stop passing through
2 payments to Freddie Mac. That's when they inactivate it, and
3 they no longer have to pass through interest to Freddie Mac.

4 Q You testified about two things that Freddie will do.
5 They'll either hold the loan as an investment, or they will
6 make a -- sell it as a securitized mortgage-backed security?

7 A Well, no. So we will hold it for an investment, or
8 we will securitize the cash flows associated with those loans
9 and sell the cash flows to investors.

10 Q Okay. And you said in that case the -- Freddie Mac
11 was the trustee for the investors?

12 A Yes, we are the trustee that managed the cash flows
13 for those investors.

14 Q And so the investors would be the owners of those
15 loans?

16 A No, Freddie Mac owns the loans. We have securitized
17 and pledged the cash flows from the loans which we owned to
18 those investors.

19 Q So Freddie Mac would be the trustee and the owner?

20 A Correct.

21 Q Of the loan?

22 A Freddie Mac would be the owner, and we'd be the
23 trustee of the security. They are not the trustee of the
24 loans.

25 Q Okay. In a situation like this, when the loan has

1 been assigned to Chase bank, wouldn't it be appropriate to
2 characterize Chase as the trustee for --

3 A No.

4 Q Why not?

5 A They are just the recorded beneficiary of the deed of
6 trust. They don't own the deed of trust, and they don't own
7 the note. They're just the recorded entity with the county
8 recorder's office as a beneficiary.

9 Q What's the difference between being a beneficiary on
10 a deed of trust and the owner?

11 A Well, they don't have an ownership interest in it.
12 They are just -- for purposes of public information, they're
13 recorded as who needs to be contacted if there's -- anybody has
14 a question related to that deed of trust, and we require them
15 to be that entity.

16 Q Well, with the only persons that could make inquiry
17 about the loan would be the borrowers; isn't that correct?

18 A No. If someone else had a interest in the property,
19 they would have the ability to contact Chase. So junior lien
20 holders would be able to contact Chase, and then once it's
21 validated that they have an interest in the property, Chase
22 would talk to them about it.

23 Q So you don't have an understanding of any federal
24 laws that would prohibit Chase to give that information to
25 anyone without the consent of the buyer?

1 MR. BENNER: Objecting. Seeking a legal conclusion.

2 THE COURT: I'll sustain that.

3 MR. BOHN: I'm just asking if he has an
4 understanding. It's a yes or no question.

5 THE COURT: Except for you're asking the -- he's
6 having to interpret, not just asking if the law exists. You're
7 asking whether the law is going to impact it. So I'm going to
8 sustain it. It's calling for a legal conclusion.

9 BY MR. BOHN:

10 Q Okay. Now, you also testified earlier that Freddie
11 requires all their servicers to be familiar with the laws of
12 the state in which the property is located; is that correct?

13 A Correct.

14 Q Okay. So you would expect Chase to be familiar with
15 the HOA laws in the state of Nevada if they were going to
16 service loans in the state of Nevada; is that correct?

17 A Yeah, they would be -- we would require them to make
18 sure that they know the local requirements to ensure our lien
19 is protected.

20 Q Okay. And Freddie has regulations requiring the
21 servicer to take steps to make sure that the loan is protected;
22 isn't that correct?

23 A So our seller servicer guide gives them instructions
24 not on how to protect their interest, just that when they have
25 to protect their interest what things we would require them to

1 either notify us or what things we would pay them for.

2 Q Okay.

3 A We don't tell them how to ensure our lien interest is
4 protected.

5 Q So if the borrower is not paying taxes, the servicer
6 would be required to pay the taxes and seek reimbursement from
7 Freddie; is that correct?

8 A If -- yes, if those taxes could impact our ability to
9 enforce the lien, yes.

10 Q And if the borrower wasn't paying, there wouldn't be
11 any items to escrow to pay for insurance, and the servicer
12 would be required to pay the insurance and then Freddie would
13 reimburse them for that insurance payment; is that correct?

14 A So, yes. If the -- well, we require that the
15 properties for which we have an interest in, that there is when
16 required insurance on the property, yes.

17 Q Well, insurance is pretty much always required, isn't
18 it?

19 A So condominiums aren't -- insurance -- the borrower
20 does not pay insurance that Freddie Mac requires the servicer
21 to ensure for a condominium. It's usually the condominium
22 building that holds that insurance.

23 Q But if the HOA didn't provide the insurance and it
24 was a requirement of the loan, then the servicer would have to
25 pay -- force place the insurance on the property; isn't that

1 correct?

2 A Correct.

3 MR. BENNER: Objection. Relevancy.

4 THE COURT: Well --

5 BY MR. BOHN:

6 Q Okay. What about HOA --

7 THE COURT: Counsel, since I have a belated objection
8 and he already answered, I'm going to overrule the objection.

9 MR. BENNER: Okay.

10 THE COURT: And, Counsel, you're going to tie this
11 into the present property?

12 MR. BOHN: Oh, yes.

13 THE COURT: Okay. I'll give you a little short
14 extension here to get that taken care of. Thank you.

15 BY MR. BOHN:

16 Q So if the -- and Freddie actually has servicing
17 guidelines specifically requiring the servicers to pay
18 assessments owed to the HOA or the -- what's secured -- the
19 PUD, the Planned Unit Development?

20 A It's in our guidelines, tell the servicers to -- in
21 this case were talking about HOA dues --

22 Q Correct.

23 A -- we require them to pay HOA dues, and we would
24 reimburse them if it could impact our lien position.

25 Q And, in fact, the deed of trust requires the borrower

1 to pay the assessments and, quote, Other item which can attain
2 priority over the security instrument; isn't that correct?

3 A I believe that's correct that the borrower would have
4 to pay those, yes.

5 Q And the planned unit development rider also requires
6 the borrower to pay those HOA dues; isn't that correct?

7 MR. BENNER: Objection. The documents speak for
8 themselves.

9 THE COURT: Are we referencing a particular exhibit
10 that's admitted, or are we --

11 MR. BOHN: Exhibit 2, the planned unit development
12 rider which we spoke of earlier, Chase 0084.

13 THE COURT: Okay. Well, since I have an objection
14 that the document speaks for itself, do you want to address
15 that, or do you want me just to rule on it?

16 MR. BOHN: I am trying to set the basis for other
17 questions regarding the payment of the HOA dues and the Freddie
18 Mac requirements that they be paid by the servicer.

19 THE COURT: The way that question's specifically
20 asked, the Court's going to sustain the objection. You can
21 move on to the next question to get to your area of inquiry.
22 Thank you.

23 BY MR. BOHN:

24 Q What remedies does Freddie Mac have if a servicer
25 does not perform the acts to protect the interest of the deed

1 of trust?

2 A If our lien is terminated on a property and the
3 servicer did not act to protect our interest, we could seek
4 reimbursement from them for the loss we incur.

5 Q So in this particular case, if it's ultimately ruled
6 that the foreclosures -- the HOA foreclosure sale on
7 February 1, 2013, was properly conducted and that the deed of
8 trust was extinguished, Freddie Mac would have remedies against
9 Chase Bank; isn't that correct?

10 MR. BENNER: Objection. Hypothetical and calling for
11 a legal conclusion.

12 THE COURT: Counsel, do want to address that?

13 MR. BOHN: Your Honor, he's testified about the
14 servicing guidelines and the remedies that are available to
15 Chase. I'm just asking about those remedies.

16 THE COURT: I'm going to -- the way the question's
17 asked I'm going to sustain on calling for a legal conclusion
18 and calling for a hypothetical of a lay witness here.

19 BY MR. BOHN:

20 Q You testified earlier in regards to the assignment of
21 the deed of trust Exhibit 3 that MERS -- well, Exhibit 3, the
22 entity that assigned the assignment of the deed of trust is
23 MERS; is that correct?

24 A Correct.

25 Q And you also testified that they assign only the deed

1 of trust; is that correct?

2 A Well, they assigned their interest in the loan, which
3 was the deed of trust, correct.

4 Q You also said they do not have an interest in the
5 note; is that correct?

6 A That's correct.

7 Q Why does the assignment also have the language,
8 Together with the promissory note secured by said deed of
9 trust?

10 A They add that language in there. My understanding is
11 that they add that language just to make it clear that they
12 have no interest in that loan, but they never had an interest
13 in the promissory note.

14 Q But they do have an interest in a deed of trust?

15 MR. BENNER: Objection. Asked and answered.

16 MR. BOHN: Just trying to clarify, Your Honor.

17 THE COURT: I'm going to overrule the objection.

18 THE WITNESS: Yes, they had a beneficial interest in
19 the deed of trust.

20 BY MR. BOHN:

21 Q And with the recording of the assignment, the
22 beneficiary of record became Chase Home Finance LLC; is that
23 correct?

24 A Correct.

25 Q So if an HOA was to foreclose and was to want to

1 obtain consent from Freddie Mac, there would be no way from the
2 public records to show that Freddie Mac held an interest in
3 this deed of trust, would there be?

