No. _____

In the
Supreme Court of the United States

KEITH A. SIMPSON,

Petitioner,

v.

THE BANK OF NEW YORK MELLON, etc.,

Respondent.

On Petition for Writ of Certiorari to
Florida's Third District Court Appeal

APPENDIX TO APPLICATION FOR A STAY OF WRIT OF POSSESSION

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APPENDIX

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed to aleichtling@ll-lawfirm.com to Adam B. Leichtling, Esq., Lapin & Leichtling, LLP., 255 Alhambra Circle, Suite 1250, Coral Gables, FL 33134 this 13th day of June 2018.

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION
CASE NO: 11-32903 - CA -01 / Division 24

Bank of New York, etc.

Plaintiff(s),

vs.

Simpson, et al.

Defendant(s),

_____/

ORDER
~~**GRANTING/DENYING**~~ ON
PLAINTIFF'S/DEFENDANT'S
Motion to Stay
Writ of Possession

THIS CAUSE having come on to be heard on May 29, 2018
on ~~Plaintiff~~'s/Defendant's Motion
to Stay Writ of Possession Pending
Appeal to the USSC

and the Court having heard arguments of counsel, and being otherwise advised in the premises, it is hereupon

ORDERED AND ADJUDGED that said Motion be, and the same is hereby
the motion is denied in part and granted in part
as follows: the issuance of the writ of
possession is stayed until June 20, 2018
in consideration of the health condition of
Defendant Simpson's wife.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 29th
day of May, 2018.

CONFORMED COPY
MAY 29 2018
ANTONIO ARZOLA
CIRCUIT COURT JUDGE

CIRCUIT COURT JUDGE

Copies furnished to: Counsel of Record
Adam Lichtling, Esq.
Bruce Jacobs, Esq.

117_01-554 3/11

APPENDIX "A"

Date: Friday, June 16, 2017 at 8:25:43 AM Pacific Daylight Time
From: Dimple Sehgal
To: Kohn, Robert
CC: Rachel Rose, Court Keeley, Anna Morales
Attachments: image004.jpg, image005.jpg, image006.gif, image007.png

Rob,

I don't believe we have anything more to produce, after our call on Wednesday we pushed to find all we could. We have confirmed that back in Feb 2016, BOA had us execute an extensive project to purge all its data, which we were obligated to do. Therefore, this is all we have.

Thank you,

Dimple Sehgal
Corporate Counsel
SourceHOV
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Irving, TX 75061
United States
o: +1. 972.821.4784 | m: +1.469.954.2216
dimple.sehgal@sourcehov.com

APPENDIX "B"

Dimple Sehgal

From: Bill Daniluk
Sent: Friday, February 19, 2016 4:45 PM
To: Iseminger, Zachary D; Denz, Chris (chris.denz@bankofamerica.com); 'Vinskey, Bart' (bart.vinskey@bankofamerica.com)
Cc: Ferhadson, Jack; 'Olschanski, Mark'; Subramaniam, Joythi; nick.loy
Subject: Bank of America Fastrieve Purge - Final report
Attachments: BAC.DatastoreGuardPoints.After.pdf; BAC Fastrieve Purge Final Summary Report Updated-2-11-2016.xlsx

Importance: High

Please find below a final summary of the Fastrieve Purge project high level tasks. With the deletion of the database schemas on 2/16, we consider the project complete.

#	Task	Start	Finish	Statistics
1	Physically delete all BAC image files in CWIDE, FYIUSER, and BAC production Fastrieve Systems 1. Determine all affected Fastrieve Data Stores 2. Extract a file list of all image files 3. Over-write each image file 4. Delete each over-written image file 5. Log all activity	11/13/2015	1/26/2016	BAC Datastores Purged – 117 FYIUSER Datastores Purged – 119 CWIDE Datastores Purged – 11 'root' Datastores Purged – 3 Total Storage Purged – 137.2 TB Total Objects Purged – 1.9 B (see details in attached sheet)
2	Delete Encryption Key SourceHOV used the Vormetric product to encrypt all Fastrieve objects stored for Bank of America. This product uses 'Guard Points' to enable encryption/decryption. The attached 'after' view of guard points shows that none are found for any Fastrieve datastores. The 'before' view has been sent to the bank, but is not provided here because of the size.	2/1	2/3	Vormetric Guard points in use prior to purge: 4100 Vormetric Guard points in use after the purge: 0
3	Drop Database Schemas All metadata for BAC Fastrieve was stored in Oracle database tables. BPOTS ticket 891510 was opened to the database support to purge the relevant tables; this was done per the comments on the ticke, attached here. In addition to production schemas (BAC and FYIUSER) the final metadata for test Fastrieve instances (IMAGINGUAT,	2/16	2/16	OWNER SEGMENT_TYPE COUNT(*) --- --- BAC INDEX 630 BAC INDEX PARTITION 238 BAC LOBINDEX 6 BAC LOBSEGMENT 6 BAC TABLE 355 BAC TABLE PARTITION 14 CARSON INDEX 303 CARSON INDEX PARTITION 925 CARSON LOBINDEX 6 CARSON LOBSEGMENT 6 CARSON TABLE 265 CARSON TABLE PARTITION 169 FYIUSER INDEX 299 FYIUSER INDEX PARTITION 12 FYIUSER INDEX SUBPARTITION 371

	IMAGINGUAT_V5, and CARSON) was also deleted.			FYIUSER TABLE 562 FYIUSER TABLE SUBPARTITION 53 IMAGINGUAT_V5 INDEX 220 IMAGINGUAT_V5 TABLE 261
4	As of 2/16 we attest that: • All Bank of America Fastrieve image object data has been overwritten and purged • All Bank of America Fastrieve object metadata has been deleted • All encryption technology used to process Bank of America Fastrieve data has been eliminated • Summary evidence of the above is attached to this note • Detailed evidence of the above has been shared with BAC personnel			

	Total Data Stores	Total Kbytes Deleted	Total Data Stores Purged		Total Objects Purged
bac	117	2,859,509,320	117		14,233,524
fyiuser	118	134,337,582,900	118		1,846,824,550
cwide	11	4,278,000	11		14,955,936
root	3	n/a	3		8137432
total	235	137,197,092,220	235		1,884,151,442

Please feel free to contact me for any questions you have on Fastrieve purge. Please share this document as needed.

Bill Daniluk
Implementation Manager
O:+1.972.355.6679 m: +1.972.689.3613
SourceHOV

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:15-cv-24585-UU

BRUCE JACOBS,

Plaintiff,

v.

BANK OF AMERICA CORPORATION, *et al.*,

Defendants.
_____/

OMNIBUS ORDER

THIS CAUSE is before the Court upon Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint, D.E. 95, and Defendants' Motion for Judicial Notice, D.E. 96. The Motions are fully briefed and ripe for disposition.

THE COURT has reviewed the pertinent portions of the record and is otherwise fully advised in the premises. For reasons set forth below: (1) Defendants' Motion for Judicial Notice, D.E. 96, is GRANTED IN PART; and (2) Defendants' Motion to Dismiss, D.E. 95, is DENIED.

I. BACKGROUND

The following allegations are taken from Plaintiff's Second Amended Complaint (the "SAC"). D.E. 79.

Plaintiff, Bruce Jacobs, is an attorney who practices law in the areas of foreclosure defense and consumer protection in South Florida. Plaintiff brings this action under the *qui tam* provisions of the federal False Claims Act, 31 U.S.C. § 3729, *et seq.* (the "FCA"). Defendants, Bank of America Corporation, Bank of America, N.A., Countrywide Home Loans, Inc., Countrywide Financial Corporation, Countrywide Mortgage Ventures, LLC, Countrywide Bank,

APPENDIX "C"

FSB and Recontrust Company (collectively, "Defendants"), are corporate entities subsumed under Defendant Bank of America Corporation, which is a publicly traded company.

Plaintiff's claims hinge on allegations that Defendants falsified evidence in the form of surrogate signed rubber-stamped endorsements and mortgage assignments documenting transactions that never occurred ("robo-signing"), and presented that false evidence to foreclosure courts to obtain foreclosure judgments and to make false claims for payment of mortgage insurance.

In particular, Plaintiff alleges that Defendants submitted false claims, in violation of the FCA, in two principal ways. First, Plaintiff alleges a false claims act claim, based on a theory of implied certification, on grounds that Defendants knowingly pursued, and continue to pursue, "mortgage foreclosures by misleadingly filing copies of promissory notes bearing rubber-stamped endorsement signatures that were not legally authorized by the purported signatories (and therefore, were invalid), and by filing copies of purported assignments by MERS [Mortgage Electronic Registration System, Inc.], which never owned any interest in the notes that purportedly were being assigned (and therefore, were ineffective)." *Id.* ¶ 52.

Second, Plaintiff alleges a reverse false claims act claim against Defendants based on their allegedly false statements made when signing an April 4, 2012 NMS Consent Judgment (the "Consent Judgment"), which required that Defendants comply with various HUD servicing standards and regulations, because Defendants knew—at the time of agreeing to the Consent Judgment—that they did not intend to "perform as promised [their] obligation to make sure that foreclosure-related filings were to be 'accurate and complete and . . . supported by competent and reliable evidence.'" *Id.* ¶ 51.

A. United States Settlement

Sometime prior to February 2011, the Office of Inspector General within HUD (the "OIG") conducted an investigation of possible false claims by Bank of America and, in particular, allegations of robo-signing by Bank of America, its subsidiaries, and four other mortgage servicers. *Id.* ¶¶ 15, 17, 18.

In February 2011, the OIG provided the U.S. Department of Justice ("DOJ") with OIG's analyses and preliminary conclusions as to whether Bank of America engaged in the allegedly fraudulent foreclosure practices. *Id.* ¶ 19. As a result of these investigations, the OIG Regional Inspector issued a General Report (the "OIG Report"), which concluded that Bank of America failed to establish effective control over its foreclosure process, such that: (1) "affiants routinely signed foreclosure documents, including affidavits, certifying they had personal knowledge of facts when they did not;" and (2) attorneys may have "improperly prepare[d] documents and misrepresent[ed] the work they performed." D.E. 79-3 p. 6. In other words, Bank of America filed "improper legal documents, thereby misrepresenting its claims to HUD and may have exposed it to liability under the False Claims Act." *Id.*

On February 9, 2012, DOJ and 49 state attorney generals announced a proposed settlement of $25 billion with Bank of America and four other mortgage servicers for their reported foreclosure misconduct, including possibly conveying "flawed or improper titles to HUD because it did not establish a control environment which ensured that affiants performed a due diligence review of the facts submitted to courts and that employees properly notarized documents." *Id.* ¶¶ 15, 18.

The parties officially filed their consent judgment on April 4, 2012 (the "Consent Judgment"). *Id.* ¶ 59. Among other things, the Consent Judgment required that Bank of

America Corp., Bank of America, N.A., BAC Home Loans Servicing, L.P., Countrywide Home Loans, Inc., Countrywide Financial Corporation and Countrywide Mortgage Ventures, L.L.C. ensure that: (1) factual assertions made in pleadings be accurate; (2) affidavits, sworn statements and declarations be based on personal knowledge; and (3) mortgage assignments by or on behalf of Bank of America and Countrywide be executed with appropriate legal authority, accurately reflecting the completed transaction and properly acknowledged.

Plaintiff alleges that, even after the Consent Judgment, Defendants litigating foreclosure cases continued to rely upon endorsements that were robo-signed and, also, continued to submit false statements and testimony about the dates when endorsements were stamped. *Id.* ¶¶ 25-26. In addition, Plaintiff alleges that Defendants continue to use purported assignments to the Mortgage Electronic Registration System, Inc. ("MERS") as an "instrumentality of fraud to fabricate documents that could be used to mislead courts into believing that Bank of America, N.A. or its related entities had received an assignment of a mortgage that would confer standing to foreclose." *Id.* ¶ 28. In particular, Plaintiff alleges that MERS never owned any interest in Plaintiff's or other borrower's promissory notes, or "any promissory note secured by mortgages at all," but rather **only** had mortgages registered to them as nominees to "make a public record of who the owner and holder of the note [was]." *Id.* ¶ 38. Thus, "MERS could never have assigned any such interests to anyone, including Bank of America, N.A. or any other purported mortgagee." *Id.* ¶ 37. Nonetheless, Defendants "intended to (and did) pursue judicial foreclosure cases to enforce mortgages by relying on purported assignments of the notes and mortgages from MERS." *Id.* ¶ 28.

The aforementioned conduct has allegedly continued even after the Consent Judgment expired on October 3, 2015. *Id.* ¶¶ 25-26.

B. Basis of Plaintiff's Knowledge

Plaintiff's knowledge of Defendants' alleged fraud comes from two sources: (1) Plaintiff's experience in his own foreclosure proceedings; and (2) evidence he exposed while litigating various foreclosure cases.

Both in his own foreclosure case and while litigating various foreclosure cases, Plaintiff discovered that Defendants would: (1) produce false documents and prosecute foreclosures using surrogate signed endorsements placed on original notes by teams of surrogate signors and false mortgages assignments as evidence of standing to foreclose; and (2) create and rely upon assignments from MERS in "purporting to establish both the transfer of Relator's note and thousands of others, immediately after the entry of the Consent Judgment and repeatedly since then." *Id.* ¶ 37.

In particular, three distinct rubber-stamped signatures began appearing on original notes in cases wherein the Defendants were involved. These rubber-stamped signatures bore the names of (i) Michelle Sjolander, (ii) Laurie Meder, and (iii) David Spector. *Id.* ¶ 40.

Plaintiff thereafter deposed various supervisors and employees of Shellpoint Mortgage Servicing, a subservicer that assists Defendants in servicing and foreclosing mortgage loans, as well as Maria Garner, a Senior Vice President of Recontrust Company, in connection with defending clients in other foreclosure cases. *Id.* ¶¶ 38-40. During the course of these depositions and as a result of discovery requests propounded in these cases, Plaintiff allegedly uncovered that Defendants were continuing to robo-sign promissory notes in at least five (5) different instances, even after entry of the Consent Judgment, despite the fact that such conduct violated HUD regulations and the terms of the judgment itself. *Id.* ¶¶ 50-51. Plaintiff also discovered that Defendants continued to rely on promissory notes assigned to MERS even though, according

to Plaintiff, such assignments are invalid. Each of these instances occurred after entry of the April 2, 2014 Consent Judgment. *Id.*

Based on these foreclosure cases, Plaintiff alleges that Defendants continue to make "new affirmative false claims to FHA – by submitting new claims for FHA mortgage-insurance benefits based upon foreclosures that had been obtained by (i) reliance upon misleadingly rubber-stamped endorsements affixed to promissory notes, without any present intention of the purported signatories to adopt them (which are invalid) and (ii) upon purported assignments of mortgages by MERS without MERS owning any interest in the underlying notes (which were ineffective). *Id.* ¶ 54.

C. Plaintiff's Claims

Based on this underlying conduct Plaintiff alleges, in a single Count, the following three claims: (1) an implied certification false claims act claim based on continued fraudulent use of robo-signed promissory notes, as well as ineffective MERS assignments, to obtain FHA residential mortgage insurance payments; (2) a reverse false claims act claim, on grounds that Defendants made a false statement by signing the Consent Judgment with knowledge that they did not intend to cease the fraudulent practice of relying on robo-signed promissory notes and MERS assignments in foreclosure cases; and (3) a conspiracy claim based solely on Defendants signing the Consent Judgment. *Id.* ¶¶ 50-51, 54.

Defendants move to dismiss Plaintiff's Second Amended Complaint based on: (1) the public disclosure bar under the FCA; and (2) failure to state a claim under Federal Rules of Civil Procedure 12(b)(6) and 9(b). D.E. 95. Defendants also filed a motion requesting that the Court take judicial notice of six (6) different items, including news articles, a report from the Federal Reserve, and an OCC Consent Order. D.E. 96. Plaintiff opposes Defendants' Motions.

II. LEGAL STANDARD

A. Rule 12(b)(6)

In order to state a claim, Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." While a court, at this stage of the litigation, must consider the allegations contained in the plaintiff's complaint as true, this rule "is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In addition, the complaint's allegations must include "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Thus, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. (citing *Twombly*, 550 U.S. at 555).

In practice, to survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard requires more than a sheer possibility that a defendant has acted unlawfully. *Id.* Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief. *Id.* Determining whether a complaint states a plausible claim for relief is a context-specific undertaking that requires the court to draw on its judicial experience and common sense. *Id.* at 679.

Fraud claims are subject to Rule 9(b)'s heightened pleading requirements. Rule 9(b) provides that "[i]n allegations of fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake" but "[m]alice, intent, knowledge, and other

condition of mind of a person shall be averred generally." Fed. R. Civ. P. 9(b). The Eleventh Circuit has stated that Rule 9(b)'s fraud particularity requirement is met as long as the complaint sets forth (1) precisely what representations were made, and (2) the time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) the same, and (3) the content of such statements and the manner in which they misled the plaintiff, and (4) what the defendants obtained as a consequence of the fraud." *Ziemba v. Cascade Int'l, Inc.*, 256 F.3d 1194, 1202 (11th Cir. 2001) (internal citation omitted).

B. Judicial Notice

In considering a motion to dismiss under Rule 12(b)(6), the Court may judicial notice of facts that are not subject to reasonable dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201; *Bryant v. Avado Brands, Inc.,* 187 F.3d 1271, 1278 (11th Cir. 1999).

In a case brought under the False Claims Act, "courts may take judicial notice of documents such as . . . newspaper articles . . . for the limited purpose of determining which statements the documents contain (but not for determining the truth of those statements)." *U.S. ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805, 815 n. 4 (11th Cir. 2015); *Benak ex rel. All. Premier Growth Fund v. All. Capital Mgmt. L.P.*, 435 F.3d 396, 401 (3d Cir. 2006) (affirming district court taking judicial notice of articles which "serve[d] only to indicate what was in the public realm at the time, not whether the contents of those articles were in fact true"); *Heliotrope Gen., Inc. v. Ford Motor Co.*, 189 F.3d 971, 981 n. 18 (9th Cir. 1999) ("We take judicial notice that the market was aware of the information contained in news articles submitted by the defendants."); *Rodriguez v. Bear Stearns Companies, Inc.*, No. 07-CV-1816 (JCH), 2009 WL 995865, at *12 (D. Conn. Apr. 14, 2009) ("The court takes judicial notice of the existence,

publication, and/or availability of certain news articles and annual reports as requested by the defendants, but does not take notice of the truth of the matters asserted in those articles and reports." (citing *Staehr v. Hartford Fin. Servs. Grp.*, 547 F.3d 406, 424 (2d Cir. 2008)); *U.S. ex rel. Lam v. Tenet Healthcare Corp.*, 481 F. Supp. 2d 673, 680 (W.D. Tex. 2006) ("Pursuant to Rule 201(b), Courts have the power to take judicial notice of the coverage and existence of newspaper and magazine articles.").

III. DISCUSSION

Defendants move to dismiss Plaintiff's SAC because: (1) Plaintiff's claims are barred by the FCA public disclosure bar; and (2) Plaintiff fails to state a claim under the False Claims Act: (a) based on a theory of implied certification; (b) by alleging a reverse false claims act claim; and (c) for conspiracy.

A. FCA Public Disclosure Bar

The currently enacted version of Section 3730(e)(4) of the False Claims Act[1] provides:

> The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed--
>
> (i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;
>
> (ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or
>
> (iii) from the news media,
>
> unless the action is brought by the Attorney General **or the person bringing the action is an original source of the information**.

31 U.S.C. § 3730(e)(4)(A) (emphasis added). The public disclosure bar "creates grounds for dismissal for failure to state a claim" under Rule 12(b)(6). *U.S. ex rel. Osheroff* , 776 F.3d at

[1] The parties agree that the current FCA, enacted in 2010, governs Plaintiff's claims in this action.

811. However, courts are expressly permitted to consider documents subject to judicial notice, such as news articles, websites, and other publicly available documents, "for the limited purpose of determining which statements the documents contain (but not for determining the truth of those statements)." *Id.* at 812 n. 4.

The Eleventh Circuit has articulated the following three-part test for deciding if the public disclosure bar applies: "(1) have the allegations made by the plaintiff been publicly disclosed; (2) if so, is the disclosed information the basis of the plaintiff's suit; and (3) if yes, is the plaintiff an 'original source' of that information." *Id.* (citing *Cooper*, 19 F.3d at 565 n. 4).

"The FCA is most naturally read to preclude suits based in *any part* on publicly disclosed information." *Battle v. Bd. of Regents for Georgia*, 468 F.3d 755, 762 (11th Cir. 2006). For this reason, a plaintiff basing a False Claims Act *qui tam* claim based "in any part on such publicly disclosed information must demonstrate that the plaintiff is an original source of that information." *Id.*

An "original source" is defined as "an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section." 31 U.S.C. § 3730(e)(4)(B).

i. *Whether allegations have been publicly disclosed*

Defendants argue that the allegations contained in Plaintiff's SAC have been publicly disclosed. Defendants group Plaintiff's allegations into the following three categories: (1) that Defendants robo-signed promissory notes; (2) that Defendants used MERS to transfer mortgage

assignments; and (3) that these practices resulted in improper foreclosures, both because rubber-stamped endorsements are not good evidence of Defendants' ownership of the underlying property and because MERS does not have the power to transfer a note—and a mortgage cannot be assigned without a note. D.E. 95 p. 10. Defendants contend that each of these allegations "has for many years been publicly disclosed" by, at the very least: (1) the U.S. Government's published investigation in April 2011; (2) a June 2011 *Fortune* article; (3) a June 2014 website article posted by Clinton Kirby, a foreclosure plaintiff in a case against Bank of America; and (4) an April 1, 2015 *Housing Wire* article quoting a MERS executive. *Id.* pp. 10-11.

In response, Plaintiff argues that while it is public knowledge that Defendants robo-signed promissory notes and relied on MERS' assignments before the April 2, 2014 Consent Judgment, it is not public knowledge that Defendants have continued these practices even after entry of the Consent Judgment. D.E. 103 pp. 6-7.

The Court agrees that Plaintiff's allegations concerning Defendants' alleged misconduct after the April 2, 2014 Consent Judgment have, in fact, been publicly disclosed. In particular, the Court relies on, and takes judicial notice of, Exhibit 7 to Defendants' Motion for Judicial Notice, D.E. 97-7, which is a June 2014 website article posted by Clinton Kirby, a foreclosure plaintiff in a case against Bank of America.[2] In this article, Mr. Kirby states that during his 2014 foreclosure proceeding, Bank of America produced the same unendorsed version of his promissory note until, right on the eve of trial, Bank of America produced an endorsed note bearing the names of Michele Sjolander and Laurie Meder. D.E. 97-7. In other words, Bank of America relied on a robo-signed promissory note, which appears to have been endorsed or, at the very least, relied on by Bank of America after entry of the April 2, 2014 Consent Judgement.

[2] The Court only takes judicial notice of this article for the "limited purpose of determining which statements the documents contain," but "not for determining the truth of those statements)." *Osheroff*, 776 F.3d at 815, n. 4.

This article, standing alone, is enough to satisfy the first prong of the *Cooper* test, as the Eleventh Circuit has made clear that "a plaintiff basing an FCA qui tam claim in **any part** on such publicly disclosed information must demonstrate that the plaintiff is an original source of that information." *Battle*, 468 F.3d at 762 (emphasis added).

ii. *Whether Plaintiff's action is based on publicly disclosed information*

Defendants also argue that because Plaintiff's suit is based, at least in part, on publicly-disclosed information, the second prong of the *Cooper* test is satisfied. In other words, Defendants contend that Plaintiff essentially re-hashes well-publicized claims concerning Defendants' unlawful robo-signing of promissory notes and MERS' allegedly ineffective assignment of mortgages. D.E. 95 pp. 11-12.

The Court agrees with Defendants. As an initial matter, the Eleventh Circuit has explained that the second prong of the *Cooper* test is a "quick trigger to get to the more exacting original source inquiry." *Osheroff*, 776 F.3d at 814 n. 10. Here, Plaintiff does not re-hash well-publicized allegations that pre-date the April 2, 2014 Consent Judgment, but instead alleges claims under the False Claims Act based on conduct occurring **after** entry of the April 2, 2014 Consent Judgment. However, it is clear that Plaintiff's claims are still based, at least in part, on information that is publicly available, as the crux of Plaintiff's claims were already disclosed by the June 2014 website article written by Clinton Kirby, which predates this lawsuit. *See* D.E. 97-7. Accordingly, Plaintiff's suit "may have been at least partially based upon" publicly available information, and that is enough to satisfy the substantially similar prong of the public disclosure bar. *Cooper*, 19 F.3d at 567-68; *Battle*, 468 F.3d at 762; *U.S. ex rel. Boothe v. Sun Healthcare Grp., Inc.*, 496 F.3d 1169, 1174 (10th Cir. 2007) (rejecting "time, place and manner" distinction to find that a plaintiff's claim was "based upon" prior public disclosures).

iii. *Whether Plaintiff is an original source of such information*

In any event, Plaintiff argues that the public disclosure does not apply because he is an "original source" under 31 U.S.C. § 3730(e)(4)(B). D.E. 103 p. 5. The Court agrees that Plaintiff is an "original source" under Section 3730(e)(4)(B) and that, for this reason, the public disclosure bar does not apply. *See Cooper*, 19 F.3d at 568 (noting that "even if a relator's claims are 'based upon' prior public disclosures, one may still navigate around the public disclosure bar by showing that he or she is an 'original source' within the meaning of Section 3730(e)(4)(A)").

As an initial matter and as discussed above, Plaintiff's claims hinge not on conduct uncovered before the Consent Judgment, but rather on Defendants' conduct after entry of the Consent Judgment. Accordingly, Plaintiff is an original source under Section 3730(e)(4)(B)(2) so long as he has provided the government with information based on knowledge that is "independent of" and that "materially adds to" information that has already been publicly disclosed, which is information about robo-signing and MERS assignments post-dating the April 2, 2014 Consent Judgment. 31 U.S.C. § 3730(e)(4)(B).

Plaintiff is an original source for two reasons. First, Plaintiff has independent knowledge of Defendants' allegedly unlawful activity based on his own experience litigating foreclosure cases. *See Cooper*, 19 F.3d at 568 (finding that a relator was an "original source" with "direct" and "independent" information because he acquired his knowledge of the wrongdoing through "three years of his own claims processing, research, and correspondence with members of Congress and HCFA," even though the complaint was filed after the release of Congressional reports and a hearing on similar allegations); *Lamers v. City of Green Bay*, 168 F.3d 1013, 1017 (7th Cir. 1999).

Second, the information allegedly uncovered by Plaintiff "materially adds" to publicly-disclosed information because allegations that Defendants relied on robo-signed documents and assignments to MERS after entering into the April 2, 2014 Consent Judgment—and continue to rely on robo-signed documents, in violation of HUD regulations, as well as allegedly inoperative MERS assignments—is "significant, influential or relevant information." *U.S. ex rel. Moore & Co., P.A. v. Majestic Blue Fisheries, LLC*, 812 F.3d 294, 307 (3d Cir. 2016). In other words, Plaintiff is an original source of information pertaining to Defendants' use of robo-signed promissory notes and allegedly ineffective assignments of mortgages by MERS because he "contributes information—distinct from what was publicly disclosed . . . that adds in a significant way to the essential factual background: 'the who, what, when, where and how of the events at issue.'" *Majestic Blue Fisheries, LLC*, 812 F.3d at 307; *Battle*, 468 F.3d at 762 (noting that a plaintiff need not establish herself as *the* original source of the publicly disclosed information but must establish that she is *an* original source of the information in that she had direct and independent knowledge of the information on which she is basing her FCA claim"); *United States v. Med–Care Diabetic & Med. Supplies, Inc.*, No. 1081634CIVRYSKAMPHOP, 2014 WL 12279512, at *7 (S.D. Fla. Dec. 23, 2014); *Lamers v. City of Green Bay*, 168 F.3d 1013, 1017 (7th Cir. 1999) (holding that a competitor who conducted an investigation and gleaned information "readily available to the government investigators . . . or even to members of the general public" was nevertheless an original source).

For these reasons, the Court finds, strictly for purposes of ruling on Defendants' Motion to Dismiss, that Plaintiff's claims are not barred by the public disclosure doctrine. In other words, at this stage, Plaintiff has plausibly alleged that he is an "original source" for purposes of

the FCA's public disclosure bar and, therefore, Defendants' Motion to Dismiss on this basis should be denied.

B. Rule 12(b)(6) Failure to State a Claim

Under Rule 12(b)(6), Defendants also move to dismiss Plaintiff's: (1) reverse false claim; (2) implied certification violation; and (3) conspiracy claim. The Court will address each claim in turn.

i. Reverse false claim

Plaintiff's first theory is that Defendants made a false statement in violation of the FCA by signing the Consent Judgment on April 4, 2012, because Defendants never intended to abide by the requirements of the Consent Judgment but, instead, planned to continue using rubber-stamped endorsements and MERS transfers as evidence of its ownership of mortgages. D.E. 79 ¶¶ 50-52. In other words, by signing the Consent Judgment, Defendants made a false statement to the government that reduced their obligation to pay.

Under the FCA, a defendant can be liable for a reverse false claim if it: "[k]nowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government." 31 U.S.C § 3729. Accordingly, to state a claim for reverse false claim, a relator must plausibly allege, under Rule 12(b)(6) and 9(b): (1) an obligation to pay money to the government; (2) a false record or statement; (3) the defendant's knowledge of the falsity; and (4) the materiality of the misrepresentation. *U.S. ex rel. Matheny v. Medco Health Sols., Inc.*, 671 F.3d 1217, 1222 (11th Cir. 2012).

Defendants move to dismiss Plaintiff's reverse false claim for failure to allege each of these four elements.

a. Obligation

Defendants' principal argument is that Plaintiff fails to allege facts showing that Defendants had an obligation to pay the government.

The FCA defines an obligation as "an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based on similar relationship, from statute or regulation, or from the retention of any overpayment 31 U.S.C. § 3729(b)(3). Courts have held that the reverse false claims provision of the FCA "does not extend to the potential or contingent obligations to pay the government fines or penalties which have not been levied or assessed . . . and which do not arise out of an economic relationship between the government and the defendant." *U.S. ex rel. Schaengold v. Mem'l Health, Inc.*, No. 4:11-CV-58, 2014 WL 6908856, at *16 (S.D. Ga. Dec. 8, 2014) (citing *United States ex rel. Bain v. Ga. Gulf Corp.,* 386 F.3d 648, 657 (5th Cir. 2004)). In other words, the FCA requires an allegation of "an existing legal obligation to pay or transmit money or property to the government." *Id.* (citing *United States ex rel. Bahrani v. Conagra, Inc.,* 465 F.3d 1189, 1195 (10th Cir. 2006). "[Q]uasi-contractual obligations created by statute or regulation" suffice and are thus distinguishable from "[c]ontingent obligations-those that will arise only after the exercise of discretion by government actors-[which] are not contemplated by the statute." *Id.*; *see also Am. Textile Mfrs. Inst., Inc. v. The Ltd., Inc.,* 190 F.3d 729, 738 (6th Cir. 1999).

Defendants argue that Plaintiff's SAC fails to plead an "established duty" to pay the government. D.E. 95 p. 14. Instead, Defendants contend that Plaintiff alleges "that when the HUD OIG investigated Bank of America's foreclosure practices, it identified $1.1 billion of

potentially false claims." *Id.* Based on these claims, Plaintiff alleges that Bank of America, or its affiliates, had an obligation to pay the government because it would have been required to do so if the government: (1) "proceeded with its own suit against Bank of America for all potential claims HUD OIG identified;" and (2) "prevailed entirely in that suit." *Id.* pp. 14-15. In other words, "Jacobs does not allege that the Government had secured a judgment against Bank of America; rather, he alleges that Defendants had an 'obligation' merely as a result of the HUD OIG investigation, which itself states only that Defendants' foreclosure practices '*may* have exposed Bank of America to liability under the False Claims Act.'" *Id.* p. 15 (citing D.E. 79-3 p. 5) (emphasis in briefing). Because a company's potential liability, identified in a HUD investigation, does not create an obligation to pay the government, Defendant contends that Plaintiff's reverse false claims act claim must be dismissed. *Id.*

In response, Plaintiff argues that Defendants had an obligation to comply with the FCA itself and the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (the "FIRREA"), as shown by the fact that DOJ brought the enforcement action against Bank of America, as well as its affiliates, which resulted in the Consent Judgment, and that this duty is enough, at least at the motion to dismiss stage, to allege a reverse false claims act claim. D.E. 103 p. 8. In addition, Plaintiff argues that the government "already exercised any discretion that might have affected the existence of the alleged obligation . . . when the [government] chose to sue the Defendants to enforce the obligation itself." *Id.*

At this stage, the Court concludes that Plaintiff has plausibly alleged an obligation under the FCA. In particular, Plaintiff alleges: (1) Bank of America, as well as its affiliates, had an obligation to pay damages under the FCA and FIRREA; (2) Bank of America Corp., Bank of America, N.A., BAC Home Loans Servicing, L.P., Countrywide Home Loans, Inc., Countrywide

Financial Corporation and Countrywide Mortgage Ventures, L.L.C. entered into the Consent Judgment, thereby directing settlement payment of $2,382,415,075; (3) the settlement payment "represented a substantial decrease of the obligations owed by Bank of America to the United States, as identified by HUD's OIG," as Bank of America's obligation to pay damages under the FCA was $3.3 billion and up to $8.9 billion under FIRREA; and (4) "Defendants made a false statement—by signing the consent judgment itself—in order to decrease their obligations as alleged in its NMS Complaint against them." D.E. 79 ¶¶ 45-50. Plaintiff's allegations are enough, at the motion to dismiss stage, to plausibly allege an obligation for purposes of a reverse false claim under the FCA. *Schaengold*, No. 4:11-CV-58, 2014 WL 6908856, at *16 ("To be sure, as Defendants argue, a lone, conclusory allegation of concealment of an obligation to pay money to the Government would be insufficient to survive a motion to dismiss. But the Government's Complaint does more than that."); *see also Am. Textile Mfrs. Inst., Inc.,* 190 F.3d at 738.

Accordingly, the Court finds that Plaintiff plausibly alleges "an existing legal obligation to pay or transmit money or property to the government."[3] *See, e.g.*, *Schaengold*, No. 4:11-CV-58, 2014 WL 6908856, at *16 (citing *Conagra, Inc.,* 465 F.3d at 1195).

b. False statement

Defendants also argue that Plaintiff fails to allege a false statement because Plaintiff fails to "allege facts plausibly suggesting that Defendants' use of rubber-stamped endorsements or MERS transfers conflict with the 'Servicing Standards'" in the April 2, 2014 Consent Judgment. D.E. 95 pp. 15-16. In particular, Defendants argue that the "seven provisions of the Consent

[3] Nonetheless, the Court seriously doubts that Plaintiff will, ultimately, be able to prove that Defendants decreased their "established duty" or existing obligation to pay damages under the FCA and FIRREA based on his theory that each alleged statutory violation included in the HUD OIG report was, in fact, a proven legal obligation to pay the U.S. Government.

Judgment" described in the SAC "primarily relate to use of 'declarations, affidavits, and sworn statements' in foreclosure proceedings," but do not related to endorsed promissory notes. *Id.* p. 16.

In response, Plaintiff argues that the SAC plausibly alleges a false statement because the Servicing Standards do not "primarily relate to Bank of America's use of 'declarations, affidavits and sworn statements' in foreclosure proceedings," but instead pertain to assurances that "factual assertions made in pleadings," as well as declarations, affidavits and sworn statements, are "accurate and complete and supported by competent and reliable evidence." D.E. 103 p. 9.

The Court agrees with Plaintiff. The SAC plainly alleges that the Servicing Standards contained in the Consent Judgment provided:

> (1) **Servicer shall ensure that factual assertions made in pleadings** . . . , Declarations, affidavits and sworn statements **filed by or on behalf of Service in judicial foreclosures or bankruptcy proceedings and notices of default, notices of sale and similar notices** submitted by or on behalf of Service in non-judicial foreclosures **are accurate and complete and are supported by competent and reliable evidence**;
>
> (2) Affidavits, sworn statements and Declarations **shall not contain information that is false or unsubstantiated**;
>
> (3) Service **shall not file a [Proof of Claim]** in a bankruptcy proceeding which, when filed, **contained materially inaccurate information**; and
>
> (4) Service **shall not rely on** [a] . . . **sworn statement or Declaration filed in a pending pre-judgment judicial foreclosure or bankruptcy proceeding which** . . . **contained materially inaccurate information in order to obtain and judgment of foreclosure, order of sale,** relief from the automatic stay or other relief in bankruptcy.

D.E. 79 ¶ 51 (emphasis added). In other words, Defendants were required to ensure that "factual assertions," including those in pleadings, affidavits, sworn statements and Declarations, did not contain "materially inaccurate information" that would be used to "obtain a judgment of foreclosure [or] order of sale." *Id.* ¶ 51(a)-(p). Using rubber-stamped endorsements on promissory notes or relying on MERS transfers to foreclose on properties or obtain orders of

sales falls within the scope of actions barred by the Consent Judgment Servicing Standards, as using facially invalid promissory notes in foreclosure proceedings could constitute relying on "materially inaccurate information" in pleadings, affidavits, sworn statements, or declarations.

c. Defendants' knowledge of the falsity

Defendants also argue that the SAC fails to allege Defendants' knowledge of their false statements, as Plaintiff's "allegations that Bank of America intended to mislead the DOJ are not only conclusory, but suggest just the opposite . . . [as the] Consent Judgment [did not] actually address[] rubber-stamped endorsements or MERS transfers." D.E. 95 p. 16.

The Court disagrees with Defendants. As an initial matter, "although Rule 9(b) permits knowledge to be averred generally, [courts have often] required plaintiffs to plead the factual basis" which gives rise to reasonable inference of fraudulent intent. *Viera v. Basf Catalysts LLC*, No. 5:16-CV-1-OC-30PRL, 2016 WL 1394333, at *3 (M.D. Fla. Apr. 8, 2016); *Innovative Biometric Tech., LLC v. Lenovo (United States), Inc.*, No. 09-81046-CIV, 2010 WL 11447535, at *2 (S.D. Fla. Oct. 12, 2010). "A reasonable inference is one that is plausible and that flows logically from the facts alleged, including any objective indications of candor and good faith." *Innovative Biometric Tech., LLC*, 2010 WL 11447535, at *2. In other words, pleading knowledge under Rule 9(b) requires that a plaintiff state "sufficient allegations of underlying facts from which a court may reasonably infer that a specific individual (1) knew of the withheld material information or of the falsity of the material misrepresentation, and (2) withheld or misrepresented this information with a specific intent to deceive." *AAMP of Florida, Inc v. Auto. Data Sols., Inc.*, No. 8:13-CV-2019-T-35TGW, 2014 WL 12620847, at *2 (M.D. Fla. Aug. 26, 2014).

Here, Plaintiff alleges, with particularity, that Defendants relied on rubber-stamped promissory notes after entry of the April 2, 2014 Consent Judgment in a least four foreclosure cases, which were litigated in April 2013, September 2014, August 2015, and October 2016. D.E. 79 ¶¶ 56(I)(a)-(II)(b). Plaintiff then describes the promissory notes used in each of these foreclosure cases, why they were fraudulent, and how Defendants used them in alleged violation of the Consent Judgment. *Id.* Based on Defendants' use of these promissory notes, Plaintiff alleges that "[a]lmost immediately [after entry of the Consent Judgment], and repeatedly, the Defendants began using these false documents and evidence within their foreclosure cases in their efforts to obtain foreclosure judgments that would allow for them to make claims for mortgage insurance benefit payments from HUD." *Id.* ¶ 52,

Strictly for purposes of deciding Defendants' Motion to Dismiss, the Court concludes that the SAC satisfies the pleading requirements concerning Defendants' knowledge under *Iqbal* and *Twombly* and Rule 9(b), as it alleges facts that give rise to a "reasonable inference" that Defendants signed the Consent Judgment with the intent to "continue pursuing mortgage foreclosures by misleadingly filing copies of promissory notes bearing rubber-stamped endorsement signatures that were not legally authorized by the purported signatories (and therefore, were invalid), and by filing copies of purported assignments by MERS, which never owned any interest in the notes that purportedly were being assigned (and therefore, were ineffective)." *Id.* ¶ 52; *Innovative Biometric Tech., LLC*, 2010 WL 11447535, at *2; *see also Matheny*, 671 F.3d at 1224 (noting that at the pleading stage in a False Claims Act case, "knowledge, and other conditions of a person's mind may be alleged generally"); *see also Kostoski v. Steiner Transocean, Ltd.*, 278 F.R.D. 695, 698 (S.D. Fla. 2012) (finding Rule 9(b)'s

particularity requirement satisfied where counterclaim "contain[ed] sufficient factual material to suggest that the Plaintiff knowingly concealed his condition").

d. Materiality of misrepresentation

Lastly, Defendants argue that Plaintiff "has not plausibly alleged that Defendants' supposed deception about its use of rubber-stamped endorsements and MERS transfers was material to the DOJ's decision to enter the NMS." D.E. 95 pp. 16-17.

Defendants' argument has no merit. "To be material, a misrepresentation must have the ability to influence the government's decision making." *Matheny*, 671 F.3d at 1228; 31 U.S.C. § 3729(b)(4) ("the term 'material' means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property."). Here, there is little question that Defendants' alleged scheme to continue using rubber-stamped endorsements and MERS transfers—even after entry of the Consent Judgment—might have influenced, or was capable of influencing, the Government's decision to enter into the Consent Judgment; in other words, had the Government known that Defendants would continue to violate the Servicing Standards, even after entry of the Consent Judgment, it might have either crafted a different Consent Judgment or, possibly, chosen not to agree to any consent judgment. *See Matheny*, 671 F,3d at 1228; *see also United States v. Crumb*, No. CV 15-0655-WS-N, 2016 WL 4480690, at *24 (S.D. Ala. Aug. 24, 2016) (refusing to dismiss implied certification claim where "allegations of the Amended Complaint raise a compelling inference that the purported misrepresentations in question were material to the Government's payment decision").

ii. *Implied certification violation*

Plaintiff alleges that Defendants violated the False Claims Act based on a theory of implied certification by submitting new claims for FHA mortgage-insurance benefits based upon

foreclosures that had been obtained by: (1) relying on misleadingly rubber-stamped endorsements affixed to promissory notes; and (2) purported assignments of mortgages by MERS, without MERS owning an interest in the underlying notes. D.E. 79 ¶ 54.