4 MR. BENNER: Objection. Hypothetical.

5 THE COURT: Sustained.

6 BY MR. BOHN:

7 Q Are you aware in regards to this property at 6119
8 Magic Mesa of any recorded documents that would put the public
9 on notice of the fact that Freddie Mac had an interest in this
10 property?

11 A No.

12 MR. BOHN: Court's indulgence, Your Honor.

13 THE COURT: Okay.

14 BY MR. BOHN:

15 Q Does Freddie have a national policy regarding the
16 states in which the HOAs are given a super-priority lien?

17 MR. BENNER: Objection. Beyond the scope. I believe
18 we were only focusing on Nevada for this matter.

19 MR. BOHN: I'll narrow it.

20 BY MR. BOHN:

21 Q Does Freddie have a policy regarding Nevada
22 properties with HOAs that grant super-priority liens?

23 A So I don't think we have a policy related to super
24 liens, but in the state of Nevada, if the servicer pays a
25 certain number of months' worth of HOAs for a certain number of

1 months, we would agree to reimburse them for that cost.

2 Q And by your regulation, that's limited to six months?

3 A I believe that's the amount of -- that we would
4 reimburse the servicer for in the state of Nevada, yes.

5 Q Okay. And why would you reimburse the servicer for
6 those?

7 A It was a business decision.

8 MR. BOHN: I have no further questions, Your Honor.

9 THE COURT: Okay. Redirect, Counsel.

10 REDIRECT EXAMINATION

11 BY MR. BENNER:

12 Q Okay. Previously you mentioned that the screenshots
13 and the Midas and the loan servicer system are updated --
14 updated basically automatically, correct?

15 A Correct.

16 Q Okay. So if there was a merger between First
17 National Bank of Arizona and First National Bank of Nevada, the
18 system -- that would be inputted, and the system would update
19 itself, correct?

20 A Well, when the seller would notify us of a name
21 change, then that would automatically update within Midas's
22 system as well, yes.

23 Q Okay. So prior to any type of a merger or such, it
24 indicates the one entity, and then post merger it would
25 indicate the new entity or the new name?

1 A Correct.

2 Q Okay. And on plaintiff's questioning regarding the
3 assignment, you mentioned that the assignment would require --
4 from MERS to a servicer it would require it to include language
5 when that was an assignment initially from MERS. Can you
6 clarify what you meant by in the case of initially from MERS.

7 A So if the -- if MERS was the recorded beneficiary of
8 the deed of trust, in those circumstances they would be
9 required to assign their interest in the deed of trust to the
10 new entity, which in this case was Chase.

11 Q Okay. And it's when the -- when the new entity, in
12 this instance Chase took up servicing, then that was to
13 facilitate, as you had previously stated, the efficiency of
14 having a servicer conduct the day-to-day management of the
15 loan, correct?

16 A Well, the loan could remain -- so Chase was servicing
17 the loan long before it was assigned to them. MERS is there as
18 a tracking system that tracks who the servicer is and who the
19 owner of the loan is. At the time when Chase made the decision
20 to initiate a foreclosure, they typically would request that
21 MERS assign the beneficiary interest, the recorded interest to
22 them for purposes of enforcing it, yes.

23 Q Okay. So when you say enforcing it, what do you mean
24 by enforcing it?

25 A So typically when the borrower is in default and

1 they're going to initiate foreclosure, we require and MERS
2 requires the foreclosure to be done in the servicer's name --
3 well, MERS requires it to be done not in their name, and we
4 require it to be under the servicer's name. So then they would
5 request MERS to assign the deed of trust to that entity.

6 Q Okay. So is it fair to say then that you won't see
7 something that says MERS is foreclosing on this property,
8 correct?

9 A Correct.

10 Q Okay. So and now when you said that there's -- when
11 you said that there's a mortgage-banked security -- sorry --
12 what was the term, the mortgage banked or --

13 MR. BOHN: Mortgage backed security.

14 BY MR. BENNER:

15 Q -- mortgage-backed security, and that's -- Freddie
16 Mac is acting as the trustee. You mean solely of the security,
17 not the trustee in the sense of the foreclosure, correct?

18 A Correct, different trustee.

19 Q Okay. So different meanings for the term?

20 A Correct.

21 Q Now, and let's also clarify a little bit that when
22 we're using the language beneficiary versus owner, as far as
23 the owner goes, we're talking about the investor Freddie Mac,
24 correct?

25 A Correct.

1 Q Okay. But when we are speaking about the
2 beneficiary, we mean, okay, this is the entity that can
3 foreclose pursuant to the -- presumably pursuant to the state
4 regulations and Freddie Mac's requirements, correct?

5 A Correct.

6 Q Okay. Now, and you'd previously stated that the
7 requirements of Freddie Mac are -- for the servicers are
8 outlined in the seller servicing agreement, correct?

9 A Correct.

10 Q Okay. So essentially the selling servicing agreement
11 directs the activity but doesn't state how that activity is to
12 occur, correct?

13 A Correct.

14 Q Okay. And referencing our previous discussion
15 regarding the requirements for selling and servicing of the
16 loan, an authorized representative is not going to take
17 activity outside of the servicing agreements just of its own
18 accord, correct?

19 A Correct.

20 Q Okay. So that's the agreement regarding the handling
21 and the directives for servicing to still be compliant with the
22 Freddie Mac servicing contract?

23 A Correct.

24 Q Okay. Was there a selling and servicing agreement
25 with MERS?

1 A Never. No.

2 Q And why is that?

3 A They're not a party to the seller -- they're not a
4 party to that contract.

5 Q Okay. And you previously also indicated that the
6 screenshots show that there was an interest-bearing and another
7 portion that was a -- it looks -- I believe you said a deferred
8 account, correct?

9 A Correct.

10 Q Okay. So essentially that's just an indication of
11 the terms of a modification, not of a differentiation of the
12 loan into a first or a second, correct?

13 A No. So when we defer the mortgage under the HAMP
14 modification program, if we agreed to defer a portion of the
15 principal balance, that portion becomes noninterest bearing
16 when it comes to the borrower, and then the existing UPB is
17 interest bearing, and that part is basically a balloon at the
18 end of the loan. It's still part of the same loan.

19 Q And that's in order to, as you said, meet with the
20 HAMP guidelines and not necessarily as a reflection of the
21 property value or anything along those lines, correct?

22 A Correct.

23 MR. BENNER: Okay. Now one moment, please, with the
24 Court's indulgence.

25 / / /

1 BY MR. BENNER:

2 Q Okay. So and just to clarify a little bit further,
3 the funding detail reports, would that have shown multiple
4 loans or would that show a singular loan --

5 A In both cases, it would be --

6 Q -- regarding this --

7 A -- multiple loans that a seller has agreed to sell to
8 Freddie Mac on a certain day.

9 Q So this particular loan would just be a single line
10 entry in that larger section, correct?

11 A Correct. It would be a one line entry of the loan
12 number, the property address of the borrower and then the
13 amount of the purchase.

14 Q Okay. And is that funding detail report basically a
15 requirement of being an authorized seller of the loan to allow
16 the loan into the contract between Freddie Mac and the
17 authorized seller?

18 A Oh, that would -- only an authorized seller would be
19 eligible to sell a loan to us, and therefore a funding detail
20 report would only be generated by an approved seller in
21 approved set of loans that they agreed to sell it to us under
22 that master agreement we spoke about.

23 Q Okay. And are you aware of any correspondences in
24 this matter from an additional party regarding the first deed
25 of trust and the amount to pay off the first deed of trust?

1 A No.

2 Q Previously you testified that if someone had an
3 interest, such as the second deed of trust, that they could be
4 an authorized party to request that information, correct?

5 A Yeah, they could request information about how much
6 is due on the loan, like a payoff statement. That was about
7 all they would be provided.

8 Q Okay. And what would they need to provide to be able
9 to request that information as a -- as a -- if you require an
10 example, as a second deed of trust which you had mentioned?

11 A Right. Yeah. So the servicer would be responsible
12 to know what documents they would require from that entity to
13 validate their interest in the property. Usually it would be a
14 copy of that deed of trust that they hold on the loan against
15 the property.

16 Q Okay. And that request would go to the servicer, for
17 instance in this case Chase, correct?

18 A Correct. Yes.

19 Q Okay. And is the requirements for disclosing that
20 information set forth in the selling and servicing guide?

21 A The only thing we have in the seller servicer guide
22 is we direct the servicers that if a borrower asks who their
23 investor is we require them to tell them that it's Freddie Mac.
24 The local rules and laws would dictate under which
25 circumstances they were required or obligated to provide that

1 information to other parties.

2 MR. BENNER: Okay. That's all.

3 THE COURT: Recross, Counsel.

4 MR. BOHN: Court's indulgence, please.

5 MR. BENNER: Shall we take a short break perhaps?

6 MR. BOHN: I may not have any further questions.

7 THE COURT: Do you need a break?

8 MR. BENNER: Well, if we're going to end up, let's
9 see, but I was --

10 MR. BOHN: If I could have 60 seconds, I may be done.

11 THE COURT: The Court's going to have one question if
12 counsel don't mind afterwards then depending on the question I
13 have that's asked.

14 MR. BOHN: No further questions, Your Honor.

15 MR. BENNER: I am going to request the break before
16 we --

17 THE COURT: Go ahead.

18 MR. BENNER: -- do the final one.

19 THE COURT: Sure.

20 MR. BENNER: So a 5, 10-minute break?

21 THE COURT: Sure.

22 MR. BOHN: Are we done with this witness then?

23 THE COURT: The Court had one question for the
24 witness.

25 MR. BENNER: Well, the Court --

1 MR. BOHN: Oh, okay.

2 MR. BENNER: The Court's going to have one.

3 THE COURT: I can ask -- if you want me to ask, if to
4 fill in the blank question, I'm just going to -- if you need a
5 break, we'll do a break and we'll come back, but instead of
6 talking about it, which way do you want it?

7 MR. BENNER: I know Your Honor prefers to have us
8 hear the question and decide if there's any possibility of
9 problem with it. So I wouldn't mind knowing what the question
10 is to think about it.

11 THE COURT: Sure. I have no problem telling both the
12 parties what the Court's one question is.

13 MR. BENNER: Okay.

14 MR. BOHN: Sure.

15 THE COURT: Do you want a break first, or do you want
16 me to tell you right now?

17 MR. BENNER: Well, let's --

18 MR. BOHN: Don't hold us in suspense.

19 MR. BENNER: Yeah.

20 THE COURT: Huh?

21 MR. BENNER: Let's not leave us on a cliffhanger.
22 Let's go ahead.

23 THE COURT: Oh, no, no, no, no, no. Okay. As of
24 January 30th, 2013, fill in the blank: Blank owned the deed of
25 trust. That's what the Court's question was going to be.

1 MR. BENNER: Okay.

2 MR. BOHN: Okay.

3 THE COURT: And you can have your break, and then you
4 can tell me if you object to the Court's question or not, and
5 then I'll ask it or not ask it depending on what the parties --
6 10 minutes, come back.

7 MR. BENNER: Okay. Thank you, Your Honor.

8 (Proceedings recessed 3:45 p.m. to 3:56 p.m.)

9 THE COURT: Okay. Back on the record.

10 So the Court right before the break -- so since all
11 the parties had finished with their questioning, the Court was
12 stating that it had one question that it would like to ask this
13 witness just for point of clarification. I stated what the one
14 question is. So let me hear with the parties' response is.
15 Does anyone object to that?

16 MR. BENNER: I have no objection to that one
17 question, Your Honor.

18 MR. BOHN: I have no objection, Your Honor.

19 THE COURT: Okay. So for ease I'll just state what
20 the one question was: On January 30th, 2013, blank owned the
21 deed of trust. How would you fill in that blank?

22 THE WITNESS: Freddie Mac.

23 THE COURT: Thank you. Okay.

24 MR. BENNER: And if I can make one representation,
25 Your Honor, I did have the documents run off from what I

1 stated. I want to present that that was not a
2 misrepresentation on my part about running the documents off
3 the Exhibit 6, and it --

4 THE COURT: I'm sorry. Counsel, meaning running it
5 off, meaning you had 2013, or you got -- I'm not sure what
6 you're saying for Exhibit 6. I'm sorry.

7 MR. BENNER: Oh, sorry. For Exhibit 6, the seller
8 servicer guide regarding that the documents were available --
9 are available on the allregs site, that there is a link to it.
10 I had those during the questioning run off per the 2013.
11 There's a formatting difference, but it has the -- it has the
12 actual website on it. It has the -- it appears the only
13 difference is in the numbering and the type of the script in
14 it. I have copies for the Court and for opposing counsel if
15 you'd like to take a look.

16 MR. BOHN: It wasn't produced prior to today, and on
17 that basis I would object to its admission.

18 THE COURT: Was there any agreement between the
19 parties otherwise with regards to the -- I'm going to shorten
20 it and just call it servicing agreement. Obviously it's
21 servicer -- service --

22 MR. BENNER: No, Your Honor, otherwise than the
23 mistaken agreement earlier today, but we've already addressed
24 that that was opposing counsel had the objection.

25 THE COURT: Okay. Well, in light of the fact that it

1 wasn't produced and in light of the fact that there wasn't
2 agreement to otherwise allow it -- you know, it's not like a
3 substituting, you do two page 56's and so you need to
4 substitute a 57 for a 56 -- the Court's going to have to
5 because I have the objection deny the request.

6 Were you seeking now to admit --

7 MR. BENNER: Well, yes.

8 THE COURT: -- modified 6? Is that where you were
9 going with that?

10 MR. BENNER: Well, to review it and to say because he
11 had said he -- there were only slight -- not to mischaracterize
12 the testimony but just to abbreviate -- that there were only
13 slight administrative --

14 THE COURT: There's nothing material?

15 MR. BENNER: Yeah, that there were no material
16 changes. So as far as, okay, here's -- here's the document as
17 it was publicly available on the site. Here's what was
18 presented. There's no material differences between the two.

19 THE COURT: So are you asking that he review it while
20 he's on the stand now page by page, each of the two documents?

21 MR. BENNER: I don't think that that would --

22 THE COURT: I mean, I'm just trying to get an
23 understanding of what the ask is. If you wouldn't mind kind of
24 explaining what the ask is.

25 MR. BENNER: Well, the ask is to take a look through

1 and see, not necessarily page by page, line by line, but to be
2 able to refresh his recollection on, okay, what were those
3 changes. Were any of those -- were any of those material? He
4 represented that, no, they were not, and so that he could
5 review them between the 2013 and 2016 and have that testimony
6 stand essentially saying these were -- there weren't any
7 material differences.

8 THE COURT: I'm sorry. Counsel, I'm going to let you
9 respond, and then the Court's going to make a ruling. Go
10 ahead.

11 MR. BOHN: Again, the documents haven't been produced
12 prior to today. He did testify of servicing guidelines that he
13 did write, and he can certainly testify as to what those
14 guidelines are, but I don't think it would add anything if he
15 compared the two side by side and pointed out the differences,
16 and I think it's a -- not a good use of time and otherwise not
17 relevant and certainly within your discretion at this point.

18 THE COURT: Well, what I'm trying to understand,
19 Counsel -- I'm sorry if I'm being a little dense -- but you had
20 no further questions of this witness.

21 MR. BENNER: Correct.

22 THE COURT: So the witness would have been excused
23 but for the fact you asked for a break right before the Court
24 said it was going to -- if no objection was going to ask the
25 one question, which it did. So are you seeking to admit a

1 different exhibit? Because I already have the testimony. The
2 witness has testified as he's testified, and I'm paraphrasing,
3 nothing material. So are you seeking additional oral testimony
4 from this witness? Are you seeking to admit Exhibit 6 as is?
5 Are you seeking to admit a substituted Exhibit 6 or some other
6 alternative that I'm not fully understanding? Sorry.

7 MR. BENNER: Well, I was -- I was anticipating the
8 challenge by opposing counsel -- which he's not made -- of
9 saying, well, you didn't -- you wrote it, but this wasn't the
10 exact. He said there might have been material differences. I
11 was going to say, well, if his testimony can be substantiated
12 that these aren't material differences. I wrote it. I recall
13 it. But from what I gather, opposing counsel's not contesting
14 his testimony. So I don't know that we necessarily need to go
15 down the road of what the material differences are if opposing
16 counsel's not trying to say, oh, his testimony could've been
17 impacted by those slight technical changes.

18 MR. BOHN: Is there a question out of that?

19 MR. BENNER: Well, I was just -- am I
20 mischaracterizing what your agreement is essentially?

21 MR. BOHN: Yeah, his testimony is certainly
22 admissible, but the new documents I believe are not.

23 MR. BENNER: Okay. So I think we've addressed that
24 point, and --

25 THE COURT: Is there something you're requesting the

1 Court rule on?

2 MR. BENNER: I think with the stipulation of opposing
3 counsel we can take care of the testimony. I would -- I would
4 try to admit these and ask that the Court rule on that simply
5 because we've gone through it, but we both had our chance to
6 speak regarding that.

7 THE COURT: Okay. Sorry. So you are -- you want a
8 ruling or you don't? Because -- I'm sorry -- when you said
9 that since he stipulated you didn't need to deal with it, and
10 then you said you possibly want a ruling. So if you want a
11 ruling, I'd be glad to give a ruling. If you don't want a
12 ruling, then I'll say, call your next witness. I'm fine either
13 way.