In *Universal Health Services*, the U.S. Supreme Court recently permitted a FCA claim based on the theory of implied certification, holding that "at least in certain circumstances, the implied false certification theory can be a basis for [FCA] liability." *Universal Health Servs., Inc. v. United States*, 136 S. Ct. 1989, 1995 (2016). More specifically, the Court explained that liability can attach where "the defendant submits a claim for payment that makes specific representations about the goods or services provided, but knowingly fails to disclose the defendant's noncompliance with a statutory, regulatory, or contractual requirement," as long as failure to disclose this noncompliance is "material to the Government's payment decision." *Id.* at 1995-96.

Noncompliance with a specific statute, regulation or contractual requirement may be "material," even if those requirements were not expressly designated as conditions of payment. *Id.* at 1995, 2001 ("Whether a provision is labeled a condition of payment is relevant to but not dispositive of the materiality inquiry."). Under the FCA and the U.S. Supreme Court's decision, a requirement is "material" for the same reasons as under a theory of reverse false claim, namely that it has a "natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." *Id.* at 2002 (citing 31 U.S.C. § 3729(b)(4)).

Defendants argue that Plaintiff fails to state a claim based on a theory of implied certification because he does not plausibly allege: "(1) that Defendants failed to gain good marketable title when they foreclosed; (2) that Defendants knew they were violating any HUD

requirements when they conveyed title to HUD; or (3) that any violation was material to the FHA's decision to pay the insurance claims." D.E. 95. p. 18.

a. Marketable title

Defendants argue that the specific rubber-stamped endorsements referred to in Plaintiff's SAC conveyed marketable title and were, therefore, not false for purposes of the False Claims Act. D.E. 95 p. 18. As an initial matter, Defendants contend that Plaintiff's theory hinges on the fact that "an improperly endorsed note would not legally transfer the note to a third party, and therefore that third party would not obtain 'good marketable title' when it foreclosed on a property it did not own." *Id.* However, each of the specific examples of promissory notes mentioned in Plaintiff's SAC involved only assignments from Bank of America to one of its affiliates. Thus, each of these assignments were valid—even if the promissory notes included rubber-stamped endorsements—because an endorsement from one Defendant to another would have no "bearing on whether Bank of America still retained ownership of the note and thus obtained 'good marketable title' when it foreclosed." *Id.*

In addition, Defendants argue that "[i]t is well-settled law that MERS can assign mortgages." *Id.* p. 19. For this reason, Defendants ask the Court to reject Plaintiff's allegations that MERS cannot assign mortgages and, therefore, reject Plaintiff's allegations that foreclosures based on promissory notes assigned by MERS constitute a fraudulent act for purposes of the FCA. *Id.*

Plaintiff responds in two principal ways. First, Plaintiff argues that "'good marketable title' does not mean a title whose conveyance would ultimately survive a challenge in court," but instead means a title that is "free from reasonable doubt as to *any question* o[f] law or fact necessary to sustain its validity." D.E. 103 p. 12 (emphasis in briefing) (collecting cases).

Second, Plaintiff contends that MERS cannot assign a mortgage that it does not own—which is especially an issue if a mortgage is based on a fraudulently endorsed promissory note. In light of this, Plaintiff contends that "a foreclosure title obtained by reliance on a MERS assignment of the mortgage (when MERS did not own and therefore could not 'sell' the note)" does not constitute "marketable title" because it can be reasonably questioned in the future. *Id.*

The Court rejects Defendants' arguments. The Eleventh Circuit has made clear that "[m]arketable title is unencumbered title, free from reasonable doubt as to any question of law or fact necessary to sustain its validity. *Matter of Garfinkle*, 672 F.2d 1340, 1345 (11th Cir. 1982) (internal citations omitted). "Marketable title is not necessarily perfect title, nor must it satisfy the purchaser or his attorney, unless there is an express stipulation to that effect." *Id.* For this reason, courts have explained that marketable title refers "not merely a title valid in fact but a title that must be such as to make it reasonably certain that it will not be called in question in the future" or, in other words, title that will not "subject the purchaser to the hazard of litigation with reference thereto." *In re Aman*, 492 B.R. 550, 565–66 (Bankr. M.D. Fla. 2010); *Camp v. Commonwealth Land Title Ins. Co.*, 787 F.2d 1258, 1261 (8th Cir. 1986) ("Reasonable doubt affecting marketability is said to exist where 'there is uncertainty as to some defects appearing in the course of its deduction, and the doubt must be such as affects the value of the land, or will interfere with its sale.'").

In light of this case law, it is plausible that promissory notes containing rubber-stamped endorsements did not convey marketable title. *Matter of Garfinkle*, 672 F.2d at 1345; *Denson v. Stack*, 997 F.2d 1356, 1363 (11th Cir. 1993) (concluding that district court "improperly concluded" that the defendant "was in a position to convey marketable title" and noting that title "is free from reasonable doubt when a litigant cannot point to a fact in the record which would

cause a reasonable person to have a doubt"). It is also plausible that promissory notes did not convey marketable title because MERS did not have the authority to assign promissory notes to anyone, as MERS did not own any interest in borrower's promissory notes.[4] *See HSBC Bank USA, Nat. Ass'n v. Roumiantseva*, 130 A.D.3d 983, 984, 15 N.Y.S.3d 117, 119 (N.Y. App. Div. 2015) (affirming dismissal of action for lack of standing where "the documents showed that MERS was never the holder of the note and, therefore, was without authority to assign the note"); *see also Arch Bay Holdings, LLC v. Albanese*, 146 A.D.3d 849, 853, 45 N.Y.S.3d 506, 510 (N.Y. App. Div. 2017) (concluding that plaintiff "failed to establish standing based upon an assignment of the note and mortgage from MERS to Wachovia prior to commencement of the action, as Arch Bay failed to establish delivery or assignment of the note to MERS prior to its execution of the assignment to Wachovia").

b. Knowledge

Defendants also argue that Plaintiff fails to plausibly allege that Defendants knew they were falsely certifying compliance with the "good marketable title requirement," thereby requiring that the Court dismiss Plaintiff's implied certification claim. D.E. 95.

Defendants are mistaken. As discussed above, Plaintiff alleges that Defendants knowingly violated HUD regulations by submitting new claims for FHA insurance benefits after April 4, 2012, which were not based on "good marketable title," based on at least four instances in which Defendants relied on rubber-stamped promissory notes in foreclosure cases. *Supra* pp. 20-22. This alleged use of rubber-stamped promissory notes was, possibly, a violation of HUD regulations contained in 24 C.F.R. § 203.366(a). D.E. 79 ¶¶ 23, 54, 59. Based on these facts and

[4] While there is no Eleventh Circuit precedent to squarely address whether MERS can assign promissory notes, Defendants cite to persuasive authority from other jurisdictions rejecting Plaintiff's theory that MERS lacks authority to assign mortgages. D.E. 95. The Court is persuaded by these decisions, but declines to reach the issue at the motion to dismiss stage.

for the reasons already discussed above, the Court concludes that Plaintiff has plausibly alleged facts to give rise to a reasonably inference that Defendants knowingly submitted false claims to FHA for insurance benefits, as these claims were not based on "good marketable title." *Matheny*, 671 F.3d at 1224; *Crumb*, No. CV-15-0655-WS-N, 2016 WL 4480690, at *17.

c. Materiality of misrepresentation

Lastly, Defendants argues that even if Plaintiff plausibly alleges that Defendants knowingly submitted FHA insurance claims in violation of 24 C.F.R. § 203.366(a), Plaintiff fails to allege that violations of this regulation were material to the government's decision to pay these mortgage insurance claims. D.E. 95 p. 20. Defendants argue that any violation of HUD regulations was immaterial because: (1) the endorsements specifically described in the SAC relate only to transfer of mortgages and notes among entities that were part of the Bank of America enterprise; and (2) Plaintiff fails to allege facts to indicate that the FHA, as a general practice, refused to pay mortgage insurance claims based on noncompliance with 24 C.F.R. § 203.366(a). *Id.* p. 21.

Plaintiff raises two main arguments in response. First, Plaintiff argues that compliance with 24 C.F.R. § 203.366(a) and HUD regulations requiring Defendants to "obtain and convey to the Secretary of HUD good and marketable title to properties" were "obviously material," as they were the "same kind[s] of violations [that had already] led the Government to sue under the FCA" and, ultimately, enter into the 2014 Consent Judgment. D.E. 103 p. 13. Second, Plaintiff disputes Defendants' argument that rubber-stamped endorsements were irrelevant to promissory notes assigned to entities affiliated with Bank of America. *Id.* p. 15. Instead, Plaintiff contends that Bank of America's subsidiaries lacked standing to foreclose based on promissory notes with

rubber-stamped endorsements—even where these notes were only purportedly assigned from one Bank of American entity to another. *Id.*

The Court agrees with Plaintiff that Defendants' alleged reliance on fraudulently signed promissory notes to foreclose on properties and, thereafter, collect FHA mortgage insurance, was material to the government's decision to tender payment. In short, the government would have a "natural tendency" to be influenced by Defendants' alleged use of fraudulently signed promissory notes, which were used to improperly and unlawfully foreclose on mortgages insured by the FHA, in determining whether to pay mortgage insurance claims. *See Universal Health Services*, 136 S. Ct. at 1995. In other words, Defendants' alleged repeated reliance on rubber-stamped endorsements and promissory notes purportedly assigned to MERS in foreclosure cases was, without a doubt, "capable of influencing" the government's "payment . . . of money." *Id.*; *Matheny*, 671 F.3d at 1228; 31 U.S.C. § 3729(b)(4). Because the Court can reasonably infer that the government would be affected by Defendants' allegedly fraudulently behavior, Plaintiff adequately alleges materiality under the FCA. *Matheny*, 671 F,3d at 1228; *see also Crumb*, No. CV 15-0655-WS-N, 2016 WL 4480690, at *24.

iii. Conspiracy

To state a claim for conspiracy under Section 3729(a)(1)(C) of the FCA, a plaintiff must allege: "(1) that the defendant conspired with one or more persons to get a false or fraudulent claim paid by the United States; (2) that one or more of the conspirators performed any act to effect the object of the conspiracy; and (3) that the United States suffered damages as a result of the false or fraudulent claim." *Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1014 (11th Cir. 2005); 31 U.S.C. § 3729(a)(1)(C).

Defendants argue that Plaintiff's conspiracy claim should be dismissed for two reasons. First, Defendants argue that Plaintiff fails to state any claim for a violation of the FCA, so his conspiracy claim must be dismissed. D.E. 95 p. 21. Second, Defendants argue that Plaintiff fails to allege sufficient facts to plausibly allege that Defendants engaged in conspiracy. *Id.*

In response, Plaintiff argues that he has adequately alleged conspiracy because the SAC alleges that Defendants signed the April 2, 2014 Consent Judgment, which: (1) was an overt act; (2) was in violation of the False Claims Act; and (3) harmed the government. D.E. 103 p. 15.

The Court concludes that Plaintiff has plausibly alleged a conspiracy between Defendants based on signing the April 2, 2014 Consent Judgment in violation of the FCA. D.E. 79 ¶¶ 50-52; D.E. 79-2 pp. 91-94; *see, e.g.*, *Corsello*, 428 F.3d at 1014. However, Plaintiff's conspiracy claim is constrained to the allegations pertaining to Plaintiff's reverse false claim—which is based entirely on signing the April 2, 2014 Consent Judgment. D.E. 79 ¶ 64. For this reason, the Court **will not** permit Plaintiff to litigate a conspiracy claim against Defendants based on his theory of an implied certification FCA violation; in other words, Plaintiff's conspiracy claim attaches to his reverse false claim and not his FCA claim based on implied certification. *See, e.g.*, *Corsello*, 428 F.3d at 1014 (noting that conspiracy requires an overt act). Accordingly, it is

ORDERED AND ADJUDGED that Defendants' Motion to Dismiss, D.E. 95, is DENIED. It is further

ORDERED AND ADJUDGED that Defendants' Motion for Judicial Notice, D.E. 96, is GRANTED with respect to Exhibit 7 to Defendants' Motion for Judicial Notice, D.E. 97-7. The remainder of the Motion, D.E. 96, is DENIED AS MOOT. It is further

ORDERED AND ADJUDGED that Defendants SHALL file their Answer to Plaintiff's Second Amended Complaint, D.E. 79, no later than **Monday, April 3, 2017.** It is further

DONE AND ORDERED in Chambers at Miami, Florida, this 20th day of March, 2017.

URSULA UNGARO
UNITED STATES DISTRICT JUDGE

copies provided: counsel of record

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

BANK OF AMERICA, N.A.,

Plaintiff,

vs.

GENNY M. RODRIGUEZ AKA GENNY RODRIGUEZ AKA GENNY MARINO RODRIGUEZ AND JOSE RODRIGUEZ AKA JOSE R. RODRIGUEZ AND UNKNOWN TENANT/OCCUPANT KNA JUANA MARINO, *et. al.*,

Defendant(s).
_____/

GENERAL JURISDICTION DIVISION

CASE NO.: 2013-30447-CA-01

JUDGE: DAVID C. MILLER

ORDER ON THE COURT'S *SUA SPONTE* FINDING OF PLAINTIFF'S BAD FAITH DISCOVERY TACTICS AND AWARDING SANCTIONS UNDER THE INEQUITABLE CONDUCT DOCTRINE

THIS CAUSE having come before the Court upon its own Motion, and the Court having considered the applicable law, and otherwise being fully advised in the premises, it is hereby:

ORDERED AND ADJUGED that Plaintiff and its counsel have acted in bad faith to stonewall discovery regarding Defendant's allegations of widespread misconduct in foreclosures that, if proven true, would require serious consideration by this Court sitting in equity.

Findings of Fact and Law

1. On October 28, 2014, the parties appeared for a hearing on Plaintiff's Motion for Relief from Technical Admissions filed approximately one year late. The Court DENIED Plaintiff's Motion finding the proposed responses to be argumentative and filed in bad faith.

2. The proposed responses to Defendant's Request for Admissions raised repeated objections that the deposition of Michelle Sjolander, Senior Vice President of Bank of America, is inadmissible hearsay for purposes of discovery, despite that hearsay is not a proper reason to object to discovery, especially when Bank of America is the Plaintiff in this action.

3. During argument, Defendant's counsel advised that Plaintiff's law firm, Liebler Gonzalez and Portuando, (hereinafter "LGP firm") is lead counsel in many of Defense Counsel's cases involving the same issue of **surrogate signed endorsements** by Bank of America, N.A., Countrywide and their affiliates that is being investigated in the instant case.

APPENDIX "D"

4. Defense counsel further alleged that the LGP firm then coordinated a pattern of bad faith stonewall tactics to effectively block all of his discovery efforts in the cases that were the subject of the hearing.

5. Defendant's counsel brought to the attention of this Court that the trouble began after February 2013, when Ms. Sjolander testified under oath about endorsement rooms operating in three states where Master Document Custodian employees used rubber stamps to surrogate sign endorsements for "authorized" signors on behalf of Countrywide related entities.

6. Soon after, Defendant's counsel informed this Court that the LGP firm started appearing as lead counsel in a large percentage of his cases involving rubber stamped signatures in foreclosures filed by, *inter alia*, Bank of America and the Bank of New York Mellon.

7. In 2011, the Fourth DCA certified a question of great public importance to the **Florida Supreme Court** in a separate foreclosure action with Bank of New York Mellon as Plaintiff, finding that "many, many mortgage foreclosures appear tainted with suspect documents…[which] may dramatically affect the mortgage foreclosure crisis in State." *See Pino v. Bank of New York, Mellon*, 57 So. 3d 950, 954 (Fla. 4th DCA 2011). In the *Pino* dissent, the Honorable former Chief Judge Polen wrote:

> **Decision-making in our courts depends on genuine, reliable evidence. The system cannot tolerate even an attempted use of fraudulent documents and false evidence in our courts. The judicial branch long ago recognized its responsibility to deal with, and punish, the attempted use of false and fraudulent evidence. When such an attempt has been colorably raised by a party, courts must be most vigilant to address the issue and pursue it to a resolution.** *Id.* at 959. (emphasis added).

8. The Court reviewed an order in another Bank of New York Mellon case litigated by these law firms from Former Fourth DCA Judge Barry Stone, now acting as a Broward County Senior Judge, who **sanctioned Plaintiff under the Inequitable Conduct Doctrine** on October 21, 2014. *See attached as Exhibit A.*

9. Judge Stone made a finding that the LGP firm committed **willful misconduct** in refusing to turn over discovery and sanctioned Plaintiff $1,200 in attorney's fees. Judge Stone also ordered Plaintiff to pay all legal fees, travel expenses, video-deposition costs, and a $150 per diem for Defendant's counsel to fly to New York City to re-depose Plaintiff's expert witness.

10. The Court then reviewed Circuit Court Judge Darryl Trawick's order on a special set hearing held October 27, 2014. *See attached as Exhibit B.* **Judge Trawick found the LGP firm misused a protective order** preventing the dissemination of Ms. Sjolander's deposition transcript entered in his case **to achieve purposes he never intended** and ended all enforcement of that protective order.

11. The Court inquired as to the status of discovery in cases litigated by Defense Counsel against the LGP firm and conducted an evidentiary hearing, *sua sponte*, into allegations of misconduct related to setting the deposition of the corporate representative with most knowledge of the endorsement rooms described in Ms. Sjolander's deposition.

12. The Court then reviewed Judge Trawick's order dated **November 29, 2012**, that required Plaintiff to identify and coordinate the deposition of its Master Document Custodian's representative within 90 days of said order, an order entered into nearly two years ago which Plaintiff has yet to comply with. *See attached as Exhibit C.*

13. The Court takes Judicial Notice of the discovery attempted in other cases, as noted in the hearing, and notes that other Broward and Miami-Dade Circuit Court judges have also ordered Plaintiffs represented by the LGP firm to produce a witness with knowledge about the endorsement rooms and surrogate signing that Ms. Sjolander described in her deposition.

14. The parties agree that prior counsel for Bank of America identified Maria Garner as the person with most knowledge about the endorsement rooms in February of 2013. Ms. Garner worked for ReconTrust, the Master Document Custodian for Bank of America and Bank of New York Mellon. It would appear that Ms. Garner is under Plaintiff's care, custody and control as she works for Plaintiff's agent and Master Document Custodian.

15. Ms. Garner's deposition did not go forward in California due to a scheduling conflict with Plaintiff's prior counsel. This Court finds that Defendant's counsel did not waive the right to depose Ms. Garner by agreeing to reschedule her deposition after February of 2013.

16. The Court reviewed a number of emails entered into evidence that reflect the frustrated efforts of Defense counsel in requesting the LGP firm to identify and coordinate the deposition Judge Trawick ordered on **November 29, 2012,** nearly two years ago. *See attached as Exhibit J.*

17. The Court also reviewed four (4) separate deposition notices for Plaintiff's witness with most knowledge pertaining to the endorsement rooms described in Ms. Sjolander's deposition. All of the notices propose the same areas of inquiry. The fourth provided more detail as to the two areas of inquiry that Plaintiff repeatedly claimed were too vague in the first three deposition notices.

18. The Court finds Defense Counsel named Ms. Garner in the second deposition notice as the corporate representative only because Defense counsel believed that the LGP firm identified her as their representative for the first area of inquiry back on July of 2014.

19. The emails reflect Defense Counsel repeatedly requested dates for Ms. Garner's deposition and Plaintiff repeatedly refusing to coordinate same, despite Judge Trawick's order of November 29, 2012.

20. This Court finds that Plaintiff's objections to the fourth deposition notice and demand for a fifth set of notice(s) requiring that Defendant separate out each area of inquiry is made in **bad faith**.

21. It is **outrageous** that Plaintiff and the LGP firm would force Defense counsel to jump through so many hoops clearly intended to deliberately block discovery ordered by several Circuit Court judges. Furthermore, there is nothing to preclude a party from identifying multiple areas of inquiry within a single corporate representative deposition notice.

22. On **October 22, 2014**, the LGP firm forwarded an email to Defense Counsel in the Bank of America case before Judge Trawick. The email offered to resolve Defendant's Motion for Sanctions as to Judge Trawick's **order dated November 29, 2012**. The Court finds this email establishes that Plaintiff identified Maria Garner as its representative with *"knowledge of the first area of inquiry"* for the third time since February of 2013.

23. Accordingly this Court hereby orders Plaintiff to produce Ms. Garner for deposition as its corporate representative for the first area of inquiry at Defense counsel's office within thirty (30) days of October 28, 2014

24. Plaintiff shall make a good faith effort to produce all non-privileged documents responsive to the duces tecum portion of the deposition notice to Defendant's counsel in segregated responses and in Adobe PDF format at least ten (10) days before the deposition.

25. Defense counsel has the right to discover in his cases whether Plaintiff has some *"standard operating procedure"* to generate surrogate signed endorsements to create evidence of standing to foreclose. If there was no standard operating procedure in place that amounted to fraud, Plaintiff has nothing to fear by full disclosure of the facts in this search for the truth.

26. The United States Supreme Court instructs that sanctions for inequitable conduct are necessary to *"protect against the deleterious effect on the Court's fair allocation of judicial resources."* *Martin*, 506 U.S. at 3, 113 S.Ct. 397. In *Moakley v. Smallwood,* 826 So. 2d 221, 224 (Fla. 2002), the Florida Supreme Court held:

> "Clearly, a trial judge has the inherent power to do those things necessary to enforce its orders, to conduct its business in a proper manner, and to protect the court from acts obstructing the administration of justice." *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. United States Fire Ins. Co.,* 639 So.2d 606, 608-09 (Fla.1994). Most recently, the Court in *Bitterman v. Bitterman,* 714 So.2d 356, 365 (Fla.1998), recognized the inherent authority of a trial court to award attorneys' fees for bad faith conduct against a party, even though no statute authorized the award.
>
> The inequitable conduct doctrine permits the award of **attorney's fees** where one party has exhibited **egregious conduct or acted in bad faith.** Attorney's fees based on a party's inequitable conduct have been recognized by other courts in this country. *See Vaughan v. Atkinson,* 369 U.S. 527, 530-31, 82 S.Ct. 997, 8

> L.Ed.2d 88 (1962) (awarding attorney's fees based on respondent's "recalcitrance" and "callous" attitude); *Rolax v. Atlantic Coast Line R.R. Co.*, 186 F.2d 473, 481 (4th Cir.1951) (holding that attorney's fees were justified because "plaintiffs of small means have been subjected to discriminatory and oppressive conduct by a powerful labor organization"). We note that this doctrine is rarely applicable. It is **reserved for those extreme cases where a party acts *"in bad faith, vexatiously, wantonly, or for oppressive reasons."*** *Foster v. Tourtellotte*, 704 F.2d 1109, 1111 (9th Cir.1983) (quoting *F.D. Rich Co. v. United States ex rel. Industrial Lumber Co.*, 417 U.S. 116, 129, 94 S.Ct. 2157, 2165, 40 L.Ed.2d 703 (1974)). "Bad faith may be found not only in the actions that led to the lawsuit, but also in the conduct of the litigation." *Dogherra v. Safeway Stores, Inc.*, 679 F.2d 1293, 1298 (9th Cir.1982) (quoting *Hall v. Cole*, 412 U.S. 1, 15, 93 S.Ct. 1943, 1951, 36 L.Ed.2d 702 (1973)). This Court and other courts in this state have recognized that attorney's fees can be awarded in situations where one party has acted vexatiously or in bad faith. *See Florida Patient's Compensation Fund v. Rowe*, 472 So.2d 1145, 1148 (Fla.1985) ("This state has recognized a limited exception to this general American Rule in situations involving inequitable conduct."); *Hilton Oil Transport v. Oil Transport Co.*, 659 So.2d 1141, 1153 (Fla. 3d DCA 1995); *In re Estate of DuVal*, 174 So.2d 580, 587 (Fla. 2d DCA 1965).
>
> Nothing in the Court's reasoning in *Bitterman*, in which we acknowledged the trial court's inherent authority to award attorneys' fees under extremely narrow circumstances, limits the application of this authority to a party rather than the party's attorney. Indeed, the attorney is not only a representative of the client, but also an officer of the court. *See* Preamble to Rules of Professional Conduct, R. Regulating Fla. Bar ("A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.").

27. Sanctions also protect the rights of others to the timely review of their legitimate filings. *Mora v. McNeil*, 984 So. 2d 513 (Fla. 2008), reh'g dismissed, (May 23, 2008); *Sibley v. Florida Judicial Qualifications Com'n*, 973 So. 2d 425 (Fla. 2006), cert. denied, 127 S. Ct. 584, 166 L. Ed. 2d 430 (U.S. 2006).

28. The Court may find bad faith to award attorney fees under the Inequitable Conduct Doctrine in the actions that led to the lawsuit and the conduct of the litigation. *Nedd v. Gary*, 35 So. 3d 1028 (Fla. Dist. Ct. App. 4th Dist. 2010). In *Nedd*, the Fourth District Court of Appeal described inequitable conduct as "filing a steady stream of motions over a period of years, that although not without merit, were essentially denied," or "playing endless discovery games and making numerous allegations claiming breach of fiduciary duty." Id. at 1030.

29. For these reasons, the Court makes an express finding of bad faith and outrageous conduct by Plaintiff and the LGP firm that resulted in the unnecessary incurrence of attorney's fees. *Finol v. Finol*, 912 So. 2d 627 (Fla. Dist. Ct. App. 4th Dist. 2005), related reference, 2005 WL 2373889 (Fla. Dist. Ct. App. 4th Dist. 2005) and reh'g denied, (Nov. 7, 2005).

30. The Court awards sanctions under the Inequitable Conduct Doctrine in the form of attorney's fees to Defendant's counsel in an amount to be determined at a fee hearing.

31. The Court will entertain any motions for additional sanctions under the Inequitable Conduct Doctrine should Plaintiff continue to stonewall discovery efforts by Defense counsel with bad faith delay tactics.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 10/31/14.

DAVID C. MILLER
CIRCUIT COURT JUDGE

No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Copies furnished to:
Defendant's counsel:
Bruce Jacobs, Esq., Court E. Keeley, Esq., Amida Umesh Frey, Esq., and/or Bridgid Capmany Napier, Esq., Jacobs Keeley, PLLC., 169 E. Flagler Street, Suite 1620, Miami, FL 33131
Plaintiff's counsel:
Christine Michelle Manzo Esq., Liebler, Gonzalez & Portuondo, P.A., 44 W. Flagler St., Suite 2500, Miami, FL 33130-6808

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

BANK OF AMERICA, N.A.,

Plaintiff,

vs.

GENNY M. RODRIGUEZ AKA GENNY RODRIGUEZ AKA GENNY MARINO RODRIGUEZ AND JOSE RODRIGUEZ AKA JOSE R. RODRIGUEZ AND UNKNOWN TENANT/OCCUPANT KNA JUANA MARINO, *et. al.*,

Defendant(s).
_____/

GENERAL JURISDICTION DIVISION

CASE NO.: 2013-30447-CA-01

JUDGE: DAVID C. MILLER

ORDER ON DEFENDANT'S MOTION FOR ADDITIONAL SANCTIONS UNDER THE INEQUITABLE CONDUCT DOCTRINE

THIS CAUSE having come before the Court upon Defendant's Motion for Additional Sanctions under the Inequitable Conduct Doctrine, and the Court having considered the applicable law, and otherwise being fully advised in the premises, it is hereby:

ORDERED AND ADJUGED that Plaintiff and its counsel have again acted in bad faith to stonewall discovery into allegations of widespread misconduct in foreclosures that, if proven true, would require serious consideration by this Court sitting in equity.

Findings of Fact and Law

A. *The Court's First Order Imposing Sanctions Under the Inequitable Conduct Doctrine*

1. On October 28, 2014, this Court imposed sanctions under the inequitable conduct doctrine finding Plaintiff's counsel, Liebler Gonzalez and Portuando, ("the LGP firm") engaged in bad faith delay tactics to stonewall the corporate representative deposition with knowledge of endorsement rooms described by Bank of America Senior Vice President Michelle Sjolander.

2. The LGP firm is lead counsel in many of Defense Counsel's cases involving the same issue of now admittedly[1] **surrogate signed rubber stamped endorsements** by Bank of America, N.A., Countrywide and their affiliates that is being investigated in the instant case.

[1] It is uncontested that Michelle Sjolander, SVP of Bank of America, and Marie Garner, SVP of ReconTrust have both testified unauthorized signors used rubber stamps to affix the signatures of authorized signors to endorsements on original notes.

3. In the October 28th order, this court found it was "**outrageous** that Plaintiff and the LGP firm would force Defense counsel to jump through so many hoops clearly intended to deliberately block discovery ordered by several Circuit Court judges."

4. Also in the October 28th Order, this Court ordered that Plaintiff is deemed to have identified Maria Garner as the person with most knowledge about the endorsement rooms and required she be produced for deposition within 30 days.

5. The Court further ordered Plaintiff shall make a good faith effort to produce all non-privileged documents responsive to the duces tecum portion of the deposition notice to Defendant's counsel in segregated responses and in Adobe PDF format at least ten (10) days before the deposition.

6. Finally, the Court's order specifically warned Plaintiff it faced additional sanctions under the Inequitable Conduct Doctrine if continued to stonewall discovery with bad faith delay tactics.

B. *Plaintiff's Willful, Intentional, Bad Faith Response to the Duces Tecum*

7. Exactly Ten (10) days before Ms. Garner's deposition, Plaintiff produced 129 pages of documents to Defendant, but violated this Court's order by failing to provide "segregated responses" for each duces tecum request.

8. On November 20, 2014, four (4) days before Ms. Garner's deposition, Defendant's counsel asked this Court to impose sanctions claiming that Plaintiff's 129 page response was woefully deficient and failed to include documents requested in the duces tecum.

9. At the conclusion of the hearing, at the Court's instruction, the parties conducted a "meet and confer" in chambers to make a good faith effort to clarify what responsive documents were requested by the Duces Tecum.

10. In further violation of this Court's order, Plaintiff and the LGP firm served over 2,100 pages of documents on Defendant's counsel Friday evening, Sunday afternoon and the Monday morning of Ms. Garner's deposition.

11. The Court finds Plaintiff's efforts to send a single email asking Defendant's counsel to conduct an additional meet and confer during Ms. Garner's deposition does not constitute good faith.

12. The Court finds Ms. Garner admitted she never reviewed the Duces Tecum portion of her deposition notice. The Court further finds the response to the Duces Tecum produced only documents that facilitated the endorsement room operations without producing any source documents that would necessarily exist to create the endorsement room operations.

13. This Court finds that the Plaintiff has been woefully deficient in their response to the Defendant's discovery requests and their production of documents in response to the Defendant's discovery requests.

14. This Court further finds that the Plaintiff continues to act with intentional, willful and wanton bad faith by refusing to make good faith efforts to respond to Defendant's discovery.

15. This Court finds that as of today's date, the Plaintiff's bad faith conduct within this case rises to the level that this Court could strike the Plaintiff's pleadings at some date in the future and such action by this Court would be appropriate.

C. *The Court Hereby Orders The Following:*

16. The Plaintiff and the LGP firm are hereby ordered to produce a due diligence affidavit naming all people that the Plaintiff consulted with in responding to the Defendant's discovery requests in this case, including but not limited to any monies that were paid to or by any persons assisting the Plaintiff in responding to the Defendant's discovery requests. The Plaintiff and it's counsel shall specify within the affidavits produced exactly what efforts were made to respond to the Defendant's discovery and duces tecum requests in this case.

17. The Plaintiff is hereby ordered to produce documents, correspondence and any other evidence as to the establishment and operation of the endorsement rooms.

18. The Plaintiff is ordered to produce background documentation, correspondence, emails, and notes that preceded the board authorization agreements produced to date or make any reference to the establishment or operation of the endorsement rooms.

19. The Plaintiff is hereby ordered to produce a complete list with last known contact information and dates of employment of all employees that worked in the endorsement rooms affixing rubber stamp signatures on original notes between January 9, 2009 and the filing of the instant complaint on September 23, 2013.

20. The Plaintiff is hereby ordered to produce all documents, correspondence or other evidence showing to the exact physical location of the note at issue in this case from the date of its execution on January 9, 2009 to the date of the filing of the instant complaint on September 23, 2013.

21. The parties shall coordinate the deposition of Laurie Meder, such deposition shall take place in California. At the deposition, the Plaintiff shall produce the entire employee and personnel file of Ms. Meder, which shall be bate stamped, so that Ms. Meder, her attorney and the Plaintiff's attorney can review it. If any documents are objected to being produced, the documents shall be put into a sealed envelope and produced to this Court for an *in camera* review. The Court will then make a determination as to whether the documents should be produced to the Defendant.

22. The Court orders Plaintiff to comply with all production within 30 days from the entry of this Order.

23. The Plaintiff is ordered to pay all attorney's fees expended by the Defense from the date of the last hearing on November 20, 2014 to today's date, including but not limited to the time expended at the November 20, 2014 hearing, the time expended at the deposition of Maria Gardner on November 24, 2014 and the time expended at today's hearing held on December 5, 2014 as additional sanctions under the inequitable conduct doctrine.

24. Defendant's counsel is invited to submit additional caselaw that would establish the right for this Court to impose sanctions beyond attorney's fees for Plaintiff's bad faith conduct. Specifically, the Court seeks support for imposing additional sanctions under the Court's inherent authority to force Plaintiff to comply with its orders.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 12/12/14.

DAVID C. MILLER
CIRCUIT COURT JUDGE

No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Copies furnished to:
Defendant's counsel:
Bruce Jacobs, Esq., Court E. Keeley, Esq., Amida Umesh Frey, Esq., and/or Bridgid Capmany Napier, Esq., Jacobs Keeley, PLLC., 169 E. Flagler Street, Suite 1620, Miami, FL 33131
Plaintiff's counsel:
Christine Michelle Manzo Esq., Liebler, Gonzalez & Portuondo, P.A., 44 W. Flagler St., Suite 2500, Miami, FL 33130-6808

IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JOSE RODRIGUEZ AKA JOSE R. RODRIGUEZ

Appellant,

vs.

BANK OF AMERICA, N.A.,

Appellee.

_____/

CASE No. 3D17-272
LT No. 13-30447

APPELLANT'S MOTION FOR REHEARING, FOR REHEARING *EN BANC* AND REQUEST FOR A WRITTEN OPINION

Appellant, JOSE RODRIGUEZ, ("Appellants"), pursuant to Fla. R. App. P. 9.330 and 9.331 file this Motion for an order (i) granting rehearing, (ii) granting re-hearing *En Banc*, or (iii) for a written opinion and state:

This Honorable Court cannot fairly resolve this appeal by PCA despite clear evidence of a fraud upon the court in this case, and others. Such a result violates the Appellant's right to due process protected under the U.S. and Florida Constitutions. This Honorable Court's attempt to resolve this appeal by PCA without a written opinion just days after denying a legally sufficient and extensively documented Motion to Disqualify this Honorable Court is yet another objective reason to question this Court's objectivity. This is not the rule of law.

There is clear and convincing evidence that Appellee, Bank of America, committed fraud on the court in this equitable foreclosure action, and in other

equitable foreclosure actions throughout the State Court and U.S. Bankruptcy Court Systems. The Honorable Judge David Miller issued two sanctions orders finding bad faith and outrageous conduct as Bank of America stonewalled discovery that would expose this misconduct back in 2014, before rotating out of the division. Appellee then threw a fundraiser for the successor judge who struck both sanctions orders, struck all discovery, struck all defenses and counterclaims alleging fraud, and entered summary judgment. This is not the rule of law.

In this case, Appellee presented a false MERS assignment and backdated Countrywide rubber stamped blank endorsement to establish standing. In a similar case before the Judge Miller, Bank of New York Mellon ("BONYM") presented the same evidence. However, Judge "David" Miller took on "Goliath" and issued an Order to Show Cause why BONYM should not be held in criminal contempt of court for fraud on the court. The criminal arraignment is set for July 10, 2018. See Motion for Order to Show Cause transcript attached as Appendix A.

It will negatively impact the public's perception of this Honorable Court's ability to render meaningful justice if there is no explanation why this Honorable Court would condone such clear misconduct without a written opinion to explain its ruling. This Court must give reasons for allowing the equitable relief of foreclosure despite compelling evidence of unclean hands. This Court cannot sit silently when the public could perceive that certain judges object to misconduct by

bad corporate citizens and this appellate court does not.

It should cause grave due process concerns that the trial court below struck all allegations of misconduct, refused to permit argument, and denied any opportunity to present evidence of misconduct while granting summary judgment.

This Honorable Court is not a golden ring to be taken by the most rich or powerful. It is a servant of the law. Its function is to ensure a healthy, vibrant democracy. Each judge is held to its own ethos to ensure the rights of all litigants are protected. It is not for any judge to decide what law to follow, but rather to ensure we all follow the law. Bad corporate citizens are bad corporate citizens. There is no good reason to turn a blind eye to their misconduct.

A. This Honorable Court Did Not Address Allegations of Fraud on the Court Which Precludes the Use of a PCA to Resolve this Appeal

The evidence shows these parties sentiently set in motion an unconscionable scheme to defraud the courts since this foreclosure crisis began in 2005, and has continued unabated, even after the $25 Billion National Mortgage Settlement ("the $25 Billion NMS) to this appeal. Appellee is the same party who the Fourth District Court of Appeal certified a question of great public importance to the Florida Supreme Court in 2011, noting:

> "many, many mortgage foreclosures appear tainted with suspect documents... [which] may dramatically affect the mortgage foreclosure crisis in State. The defendant has requested a denial of the equitable right to foreclosure the mortgage at all." *Pino v. Bank of New York, Mellon, 57 So. 3d 955 (Fla. 4th DCA 2011).*

In his dissent in *Pino*, Judge Pollack wrote:

> "Decision-making in our courts depends on genuine, reliable evidence. **The system cannot tolerate even an attempted use of fraudulent documents and false evidence in our courts. The judicial branch long ago recognized its responsibility to deal with, and punish, the attempted use of false and fraudulent evidence.** When such an attempt has been colorably raised by a party, courts must be most vigilant to address the issue and pursue it to a resolution." *Id.* at 954 (emphasis added).

No party, especially not a party to the $25 Billion NMS, "has a right to trifle with the courts." *Ramey v. Haverty Furniture Companies, Inc*., 993 So. 2d 1014, 1018 (Fla. 2nd DCA 2008). The Ramey Court cited the United States Supreme Court holding by Justice Black that:

> "[T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." Id. at 1020-21, citing, *Hazel-Atlas Glass Co. v. Hartford-Empire Co*., 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250 (1944), receded from on other grounds by *Standard Oil Co. of Cal. v. United States*, 429 U.S. 17, 97 S.Ct. 31, 50 L. Ed.2d 21 (1976).

The Honorable Judge Sheppard instructs that a case is of exceptional importance to be considered *en banc* if the result "may reasonably and negatively influence the public's perception of the judiciary's ability to render meaningful justice." *University of Miami v. Wilson, 948 So.2d 774, 791 (Fla. 3rd DCA 2006).* Any appellate court concerned about the public's perception of its ability to render

meaningful justice should make findings of fact and conclusions of law when the Appellant sets forth reasonable grounds to show there is a fraud of the court.

The public's perception of the ability of the judiciary to render meaningful justice in foreclosures is already negatively influenced by a recent Hollywood movie that gave the public an informative expose´ explaining that one banker got prosecuted for the 2008 financial collapse that followed widespread, unchecked corruption on Wall Street. See Pitt, Brad (Producer) and McCay, Adam (Director). (2015). *The Big Short* [Motion Picture]. United States: Paramount Pictures.

Regretfully, there are almost no written opinions describing the foreclosure scandals that followed the collapse which hurt so many Floridians. Now, the President of the United States has convinced millions of Americans that "so called judges" have rigged the system. This is not good for democracy. If Judges make political decisions instead of offer sound legal opinions based on findings of fact and conclusions of law, we are no longer a republic or a democracy. Respectfully, we are either a nation of men or a nation of laws.

This appeal should be the spark that reaffirms the independence and importance of a fair and unbiased judiciary. The result so far appears to reaffirm Appellant's concern below that the Judiciary will not render meaningful justice when Appellee and Bank of America commit fraud upon the court unless the Executive Branch takes action again. This should not be what the public perceives.

As Albert Einstein said, "one with the privilege to know has a duty to act."

A. Constitutional Due Process Does Not Permit a PCA on this Record

A District Court may refuse to issue a written opinion for any reason or for no reason at all. However, it is "fundamental black letter law" that a District Court should write an opinion unless "the points of law raised are so well settled that a further writing would serve no useful purpose." *Elliot v. Elliot*, 648 So. 2d 137, 138 (Fla. 4th DCA 1994).

Arthur J. England Jr., Former Chief Justice of the Florida Supreme Court wrote: "[W]e expect judges, like no other public official, to justify their decisions with reason." Arthur J. England Jr., Asking For a Written Opinion From a Court That Has Chosen Not To Write One, 78-Mar Fla. B. J. 10, 14 (March 2004). Before his passing, Justice England concluded this amendment to Rule 9.330 is conceptually flawed and should be repealed, recognizing a procedural infirmity in that "asking a District Court to provide an opinion that will expose their rationale to Supreme Court review puts expressly in the hands of District Court judges the discretion to allow or not allow review." Id. at 15.

Judge Cope argues this requirement is unsound as its permits review by the United States Supreme Court while depriving the Florida Supreme Court jurisdiction to review the same matter. Cope at 80. Judge Cope also notes the practice of issuing a PCA is entirely unregulated and inconsistently applied

throughout the District Courts. Id. Moreover, Judge Cope observes that PCAs are routinely issued improperly to resolve cases that present debatable legal issues as evidenced by the dissenting and concurring opinions that often follow. Id.

The Daily Business Review wrote an article celebrating the integrity of a Fourth DCA appellate panel that granted rehearing after a PCA and reversed.[1] *See*, *U.S. Bank v. Sharlene Lewis,* 2016 WL 899912 (Fla. 4th DCA 2016). The primary factor that compelled the panel to reconsider and reverse their ruling was each individual judge's personal ethos. Each panel judge paused, took stock of their decision, and decided whether their ruling followed established Florida law.

Since the Magna Carta, the Due Process Clause has limited the powers of all branches of government, including the judiciary. *Truax v. Corrigan*, 257, U.S. 312,333, 42 S.Ct. 124, 129 (1921). "The vague contours of the Due Process Clause do not leave judges at large." *Rochin v. People of California*, 342 U.S. 165, 170, 72 S.Ct. 205, 209 (1952). Judges have long been required to publicly give a reasoned opinion from the bench in support of their judgment. *Id.* at fn. 4.

Respectfully, this result which affirms without comment the final judgment granting the equitable relief of foreclosure appears arbitrary, capricious, and in conflict with fundamental principles protecting private rights. *American Ry. Express Co. v. Commonwealth of Kentucky*, 273 U.S. 269, 273, 47 S.Ct. 353, 355

[1] http://www.dailybusinessreview.com/id=1202752251066/Foreclosure-Shifts-From-Summary-Denial-to-Reversal-With-Opinion?slreturn=20160320115614.

(1927). In the context of substantive due process, the reason given to support state action which deprives property may not be so inadequate that it may be characterized as arbitrary. *Jeffries v. Turkey Run Consolidated School District*, 492 F.2d 1, 4 (7th Cir. 1974). State action is "arbitrary" when taken without reason or for merely pre-textual reasons. *Decarion v. Monroe County*, 853 F. Supp 1415, 1421 (S.D. Fla. 1994).

The "arbitrary and capricious" standard requires a State examine the relevant data and articulate a satisfactory explanation for its action. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm*, 463 U.S. 29, 43, 103 S.Ct. 2856, 2867 (1983) *citing Burlington Truck Lines v. United States*, 371 U.S. 156, 168, 83 S.Ct. 239, 245-246 (1962). As the Florida Supreme Court noted, "one of the best procedural protections against arbitrary exercise of discretionary power lies in the requirement of findings and reasons that appear to reviewing judges to be rational." *Roberson v. Florida Parole and Probation Commission*, 444 So. 2d 917, 921 (Fla. 1983).

B. <u>There Are Many Unsettled Questions of Law Which Mandate a Written Opinion, Rehearing, or Rehearing En Banc</u>

Any appellate court concerned about the public's perception of its ability to render meaningful justice should correct a lower court ruling that relies upon a fraudulent piece of evidence prepared by the party in anticipation of litigation. Respectfully, this appeal raises questions regarding the integrity of the foreclosure process itself which are clearly not settled. Particularly, whether Appellee violated

the $25 Billion NMS in this case by continuing to use a materially false mortgage assignment and surrogate signed endorsement created after the fact on behalf of third parties to establish standing. As this Honorable Court's decision does not speak to any of the issues raised below and on appeal, there is a due process violation. It would be fundamentally improper to issue a PCA on unsettled issues to avoid further appellate review or reach a result contrary to Florida law.

1. The Federal Court Ruling Affirming a Bankruptcy Judge's Findings That Wells Fargo Committed the Same Misconduct Alleged Herein Against Appellee and Bank of America

The allegations raised herein against Appellee nearly mirror the findings of a U.S. Bankruptcy Court Judge for the Southern District of New York, the Honorable Robert N. Drain, that Wells Fargo, another party to the $25 Billion NMS, employed a similar process of "improving its own position by creating new documents and indorsements from third parties to itself to ensure that it could enforce its claims." *In re Carssow-Franklin (Wells Fargo Bank, N.A. v. Carssow-Franklin)*, --- F. Supp. 3d ---, --- [2016 WL 5660325, *6-10] (S.D.N.Y. 2016).

In *Franklin*, the Honorable U.S. District Court Judge Kenneth M. Karas affirmed Judge Drain's findings applying the same law found in Fla. Stat. §673.3081, noting Wells Fargo engaged in a practice of creating "after-the-fact" documentation "on behalf of third parties" by in-house "assignment and

indorsement teams" which Wells Fargo tried to cover-up with an invalid MERS assignment on June 12, 2012, two months after signing the $25 Billion NMS.

Here, the lower court struck even the allegation of misconduct against Appellee, struck Appellant's defense recognized under Fla. Stat. §673.3081, refused to conduct any statutory analysis of the 2001 Amendments to Article 9 of the UCC despite the clear evidence from the 2005 amendments to Florida Statute §702.01 explaining that: "**Article 9 of the UCC … was revised since Rucker to clearly indicate that the assignment of a mortgage securing a promissory note *is* a secured transaction.** (citing Fla. Stat. §679.1091(4)(k)1). See, Fla. Sen. Justice Approp. Comm., SB 370 (April 2005), Staff Analysis & Economic Impact Statement, *3. The lower court even refused to permit discovery into the allegations of fraud upon the court. This does not comport with due process.

Moreover, the official comment 7 for Fla. Stat. §679.1091 states: "It also follows from subsection (b) that **an attempt to obtain or perfect a security interest in a secured obligation by complying with non-Article 9 law, as by an assignment of record of a real-property mortgage, *would be ineffective***." Id. at Off. Cmt. 7. Yet, the lower court accepted a materially false assignment of mortgage as effective evidence of standing without any meaningful analysis.

The Honorable Retired Judge Alan Schwartz once wrote, "the law is the law. Notwithstanding the distasteful consequences of applying it in this case, it must be served." *Spencer v. EMC Mortg. Corp*., 97 So.3d 257, 262 (Fla. 3rd DCA 2012). The last time Appellant's counsel cited that quote to this Honorable Court, it resulted in Appellant's Counsel responding to an Order to Show Cause Why He Should Not Be Sanctioned. See attached as Appendix B.

2. The MERS Foreclosure Fraud From 2005

To understand the fraud upon the court in this appeal, it is necessary to begin with the earliest foreclosure cases filed in 2005. All those early foreclosures were filed in the name of Mortgage Electronic Registration Systems, Inc., ("MERS"). All the complaints alleged MERS owns and holds the note and mortgage and alleged a lost note count. The Honorable Miami-Dade Circuit Court Judge Jon Gordon summarily dismissed all the early foreclosures after a show cause hearing noting after MERS conceded the allegation that MERS "owns and holds" the notes or mortgages is a sham. See Judge Gordon's Order attached as Appendix C.

Judge Gordon dismissed all the early MERS cases relying on the Florida Supreme Court common law rule that a party must own and hold the note and mortgage in order to foreclose. *Smith v. Kleiser*, 107 So. 262 (Fla. 1926) ("If suit to foreclose a mortgage which has been assigned is by bill in equity, it should be in the name of the real owner of the debt secured"); *Edason v. Central Farmers Trust*

Co., 129 So. 698 (Fla. 1930) ("Bill to foreclose a mortgage should show that it is brought in the name of the owner of the debt secured by the mortgage").

As Judge Gordon correctly noted, the Florida Supreme Court promulgated Fla. R. Civ. P. 1.110, and its accompanying Form 1.944 in 1992 and again in 2000. At all times, the form required Plaintiff plead it "owns and holds the note and mortgage" to establish standing in a foreclosure complaint. *In re Amendments to the Florida Rules of Civil Procedure*, 604 So. 2d 1110, 1182 (Fla. 1992) (emphasis added); *In re Amendments to the Florida Rules of Civil Procedure*, 773 So. 2d 1098, 1144 (Fla. 2000). As MERS conceded it did not own the note or mortgage, the early MERS foreclosure complaints were properly stricken as sham.

3. *The 2006 Baker Hostetler Report to Fannie Mae Discussion of the "MERS Florida Embarrassment" and the 2001 Amendments to Article 9 of the UCC*

The following year, in 2006, the Washington DC law firm of Baker Hostetler conducted an investigation into the "MERS Florida Embarrassment" for the Federal National Mortgage Association, ("Fannie Mae") and issued a report which the New York Times published in 2012.[2] See the "Baker Hostetler Report" attached as Appendix D. Fannie Mae's lawyers concluded that report finding:

> "We conclude that foreclosure attorneys in Florida are routinely filing false pleadings … regarding the plaintiffs - MERS or servicers -

[2] http://www.nytimes.com/interactive/2012/02/05/business/05fannie-doc.html?action=click&contentCollection=Business%20Day&module=RelatedCoverage&pgtype=article&region=Marginalia&_r=0

> interest in the proceedings …. The practice could be occurring elsewhere. It is axiomatic that the practice is improper and should be stopped." pg 35.

Perhaps more damning, the Baker Hostetler report addressed the "Effects of a Note Endorsed in Blank" which does not comport with the present state of the law in Florida. At page 38, Baker Hostetler advises that: "Promissory notes, which establish the obligation to repay the loan, are governed by Article 3 of the Uniform Commercial Code ("UCC"). The sale of promissory notes is also now covered under Revised UCC Article 9."

The Baker Hostetler report further finds "Mortgages are treated differently from promissory notes under the law. Mortgages, which establish the security interest in the home, are governed by UCC Article 9." *Id.* The report discussed an interview with Daniel C. Smith, Deputy General Counsel on Oct. 14, 2005 who explained:

> "Fannie Mae's position is that it does not need to appear in the land records in order to have the benefit of the security provided by the mortgage. 128 UCC§ 9-203(g) and its accompanying comment state that the transfer of an obligation secured by a security interest also transfers the security interest. Thus, the transfer of the promissory note, which is the obligation, also transfers the mortgage, which is the security interest. **Once the note is sold to Fannie Mae, the mortgage also transfers, despite the fact that the servicer, lender or MERS' name appears in the land records.** *Id.* at 39 (emphasis added).

The effect of possession of a note endorsed in blank under present Florida jurisprudence is the party has established standing to foreclose, even without proving ownership.

Florida jurisprudence is devoid of any statutory analysis or construction of the 2001 amendments to Article 9 of the UCC. Appellant respectfully submits this Honorable Court should conduct a statutory analysis of Fla. Stat. §679.2031 which is the exclusive method to prove ownership. Since the 2001 amendments to Article 9, Fla. Stat. 679.1091(4)(k) states that Article 9 does now apply to a transfer of a lien on real estate "to the extend provided under Fla. Stat. §679.2031." Failure to establish proof of purchase of the debt under Fla. Stat. §679.2031(2) means the mortgage does not follow the note under Fla. Stat. §679.2031(7).

4. The Florida District Courts Have Erred and Invalidated the Common Law Rule Requiring Ownership to be Proven to Establish Standing to Foreclose

This Honorable Court overturned Judge Gordon without any discussion of the common law rule on standing to foreclose or the Florida Supreme Court. *MERS v. Revoredo*, 955 So. 2d 33, 34 (Fla. 3rd DCA 2007). Respectfully, enforcing the common law rule could have immeasurably benefited the citizens of Florida as many more homeowners might have saved their homes. As the Florida Supreme Court instructs: "[t]o allow a District Court of Appeal to overrule controlling precedent of this Court would be to create chaos and uncertainty in the

judicial forum, particularly at the trial level." *Hoffman v. Jones*, 280 So. 2d 431, 434 (Fla. 1973). Chaos is one word that fairly described the effect of the robo-signing scandal and the continued foreclosure crisis on Florida Courts.

The Florida District Courts more recently suggested Article 3 of the UCC dealing with negotiable instruments changed this common law rule requiring proof of ownership. *Tilus v. AS Michai LLC*, --- So.3d ----, 2015 WL 1545223 --- So.3d ----, 2015 WL 1545223 (Fla. 4th DCA 2015); *citing, Wells Fargo Bank, N.A. v. Morcom*, --- So.3d ----, 2013 WL 5575634 (Fla. 1st DCA 2013). Both cite to Fla. Stat. §673.3011 which provides:

> "Person entitled to enforce instrument.—The term "person entitled to enforce" an instrument means:
> (1) The holder of the instrument;
> (2) A nonholder in possession of the instrument who has the rights of a holder; or
> (3) A person not in possession of the instrument who is entitled to enforce the instrument pursuant to s. 673.3091 or s. 673.4181(4).
>
> A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument." §673.3011, Fla. Stat. (1963).

The Florida Supreme Court instructs: "A statute, therefore, designed to change the common law rule must speak in clear, unequivocal terms, for the presumption is that no change in the common law is intended unless the statute is explicit in this regard." *Carlile v. Game & Fresh Water Fish Comm'n*, 354 So. 2d 362, 364 (Fla. 1977). Respectfully, Fla. Stat. §673.3011 does not mention or

address the common law rule that the plaintiff must plead it "owns and holds the note and mortgage" to establish standing to foreclose.

Under established Florida Supreme Court precedent, Fla. Stat. §673.3011 does not and cannot affirmatively change the common law rule. Fla. Stat. §673.3011 deals only with negotiable instruments and does not mention mortgage or foreclosure. A careful inspection of Fla. Stat. §673.3011 reveals the statute merely establishes the facts that must be alleged and proven to file a civil action to enforce a negotiable instrument. There is simply no language in Fla. Stat. §673.3011 making any reference to common law rule governing standing to foreclose on a mortgage that secures that negotiable instrument. Accordingly, Fla. Stat. §673.3011 made no change to that rule. Yet, this Honorable Court's opinion does not discuss these issues in any meaningful way.

5. *The Florida Attorney General Robo-Signing Investigation, the Fourth DCA's Question of Great Public Importance, and the $25 Billion NMS*

In January of 2011, the Florida Attorney General published its "robo-signing" investigation into "Unfair, Deceptive and Unconscionable Acts in Foreclosure Cases." See attached as Appendix E. The investigation concluded "improper assignments" were recorded, submitted and "accepted by the Courts as valid assignments that substantiated the foreclosure." In a press release regarding the presentation, the Attorney General described how LPS and DocX:

> "produced numerous documents, called Assignments of Mortgage, that to even the untrained eye, appear to be forged and/or fabricated ... [then] used to gain standing for the plaintiff in a foreclosure suit. Subject corporations seem to be creating and manufacturing "bogus assignments" of mortgage in order that foreclosures may go through more quickly and efficiently. **These documents appear to be forged, incorrectly and illegally executed, false and misleading. These documents are used in court cases as "real" documents of assignment and presented to the court as so, when it actually appears that they are fabricated in order to meet the demands of the institution that does not, in fact, have the necessary documentation to foreclose according to law**. See Tab C of Defendant's Request for Judicial Notice (emphasis added).

Ultimately, the "suspect documents" were surrogate signed/robo-signed MERS assignments created by an employee of the law firm who filed on behalf of Bank of New York ("BONY"). Essentially, Bank of America, Bank of New York, Mellon, and others doubled down on using MERS as an instrumentality of fraud on the court. MERS cannot sell notes MERS does not own.

On January 31, 2013, Florida Attorney General Pam Bondi ("AG Bondi") announced a $120 million Multi-State Settlement with Lender Processing Services and its subsidiary DocX, LLC ("DocX"). See Press Release attached as Appendix F. The settlement expressly prohibited "the practice of surrogate signing of documents...." The settlement described surrogate signing as "the signing of documents by an unauthorized person in the name of another... as if they had been signed by the proper person...."

In Section 2.3 of the resulting Consent Final Judgment, DocX stipulated its management directed employees to sign Mortgage Loan Documents in the name of other DocX employees, who were or had been at one time authorized to sign on behalf of Servicers. DocX referred to these unauthorized signers as "Surrogate Signers." These surrogate signors "were not authorized by the applicable Servicer to sign their own names or the names of those persons who had purportedly been authorized by the Servicer to sign the Mortgage Loan Documents in question…. The Surrogate Signers executed certain Mortgage Loan Documents in the name of other DocX employees without indicating that the documents had been signed by a Surrogate Signer." Under this settlement, Florida received a lump sum of $7,659,176.00 with an additional $983,337.00 paid to AG Bondi's office as the investigating Attorney General.

In 2014, Bank of America and Wells Fargo both entered into the $25 Billion NMS and promised to use only "competent evidence" in foreclosures. That same year, the Florida legislature enacted Fla. Stat. §817.535, which made recording a materially misleading or fictitious assignment a third degree felony in Florida, and a second degree felony if litigation ensues over it. Yet, both Bank of America and Wells Fargo continued to manufacture false MERS assignments after the fact evidence on behalf of third parties to improve their record on standing.

Wells Fargo and Bank of America both had same problem after the $25 Billion NMS. Rather than do it right and comply with the 2001 Amendments to Article 9 of the Florida UCC, they both decided it would be cheaper and easier to fabricate evidence of standing. Neither could not prevail on the thousands of foreclosures filed with lost note counts because the notes were not endorsed before the filing of the complaint. The legally correct choice would be to dismiss all those pending cases, pay prevailing party attorney's fees, properly endorse the notes, and then pay the cost to refile.

To its credit, Wells Fargo admitted to Judge Drain that it used assignment and endorsement teams after the fact to manufacture evidence on behalf of third parties. At least Mr. Kennerty signed his own name. In stark contrast, Bank of America sentiently set in motion an unconscionable scheme designed to mislead courts into believing all the original notes were systematically endorsed shortly after origination. This artifice is demonstrably false.

There is clear and convincing evidence that Bank of America started to affix the surrogate signed endorsements onto original notes, including the note in this case, after it began negotiating the $25 Billion NMS, submitted perjury to cover it up, and then engaged in bad faith, stonewall, scorched earth discovery tactics. Most of that evidence is pending below in a Rule 1.540(b) Motion and should be considered by this Honorable Court before rendering a PCA without opinion.

C. This Honorable Court Should Grant Some Relief to Protect Against the Appearance of Impropriety By Refusing to Address These Legal Issues

This Honorable Court should grant rehearing or write an opinion that would permit Appellant to seek further review by the Florida Supreme Court. Under Article V of the Florida Constitution, as amended in 1980, the Florida Supreme Court lacks jurisdiction to review a District Court decision that issues a PCA without a written opinion. There are no standards in Florida that require a District Court to write an opinion or certify a matter to be of great public importance.

Appellant's due process rights are nearly extinguished if this Honorable Court denies Rehearing *En Banc* or refuses to issue a written opinion. A recent Florida Bar Journal suggested the "extraordinary remedy of Mandamus" is one possible option to protect Appellants constitutional right to due process of law.[3] If that path fails, the last option is an appeal for a violation of due process to the United States Supreme Court. Both paths have, admittedly, only a slight chance. Neither path should be necessary upon careful consideration of this record.

The February 2016 edition of the Florida Bar Journal included an article entitled, Our Due Process Debt Owed to the Magna Carta.[4] The article talks about the rebellion against a king who took property and liberty without due process of

[3] https://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/8c9f13012b96736985256aa900624829/eda2a9d74d99b56e85257f45004b92ce!OpenDocument

[4] https://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/8c9f13012b96736985256aa900624829/eda2a9d74d99b56e85257f45004b92ce!OpenDocument

law. The rebellion ended after the Magna Carta codified for the first time a principle, explicitly stating that all persons, including for the first time the king, were subject to the law of the land. It is the first written statement of the right to due process and habeas corpus. It is the foundation of the notion of due process.

Five Hundred and Thirty-Seven (537) years later, the United States Constitution enacted the Due Process Clause, which states: "No person shall...be deprived of life, liberty, or property, without due process of law." This concept of "due process" embodies the principle that a government can only act against a citizen in accordance with a law permitting it to do so and the law of the land.

Accordingly, governmental infringement upon a person's life, liberty, or property is only possible if and when permitted by the people and their laws and may only be exercised as set forth in those laws. The author compared the Magna Carta to the Ten Commandments. In a most biblical sense, the commandment for each judge to hold themselves to the highest standards of integrity dates back to the Old Testament. The Fifth Book of the Old Testament states at Chapter 16, verses 18-20 of Deuteronomy:

> 18You shall set up judges and law enforcement officials for yourself in all your cities that the Lord, your God, is giving you, for your tribes, and they shall judge the people [with] righteous judgment.
>
> 19You shall not pervert justice; you shall not show favoritism, and you shall not take a bribe, for bribery blinds the eyes of the wise and perverts just words.

> 20Justice, justice shall you pursue, that you may live and possess the land the Lord, your God, is giving you.

These concepts are engrained in Florida jurisprudence. Canon One of the Code of Judicial Conduct states "a Judge should participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards, so that the integrity and independence of the judiciary may be preserved." Canon 2-a of the Code states "a Judge shall respect and comply with the law and shall act, at all times, in a manner that promotes public confidence and the integrity and impartiality of the Judiciary."

There is no question any Judge or law-abiding citizen could reasonably insist that homeowners pay their mortgage or lose their homes. Unlike the law-abiding citizen, this Honorable Court has a constitutional obligation to the integrity of the process. The Florida Supreme Court instructs that:

> This Court is committed to the doctrine that every litigant is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of Courts to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. The exercise of any other policy tends to discredit the judiciary and shadow the administration of justice.
>
> It is not enough for a judge to assert that he is free from prejudice. His mien and the reflex from his court room speak louder than he can declaim on this point. If he fails through these avenues to reflect justice and square dealing, his usefulness is destroyed. The attitude of the judge and the atmosphere of the court room should indeed be such that no matter what charge is lodged against a litigant or what cause he is called on to litigate, he can approach the bar with every

> assurance that he is in a forum where the judicial ermine is everything that it typifies, purity and justice. The guaranty of a fair and impartial trial can mean nothing less than this. *Crosby v. State*, 97 So. 2d 181, 184 (Fla. 1957).

The Florida Supreme Court instructs that, "[e]quity cannot therefore look solely to the result in determining whether to grant relief, but must apply rules which confer some degree of predictability on the decision-making process." *David v. Sun Fed. Sav. & Loan Ass'n*, 461 So. 2d 93, 95-96 (Fla. 1984).

"Only in those cases where 'the equities and good conscience point unerringly toward the correctness of the position of one litigant and against that of the other' may equity give some flexibility to the harsh, rigid and usually inexorable principles of the common law. Where the equities are equal, the law must prevail." *August Tobler, Inc. v. Goolsby*, 67 So. 2d 537, 539 (Fla. 1953). Moreover, the First DCA held:

> "[sitting in equity] does not permit … this court the luxury of sympathy in deciding cases; each court must follow the evidence. It is sometimes said that courts do not administer justice, but justice under law. **In this day, resort may seldom be had to what in an earlier era was called natural law, a sense of what is right and what is wrong, uncontrolled by evidence or by the rules that, through centuries of development since the time of the English ecclesiastical courts, have become nearly as stratified and rigid on the equity side as on the law side. To do so would mean a government not of law but of men. In this case, to do so would mean ignoring well established rules, on which people are entitled to rely.** *David Properties, Inc. v. Selk*, 151 So. 2d 334, 340 (Fla. Dist. Ct. App. 1963)(emphasis added).

Appellant respectfully submits the *per curiam* affirmance of the trial court's

final judgment of foreclosure is arbitrary, capricious, and a denial of Appellant's constitutional right to due process protected by the Florida and United States Constitutions. This Honorable Court's ruling conflicts with decisions of the Florida Supreme Court, Florida Statutes, this Honorable Court, and other District Courts of Appeal, that all require a party have the opportunity to plead and prove defenses after reasonable discovery before a fair and impartial tribunal.

Counsel for Appellant expresses a belief, based upon a reasoned and studied professional judgment, that a written opinion will provide a legitimate basis for Supreme Court review.

There is a reason Lady Justice carries a scale and wears a blindfold. A fair and impartial judiciary is necessary to a good and orderly society. Our justice system is grounded in the ideal that every citizen should have an opportunity to be heard. The rules of procedure and evidence bind everyone. There should be full and fair discovery in every case. The trial court should conduct a fair trial and reserve judgment until hearing all the evidence. These are fundamental concepts in Florida jurisprudence that appellate courts are constitutionally charged to oversee.

Respectfully, as a zealous advocate, a member of the Florida Bar, and an Officer of the Court, undersigned counsel hopes the expert and righteous judges of this Honorable Court see the merit of this cause. No party should gain equitable relief without meeting its obligations under the law without resorting to fabricating

evidence on behalf of third parties after the fact.

Granting this motion will either permit Appellant to challenge this result before the Florida Supreme Court or reaffirm this Honorable Court's adherence to its constitutional oath to uphold the integrity of the process above all. Respectfully, this case is of exceptional importance warranting rehearing *en banc* as the result negatively impacts the public's perception of this Honorable Court's ability to render meaningful justice. There cannot be meaningful justice if an appellate court declines to correct a trial court that grants a final judgment in direct conflict with the Florida Supreme Court and the District Courts of Appeal.

At this juncture, the public should not have reason to perceive that this Honorable Court is committed to a results oriented foreclosure process focused more on whether the borrower has paid than whether the lender proved its right to foreclosure by substantial competent evidence in accordance with due process. Most recently, the Daily Business Review published an article noting this Honorable Court's silence on standing in foreclosure cases.[5] Previously, on December 1, 2013, the Daily Business Review published another article involving this Honorable Court and Appellant's counsel.[6] Certainly, the public's perception of the judiciary's ability to render meaningful justice would be denigrated if a

[5]http://www.dailybusinessreview.com/id=1202752360518/Defense-Questions-Courts-Silence-on-Standing-in-Foreclosure-Cases#ixzz4362cxF6z

[6]http://www.jakelegal.com/files/daily_business_review__justice_watch_foreclosure_attorneys_targeted_in_3rd_dca_ruling.pdf

Federal Judge or another appellate court addressed these issues when this Honorable Court chose to remain silent.

Counsel for Appellant expresses a belief, based on reasoned and studied professional judgment, that the panel decision is contrary to the decisions of this Honorable Court and would negatively impact the public's perception of this Honorable Court's ability to render meaningful justice. A consideration by the full court is necessary to maintain uniformity of decisions in this court and protect the integrity of the public's perception. These points of law raised are so well settled in Florida. The law favors the Appellant, not the Appellee.

This appeal should result in a reversal with instructions to permit Appellant to plead the allegations of fraud and invalid endorsements under Fla. Stat. §673.3081 and take discovery. Appellant respectfully implores the expert and righteous judges of this Honorable Court, "justice, justice, shall you pursue." This Honorable Court should issue a written opinion to explain its affirmance, grant rehearing, or grant rehearing *En Banc*.

WHEREFORE, Appellants request this Honorable Court grant rehearing, rehearing *En Banc*, issue a written opinion or any relief deemed mete and just.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed to service@lgplaw.com, jbr@lgplaw.com, Jessica B. Reyes, Esq., Liebler, Gonzales & Portuondo, 44 West Flagler Street, Miami, Florida 33130; and fl.service@phelanhallinan.com, John D Cusick, Esq., Phelan Hallinan, PLC, 2727 West Cypress Creek Road, Ft. Lauderdale, Florida 33309 this 31st day of May, 2018.

CERTIFICATION OF GOOD FAITH

Counsel for Appellant expresses a belief, based on a reasoned and studied professional judgment, that the case is of exceptional importance as this result may negatively impact the public's perception of the judiciary's ability to render meaningful justice.

/S/ BRUCE JACOBS
BRUCE JACOBS

IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JOSE RODRIGUEZ AKA JOSE R. RODRIGUEZ

Appellant,

vs.

BANK OF AMERICA, N.A.,

Appellee.
_____/

CASE No. 3D17-272
LT No. 13-30447

APPENDIX TO APPELLANT'S MOTION FOR REHEARING *EN BANC* AND REQUEST FOR A WRITTEN OPINION

Respectfully submitted,

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APPENDIX

Appendix A Transcript of proceedings before in *BONY vs. Ryan Atkin Miami-Dade County Case No. 2009-87096-CA* 3-193

Appendix B Appellant's Counsel's Verified Response to Order to Show Cause in *Delsa Bernardo v. PNC Mortgage Case No. 3D12-1071*.194-208

Appendix C Judge Gordon's Order in *Mers v. Enzo Cabrera Miami-Dade County Case No. 2005-2425* 209-225

Appendix D Baker and Hostetler Report by Mr. Nye Lavalle 226-372

Appendix E Florida Attorney General Powerpoint Presentation 373-470

Appendix F Florida Attorney General Pam Bondi's Multi-State Settlement…….471-475

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed to service@lgplaw.com, jbr@lgplaw.com, Jessica B. Reyes, Esq., Liebler, Gonzales & Portuondo, 44 West Flagler Street, Miami, Florida 33130; and fl.service@phelanhallinan.com, John D Cusick, Esq., Phelan Hallinan, PLC, 2727 West Cypress Creek Road, Ft. Lauderdale, Florida 33309 this 31st day of May, 2018.

DISTRICT COURT OF APPEAL
THIRD DISTRICT OF FLORIDA

CASE NO. 3D12-1071

DELSA BERNARDO, et al.,

Appellant,

v.

PNC MORTGAGE, a division of
PNC Bank, N.A,

Appellee.
_____/

APPELLANT'S COUNSEL'S VERIFIED RESPONSE TO ORDER TO SHOW CAUSE

The Appellant's attorney, Bruce Jacobs, for his verified response to this Court's order to show cause, states that sanctions should not be imposed upon him because he has proceeded in good faith with the honest—if mistaken—belief that the arguments he advanced on behalf of his client were warranted by existing law or, at the very least, constituted "a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with the reasonable expectation of success," within the meaning of §57.105 (3)(a), Fla. Stat.

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Mr. Jacobs humbly apologizes to the Court for his responses to questions at oral argument perceived by the Court to be disrespectful, and states that he had since been mentored by several former appellate judges, experienced appellate attorneys, and others who have shown him the error of his ways. He believed he had a good faith basis to respond as he did at the time of oral argument. Since the sobering threat of sanctions by this Honorable Court, he has become educated to the appropriate manner of conduct in appellate oral arguments and pledges to ensure he will not cross the line of acceptable argument in the future.

In support of this response, Mr. Jacobs relies upon the following memorandum of law:

I.

THIS APPEAL WAS NOT TAKEN FOR THE PURPOSE OF UNREASONABLE DELAY

Subsection (2) of §57.105 permits the imposition of sanctions against those who file proceedings and engage in other activities which are "taken primarily for the purpose of unreasonable delay." Mr. Jacobs understands that too many foreclosure defendants retain counsel who purposefully delay the proceedings solely to enjoy the occupancy of the property without payment for extended periods of time. He has also seen many banks that failed to prosecute foreclosure cases for similar time periods without facing any meaningful defense.

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Appellant left the property vacant since submitting her short sale application. Filed herewith as an appendix exhibit is the affidavit of the Appellant Delsa Bernardo. That affidavit demonstrates that Ms. Bernardo vacated the property months before the initial brief was filed and did not otherwise enjoy the benefit of ownership of that property thereafter. App. 1. She did not rent out the property, use it for any purpose, or otherwise benefit from the delay in the foreclosure. App. 1 at 2. Therefore, this Court should not impose sanctions under subsection (2) of §57.105.

II.

THE APPELLANT'S LEGAL ARGUMENTS WERE MADE IN GOOD FAITH

A. Mr. Jacobs' Background As An Attorney:

Mr. Jacobs submits that his background as an ethical professional should be considered by the Court in determining whether the arguments he made on behalf of his client were made in good faith. By way of background, Mr. Jacobs has been a member in good standing of the Florida Bar, as well as the Bars of New York and New Jersey for almost eighteen years. He has never been the subject of any disciplinary proceedings. Before the oral argument in this appeal, never in his history as an attorney has he been sanctioned or even threatened with sanctions for raising frivolous arguments. It has been a very sobering experience.

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Mr. Jacobs began his legal career as an Assistant State Attorney in the Miami-Dade State Attorney's Office. After entering private practice he worked hard to educate himself concerning the best practices in civil litigation in general, and foreclosure litigation in particular. Mr. Jacobs prosecuted foreclosures for banks before defending homeowners, acting as lead counsel in hundreds of circuit court foreclosure cases over the past twelve years for both sides.

Using his own funds, Mr. Jacobs traveled to legal education seminars around the nation learning and developing viable and meaningful arguments relating to foreclosure defense. He bears witness to many of the injustices that banks have inflicted upon the Courts and homeowners. He believes in the opportunity for good faith creative lawyering in foreclosures as the body of law is just developing.

After becoming somewhat educated in the field, Mr. Jacobs volunteered his firm to attend foreclosure trial dockets before Judge Beatrice Butchko and Judge Sarah Zabel. Mr. Jacobs and his firm offered pro-bono services that assisted homeowners to understand their rights and resolved many cases without trial in the best interest of all parties.

Mr. Jacobs recalls the level of practice expected before Judge Rothenberg when she sat as a circuit judge in the Criminal Division of the Miami-Dade Circuit Court. Throughout his criminal and civil litigation experience, Mr. Jacobs always prided

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himself as an ethical and professional attorney, balancing the needs of deserving clients for zealous advocacy with the limits of fairness to opposing parties, candor to the tribunal, and other professional considerations.

Mr. Jacobs enhanced his knowledge of professional ethics by volunteering for a three-year term as a member of The Florida Bar Grievance Committee 11F in Miami, where attorneys accused of ethical violations were investigated for disciplinary actions. He presently serves as a volunteer arbitrator for the Florida Bar Fee Arbitration Program. He always has been and remains committed to satisfying the highest ethical and professional ideals in his practice.

B. Mr. Jacobs' Lack of Motive to Advance Any Frivolous Position:

In handling the present appeal, Mr. Jacobs had absolutely no motive to advance any frivolous position or otherwise needlessly prolong this litigation. The Appellant, Delsa Bernardo, is the significant other of Mr. Jacobs' associate, Abbie Cuellar. Ms. Cuellar and Mr. Jacobs began their careers together as Miami prosecutors and both represented banks in foreclosure cases before deciding to work together in 2012.

Ms. Bernardo's original appellate counsel died before this Honorable Court ordered no further extensions of time to file the initial brief. Mr. Jacobs agreed to handle the appeal essentially to help a family member in desperate need.

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Mr. Jacobs had no economic motive to prolong this appeal. Upon his review of the file, Mr. Jacobs developed the good faith belief that substantive defects in the summary judgment process would result in a successful appeal. He handled the case without any compensation, agreeing to work for only a court-awarded fee if he was successful. Mr. Jacobs has received nothing for this case, and never would receive anything unless successful on appeal and on remand. His primary motivation was to end the appeal quickly with a waiver of the deficiency judgment, intending to get no fees for his efforts if successful. He was helping family.

Mr. Jacobs believed he made good faith attempts to negotiate a settlement during the appellate process. Appellant conveyed short sale offers to the bank's attorney even before Mr. Jacobs became appellate counsel. Despite repeated inquiries, no response ever was forthcoming. The appeal was his client's only hope to avoid financial ruin.

Mr. Jacobs had no axe to grind against the Appellant or Appellant's attorneys, and had no motive to needlessly delay this case. He believed his predecessor counsel filed the notice of appeal in good faith. He took all actions as Appellant's counsel in the good faith belief they were meritorious.

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C. Good Faith Legal Argument on Standing Defense:

Mr. Jacobs respects this Court's ruling affirming the decision below without opinion, and would not challenge that decision now. However, Mr. Jacobs respectfully submits that his position on behalf of his client was not so obviously devoid of merit that he knew or should have known it would not be supported by the application of then-existing law to the facts or by a good faith extension of existing law.

Mr. Jacobs notes that—although this Court's order to show cause reflects that it is based "[u]pon consideration of Appellee's motion for attorney's fees,"—that motion does not reference §57.105. App. 2. The Appellee did not ask that Mr. Jacobs should be personally sanctioned for his position taken in this appeal.

Mr. Jacobs believed in good faith that Appellee "opened the door" to argue the fundamental issue of standing. Although Appellant raised standing as an affirmative defense, there was no record she argued standing during the summary judgment hearings below. However, Appellee's correction to its answer brief admits it mistakenly represented its ownership of the loan to this Honorable Court and to the lower court that granted summary judgment.

The Florida Supreme Court defines fundamental error as one "that reaches down into the validity of the trial itself to the extent that a verdict . . . could not have been

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obtained without the assistance of the alleged error." *Anderson v. State*, 841 So.2d 390, 403 (Fla. 2003). Appellee conceded it erroneously claimed its ownership of the note below and on appeal. Mr. Jacobs had a good faith belief Appellee conceded fundamental error sufficient to render the issue non-frivolous for 57.105 purposes, despite being raised after Appellee filed its answer brief.

D. Good Faith Legal Argument on Notice Defense:

Mr. Jacobs in good faith believed that there was a viable issue concerning the Plaintiff's failure to provide the acceleration notice required by the loan documents. At oral argument the court observed that the Defendant did not flatly deny having received the requisite notice, but in her affidavit stated that she did "not recall or have any personal recollection of having received correspondence from the bank informing [her] of the bank's intent to acceleration [her] loan." R.748. However, in addition to the Defendant's affidavit testimony that she had no recollection of having received it, that affidavit also establishes that she "provided [her] attorney [Abbie Cuellar] with all the documentation [the Defendant] received from the bank." R.748. The affidavit of Ms. Cuellar establishes that she reviewed all of that documentation and that, based upon that review: "Ms. Bernardo did not receive the notice of intent to accelerate letter required by the mortgage to be sent prior to the foreclosure being filed." R. 750.

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There also was the issue of the discrepancy between the allegations of the complaint and the affidavit filed by Plaintiff as to which entity sent the acceleration letter. Mr. Jacobs in good faith believed that the discrepancies in the Plaintiff's affidavit concerning the circumstances under which the acceleration letter purportedly was mailed—coupled with the Defendant's affidavit that she did not recall having received the acceleration letter and the affidavit of her trial counsel Abbie Cuellar which established that the acceleration letter is not in the materials provided by the bank to the Defendant—created a genuine issue of material fact whether the notice had been mailed at all ***by any entity***.

It was not so much an argument that the wrong entity had sent it, as it was an argument that the inconsistency between the allegations of the Plaintiff's affidavit and its exhibit created a fact issue whether the acceleration letter had been mailed in the first place. *See, e.g., Joyner v. Anderson Columbia, Co.*, 988 So. 2d 60 (Fla. 1st DCA 2008):

> Because the facts permitted different reasonable inferences, and the inferences reached tended to prove the issue, the cases should have been submitted to the jury. *See Spears v. Albertson's, Inc.*, 848 So. 2d 1176, 1177-1178 (Fla. 1st DCA 2003) (noting summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law); *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So.2d 126, 130 (Fla. 2000) (noting if the evidence is conflicting, will permit different

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> reasonable inferences, or tends to prove the issues, it should be submitted to the jury as a question of fact).

Id. at 61. That factual issue was sufficient, in Mr. Jacobs' opinion, to render the issue meritorious.

Mr. Jacobs is familiar with the standard for grant of a summary judgment under Florida law which requires that summary judgment be reversed "[i]f the record on appeal reveals the possibility of genuine issues of material fact ***or even the slightest doubt in this regard.***" *Braidi Trading Co. v. Anthony R. Abraham Enterprises, Inc.*, 469 So. 2d 955, 956 (Fla. 3d DCA 1985)(emphasis added). Thus, because Ms. Bernardo had no recollection of having received the document and because she kept all of the records she had received from the bank and provided them to Ms. Cuellar for review, the circumstances, in Mr. Jacobs' opinion, created at least a "slightest doubt," sufficient to warrant reversal of the summary judgment. Therefore, sanctions should not be imposed against him for handling this appeal.

D. Good Faith Argument on Signature Issue:

Mr. Jacobs also in good faith asserted that the Plaintiff had the burden of demonstrating the authenticity of the signatures on the documents in the case and had failed to do so with the affidavit of someone whose authority was unquestionable. The body of law on this issue is just developing, as underscored by the very recent decision of the Fourth District in *Bennett v. Deutsche Bank Nat'l Trust Co.*, No. 4D12-

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2471; 2013 Fla. App. LEXIS 12341 (Fla. 4th DCA Aug. 7, 2013) (copy filed herewith as appendix exhibit App. 3). In that case, the Fourth District reversed a final summary judgment of foreclosure finding a genuine issue of material fact concerning the validity of the Bank's signatures on the allonges at issues, holding as follows:

> In this case, ***the Bennetts put the validity of the signatures on both allonges at issue. In their amended answer and affirmative defenses, the Bennetts specifically allege that Elizabeth Causseaux was not an authorized agent of one or both entities. Appellants rely on the inference that the signatures were not authorized because they were made by the same person on behalf of two separate entities. Construing this evidence and resolving all reasonable inferences in the light most favorable to the non-moving party, the Bennetts, this pleading was sufficient to put the authenticity of the signatures at issue, thus creating a genuine issue of material fact.*** Because a genuine issue of material fact exists, summary judgment was improper.

Id. at *3-5 (emphasis added).

Mr. Jacobs held the good faith belief that the issue of the improper signature was preserved for appellate review because the signature had to be established to overcome the Plaintiff's affirmative defense and this Court had held that "where a defendant pleads affirmative defenses and the movant-plaintiff does not by affidavit disprove the defenses, or does not establish the legal insufficiency of the defenses it is ***fundamental error*** to enter a summary judgment for the Plaintiff." *Newton v. Overseas Private Inv. Corp.*, 544 So. 2d 224, 225 (Fla. 3d DCA 1989)(emphasis

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added). It goes without saying that matters of fundamental error are preserved for appellate review, even without timely objection at the trial court level. Here, Mr. Jacobs believed that the presence of fundamental error and the fact that the signature issue was addressed on rehearing at the trial court level was sufficient to render the issue non-frivolous for 57.105 purposes.

III.

MR. JACOBS APOLOGIZES FOR HIS INAPPROPRIATE BEHAVIOR AT ORAL ARGUMENT

This Court should not sanction Mr. Jacobs for his remarks at oral argument because he has learned his lesson by consulting with former Third District Court of Appeal judges[1], former circuit court judges, and numerous appellate specialists concerning his responses to questions and observations by the Court at oral argument, and has learned that his behavior was inappropriate. Therefore, Mr. Jacobs humbly and deeply apologizes to this Court. Mr. Jacobs understands that he improperly conveyed a sense of disrespect to the Court in addressing Senior Judge Schwartz about his concurring opinion in *Spencer v. EMC Mortgage Corp.*, 97 So. 3d 257 (Fla. 3d DCA 2012). Mr. Jacobs also recognizes that he should not have referenced Judge Schwartz's warning to another foreclosure defense attorney in another case

[1] Mr. Jacobs has conferred at length with former judges Gerald Cope, Rodolfo Sorondo, and Phillip Hubbart concerning this matter.

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concerning sanctions under §57.105.

Although Mr. Jacobs has been practicing for almost eighteen years, he has limited experience in appellate oral arguments and allowed his nervousness and unfamiliarity with the venue to permit emotional and improper responses to tough questioning from the panel. He has learned from his mentors that his argument was inappropriate and come to learn a valuable lesson that will stand him in good stead in the future. Mr. Jacobs recognizes his duty as an effective advocate requires him to engage in creative lawyering. *See generally,* Monroe H. Freedman & Abbe Smith, *Understanding Lawyer's Ethics 97-8*, (Matthew Bender 2004). However, he also pledges to balance that duty of zealous advocacy with the commitment to pursue only meritorious positions in all cases in the future. Therefore, no sanctions are necessary and the order to show cause should be discharged.

CONCLUSION

WHEREFORE, the present appeal being prosecuted in good faith without improper motive, Mr. Jacobs should not be sanctioned and the order to show cause should be discharged.

Respectfully submitted,

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By: _____
ROY D. WASSON
Florida Bar No. 332070

VERIFICATION

Under penalty of perjury, I hereby verify that the foregoing is true and correct.