14 MR. BENNER: Let's go for a ruling on if the new
15 version can be admitted.

16 THE COURT: Well, based on the objection of counsel
17 and a document that I have not seen, has not been handed to
18 counsel and was not -- it was represented it was never produced
19 during discovery or never provided to opposing party prior to
20 around 4 o'clock today in the midst of trial, the Court's going
21 to have to deny the request to substitute a 2013 version that
22 you printed out for a 2016. I don't know if it's the same
23 number of pages. I don't know if it's the exact same sections.
24 I don't even know if 2013 it was in effect in February 1, 2013,
25 or some other date in 2013. So in light of all of those I have

1 to deny the request.

2 But since you're pro offering that, my clerk's going
3 to need a copy of it because I am not admitting it, but it's
4 not on an exhibit list. Yes, I know.

5 THE CLERK: Would that be 22?

6 THE COURT: So is that going to be a Proposed 22, or
7 was it a substituted 6?

8 MR. BENNER: I would say it's a substituted 6.

9 THE COURT: I mean, since I've already denied 6, I
10 will tell you probably from a clarity of record you probably
11 want to do it as a Proposed 22.

12 MR. BENNER: Okay. Let's keep the record clear then
13 and make it a Proposed 22.

14 THE COURT: Is that right, Madame Clerk, that that's
15 more --

16 THE CLERK: Yes.

17 THE COURT: Yes, that's what I thought Madame Clerk's
18 going to tell me.

19 Okay. So if you could provide Madame Clerk with your
20 Proposed 22, feel free to walk over and -- and so denying the
21 exhibit is in no way changing any of the testimony of this
22 witness and what the Court can and cannot take into account.
23 The Court's not making any ruling on the witness's testimony,
24 only on Proposed Exhibit 22 that's being submitted for the
25 first time during the midst of trial and because of an

1 objection of plaintiff's counsel, okay.

2 MR. BENNER: Okay.

3 THE COURT: For the reasons stated. Okay. So thank
4 you so very much.

5 That was the Court's one question. In light of the
6 Court's one question, did anyone have any follow-up questions,
7 or is this witness excused, and if the witness is excused, is
8 it for all purposes?

9 MR. BOHN: The Court's question was who was the owner
10 of the deed of trust on January 31st?

11 THE COURT: Yeah. I phrased it a little bit
12 differently. I said, On January 30th, 2013, fill in the
13 blank. Blank owned the deed of trust. I'm pretty close to
14 paraphrasing what I said.

15 MR. BOHN: And the answer was Freddie --

16 THE COURT: You can ask the witness.

17 The answer was?

18 THE WITNESS: Freddie Mac.

19 FOLLOW-UP EXAMINATION

20 BY MR. BOHN:

21 Q On the same date, who was the owner of the promissory
22 note?

23 A Freddie Mac.

24 MR. BOHN: I have no other questions.

25 THE COURT: And do you have any follow-up to the

1 Court's question?

2 MR. BENNER: No follow-ups to the Court's question or
3 opposing counsel's follow-up to the follow-up.

4 THE COURT: Okay. I do appreciate it. Thank you so
5 very much.

6 Is this witness excused for all purposes or subject
7 to recall?

8 MR. BENNER: Excused for all purposes.

9 MR. BOHN: Excused for all purposes.

10 THE COURT: Thank you so very much. Thank you for
11 your time. Please watch your step on the way out. I
12 appreciate it.

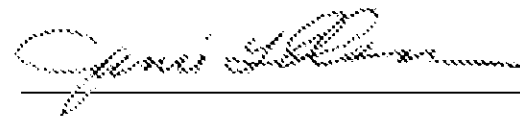
13 (End of transcribed excerpt of proceedings.)

14 -oOo-

15 ATTEST: I do hereby certify that I have truly and correctly
16 transcribed the audio/video proceedings in the above-entitled
17 case.

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Janie L. Olsen
Transcriber

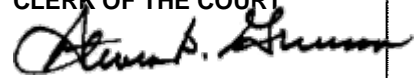
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FFCL
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
DONNA M. WITTIG
Nevada Bar No. 11015
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: melanie.morgan@akerman.com
Email: donna.wittig@akerman.com

Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
CUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**NATIONSTAR MORTGAGE LLC'S
FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT**

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

On February 25, 2018, this Court heard plaintiff/counter-defendant Saticoy Bay LLC Series
AA001431
4641 Viareggio Ct's motion for summary judgment. Defendant/counterclaimant Nationstar
Mortgage LLC opposed the motion. Michael F. Bohn of the Law Offices of Michael F. Bohn, Esq.,

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 - FAX: (702) 380-8572

☐ Motion to Dismiss by Def(s)
☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☒ Summary Judgment
☐ Default Judgment
☐ Judgment of Arbitration

1 Ltd. appeared on behalf of plaintiff. Regina A. Habermas of Wright, Finlay & Zak, LLP appeared
2 on behalf of Nationstar. The Court having reviewed the pleadings and heard arguments hereby
3 makes findings of facts, conclusions of law, and orders as follows:

4 **FINDINGS OF FACT**

5 1. Saticoy Bay is the owner of the real property commonly known as 4641 Viareggio
6 Court, Las Vegas, Nevada.

7 2. Saticoy Bay acquired its interest in the property at foreclosure sale which occurred on
8 August 22, 2013 as evidenced by the foreclosure deed recorded on September 6, 2013.

9 3. Monique Guillory is the former owner of the property.

10 4. The property is encumbered by a Declaration of Covenants, Conditions and
11 Restrictions and Reservation of Easements (CC&Rs) in favor of the Naples Community
12 Homeowners Association (HOA).

13 5. The foreclosure deed arose from a delinquency in assessments due from the former
14 owner Guillory to the HOA pursuant to NRS Chapter 116.

15 6. Guillory executed a promissory note and obtain a loan in the original principal
16 amount of \$58,400 loan from First Magnus Financial Corporation.

17 7. Guillory also executed a first-lien deed of trust, which secured the loan and
18 encumbered the property. The deed of trust identified First Magnus as the lender, and Mortgage
19 Electronic Registration Systems, Inc. (MERS) as nominee for lender and lender's successors and
20 assigns as the beneficiary.

21 8. The deed of trust was initially assigned from MERS as nominee to Aurora Loan
22 Services LLC in an assignment on February 11, 2011.

23 9. The deed of trust was subsequently assigned from Aurora to Nationstar in an
24 assignment recorded on October 18, 2012.

25 10. The HOA retained the law firm of Leach Johnson Song & Gruchow as the foreclosure
26 agent to collect the unpaid assessments due on the subject property.

27 11. On August 18, 2011, the foreclosure agent sent the former owner a copy of the notice
28 of delinquent assessment lien.

AA001432

- 1 12. On August 18, 2011, the foreclosure agent recorded the notice of lien.
- 2 13. On January 24, 2012, the foreclosure agent recorded the notice of default and election
- 3 to sell. The notice of default was mailed to the former owner Guillory, MERS, and Aurora.
- 4 14. On July 30, 2012, the foreclosure agent recorded a notice of foreclosure sale.
- 5 15. The foreclosure agent also mailed a copy of the notice of sale to the former owner
- 6 Guillory, MERS, and Aurora.
- 7 16. The notice of foreclosure sale under the lien for delinquent assessments was also
- 8 served upon the unit owner by posting a copy of the notice in a conspicuous place on the property.
- 9 17. The Notice of Sale was also posted in three locations within the county.
- 10 18. The foreclosure agent also published the notice of sale in Nevada Legal News on
- 11 three dates.
- 12 19. As reflected by the recitals in the foreclosure deed, Saticoy Bay appeared at the
- 13 public auction conducted on August 22, 2013, and entered the high bid of \$5,563.00 to purchase the
- 14 Property.
- 15 20. The HOA foreclosure agent issued a deed upon sale which was recorded on
- 16 September 6, 2013, and contains the following recitals:

17 This conveyance is made pursuant to the authority and powers vested to Naples

18 by Chapter 116 of Nevada Revised Statutes and the provisions of the

19 Declaration of Covenants, Conditions and Restrictions, recorded May 7, 2000

20 in Book 20000507 as Instrument No. 00911, in the Official Records of Clark

21 County, Nevada, and any subsequent modifications, amendments or updates of

the said Declaration of Covenants, Conditions and Restrictions, and Naples

having complied with all applicable statutory requirements of the State of

Nevada, and performed all duties required by such Declaration of Covenants,

Conditions and Restrictions.

22 A Notice of Delinquent Assessment Lien was recorded on August 18, 2011

23 in Book 20110818, Instrument No. 02904 of the Official Records of the

24 Clark County Recorder, Nevada, said Notice having been mailed by

25 certified mail to the owners of record; a Notice of Default and Election to

26 Sell Real Property to Satisfy Assessment Lien was recorded on January 24,

27 2012 in Book 20120124, Instrument No. 00764 in the Official Records,

28 Clark County, Nevada, said document having been mailed by certified mail

to the owner of record and all parties of interest, and more than ninety (90)

days having elapsed from the mailing of said Notice of Default, a Notice of

Sale was published once a week for three consecutive weeks commencing

on September 20, 2012, in the Nevada Legal News, a legal newspaper. Said

Notice of Sale was recorded on July 30, 2012 in Book 20120730 as

Instrument 01448 of the Official Records of the Clark County Recorder,

Nevada, and at least twenty days before the date fixed therein for the sale, a

1 true and correct copy of said Notice of Sale was posted in three of the most
2 public places in Clark County, Nevada, and in a conspicuous place on the
property located at 4641 Viareggio Ct., Las Vegas, NV.