By: _____
BRUCE JACOBS
Florida Bar No. 116203

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were served by email upon Bruce Jacobs, Co-counsel for Appellant, Bruce Jacobs & Associates, P.A., Bruce Jacobs <jacobs@bjalegal.com>; <efile@bjalegal.com>; Stephen T. Maher, Anthony R. Yanez, and Edward J. O'Sheehan, Counsel for Appellee, Shutts & Bowen, LLP, <smaher@shutts.com>; <ayanez@shutts.com>; <ejo@shutts.com>; on this the 12th day of August, 2013.

By: _____
ROY D. WASSON
Florida Bar No. 332070

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IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 05-2425 CA 05
05-11570 CA 05
05-12531 CA 05
05-15138 CA 05

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

Plantiff(s),

vs.

ENZO CABRERA, ET AL.,

Defendant(s).

_____/

ORDER OF DISMISSAL ON THE CORRECTED ORDER TO SHOW CAUSE

This cause came on to be heard pursuant to the "Corrected Order to Show Cause" dated September 1, 2005 directed to Mortgage Electronic Registration Systems, Inc., (hereafter referred to as MERS) in which they were Ordered to Appear and to Show Cause why the above consolidated actions should not be dismissed either as a sham and/or a frivolous pleading. The principle concerns of the Court were as follows:

1. Whether MERS had legal standing to prosecute those actions in the capacity of a "nominee" for a Third party; or as a simple "holder" of the instrument without "ownership" thereof;
2. Whether MERS, in fact, made the following allegations knowing them to be palpably or inherently false from the plain or conceded facts at the time they were made:
    a. that they "owned and held" the notes in question;
    b. that they were entitled to enforce the note when loss of possession occurred or that they had directly or indirectly acquired ownership of

the notes from a person who was entitled to enforce it when loss of possession occurred; and

c. that they cannot reasonably obtain possession of the note because it was destroyed, its whereabouts cannot be determined.....

A BRIEF PROCEDURAL HISTORY

Following the issuance of the "Corrected Order to Show Cause", a number of the consolidated actions were voluntarily dismissed (Case # 05-10022, 05-11350, 05-12227, 05-14401 and 05-14911). The Court had previously dismissed sua sponte the case styled Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Home Loans, Inc., v. Gordon, Case # 05-12531 for the lack of legal standing of the Plaintiff but, the Court granted the Plaintiff's Motion for Rehearing on Plaintiff's objection, scheduling the same to coincide with the Show Cause hearing involving the other cases.

A review of the remaining cases reveals the following:

1. Case # 05-15138 styled Mortgage Electronic Registration Systems, Inc. as nominee for Washington Mutual Bank, F.A. and Washington Mutual Bank, f/k/a/ Washington Mutual Bank, F.A. v. Martinez, et al.,: The Plaintiff, MERS, alleges in paragraph four of the Complaint that as nominee for Washington Mutual Bank it is the owner and holder of the Mortgage and that Washington Mutual Bank is the owner and holder of the note. The lender, as reflected in the attached exhibit is GM Mortgage Corporation. The Complaint fails to allege any facts that demonstrate how Washington Mutual Bank acquired ownership of the note which

is at odds with the attached exhibits; nor does the complaint allege that MERS as nominee for Washington Mutual Bank is the payee on the indebtedness that is the subject of the foreclosure. At the Plaintiff's request, the Court appointed a Guardian Ad Litem, Richard Allen, Esq. for a number of the named Defendants. In the interest of justice, the Court hereby appoints Mr. Allen as Guardian Ad Litem for the other unserved, absentee or incompetent Defendants in the other three consolidated cases. (Case# 05-2425, 05-12531, and 05-11570) see Peppard v. Peppard, 198 So. 2d 68 (3d D.C.A. Fla. 1967).

2. Case #05-2425 styled Mortgage Electronic Registration Systems v. Cabrera, et al., The Plaintiff, in its own right, alleges in paragraph four of the Amended that it "owns and holds the Note and Mortgage." MERS has joined itself as a party Defendant, as a nominee, for Fermont Investment and Loan. The exhibit attached to the complaint identifies Fermont Investment and Loan as the lender. The Amended Complaint fails to allege any facts that demonstrate how MERS acquired ownership of the note which is at odds with the attached exhibit. At the conclusion of the Show Cause hearing, counsel for the Plaintiff, MERS, filed a Notice of Appearance on behalf of an entity named "U.S. Bank National Association as Trustee under the Securitization Servicing Agreement dated as of October 1, 2004 structured Asset Securities Corporation Fermont Home Loan Trust Mortgage Pass Through Certificate, series 2004-3, the assignee of Mortgage Electronic Registration Systems, Inc., and the owner and holder of the Note and Mortgage." In addition, counsel for this new entity filed a "Motion to Replead to

Substitute Plaintiff" and asserted that since the filing of the law suit and as a result of the issuance of the Order to Show Cause, MERS assigned the subject Mortgage to the moving party. Exhibit B to the proposed Second Amended Complaint purports to be an assignment from MERS to that entity of the Note and Mortgage. Interestingly, paragraph 17 of the proposed amended complaint continue to join MERS as nominee for Ferment Investment and Loan as a party defendant.

3. Case # 05-12531 styled Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc., v. Gordon , Plaintiff, MERS as nominee for Countrywide Home Loans, Inc., alleged in paragraph 4 of the Complaint that it "now owns and holds the Mortgage Note and Mortgage." Count II, to Re-establish the Note, alleges in paragraph 17 of the Complaint that "there was executed and delivered a Promissory Note ("Mortgage Note") to Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc.," Paragraph 19 alleges that Plaintiff "owns the Mortgage Note and is entitled to enforce said Mortgage Note." (emphasis added) Paragraph 20, however, alleges that the note has been lost or destroyed and that it is no longer in its custody or control. Paragraph 22 alleges that Plaintiff was in possession of the Mortgage Note and entitled to enforce it when loss of possession occurred or Plaintiff has been assigned the right to enforce the Mortgage Note. Paragraph 24 alleges that "the note has not been seized or transferred by Plaintiff."

The Court, by its order of August 3, 2005 sua sponte dismissed this action for lack of legal standing, but upon objection of the Plaintiff, the Court granted a

Rehearing scheduling the same at the Show Cause Hearing.

4. Case # 05-11570 styled Mortgage Electronic Registration Systems, Inc., as nominee for Accredited Home Lenders, Inc., v. Revoredo, et al., The original complaint alleged in paragraph 5 that "There has been a default under the note and mortgage held by Plaintiff....." (emphasis added) Interestingly, the Plaintiff does not allege that it "owns" the note in Count I to foreclose. Paragraph 16 of Count II, to Reestablish the Note, alleged, however, that Plaintiff owns and holds the subject Note and Mortgage. Paragraph 18 alleged that Plaintiff or its predecessor(s) was in possession of the Promissory Note and was entitled to enforce it when the loss of possession occurred." In response to the Order to Show Cause, the Plaintiff, MERS filed an Amended Complaint, apparently now in its own right---not as nominee---as "holder" of the note and mortgage. The amended complaint does not allege that the Plaintiff "owns" the note. Paragraph 7 of the Amended Complaint invite the parties to visit its Web cite (www.MERSInc.org) to review the various Agreements, Rules, and Procedures that define the relationship between MERS and its members.

LEGAL STANDING AS "NOMINEE"

MERS has in a number of cases, initiated these mortgage foreclosure action in the capacity of "nominee." Are they "nominee" for the "payee"? Are they "nominee for the "servicer"? What are the recognized legal rights and obligations of a "nominee" in the

mortgage foreclosure context? MERS has promulgated certain Recommended Foreclosure Procedures for various states including the State of Florida. (see Court's Composite Exhibit). Their procedures state:

.....

> "..... if MERS is the original mortgagee of record, meaning that MERS is named on the mortgage in a nominee capacity for the originating lender. The caption should then state Mortgage Electronic Registration Systems, Inc. as nominee for [insert name of the current servicer] .....
>
> .....
>
> The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will be the ultimate owner of the note. (emphasis added page 26)

Of course the next question is what is a "servicer." As explained at the Show Cause hearing (and as described in the Court's Composite Exhibit), a "servicer" is a separate entity contractually charged with the responsibility of servicing the mortgage account. The servicer has no beneficial interest in the Mortgage Note, yet the actions are brought on their behalf, as nominee, as though they were a "payee" on the Mortgage Note. see Overseas Development Inc. v. Krause, 323 So. 2d 679 (3d D.C.A. Fla. 1975). see also Mortgage Electronic Registration Systems, Inc., v. Estrella, 390 F. 3d 522 (7th Cir 2004); Mortgage Electronic Registration Systems, Inc., v. Paul Bureck, 798 N.Y.S. 2d 346 (Supreme Court Richmond County, 2004).

As a "nominee" the complaints fail to allege that MERS has legal standing to maintain these actions and their allegations are at odds with the exhibits attached to the complaints. see Smith v. Kleiser, 107 So. 262 (Fla. 1926); Harry Pepper and Associates

Inc., v. Lasseter, 247 So. 2d 736 (3d. D.C.A. Fla. 1971); see also, Jeff-Ray Corp. v. Jacobson, 566 So. 2d 885 (4th D.C.A. Fla. 1990). As plead, the actions prosecuted by MERS as "nominee" fail to state a cause of action and should be dismissed. see Morales v. All Right Miami, Inc., 755 So. 2d 198 (3d D.C.A. Fla. 2000); Dollar Systems, Inc., v. Detto, 688 So. 2d 470 (3d D.C.A. Fla. 1997). see also Sobel v. Mutual Developments, Inc., 313 So. 2d 77 (1st D.C.A. Fla. 1975).

LEGAL STANDIND AS A "HOLDER"

Next, notwithstanding the many allegations to the contrary in thousands of other cases, that they "own" the Notes in question, MERS concedes that it has no "beneficial interest" in the Mortgage Notes. Indeed, the "Terms and Conditions" if its Membership Agreement as well as its Rules of Membership clearly and unequivocally disclaim MERS's right or interest in the "payment made on account of such mortgage loans" (see Terms and Conditions of Courts' Composite Exhibit). After Judge Logan's decision in Mortgage Electronic Registration Systems, Inc., v. Azize (see attachment to the Court's "Corrected Order to Show Cause") and this Court's Order to Show Cause, contrary to long standing and establish Florida law, MERS now asserts in defense of its Amended Complaint in Case # 05-11570, that it need not allege "ownership" of the Mortgage Notes in order to foreclose. but see Forms 1.944 and 1.934 of the Fla. R. Civ. P., Smith v. Kleiser, Supra, Edason v. Central Farmers' Trust Co, 129 So. 698 (Fla. 1930); Booker v. Sarasota, 707 So. 2d 886 (1st D.C.A. Fla. 1998); Your Construction Center, Inc., v. Gross, 316 So. 2d 596 (4th D.C.A.Fla. 1975); see also Davarzo v. Resolute Insurance Company,

346 So. 2d 1227 (3d. D.C.A. Fla. 1977); see generally Costa Bella Development Corp., v. Costa Development Corporation; 441 So. 2d 1114 (3d D.C.A. Fla. 1983).

MERS relies upon the UCC, Chapter 673, Fla. Statutes in support of its argument that it is entitled to foreclose on the notes in question simply by asserting that it is a "holder" without alleging and proving in addition thereto that it "owns" the instrument. An examination of the Official Comments to the UCC are pertinent. In particular,

Official comment § 3-110 states:

> "This provision merely determines who can deal with an instrument as a holder. It does not determine ownership of the instrument or its proceeds." (emphasis added)

Official comment § 3-203

> "The right to enforce an instrument and ownership of the instrument are two different concepts. (emphasis added)
>
> .....
>
> Ownership rights in instruments may be determined by principles of the law of property, independent of Article 3..... (emphasis added)

Concededly, some commentators are in agreement with the Plaintiff's position that the foreclosure complaint need only allege that they "hold" the Mortgage Note without being required to plead in addition thereto that they "own" the Note. Until such time as the appropriate Florida Appellate Court has definitively ruled that "ownership" is unnecessary to plead and to prove in a foreclosure action, this trial Court will adhere to establish Florida precedent. see generally, Vol. 4 Hawkland, Uniform Commercial Code Services § 3-301:2 (4/99); Vol. 5A, Anderson, Uniform Commercial Code (3d Edition) § 3 -301:9 (1994). The Complaints which fail to "allege ownership" of the Mortgage Notes in question fail to state a cause of action and should be dismissed. Smith v. Kleiser, supra; see also Morales v. AllRight Miami, Inc., 755 So. 2d 198 (3d D.C.A.Fla. 2000);

Dollar Systems v. Detta, 688 So. 2d 470 (3d D.C.A. Fla. 1977).

SHAM PLEADINGS

Now we address the more troubling question of whether MERS has committed fraud upon the Court by knowingly filing pleadings which contain allegations which are clearly false, as a mere pretense set up in bad faith and without color of fact. "A plea is considered 'sham' when it is palpably or inherently false, and from the plain or conceded facts in the case, must have been known to the party interposing it to be untrue." see Rhea v. Halkney, 157 So. 190, 193 (Fla. 1934). The Corrected Order to Show Cause directed MERS to appear before the Court and Show Cause why these consolidated actions and all other similar pending or subsequently filed actions should not be dismissed as a sham and/or a frivolous pleading. MERS had adequate notice and a fair opportunity to present any evidence in response to the Corrected Order to Show Cause. MERS appeared through local and corporate counsel; aside from argument and representations of counsel, MERS failed to produce any witnesses or to offer any evidence in response to the Corrected Order to Show Cause. The only evidence admitted at the hearing was the Courts' composite exhibit which consisted of copies of documents obtain from MERS official web site (www.MERSINC.org) of which the Court took judicial notice -- the same web site referred to paragraph 7 of MERS Amended Complaint in Case # 05-11570. The Court has the inherent authority to present evidence or to call witnesses in the interest of justice and in the ascertainment of the truth. see Ritter v. Jimenez, 343 So. 2d 659 (3d D.C.A. Fla. 1977); see also F.S. §§ 90.612 and

90.615 (2005). Moreover, paragraph 7 of the Amended Complaint, pursuant to Rule 1.130 of the Fla. R. Civ. P., by reference effectively adopted and incorporated therein those documents available on the web-site, copies of which were compiled as the Court's composite exhibit. Further, MERS's Responses in Cases # 05-12227 and 05-10022 to the Court's Order to Show Cause attach thereto the Terms and Conditions of the Membership Agreement together with its Rules of Membership.

Does MERS "own" the mortgage notes as alleged? "Ownership of property implies the right of possession and control thereof, as well as the right to dispose of, alienate, or transfer the property rights freely and without interference or restraint." see 42 Fla. Jur 2d Property § 14. Although promissory notes may be subject to conversion they also constitute "chose in actions." see 12 Fla. Jur 2d Conversion and Replevin § 8; 42 Fla. Jur 2d Property § 10. MERS concedes that it has no beneficial interest in the Mortgage notes; "that it has no rights whatsoever to any payments made on account of such mortgage loans;" "that it is not a vehicle for creating or transferring beneficial interest in the mortgage loans;" that it will comply with the instructions of the holder of the mortgage loan promissory notes or, in the absence of contrary instructions from the Note holder, it will comply with the instructions of the "servicer" of the mortgage loan; and that with regard to foreclosures, "the beneficial owner of such mortgage loan or its servicer shall determine whether foreclosure proceedings with respect to such mortgage loan shall be conducted in the name of Mortgage Electronic Registration Systems, Inc., the name of the servicer, or the name of a different party to be designated by the beneficial owner." (see Terms and Conditions and Rules of Membership in Courts' composite exhibit).

The Recommended Foreclosure Procedure Manual provides,

> "The transfer process of the beneficial ownership of mortgage loans does not change with the arrival of MERS. Promissory notes still require an endorsement and delivery from the current owner to the next owner in order to change the beneficial ownership of a mortgage loan" see Courts' composite exhibit page 4 of the Foreclosure Procedure Manual (emphasis added)
>
> "Typically, the loan servicer, as the mortgagee of record, is the party that initiates the foreclosure proceedings on behalf of the investor. When MERS is the mortgage of record, the foreclosure can be commenced in the name of MERS in place of the loan servicer." Page 7 of the Foreclosure Procedure Manual (emphasis added)
>
> "To help a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERs recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.
>
> .....
>
> The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market. investor, will be the ultimate owner of the note. [8] (emphasis added) Page 26 of the MERS Foreclosure Manual

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8 Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights to the promissory. (emphasis added)

Based upon the evidence and the argument advance at the Order to Show Cause hearing, consistent with the findings of Judge Logan in Mortgage Electronic Registration Systems, Inc., v. Azize Case #05-001295 CI-11 pending in the Circuit Court of the 6th Judicial Circuit (this Court has previously taken judicial notice of that proceeding as per the Corrected Order to Show Cause and attachment thereto) MERS is not the "owner" of these mortgage loans as alleged. The problem for MERS is obvious; it is not the "owner", ought not to have ever plead it and cannot prove it. Frankly, this explains why MERS posted on its web site a revised Model Florida Foreclosure Complaint August 24, 2005 which omits an allegation that they "own" the note in question.

Next, does MERS "hold" the Mortgage Notes as alleged? Florida Statute § 671.201 (20) defines "holder" as:

> "(20) "Holder," with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in case of an instrument payable to an identified person, if the identified person is in possession. "Holder", with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession." (emphasis added) see generally 6 Fla. Jur 2d Bills and Notes §§ 118,120,125.

Further, "'Bearer' means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank" Fla. Statute 671.201 (5). (emphasis added).

MERS's Recommended Foreclosure Procedure for Florida clearly addresses this issue:

> .....
> "Employee of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution from MERS. In other words, the same individual that signs the documents for the servicer will

continue to sign the documents, but now as an officer of MERS." See Page 27

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8 Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights to the promissory note. (emphasis added)

9 If the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having the servicer employee be certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan (footnote 9 page 26, 27 Emphasis Added)

Clearly MERS does not have physical possession of the notes as alleged. As its name implies, Mortgage Electronic Registration Services purpose is to use electronic commerce to eliminate paper. The use of designating employees of the servicer as officers of MERS in order to circumvent the "technical" requirement of law is transparent. MERS, at best, is the agent of the "servicer" or the agent of the "owner" of the note. The servicer itself is the agent of the owner of the note. True, a principle can be said to have "constructive possession" of a negotiable instrument when in the hands of its agent, but not visa versa. Deakter v. Menendez, 830 So. 2d 124 (3d. D.C.A. Fla 2002); see State Street Bank and Trust Company v. Lord, 851 So. 2d 790 (4th D.C.A. Fla. 2003); see generally, Lawyers Title Insurance Company, Inc. v. Novastar Mortgage, Inc., 862 So. 2d 793 (4th D.C.A. Fla. 2004). MERS itself is unable to verify or to certify copies of the promissory notes; such request must be made to the servicer of the mortgage loan in question. Based upon the evidence and arguments presented, MERS does not "hold" the Mortgage Notes as alleged.

Next, in Case # 05-12531 MERS included a Count to Reestablish the Note and

Mortgage. The complaint alleges that MERS "owns" the Mortgage Notes and the Plaintiff was in possession of the note and entitled to enforce it when loss of possession occurred or that it had been assigned the right to enforce the Mortgage Note. Florida Statute § 673.3091 (1) was amended in March, 2004 by Chapter 2004-3 (to comport with the 2002 Revised Article 3 of the UCC) and states:

> 673.3091. Enforcement of lost, destroyed or stolen instrument
>
> > (1) A person not in possession of an instrument is entitled to enforce the instrument if:
> >
> > (a) The person seeking to enforce the instrument was in possession of the instrument and entitled to enforce the instrument it when loss of possession occurred, or has directly or indirectly acquired ownership of the instrument from **a person who was entitled to enforce the instrument when loss of possession occurred;**
> >
> > (b) The loss of possession was not the result of a transfer by the person or a lawful seizure; and
> >
> > (c) The person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

In order to prevail in a mortgage foreclosure action, the Plaintiff must produce the original note or reestablish the note pursuant to law. National Loan Investors v. Joymar Association, 767 So. 2d 549 (3d D.C.A. Fla. 2000); Pastore-Borroto Development, Inc., v. Marevista Apartments, M.B., Inc., 596 So. 2d 526 (3d D.C.A. Fla. 1992); see State Steet Bank and Trust Company v. Lord, 851 So. 2d 790 (4th D.C.A. Fla. 2003); see also, Lawyers Titles Insurance v. Novastar Mortgage, Inc., 862 So. 2d 793 (4th D.A.C. Fla. 2004). Was MERS "entitled to enforce" the Notes when loss of possession occurred? There are no facts alleged which would demonstrate when the Notes were lost; who had

possession of the notes at the time of loss; and by what authority MERS asserts that it was entitled to enforce the notes when loss occurred. See Official Comments §§ 3-301&309. It is clear based upon the evidence that MERS is not an "owner" or "holder" of the notes; nor does MERS take actual possession of the notes themselves.

The evidence is clear and convincing the MERS's allegations that it "owned" "held" and "possessed" the Mortgage Notes in questions are clearly, palpably and inherently false based upon the plain and conceded facts in the case. The evidence is likewise clear and convincing that MERS at all times prior to making these allegations acted in bad faith knowing them to be false and indeed, it was forewarned of the potential consequences for making such false allegations. The falsity of the allegations is readily apparent from a cursory review of their own documents readily available on their official web site and incorporated by reference into the Amended Complaint in Case # 05-11570 . MERS created a world of electronic transactions which does not readily integrate into existing Florida law and procedure: it chose to fabricate the facts and to create a charade to give it appearance of proceeding lawfully------- in short, the ends justified the means.

The "integrity" of the civil litigation process depends on truthful disclosure of "facts". Metropolitan Dade County v. Martinson, 736 So. 2d 794 (3d D.C.A. Fla. 1999). Not surprising, the most egregious pleadings, were contained in the actions which were voluntarily dismissed subsequent to the issuance of the Corrected Order to Show Cause. (see Corrected Order to Show Cause and transcript of hearing) The Court in Boca Burger, Inc. v. Forum, ____ So. 2d _____(Fla. 2005), 30 Fla. L. Weekly S 539 said it best,

The heart of all legal ethics is in the lawyer's duty of candor to a tribunal. It is an exacting duty with an imposing burden. Unlike many provisions of the disciplinary rules,

which rely on the court or an opposing lawyer for their invocation, the duty of candor depends on self-regulation; every lawyer must spontaneously disclose contrary authority to a tribunal. It is counter-intuitive, cutting against the lawyer's principal role as an advocate. It is also operated most inconveniently-that is, when victory seems within grasp. But it is precisely because of these things that the duty is so necessary. Although we have an adversary system of justice, it is one founded on the rule of law. Simply because our system is adversarial does not make it unconcerned with outcomes. Might does not make right, at least in the courtroom. We do not accept the notion that outcomes should depend on who is the most powerful, most eloquent, best dressed, most devious and most persistent with the last word-or, for that matter, who is able to misdirect a judge. American civil justice is so designed that established rules of law will be applied and enforced to insure that justice be rightly done. Such a system is surely defective, however, if it is acceptable for lawyers to "suggest" a trial judge into applying a "rule" or a "discretion" that they know-or should know-is contrary to existing law. Even if it hurts the strategy and tactics of a party's counsel, even if it prepares the way for an adverse ruling, even though the adversary has himself failed to cite the correct law, the lawyers is required to disclose law favoring his adversary when the court is obviously under an erroneous impression as to the law's requirements. Forum, 788 So. 2d 1062 (footnote omitted). see Peter T. Fay, "Officer of the Court", 60 Fla. B.J. 9 (1986).

That having been said, based upon the findings and reasons set forth above, it is

ORDER and ADJUDGED as follows:

1. MERS's ore tenus motions to amend in Cases 05-15138, 05-2425, and 05-12531 are denied. see Metropolitan Dade County, v. Martinson, 736 So. 2d 794, 795 (3d D.C.A. Fla. 1999). MERS was entitled, as a matter of right, to amend its complaint in Case # 05-11570. see Boca Burger, Inc., v. Forum, surpra.

2. Following the Show Cause Hearing, MERS has moved in Case # 05-11570, 05-11350 and 05-12531 for an additional evidentiary hearing. (Case # 05-11350 had been voluntarily dismissed). The motion is denied. MERS had adequate notice and a fair opportunity to present evidence at the Show Cause Hearing on September 16, 2005. Having failed to offer any evidence, it cannot now claim it was denied due process.

3. The Motion to Replead to Substitute Plaintiff in Case # 05-2425 is denied.

4. That the above consolidated actions are hereby dismissed as a sham and/or a frivolous pleading without prejudice, however, to the true "owner" and "holder" of the notes in question to file and prosecute their own mortgage foreclosure actions, if warranted. Pending appellate review of this Order, the Court intends to stay by separate order all other pending or subsequently filed mortgage foreclosure actions filed by MERS and assigned to the undersigned Judge.

DONE and ORDERED in Chambers at Miami-Dade County, Florida this 28th day of September 2005.

JON I. GORDON, CIRCUIT JUDGE

JON I. GORDON
CIRCUIT COURT JUDGE

REPORT TO FANNIE MAE REGARDING SHAREHOLDER COMPLAINTS BY MR. NYE LAVALLE

OCJ CASE NO. 5595

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I.
EXECUTIVE SUMMARY

The Office of Corporate Justice has retained Baker & Hostetler LLP to conduct an independent investigation of concerns expressed by Mr. Nye Lavalle, a Fannie Mae shareholder, about several Fannie Mae business practices in connection with single-family mortgages.[1] Mr. Lavalle accuses Fannie Mae of "aiding, abetting and sanctioning ... predatory lending and servicing schemes," as well as committing accounting and securities fraud, and racketeering violations. He views Fannie Mae as responsible for damage inflicted on single-family borrowers by unscrupulous lenders and servicers because Fannie Mae approves lenders and servicers, maintains servicer profiles and ratings, approves mortgage document terms and servicing requirements, and benefits from the income stream created by wrongdoing. He fears Fannie Mae's alleged failures could result in both civil and criminal liability that would affect shareholder value.

Through a series of communications to members of the Board of Directors and others starting in December 2003, Mr. Lavalle called for an independent investigation of his allegations.[2] The Board of Directors decided to conduct an internal review of these concerns. On September 12, 2005, the Office of Corporate Justice retained Baker & Hostetler LLP.

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[1] Mr. Lavalle has informed us that he personally owns Fannie Mae stock, he is the beneficiary of the Pew Family Trust which owns Fannie Mae stock and debt, and he holds proxies from other Fannie Mae shareholders. *See* E-mail dated July 22, 2005, from Nye Lavalle to Deborah M. House, Vice President and Deputy General Counsel; Daniel H. Mudd, President and Chief Executive Officer; and Board of Director members Stephen Ashley, Ann Korologos, Frederic Malek, Donald Marron, Leslie Rahl, H. Patrick Swygert, and John Wulff; and others; E-mail dated Feb. 15, 2006, from Mr. Lavalle to Mark Cymrot and Ambika Biggs.

[2] *See, i.e.*, E-mail dated Dec. 19, 2003, from Nye Lavalle to then Fannie Mae Chairman and Chief Executive Officer Franklin Raines and other individuals; E-mail dated Jan. 8, 2004, from Nye Lavalle to Vice President and Deputy General Counsel Deborah M. House; E-mail dated June 4, 2004, from Nye Lavalle to Mr. Raines, Ms. House and other undisclosed recipients; E-mail dated July 22, 2005, from Nye Lavalle to Ms. House, Mr. Mudd, and Board of Director members Stephen Ashley, Ann Korologos, Frederic Malek, Donald Marron, Leslie Rahl, H. Patrick Swygert, and John Wulff, and others; E-mail dated July 25, 2005, to the individuals referenced in July 22, 2005 e-mail; E-mail dated July 26, 2005, from Nye Lavalle to the individuals referenced in the July 22, 2005, e-mail.

Mr. Lavalle began investigating the mortgage industry after his parents, Anthony and Matilde L. Pew, had a dispute with mortgage servicer EMC Mortgage Corporation ("EMC"), a subsidiary of Bear Stearns Companies ("Bear Stearns").[3] EMC ultimately foreclosed on the Pews' property, even though, according to Mr. Lavalle, his family is wealthy and made repeated efforts to repay the loan.[4] The dispute motivated Mr. Lavalle to investigate and publicize his allegations that EMC engaged in predatory servicing practices, which has resulted in several lawsuits between Bear Stearns and Mr. Lavalle.[5] Mr. Lavalle then broadened his focus to include the single-family mortgage industry as a whole.

Mr. Lavalle considers himself a gadfly of the mortgage industry. He claims to have been investigating, analyzing and exposing mortgage fraud, predatory lending and servicing, and securitization schemes since 1993.[6] He has a website that details his complaints,

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[3] Mr. Lavalle has alleged that Bear Stearns Companies, its subsidiary EMC, and Savings of America committed predatory lending and servicing practices with regard to his parents' loan. Mr. Lavalle prepared a lengthy account of this dispute in a document he titled, *Predatory Grizzly "Bear" Attacks Innocent, Elderly, Poor, Minorities, Disabled and Disadvantaged!*

Mr. Lavalle alleges that the loan agent who originated the loan committed fraud, and either Fannie Mae, Freddie, EMC or EMC's predecessor, Savings of America, found the fraud. November 1, 2005, conversation with Mr. Lavalle; e-mail dated July 22, 2005, from Nye Lavalle to Deborah M. House, Vice President and Deputy General Counsel; Daniel H. Mudd, President and Chief Executive Officer; and Board of Director members Stephen Ashley, Ann Korologos, Frederic Malek, Donald Marron, Leslie Rahl, H. Patrick Swygert and John Wulff; and others.

[4] Nye Lavalle, *Predatory Grizzly "Bear" Attacks Innocent, Elderly, Poor, Minorities, Disabled and Disadvantaged!*, pp. 24-25, 102; *see also Bear Stearns Companies v. Lavalle*, No. 3:00-CV-1900-D, 2000 WL 34339773, *1 (N.D. Tex. Oct. 27, 2003).

[5] Mr. Lavalle created several websites that alleged that Bear Stearns engaged in abusive and illegal business practices. *See Bear Stearns Companies v. Lavalle*, Case No. 3:00-CV-1900-D, 2000 WL 34339773 (N.D. Tex. Oct. 27, 2003)(in which the court enjoins Mr. Lavalle from using certain domain names and an e-mail address that incorporated Bear Stearns' name) and *Bear Stearns Companies v. Lavalle*, Case No. 3:00-CV-1900-D, 2002 WL 31575771 (N.D. Tex. Dec. 3, 2002). For further examples of the acrimony that exists between Mr. Lavalle and EMC and Bear Stearns, see *Bear Stearns Companies v. Lavalle*, Case No. 3:00-CV-1900-D, 2002 WL 485697 (N.D.Tex. Mar. 29, 2002); *Bear Stearns Companies v. Lavalle*, Case No. 3:00-CV-1900-D, 2001 WL 406217 (N.D. Tex. Apr. 18, 2001); and *Bear Stearns Companies v. Lavalle*, Case No. 3:00-CV-1900-D, 2001 U.S. Dist. Lexis 20633 (N.D. Tex. Dec. 11, 2001).

[6] June 04, 2004, e-mail attachment entitled *Report on Predatory Lending & Servicing Practices & Their Effect on Corporate Compliance, Conduct, Ethics & Accounting* ¶ 11. E-mail dated July 22, 2005, from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors.

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and has posted information on several other sites.[7] He claims to have spent more than 20,000 hours and nearly $500,000 investigating predatory lending and servicing.[8] He reports that he is a consultant to plaintiff lawyers who sue lenders and servicers and to homeowners.

Mr. Lavalle's view is that since Fannie Mae is such an important force in the mortgage industry, it has both the responsibility and means to end abusive lending and servicing practices. Mr. Lavalle's view is that Fannie Mae directs the conduct of servicers from afar. In an e-mail of February 21, 2006, Mr. Lavalle expresses his frustration, saying:

> I hate to keep using the analogies that you don't like but it really is like a Mafia operation. The Godfather [Fannie Mae] says we got a problem, "take care of it" and the lieutenant ["the servicer"] orders the hit [foreclosure] and hires the hitman [the USFN or other lawyer to foreclose].
>
> The hit man and lieutenant don't want the Godfather implicated so they create layers of deniability [a typical CIA, white house, legal and political maneuver] to conceal who the real parties in interest are and who had knowledge of and ordered the hit.

While Mr. Lavalle is partial to extreme analogies that undermine his credibility, he has become knowledgeable about the mortgage industry. He has identified significant issues but, in our view, does not always analyze them correctly. In proposing solutions, he generally undervalues the benefits to homeowners of efficient mortgage markets operated at low costs and overstates the needs of borrowers to have information about the status of their loans in the secondary markets for mortgages. Fannie Mae has already identified and is addressing many of the same issues. This report details several areas where Fannie Mae faces legal and business issues that

---

[7] *See* Mortgage Servicing Fraud.org, http://www.msfraud.org (last visited Mar. 16, 2006). He also has posted information on EMC Sucks.org, http://www.emcsucks.org (last visited Mar. 16, 2006); Websitetoolbox, http://www.websitetoolbox.com/tool/mb/ssgoldstar (last visited Mar. 16, 2006); and Rip-Off Report.com, http://www.ripoffreport.com last visited Mar. 16, 2006).

[8] E-mail dated July 22, 2005, from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors.

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remain to be addressed.

Mr. Lavalle also claims that as a result of this work, he and his family have been harassed. He expresses considerable anger when he attributes these attacks to Fannie Mae. An investigation of his personal retaliation claim is in progress; to date Mr. Lavalle has identified no direct conduct by Fannie Mae that he considers harassing.

We have reviewed more than 1,500 pages of documents provided by Mr. Lavalle to Fannie Mae or us directly and had 17 conversations with him. We have identified six general areas of his concerns: (1) foreclosure policies and procedures, (2) transparency, (3) protection of promissory notes, (4) predatory servicing, (5) fraud detection and reporting, and (6) accounting and securities issues. Within each area, Mr. Lavalle identifies multiple issues that are detailed in this report. In investigating these concerns, we have collected documents from Mr. Lavalle, Fannie Mae and public sources, reviewed extensively eFannie.com, and interviewed at least 30 Fannie Mae employees. The company has fully cooperated in our investigation.

In reviewing Mr. Lavalle's concerns as a shareholder, we have told Mr. Lavalle that the proper scope of our investigation is to determine whether he has identified wrongdoing by Fannie Mae officials or financial risks of sufficient magnitude to affect materially Fannie Mae's financial statements. We cannot resolve every case of an alleged mishandled mortgage.

1. Foreclosure Policies and Procedures

Mr. Lavalle asserts that Fannie Mae's mortgage servicers and the Mortgage Electronic Registry System, Inc. ("MERS") routinely make misrepresentations in foreclosure proceedings. He has identified two categories of alleged misrepresentations: that MERS or the servicers are the holders and owners of the defaulted promissory notes, and that promissory notes

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are lost, stolen or destroyed.[9] He also questions whether foreclosures in the name of MERS or servicers satisfy state laws on standing to sue. Since Fannie Mae authorizes foreclosures, Mr. Lavalle argues that Fannie Mae could be liable for these misrepresentations, including for racketeering violations under federal and state laws, and could risk having foreclosure sales unwound by the courts.[10]

We have found evidence that false statements by foreclosure attorneys are being routinely made in at least two counties in Florida and appear to be occurring elsewhere. Apparently due to Mr. Lavalle's *ex parte* communications, two Florida judges ordered hearings to examine MERS's role in foreclosures. During consolidated hearings that resulted in the judges dismissing 24 foreclosure actions, three judges (including one who took the time to observe and comment) criticized MERS for routinely filing "sham" pleadings and "false" affidavits regarding its interest in promissory notes and supposed lost promissory notes.[11] One judge questioned whether large numbers of foreclosures would have to be reversed due to fraud on the court.

MERS's counsel conceded false allegations are routinely made, and the practice should be "modified." He acknowledged that foreclosure counsel used the Florida Supreme Court's form pleading for foreclosures without critically analyzing the facts. The form contains an allegation that the plaintiff is the "owner and holder" of the promissory note. MERS is neither.

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[9] E-mail dated December 19, 2003, from Mr. Lavalle to Mr. Raines and others.

[10] E-mail dated July 22, 2005, from Nye Lavalle to Mr. Mudd, Ms. House and various members of Fannie Mae's Board of Directors; Nye Lavalle, report on his allegations against Fannie Mae (Feb. 2, 2006) (unpublished report), sent as attachment to e-mail dated Feb. 2, 2006, to Mark Cymrot.

[11] *See* Transcript of September 16, 2005, Hearing, *MERS v. Cabrera*, Case No. 05-02425 CA 05, pp. 15-23.

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Courts in several other states also have rejected foreclosures based upon "discrepancies" between MERS' pleadings and supporting documents. Other court opinions or reports from borrowers – provided by Mr. Lavalle – suggest the same misrepresentations are made in other states. Our review of reported decisions and pleadings from Connecticut, Illinois, Louisiana, New York, Ohio, Kentucky, and Georgia appear to contain similar false statements.

The Florida judges also criticized foreclosure counsel for routinely filing lost note affidavits and counts to reform promissory notes. Mr. Lavalle has identified cases in which the original promissory notes were produced once the court challenged the lost note affidavit. It appears the notes are not lost, and instead, false statements are being made in the pleadings and affidavits.

Masked by the improper pleadings is a substantive legal issue of whether MERS or servicers have standing to foreclose. In the two Florida cases, the judges held that MERS did not have the right to bring the foreclosure actions and dismissed the actions. These opinions are on appeal. Fannie Mae's policy instructs servicers and MERS to commence foreclosure proceedings in their own names if permitted under state laws. While this policy is based upon reasonable legal arguments and policy considerations, the issue is not resolved in case law.

It is axiomatic that the practice of submitting false pleadings and affidavits is unlawful. With his complaint, Mr. Lavalle has identified an issue that Fannie Mae needs to address promptly. For some time, the Legal Department has been working on a proposal for a new computer system to communicate better with and control attorneys working on Fannie Mae litigated matters. As a result of the Florida cases, the Legal Department is formulating a more immediate solution for the issues raised in those cases, including a directive to attorneys and servicers in Florida directing corrective action.

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While these issues present reputational and litigation risks, Mr. Lavalle's assertion that Fannie Mae faces tens of billions of dollars of unenforceable mortgages and damages from class action lawsuits is overstated in our view. Even the Florida judges who were angered at MERS's misconduct dismissed the foreclosure actions without prejudice to the proper party bringing new actions. It appears unlikely that substantial numbers of borrowers who have defaulted on their mortgages could meet the heavy legal burden to avoid foreclosure. Borrowers seeking damages also would face a difficult burden to demonstrate that Fannie Mae is responsible for the attorneys' misconduct and the conduct was the proximate cause of damages. Prompt correct action, however, should be taken and would mitigate these risks.

2. Transparency

One of Mr. Lavalle's principal themes is that the mortgage industry is not transparent to borrowers. The gulf between Fannie Mae's understanding of its role and Mr. Lavalle's contentions about its role is wide. Mr. Lavalle has a broader view of Fannie Mae's responsibilities than appears justified by its charter and the mortgage documents. On the issue of transparency, the mortgage industry has become more complex and more efficient as it has matured but with a loss of transparency to borrowers. Homeowners have benefited through lower interest rates and available mortgages. They remain entitled, as Mr. Lavalle points out, to assurances that their payments are properly credited, they have access to information concerning their mortgage balances, and they are not subject to improper charges or other harassing behavior. Fannie Mae's mortgage guidelines and servicer reviews already address these issues.

Mr. Lavalle focuses on two structural developments in the mortgage markets that have decreased the transparency of transactions to borrowers: the requirement of having notes endorsed in blank and the creation of MERS. Both developments were introduced to reduce

paperwork and the cost of transactions. They have, as Mr. Lavalle suggests, reduced somewhat the transparency from the borrowers' vantage.

Mr. Lavalle proposes that Fannie Mae return to the days when each promissory note is endorsed and each note is returned stamped "paid in full." He wants an audit trail for mortgage servicing and ownership, and he proposes that borrowers be entitled to circumvent predatory servicers by dealing directly with their note owners. He also would give borrowers access to the MERS database – which contains considerable information regarding servicing histories – for a fee.

These proposals are not practical, not legally required by the mortgage documents, and not necessary to meet borrowers' needs. Borrowers do not have a legal right or an identifiable interest in knowing the current owners of their mortgages or in the complex transactions that underlie the secondary mortgage markets. The Servicing Guide addresses borrower interests by placing disclosure obligations on the servicers. Servicing Guide III-104, for instance, provides that "The servicer also must provide a detailed analysis of all transactions relating to a borrower's payments or escrow deposit account whenever the borrower requests it." The Guide also requires servicers to disclose Fannie Mae's interest in the promissory note if a borrower asks.[12]

Mr. Lavalle's proposal that the owner or Fannie Mae, as trustee, should accept loan repayments or otherwise interact directly with borrowers is contrary to the concept of a secondary market. Ownership interests in mortgages are now fractured into a variety of income streams due to the advent of mortgage-backed securities ("MBS"). No single owner would have the means or authority to accept payments. It is also contrary to Fannie Mae's role, as stated in

[12] Servicing Guide, I-311.

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its charter, of creating and operating within a secondary market. During years of lobbying, private financial institutions and their associations have urged Congress to limit the competition Fannie Mae provides private financial institutions. Fannie Mae officials uniformly express sensitivity to Fannie Mae's limitations with regard to direct consumer contacts; Fannie Mae's customers are lenders and servicers for whom homeowners are customers.

Fannie Mae's approach appears sound and efficient, provided that servicers' disclosure obligations are enforced. As this report discusses, Fannie Mae has an extensive program for ensuring servicer compliance.

3. Protection of Promissory Notes

In Mr. Lavalle's view, the numerous lost note affidavits filed in foreclosure proceedings support the notion that notes are regularly misplaced at a risk to both Fannie Mae and borrowers. He expresses fear that Fannie Mae does not have adequate procedures to protect the 15 million freely negotiable promissory notes in its portfolio. Mr. Lavalle has identified an important legal issue – lost notes threaten the enforceability of Fannie Mae's mortgages and expose borrowers to financial risks. Mr. Lavalle, however, has not provided support, and we have not found support, for the assertion that mortgage documents are regularly lost or stolen.

Fannie Mae has extensive custodial procedures and certifies 58 private custodians, which must comply with its security procedures. Fannie Mae's in-house custodian reports minimal lost notes. Fannie Mae does not, however, have a centralized registry to identify notes lost by the other custodians or procedures for notifying or protecting borrowers. Fannie Mae's in-house custodian is subject to internal audit which is ongoing at the time of this report. It has recently instituted reviews of the certified custodians. The internal audits and external reviews should identify any issues regarding missing mortgage documents. The 2005 custodian

reviews did not find significant problems. The internal audits and external reviews do not currently specifically test security procedures for mortgage documents to ensure notes are not lost. We recommend this control be added to future reviews.