3 On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a
4 Nevada Corporation, Front Entrance Lobby, 930 South 4th Street, Las
Vegas, Nevada, 89101, Naples, by and through its Agent, exercised its
5 power of sale and did sell the above described property at public auction.
Grantee, being the highest bidder at said sale, became the purchaser and
6 owner of said property for the sum of FIVE THOUSAND FIVE
HUNDRED SIXTY THREE (\$5,563.00) Dollars, cash, lawful money of the
7 United States, in full satisfaction of the indebtedness secured by the lien of
Naples.

8 21. Federal Home Loan Mortgage Corporation's (**Freddie Mac**) business records and
9 testimony of a Freddie Mac employee state that Freddie Mac purchased the loan, including both the
10 note and the deed of trust, on March 29, 2007 and continued to own the loan at the time of the HOA
11 sale.

12 22. Nationstar was servicing the loan on behalf of Freddie Mac at the time of the HOA
13 sale.

14 CONCLUSIONS OF LAW

15 1. The Court finds Saticoy Bay has sufficiently established that, absent flaws in the
16 HOA foreclosure sale or potential equitable reasons for setting aside the sale, Saticoy Bay is entitled
17 to judgment as a matter of law on its quiet title claim.

18 2. The Court finds that Nationstar has not met its burden of establishing a genuine issue
19 of material fact as to whether Saticoy Bays claim is preempted by the federal foreclosure bar, 12
20 U.S.C. § 4617(j)(3).

21 3. The Court agrees that, if the federal foreclosure bar applies, the HOA's foreclosure
22 could not affect FHFA's interest in the deed of trust, and thus that the property would still be
23 encumbered by the deed of trust. However, this requires a finding that FHFA in fact owned a legally
24 cognizable interest in the deed of trust. In Nevada, a security interest is only effective against a third
25 party once it is recorded. *See In re Montierth*, 354 P.3d 648, 650 (Nev. 2015).

26 4. Nationstar has not disputed the fact that no recorded document reflects any Federal
27 Housing Finance Agency (**FHFA**) interest in the deed of trust, much less that any recorded
28 document makes any mention of Freddie Mac having an interest in the deed of trust. The only

1 evidence that Nationstar has provided in an effort to prove Freddie Mac's ownership are business
2 records of Freddie Mac, coupled with an affidavit stating that Freddie Mac's business records reflect
3 ownership of the subject loan at the time of the HOA sale. However, even if this information is
4 sufficient to show that Freddie Mac believed it had ownership of the loan, this evidence would
5 conflict with the judicially noticeable public record.

6 5. Because no interest of Freddie Mac or FHFA was recorded, there is no such interest
7 that would be effective as against the HOA or Saticoy Bay. Thus, the federal foreclosure bar does
8 not apply here.

9 6. An HOA sale cannot be held commercially unreasonable based on price alone, as this
10 conclusion requires a finding of fraud, unfairness, or oppression that brings about and causes a low
11 sale price. *Nationstar Mortgage v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641
12 (Nev. 2017).

13 7. Nationstar contends that fraud, unfairness, or oppression are shown by the existence
14 of a mortgage protection clause in the HOA's CC&Rs, by the HOA's failure to try to get the best
15 price possible at foreclosure, and by the HOA's inclusion of fees and costs in its calculation of its
16 lien. The Court finds that none of these issues presents evidence of fraud, unfairness, or oppression.

17 8. A clause such as the one in the relevant CC&Rs here, which states that the HOA's
18 foreclosure cannot extinguish a mortgage deed of trust, is void under NRS 116.1104, as held in *SFR*
19 *Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014), and thus the HOA's act of foreclosing is
20 not rendered fraudulent, unfair, or oppressive due to the clause's presence in the CC&Rs.

21 9. NRS Chapter 116 imposes no duty on an HOA to get the best price possible at
22 foreclosure, as affirmed in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754
23 (Nev. 2017), where the Nevada Supreme Court rejected the argument that an HOA has the burden of
24 establishing that it took all steps possible to obtain the highest sales price it could.

25 10. An HOA lien is not invalid for including fines, as addressed in the recent *Shadow*
26 *Canyon* case. The Nevada Supreme Court rejected this argument, finding that such an interpretation
27 is untenable, and that the legislature apparently intended to prevent foreclosure on a lien that is
28 comprised solely of fines, but not a lien that includes both delinquent assessments and fines.

AA001435

11. Nationstar has identified no evidence of fraud, unfairness, or oppression, so the HOA sale cannot be held commercially unreasonable.

12. Nationstar's remaining arguments do not impact the Court's decision. The Nevada Supreme Court has conclusively held that NRS 116 does not violate due process, in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 388 P.3d 970 (Nev. 2017).

13. Because Nationstar has not presented any meritorious reason for setting aside the sale, Plaintiff's potential status as a bona fide purchaser is not a necessary determination.

14. Nationstar has not met its burden in resisting summary judgment, and the Court finds judgment as a matter of law in Saticoy Bay's favor is appropriate.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion of plaintiff/counter-defendant Saticoy Bay LLC Series 4641 Viareggio Ct's motion for summary judgment is granted as to its quiet title claim.

IT IS FURTHER ORDERED that judgment is entered on behalf of plaintiff/counter-defendant Saticoy Bay LLC Series 4641 Viareggio Ct against defendant/counter-claimant Nationstar Mortgage LLC as to the quiet title claim.

DATED December 6, 2018.


DISTRICT COURT JUDGE

Respectfully submitted:


AKERMAN LLP

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

DONNA M. WITTIG

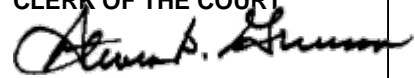
Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC

AA001436



NEFF
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
DONNA M. WITTIG
Nevada Bar No. 11015
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: melanie.morgan@akerman.com
Email: donna.wittig@akerman.com

Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
CUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**NOTICE OF ENTRY OF NATIONSTAR
MORTGAGE LLC'S FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
JUDGMENT**

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

AA001437

PLEASE TAKE NOTICE that NATIONSTAR MORTGAGE LLC'S FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND JUDGMENT has been entered by this Court on the 11th

1 day of December, 2018, in the above-captioned matter. A copy of said Order is attached hereto as
2 **Exhibit A.**

3 DATED this 14th day of December, 2018.

4 **AKERMAN LLP**

5
6 /s/ Donna M. Wittig

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

DONNA M. WITTIG

Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

10 *Attorneys for Nationstar Mortgage LLC*

26 AA001438

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 14th day of December, 2018, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF NATIONSTAR MORTGAGE LLC'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**, in the following manner:

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

LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.

Eserve Contact	office@bohnlawfirm.com
Michael F Bohn Esq	mbohn@bohnlawfirm.com

/s/ Carla Llarena

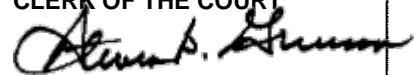
An employee of AKERMAN LLP

AA001439

EXHIBIT A

EXHIBIT A

AA001440



1 **FFCL**
2 MELANIE D. MORGAN, ESQ.
3 Nevada Bar No. 8215
4 DONNA M. WITTIG
5 Nevada Bar No. 11015
6 AKERMAN LLP
7 1635 Village Center Circle, Suite 200
8 Las Vegas, Nevada 89134
9 Telephone: (702) 634-5000
10 Facsimile: (702) 380-8572
11 Email: melanie.morgan@akerman.com
12 Email: donna.wittig@akerman.com

13 *Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 SATICOY BAY LLC SERIES 4641
17 VIAREGGIO CT,

18 Plaintiffs,

19 v.

20 NATIONSTAR MORTGAGE LLC, COOPER
21 CASTLE LAW FIRM, LLP; and MONIQUE
22 CUILLORY,

23 Defendants.

24 NATIONSTAR MORTGAGE LLC,

25 Counterclaimant,

26 v.

27 SATICOY BAY LLC SERIES 4641
28 VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**NATIONSTAR MORTGAGE LLC'S
FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT**

On February 25, 2018, this Court heard plaintiff/counter-defendant Saticoy Bay LLC Series
AA001441

4641 Viareggio Ct's motion for summary judgment. Defendant/counterclaimant Nationstar
Mortgage LLC opposed the motion. Michael F. Bohn of the Law Offices of Michael F. Bohn, Esq.,

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 - FAX: (702) 380-8572

☐ Motion to Dismiss by Def(s)
☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☒ Summary Judgment
☐ Default Judgment
☐ Judgment of Arbitration

1 Ltd. appeared on behalf of plaintiff. Regina A. Habermas of Wright, Finlay & Zak, LLP appeared
2 on behalf of Nationstar. The Court having reviewed the pleadings and heard arguments hereby
3 makes findings of facts, conclusions of law, and orders as follows:

4 **FINDINGS OF FACT**

5 1. Saticoy Bay is the owner of the real property commonly known as 4641 Viareggio
6 Court, Las Vegas, Nevada.