4. Predatory Servicing

Mr. Lavalle alleges that Fannie Mae has been instrumental in creating a system in which predatory servicing flourishes. He perceives servicing problems within Fannie Mae's portfolio as more pervasive than Fannie Mae officials and suggests that Fannie Mae should do more to protect borrowers. In his opinion, Fannie Mae should mandate a set of "best practices" based on a 2003 consent decree that Fairbanks Capital Corporation agreed to with the United States.[13] Mr. Lavalle's proposals often go even further than the consent decree in imposing controls but also imposing costs on servicers.

Fannie Mae has extensive procedures to review the conduct and efficiency of its servicers. In recent years, it has become more conscious of concerns about predatory servicing, as have law enforcement and regulatory officials at the federal and state levels. Fannie Mae has responded by adding Servicing Guide requirements, conducting extensive statistical analyses of servicers' portfolios, and engaging in direct servicer reviews. Fannie Mae already has responded to the Fairbanks consent decree by augmenting its Servicing Guide in 2004, and adopting, in whole or in part, the Fairbanks requirements. Where Fannie Mae has not adopted the Fairbanks requirements completely, it believes the requirements are not appropriate for its universe of servicers, which generally do not operate in the subprime markets where most of the issues have

[13] *See U.S. v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Oct. 6, 2003) (order preliminarily approving stipulated final judgment and order as to Fairbanks Capital Corp. and Fairbanks Capital Holding Corp.). In that case, the Federal Trade Commission ("FTC") and the Department of Housing and Urban Development ("HUD"), accused Fairbanks of violating the Federal Trade Commission Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act and the Real Estate Settlement Procedures Act ("RESPA"). The case was settled by a consent decree that mandated certain business practices to correct the alleged abuses.

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been found. The Fairbanks consent decree also was remedial of a serious problem; Fannie Mae believes it can safely give its servicers more discretion to deal with borrowers. These judgments appear to be reasonable.

Mr. Lavalle asserts that Fannie Mae's loan repurchasing policies result in unqualified mortgages being labeled as "scratch and dent."[14] These loans, he claims, are sold to "special servicers," which aggressively service the loans into foreclosure or bankruptcy.[15] Mr. Lavalle refers to these special servicers as "the toxic waste dump."[16] He asserts that these companies regularly defraud borrowers. Mr. Lavalle expresses particular concern about EMC Mortgage, Litton Loan Servicing, Ocwen Financial Corporation, and Select Portfolio Servicing ("SPS") (formerly Fairbanks Capital Corp). Mr. Lavalle proposes that Fannie Mae warn borrowers before transferring loans to special servicers.

Fannie Mae must have the option of protecting its financial condition by setting enforceable parameters for the mortgages it purchases. Fannie Mae, like the rest of the mortgage industry, knows that loans that do not satisfy Fannie Mae, Freddie Mac or Ginnie Mae parameters tend to be less valuable. The industry – not Fannie Mae – created the term "scratch and dent." Fannie Mae's volume of repurchases is relatively small, about 10,000 from 2002 to 2004; it owned an average of 15.2 million loans during that period.

We have reviewed Fannie Mae's oversight of the four servicers that are the target of Mr. Lavalle's strongest criticism. The four servicers are primary servicers for less than 1% of Fannie Mae's portfolio. Since the 2003 consent decree, Fairbanks has changed names to SPS,

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[14] Interview with Mr. Lavalle (Nov. 1, 2005).

[15] E-mail dated July 22, 2005, from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors; *see also* E-mail dated Oct. 7, 2005, from Nye Lavalle to Mark Cymrot.

[16] E-mail dated July 22, 2005, from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors.

ownership to Credit Suisse First Boston, and its conduct. Fannie Mae no longer believes that SPS engages in pervasive predatory servicing practices, but it monitors the company closely. The other three servicers – EMC, Ocwen and Litton – are subject to regular reviews, including on-site visits from Fannie Mae's National Servicing Organization, which has not identified significant servicing problems. Their portfolios perform on a par with other servicers. The three main rating agencies also rate these servicers with their highest or second highest subprime ratings. Fannie Mae is aware that EMC currently is the subject of a Federal Trade Commission investigation, but at this stage, Fannie Mae – like the rating agencies – has not found reason to take action against the company.

Mr. Lavalle appears to overstate the risk to borrowers of repurchases. He does not present any evidence that borrowers are regularly injured by servicers after repurchase transactions. While Fannie Mae polices its own servicers for predatory servicing practices, it is not in the position nor does it have the legal duty to police the entire industry. The general issue of predatory servicing is more appropriately the subject for state and federal regulations and enforcement.

5. Fraud Detection and Reporting

Mr. Lavalle asserts that borrowers should be informed of mortgage fraud that Fannie Mae discovers in its due diligence and quality control processes.[17] Since the promulgation of fraud regulations by the Office of Federal Housing Enterprise Oversight ("OFHEO"), Fannie Mae has implemented extensive procedures to detect and investigate mortgage fraud. The effectiveness of these relatively new procedures will have to be monitored over time. As Mr. Lavalle suggests, Fannie Mae's procedures require fraud reports be made to

[17] E-mail dated July 22, 2005, from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors.

OFHEO but not to borrowers. The OFHEO regulation does not require Fannie Mae to report suspected cases of fraud to borrowers, but also does not relieve Fannie Mae from disclosing fraud to victims or law enforcement pursuant to undefined and largely non-existent "legal requirements." Fannie Mae must take legal or business action it may deem "appropriate."

Fannie Mae's reluctance to contact borrowers arises from its lack of privity with borrowers as a secondary market company and its concern for its potential liability for the reports. The OFHEO regulation does not contain a safe harbor provision that would immunize Fannie Mae from tort suits – such as libel or interference with contract – arising from its reports. The regulation provides Fannie Mae with little guidance and requires the company to make very difficult judgments on incomplete information.

Fannie Mae has faced financial exposure for its failure to report a fraud. In the case of a fraud by First Beneficial Mortgage Corp., Fannie Mae required the lender to repurchase the loans but did not report the fraud to law enforcement authorities. After the loans were sold to Ginnie Mae, Fannie Mae agreed to pay the government $7.5 million to settle a case in which the Justice Department alleged that Fannie Mae had accepted the proceeds of a fraud.

In the case of a fraud by Olympia Mortgage Corporation ("Olympia"), however, Fannie Mae took extensive steps to ensure borrowers were made whole. In 2004, Fannie Mae discovered that a lender had not repaid prior loans after selling it refinancing loans. When Fannie Mae discovered the fraud, it reported its findings to law enforcement, transferred the portfolio to a sub-servicer with instructions to cure damage to borrowers (*e.g.*, adjustment of balances and credit histories), and issued a press release to inform investors that Fannie Mae had purchased the loans out of the pool, which would cause a quick pay down on the loans instead of

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a stream of monthly payments. Fannie Mae, however, does not have an institutional policy for reporting fraud to borrowers or other potential victims.

Fannie Mae appears to be making decisions regarding the disclosure of fraud and misrepresentation findings on an *ad hoc* basis. In our view, Fannie Mae should create a corporate policy for determining when its findings of misrepresentations or fraud in mortgage lending or servicing should be reported to law enforcement, borrowers and potential victims. The policy should balance at least five interests: (1) Fannie Mae's public mission to expand homeownership; (2) potential liability for failure to inform potential victims; (3) lack of a direct relationship with borrowers; (4) law enforcement issues; and (5) risk of liability from libel and other claims brought by the alleged wrongdoers.

6. Accounting and Securities Issues

Mr. Lavalle alleges that Fannie Mae has engaged in several forms of accounting and securities fraud. The company currently is undergoing an extensive accounting review and restatement of its financial statements. We, therefore, have not attempted to duplicate the ongoing work of independent accountants and lawyers.[18] We have limited our review to determining whether the issues raised by Mr. Lavalle are addressed through current tests and analyses designed to ensure the accuracy of financial reporting or are under review in the current review of accounting controls and restatement of financial statements.

Mr. Lavalle has focused on the following four areas: (1) impact of servicer frauds on Fannie Mae's financial statements; (2) the alleged failure to remove paid-off promissory notes

[18] *See* Report of Findings to Date, Special Examination of Fannie Mae, Office of Compliance, Office of Federal Housing Enterprise Oversight, September 17; A Report to the Special Review Committee of the Board of Directors of Fannie Mae, Paul, Weiss, Rifkind, Wharton & Garrison LLP. Fannie Mae is currently working to restate its financial statements from December 31, 2002 through June 30, 2004. It will submit its restated financial statements to its independent auditor, Deloitte & Touche LLP, so it can re-audit them. Federal National Mortgage Association, Notification of Late Filing (Form 12b-25), at 2-3 (Mar. 13, 2006).

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from MBS pools; (3) the question of whether terms of MBS's comply with true sale accounting rules; and (4) whether the transfer of holder status to servicers during foreclosure proceedings are accounted for properly.

Mr. Lavalle suspects that Fannie Mae does not have adequate procedures to monitor servicer reports on mortgages, particularly when servicers are caught committing predatory lending or servicing frauds. The principal balances and loan-to-value ratios on the loans need to be re-amortized and recalculated, but Mr. Lavalle questions whether they are. Inflated property appraisals also could lead to loans that are not adequately secured, thus resulting in inaccurate financial filings. Fannie Mae, however, does extensive modeling of its portfolio to identify anomalies in loan portfolios or particular loans. It, for instance, specifically checks for duplicate loans on the same property and has developed, and is improving, sampling techniques designed to identify appraisal errors or fraud.

Mr. Lavalle's concern that paid-off promissory notes are not being removed from MBS pools is also addressed by current accounting controls. Mr. Lavalle claims to have been informed by mortgage industry executives that paid off promissory are still part of securitized pools.[19] He has not provided documentary evidence of these statements. Fannie Mae's accounting controls address these issues and their accuracy are currently under extensive review. With respect to paid-off loans, the pay down schedules are reconciled to the actual cash received to ensure that pay offs and other transactions are being properly accounted for.

[19] *Id.* In support of his allegations, Mr. Lavalle refers generally to Margery A. Colloff, "The Role of the Trustee in Mitigating Fraud in Structured Financings," J. of Structured Finance (Winter 2005). The article states "Government-reimbursed programs are at the top of the list [of hot spots for fraud]" because "[c]ollateral may be overvalued, or non-existent, or pledged to more than one transaction. No one knows because the collateral is often in the custody of the servicer or another business party, not the trustee." *Id.* at 3.

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Mr. Lavalle also claims that Fannie Mae's policy of removing certain loans from MBS pools raises questions as to whether the sale is a "true sale," which affects its accounting treatment. The Rudman Report discovered one true sale issue, which Fannie Mae is now taking steps to address. In addition, Fannie Mae did not obtain true sale legal opinions prior to the recent restatement. It now has two law firms reviewing true sale questions.

Mr. Lavalle questions how promissory notes are accounted for on servicers' and Fannie Mae's accounting books when Fannie Mae transfers holder status to the servicer at the time of foreclosure. It appears that Mr. Lavalle has incorrectly analyzed the issue. Even when holder status changes, ownership does not change; thus, mortgages are properly maintained on Fannie Mae's books as assets.

II.
THE PROBLEM IN FORECLOSURES

A. Mr. Lavalle's Assertions about Foreclosures

Mr. Lavalle contends that MERS and servicers are routinely making false statements regarding their interest in promissory notes and routinely filing lost note affidavits. In support of his claim, Mr. Lavalle has provided court transcripts and opinions. In two Florida cases, judges dismissed 24 foreclosure actions in which MERS misrepresented it was the holder and owner of notes, when it is neither.[20] The courts found that MERS had submitted "sham" pleadings.[21]

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[20] *In re Mortgage Electronic Registration Systems, Inc.* (MERS), No. 05-001295CI-11 *et al.* (Fla. Cir. Ct. Aug. 18, 2005) (order regarding standing of MERS to foreclose on behalf of others); *MERS v. Cabrera*, No. 05-245 CA 05 *et al.* (Fla. Cir. Ct. Sept. 28, 2005) (order of dismissal on the corrected order to show cause).

[21] *Mortgage Electronic Registration Systems v. Cabrera*, No. 05-245 CA 05 *et al.* (Fla. Cir. Ct. Sept. 28, 2005) (order of dismissal on the corrected order to show cause).

He also provided us with opinions from Connecticut, New York, and Georgia, courts that have found discrepancies between a MERS affidavit and the exhibits.[22] The same allegations are referred to in a Kentucky case and in an email by an Ohio borrower.[23]

The cases raise a substantive issue of whether MERS has standing to conduct foreclosures.[24] MERS, Mr. Lavalle points out, has taken inconsistent positions in different cases. While MERS claims it can conduct foreclosures in its own name, MERS successfully defeated a borrower's effort to cancel a note, in part, by arguing that the borrower had failed to join an indispensable party, Fannie Mae.[25]

With regard to lost note affidavits, Mr. Lavalle suggests Fannie Mae has a serious dilemma. If the notes are not, in fact, missing, Fannie Mae could be liable for the misrepresentations to the courts, he argues; while if the promissory notes actually cannot be produced, borrowers may be relieved of liability for the notes.[26]

Mr. Lavalle alleges that MERS allows Fannie Mae to hide the fact that it is a real party in interest in foreclosure actions and avoid assignee liability issues.[27] Mr. Lavalle has

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[22] *See Mortgage Electronic Registration Systems v. Rees*, No. 2003 Conn. Super. Lexis 2437 (Conn. Super. Ct. Sept. 4, 2003) (unreported); *Mortgage Electronic Registration Systems v. Burek*, 798 N.Y.S.2d 346 (N.Y. Supp. 2004)(summary judgment motion denied based in part on an inconsistency between complaint and its reply affirmation); *Taylor, Bean & Whitaker Mortgage Corp. v. Brown*, 583 S.E.2d 844 (Ga. 2003) (reversed holding of trial court that cancelled note but remanded for determination whether MERS as nominee of the lender had the power to foreclose).

[23] *See Waggoner v. Mortgage Electronic Registration Systems*, No. 2003-CS-002666-MR, slip op. (Ky. Ct. App. Sept. 5, 2005) (affirming summary judgment for MERS in a foreclosure action).

[24] *Mortgage Electronic Registration Systems v. Thompson*, No. 2002 Conn. Super. Lexis 828 (Conn, Super. Ct. Mar. 14, 2002) (unreported); *Mortgage Electronic Registration Systems v. Pressman*, No. 2005 Conn. Super. Lexis 82 (Conn. Super. Ct. Jan. 7, 2005) (unreported).

[25] *Taylor, Bean & Whitaker Mortgage Corp. v. Brown*, 583 S.E.2d 844 (Ga. 2003). Fannie Mae involuntarily terminated Taylor, Bean & Whitaker Mortgage Corp. as a servicer in 2002. March 3, 2006, e-mail attachment of a chart of all terminations in 2002, from Marianne Sullivan, Senior Vice President, Credit Loss Management.

[26] E-mail dated Dec. 19, 2003, from Nye Lavalle to then-Fannie Mae Chairman and Chief Executive Officer Franklin Raines and other Fannie Mae employees, as well as other individuals.

[27] E-mail dated July 22, 2005, from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors.

communicated with MERS General Counsel, Sharon Horstkamp, regarding his concerns that MERS is committing fraud on the courts.[28] Mr. Lavalle states that his communications with Fannie Mae and MERS, as well as the court opinions, put Fannie Mae on notice of the fraudulent conduct of MERS and the servicers, which Mr. Lavalle considers to be agents of Fannie Mae.[29]

These practices not only expose Fannie Mae to liability, he asserts, but also may result in foreclosures being unwound. Mr. Lavalle claims that the alleged fraud regarding ownership of the notes and lost note affidavits violates federal and state Racketeer Influenced and Corrupt Organizations ("RICO") acts and parties engaging in the fraud face both civil and criminal liability.[30] He states that the number of civil conspiracy claims against these Fannie Mae, MERS, and servicers will increase.[31] He claims to be consulting with the counsel for a class action brought by victims who were foreclosed upon illegally.[32] If counsel for the class action seeks to void all prior foreclosures in Florida, Fannie Mae shareholders, as well as servicers, investors, and MERS shareholders, could potentially lose tens of billions of dollars, Mr. Lavalle asserts.[33] This large figure results from the compensation that the victims would be due, as well as the compensation due to new homeowners whose title to the property may be clouded due to the fraud, he claims.[34]

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[28] *See* Letter from Nye Lavalle to Sharon Horstkamp, MERS General Counsel, informing her of his allegations of MERS committing fraud (September 15, 2005).

[29] Telephone interview with Nye Lavalle (November 1, 2005).

[30] E-mail dated Feb. 15, 2006, from Mr. Lavalle to Mark Cymrot and Ambika Biggs.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

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He asserts that he has spoken with hundreds of victims and read their postings on his website and forum.[35] Some of the victims have lost everything due to the fraud, Mr. Lavalle claims, and some have committed suicide or are suicidal.[36] In addition, he believes that a "troubled and victimized borrower" may one day kill a major Wall Street executive or mortgage servicer as a result of the fraud.[37]

B. MERS Foreclosure Procedures

MERS regularly brings foreclosure actions on behalf of parties that own a beneficial interest in mortgages registered on its system. MERS was conceived as a registry for mortgages; the original concept did not include the idea that MERS would conduct foreclosures in its own name.[38] Fannie Mae, Freddie Mac, Ginnie Mae, the Mortgage Bankers Association of America, HUD and VA created MERS to simplify the process of transferring interests in mortgages.[39] Fannie Mae is a MERS shareholder, as well as one of 15 charter members.[40] Fannie Mae also has a permanent seat on MERS' Board of Directors.[41]

MERS reduces the need for paper mortgage assignments and the payment of recordation fees when mortgage rights are transferred.[42] Documents from MERS' creation show

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[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] E-mail dated Nov. 7, 2005, from Daniel C. Smith, Deputy General Counsel, Legal Department, to Mark Cymrot.

[39] MERS is a Reality!, an undated document created by MERS announcing that MERS has been formally launched [hereinafter MERS is a Reality!]. Fannie Mae, Freddie Mac, Ginnie Mae and MBA published the Whole Loan Book Entry White Paper in October 1993, and MERS was incorporated on October 16, 1995. *Id.* According to Fannie Mae's August 18, 1997, Announcement, "Fannie Mae [was] an active supporter of MERS since the concept of electronic tracking was first discussed in 1993, contributing substantial resources and effort to help the concept come to fruition."

[40] MERS Overview; MERS: About Us: Shareholders, available at http://www.mersinc.org/about/shareholders.aspx; MERS State by State MERS Recommended Foreclosure Procedures.

[41] Telephone interview with Robert Engelstad, Vice President for Policy and Standards (February 21, 2006).

[42] MERS is a Reality!, pp. 1, 10.

that the creators contemplated MERS assigning mortgages out of its system in the case of foreclosures, and having this assignment recorded in the land records.[43] We have not been able to determine when or why MERS began bringing foreclosure actions in its name; the Fannie Mae employees involved have since left the company. Presumably, it began offering this service because it adds efficiency by eliminating the need for a mortgage assignment from MERS to the foreclosing servicer.

MERS, however, has not instituted controls over the servicers who conduct foreclosures or their attorneys. MERS has the servicer retain counsel. MERS has authorized an employee of the servicer to act as an officer of MERS for the purpose of approving pleadings. MERS' Recommended Foreclosure Procedures state that employees of the servicers will be MERS certifying officers.[44] A MERS corporate resolution gives these certifying agents the power to sign any necessary documents as a MERS officer.[45] This practice enables in-house transfer of possession of the note from the servicer to MERS, in cases in which the foreclosing party has to be the note holder.[46]

C. MERS Florida Embarrassment

Two Florida trial courts recently have criticized MERS for false pleadings in foreclosure proceedings. Mr. Lavalle apparently approached judges in two Florida counties with sufficient information to prompt the judges to call extraordinary hearings.

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[43] *See* Mortgage Electronic Registration System, Legal Issues Work Team, Mortgage Bankers Association of America, August 25, 1994, p. 9. *See also* MERS Kick Off Meeting Minutes, p. 10, stating "Either the clearinghouse as the mortgagee of record will have to handle foreclosures and execute and record releases or a procedure will have to be developed for another party – the servicer or custodian – to handle one or both of these matters through an assignment or a power of attorney."

[44] *See* State-by-State MERS Recommended Foreclosure Procedure.

[45] *Id.*

[46] *See, e.g.*, MERS Recommended Foreclosure Procedure for Connecticut.

In *MERS v. Cabrera*, the judge started an extraordinary show cause hearing regarding nine foreclosure cases by reading portions of inquiries from Mr. Lavalle and his mother, Ms. Pew.[47] MERS counsel was forced to concede that the complaints contained inaccurate allegations regarding its interests in promissory notes.[48] The complaints allege that MERS is the "holder and owner" of promissory notes when neither is true. This allegation hides the relationships of the parties who will benefit from the foreclosure and masks a serious legal issue. The judge was troubled that MERS changed its stance after filing "thousands and thousands of cases" stating that it owns the note.[49]

A second judge (who took the time to observe the hearing) criticized MERS for routinely filing lost note affidavits and counts to reform the promissory notes. It appears the notes are not lost but lawyers or servicers find it easier and quicker to claim the notes cannot be found. The judge pointed out the inconsistency of the affidavit to the MERS complaint, asking:

> Where is it at the time it is lost in all of these myriad hundreds of cases which alleged that it's in our possession at the time it was lost or destroyed?[50]

The judge accused MERS of filing "false affidavits" and questioned whether foreclosures should be allowed to go forward.[51] MERS' attorney made the concession that "My understanding is lost note affidavits and lost note counts are routinely filed by mortgagees and note holders ..."[52] He acknowledged the practice should be "modified."[53]

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[47] *See* Transcript of September 16, 2005 Hearing at 15-23, *MERS v. Cabrera*, No. 05-245 CA 05 *et al.* (Fla. Cir. Ct. Sept. 16, 2005).

[48] *Id.* at 25.

[49] *Id.* at 58-59.

[50] *Id.* at 49.

[51] *Id.* at 52.

[52] *Id.*

[53] *Id.* at 54.

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In an order of dismissal dated September 28, 2005, the court dismissed four foreclosures as a "sham and/or frivolous pleading," but dismissed them without prejudice so that the true owners and holders of the notes could file their own foreclosure actions.[54]

The court also criticized MERS' practice of certifying servicers' employees as certifying officers, saying: "[t]he use of designating employees of the servicer as officers of MERS in order to circumvent the 'technical' requirement of law is transparent."[55] He called the practice a "charade."[56]

A judge in the Pinellas County, Florida, circuit court issued an order dismissing 20 MERS foreclosures for essentially the same reasons. Judge Logan noted the false allegations, stating:

> "The standard allegation in the Complaint alleged that ... 'Plaintiff now owns and holds a mortgage note and mortgage ...' The Court never found that allegation which is contained in all of the MERS Complaints to be supported by a review of the documents within the Court file."[57]

Fannie Mae does not authorize attorneys to represent that MERS holds or owns promissory notes. The Servicing Guide states "MERS will have no beneficial interest in the mortgage, even if it is named as the nominee for the beneficiary in the security instrument."[58]

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[54] *MERS v. Cabrera*, No. 05-245 CA 05 *et al.* at 5, (Fla. Cir. Ct. Sept. 28, 2005) (order of dismissal on the corrected order to show cause). The court held a show cause hearing for nine consolidated actions on September 16, 2005, but five of the cases were voluntarily dismissed before the issuance of the Corrected Order to Show Cause. *Id.* at 2.

[55] *Id.* at 13.

[56] *Id.* at 42.

[57] *In re Mortgage Electronic Registration Systems, Inc.* (MERS), at 2, No. 05-001295CI-11 *et al.* (Fla. Cir. Ct. Aug. 18, 2005) (order regarding standing of MERS to foreclose on behalf of others).

[58] Servicing Guide, I-407. *See also* Selling Guide, IV-103 ("Even when MERS is named as the nominee for the beneficiary in the security instrument, it will have no beneficial interest in the mortgage.").

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MERS is appealing Judge Logan's ruling on standing, but has ceased all foreclosure actions brought in the name of MERS in Florida in the meantime.[59] In addition, MERS revoked the authority of MERS certifying officers to bring foreclosure actions in Florida.[60] Fannie Mae has joined in filing an amicus brief with Freddie Mac, the Mortgage Bankers Association, Chase Home Finance LLC, and Countrywide Home Loans, Inc., in which they argue that affirming the circuit court's decision on standing would result in higher credit costs, reduced efficiency in the mortgage industry, and impair federal housing policy.[61] To our knowledge, however, MERS has not addressed the issue of its counsels' repeated false statements to the courts.

Mr. Lavalle claims that he is preparing a detailed *ex parte* report that he will submit to Judges Logan and Gordon in which he will offer all of his tapes, e-mail, reports and other information that show Fannie Mae, MERS, EMC, BankOne, Merrill Lynch and United States Foreclosure Network ("USFN") attorneys have been on notice of this issue.[62] He has not shared this report with us. He is also reviewing pleadings in other counties and claims to have found similar false statements in those counties.

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[59] MERS September 23, 2005, press release entitled "MERS Suspends Foreclosures In Florida," available at http://www.mersinc.org/newsroom/press_details.aspx?id=178.

[60] *See* Proposed Changes to Rule 8 (stating "In the state of Florida, the power to conduct foreclosures in the MERS granted to a Member's Certifying Officers under Paragraph 3 of the Member's MERS Corporate Resolution is revoked. Effective January 19, 2006, the Member shall be sanctioned $10,000.00 per violation for commencing a foreclosure in Florida in the name of MERS.") *See* E-mail from Adam L. Bendett of Reiner, Reiner & Bendett, PC to Daniel Gray, Associate General Counsel, stating the proposed changes to the rule will go into effect on January 19, 2006 (December 12, 2005).

[61] *See* Consolidated Joint Amicus Brief, *Mortgage Electronic Registration Systems v. Azize*, No. 2D05-4544 (Fla. Dist. Ct. App. Jan. 27, 2006). *Azize* was one of the cases dismissed in the August 18, 2005 order.

[62] E-mail dated Feb. 15, 2006, from Mr. Lavalle to Mark Cymrot and Ambika Biggs.

D. False Statements May Be Occurring Elsewhere

MERS' concession that false statements are routine does not appear to be isolated to Florida. Other courts have questioned the accuracy of MERS' pleadings. A review of reported cases and pleadings reveal that MERS counsel are misrepresenting to courts that MERS is the owner or holder of defaulted promissory notes in at least 7 states. While these reported cases are small in number, the law firms undoubtedly are making the same representations in other foreclosures, and given the experience in Florida, these cases could be indicative of a broader problem within these states. While Fannie Mae officials do not have a single opinion, some officials believe foreclosure counsel are sacrificing accuracy for speed.

Connecticut, New York, and Georgia courts have found "discrepancies" in MERS' pleadings. In *Mortgage Electronic Registration Systems v. Thompson*, a trial court dismissed a foreclosure action brought by MERS after it had ruled in MERS' favor and title to the property had passed.[63] In that case, the homeowner of the foreclosed property moved to reopen the judgment, arguing that MERS did not have standing to bring the foreclosure action because it did not own the mortgage at the time it initiated the action, and the court agreed.[64] *See also Mortgage Electronic Registration Systems v. Rees*, No. 2003 Conn. Super. Lexis 2437 (Conn. Super. Ct. Sept. 4, 2003) (unreported) (motion for summary judgment denied because of a discrepancy between an affidavit and the promissory note); *Mortgage Electronic Registration Systems v. Pressman*, No. 2005 Conn. Super. Lexis 82 (Conn. Super. Ct. Jan. 7, 2005)(unreported)(motion to strike special defenses denied including one that alleged that MERS did not have standing to enforce the indebtedness); *Mortgage Electronic Registration Systems v.*

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[63] *Mortgage Electronic Registration Systems v. Thompson*, No. 2002 Conn. Super. Lexis 828, at *2 (Conn, Super. Ct. Mar. 14, 2002) (unreported).

[64] *Id.* at *2.

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Burek, 798 N.Y.S.2d 346 (N.Y. Supp. 2004)(summary judgment motion denied based in part on an inconsistency between complaint and its reply affirmation); *Taylor, Bean & Whitaker Mortgage Corp. v. Brown*, 583 S.E.2d 844 (Ga. 2003)(reversed holding of trial court that cancelled note but remanded for determination of whether MERS as nominee of the lender had the power to foreclose).

Mr. Lavalle provided us with other examples in which MERS claimed to be the owner or holder of the note, or used a lost note affidavit. *See Waggoner v. Mortgage Electronic Registration Systems*, No. 2003-CS-002666-MR, slip op. (Ky. Ct. App. Sept. 5, 2005)(affirming summary judgment for MERS in a foreclosure action); and *Mortgage Electronic Registration Systems v. Andrews*, No. 05-CA-007881, Lost Instrument Aff. (Fla. Cir. Ct. Nov. 10. 1005).

Our research also revealed other cases in Illinois, Ohio, Louisiana and Connecticut in which MERS claimed to hold or own the promissory notes. *See Freedom Mortgage Corp. v. Burnham Mortgage*, No. 03 C 6508 2006 U.S. Dist. LEXIS 10538, *46 n.14 (N.D. Ill. Mar. 13, 2006)(stating that the verified complaints in foreclosure actions stated MERS was the owner and legal holder of the note, mortgage and indebtedness); *Mortgage Electronic Registration Systems v. Akpele*, C.A. No. 21822, 2004 Ohio App. LEXIS 3052, *7 n. 2, *13 (Ohio Ct. App. June 30, 2004)(stating that MERS' affidavit asserted that MERS was the holder of the note and mortgage and holding that MERS was the holder, but reversing the lower court's grant of summary judgment for other reasons); *Mortgage Electronic Registration Systems v. Barclay*, No. 05AP-58, 2005 Ohio App. LEXIS 3375 (Ohio Ct. App. July 21, 2005)(stating that MERS' complaint asserted that it was the owner and holder of the note and mortgage and affirming the trial court's denial of relief to the appellant from a default judgment in a foreclosure action); *Mortgage Electronic Registration Systems v. Richard*, 889 So. 2d 1126, 1126

(La. Ct. App. 2004) (stating that MERS alleged in a petition for executory process that it was the holder of the mortgage); *Mortgage Electronic Registration Systems v. Dorcely*, CV020187258NS, 2002 Conn. Super. LEXIS 3086, *1, *7-8 (Conn. Super. Ct. Sept. 18, 2002)(unreported)(stating that MERS alleged it was the holder of the note and mortgage and denying MERS' motion to strike the defendants' special defenses because it had not recorded an assignment of the mortgage); *Mortgage Electronic Registration Systems v. Leslie*, CV044001051, 2005 Conn. Super. LEXIS 1360, *5 (Conn. Super. Ct. May 25, 2005)(unreported)(denying the defendants' motion to strike and holding that MERS had standing to bring a foreclosure action because it alleged in its complaint that it was the mortgagee and holder of the note and mortgage); *Mortgage Electronic Registration Systems v. Serencsics*, CV000339985S, 2000 Conn. Super. LEXIS 3028, *2, *4 (Conn. Super. Ct. Nov. 16, 2000)(unreported)(stating that MERS filed and served an affidavit stating that it was the holder of the mortgage and note and granting MERS summary judgment on the issues of default and the right to foreclose); and *Mortgage Electronic Registration Systems v. Socci*, CV020190866S, 2003 Conn. Super. LEXIS 1490, *1, *3 (Conn. Super. Ct. May 16, 2003) (unreported) (stating that MERS's affidavit showed that was the owner of the note and mortgage and granting MERS' motion for summary judgment as to liability).

MERS recently amended its Rules of Membership to prevent servicers from pleading that MERS owns the note and to require MERS certifying agents to have possession of the note before conducting foreclosures in MERS' name.[65]

[65] Proposed Changes to Rule 8, Foreclosure, Section 2. *See* E-mail from Adam L. Bendett of Reiner, Reiner & Bendett, PC to Daniel Gray, Associate General Counsel, stating the proposed changes to the rule will go into effect on January 19, 2006 (December 12, 2005).

E. Servicers Standing to Foreclose

While MERS took the brunt of the public criticism for false affidavits, servicers' counsel were the ones representing MERS and filing the false statements. There is no reason to believe they are acting any differently when representing servicers directly.[66] The legal issue of whether servicers have standing to bring foreclosures also is unresolved, although there are more precedents supporting servicer standing.

Fannie Mae's position is that servicers have a beneficial interest in the mortgages they service, the servicing rights.[67] When borrowers remit their fees to servicers each month, the servicers forward most of the payment to Fannie Mae, the owner or trustee of the notes, but they also receive a portion of the payments as their servicing fee. Fannie Mae's position is that ownership of servicing rights is a sufficient interest to give servicers standing to bring foreclosure actions.[68]

At least one court has found specifically that a mortgage servicer has standing to foreclose. *Fairbanks Capital Corp. v. Nagel*, 289 A.2d 99 (N.Y. App. Div. 2001) (servicer had

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[66] Mr. Lavalle has provided us with pleadings in which MERS was not the plaintiff, and the plaintiff or servicer alleged the note was lost. *See, i.e.*, Complaint, *Bank One v. Calcaterra*, No. 0008468 (Fla. Cir. Ct., n.d.) (which includes a count to reestablish a lost note); Plaintiff's Affidavit, *Bank One v. Grusczynski*, No. 00-9764 B (Fla. Cir. Ct. Feb. 16, year indecipherable) (in which a Fairbanks employee asserts that the original note has been lost); Complaint, *Bank One v. Piette*, No. 01005784 (Fla. Cir. Ct. Jul. 12, 2001) (which includes a count to reestablish a lost note); Complaint to Foreclose Mortgage and to Enforce Lost Loan Documents, *Bankers Trust Co. v. Jackson*, No. 01005591 (Fla. Cir. Ct. July 5, 2001); Lost Instrument Affidavit, *Bankers Trust Co. v. Jackson*, No. 01005591 (Fla. Cir. Ct. July 17, 2001); Affidavit as to Lost or Misplaced Original Note, *Cendant Mortgage Corp. v. Corrigan*, No. 50-2004-CA-742 (Fla. Cir. Ct. Feb. 4, 2004); Complaint in Mortgage Foreclosure, *Deutsche Bank National Trust Co. v. Stephens*, No. 05-04002 (Fla. Cir. Ct. May 5, 2005) (which includes a count to reestablish a lost note); Affidavit of Lost Note, *Deutsche Bank National Trust Co. v. Stephens*, No. 05-04002 (Fla. Cir. Ct. May 20, 2005); Complaint, *Deutsche Bank National Trust Co. v. Sherman*, No. 05004405 (Fla. Cir. Ct. May 19, 2005) (which includes a count to reestablish a lost note); and Complaint to Foreclose Mortgage and to Enforce Lost Loan Documents, *SFJV-2004-1 LLC v. Boykin*, No. 05-03202 (Fla. Cir. Ct. Apr. 11, 2005). Mr. Lavalle also provided e-mail from a borrower from Ohio who claims that the servicer in a foreclosure action against the borrower falsely stated that it was the owner and holder of the note. The borrower claims to be preparing a motion to vacate the foreclosure judgment because the servicer allegedly did not have standing to bring the action. *See* E-mail dated Feb. 21, 2006, from Nye Lavalle to Mark Cymrot, which includes e-mail correspondence from the borrower.

[67] Interview with Daniel C. Smith, Deputy General Counsel, Legal Department (October 14, 2005).

[68] *Id.*

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standing to sue based on the trustee's delegation of authority over the mortgage). Bankruptcy court precedents also support the servicer. (*In re Raymond C.Q.K.T.N.W. Tainan*, 48 B.R. 250 (Bankr. E.D. Pa. 1985) (servicer in its capacity as representative for collection purposes of Fannie Mae was a real party in interest); *Greer v. O'Dell,* 305 F.3d 1297 (11th Cir. 2002) (credit card servicer was a real party in interest).

Mr. Lavalle, nonetheless, suggests that foreclosures could still be unwound because an indispensable party, the owner of the promissory note, was not a party to the action. Three cases from lower courts do not resolve the issue, and therefore the accuracy of pleadings is particularly important to avoid misleading borrowers and the courts. Fannie Mae is entitled to take the legal position that MERS or servicers have standing to sue, provided the pleadings clearly set forth the facts.

F. Fannie Mae's Current Policy on Foreclosures

Fannie Mae's Servicing Guide states that routine legal proceedings generally should not be initiated in Fannie Mae's name, even though it would clearly satisfy the standing requirements in all states as the owner and holder of the promissory note.[69] Foreclosures are conducted in Fannie Mae's name only when it is the mortgagee of record, which generally means it is an older loan, or if a filing in MERS or the servicer's name would require the imposition of a transfer tax.[70] The Servicing Guidelines express a preference for naming MERS as plaintiff.[71]

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[69] Servicing Guide, VIII-102.

[70] Servicing Guide, VIII-105.

[71] *Id.* It states: "In either situation, the attorney (or trustee) should subsequently have title vested in our name in a manner that will not result in the imposition of a transfer tax. Examples of ways to accomplish this include the assignment of the foreclosure bid or judgment to us, inclusion of appropriate language in the judgment that directs the sheriff or clerk to issue a deed in our name, recordation of an assignment of the mortgage or deed of trust to us immediately before the foreclosure sale, recordation of a grant deed to us immediately following the foreclosure sale, etc. The servicer and its selected foreclosure attorney (or trustee) must determine the most appropriate method to use in each jurisdiction. ..."

Fannie Mae's guidelines do not provide specific pleading guidelines. Servicers and their attorneys are required to comply with the applicable state laws.[72]

Although foreclosure actions generally are not to be initiated in Fannie's name, the Guide states that if the borrower asks who owns the note, the servicer is to inform them that Fannie Mae owns it.[73] Fannie Mae's position is that by having the servicer foreclose, the borrower continues to deal with the company with whom it already has a relationship. The servicer is in the best position to make adjustments to loan records and has the most detailed information about the loans. In addition, if the borrower has complaints, it is likely against the servicer, and they can be litigated during the foreclosure.

On the issue of producing the promissory note during the foreclosure, the Servicing Guide states that most servicers have a copy of the note and can begin foreclosure proceedings with copies in jurisdictions that allow it.[74] For jurisdictions that require the original note, the servicer can request it from Fannie Mae.[75] For jurisdictions that allow only the "holder" of the note to conduct a foreclosure, Fannie Mae transfers possession of the note to the servicer temporarily in accordance with a statement in its Servicing Guide, which says:

> In some jurisdictions, only the "holder" of the note may conduct a foreclosure. In any jurisdiction in which our servicer must be the holder of the note in order to conduct the foreclosure, we

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[72] Servicing Guide, I-306.

[73] Servicing Guide, I-311.

[74] Servicing Guide, VIII-102. It states: "In most cases, a servicer will have a copy of the mortgage note that it can use to begin the foreclosure process. However, some jurisdictions require that the servicer produce the original note before or shortly after initiating foreclosure proceedings. If our possession of the note is direct because the custody documents are at our document delivery facility, to obtain the note and any other custody documents that are needed, the servicer should submit a request to our Custody Department through the Loan Document Request System (LDRS) on our Web site (www.efanniemae.com). If we possess the note through a document custodian that has custody of those documents for us, to obtain the note and any other custody documents that are needed, the servicer should submit a *Request for Release/Return of Documents* (Form 2009) to our custodian. In either case, the servicer should specify whether the original note is required or whether the request is for a copy."

[75] *Id.*

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> temporarily transfer our possession of the note to our servicer, effective automatically and immediately before commencement of the foreclosure proceedings. When we transfer our possession, our servicer becomes the holder of the note during the foreclosure proceedings.[76]

In Fannie Mae's view, no documents need be exchanged or physical possession of the note passed to signify a change in holder status. The Guide states:

> The transfer of our possession, and any reversion of possession to us, are evidenced and memorialized by our publication of this paragraph. This Guide provision may be relied upon by a court to establish that the servicer conducting the foreclosure proceeding has possession, and is the holder, of the note during the foreclosure proceeding, unless the court is otherwise notified by Fannie Mae.[77]

Possession of the note automatically reverts to Fannie Mae if the borrower reinstates the loan or the servicer stops servicing the loan for Fannie Mae.[78]

Fannie Mae's position has a reasonable legal basis, but the courts may or may not accept it. The issue is whether stating that holder status is transferred without a physical transfer of the note is enough to make the servicer the holder. The U.C.C. defines a "holder" as: "(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession . . . ."[79] In order to be a holder, the servicer must be in possession of the promissory note that was endorsed in blank to Fannie Mae.

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[76] *Id.* For instance, a Connecticut appellate court has held that an entity must be a holder of a promissory note in order to initiate foreclosures. *See Fleet National Bank v. Nazareth*, 818 A.2d 69, 72 (Conn. App. 2003) (holding that a Connecticut statute allows a holder of a note who has not had the mortgage assigned to him to foreclose, but that an assignee of the mortgage who does not hold the note cannot foreclose).

[77] *Id.*

[78] *Id.* It states: "If the borrower reinstates the loan or the servicer ceases to service the loan for Fannie Mae for any reason, then possession of the note at that time automatically reverts to Fannie Mae and the note must be returned to the document custodian. At that time, Fannie Mae also resumes being the holder, just as it was before the foreclosure proceedings."

[79] U.C.C. § 1-201(21).

In *MERS v. Cabrera*,[80] the trial court held that MERS did not have physical possession of the promissory notes, as it alleged, and thus it did not "hold" the notes. It stated when a note is in the hands of an agent, the principal can have constructive possession of the note.[81] However, the converse was not true.[82] As MERS was an agent of the servicer or the owner of the note, it could not have constructive possession based on the servicer's possession of the note, the court held.[83] This decision is now on appeal and Fannie Mae has supported its position with authorities in an *amicus* brief.[84]

G. Fannie Mae's Oversight of Foreclosure Attorneys

Most foreclosures are conducted by servicers (even where MERS or Fannie Mae are the named plaintiff), and the servicers are responsible for choosing counsel. Fannie Mae, through its National Servicing Organization ("NSO"), has established a Retained Attorney Management Network ("RAMN"), which acts as a listing of preferred counsel.[85] Servicers can

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[80] *MERS v. Cabrera*, No. 05-245 CA 05 *et al.* (Fla. Cir. Ct. Sept. 28, 2005)(order of dismissal on the corrected order to show cause). The court used a slightly different definition of "holder." Florida Statute § 671.201(20) defines holder as: "'Holder,' with respect to a negotiable instrument, means the person in *possession* if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in *possession*. 'Holder,' with respect to a document of title, means the person in *possession* if the goods are deliverable to bearer or to order of the person in possession."

[81] *Id.* at 13.

[82] *Id.*

[83] *Id.* at 13.

[84] The trial court's view, however, has support. Gilmore's treatise on Security Interests in Personal Property takes the position that a written declaration is insufficient to "give him the right to collect the instrument from the obligor." *See Investment Service Co. v. Martin Bros. Contained & Timber Products*, 465 P.2d 868 (Or. 1970), quoting I Grant Gilmore, *Security Interests in Personal Property* § 1.2, 11 (1965). The Supreme Court of Oregon has stated that "it is questioned under the U.C.C. whether constructive possession is sufficient [for recovery on a negotiable instrument]." *Id. Cf. In re Big Squaw Mountain Corp. v. Big Squaw Mountain Corp.*, 122 B.R. 831, (Bankr. Me. 1990) (stating "Certainly, were we considering an attempted transfer for security of a negotiable instrument by a separate writing, unaccompanied by delivery of the instrument itself, the opportunity for mischief would exist, and the transfer would not be effective against third parties.").

[85] Servicing Guide, VIII-104.02; e-mail from Adam Womack, Servicing Process Manager, Quality Assurance (December 19, 2005). .

choose to retain a RAMN counsel or operate outside of Fannie Mae's network.[86] Fannie Mae has a retainer agreement with RAMN counsel.[87] Fannie Mae's Servicing Guide contains time guidelines for the efficient handling of defaults and foreclosures.[88] Servicers who retain RAMN counsel are relieved of penalties for delays.[89] About 21 percent of foreclosure actions are RAMN network cases.[90]

If the servicer chooses not to work within the RAMN network, it can retain counsel of its own choosing. Fannie does not have a retainer agreement with non-network counsel. In those cases, the attorney-client relationship appears to be between the servicer and the attorney. The Servicing Guide Art VIII, 104.01 imposes upon servicers the responsibility for monitoring all aspects of the performance of any foreclosure attorney or trustee it retains,

Fannie current servicer oversight does not review attorney pleadings or litigation conduct. Servicing specialists, who are a part of the NSO's Centralized Servicing Operations Division,[91] are responsible for attorney supervision, as well as loss mitigation, loan administration, and default management (which includes foreclosures and bankruptcy).[92] Loan administration includes reviewing loan level delays in foreclosures and bankruptcies to determine whether to assess penalties against servicers and reviewing reports of delinquent loans

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[86] Servicing Guide, VIII-104. In many cases, servicers will conduct a foreclosure out of the network, even though the attorney they select is part of RAMN. Telephone interview with Debbie Kehr, Director of Centralized Servicing Operations (Dec. 19, 2005).

[87] Telephone interview of Robin Gillespie, Vice President and Deputy General Counsel (Mar. 17, 2006).

[88] *See, e.g.*, Servicing Guide, VIII, Ch 1, Exhibit 4, and Servicing Guide, VII-602.

[89] Servicing Guide, VIII-104.02.

[90] Telephone interview with Debbie Kehr, Director of Centralized Servicing Operations (Dec. 19, 2005).

[91] *Id.*

[92] *Id.*

to determine if they were accurately reported.[93] Fannie Mae's NSO does not perform quality assurance of attorney conduct or the legal positions taken in pleadings. Fannie Mae views foreclosure counsel as the attorney of the servicer. The Legal Department has had a view that it can insulate Fannie Mae from responsibility for servicer and attorney misconduct if they are independent contractors and not under Fannie Mae's direct supervision.[94] This approach is under review.[95] Legal positions taken by counsel can have state-wide or national impact, like the standing issue that is currently being litigated in Florida. Since Fannie Mae authorizes servicers to execute legal documents on its behalf[96] and receives the benefit from foreclosures, some plaintiffs may argue that servicers and their counsel are not independent contractors, and therefore may not be insulated from liability for misconduct by servicers or their attorneys.

Fannie Mae believes that lost note affidavits are the servicer's responsibility and can not be effectively reviewed under the current system. Fannie Mae has delegated the execution of lost note affidavits to servicers.[97] It does not believe that it is in a position to make a subjective call as to whether a servicer has lost a note.[98] The party executing the affidavit makes a sworn statement under penalty of perjury as to whether the note is lost, and an attorney advises the executing party regarding the legality of the affidavit.[99] The servicer must comply with all applicable law related to foreclosures.[100] The use of a lost note affidavit also is not

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[93] Attachments to e-mail from Debbie Kehr, Director of Centralized Servicing Operations (Dec. 19, 2005).

[94] Interview of Daniel C. Smith, Deputy General Counsel of the Legal Department (Oct. 14, 2005).

[95] Telephone interview of Robin Gillespie, Vice President and Deputy General Counsel (Feb. 1, 2006).

[96] Servicing Guide I-202.05: Execution of Legal Documents.

[97] E-mail from Adam Womack, Servicing Process Manager, Quality Assurance (Dec. 19, 2005).

[98] *Id.*

[99] *Id.*

[100] Servicing Guide, I-306. It states: "We require each Fannie Mae-approved servicer (and any subservicer or third-party originator it uses) to be aware of, and in full compliance with, all federal, state, and local laws (including statutes, regulations, ordinances, administrative rules and orders that have the effect of law, and judicial rulings and

captured as computer data, so reviewing lost note affidavit usage would be manual.[101] Fannie Mae's servicing consultants also do not investigate whether notes are really lost when servicers use lost note affidavits.[102] Fannie Mae views such an investigation as unnecessary because document custodians are responsible for retaining mortgage documents and must bear an expense if they are unable to locate mortgage documents.[103] For these reasons, Fannie Mae believes that servicers are not likely to state that the notes are lost, stolen or missing if they in fact are not.[104] Some in the Legal Department, however, suspect foreclosure attorneys may be taking short cuts by misrepresenting that the notes are lost.

H. Proposal for Changes in Foreclosure Procedures

The Legal Department is formulating a proposal for a new computer system that would permit better communication with foreclosure attorneys and capture information about their conduct.[105] The department recognizes the need for greater communication with attorneys representing Fannie Mae's interests in foreclosures and other proceedings.[106] The new system would permit direct interaction between Fannie Mae attorneys and counsel handling specific cases.[107] Legal positions with broad impact could be coordinated.[108] Lost note affidavits and

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opinions) that apply to any of its origination, selling or servicing practices or other business practices (including the use of technology) that may have a material effect on us. ...."

[101] E-mail from Adam Womack, Servicing Process Manager, Quality Assurance (Dec. 19, 2005).

[102] Telephone interview with Sheila Green, Director of Servicer Management (Dec. 16, 2005).

[103] *Id.*

[104] *Id.*

[105] Telephone Interview with Robin Gillespie, Vice President and Deputy General Counsel (Feb. 1, 2006).

[106] *Id.*

[107] *Id.*

[108] *Id.*

other conduct could be better monitored.[109] The creation and installation of the computer system is a long-term goal, and the system will not be operational in the near future.[110]

The Legal Department also plans to recommend amendments to the Servicing Guide to address the issues raised in the Florida cases, but that too is a long-term project.[111] In the meantime, the Legal Department is working on an interim solution to instruct its RAMN attorneys and large servicers as to how to avoid the issues. [112] It also plans to review samplings of pleadings its attorneys and servicers file to ensure they are complying with Fannie Mae's instructions.[113]

I. Findings on Foreclosure Procedures

We conclude that foreclosure attorneys in Florida are routinely filing false pleadings and affidavits regarding the plaintiff's – MERS or servicers – interest in the proceedings and regarding lost, missing or destroyed promissory notes. The practice could be occurring elsewhere. It is axiomatic that the practice is improper and should be stopped. Fannie Mae has not authorized this unlawful conduct. As a result of the MERS hearings in Florida, Fannie Mae recognizes the issue and is taking action to correct it.

Mr. Lavalle's claim that large numbers of foreclosures – tens of billions of dollars worth – could be unwound as a result of this misconduct likely overstates the risk to Fannie Mae. Courts are unlikely to unwind foreclosures unless borrowers can demonstrate that the foreclosure would not have gone forward with the correct pleadings, which is a difficult burden for most borrowers to meet. Even the Florida judges who were very angry about the false pleadings

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[109] *Id.*

[110] Telephone Interview with Robin Gillespie, Vice President and Deputy General Counsel (Mar. 17, 2006).

[111] *Id.*

[112] *Id.*

[113] *Id.*

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ordered that the foreclosures could go forward with correct pleadings and the proper plaintiff. Civil lawsuits would have a similar burden; the plaintiffs would have to demonstrate damages arising from the false statements. Mr. Lavalle has not presented evidence that the borrowers were improperly placed in default. Nevertheless, the issues Mr. Lavalle raises should be addressed promptly in order to mitigate the risk of exposure to lawsuits and some degree of liability.

III.
TRANSPARENCY ISSUE

A. Mr. Lavalle's Plea for Transparency

A principal source of Mr. Lavalle's concerns is his perception that the mortgage industry is not transparent to homeowners and courts. As the industry has matured, it has become highly complex. Fannie Mae has instituted policies that have made transactions more efficient and less costly but have resulted in borrowers having less access to information about their mortgages. In Mr. Lavalle's view, this development allows Fannie Mae and others in the mortgage industry to hide transactions that should be transparent to borrowers, has contributed to predatory servicing, and has made Fannie Mae's financial statements unreliable.

For instance, Fannie Mae's policy of having promissory notes endorsed in blank, undated and without recourse[114] was intended to reduce significant administrative costs. When notes are endorsed in blank and mortgage assignments are not recorded in land records, however, borrowers cannot identify the chain of owners and servicers. This procedure, Mr. Lavalle contends, hinders borrowers from auditing the trail of charges and payments in order to correct

[114] Selling Guide, IV-204.

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errors.[115] Victims of predatory servicing, Mr. Lavalle also contends, should be entitled to circumvent unscrupulous servicers to pay off their loans directly to the owners.[116]

Mr. Lavalle contends that by creating MERS and United States Foreclosure Network, Fannie Mae has "helped shaped [sic], guide, direct, govern and implement such [predatory or aggressive servicing] practices for a variety of motives."[117] MERS is another innovation designed to add efficiency to the system. It eliminates the need for paper mortgage assignments and the payment of recordation fees when mortgages are transferred.[118] Mr. Lavalle claims, however, that MERS has further hidden the chain of servicers and owners.

Mr. Lavalle proposes that Fannie Mae instruct MERS to open its records for a fee to the public so that borrowers can ascertain who are the servicers, trustees, investors and custodians of their mortgages.[119] He also claims to be obtaining proxies from friends who have substantial shares in Fannie Mae so that they can seek approval from the Board of Directors or shareholders for various corporate resolutions, including one for an investigation of Fannie Mae's relationship with MERS and USFN.[120]

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[115] Telephone interview with Nye Lavalle (Feb. 6, 2006).

[116] Telephone interviews with Nye Lavalle (Nov. 1, 2005 and Feb. 6, 2006).

[117] E-mail dated July 22, 2005, from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors.

[118] Fannie Mae Announcement 97-0;, MERS is a Reality!, pp. 1, 10.

[119] E-mail dated June 4, 2004, from Nye Lavalle to Mr. Raines, Ms. House, and other undisclosed recipients; E-mail dated July 22, 2005, from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors; E-mail dated Oct. 14, 2005, from Nye Lavalle to Mark Cymrot.

[120] E-mail dated Feb. 15, 2006, from Mr. Lavalle to Mark Cymrot and Ambika Biggs.

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B. Effects of Note Endorsed In Blank

When Fannie Mae purchases mortgages,[121] Fannie Mae requires the lender to endorse the promissory notes "in blank" and without recourse.[122] Promissory notes in this form are bearer instruments that can be negotiated without endorsement.[123] Promissory notes, which establish the obligation to repay the loan, are governed by Article 3 of the Uniform Commercial Code ("UCC"). The sale of promissory notes is also now covered under Revised UCC Article 9.[124] As a result of Fannie Mae's policy of requiring lenders to endorse notes in blank, notes do not contain a series of endorsements that would permit the borrower to identify the chain of ownership. Secondary market transactions, however, do not affect a borrower's payments or other obligations under the mortgage. They also do not necessarily affect the servicer with whom the borrower interacts.

Mortgages are treated differently from promissory notes under the law. Mortgages, which establish the security interest in the home, are governed by UCC Article 9, and the obligation to record the mortgage is governed by state laws that vary from state to state. The purpose of land record laws is to give public notice of liens on real property. These laws do not

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[121] Fannie's Selling Guide defines "Mortgage" as: "Collectively, the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt (including the chattel mortgage, security agreement, and financing statement for a cooperative share loan); an individual secured loan that is sold to us for retention in our portfolio or for inclusion in a pool of mortgages that backs a Fannie Mae-guaranteed mortgage security. The term includes a participation interest where context requires." Selling Guide, Part XIII, Glossary.

[122] Selling Guide, IV-204.

[123] U.C.C. Revised § 3-205(b). It states: "(b) *When indorsed in blank, an instrument becomes payable to bearer* and may be negotiated by transfer of possession alone until specially indorsed." U.C.C. Revised § 3-205(a) defines a special indorsement as one that "identifies a person to whom it makes the instrument payable."

[124] Revised § 9-109. It states: "this article applies to ... a sale of accounts, chattel paper, payment tangibles, *or promissory notes*." § 9-109(a)(3). Former Article 9 did not apply to the sale of promissory notes. "Subsection (a)(3) expands the scope of this Article by including the sale of ... a 'promissory note.'" Revised § 9-109, Official Comment 4.

require and do not provide a mechanism for recording promissory notes.[125] When a lender sells to Fannie Mae a mortgage that is not registered with MERS, the lender or the servicer must prepare a mortgage assignment.[126] If the lender is not the servicer, the lender must assign the mortgage to the servicer and record the assignment in the land records.[127]

Fannie Mae's position is that it does not need to appear in the land records in order to have the benefit of the security provided by the mortgage.[128] UCC§ 9-203(g) and its accompanying comment state that the transfer of an obligation secured by a security interest also transfers the security interest.[129] Thus, the transfer of the promissory note, which is the obligation, also transfers the mortgage, which is the security interest. Once the note is sold to Fannie Mae, the mortgage also transfers, despite the fact that the servicer, lender or MERS' name appears in the land records.

Borrowers thus cannot determine the chain of owners from public records. Under the Servicing Guide, however, borrowers should be able to determine whether Fannie Mae is the beneficial owner of their loan. The Servicing Guide states that the "servicer should freely

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[125] *See* Asset Based Financing: A Transactional Guide, at §9.04[2] (Howard Ruda ed., LexisNexis, Vol. 1 2005), which states: "Typically, [recording] acts require that the *mortgage or deed of trust* be recorded in the district or county where the property is located"); *see also* Black's Law Dictionary 1301 (8th ed. 2004), which defines "recording act" as a "law that establishes the requirements for recording a deed or other property interest and the standards for determining priorities between persons claiming interest in the same property," and defines "recordation" as the "act or process of recording an instrument, such as a deed or mortgage, in a public registry."

[126] Selling Guide, IV-402 states: "For any mortgage that is not registered with MERS, we require the lender to prepare an assignment of the mortgage to Fannie Mae, although the assignment should not be recorded. If the mortgage seller is not going to service the mortgage, the unrecorded assignment to Fannie Mae must be executed by the mortgage servicer."

[127] Selling Guide, IV-403. It states: "When the mortgage seller and the mortgage servicer are not the same entity, we require a recorded intervening assignment from the seller to the servicer—and then an assignment from the servicer to us (or MERS)."

[128] Interview with Daniel C. Smith, Deputy General Counsel (Oct. 14, 2005).

[129] U.C.C. Revised § 9-203(g) states: "The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage or other lien." The Official Comment states that subsection (g) "codifies the common-law rule that a transfer of an obligation secured by a security interest or other lien on personal or real property also transfers the security interest or lien."

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disclose Fannie Mae's interest in the mortgage in response to a borrower's inquiry (including the name, address, and telephone number of our applicable regional office if the borrower requests this type of information)."[130] Borrowers may not always be able to determine who owns their mortgage, but they should be able to determine if Fannie Mae owns it, if that information is important to them.

C. MERS Impact on Transparency

Prior to the creation of MERS, the borrower could look to the land records to follow the chain of servicers. If a mortgage is registered with MERS, however, MERS is the mortgagee of record. Fannie Mae does not require lenders to register mortgages they sell or service for Fannie Mae with MERS.[131] If a lender registers a mortgage with MERS, it can do so in one of two ways. First, it can originate the mortgage with MERS appearing in the security instrument as the nominee for the beneficiary and its successors and assigns.[132] This is known as MOM, or MERS as Original Mortgagee.[133] Originating the mortgage with MERS as nominee "eliminate[s] the need for a subsequent assignment of the security instrument should the lender sell (or transfer servicing of) the mortgage to another lender that is a member of MERS.[134]

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[130] Servicing Guide, I-311.

[131] Fannie Mae Announcement 97-08, p.1, stating: "Although we will not require lenders to register their Fannie Mae-owned or securitized mortgages with MERS, we expect that many lenders will want to register all of their mortgages with MERS. We encourage all lenders to look into the benefits that MERS offers."

[132] MERS Recommended Foreclosure Procedures, First Edition, p. 4.

[133] MERS Recommended Foreclosure Procedures, First Edition, p. 4.

[134] Selling Guide, IV-103. It states that when a mortgage is originated with MERS as nominee: "the applicable security instrument must be appropriately modified to show MERS as the nominee for the lender, to define and name the originating lender, and to obtain the borrower's acknowledgment of MERS' role in the mortgage transaction ... The lender will be responsible for the accurate and timely preparation and recordation of the security instrument (and must take all reasonable steps to ensure that the information on MERS is updated and accurate at all times)."

Second, if the mortgage already has been originated, the lender can record an assignment of the mortgage to MERS, making MERS the mortgagee of record.[135]

In either case, MERS becomes the mortgagee of record in the county land records.[136] All subsequent transfers of ownership or servicing rights among MERS members are recorded electronically.[137] As long as the loan is sold and transferred to a MERS member, the identity of the record mortgagee never changes during the life of the loan even though the owner and servicer might.[138] If a borrower has not kept historical records of payments, the land records no longer will provide a chain of servicers for the borrower to use to trace problems.

A study of foreclosures in the Chicago, Illinois area found that in 2003, MERS was the most active foreclosing institution in that area.[139] That year MERS started 14.7 percent of all foreclosures.[140] The study found that MERS made it difficult for borrowers to track who owned properties that were foreclosed upon, as well as those entities that may have used abusive practices, by hiding the identities of lenders, servicers or trustees.[141]

D. Reasons for Endorsement and Recording Policies

The purpose of both developments was to reduce paperwork and lower the costs of mortgage administration, which should have the effect of lowering interest rates. If notes

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[135] MERS Recommended Foreclosure Procedures, First Edition, pp. 4-5.

[136] *Id.* at 5. Lenders who sell loans to Fannie Mae may or may not have to assign the mortgage to Fannie Mae depending on whether the mortgage is registered with MERS. *See,* Selling Guide IV, Chapter 4: Assignment of Mortgages.

[137] MERS Recommended Foreclosure Procedures, First Edition, p. 5.

[138] *Id.* at 5. *See also* MERS is a Reality!, p. 2, stating: "Because the mortgagee of record (MERS) [does] not change while the loan is current, there [is] no necessity either to execute or record in the public land records any assignments to reflect the ... sale of the mortgage to an investor, or the transfer of servicing rights."

[139] National Training and Information Center, October 8, 2004, "Preying on Neighborhoods II: Community Partners Turn the Tide Against Predatory Lending," p. 25. The study analyzed foreclosures in Cook, DuPage, Kane, Lake, McHenry and Will counties. *Id.* at 11.

[140] *Id.* at 25.

[141] *Id.*

were endorsed (as they once were), Fannie Mae would incur the considerable administrative cost of endorsements for millions of transactions.[142] MERS was created, in part, to eliminate the need to record mortgage assignments in state land records when servicing rights were transferred. These developments, however, had the secondary effect of making the mortgage markets less transparent for borrowers.

Fannie Mae's policy of having the servicer, lender, or MERS act as the mortgagee of record serves two other purposes. The servicer's duties include protecting Fannie Mae's interest in the mortgaged property.[143] The servicer can better perform when legal notices that may affect Fannie Mae's lien on the property come directly to it.[144] If Fannie Mae were the mortgagee of record, it would have to forward these notices to the servicer, just as MERS must do when it is the mortgagee of record.[145]

Having MERS or the servicer named in the land records also tends to direct complaints to the servicer whose conduct is generally the one being questioned. Borrowers rarely, if ever, need to know the current owner, or chain of owners, of their mortgage. Income streams from mortgages have been fractured and sold as MBS's. In many cases, none of the numerous owners would have the legal right to resolve issues with a servicer. Mr. Lavalle's proposal to allow borrowers to avoid an unscrupulous servicer by paying the owners or trustee is

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[142] *See* U.C.C. Revised § 3-201(b), which states "... if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument *and its indorsement by the holder*. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone." U.C.C. Revised § 3-201(a) states: "'Negotiation' means a transfer of possession, whether voluntary *or involuntary*, of an instrument by a person other than the issuer to a person who thereby becomes its holder."

[143] Servicing Guide, I-202.

[144] *Id.* It states: "To facilitate performance of the servicer's contractual responsibilities to Fannie Mae and the borrower, the servicer ordinarily appears in the land records as the mortgagee. For example, this ensures that the servicer receives legal notices that may impact our lien, such as notices of foreclosure of tax and other liens."

[145] Servicing Guide, III, Chapter 5. When the notices provide enough information for MERS to determine the servicer of the mortgage, MERS forwards the notice to the servicer. When not enough information is available to identify the servicer, MERS electronically notifies all MERS members about the unidentified notice.

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unworkable. The owners are too numerous and Fannie Mae does not have facilities to deal directly with the public. In a recent conversation, Mr. Lavalle acknowledged that strict enforcement of servicer obligations would be a better approach to the issue.

E. Disclosures to Borrowers

Fannie Mae has chosen, consistent with its charter, to require servicers to provide information to and assist borrowers with problems rather than interact with borrowers directly. The Servicing Guide III-104 requires servicers to provide borrowers with an annual statement of activity in their account. Servicers also:

> ... must provide a detailed analysis of all transactions relating to a borrower's payments or escrow deposit account whenever the borrower requests it.[146]

Servicers also must "provide borrowers with assistance when it is requested" and "have effective processes to promptly address borrower inquiries (relating to both current and delinquent loans) and provide timely payoff quotes."[147] The Guide also instructs servicers to inform borrowers that Fannie Mae is the owner of their notes if they ask.[148]

When servicing rights are transferred, Fannie Mae requires the servicers to notify and provide information to borrowers about the transfer.[149] RESPA also requires servicers of "federally related mortgage loans" to inform borrowers of any assignment, sale or transfer of the servicing of a loan.[150]

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[146] *Id.*

[147] Servicing Guide, I-202. It states: "As a general matter, servicers should have sufficient properly trained staff, and adequate controls and quality assurance procedures in place, to carry out all aspects of their servicing duties; to protect against fraud, misrepresentation, or negligence by any parties involved in the mortgage servicing processes; to protect our investment in the security properties . . . ."

[148] Servicing Guide I-311.

[149] Servicing Guide, I-205.04.

[150] 12 U.S.C § 2605.

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Although Fannie ordinarily does not have direct contact with borrowers, it has established channels for borrowers to report suspected cases of mortgage fraud.[151] Borrowers can contact Fannie Mae via a toll-free telephone number or by e-mail.[152] Fannie Mae's procedures for investigating these tips are detailed in the section on fraud investigations and reporting.

F. Findings Regarding Transparency

Mr. Lavalle's complaint about transparency is the natural consequence of mortgage markets becoming more complex and fractured. The requirement to have notes endorsed in blank and the creation of MERS are designed to add efficiency to the mortgage markets and reduce costs, which should benefit homeowners with lower interest rates and more choices. These developments, however, have made the system less transparent.

Mr. Lavalle complains that a lack of transparency has made it easier for predatory servicers to flourish. Fannie Mae has addressed this issue by requiring servicers to disclose information to borrowers and through other enforcement efforts detailed in the predatory servicing section. These disclosures respond to Mr. Lavalle's proposal that borrowers have access to the MERS' database for a fee; they should be able to get relevant information from the servicers. The borrowers should have ready access to information about their payments, escrows, fees and other relevant information concerning their mortgages.

Mr. Lavalle's proposed solution that borrowers be given the option to conduct transactions directly with note owners or Fannie Mae is impractical and not consistent with Fannie Mae's mission. Ownership interests in mortgage income streams have been fractured due

[151] Fannie Mae Response to OFHEO Mortgage Fraud Reporting Rule; Single-Family Anti-Fraud Protocols and Procedures, p. 6.

[152] *Id.*

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to the advent of MBS's. No single owner would have authority to bind others, and no mechanism exists for owners to resolve servicing disputes. Fannie Mae, as owner or trustee for MBS's is not intended to, and not capable of, interacting directly with borrowers; it operates in a secondary market in which its customers are lenders and servicers.

Mr. Lavalle has provided examples of situations in which borrowers have had difficulty obtaining information, even in litigation. We have not been able to examine the full context of these problems. As discussed below, Fannie Mae reviews certain servicer conduct and has taken steps to prevent or uncover predatory servicing practices. As Mr. Lavalle recently acknowledged, the better approach is for Fannie Mae to mandate that servicers be transparent with borrowers – which it already does – and to enforce these requirements and those prohibiting predatory lending and servicing practices – which it also appears to do.

IV.
PROMISSORY NOTE POLICIES

A. Mr. Lavalle's Concerns

Mr. Lavalle expresses concern about two Fannie Mae policies regarding the handling of promissory notes: (1) notes are required to be endorsed in blank, undated and without recourse,[153] and (2) original notes are not consistently returned to the borrower stamped "cancelled" and "paid in full."[154] Mr. Lavalle questions whether Fannie Mae has adequate procedures in place to keep track of 15 million promissory notes that it has in its possession or is held for its account.[155] Mr. Lavalle claims that the endorsement-in-blank policy leads to trillions

[153] E-mail dated Dec. 19, 2003 from Nye Lavalle to then-Fannie Chairman and Chief Executive Officer Franklin Raines and other individuals.

[154] E-mail dated July 22, 2005, from Nye Lavalle to Ms. House, Mr. Mudd, and Board of Director members Stephen Ashley, Ann Korologos, Frederic Malek, Donald Marron, Leslie Rahl, H. Patrick Swygert, and John Wulff, and others.

[155] E-mail dated Dec. 19, 2003, from Nye Lavalle to then-Fannie Mae Chairman and Chief Executive Officer Franklin Raines and other individuals; E-mail dated July 22, 2005, from Nye Lavalle to Ms. House, Mr. Mudd, and

of dollars of missing or lost negotiable paper.[156] Mr. Lavalle bases his claim that the problem is widespread by extrapolating from routine filing of lost note affidavits in Florida foreclosure proceedings.[157] He acknowledges that every entity operating in the secondary mortgage market has the same policy.[158] According to his calculations, about $6 trillion worth of bearer paper exists due to this practice.[159] Since these notes are negotiable instruments, Mr. Lavalle contends borrowers face dire consequences from their mishandling.[160] A holder in due course, for instance, can recover even when the maker has defenses or has paid the note in full.[161]

Mr. Lavalle also criticizes Fannie Mae's policies regarding the return of original notes upon pay off. Fannie Mae's policies allegedly are having an adverse impact on borrowers and on the value of Fannie Mae's mortgages and mortgage-backed securities. Original promissory notes are not routinely returned to borrowers stamped "cancelled" and "paid in full" when they pay off their loans. He feels that satisfactions or lien releases, which are now permitted under state laws, do not adequately protect borrowers should their original promissory notes end up in the wrong hands.[162] Mr. Lavalle claims this practice leaves borrowers at risk for years after they have paid off the note.[163] Mr. Lavalle has supplied us with cases of borrowers

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Board of Director members Stephen Ashley, Ann Korologos, Frederic Malek, Donald Marron, Leslie Rahl, H. Patrick Swygert, and John Wulff, and others.

[156] Telephone interview with Mr. Lavalle (Nov. 1, 2005).

[157] Telephone Interview with Mr. Lavalle (Nov. 23, 2005).

[158] Telephone interview with Mr. Lavalle (Nov. 1, 2005).

[159] *Id.*

[160] *Id. See also* Benny L. Kass, *Lost Mortgage Documents May Cause Future Problems*, Realty Times, Sept. 13, 2004, available at http://realtytimes.com/rtcpages/20040913_lostdocs.htm.

[161] U.C.C. Revised §§ 3-305(b) and 3-601.

[162] Telephone interview with Mr. Lavalle (Nov. 1, 2005).

[163] *Id.*

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subjected to claims by multiple lenders alleging ownership of the same notes.[164] Mr. Lavalle proposes that lenders be required to return the original promissory notes stamped "paid in full" with each pay off. Mr. Lavalle fears that if the notes are mishandled, borrowers could bring class action lawsuits, exposing Fannie Mae to great liability.

B. Borrower's Risk to a Holder in Due Course

The risk Mr. Lavalle perceives from lost or mishandled notes arises from the rights given a holder in due course by the UCC. A borrower can be required to pay a note twice – even one that is lost or stolen – if the note comes into the hands of a holder in due course. Under UCC Article III, a maker of a note (*i.e.*, the borrower) is "discharged" of liability under the note once payment has been made in accordance with the note.[165] If, however, the party who comes to possess the note is a holder in due course without notice of the discharge, the discharge is not effective against that party.[166] Generally speaking, a holder in due course is a good faith purchaser of a note for value.[167] An individual who finds or even steals a promissory note endorsed in blank can become a person entitled to enforce the promissory note.[168] Against a person entitled to enforce, the borrower can assert defenses, such as the note has already been

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[164] *See First Union Nat'l Bank v. Hufford*. 767 N.E.2d 1206(Ohio Ct. App. 2001); E-mail from Nye Lavalle to Mark Cymrot and Ambika Biggs, containing postings by individuals claiming there were multiple foreclosures on the same property (Nov. 29, 2005). *See also* E-mail attachments from Carl Erickson, which include an allegedly fraudulent promissory note (Nov. 30, 2005). Mr. Erickson claims that two different companies – Freddie Mac and the Charles F. Curry Company – claimed to be the owner of the note at the same time. Mr. Erickson has communicated with Mr. Lavalle, as is evidenced in the e-mail.

[165] U.C.C. Revised § 3-602(a). It states: "an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged ..."

[166] U.C.C. Revised § 3-601(b). It states: "Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge."

[167] U.C.C. Revised §§ 3-302.

[168] U.C.C. Revised § 3-205, Comment 2; U.C.C. Revised § 3-301, Comment.

paid.[169] If, however, the lost or stolen note is transferred to a holder in due course, the note can be enforced without regard to many of the borrower's defenses, including discharge.[170]

The borrower is, thus, at risk to paying twice if the original promissory note is not properly protected.[171] The borrower would have the expensive and unenviable task of trying to collect from the custodian that was negligent in losing the note, from the servicer that accepted payments, or from others responsible for the predicament.

C. Fannie Mae's Herndon Custody Facility

Fannie Mae's mortgage documents – including promissory notes - are stored in one of three places: Fannie Mae's document delivery facility in Herndon, Virginia; in the possession of an independent custody agent; or in the possession of the servicer, acting as a custody agent.[172] The party responsible for physical possession of the mortgage documents, called custody documents,[173] may vary depending on whether Fannie Mae purchases the

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[169] *See* U.C.C. Revised § 3-302, Comment 3, which states: "Discharge is effective against anybody except a person having rights of a holder in due course who took the instrument without notice of the discharge." Section 3-305(a) provides other defenses.

[170] U.C.C. Revised § 3-601(b). It states: "Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge." In cases involving lost note affidavits, courts have addressed Mr. Lavalle's concern that a subsequent holder will seek to recover against a borrower. *See McKay v. Capital Resources Co.*, 940 S.W.2d 869, 871 (Ark. 1997)(reversing a foreclosure decree in which the foreclosing party only produced a photocopy of the promissory note because the borrower may have been subjected to double liability if the holder of the original note brought a claim); *Shores v. First Florida Resource Corp.*, 267 So. 2d 696 (Fla. Dist. Ct. App. 1972) (in an action for reestablishment of a lost note, the court held that evidence that the note and mortgage had not been assigned was inadequate because the borrowers were entitled to assurance that future holders would not sue them on the instruments); *Resolution Trust Corp. v. First Federal Savings Banks of Diamondsville*, 36 F.3d 972 (10th Cir. 1994) (holding that the debtor was adequately protected by the foreclosing party's agreement to indemnify the debtor for any liability arising from a claim by a person who may become a holder of the lost note).

[171] Notice of discharge does not prevent holder in due course status. *See* Official Comment to U.C.C. § 3-601, stating: "Notice of discharge is not treated as notice of a defense that prevents holder in due course status." However, if the holder in due course had notice of discharge when holder in due course status was established, discharge is effective against the holder in due course. *Id.*

[172] Interview with Debra Thompson, Director, Asset Acquisitions and Custody (Nov. 8, 2005). *See also* Selling Guide, I-403.

[173] Generally speaking, for portfolio mortgages, these custody documents "consist of the *original mortgage notes*" and other important mortgage documents. Selling Guide, I-403.

mortgage for its portfolio or is a trustee for an MBS pool. Fannie Mae's document delivery facility generally maintains custody of the mortgage documents for its portfolio mortgages,[174] certifying and holding 67 percent of all Fannie Mae portfolios loans certified in 2005.[175] A lender-designated document custodian, which can be the lender, a third-party document custodian, or Fannie Mae's document delivery facility, generally maintains control over MBS custody documents.[176] Fannie Mae certified and held about 6.3 percent of Fannie Mae MBS loans that were certified in 2005.[177]

Of the approximately 15 million Fannie Mae loans (portfolio and MBS), the Herndon facility maintains custody over approximately 2 million, or 13 percent.[178] Each month, Fannie Mae receives and releases the mortgage documents for about 40,000 mortgages, although the numbers can vary considerably.[179] When a mortgage arrives at Fannie Mae's document custody facility for purchase, the custody documents undergo a certification process, during which Fannie Mae employees ensure that the mortgage documents are legally enforceable and that the information the lender submitted regarding the mortgage corresponds with the information recorded on the promissory note.[180] If the mortgage is certified, the promissory note

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[174] Selling Guide, I-403. It states: "The only exceptions to this involve some mortgages we agree to purchase under the terms of a negotiated contract that permits the lender to designate another document custodian and participation pool mortgages we purchased under commitments executed prior to 10/31/91, which permitted the mortgage servicer or the participating lender to retain the custody documents."

[175] *See* Certification chart, included in Letter from Debra Thompson, Director, Asset Acquisitions & Custody, to Mark Cymrot (Jan. 26, 2006).

[176] *See* Selling Guide, I-403. It states: "The only exception to this involves some participation interests in MBS pools that were issued under contracts executed prior to 10/31/91 ..."

[177] *See* Certification chart, included in Letter from Debra Thompson, Director, Asset Acquisitions & Custody, to Mark Cymrot (Jan. 26, 2006).

[178] *See* Vault Percentage chart, included in Letter from Debra Thompson, Director, Asset Acquisitions & Custody, to Mark Cymrot (Jan. 26, 2006).

[179] Interview of Debra Thompson, Director, Asset Acquisitions and Custody (Nov. 8, 2005).

[180] During the certification process, Fannie Mae employees ensure that there are no breaks in the chain of endorsement from the originating lender to Fannie Mae, that the seller was a holder in due course of the promissory

and other mortgage documents are placed in a vault and remain there until either: (1) the lender requests Fannie Mae to return the promissory note; (2) the lender reports the note as liquidated;[181] or (3) the lender wants the documents to be transferred to another document custodian, which can occur when servicing rights are transferred.[182]

Thirteen jurisdictions require an individual to have possession of the original promissory note in order to take certain legal actions, including foreclosure.[183] Fannie Mae returns the notes to lenders in these jurisdictions, referred to as the Original Notes States. Fannie Mae also returns notes to lenders that have informed Fannie Mae that they always want the notes returned after pay off.[184] Fannie Mae does not mark notes "cancelled" when it returns them to servicers.[185] In addition, if a lender wants Fannie Mae to return a note because it is initiating foreclosure actions, the lender can request it from Fannie Mae through the Loan Document Request System ("LDRS"), which is an electronic system through which lenders request and Fannie Mae sends documents.[186]

If a note is not from an Original Notes State and the lender does not request its return, Fannie Mae destroys the note after the servicer informs it that the loan has been

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note, and that the promissory note is endorsed in blank. In addition, employees review certain information, such as the interest rate, property address, original note rate, first payment due date, principal and interest constant, and unpaid principal balance, to ensure that the information submitted by the lender corresponds to the information recorded on the promissory notes.

[181] Payoffs, repurchases, assignments, deeds-in-lieu, and foreclosures are categorized as liquidation transactions. Servicing Guide, X-601.

[182] Interview of Debra Thompson, Director, Asset Acquisitions and Custody (Nov. 8, 2005).

[183] The jurisdictions are: California, Connecticut, Colorado, Florida, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Texas, Virginia, Washington, and Puerto Rico.

[184] These lenders are: Sky Financial, Bank of America, First Merit, and Whatcom Educational Credit Union.

[185] Telephone Interview with Debra Thompson, Director, Asset Acquisitions and Custody (March 3, 2006).

[186] Servicing Guide, VIII-102.

liquidated.[187] Lenders report account activity for the mortgages monthly through an electronic system called LASER.[188] Fannie Mae examines these reports and determines which loans have been liquidated.[189] In order to provide for mistakes in reporting, Fannie Mae leaves a lag time between when lenders indicate that a loan has been liquidated and when the promissory note is shredded.[190] Fannie Mae employees pull the promissory notes from the vaults 90 days after lenders report the loan liquidated. The note is stored for 30 days before it is sent to the contractor for shredding.[191] Approximately 60 percent of the mortgage documents are returned to lenders and 40 percent are destroyed.[192]

D. Other Certified Custodians

Other than its own facilities, Fannie Mae certifies 58 active document custodians.[193] Fannie Mae has additional inactive custodians that hold mortgage documents for Fannie Mae, but they no longer certify documents for new loans.[194] Document custodians must comply with Fannie Mae's procedures.[195] In order to be a document custodian, the custodial institution must be a regulated financial institution or a subsidiary and meet certain eligibility

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[187] Telephone Interview with Debra Thompson, Director, Asset Acquisitions and Custody (March 3, 2006). Servicing Guide, 1-403.03, however, states: "The document delivery facility will automatically return to the servicer any custody documents it is holding for a portfolio mortgage and MBS pool within 60 to 90 days after the servicer reports a mortgage payoff or repurchase, the acceptance of a deed-in-lieu, or the completion of foreclosure proceedings to us through *LASER*." This procedure has since been updated, but the change is not reflected in the Servicing Guide.

[188] *See* Servicing Guide, X: LASER Reporting System.

[189] Interview of Debra Thompson, Director, Asset Acquisitions and Custody (Nov. 8, 2005).

[190] *Id.*

[191] *Id.*

[192] *Id.*

[193] Telephone interview with Debra Thompson, Director, Asset Acquisitions and Custody (Mar. 3, 2006).

[194] *Id.*

[195] Guidelines for Document Custodians, Introduction (stating "Fannie Mae requires that certain documents relating to mortgages in MBS pools be held by custodial institutions (called document custodians) that meet the eligibility criteria set out in the Selling and Servicing Guides.").

criteria that are set forth in the Selling and Servicing Guides and the Guidelines for Document Custodians.[196] These criteria include having the capabilities to track the receipt and release of documents and the physical location of documents, and maintaining secure storage facilities that have controls to ensure the security of custody documents.[197] The custodian also must install the MORNET Custodian Certification System, an electronic service that enables it to transmit MBS pool certifications. Each document custodian must subscribe to Fannie Mae's Selling, Servicing, and Forms Guides to ensure that all are aware of Fannie Mae's latest policies and procedures."[198] Lenders must have a Custodial Agreement with one of the certified custodians for all MBS pools they deliver to Fannie.[199] The promissory note is one of the custody documents the custodian holds.[200]

When the document custodian receives documents from the lender, it must review and certify them in the same manner as Fannie Mae's Herndon facility.[201] The lender electronically submits to the custodian a Schedule of Mortgages, which includes data about the individual mortgages in each MBS pool for which the custodian will maintain documents.[202] The custodian must compare the information recorded in the Schedule of Mortgages to the information contained on the related notes to ensure it is the same.[203] If the document custodian

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[196] *See id.*; Guidelines for Document Custodians, Eligibility Criteria for Third-Party Document Custodian; Guidelines for Document Custodians, Eligibility Criteria for Lending [sic] Acting as Own Document Custodian.

[197] Guidelines for Document Custodians, Eligibility Criteria for Third-Party Document Custodian.

[198] Guidelines for Document Custodians, Introduction.

[199] *Id.*

[200] Guidelines for Document Custodians, Custody Documents. *See also* Selling Guide, VI-302.01, for a similar list of items that a lender that creates an MBS pool must send to the document custodian for each mortgage in the pool.

[201] Guidelines for Document Custodians, Introduction.

[202] Guidelines for Document Custodians, Documentation Review, and Certification, Schedule of Mortgages (Form 2005).

[203] *Id.*

receives all the required documents and determines that they contain the correct information and are consistent with Fannie Mae's requirements, it sends an electronic certification of the MBS pool to Fannie Mae.[204]

After the custodian has certified the MBS pool, it "must exercise control over all documents that are retained in its custody."[205] If a lender transfers documents to a different custodian, the new custodian must recertify the MBS pool, by indicating that it has received all required documents and that any new documents required in connection with the transfer satisfy Fannie Mae's requirements.[206]

The Guidelines for Document Custodians also state that "[o]nce the documents related to an MBS pool are delivered to the document custodian, the note and, if applicable, the assignment of the mortgage to Fannie Mae must remain in the custodian's possession at all times, unless the lender needs to obtain documents to perform a specific servicing function (such as the initiation of foreclosure proceedings or satisfaction of a mortgage that has been paid-in-full)."[207] The lender must submit a *Request for Release/Return of Documents* form to obtain the documents from the custodian,[208] and if the documents are released on a temporary basis, the lender must return the documents as soon as it no longer needs them.[209] When an MBS pool has been liquidated, meaning that all the individual mortgages in the pool have been liquidated, the

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[204] Guidelines for Document Custodians, Documentation Review, and Certification, Document Custodian's Certification. This electronic certification is sent via the MORNET Custodian Certification System.