7 2. Saticoy Bay acquired its interest in the property at foreclosure sale which occurred on
8 August 22, 2013 as evidenced by the foreclosure deed recorded on September 6, 2013.

9 3. Monique Guillory is the former owner of the property.

10 4. The property is encumbered by a Declaration of Covenants, Conditions and
11 Restrictions and Reservation of Easements (CC&Rs) in favor of the Naples Community
12 Homeowners Association (HOA).

13 5. The foreclosure deed arose from a delinquency in assessments due from the former
14 owner Guillory to the HOA pursuant to NRS Chapter 116.

15 6. Guillory executed a promissory note and obtain a loan in the original principal
16 amount of \$58,400 loan from First Magnus Financial Corporation.

17 7. Guillory also executed a first-lien deed of trust, which secured the loan and
18 encumbered the property. The deed of trust identified First Magnus as the lender, and Mortgage
19 Electronic Registration Systems, Inc. (MERS) as nominee for lender and lender's successors and
20 assigns as the beneficiary.

21 8. The deed of trust was initially assigned from MERS as nominee to Aurora Loan
22 Services LLC in an assignment on February 11, 2011.

23 9. The deed of trust was subsequently assigned from Aurora to Nationstar in an
24 assignment recorded on October 18, 2012.

25 10. The HOA retained the law firm of Leach Johnson Song & Gruchow as the foreclosure
26 agent to collect the unpaid assessments due on the subject property.

AA001442

27 11. On August 18, 2011, the foreclosure agent sent the former owner a copy of the notice
28 of delinquent assessment lien.

- 1 12. On August 18, 2011, the foreclosure agent recorded the notice of lien.
- 2 13. On January 24, 2012, the foreclosure agent recorded the notice of default and election
- 3 to sell. The notice of default was mailed to the former owner Guillory, MERS, and Aurora.
- 4 14. On July 30, 2012, the foreclosure agent recorded a notice of foreclosure sale.
- 5 15. The foreclosure agent also mailed a copy of the notice of sale to the former owner
- 6 Guillory, MERS, and Aurora.
- 7 16. The notice of foreclosure sale under the lien for delinquent assessments was also
- 8 served upon the unit owner by posting a copy of the notice in a conspicuous place on the property.
- 9 17. The Notice of Sale was also posted in three locations within the county.
- 10 18. The foreclosure agent also published the notice of sale in Nevada Legal News on
- 11 three dates.
- 12 19. As reflected by the recitals in the foreclosure deed, Saticoy Bay appeared at the
- 13 public auction conducted on August 22, 2013, and entered the high bid of \$5,563.00 to purchase the
- 14 Property.
- 15 20. The HOA foreclosure agent issued a deed upon sale which was recorded on
- 16 September 6, 2013, and contains the following recitals:

17 This conveyance is made pursuant to the authority and powers vested to Naples

18 by Chapter 116 of Nevada Revised Statutes and the provisions of the

19 Declaration of Covenants, Conditions and Restrictions, recorded May 7, 2000

20 in Book 20000507 as Instrument No. 00911, in the Official Records of Clark

21 County, Nevada, and any subsequent modifications, amendments or updates of

the said Declaration of Covenants, Conditions and Restrictions, and Naples

having complied with all applicable statutory requirements of the State of

Nevada, and performed all duties required by such Declaration of Covenants,

Conditions and Restrictions.

22 A Notice of Delinquent Assessment Lien was recorded on August 18, 2011

23 in Book 20110818, Instrument No. 02904 of the Official Records of the

24 Clark County Recorder, Nevada, said Notice having been mailed by

25 certified mail to the owners of record; a Notice of Default and Election to

26 Sell Real Property to Satisfy Assessment Lien was recorded on January 24,

27 2012 in Book 20120124, Instrument No. 00764 in the Official Records,

28 Clark County, Nevada, said document having been mailed by certified mail

to the owner of record and all parties of interest, and more than ninety (90)

days having elapsed from the mailing of said Notice of Default, a Notice of

Sale was published once a week for three consecutive weeks commencing

on September 20, 2012, in the Nevada Legal News, a legal newspaper. Said

Notice of Sale was recorded on July 30, 2012 in Book 20120730 as

Instrument 01448 of the Official Records of the Clark County Recorder,

Nevada, and at least twenty days before the date fixed therein for the sale, a

1 true and correct copy of said Notice of Sale was posted in three of the most
2 public places in Clark County, Nevada, and in a conspicuous place on the
property located at 4641 Viareggio Ct., Las Vegas , NV.

3 On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a
4 Nevada Corporation, Front Entrance Lobby, 930 South 4th Street, Las
Vegas, Nevada, 89101, Naples, by and through its Agent, exercised its
5 power of sale and did sell the above described property at public auction.
Grantee, being the highest bidder at said sale, became the purchaser and
6 owner of said property for the sum of FIVE THOUSAND FIVE
HUNDRED SIXTY THREE (\$5,563.00) Dollars, cash, lawful money of the
7 United States, in full satisfaction of the indebtedness secured by the lien of
Naples.

8 21. Federal Home Loan Mortgage Corporation's (**Freddie Mac**) business records and
9 testimony of a Freddie Mac employee state that Freddie Mac purchased the loan, including both the
10 note and the deed of trust, on March 29, 2007 and continued to own the loan at the time of the HOA
11 sale.

12 22. Nationstar was servicing the loan on behalf of Freddie Mac at the time of the HOA
13 sale.

14 CONCLUSIONS OF LAW

15 1. The Court finds Saticoy Bay has sufficiently established that, absent flaws in the
16 HOA foreclosure sale or potential equitable reasons for setting aside the sale, Saticoy Bay is entitled
17 to judgment as a matter of law on its quiet title claim.

18 2. The Court finds that Nationstar has not met its burden of establishing a genuine issue
19 of material fact as to whether Saticoy Bays claim is preempted by the federal foreclosure bar, 12
20 U.S.C. § 4617(j)(3).

21 3. The Court agrees that, if the federal foreclosure bar applies, the HOA's foreclosure
22 could not affect FHFA's interest in the deed of trust, and thus that the property would still be
23 encumbered by the deed of trust. However, this requires a finding that FHFA in fact owned a legally
24 cognizable interest in the deed of trust. In Nevada, a security interest is only effective against a third
25 party once it is recorded. *See In re Montierth*, 354 P.3d 648, 650 (Nev. 2015).

26 4. Nationstar has not disputed the fact that no recorded document reflects any Federal
27 Housing Finance Agency (**FHFA**) interest in the deed of trust, much less that any recorded
28 document makes any mention of Freddie Mac having an interest in the deed of trust. The only

1 evidence that Nationstar has provided in an effort to prove Freddie Mac's ownership are business
2 records of Freddie Mac, coupled with an affidavit stating that Freddie Mac's business records reflect
3 ownership of the subject loan at the time of the HOA sale. However, even if this information is
4 sufficient to show that Freddie Mac believed it had ownership of the loan, this evidence would
5 conflict with the judicially noticeable public record.

6 5. Because no interest of Freddie Mac or FHFA was recorded, there is no such interest
7 that would be effective as against the HOA or Saticoy Bay. Thus, the federal foreclosure bar does
8 not apply here.

9 6. An HOA sale cannot be held commercially unreasonable based on price alone, as this
10 conclusion requires a finding of fraud, unfairness, or oppression that brings about and causes a low
11 sale price. *Nationstar Mortgage v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641
12 (Nev. 2017).

13 7. Nationstar contends that fraud, unfairness, or oppression are shown by the existence
14 of a mortgage protection clause in the HOA's CC&Rs, by the HOA's failure to try to get the best
15 price possible at foreclosure, and by the HOA's inclusion of fees and costs in its calculation of its
16 lien. The Court finds that none of these issues presents evidence of fraud, unfairness, or oppression.

17 8. A clause such as the one in the relevant CC&Rs here, which states that the HOA's
18 foreclosure cannot extinguish a mortgage deed of trust, is void under NRS 116.1104, as held in *SFR*
19 *Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014), and thus the HOA's act of foreclosing is
20 not rendered fraudulent, unfair, or oppressive due to the clause's presence in the CC&Rs.

21 9. NRS Chapter 116 imposes no duty on an HOA to get the best price possible at
22 foreclosure, as affirmed in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754
23 (Nev. 2017), where the Nevada Supreme Court rejected the argument that an HOA has the burden of
24 establishing that it took all steps possible to obtain the highest sales price it could.