[205] Guidelines for Document Custodians, Introduction.

[206] *Id.*

[207] Guidelines for Document Custodians, Request for Release/Return of Documents (Form 2009).

[208] *Id.*

[209] *Id.*

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lender should send a written request within 30 days of liquidation of the MBS pool to the document custodian to return any remaining documents to the lender.[210]

The current Custodian Guidelines, however, do not have any provision for centralized reporting of lost notes, or a procedure for requiring the custodian or the servicer to report the missing note to the borrower.

E. Fannie Mae's Internal Audits and Custodian Reviews

Fannie Mae's own document custodian facility undergoes periodic internal audits by Fannie Mae's Audit Department to ensure compliance with these procedures. In the past, internal auditors had not focused specifically on the document custodian facility, but had reviewed it while auditing other areas of Fannie Mae.[211] Currently, a more vigorous internal audit is in progress.[212] Internal auditors are reviewing Fannie Mae's procedures regarding certification, access to the vault, and inventory control, which includes note retention, return, and destruction processes.[213] So far, they have found that Fannie Mae management already had identified and taken steps to correct most of the issues they discovered during the audit.[214] They anticipate completing the audit by mid-March 2006.[215]

Fannie Mae recently instituted reviews of the 58 certified custodians.[216] Fannie Mae employees conducted walk-throughs at document custodians' facilities to examine their

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[210] Guidelines for Document Custodians, Liquidated MBS Pools. It further states: "For the most part, the custodian will already have released the documents based on receipt of a *Request for Release/Return of Documents* (Form 2009). The custodian does not need to request submission of a Form 2009 for any remaining documents – the lender's written request will be sufficient justification for the document custodian to close out its records for the pool."

[211] Telephone interview with Curtis Doss, Audit Director for the Guarantee Fee Division (Mar. 3, 2006).

[212] *Id.*

[213] *Id.*

[214] *Id.*

[215] *Id.*

[216] Interview with Debra Thompson, Director, Asset Acquisitions and Custody (Nov. 8, 2005).

procedures and processes. They also selected pools and loans to review to determine if there are any errors in their certification procedures. Fannie Mae conducted reviews of six custodian facilities in 2005, and plans to visit all 58 during 2006.[217] The 2005 reviews found generally good compliance with the required custodial procedures. Fannie Mae is in the process of developing guidelines to standardize the certification process.

Fannie Mae's custodian reviews focus principally on the certification process, which tests the information about mortgages in Fannie Mae's computer system. The reviews do not specifically test whether the custodian is maintaining proper control over promissory notes.

We have not found evidence that Fannie Mae's custodial procedures are inadequate or that notes are regularly being lost or stolen. Other than pointing to the filing of numerous lost note affidavits, which appear to be indicative of improper pleading rather than actual lost notes, Mr. Lavalle has not presented evidence that notes are regularly being mishandled. Fannie Mae's document custodian prepared lost note affidavits as follows:

2003	97
2004	183
2005	108.[218]

Fannie Mae's original promissory notes do not appear to be regularly lost or stolen in a volume that would present a serious financial problem for Fannie Mae. Every lost note obviously is important because it puts a borrower at risk. We have found no evidence, however, that any lost notes have been misused to the detriment of a borrower.

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[217] Interviews with Debra Thompson, Director, Asset Acquisitions, and Custody (Nov. 8, 2005, and Feb. 17, 2006); and interview with John Gang, Vice President, Asset Acquisitions, and Custody (Dec. 8, 2005).

[218] E-mail from Debra Thompson, Director, Asset Acquisitions, and Custody to Mark Cymrot (Feb. 21, 2006); Letter from Ms. Thompson to Mr. Cymrot (Jan. 30, 2006).

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F. Satisfactions and Lien Releases

Mr. Lavalle would like every original promissory note returned to the borrower once it is discharged in order to mitigate the risk that it could get into the wrong hands. Fannie Mae's policy is to require servicers to satisfy a mortgage and release the lien in a timely manner and in accordance with the applicable state law.[219] The servicers also must return the cancelled note to borrowers if required by state law or the borrower specifically requests the note.[220] In other cases, the servicer either can return the documents to the borrower or retain them.[221]

In our view, Fannie Mae can rely upon the dictates of state law. State legislators presumably evaluated the risks Mr. Lavalle has expressed and determined that loan satisfactions and lien releases are adequate to protect borrowers and a reasonable trade off for the added efficiencies to the mortgage system.

G. Findings Regarding Promissory Notes

While Mr. Lavalle's concern has a theoretical legal basis, we have not found evidence that large volumes of promissory notes are being mishandled. He bases his assertion on the routine filing of lost note affidavits. The affidavits, however, appear to be inaccurate, rather than the notes lost. Fannie Mae has policies for its own in-house custodian and the 58 custodians

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[219] Servicing Guide, VI-103. It states: "We expect a servicer to take all actions necessary to satisfy a mortgage and release the lien in a timely manner . . . . Procedures for satisfying the mortgage will vary depending on whether or not we are the owner of record for the mortgage; the party holding the custody documents; and whether the mortgage is a portfolio mortgage or an MBS pool mortgage. Regardless of the procedure used, the servicer has the ultimate responsibility for having the lien released in a timely manner." If Fannie Mae is the owner of record, it must execute any required release or satisfaction documents, unless it has granted a limited power of attorney to the servicer. Servicing Guide, VI-103.01. If Fannie Mae is not the owner of record, the servicer must execute the release or satisfactions documents in its or MERS' name. Servicing Guide, VI-103.02. The servicer also must submit forms to either Fannie Mae or the document custodian requesting the custody documents. *See* Servicing Guide, VI-103.01 and VI-103.02.

[220] *Id.* It states: "Once the required release or satisfaction documents are executed and the mortgage note is canceled, the servicer must immediately send the canceled documents to the borrower if state law requires such action or the borrower specifically requests the return of the documents."

[221] *Id.* (stating "In other instances [when state law does not require the return of the documents and the borrower has not requested them], the servicer may either return the documents to the borrower or retain them (as long as they are not destroyed until after the retention period required by applicable law).")

it has certified that they seek to protect the mortgage documents. We have found no evidence suggesting that these procedures are ineffective.

With respect to the return of original promissory notes, Fannie Mae is following state law. In the jurisdictions in which original notes must be returned, they are. Fannie Mae also responds to requests from lenders and borrowers to return original notes. If borrowers want their original notes, they can ask for them. In our view, Fannie Mae can reasonably rely upon state law. The risk that Mr. Lavalle identifies has been evaluated by state legislatures which have established rules for mortgages within their states.

V.
PREDATORY SERVICING

A. Mr. Lavalle's Concerns

Mr. Lavalle alleges that Fannie Mae has been instrumental in creating a system in which predatory servicing flourishes. He claims to have coined the term "predatory servicing"[222] to describe practices and schemes that mortgage servicers use to defraud borrowers.[223] Mr. Lavalle perceives servicing problems as more pervasive than Fannie Mae officials and suggests that Fannie Mae should do more to protect borrowers, including having direct interaction with borrowers when problems arise. He objects to a perceived lack of oversight of servicers by Fannie Mae and to Fannie Mae's role in creating and operating MERS.

Mr. Lavalle believes that Fannie Mae and Freddie Mac "are responsible for the activities of sellers and more importantly, servicers" and views Fannie Mae as a quasi-

[222] E-mail dated Oct. 2, 2005, from Nye Lavalle to Mark Cymrot. Mr. Lavalle claims to have coined the phrase in the late 1990s.

[223] *See, e.g.*, report by Nye Lavalle entitled "Predatory Grizzly 'Bear' Attacks Innocent, Elderly, Poor, Minorities, Disabled & Disadvantaged!", pp. 4-11.

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regulator.[224] He claims a seller or servicer is practically required to be Fannie Mae-approved in order to do business.[225] Fannie Mae also establishes how the servicers conduct their businesses, and Fannie Mae places employees in servicers' offices to oversee their servicing operations.[226] He also claims that servicers are Fannie Mae's agents, and therefore, Fannie Mae can be held liable for its servicers' inappropriate actions. Fannie Mae's employees make the decision or authorize the servicers' recommendation "to make the hit" – that is, deciding whether to foreclose.[227]

Since Fannie Mae plays such a central role in the mortgage industry, it can and should take the lead in ending predatory servicing practices, he argues.[228] In Mr. Lavalle's opinion, Fannie Mae should institute good servicing guidelines because the mortgage industry follows Fannie Mae and Freddie Mac's lead "as a matter of course in doing business."[229] For instance, he has proposed a joint effort to review servicer performance, and he wants Fannie Mae to mandate a set of "best practices" based on a set of practices that Fairbanks Capital Corp. agreed to in its 2003 consent order with the United States.[230]

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[224] E-mail dated Oct. 14, 2005, from Nye Lavalle to Mark Cymrot.

[225] *Id.*

[226] Telephone interview with Mr. Lavalle (Nov. 1, 2005). *See* "Current Issues: Overview of Credit Risk Management at Fannie Mae, June 19, 2002, available at www.fanniemae.com, stating: "Fannie Mae employs 44 servicing consultants," who work as on-site consultants at our largest loan servicers, helping them manage problem loans on a case-by-case basis with judgment and speed. Working with our mortgage servicers, Fannie Mae has redefined the traditional collection rules to focus lender resources and attention on those loans most at risk."

[227] Telephone interview with Mr. Lavalle (Nov. 1, 2005).

[228] E-mail dated Oct. 14, 2005, from Nye Lavalle to Mark Cymrot.

[229] E-mail dated June 4, 2004 from Mr. Lavalle to Mr. Raines, Ms. House, and other undisclosed recipients requesting Fannie Mae establish a National Compliance Center and institute mortgage servicing best practices standards that he recommended. He also requested that Fannie Mae not conduct any business with any companies found to be using predatory servicing practices. E-mail dated Oct. 14, 2005, from Nye Lavalle to Mark Cymrot.

[230] *U.S. v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Oct. 6, 2003) (order preliminarily approving stipulated final judgment and order as to Fairbanks Capital Corp. and Fairbanks Capital Holding Corp.)In that case, the Federal Trade Commission ("FTC") and the Department of Housing and Urban Development ("HUD"), accused Fairbanks of violating the Federal Trade Commission Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting

He also asserts that borrowers are not informed of fraud by loan originators and servicers that Fannie Mae discovers in its due diligence and quality control processes.[231] Fannie Mae may report its findings to MARI, an industry database, but borrowers are not told.[232] Mr. Lavalle believes that Fannie Mae has an ethical obligation to inform borrowers when it uncovers fraud.[233]

Mr. Lavalle asserts that Fannie Mae has a policy of labeling mortgages that are unsellable as "scratch and dent" after rejecting them for purchase.[234] The loans are then sold to "special servicers," such as EMC Mortgage, Litton Loan Servicing, Ocwen, and Select Portfolio Servicing ("SPS")(formerly Fairbanks Capital Corp.), which aggressively service the loans into foreclosure or bankruptcy, he claims.[235] Mr. Lavalle alleges that in the foreclosure process, Fannie Mae transfers servicing rights to aggressive servicers.[236]

Mr. Lavalle refers to these special servicers as "the toxic waste dump."[237] He asserts that these companies defraud borrowers, by such schemes as not crediting a borrower for payments, misapplying payments, and placing unnecessary force-placed insurance on borrowers' accounts and others.[238] When borrowers complain about these practices, which the mortgage

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Act, and the Real Estate Settlement Procedures Act ("RESPA"). The case was settled by a consent decree that mandated certain business practices to correct the alleged abuses.

[231] E-mail dated June 22, 2005 from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors.

[232] *Id.*

[233] *Id.*

[234] Telephone interview with Mr. Lavalle (Nov. 1, 2005).

[235] E-mail from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors (July 22, 2005); *see also* E-mail from Nye Lavalle to Mark Cymrot (Oct. 7, 2005).

[236] Telephone interview with Nye Lavalle (Dec. 14, 2005).

[237] July 22, 2005, e-mail from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors

[238] *See, e.g.*, report by Nye Lavalle entitled "Predatory Grizzly 'Bear' Attacks Innocent, Elderly, Poor, Minorities, Disabled & Disadvantaged!", pp. 4-11.

servicers claim are just mistakes, their mortgages are not reamortized to adjust payments and interest assessments, he claims.[239] Mr. Lavalle suggests that Fannie Mae has an obligation to inform the borrowers their loans are going to be subject to aggressive servicers.

As a Fannie Mae shareholder, Mr. Lavalle is concerned about criminal and civil liability that Fannie Mae could face for its servicers' misconduct.[240]

B. Current Servicer Rules and Procedures

Fannie Mae has contracts with about 1,500 active servicers, either original lenders or independent servicers.[241] A servicer must first be approved before servicing Fannie Mae loans. If a servicer assigns its responsibility to service a loan to another servicer, it must first get approval from Fannie Mae.[242]

For a traditional servicer to be approved, the servicer must meet minimum eligibility and capability requirements.[243] For instance, it must have experience in selling and servicing mortgages, have knowledge of Fannie Mae's policies and practices, and have post-closing quality control methods in place.[244] In addition, Fannie Mae conducts a MARI check on the seller/servicer and LexisNexis background checks on the seller/servicer's principals.[245]

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[239] E-mail dated Oct. 7, 2005, from Nye Lavalle to Mark Cymrot.

[240] E-mail dated July 22, 2005, from Nye Lavalle to Ms. House, Fannie Mae President, and CEO Daniel Mudd, and Board of Director members Stephen Ashley, Ann Korologos, Frederic Malek, Donald Marron, Leslie Rahl, H. Patrick Swygert, and John Wulff, and others.

[241] E-mail dated Mar. 1, 2006 with attachment of a chart of the Servicer Counts for Year-Ends 2002-2004, from Marianne Sullivan, Senior Vice President, Credit Loss Management. There was an average of 1,532 servicers at year-end in 2002, 2003, and 2004.

[242] Mortgage Selling and Servicing Contract, VII; *see also* Servicing Guide, I-205.

[243] Interview with Robert Sanborn, Vice President, National Servicing Organization (Nov. 15, 2005).

[244] *Id.*

[245] Interview with Mercy Jimenez, Senior Vice President of the National Business Center (Nov. 7, 2005).

MARI, Mortgage Asset Research Institute, Inc., provides information services for the mortgage and financial services industries.[246]

Approved processors of less traditional loans, referred to as non-traditional servicers, are subjected to a more rigorous approval process.[247] Fannie Mae employees visit the servicers' facility and observe its selling and servicing practices to determine if they comply with Fannie Mae's.[248] Fannie Mae has approved only 46 non-traditional servicers, but 13 of those do not service any Fannie Mae loans.[249] Non-traditional servicing is not synonymous with subprime servicing, and non-traditional servicers do not necessarily service loans with a higher risk of default than most loans.[250] For instance, reverse mortgages and eChannel loans, which allow borrowers with good credit ratings to streamline the home buying process, are considered non-traditional,[251]

Nine large servicers service 70 percent of Fannie Mae's loan assets, and 40 servicers service 85 percent of Fannie Mae's loan assets.[252] Mr. Lavalle has specifically complained about the practices of four servicers – EMC Mortgage, Litton Loan Servicing, Ocwen Financial Corporation, and Select Portfolio Servicing ("SPS"), formerly Fairbanks Capital Corp. From 2002 through 2004, these entities combined serviced less than one percent

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[246] MARI Overview, available at http://www.mari-inc.com/about.html.

[247] Interview with Robert Sanborn, Vice President, National Servicing Organization (Nov. 15, 2005).

[248] *Id.*

[249] Telephone Interview, Rick Bauerband, Director of Non-Traditional Servicing (Mar. 14, 2006). These approved servicers may originate loans and then transfer them to other servicers, but they are approved to service Fannie Mae loans.

[250] *Id.*

[251] *Id.*

[252] Interview with Robert Sanborn, Vice President, National Servicing Organization (Nov. 15, 2005).

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of all the loans Fannie Mae owned.[253] They also serviced less than one percent of the unpaid principal balances for loans Fannie Mae owned.[254]

After approval, all servicers must sign Fannie Mae's Mortgage Selling and Servicing Contract that establishes the basic legal relationship.[255] Fannie Mae also publishes a Selling Guide and a Servicing Guide to keep lenders informed of its policies. Under the contract, the mortgages must be sold and serviced in accordance with the Guides.[256] The Servicing Guide allows for variants which are subject to negotiation between Fannie Mae and the servicer.[257]

The Servicing Guide provides "broad parameters" for servicers.[258] Fannie Mae takes the position that servicers are independent contractors, and not agents, assignees or representatives of Fannie Mae.[259] The Servicing Guide thus gives servicers considerable discretion about how to conduct their businesses. The Guide states:

> ... most of the policies and standards described in this *Guide* are intended to set forth the broad parameters under which lenders should exercise their sound professional judgment as mortgage servicers in the performance of their duties. As a result, in most instances we have not set forth absolute requirements because we believe that servicers need to maintain the discretion to apply appropriate judgment in dealing with borrowers and loans on a case-by-case basis, consistent with our servicing policies.[260]

Fannie Mae generally will not object to the practices a servicer regularly applies so long as they are carried out in accordance with established written procedures that are consistent with Fannie

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[253] All Active Single-Family Loans chart from Marianne Sullivan, Senior Vice President, Credit Loss Management.

[254] *Id.*

[255] Mortgage Selling and Servicing Contract, I-A.

[256] *See* Mortgage Selling and Servicing Contract, I-C ("Whenever there is a reference to the Guides in this Contract, it means the Guides as they exist now and as they may be amended or supplemented in writing.").

[257] Interview with Daniel C. Smith, Deputy General Counsel, Legal Department (Oct. 14, 2005).

[258] Servicing Guide, I-202.

[259] *Id.*

[260] *Id.* The Selling Guide contains similar language. Selling Guide, I-201.01.

Mae's servicing policies.[261]

The Servicing Guide also "require[s] each Fannie Mae-approved servicer (and any subservicer or third-party originator it uses) *to be aware of, and in full compliance with, all federal, state, and local laws* (including statutes, regulations, ordinances, administrative rules and orders that have the effect of law, and judicial rulings and opinions) that apply to any of its origination, selling or servicing practices or other business practices (including the use of technology) that may have a material effect on [Fannie Mae].[262]

The Servicing Guide requires servicers to have trained staff and adequate procedures to conduct their duties and

> ... *to protect against fraud, misrepresentation, or negligence by any parties involved in the mortgage servicing processes*; to protect our investment in the security properties; and to provide borrowers with assistance when it is requested. Servicers should have effective processes to promptly address borrower inquiries (relating to both current and delinquent loans) and provide timely payoff quotes and refunds of escrow deposits after payoff.[263]

The guidelines encourage servicers to adopt servicing practices that allow for an appropriate level of discretion to take into account the facts of a particular loan and the circumstances of the borrower.[264]

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[261] Servicing Guide, I-202.

[262] Servicing Guide, I-306. It further states: "Among other things, this means that the servicer must comply with any applicable law that addresses fair housing, equal credit opportunity, truth-in-lending, wrongful discrimination, real estate settlement procedures, borrower privacy, escrow account administration, mortgage insurance cancellation, debt collection, credit reporting, electronic signatures or transactions, *predatory lending*, terrorist activity, or the enforcement of any of the terms of the mortgage.

Since applicable law can change quickly, sometimes without widespread notice, it is imperative that a servicer monitor federal requirements and the requirements of each state or locality in which it does business and take appropriate action to comply with any changes. If a change to applicable local or state law represents a potential conflict with our requirements, the servicer should advise its lead Fannie Mae regional office. *When we consider it appropriate, we may request a servicer to provide evidence of its compliance with any given jurisdictional requirement or applicable law.*"

[263] Servicing Guide, I-202.

[264] *Id.*

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Fannie Mae conducts performance monitoring on the status of the lender and also audits servicer records related to Fannie Mae mortgages.[265] Fannie Mae uses an array of analytical tools to track the performance of servicers. Fannie Mae monitors its servicers' performance by validating that the loan activity data reported to Fannie Mae is accurate; by checking if servicers are servicing Fannie Mae's loans in compliance with Fannie Mae's guidelines; by checking whether servicers are following the timelines Fannie Mae has established for foreclosure and bankruptcy actions; and by auditing servicers' records.[266]

Servicers provide Fannie Mae with information on a monthly basis about loan activity for the loans that they are servicing.[267] Servicers report "loan level" activity for all the loans that they service, whether they are held in Fannie Mae's portfolio or back MBS.[268] This information includes the last paid installment, the unpaid principal balance, principal, interest, actions taken on the loans, and fees collected.[269] Servicers also report "pool level" activity for loans that back MBS, which includes the outstanding security balance for fixed rate pools, and the security balance and aggregate pass through rate of the underlying adjustable loans for adjustable rate pools.[270]

Fannie Mae validates the loan activity information the servicers provide by comparing it with Fannie Mae's expectations on how the loans and pools of loans will

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[265] The Selling Guide I-104.

[266] Interview of Dror Oppenheimer, Vice President for Asset Development and Management (Dec. 7, 2005); interview with Robert Sanborn, Vice President of the National Servicing Organization (Dec. 16, 2005); interview with Debbie Kehr, Director of Centralized Servicing Operations (Dec. 19, 2005); and Selling Guide, I-404.

[267] Interview of Dror Oppenheimer, Vice President for Asset Development and Management (Dec. 7, 2005)

[268] *Id.* This information is reported to a mortgage accounting system named LASER. Servicers report loan activity to Fannie Mae through the SURF or MORNET systems, or via a direct line to Fannie Mae.

[269] *Id.*

[270] *Id.* This information is reported to a computer system named MAST.

perform.[271] Fannie Mae's primary tasks are ensuring that servicers remit all the funds that Fannie Mae is due and ensuring that the appropriate funds are being passed on to investors.[272] In these reviews, Fannie Mae does not have a mechanism to ensure that the fees servicers are charging borrowers are appropriate.[273] Unusual activity – such as high default rates or other indications that loans are not performing as expected – would prompt Fannie Mae to conduct further reviews of a servicer.[274] The statistics are now being analyzed to assist in detecting lender or servicer fraud in the origination or servicing of loans.[275]

Fannie Mae employs servicing "consultants" who train servicers on how to comply with Fannie Mae's guidelines, as well as provide on-going consultation.[276] They also regularly review servicers' compliance with Fannie Mae's guidelines.[277] They monitor the servicers' performance by looking at factors such as the delinquency and loan level delays, which include servicers' delays in collecting on the loans and delays during foreclosure.[278] Consultants determine why the delays occurred and whether they are acceptable or not.[279] Servicers often ask on-site consultants for advice if they have difficulty interpreting Fannie Mae's guidelines or if they want to know if they are in compliance with Fannie Mae's standards.[280] Some servicing consultants are responsible for dozens of small servicers, while

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[271] *Id.*

[272] *Id.*

[273] *Id.*

[274] *Id.*

[275] *Id.*

[276] *Id.*

[277] *Id.*

[278] *Id.*

[279] *Id.*

[280] *Id.*

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others may be responsible for managing one large servicer.[281] The consultants are decentralized and report to portfolio managers.[282]

Consultants are responsible for ensuring that servicers are pursuing alternatives to foreclosures when borrowers are delinquent on their payments.[283] Mr. Lavalle has pointed to language contained on Fannie Mae's website as evidence that Fannie Mae is responsible for making the decision whether to foreclose and argues that Fannie Mae "order[s] the hit." The website states that Fannie Mae "employs 44 servicing consultants, who work as on-site consultants at [its] largest loan servicers, helping them manage problem loans on a case-by-case basis with judgment and speed."[284] Fannie Mae's policy is that if a loan goes into foreclosure, consultants work with the servicer, but consultants do not make the decision of whether to foreclose.[285]

Servicing specialists are part of the Centralized Servicing Operations Group, a division of the NSO.[286] Specialists are responsible for loss mitigation, loan administration, default management (which includes foreclosures and bankruptcy), and attorney supervision.[287] Loan administration includes reviewing loan level delays in foreclosures and bankruptcies to determine whether to assess a penalty against the servicer and reviewing reports of delinquent loans to determine if they were accurately reported as falling outside of Fannie Mae's guidelines

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[281] *Id.*

[282] *Id.*

[283] *Id.*

[284] Current Issues: Overview of Credit Risk Management at Fannie Mae, June 19, 2002, available at www.fanniemae.com.

[285] Interview with Robert Sanborn, Vice President of the National Servicing Organization (Dec. 16, 2005).

[286] Interview with Debbie Kehr, Director of Centralized Servicing Operations (Dec. 19, 2005).

[287] *Id.*

("exception review").[288] Specialists audit the servicing records to ensure that penalties have been properly assessed and to conduct a review for loan level delays relating to title issues, servicing issues, litigation, bankruptcy and foreclosure.[289] In essence, servicing specialists focus on whether servicers are acting in a timely manner to protect Fannie Mae's interest. They are not responsible for determining whether servicers are engaging in predatory servicing. Servicing specialists also conduct a review of Fannie Mae-retained attorneys through the RAMN (Retained Attorney Management Network) system.

Servicers must permit Fannie Mae to examine certain records relating to mortgages they services for Fannie Mae.[290] The Selling Guide states that servicers must maintain their records in such a manner that would enable Fannie Mae to examine and audit them at any time. Mortgage files and records include the individual mortgage files, permanent mortgage account records, and accounting system reports. The accounting records relating to mortgages serviced for Fannie Mae must be maintained in accordance with sound and generally accepted accounting principles and in such a manner as will permit its representatives to examine and audit such records at any time.[291]

Fannie Mae reserves the right in its Mortgage Selling and Servicing Contracts to terminate a servicer with or without cause.[292] Grounds for terminating with cause include knowingly selling Fannie Mae a mortgage that has untrue mortgage warranties; failing to comply

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[288] Attachments to e-mail from Debbie Kehr, Director of Centralized Servicing Operations (Dec. 19, 2005).

[289] *Id.*; e-mail from Adam Womack, Servicing Process Manager, Quality Assurance (Dec. 19, 2005).

[290] Mortgage Selling and Servicing Contract, II-D.

[291] Selling Guide, I-404.

[292] Mortgage Selling and Servicing Contract, IX-C: "We may terminate servicing for any reason, by giving the Lender notice of the termination. If we do so, the provisions of this Contract covering the servicing of the affected mortgages will automatically terminate on the thirtieth day following the day our notice is given. ..." *See also* Servicing Guide, I-201.08. *See also* Selling Guide, I-201.07, which Fannie revised on January 31, 2006, and which contains similar language.

with the Fannie Mae Selling and Servicing Contract and Selling and Servicing Guides, by failing to keep accurate accounting and mortgage servicing records, or other non-performance; and failing to properly foreclose on a property when a borrower is in default. It also is a breach of the Mortgage Selling and Servicing Contract and grounds for termination if

> a court of competent jurisdiction finds that the Lender or any of its principal officers has committed an act of civil fraud; or the Lender or any of its principal officers is convicted of any criminal act related to the Lender's lending or mortgage selling or servicing activities or that, in [Fannie Mae's] opinion, adversely affects the Lender's reputation or [Fannie Mae's] reputation or interests.[293]

One of three business centers, the Eastern Business Center, Western Business Center, or National Business Center, is responsible for the relationship with each servicer, The business center responsible for a particular servicer works with the National Servicing Organization to determine whether to terminate that servicer.[294] The business center's Vice President of Operations, the Vice President in charge of the National Servicing Organization, and the Servicing Director must consent to the termination.[295]

Fannie Mae rarely has cause to terminate a servicer involuntarily. For the past three years the terminations have been:

2003	5
2004	2
2005	1[296]

Fannie Mae has a preference for trying to reform servicers with problems. In its view, an involuntary termination does not help anyone – it severely harms the servicer, who is no longer

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[293] Mortgage Selling and Servicing Contract, VIII-A.

[294] E-mail from Mercy Jimenez, Senior Vice President, National Business Center (Apr. 13, 2006).

[295] *Id.*

[296] E-mail attachment of a chart of all terminations, from Marianne Sullivan, Senior Vice President, Credit Loss Management (Mar. 3, 2006).

Fannie Mae approved, and it harms borrowers whose loans are serviced by that servicer because it is no longer overseen by Fannie Mae.[297] Fannie Mae tries to reform a nonperforming servicer's behavior.[298] Fannie Mae believes that if it terminated the servicers, they might not ever change their poor practices.[299]

C. Best Practices – Fairbanks Consent Decree

Mr. Lavalle has requested Fannie Mae mandate a set of "best practices" that all of its servicers must follow.[300] These "best practices" would be based upon the practices Fairbanks Capital Corp. ("Fairbanks") and its parent Fairbanks Capital Holding Corp., agreed to implement in the 2003 consent order they entered into with FTC and HUD.[301] FTC and HUD accused Fairbanks of violating the Federal Trade Commission Act ("FTCA"), Fair Debt Collection Practices Act ("FDCPA"), Fair Credit Reporting Act ("FCRA") and Real Estate Settlement Procedures Act ("RESPA"). In settling the matter, Fairbanks and its parent agreed to refrain from engaging in certain predatory servicing practices and to provide borrowers with certain information pertaining to their loans.[302] The settlement, which was coordinated with a settlement in a class action lawsuit, also required the companies to pay the FTC $40 million to compensate

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[297] March 3, 2006, interview with Marianne Sullivan, Senior Vice President, Credit Loss Management (Mar. 3, 2006).

[298] *Id.*

[299] *Id.*

[300] E-mail from Nye Lavalle to Ms. House, Mr. Mudd, and Board of Director members Stephen Ashley, Ann Korologos, Frederic Malek, Donald Marron, Leslie Rahl, H. Patrick Swygert, and John Wulff, and others (July 22, 2005).

[301] *See U.S. v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Oct. 6, 2003) (order preliminarily approving stipulated final judgment and order as to Fairbanks Capital Corp. and Fairbanks Capital Holding Corp.) (order preliminarily approving stipulated final judgment and order as to Fairbanks Capital Corp. and Fairbanks Capital Holding Corp.) [hereinafter "Consent Order"].

[302] Press Release, FTC, "Fairbanks Capital Settles FTC and HUD Charges" (Nov. 12, 2003).

victims of the fraud. The companies' founder and former CEO, Thomas D. Basmajian, also paid $400,000 in a separate settlement.[303]

Mr. Lavalle wants Fannie Mae to amend its Servicing Guide to include the servicing requirements contained in the Fairbanks consent order, as well as other requirements. He has drafted a Mortgage Servicing Best Practices Guide that he wants Fannie Mae to adopt.[304]

Fannie Mae did, in fact, review the Fairbanks consent order and amend portions of its Selling and Servicing Guides.[305] The amendments were made in a series of three announcements in 2004.[306] The consent decree was resolving a case in which the FTC found that Fairbanks had violated numerous legal requirements and therefore, its provisions were remedial. In addition, most of the issues addressed in the consent order pertained to practices primarily used by subprime servicers.[307] Most of Fannie Mae's servicers are prime servicers. Fannie Mae officials felt that many of the consent order requirements were not relevant to its universe of servicers.[308] Fannie Mae adjusted those practices that it viewed as relevant.[309] In some cases, the Fairbanks consent order required Fairbanks to do more than was required by the

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[303] *Id.*

[304] E-mail from Nye Lavalle to Mark Cymrot (Feb. 27, 2006). The Mortgage Servicing Best Practices were included in a report on predatory lending and servicing that he sent to Ms. House, Mr. Raines. *See* E-mail from Mr. Lavalle to undisclosed recipients (June 4, 2004).

[305] Interview with Marianne Sullivan, Single-Family Anti-Fraud Oversight (Senior Manager of Mortgage Servicing Policy); Telephone Interview with Ezzard Alves, Senior Manager of Mortgage Servicing Policy (Nov.17, 2005).

[306] *See* Announcement ("Ann.") 04-04: Test Period for Revised Appraisal Report Forms, Property Condition and Required Repairs Guidelines, and Special Servicing Guidelines; Ann. 04-06: Authoritative Online Selling and Servicing Guides, Purchase of Massachusetts "High Cost Home Mortgage Loans," Mortgage Loan Documents, Arbitration, Waiver of Prepayment Premium, Guaranty Fees, and Escrow Accounts; and Ann. 04-07: Mortgages Secured by Manufactured Homes, Fannie Mae Purchase of Indiana "High Cost Home Mortgage Loans," Quality Assurance-Documentation Requirements, Southwestern Regional Location-Change of Physical Address, Lenders' Analysis of the Contract For Sale and Sale History of the Subject Property, Property Flipping, Comment Period for Revised Test Appraisal Forms, Servicing Transfers, Lender-Placed Property Insurance.

[307] Interview with Marianne Sullivan, Single-Family Anti-Fraud Oversight (Nov. 16, 2005).

[308] *Id.*

[309] *Id.*

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loan instruments.[310] Fannie Mae did not adopt those requirements because it thought it would face resistance from its servicers if it mandated that they do more than was actually required.[311]

The primary practices either prohibited by or mandated in the Fairbanks consent order relate to the following: (1) crediting payments, (2) misrepresentations, (3) escrow accounts, (4) force-placed insurance, (5) improper fees, (6) compliance with laws and regulations, (7) consumer complaints, (8) consumer information, (9) foreclosures, (10) late fees, and (11) forbearance agreements.[312] Fannie Mae's guidelines address many of these issues, but often not in as much detail or as explicitly.

1. Crediting Payments

In terms of crediting payments, Fairbanks was required to accept partial payments and credit all payments *as of the date of receipt*. Fannie Mae's Servicing Guide was amended in 2004 to add a section stating:

> It is the servicer's responsibility to ensure that its payment collection and posting processes enable the timely crediting of borrowers' accounts (including borrowers in bankruptcy) so that late charges are not inappropriately assessed or other actions, such as inaccurate reporting of delinquencies to credit bureaus, are not taken.[313]

Fannie Mae also encourages its servicers to periodically audit the automated processes they use to post payments to ensure they perform efficiently.[314] Mr. Lavalle asserts that Fannie Mae should require its servicers to post payments within 24 hours of receipt, and instantaneously

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[310] *Id.*

[311] *Id.*

[312] *See* Consent Order.

[313] Ann. 04-04: Test Period for Revised Appraisal Report Forms, Property Condition and Required Repairs Guidelines, and Special Servicing Guidelines.

[314] *Id.*

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when payments are submitted electronically.[315] Fannie Mae's current requirements are not as stringent as Fairbanks' requirement, nor as stringent as Mr. Lavalle has requested.

As for partial payments, Fairbanks is enjoined from not accepting partial payments, but Fannie Mae's guidelines allow its servicers to reject partial payments in some cases. One provision of the Servicing Guide states that servicers should not automatically return partial payments to borrowers, but instead should base their decision on whether to accept the payment on the amount of the shortage and on any special circumstances that might justify the partial payment.[316] The Servicing Guide states that the servicer of a first mortgage should accept a partial payment and hold it as unapplied funds, instead of returning the payment, if the borrower "has a good attitude toward the mortgage obligation; is not habitually delinquent; does not have a history of remitting checks that are returned for 'insufficient funds'; and can pay the balance of the payment within the next 30 days."[317] Another provision states that "[a]s a rule, a servicer should accept partial payments only to help cure a delinquency" and that it should return partial payments when it believes that doing so will be an effective collection tool.[318] It also states, however, that servicers should not routinely return partial payments.[319]

The Servicing Guide provides that when servicers accept partial payments, they should apply the portion of the payments that equals one or more full installments and should hold the remaining portion as "unapplied funds" until it receives enough money to make a full

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[315] Attachment from e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

[316] Servicing Guide, III-101.03: Payment Shortages.

[317] *Id.*

[318] *Id.*

[319] *Id.* It also states: "FHA, HUD, and VA require that partial payments be accepted under certain conditions that they specify."

installment.[320] The total amount due for a conventional mortgage may include late charges or prepayment premiums, so Fannie Mae allows servicers to hold as unapplied, a payment that does not include a late or prepayment charge that is due.[321] The servicer then can use a portion of the next payment to make up the shortage so that the payment can be applied.[322] If a servicer does not consider late charges and prepayment premiums as part of the total amount due, it may return a short payment.[323] In either case, the servicer should inform borrowers of the actions taken and why, and the total amount that is due.[324]

Mr. Lavalle argues that servicers should never return payments to borrowers because payment reflects a borrower's willingness to fulfill its mortgage obligation.[325] He also argues that servicers should apply partial payments to principal and interest before applying them to any expenses or fees other than escrow expenses.[326] Fannie Mae does not agree with these opinions.[327] Fannie Mae's position is that some borrowers intentionally make partial payments or sporadic payments solely to prevent foreclosure, not to fulfill their mortgage obligations.[328]

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[320] Servicing Guide, III-101.03: Payment Shortages.

[321] *Id.*

[322] *Id.*

[323] *Id.*

[324] *Id.*

[325] *Id.*.

[326] Attachment from e-mail dated Feb. 27, 2006 from Nye Lavalle to Mark Cymrot.

[327] Servicing Guide, VII-202: Accepting Partial Payments (stating that servicers can return partial payments if they believe doing so will be an effective collection tool); and Servicing Guide, III-101.03: Payment Shortages (stating that servicers can hold payments that do not include late fees as unapplied and then apply a portion of the subsequent payment to make up the shortage).

[328] Telephone Interview with Zach Oppenheimer, Senior Vice President, Single-Family Mortgage Business, and Sam Smith, Vice President, Single Family Operations, Eastern Business Center (March 6, 2006).

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These provisions are therefore necessary to prevent borrowers from skirting their mortgage obligations, Fannie Mae argues.[329]

2. Misrepresentations and Fee Disclosures

As for servicer misrepresentations, Fairbanks is prohibited from misrepresenting the amount that a consumer owes, or misrepresenting that a fee is allowed if it is not, or the amount, nature or terms of the fee. It is also prohibited from "assessing and/or collecting any fee unless it is for services actually rendered and is (a) expressly authorized, and clearly and conspicuously disclosed, by the loan instruments and not prohibited by law; (b) expressly permitted by law and not prohibited by the loan instruments; or (c) a reasonable fee for a specific service requested by a consumer that is assessed and/or collected only after clear and conspicuous disclosure of the fee is provided to the consumer and explicit consent is obtained from the consumer to pay the fee in exchange for the service, and such fee is not otherwise prohibited by law or the loan instruments."[330]

In 2004, Fannie Mae amended its Servicing Guide to state that servicers should have clearly written policies regarding fee assessment that address four points in particular:

- The types or categories of fees, and the specific amounts of fees, if known, that the servicer can charge borrowers for services that are not regular servicing activities and are not covered in the servicing fee;
- Any fees servicers charge to borrowers or that Fannie Mae reimburses servicers for must be related to work that was actually performed by the servicer, either directly or indirectly by third parties;
- Servicers must clearly disclose the assessment of any fees to borrowers in advance of performing the service where practical, or subsequently. This does not apply to fees

[329] *Id.*

[330] *See* Consent Order.

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related to foreclosures and bankruptcy that are incurred to enforce the mortgage obligation, are allowed by the Servicing Guide, and that are disclosed if required by applicable law. If borrowers request services for which free or reduced-cost alternatives are available, the servicer must explain those options to borrowers before the services are provided; and

- Servicers can charge fees on a repetitive basis *only* when Fannie Mae's Guides require or permit it, or where it is otherwise clearly supported by the circumstances relating to a particular loan.[331]

Mr. Lavalle asserts that all fees must be disclosed to borrowers, individually identified (*i.e.*, the fee cannot be included or hidden within another fee), and cross-referenced to the provision of the promissory note or mortgage that allows it.[332] If borrowers challenge the legitimacy of the fees, servicers must provide a legal opinion and case law to support the fees, he argues.[333] In addition, he asserts that servicers should submit a schedule of fees it will charge borrowers to Fannie Mae for approval.[334] Finally, he wants Fannie Mae to prohibit commissions, kickbacks, and rebates on fees.[335]

Mr. Lavalle's demands regarding disclosure of fees are far beyond Fannie Mae's and Fairbanks' requirements. Both Fairbanks' and Fannie Mae's servicers are prohibited from charging fees for services that were not performed, and from charging fees that are not allowed by law or under the mortgage documents.[336] Fairbanks also is prohibited from imposing any fee or other action that is prohibited by any contractual agreement with the borrower. Fairbanks is

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[331] Ann. 04-04: Test Period for Revised Appraisal Report Forms, Property Condition and Required Repairs Guidelines, and Special Servicing Guidelines.

[332] Attachment from e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

[333] *Id.*

[334] *Id.*

[335] *Id.*

[336] Ann. 04-04: Test Period for Revised Appraisal Report Forms, Property Condition, and Required Repairs Guidelines, and Special Servicing Guidelines.

not required, and Fannie Mae does not require its servicers, to inform borrowers which provision in the mortgage documents allow a particular fee, or provide case law to support fees if borrowers dispute them. Fannie Mae mandates that its servicers provide additional protection to borrowers by explaining to them whether less expensive alternatives for the services they requested are available. Fairbanks is not required to provide this information.

Under the consent order, Fairbanks is prohibited from assessing or collecting fees for demand letters or any other collection letters or notices, and, unless under certain conditions, for property inspections, broker's price opinions, and attorneys' fees. Fairbanks may not charge attorneys' fees to borrowers unless the fees are necessary to process a foreclosure sale or are otherwise expressly permitted by law or disclosed to borrowers who give consent, and a law firm has performed the services and charged Fairbanks for them.[337]

Fannie Mae clarified in a 2004 announcement that servicers should not charge fees related to the following activities to borrowers:

- Handling borrower disputes and facilitating routine borrower collections;
- Arranging repayment or forbearance plans;
- Sending demand or breach letters relating to the non-payment of principal, interest, taxes, or insurance before sending a formal acceleration notice that matures the principal balance and begins the foreclosure process; and
- Updating records to "reinstate" a loan that has been brought current.[338]

Fannie Mae servicers can charge for servicing activities that borrowers request and that are not covered in the servicing fee Fannie Mae pays them. These activities include "work related to a

[337] Consent Order, p. 12.

[338] Ann. 04-04: Test Period for Revised Appraisal Report Forms, Property Condition and Required Repairs Guidelines, and Special Servicing Guidelines.