25 10. An HOA lien is not invalid for including fines, as addressed in the recent *Shadow*
26 *Canyon* case. The Nevada Supreme Court rejected this argument, finding that such an interpretation
27 is untenable, and that the legislature apparently intended to prevent foreclosure on a lien that is
28 comprised solely of fines, but not a lien that includes both delinquent assessments and fines.

AA001445

11. Nationstar has identified no evidence of fraud, unfairness, or oppression, so the HOA sale cannot be held commercially unreasonable.

12. Nationstar's remaining arguments do not impact the Court's decision. The Nevada Supreme Court has conclusively held that NRS 116 does not violate due process, in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 388 P.3d 970 (Nev. 2017).

13. Because Nationstar has not presented any meritorious reason for setting aside the sale, Plaintiff's potential status as a bona fide purchaser is not a necessary determination.

14. Nationstar has not met its burden in resisting summary judgment, and the Court finds judgment as a matter of law in Saticoy Bay's favor is appropriate.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion of plaintiff/counter-defendant Saticoy Bay LLC Series 4641 Viareggio Ct's motion for summary judgment is granted as to its quiet title claim.

IT IS FURTHER ORDERED that judgment is entered on behalf of plaintiff/counter-defendant Saticoy Bay LLC Series 4641 Viareggio Ct against defendant/counter-claimant Nationstar Mortgage LLC as to the quiet title claim.

DATED December 6, 2018.


DISTRICT COURT JUDGE

Respectfully submitted:


AKERMAN LLP

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

DONNA M. WITTIG

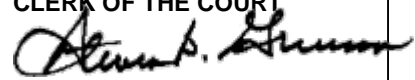
Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC

AA001446



1 **NOA**
2 MELANIE D. MORGAN, ESQ.
3 Nevada Bar No. 8215
4 DONNA M. WITTIG
5 Nevada Bar No. 11015
6 AKERMAN LLP
7 1635 Village Center Circle, Suite 200
8 Las Vegas, Nevada 89134
9 Telephone: (702) 634-5000
10 Facsimile: (702) 380-8572
11 Email: melanie.morgan@akerman.com
12 Email: donna.wittig@akerman.com
13

14 *Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC*

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 SATICOY BAY LLC SERIES 4641
18 VIAREGGIO CT,

19 Plaintiffs,

20 v.

21 NATIONSTAR MORTGAGE LLC, COOPER
22 CASTLE LAW FIRM, LLP; and MONIQUE
23 GUILLORY,

24 Defendants.

25 NATIONSTAR MORTGAGE LLC,

26 Counterclaimant,

27 v.

28 SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

Case No.: A-13-689240-C

Dept.: XIV

NOTICE OF APPEAL

///

///

///

AA001447

1 Defendant/counterclaimant Nationstar Mortgage LLC submits this notice of appeal to the
2 Nevada Supreme Court of the court's findings of fact, conclusions of law and order concerning
3 plaintiff/counter-defendant Saticoy Bay LLC Series 4641 Viareggio Ct's motion for summary
4 judgment, which was filed on December 11, 2018. Notice of entry of this order was filed on
5 December 14, 2018.

6 DATED January 7th, 2019.

7 **AKERMAN LLP**

8 /s/ Donna M. Wittig

9 MELANIE D. MORGAN, ESQ.

10 Nevada Bar No. 8215

11 DONNA M. WITTIG

12 Nevada Bar No. 11015

13 1635 Village Center Circle, Suite 200

14 Las Vegas, Nevada 89134

15 *Attorneys for Defendant/Counterclaimant Nationstar*
16 *Mortgage LLC*

27 AA001448

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 7th day of January, 2019 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NOTICE OF APPEAL**, in the following manner:

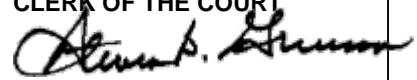
(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.

Eserve Contact office@bohnlawfirm.com
Michael F Bohn Esq mbohn@bohnlawfirm.com

/s/ Carla Llarena
An employee of AKERMAN LLP

AA001449



1 **ASTA**
2 MELANIE D. MORGAN, ESQ.
3 Nevada Bar No. 8215
4 DONNA M. WITTIG
5 Nevada Bar No. 11015
6 AKERMAN LLP
7 1635 Village Center Circle, Suite 200
8 Las Vegas, Nevada 89134
9 Telephone: (702) 634-5000
10 Facsimile: (702) 380-8572
11 Email: melanie.morgan@akerman.com
12 Email: donna.wittig@akerman.com

13 *Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 SATICOY BAY LLC SERIES 4641
17 VIAREGGIO CT,

18 Plaintiffs,

19 v.

20 NATIONSTAR MORTGAGE LLC, COOPER
21 CASTLE LAW FIRM, LLP; and MONIQUE
22 GUILLORY,

23 Defendants.

24 NATIONSTAR MORTGAGE LLC,

25 Counterclaimant,

26 v.

27 SATICOY BAY LLC SERIES 4641
28 VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**NATIONSTAR MORTGAGE LLC'S
CASE APPEAL STATEMENT**

Defendant/counterclaimant Nationstar Mortgage LLC submits its case appeal statement
pursuant to NRAP 3(f)(3). AA001450

1. The appellant filing this case appeal statement is Nationstar Mortgage LLC.

1 2. The order appealed is the district court's findings of fact, conclusions of law and order
2 concerning plaintiff/counter-defendant Saticoy Bay LLC Series 4641 Viareggio Ct's motion for
3 summary judgment, which was filed on December 11, 2018, and any order made appealable thereby.
4 This order became a final appealable judgment when a notice of entry of order was filed on
5 December 14, 2018.

6 3. Nationstar's counsel are Melanie D. Morgan, Esq. and Donna M. Wittig, Esq. of
7 Akerman LLP, 1635 Village Center Circle, Suite 200, Las Vegas, Nevada 89134.

8 4. Respondent Saticoy Bay LLC Series 4641 Viareggio Ct.'s trial counsel was Michael F
9 Bohn, Esq. and Adam R. Trippiedi, Esq., Law Offices of Michael F. Bohn, Esq., LTD., 2260
10 Corporate Circle, Suite 480, Henderson, Nevada 89074. Appellant is unaware whether respondent's
11 trial counsel will also act as its appellate counsel.

12 5. Nationstar's counsel are licensed to practice law in Nevada. Respondent's trial
13 counsel are licensed to practice law in Nevada.

14 6. Nationstar is represented by retained counsel in the district court.

15 7. Nationstar is represented by retained counsel on appeal.

16 8. Nationstar was not granted leave to proceed in forma pauperis by the district court.

17 9. The date proceedings commenced in the district court was September 25, 2013.

18 10. Respondent commenced an action to quiet title and for declaratory relief concerning
19 the real property located at 4641 Viareggio Court, Las Vegas, Nevada 89147. Respondent alleged it
20 acquired title to the property pursuant to a homeowners association (**HOA**) foreclosure sale, and that
21 the HOA sale extinguished the first-lien deed of trust encumbering the property. Respondent alleged
22 it is entitled to a judgment it owns the property free and clear of all liens including the first deed of
23 trust as a result of the HOA sale. Nationstar filed an answer and counter-claim. Nationstar alleged:
24 (i) Federal Home Loan Mortgage Corporation (**Freddie Mac**) was the owner of the note secured by
25 the senior deed of trust at the time of the HOA sale and remains the current owner; (ii) Nationstar
26 services the loan for Freddie Mac; and (iii) in its role as Freddie Mac's contractual loan servicer,
AA001451

27 Nationstar is the record beneficiary under the deed of trust. Nationstar further alleged: (i) the
28 **Federal Foreclosure Bar**, 12 U.S.C. § 4617(j)(3), protects Freddie Mac's interest in the deed of

1 trust, and preempts the state foreclosure statute, NRS 116 *et seq.*, to the extent it purportedly permits
2 the nonconsensual extinguishment of Freddie Mac's property interests while Freddie Mac is under
3 the conservatorship of the Federal Housing Finance Agency (**FHFA**); (ii) the HOA sale did not
4 extinguish Freddie Mac's deed of trust, thereby precluding respondent from claiming a free and clear
5 interest in the property, because the FHFA did not consent to the extinguishment of Freddie Mac's
6 interest in the deed of trust; and (iii) Nationstar may assert the Federal Foreclosure Bar to protect its
7 own interest in the deed of trust as the record beneficiary and to protect Freddie Mac's interest as
8 Freddie Mac's contractually authorized loan servicer. Nationstar also alleged the HOA sale should
9 be set aside on equitable grounds because the sale was unfair and the property was sold for a grossly
10 inadequate price. In granting summary judgment in favor of respondent, the district court held the
11 Federal Foreclosure Bar did not apply because the evidence purportedly did not show the FHFA or
12 Freddie Mac had any interest in the deed of trust and their interest was not recorded; the HOA sale
13 was not commercially unreasonable as there was no evidence of fraud, unfairness, or oppression; and
14 NRS 116 *et seq.* does not violate due process. Nationstar appeals from this order and judgment.

15 11. This case has not previously been the subject of an appeal to or original writ
16 proceeding in the Supreme Court.

17 12. This appeal does not involve child custody or visitation.

18 13. This appeal does not involve the possibility of settlement.

19 DATED January 7th, 2019.

20 **AKERMAN LLP**

21 /s/ Donna M. Wittig

22 MELANIE D. MORGAN, ESQ.

23 Nevada Bar No. 8215

24 DONNA M. WITTIG

25 Nevada Bar No. 11015

26 1635 Village Center Circle, Suite 200

27 Las Vegas, Nevada 89134

28 *Attorneys for Defendant/Counterclaimant Nationstar
Mortgage LLC* AA001452

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 7th day of January, 2019 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE LLC'S CASE APPEAL STATEMENT**, in the following manner:

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

LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.

Eserve Contact office@bohnlawfirm.com
Michael F Bohn Esq mbohn@bohnlawfirm.com

/s/ Carla Llarena

An employee of AKERMAN LLP

AA001453

1 **ORDR**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4 SATICOY BAY LLC SERIES 4641
5 VIAREGGIO CT,

6 Plaintiff(s),

7 NATIONSTAR MORTGAGE LLC;
8 COOPER CASTLE LAW FIRM, LLP;
and MONIQUE CUILLORY,

9 Defendant(s).

10 AND ANY RELATED MATTERS

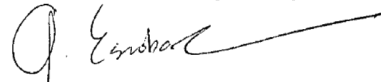
Case No.: A-13-689240-C
Dept. No.: XIV (14)

HEARING DATE: 10/22/2020
HEARING TIME: 9:30 A.M.

11
12 **ORDER SETTING FURTHER PROCEEDINGS RE: NEVADA COURT OF**
APPEALS ORDER VACATING AND REMANDING

13
14 The Court having received the Order Vacating and Remanding (Nevada Court
15 of Appeals Case No. 77874-COA) herein and good cause appearing, it is hereby
16 **ORDERED** this matter is set for hearing on **Thursday, October 22, 2020** at the hour
17 of **9:30 a.m.** in Department 14 (Courtroom 14C) for further proceedings regarding the
18 Order Vacating and Remanding. Parties should contact Department 14's Judicial
19 Executive Assistant via email at PowellD@clarkcountycourts.us two (2) days prior to
20 the hearing date if you have not yet received a Blue Jeans Videoconference
21 Invitation.

22 Dated this 28th day of September, 2020

23 

24 ADRIANA ESCOBAR
25 DISTRICT COURT JUDGE
26 DEPARTMENT 14
EDB 9CA DB43 1138
Adriana Escobar AA001454
District Court Judge

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Saticoy Bay LLC Series 4641
Viareggio Ct., Plaintiff(s)

CASE NO: A-13-689240-C

7 vs.

DEPT. NO. Department 14

8
9 Nationstar Mortgage LLC,
Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 9/28/2020

16 Brandon Lopipero .	blopipero@wrightlegal.net
17 Eserve Contact .	office@bohnlawfirm.com
18 Michael F Bohn Esq .	mbohn@bohnlawfirm.com
19 NVEfile .	nvefile@wrightlegal.net
20 Regina A. Habermas .	rhabermas@wrightlegal.net
21 Melanie Morgan	melanie.morgan@akerman.com
22 Akerman LLP	AkermanLAS@akerman.com
23 Donna Wittig	donna.wittig@akerman.com

24
25
26 If indicated below, a copy of the above mentioned filings were also served by mail
27 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 9/29/2020 AA001455

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Jason Peck	Law Offices of Jason Peck Attn: Jason Peck, Esq 7251 West Lake Mead Blvd, Suite 250 Las Vegas, NV, 89128
Melanie Morgan	Akerman LLP c/o: Melanie D. Morgan 1635 Village Center Circle, Suite 200 Las Vegas, NV, 89134
Michael Bohn	Law Offices of Michael F. Bohn, Esq., Ltd c/o: Michael F. Bohn 2260 Corporate Circle, Ste. 480 Henderson, NV, 89074

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

November 02, 2020

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

November 02, 2020

3:00 AM

Minute Order

**Plaintiff's Motion for
Summary Judgment**

HEARD BY: Escobar, Adriana

COURTROOM: Chambers

COURT CLERK: Grecia Snow

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Plaintiff's Motion for Summary Judgment (Motion) came on for hearing before Department 14 of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on October 22, 2020. Based on the pleadings and arguments of counsel, the Court issues the following order:

Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. NRCP 56(c). Wood v. Safeway, Inc. explains the following:

While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. The nonmoving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.

121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005) (emphasis added) (citations omitted).

Nevada's recording statutes do not require that Freddie Mac be identified as the beneficiary on the publicly recorded deed of trust to establish its ownership interest in the subject loan. Daisy Tr. v. Wells Fargo Bank, N.A., 135 Nev. 230, 230, 445 P.3d 846, 847 (2019).

AA001457

PRINT DATE: 11/02/2020

Page 1 of 3

Minutes Date: November 02, 2020

Freddie Mac's loan servicer is not required to produce the actual loan servicing agreement or the original promissory note to establish Freddie Mac's ownership interest in a loan where properly authenticated business records establish that interest. Id. at 233, 445 P.3d at 847.

NRS 51.135, the business records exception to the hearsay rule, provides:

A memorandum, report, record or compilation of data, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity, as shown by the testimony or affidavit of the custodian or other qualified person, is not inadmissible under the hearsay rule unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

(emphasis added).

Under *Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 445 P.3d 846, 847 (2019), there is a genuine issue of material fact as to whether Plaintiff's claim is preempted by the Federal Foreclosure Bar. Freddie Mac did not record the conveyance of the Deed of Trust from First Magnus Financial Corporation. However, the deed of trust did not have to be assigned or conveyed to Freddie Mac in order for Freddie Mac to own the secured loan, meaning that Nevada's recording statutes are not implicated. Id. at 234, 445 P.3d at 849. Thus, Freddie Mac was not required to publicly record its ownership interest as a prerequisite for establishing that interest. Id.

In Defendant's opposition to Plaintiff's Motion, Defendant provided a declaration by Dean Meyer, a Freddie Mac employee, attesting that (1) Freddie Mac acquired the loan in March 2007, (2) Freddie Mac owned the loan at the time of the HOA foreclosure sale, and (3) that Defendant had been servicing the loan since June 2012. Meyer's declaration was accompanied by printouts from Freddie Mac's databases. These printouts reflected a Funding Date of March 29, 2007, Seller NBR of 623509, and Part. Pct. of 1.00. Meyer attested, amongst other things, that the funding date referred to the date Freddie Mac purchased the loan, the seller NBR referred to the party that sold the loan to Freddie Mac, and the Part. Pct., which also means participation percentage, reflects that Freddie Mac owns 100% of the loan. Meyer also attested that the Servicer Number in Freddie Mac's printouts referred to Defendant, the loan servicer.

Meyer's respective declarations, which confirm or at least strongly indicate Defendant is Freddie Mac's loan servicer, combined with relevant provisions in the Guide that govern the contractual relationship between Freddie Mac and its servicers nationwide, is sufficient to create a genuine issue of material fact that Freddie Mac owned the loan and Defendant was the servicer of the loan, such that Defendant can assert the Federal Foreclosure Bar.

Plaintiff's argument that Meyer is not competent to testify lacks merit. The Daisy Trust Court

AA001458

addressed an almost identical argument as to the admissibility of the business records attested to in Meyer's declaration under NRS 51.135. Here, Meyer attested that the database entries contained in the printouts were made (1) at or near the time of the event being recorded, (2) by a person with knowledge of the event, and (3) in the course of the business's regularly conducted activity. Thus, the Freddie Mac database printouts are admissible.

Based on the foregoing, the Court DENIES Plaintiff's Motion.

Defendant is directed to prepare a detailed order that incorporates the substance of this Minute Order and the undisputed factual and procedural history of this case. Defendant is further directed provide the proposed order to Plaintiff for approval as to form and content.

All parties must submit their orders electronically, in both PDF version and Word version, until further notice. You may do so by emailing DC14Inbox@clarkcountycourts.us. All orders must have either original signatures from all parties or an email appended as the last page of the proposed order confirming that all parties approved use of their electronic signatures. The subject line of the e-mail should identify the full case number, filing code and case caption.

CLERK'S NOTE: The above minute order has been distributed to: Michael F. Bohn Esq., at mbohn@bohnlawfirm.com, Nikoll Nikci Esq., at mnikci@bohnlawfirm.com, Jason M. Peck Esq., at lasvegaslegal@libertymutual.com, Melanie Morgan Esq., melanie.morgan@akerman.com, Donna Wittig Esq., at donna.wittig@akerman.com. 11/2/20 gs