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change in ownership of the security property, replacement of insurance policies, a release of the security, providing expedited service via fax, providing more than one payoff statement in a short period of time (or even a single payoff statement if applicable law expressly permits a borrower fee), providing duplicate copies of loan documents, accepting a 'phone pay' payment, and consummating the assumption or modification of a loan."[339] Fannie Mae's servicers also can charge borrowers for legal service fees in cases in which their mortgage states that the borrower will reimburse the servicer for any legal service fees and costs it incurs.[340] The Guide states that the "servicer's legal counsel should attempt to handle such matters by stipulation or any other expeditious manner that will reduce the fees and costs that the borrower has to pay."[341]

Mr. Lavalle argues that borrowers should not be charged fees for any services that Fannie Mae or the investor requested, including inspection fees and broker's price opinions.[342] Servicers also must provide invoices and cancelled checks for broker's price opinions, and inspections upon request from borrowers, he contends.[343] Additionally, he asserts that payoff statements should be routine and borrowers should be able to retrieve them on-line.[344] As for attorneys' fees, he asserts that when borrowers pay off or refinance their loans, they should not be charged for the attorneys' fees the servicers incurred when the borrower sued the servicer

[339] Servicing Guide, I-203.04: Fees for Special Services.

[340] Servicing Guide, III-501: Uncontested Routine Legal Actions.

[341] *Id.*

[342] Attachment from e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

[343] *Id.*

[344] *Id.*

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over a dispute or to prevent foreclosure.[345] He also states that servicers must provide invoices and cancelled checks for legal fees upon request from borrowers.[346]

Mr. Lavalle's demands exceed Fannie Mae's and Fairbanks' practices. Fairbanks does not charge for property inspections and broker's price opinions, but Fannie Mae does not prohibit its servicers from charging for these services. In addition, Fannie Mae does not require its servicers to provide invoices and cancelled checks for these services and for attorneys' fees. Fairbanks also is not required to provide borrowers with invoices and cancelled checks for attorneys' fees. Both Fannie Mae and Fairbanks do not charge borrowers for demand letters.

3. Escrow Disbursements

The Fairbanks consent order prohibits Fairbanks from failing to make disbursements of escrow funds for insurance, taxes and other charges in a timely manner.[347] Fannie Mae amended its policies on escrow deposit accounts and escrow administration following the Fairbanks consent order, but the amendments dealt with the waiver of the escrow deposit account requirement and when a servicer is required to begin escrowing taxes and insurance.[348] Fannie Mae's Servicing Guide states that servicers of first mortgages must assume responsibility for administering escrow deposit accounts in accordance with the mortgage documents and all applicable laws and government regulations.[349] RESPA states that if the terms of a loan require the borrower to deposit money into an escrow account that the servicer

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[345] *Id.*

[346] *Id.*

[347] Consent Order, p. 8.

[348] Ann. 04-06: Authoritative Online Selling and Servicing Guides, Purchase of Massachusetts "High Cost Home Mortgage Loans," Mortgage Loan Documents, Arbitration, Waiver of Prepayment Premium, Guaranty Fees, and Escrow Accounts.

[349] Servicing Guide, III-103: Escrow Deposit Accounts. *See also* Servicing Guide, I-306: Compliance with Applicable Laws, which states, in part, that servicers must comply with any applicable law that addresses escrow account administration.

manages so that the servicer can assure tax, insurance premium and other payments, the servicer must make payments from the escrow account for those purposes "in a timely manner as such payments become due."[350]

Mr. Lavalle asserts that when borrowers write "qualified written request" letters, servicers should provide them with documentation, such as receipts, invoices and cancelled checks for payment of escrow charges.[351] A qualified written request is defined under RESPA as a written correspondence on something other than a payment medium (*i.e.*, not written on the check) that identifies the borrower and his or her account and includes a statement as to why the borrower believes the account is in error or states other information that the borrower seeks.[352] In addition, Mr. Lavalle asserts that Fannie Mae should prohibit servicers from dumping late fees, broker's price opinion fees, appraisal fees, and attorneys' fees into escrow accounts.[353] He also contends that servicers dump fees discharged in bankruptcy into escrow accounts and other adjustments.[354] Finally, Mr. Lavalle argues that servicers should provide programs on their website for borrowers to analyze their escrow accounts.[355]

Both Fairbanks and other Fannie Mae servicers must disburse escrow funds in a timely manner.[356] Fannie Mae does not require its servicers to provide receipts, invoices and cancelled checks when borrowers send qualified written request letters about escrow account

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[350] 12 U.S.C. § 2605(g).

[351] Ann. 04-06: Authoritative Online Selling and Servicing Guides, Purchase of Massachusetts "High Cost Home Mortgage Loans," Mortgage Loan Documents, Arbitration, Waiver of Prepayment Premium, Guaranty Fees, and Escrow Accounts.

[352] 12 U.S.C. § 2605(e)(1)(B).

[353] Attachment from e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

[354] *Id.*

[355] *Id.*

[356] Servicing Guide, III-103: Escrow Deposit Accounts (requiring servicers to administer escrow accounts in compliance with all applicable laws); 12 U.S.C. § 2605(g) (requiring servicers to make payments from escrow accounts in a timely manner).

payments, and Fairbanks does not have to provide these items either. RESPA requires servicers to respond to qualified written requests by acknowledging receipt of the letter within 20 days of receipt, and by correcting the borrower's account or determining the account is correct within 60 days of receipt.[357] It does not require servicers to send the documentation Mr. Lavalle asserts they should send. The consent order and Fannie Mae's guides do not address Mr. Lavalle's allegations and complaints about broker's price opinion, appraisal and attorneys' fees and fees discharged in bankruptcy being dumped into escrow accounts.

4. Force-Placed Insurance

Fairbanks was prohibited from charging for force-placed insurance before providing the consumer with adequate notice and time to demonstrate that he or she already has insurance coverage, and various related practices.[358] The Fairbanks consent order specifies how many notices Fairbanks must send, and when they must send them, before charging borrowers for force-placed insurance.[359] Fannie Mae amended its Servicing Guide in 2004 to require servicers to attempt to reach borrowers for evidence that they have insurance before issuing force-placed insurance coverage, which it refers to as lender-placed insurance.[360] The Servicing Guide states how servicers should attempt to contact borrowers, what information they must provide borrowers, and how long they must wait before charging borrowers for force-placed

[357] 12 U.S.C. § 2605(e).

[358] *See* Consent Order.

[359] *Id.*

[360] Servicing Guide Part II, Chapter 6: Lender-Placed Property Insurance. Fannie Mae amended the Servicing Guide in an Announcement on November 8, 2004 (Ann. 04-07), but servicers were not required to implement the new requirements until February 1, 2005.

insurance.[361] Servicers also are to have adequate resources to process documentation that borrowers submit that shows they have coverage.[362]

Mr. Lavalle asserts that servicers should pay borrowers' insurance instead of placing force-placed insurance, unless insurance companies will not accept it.[363] However, if servicers do place force-placed insurance, he asserts they should abide by a detailed timeline and procedures that provide more protection to borrowers. For instance, Fairbanks only must wait a total of 50 days after the mailing before charging for force-placed insurance, while Fannie Mae instructs its servicers to typically allow 60 days for the borrower to provide evidence of coverage before charging for force-placed insurance. Fairbanks, however, is required to send two letters to the borrower, while Fannie Mae only requires its servicers to send one letter to borrowers. Mr. Lavalle proposes that Fannie Mae servicers not be allowed to charge for force-placed insurance from 105 to 135 days after the first mailing. He also proposes servicers attempt to make contact with the borrower or its agent seven times before charging for force-placed insurance, while Fairbanks must make only two attempts. Fannie Mae requires it servicers to make "attempts" to contact the borrower before force-placing insurance, but does not stipulate how many are required.[364]

As for confirmation of borrower-placed insurance, Fairbanks is prohibited from failing to accept reasonable confirmation from borrowers of insurance coverage or from placing force-placed insurance on borrowers' homes even if the servicer knows or did not take

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[361] *Id.*

[362] *Id.*

[363] Ann. 04-06: Authoritative Online Selling and Servicing Guides, Purchase of Massachusetts "High Cost Home Mortgage Loans," Mortgage Loan Documents, Arbitration, Waiver of Prepayment Premium, Guaranty Fees, and Escrow Accounts.

[364] Servicing Guide Part II, Chapter 6: Lender-Placed Property Insurance.

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reasonable actions to determine whether the borrowers have their own insurance. Fairbanks is also prohibited from placing a loan in default, assessing late fees, or initiating foreclosure proceedings solely due to the borrower's non-payment of insurance premiums. It is required, within 15 days of receiving confirmation of the borrower's existing insurance coverage, to refund all force-placed insurance premiums and any related fees paid during the period in which there was overlapping coverage.

Fannie Mae's Servicing Guide states that if the borrower provides evidence of coverage, within a reasonable time the servicer must refund or credit to the borrower the total amount of any premiums it charged for force-placed insurance after the effective date of the borrower-placed coverage, as well as any late charges it assessed due to nonpayment of the force-placed insurance premiums.[365] Fannie Mae stated in a 2004 announcement that the "failure of a borrower to pay any *miscellaneous* fees assessed when the borrower is otherwise current with respect with the total amount due on his or her basic mortgage obligation (principal, interest, taxes, insurance, late charges, and any prepayment charges) *generally should not result in the acceleration of the loan and commencement of foreclosure proceedings.*"[366] Fannie Mae prohibits servicers from initiating *foreclosure proceedings due solely to late charges.*[367] Nonetheless, a specific prohibition from initiating foreclosure proceedings due to non-payment of insurance is not contained in Fannie Mae's Guides.

Mr. Lavalle argues that if insurance is ordered and the borrower then provides evidence that it was wrongly placed, any money deducted from the payments must be applied to

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[365] *Id.*

[366] Ann. 04-04: Test Period for Revised Appraisal Report Forms, Property Condition and Required Repairs Guidelines, and Special Servicing Guidelines.

[367] Servicing Guide, VII- 201: Assessing Late Charges, stating "the servicer cannot foreclose the mortgage later if the only delinquent amount is unpaid late charges."

the loan and the loan must be reamortized from the point of misapplication.[368] He also claims that if borrowers secure insurance, servicers must cancel force-placed insurance on the date they receive notice of borrower-placed insurance, and must credit borrowers' accounts for any unused portion of the force-placed insurance on the date of notice.[369] Also, servicers should disclose the carrier, master policy number and commissions, rebates or any free services the carrier provides to the servicer, Mr. Lavalle argues.[370] Finally, he asserts that when servicing is transferred, the new servicer should not be able to cancel the prior force-placed insurance to create its own force-placed insurance policy.[371]

Mr. Lavalle believes that borrowers should be credited for unnecessary force-placed insurance quicker than Fairbanks and Fannie Mae's servicers are required to credit borrowers. Fairbanks must refund force-placed insurance premiums within 15 days of receiving confirmation of borrower-placed insurance, and Fannie Mae's servicers must refund the insurance "within a reasonable time."[372] Mr. Lavalle asserts that if borrowers secure insurance, servicers must credit borrowers on the date of notice for any unused portion of the force-placed insurance.[373] Fannie Mae's Servicing Guide and the Fairbanks consent order do not address Mr. Lavalle's proposal that servicers disclose certain information about the insurance carrier, nor do they address the cancellation and placement of new force-placed insurance when servicing is transferred. Unlike the Fairbanks consent order, Fannie Mae's Servicing Guide does not contain a specific provision that states that servicers must accept reasonable confirmation of borrower-

[368] Attachment from e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

[369] Mortgage Servicing Best Practices, in the section entitled "Taxes & Insurance."

[370] Attachment from e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

[371] *Id.*

[372] Servicing Guide, II, Chapter 6: Lender-Placed Property Insurance.

[373] Attachment from e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

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placed insurance and must not place force-placed insurance on borrowers' homes even if servicers know the borrower has insurance. The Servicing Guide also does not specifically prohibit servicers from placing loans into default, charging late fees, or initiating foreclosures due solely to borrowers not paying insurance premiums. The consent order resulted from a class action lawsuit, and thus prohibits specific acts that Fairbanks was alleged to have committed. By and large, Fannie Mae's servicers have not engaged in these actions, and thus Fannie Mae's Servicing Guide does not specifically state that these actions are prohibited.

5. Consumer Services

Regarding consumer services, Fairbanks is required to maintain a toll-free number and address dedicated to handling consumer disputes and questions, and the toll-free number must be staffed for certain hours that are set in the consent order. The consent order also establishes deadlines by which Fairbanks must respond to and investigate consumer disputes. In addition, under the consent order, Fairbanks must not take "any legal or other action to collect the disputed amount and any related charges until the dispute has been investigated and the consumer has been informed of the results of the investigation."[374]

Fannie Mae requirements for its servicers, amended in 2004, are not as detailed as the ones contained in the consent order. Fannie Mae requires its servicers to respond promptly to all borrower inquiries about the terms of their mortgages, the status of their accounts, and any actions servicers took, or did not take, in servicing their mortgages.[375] Fannie Mae particularly expects its servicers to respond promptly to borrowers when they have a dispute with the servicer, as well as expects its servicers to have effective means to communicate with its

[374] Consent Order, p. 17.

[375] Ann. 04-04: Test Period for Revised Appraisal Report Forms, Property Condition and Required Repairs Guidelines, and Special Servicing Guidelines.

borrowers in such as way to help resolve the dispute.[376] Fannie Mae expects its servicers to resolve disputes without assessing additional fees on borrowers.[377] In 2004, Fannie Mae amended its policies to state that if a servicer is having an "ongoing bona fide dispute with a borrower," Fannie Mae expects that it "generally will not commence foreclosure proceedings without a thorough review of the circumstances surrounding that dispute and reasonable efforts to resolve the dispute."[378]

When borrowers send qualified written requests for information regarding servicing to Fannie Mae servicers, RESPA requires the servicers to provide a written response acknowledging receipt of a letter within 20 days of receipt.[379] Within 60 days of receipt of the request, servicers must correct the borrower's account and send the borrower a written notification of the correction.[380] After investigating the matter, servicers must provide the borrower with a written explanation that includes a statement of why the servicer believes its determination of the account is correct and who can provide assistance to the borrower, or provide the borrower with an explanation of why the information the borrower requested is unavailable and who can provide assistance to the borrower.[381]

Mr. Lavalle asserts that servicers do not promptly respond to borrower inquiries. He states that a national mortgage ombudsman position should be created to provide servicer oversight.[382] The ombudsman would audit and review servicers and arbitrate disputes.[383] It

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[376] *Id.*

[377] *Id.*

[378] Ann. 04-04: Test Period for Revised Appraisal Report Forms, Property Condition and Required Repairs Guidelines, and Special Servicing Guidelines.

[379] 12 U.S.C. § 2605(e)(1)(A).

[380] 12 U.S.C. § 2605(e)(2).

[381] *Id.*

[382] Attachment from e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

would be supported by a center of mortgage experts and advocates and paid for by mortgage companies.[384] He also advocates a Borrower Bill of Rights, which would entitle borrowers to review all information servicers have about the borrowers and their mortgages, including transfers and the assignment of the promissory note, mortgage and servicing rights.[385] Borrowers also would have knowledge of all current servicers, including the master, sub-servicers and special servicers, and the trustee and trusts to which their loan belonged.[386] Borrowers would receive the general ledgers for current and past servicers, and a layman's guide to the terms and conditions of their loans.[387] Finally, borrowers would be able to determine their document custodians, have a right to inspect their notes, and receive their note on payoff or refinance.[388] In addition, Mr. Lavalle states that Fannie Mae's Servicing Guide should catalog all the activities that servicers cannot do when resolving consumer disputes.[389]

Fannie Mae requires its servicers to promptly respond to borrower inquiries, but Fannie Mae's requirements do not contain details as to how and when servicers should respond. RESPA, which Fannie Mae servicers must follow, provides a more concrete timeline for responding to borrower inquires.[390] Neither the Fairbanks consent order nor Fannie Mae Servicing Guide requires servicers to inform borrowers of all the identities of those servicing their loan and the trustee and trust to which their loan belongs and the identity of the document custodian; to provide borrowers with all information about transfers and assignment of their

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[383] *Id.*

[384] *Id.*.

[385] *Id.*

[386] *Id.*

[387] *Id.*

[388] *Id.*

[389] Attachment from e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

[390] *See* 12 U.S.C. § 2605(e).

notes and the general ledgers of all servicers; or to provide borrowers with their notes on pay off if not required by the state.

6. Consumer Credit Ratings

As for consumer ratings, under the consent order, Fairbanks cannot threaten a borrower's credit rating or report the consumer as delinquent based on a disputed amount until the dispute has been investigated, and the borrower has been informed of the results of the investigation. Fannie Mae amended its Servicing Guide to state that when borrowers become seriously delinquent, servicers must inform them that the servicers have reported their mortgage delinquency to the major credit repositories, and that this may affect their ability to obtain credit.[391] RESPA prohibits Fannie Mae's servicers from providing information regarding an overdue payment to a consumer reporting agency within the 60 days of receiving a qualified written request from a borrower related to the dispute over payments.[392] The Servicing Guide states that servicers must accurately and completely report borrowers' mortgage status, resolve any disputes that result from the reported information, and promptly respond to borrowers' questions regarding the reported information.[393] Servicers also must comply with all applicable provisions of the Fair Credit Reporting Act.[394] In order to further consumer service, in 2004 Fannie Mae made an announcement suggesting that servicers consider the merits of implementing delinquency management, dispute resolution, and customer service improvements.

[391] Servicing Guide, VII-107: Notifying Credit Repositories.

[392] 12 U.S.C. § 2605(e)(3).

[393] Servicing Guide, VII-107: Notifying Credit Repositories.

[394] *Id.*

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Mr. Lavalle asserts that borrowers should have access to credit scores, delinquency scores, and servicing scores for a minimum cost.[395] He also asserts that an industry database on borrower inquiries and complaints should be established, and Fannie Mae should audit it to determine if servicers are in compliance with its Guides and take action if they are not.[396] He also argues that lenders and servicers should fund a central web and phone complaint site where complaints are monitored and acted upon.[397] An independent monitor and ombudsman committee would review the complaints, and borrowers would be offered arbitration and mediation for any dispute than could not be resolved.[398] If these processes did not resolve the dispute, each side would submit their offer and proof of facts and a panel would make the award.[399]

Mr. Lavalle asserts that Fannie Mae's suggestion that servicers create a staff to research and resolve borrower payment disputes while the borrower is on the telephone is not feasible.[400] First, servicers do not have prior servicing records, which must be audited, Mr. Lavalle asserts. Second, many servicers outsource servicing representatives to other countries, which leads to miscommunication; thus, disputes cannot be resolved over the phone, he alleges. To resolve these problems, Fannie Mae should notify borrowers when it discovers fraud on their accounts and instruct MARI and MERS to open their databases to borrowers for a fee so borrowers can investigate servicing problems themselves.[401]

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[395] Attachment from e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

[396] *Id.*

[397] *Id.*

[398] *Id.*

[399] *Id.*

[400] *Id.*

[401] *Id.*

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As for Fannie Mae's suggestion that servicers call borrowers who have loans greater than 90 days delinquent, Mr. Lavalle states that servicers must not contact borrowers who are represented by counsel in foreclosures. He argues that to ensure servicers do not contact represented borrowers, servicers should create certain processes, such as a field in their systems that indicate whether the borrower is represented.[402] As for programs for delinquent borrowers, Mr. Lavalle suggests web seminars and CDs that are available for download on-line and that inform borrowers of their rights and responsibilities and how to avoid foreclosure, and that provide information about credit scoring.[403]

Unlike the Fairbanks consent order, Fannie Mae's Servicing Guide does not prevent borrowers from threatening a borrower's credit rating or report the borrower as delinquent based on a dispute until the dispute has been resolved and the borrower informed of the results. Again, the consent order specifies acts that Fairbanks was alleged to have committed, whereas the Servicing Guide contains general provisions for servicers to follow. The Guide states that its servicers must accurately report borrower mortgage status, and that servicers are responsible for resolving any dispute that results from reporting information about the borrower to credit repositories.[404] Furthermore, if borrowers send qualified written requests to servicers about a dispute over payment, RESPA prohibits servicers from reporting the overdue payment to credit repositories within 60 days of receiving the letter.[405] Servicers are required to follow all applicable laws, which include RESPA.

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[402] *Id.*

[403] *Id.*

[404] Servicing Guide, VII-107.

[405] 12 U.S.C. § 2605(e)(3).

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Fannie Mae also has made several recommendations regarding customer service to its servicers. Mr. Lavalle has made several proposals that he wants the mortgage industry as a whole to implement, such as creating an industry-wide web and telephone complaint site and database, and creating an independent monitor and ombudsman committee to review complaints.

7. Consumer Information

Fairbanks must timely inform consumers prior to the due date of each monthly payment of the following, with limited exceptions: information regarding unpaid principal balance; the due date and amount due; reasons for changes in the amount due; an itemization of each fee assessed during the statement period; the telephone number and address for consumers to use if they dispute any of the information provided; and the total amount due.

Fannie Mae's Guides do not contain any provision that requires this information to be provided monthly. Under Fannie Mae's Servicing Guide, by January 31 of each year, the servicer must send "the borrower a statement of activity in his or her mortgage account during the past year."[406] The information in the statement varies depending on whether the mortgage is a regularly amortizing mortgage or a reverse mortgage.[407] In addition to this annual statement, "[t]he servicer also must provide a detailed analysis of all transactions relating to a borrower's payments or escrow deposit account whenever the borrower requests it. The servicer cannot charge the borrower for the annual statement or the detailed analysis."[408]

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[406] Servicing Guide, III-104: Mortgage Account Statements.

[407] *Id.*

[408] *Id.*

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Aside from adopting the Fairbanks requirements regarding consumer information, Mr. Lavalle asserts that Fannie Mae should require its servicers to individually identify each fee charged and cross-reference them to the provisions of the loan documents that allow the fees.[409]

Fairbanks is required to provide certain information to borrowers on a monthly basis. Fannie Mae does not require its servicers to provide this information each month, but it does require its servicers to provide borrowers with more comprehensive information – a detailed analysis of all transactions – whenever borrowers request it.[410] Fannie Mae also is required to send an annual account of mortgage activity to borrowers.[411]

8. Foreclosures

As for foreclosures, Fairbanks is prohibited from taking any action towards foreclosure until it has (1) reviewed the consumer's records to verify that the consumer missed three monthly payments; (2) confirmed that the consumer has not been subjected to any of the acts or practices prohibited in the consent order, the loan instruments, or by law, or if the consumer has been subjected to those practices, that Fairbanks has remedied them; and (3) investigated any of the consumer's disputes and informed the consumer of the results of the investigation.

Fannie Mae's Servicing Guide states that before referring a loan to a foreclosure attorney or trustee, servicers "should make every reasonable effort to conduct a personal face-to-face interview with the borrower and to cure the delinquency through [Fannie Mae's] special relief provisions or loss mitigation alternatives before referring a loan to the foreclosure attorney

[409] Attachment from e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

[410] Servicing Guide, III-104: Mortgage Account Statements.

[411] *Id.*

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or trustee."[412] Servicers also must inspect the property and analyze the individual circumstances of the delinquency before referring the loan for foreclosure.[413] Aside from those provisions, the Servicing Guide states that foreclosure proceedings generally can begin whenever at least three full monthly installments are past due.[414]

Fannie Mae's policy is that failure to pay any miscellaneous fee generally should not result in acceleration of the loan if the borrower is otherwise current on the loan.[415] However, it does allow for acceleration due to the non-payment of miscellaneous fees in some cases. Fannie Mae stated in a 2004 announcement amending the Servicing Guide that "chronic or intentional disregard by the borrower of the obligation to pay legitimate fees secured by the mortgage obligation when the borrower appears to have the means to pay those fees, the fees have been clearly disclosed to the borrower, and the servicer has attempted to resolve any dispute regarding the fees, could be an acceptable instance in which to accelerate the loan obligation."[416]

Mr. Lavalle asserts that this policy led to his family's foreclosure.[417] He asserts that as long as principal, interest and escrow payment are made, servicers should not be permitted to foreclose.[418] He states that allowing servicers to accelerate the loan because it has not made other payments encourages foreclosures and predatory servicing because it enables

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[412] Servicing Guide, VIII, Chapter 1: Foreclosures.

[413] *Id.*

[414] Servicing Guide, VIII-102.

[415] Ann. 04-04: Test Period for Revised Appraisal Report Forms, Property Condition and Required Repairs Guidelines, and Special Servicing Guidelines (07/30/04).

[416] Ann. 04-04: Test Period for Revised Appraisal Report Forms, Property Condition and Required Repairs Guidelines, and Special Servicing Guidelines (07/30/04).

[417] Attachment to e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

[418] *Id.*

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servicers to commit improper acts and trigger defaults.[419] He argues that the policy amounts to extortion – the servicer tells the borrower "PAY US WHAT WE CLAIM OR ELSE!"[420]

Both the Fairbanks consent order and Fannie Mae's Servicing Guide state that a borrower must miss three monthly payments before a servicer can initiate foreclosure proceedings.[421] They also both contain provisions for protecting borrowers by requiring either the servicer to investigate borrowers' disputes or make every reasonable effort to cure the delinquency before foreclosure. Ordinarily, servicers cannot accelerate a loan due to the borrower not paying miscellaneous fees; however, servicers can in certain instances. Mr. Lavalle believes that accelerating a loan for this reason is never acceptable.

9. Late Charges

As for late charges, Fairbanks is enjoined from pyramiding late charges (applying a portion of a payment to a previous late fee, leaving part of the scheduled payment overdue) and from charging a late fee or delinquency charge once a loan account has been accelerated to foreclosure status.

Fannie Mae's policy states that if a payment is sufficient to cover the mortgage obligation except for late charges, servicers generally should apply the payment and defer collection of the late charge.[422] However, in certain cases, such as when borrowers chronically disregard late charges even when they appear to be able to pay them, Fannie Mae permits servicers to hold the payments as unapplied or return them to borrowers.[423] When the borrower

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[419] *Id.*

[420] *Id.*

[421] Consent Order, p. 19; Servicing Guide, VIII-102.

[422] Ann. 04-04: Test Period for Revised Appraisal Report Forms, Property Condition and Required Repairs Guidelines, and Special Servicing Guidelines.

[423] *Id.*

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makes his or her next payment, the servicer can use a portion of the payment to make up the previous month's shortage and apply the payment.[424] Fannie Mae views these actions as effective collection tools to bring borrowers current.[425] Fannie Mae requires it servicers to notify borrowers of the actions taken and why, and the amount that must be paid.[426] It also generally requires its servicers to apply incomplete payments in accordance with the hierarchy established in borrowers' mortgage documents.[427]

Mr. Lavalle argues that Fannie Mae should prohibit servicers from pyramiding late fees, from charging late fees while a charge is being disputed, and from charging late fees from prior servicers unless they produce the records from all prior servicers.[428] He argues that late fees should be charged only for late payments of principal and interest, and that late fees should not be charged for assessed fees and charges.[429] He also asserts that servicers must apply payments to principal and interest before applying them to late fees.[430]

Mr. Lavalle states that Fannie Mae's policy of not applying payments or returning payments that do not include late fees also led to his family's problems. He argues that servicers must credit all principal and interest payments that bring the loan to within 60 days delinquent without regard to special or legal fees.[431] He also asserts that servicers should never return payments to borrowers because payments reflect borrowers' willingness to pay their

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[424] Servicing Guide, III-101.03: Payment Shortages.

[425] Ann. 04-04: Test Period for Revised Appraisal Report Forms, Property Condition and Required Repairs Guidelines, and Special Servicing Guidelines.

[426] *Id.*

[427] Ann. 04-04: Test Period for Revised Appraisal Report Forms, Property Condition and Required Repairs Guidelines, and Special Servicing Guidelines.

[428] Attachment to e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

[429] *Id.*

[430] *Id.*

[431] *Id.*

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mortgages.[432] He further argues that no money should ever be in an unapplied or suspended account for more than two days, and that when servicers send demands that do not credit unapplied and suspended accounts, borrowers send more money than they actually owe.[433] He argues that servicers should not be permitted to demand that funds be certified and that checks clear within two days, unless it is within one week of the foreclosure sale date.[434] Finally, he asserts that late fees should be a liquidated damages measure for all expenses incurred for late payment, and if not, the late fee portion of the payment should be eliminated, and a flat fee pricing that includes actual damages should be included.[435]

Fairbanks is prohibited from pyramiding late fees, but Fannie Mae allows its servicers to pyramid these fees by holding payments that do not include the fees as unapplied and then using a portion of the subsequent payment to cover the late fees. [436] Mr. Lavalle asserts that servicers should not be allowed to pyramid late fees or hold payments as unapplied for more than two days.[437] Fairbanks is required to apply payments on the date of receipt.

Lastly, unlike the Fairbanks consent order, Fannie Mae's Guides do not prohibit servicers from charging a late fee or a delinquency charge once a loan has been accelerated to foreclosure status, nor do they prohibit its servicers from enforcing any clause in forbearance agreements that require the consumer to acknowledge his or her lack of claims or defenses, waive access to court or otherwise waive or release any rights or claims.

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[432] *Id.*

[433] *Id.*

[434] *Id.*

[435] *Id.*

[436] Ann. 04-04: Test Period for Revised Appraisal Report Forms, Property Condition and Required Repairs Guidelines, and Special Servicing Guidelines; Servicing Guide, III-101.03: Payment Shortages.

[437] Attachment from e-mail dated Feb. 27, 2006, from Nye Lavalle to Mark Cymrot.

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Mr. Lavalle's "best practices" proposal exceeds both what Fairbanks is required to do under the consent order, and what Fannie Mae requires its servicers to do. Implementing all of Mr. Lavalle's proposals would significantly increase servicing costs, which would ultimately result in increased costs to borrowers. Mr. Lavalle has requested Fannie Mae to implement practices far beyond what is required by law, and even what is required by the Fairbanks consent order.

D. Mr. Lavalle's Problem Servicers

Mr. Lavalle has identified EMC Mortgage, Litton Loan Servicing, Ocwen and SPS (formerly Fairbanks), as servicers that rampantly engage in predatory servicing. As indicated previously, these entities service a very small portion of the loans that Fannie Mae owns. In addition, Fannie Mae loans make up a small percentage of the loans that each of these servicers service.[438] These servicers are the four major subprime servicers.[439]

The following chart shows the percentage of Fannie Mae loans for which these entities were primary servicers from 2002 through 2005. These figures were reported in December of the respective years.[440]

Year	Servicer	Number of Loans Serviced	Percentage of Total Loans Serviced	Unpaid Principal Balance	Percentage of UPB
2002	EMC	8,640	0.06%	1,078,489,005	0.07%
	OCWEN	2,739	0.02%	234,950,604	0.02%
	LITTON	862	0.006%	41,031,228	0.003%
	SPS	13,056	0.09%	1,571,825,743	0.1%
	Total	**14,209,500**	**100%**	**1,554,637,980,359**	**100%**

[438] Telephone Interview, Rick Bauerband, Director of Non-Traditional Servicing (March 14, 2006). *See also* attachments from March 9, 2006 e-mail from Richard Bauerband, on behalf of Robert Sanborn, Vice President, National Servicing Organization.

[439] Telephone Interview, Rick Bauerband, Director of Non-Traditional Servicing (March 14, 2006).

[440] Telephone interview with Marianne Sullivan, Senior Vice President, Credit Loss Management (March 17, 2006). Fannie Mae only maintains statistics on the number of loans serviced for "servicers of record," which are primary servicers.

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2003	EMC	11,433	0.07%	1,667,110,148	0.09%
	OCWEN	1,624	0.01%	108,800,663	0.006%
	LITTON	639	0.004%	29,366,579	0.002%
	SPS	8,668	0.05%	954,341,936	0.05%
	Total	**15,756,764**	**100%**	**1,922,037,101,322**	**100%**
2004	EMC	11,765	0.08%	1,803,491,876	0.09%
	OCWEN	992	0.006%	44,173,505	0.002%
	LITTON	454	0.003%	19,445,077	0.001%
	SPS	5,518	0.04%	542,535,828	0.03%
	Total	**15,647,451**	**100%**	**1,955,525,953,426**	**100%**

The small percentage of mortgages these servicers service for Fannie Mae demonstrates that Mr. Lavalle's concerns about the negative effect these servicers may have on Fannie Mae are overstated.

These servicers generally perform on par with other Fannie Mae servicers. For instance, Fannie Mae requested these servicers to repurchase only a small number of loans from 2002 to 2004. During that period, it requested servicers to repurchase more than 10,000 loans.[441] EMC repurchased only five active loans and 12 post-default loans. (Post-default repurchases occur when the National Underwriting Center conducts a post-foreclosure review of a loan and finds a "significant finding" that warrants the lender repurchasing the loan).[442] Fairbanks repurchased two active loans and no post-default loans during that period.[443] Ocwen repurchased one active loan and three post-default loans.[444] Litton did not repurchase any loans.[445] Due to

[441] E-mail dated Mar. 1, 2006, from Marianne Sullivan, Senior Vice President, Credit Loss Management, to Mark Cymrot, with attachment of a chart of the Repurchases for 2002-2004.

[442] *Id.*

[443] *Id.*

[444] *Id.*

[445] *Id.*

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data limitations, in some cases Fannie Mae could not determine whether the repurchases were required due to problems in origination or in servicing.[446]

EMC, a subsidiary of Bear Stearns Cos., is a particular target of Mr. Lavalle's anger, as the servicer that foreclosed on his parents' house. He claims that he is going to put forth a corporate resolution to Fannie Mae with a proxy from his trustee to vote their shares to cease all business with EMC, if Fannie Mae does not cease business with EMC itself.[447] EMC currently services about 15,500 Fannie Mae accounts worth a total of $2.6 billion, and subservices about 7,500 accounts worth about $1.25 billion.[448] A servicing consultant visits EMC at least quarterly and has discovered no major problems in recent visits.[449] Three ratings agencies gave high marks to EMC in 2005. Moody's gave EMC its highest rating for subprime loans (SQ1); Standard & Poor's ("S&P") rated EMC as above-average; and Fitch Ratings gave it its highest ranking as a subprime servicer (RPS1).[450] Fannie Mae's Counter-Party Risk Management group reviewed EMC in the summer of 2005 and found no problems.[451]

In December 2005, the FTC issued a civil investigative demand to EMC to provide data and documents regarding its business and servicing practices in connection with an FTC probe to determine whether any subprime lenders, servicers or brokers had violated certain

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[446] E-mail dated Mar. 1, 2006, from Marianne Sullivan, Senior Vice President, Credit Loss Management.

[447] E-mail dated Mar. 16, 2006, from Nye Lavalle to Mark Cymrot.

[448] Attachment from e-mail dated Mar. 9, 2006 from Richard Bauerband, Director of Non-Traditional Servicing.

[449] Attachment from e-mail dated Mar. 7, 2006 from Richard Bauerband, Director of Non-Traditional Servicing. *See also* November 2, 2005, Moody's Servicer Report for EMC Mortgage Corporation and October 10, 2005, FitchRatings Residential Mortgage Servicer Report for EMC Mortgage Corp.

[450] Attachment from e-mail dated Mar. 9, 2006, from Richard Bauerband, Director of Non-Traditional Servicing.

[451] Telephone Interview with Robert Sanborn, Vice President, National Servicing Organization (Mar. 7, 2006). This group evaluates the financial and operational capacity of Fannie's lenders and servicers, and is comprised of three teams: Financial Analysis, Traditional Seller/Servicer Operational Review and Compliance, and Private Label ABS and Non-traditional Lender Reviews. Letter dated Feb. 7, 2006, from Lesia Bates Moss, Vice President, Single Family Mortgage Business Counterparty Risk Management, to Mark Cymrot.

consumer-protection laws.[452] Fitch continued to give EMC its highest ratings as a subprime and special servicer as of February 2, 2006, stating that the investigation was not sufficient to cause a rating change at that time.[453]

As for Ocwen, it services about 680 Fannie Mae accounts that are worth a total of $25 million, and subservices 400 Fannie Mae accounts worth $54 billion.[454] A servicing consultant visits the facility at least quarterly.[455] Fannie Mae has discovered no problems with its collection and servicing practices, but found that Ocwen was not remitting and depositing its principal and interest collections for Fannie Mae in a timely manner.[456] This problem affects Fannie Mae but not borrower balances. The National Servicing Organization will follow-up to resolve this issue.[457] Fannie Mae also is concerned by Ocwen's high outsourcing rate; more than 60 percent of Ocwen's full time employees are in its India operation.[458] Moody's gave Ocwen an above-average rating (SQ2-, which means it's at the lower end of that rating); S&P rated

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[452] *See, e.g.,* December 30, 2005, article "Bear Stearns Gets FTC Demand for Data on Mortgages (Update 2), available at http://www.bloomberg.com/apps/news?pid=10000103&refer=us&sid=amLFixectHw0#; "Fitch: Launch of FTC Investigation Does Not Warrant Rating Change for EMC," available at http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news_view&newsId=20060206005939&newsLang=en.

[453] "Fitch: Launch of FTC Investigation Does Not Warrant Rating Change for EMC," available at http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news_view&newsId=20060206005939&newsLang=en.

[454] Attachment from e-mail dated Mar. 9, 2006, from Richard Bauerband, Director of Non-Traditional Servicing.

[455] Attachment from e-mail dated Mar. 7, 2006, from Robert Sanborn, Vice President, National Servicing Organization.

[456] Attachment from e-mail dated Mar. 7, 2006, from Robert Sanborn, Vice President, National Servicing Organization.

[457] Telephone Interview with Robert Sanborn, Vice President, National Servicing Organization (Mar. 7, 2005).

[458] Attachment from e-mail dated Mar. 7, 2006, from Robert Sanborn, Vice President, National Servicing Organization.

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Ocwen as strong; and Fitch gave Ocwen its second highest rating for a primary servicer (RPS2).[459]

In November 2005, a Texas jury found that Ocwen committed fraud in servicing a $31,000 home-equity loan and awarded the plaintiff $11.5 million.[460] The judge dismissed a portion of the award, and entered a $1.8 million judgment against Ocwen, which Ocwen is asking the court to set aside.[461]

Litton services 350 Fannie Mae loans worth a total of $13.5 million for Fannie Mae's portfolio, and has no subservicing relationships.[462] A servicing consultant visits the facility at least quarterly, and most recently visited the site in January 2006.[463] An ABS operational review was conducted in May 2005.[464] Moody's has given Litton its highest rating as a servicer for subprime loans (SQ1); S&P rated Litton as strong; and Fitch gave Litton its highest rating for a subprime servicer (RPS1).[465] A large portion of the ARMs with an interest only feature that Litton services are expected to adjust in 2006, so Fannie Mae is monitoring the

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[459] Attachment to e-mail dated Mar. 9, 2006, from Richard Bauerband, Director of Non-Traditional Servicing. *See also* August 16, 2005, Moody's Servicer Report for Ocwen Loan Servicing, LLC and October 10, 2005, FitchRatings Residential Mortgage Servicer Report for Ocwen Financial Corporation.

[460] *See* "Florida Bank Hit With $11.5 Million Verdict; Galveston Jury Says Ocwen Federal Bank Forced Woman Into Bankruptcy," PR Newswire, available at http://sev.prnewswire.com/banking-financial-services/20051129/DATU03429112005-1.html.

[461] *See* Press Release, Yahoo!, "Ocwen Loan Servicing Seeks Reversal of a Galveston Court Decision, Reiterating Long-Standing Commitment to 'Win-Win' Loan Resolutions" available at http://biz.yahoo.com/pz/060213/93960.html.

[462] Attachment to e-mail dated Mar. 9, 2006, from Richard Bauerband, Director of Non-Traditional Servicing. Litton also services more than $1 billion worth of ABS in which Fannie has purchased bonds. Statistics on the amount of ABS that Fannie has invested in and EMC, Litton, and Ocwen service were not disclosed.

[463] Attachment from e-mail dated Mar. 7, 2006, from Robert Sanborn, Vice President, National Servicing Organization.

[464] *Id.*

[465] Attachment from e-mail dated Mar. 7, 2006, from Richard Bauerband, Director of Non-Traditional Servicing. *See also* November 22, 2005, FitchRatings Residential Mortgage Servicer Report for Litton Loan Servicing LP.

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situation and conversing with it regarding their efforts to notify borrowers and what the effects of delinquency are.[466]

In July 2004, Fairbanks changed its name to Select Portfolio Servicing, Inc. ("SPS").[467] Credit Suisse First Boston ("CSFB") acquired SPS and its parent SPS Holding Corp. in October 2005.[468] At the time Fairbanks entered into the consent decree, it was the wholly-owned subsidiary of Fairbanks Capital Holding Corp.[469] Thus, the persons operating the company have changed.

SPS services about 3,500 Fannie Mae accounts worth $313.4 million, and subservices about 2,500 worth $267.8 million.[470] A servicing consultant visits the facility at least quarterly. A January 2006 review uncovered no servicing issues.[471] In 2005, Moody's gave SPS an above average rating as a primary servicer for subprime loans (SQ2-, meaning it's near the bottom of the above-average rating); S&P rated SPS as average; and Fitch gave SPS an average rating for a primary servicer (RPS2-).[472]

Fannie Mae reviewed and examined Fairbanks' servicing practices both before and after it entered into the consent order with FTC and HUD in late 2003.[473] Fairbanks was a

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[466] Attachment from e-mail dated Mar. 7, 2006, from Robert Sanborn, Vice President, National Servicing Organization.

[467] Fairbanks Capital Corp. Settles Federal Charges Of Law Violations, available at http://www.ftc.gov/fairbanks/.

[468] August 19, 2005, letter from Jeff Graham, SPS Licensing Specialist, Corporate Legal Department, to Fannie. *See also* E-mail dated Mar. 9, 2006, attachment from Rick Bauerband, Director of Non-Traditional Servicing.

[469] Press Release, FTC, Fairbanks Capital Settles FTC and HUD Charges, available at http://www.ftc.gov/opa/2003/11/fairbanks.htm. Both Fairbanks and Fairbanks Capital Holding Corp. entered into the consent decree.

[470] *Id.*

[471] E-mail dated Mar. 7, 2006, attachment from Robert Sanborn, Vice President, National Servicing Organization.

[472] Attachment from E-mail dated Mar. 7, 2006, from Richard Bauerband, Director of Non-Traditional Servicing. *See also* February 28, 2006, Moody's Servicer Report for Select Portfolio Servicing, Inc. and August 12, 2005, FitchRatings Residential Mortgage Servicer Report for Select Portfolio Servicing.

[473] Telephone Interview with Zach Oppenheimer, Senior Vice President, Single Family Mortgage Business (Mar. 6, 2006). *See also,* Austin Business Journal, "Austin Mortgage Firm Merging with Utah Company," (May 10, 2002).

subservicer for CSFB, which delivered bulk loans to Fannie Mae.[474] In late 2002, Fairbanks purchased Olympus Servicing LP from DLJ Mortgage Capital, an affiliate of CSFB.[475] Olympus had serviced loans that DLJ Mortgage Capital sold to Fannie Mae.[476] Around the same time, elected officials and community groups began to complain about some of Fairbanks' practices, and Fannie Mae discovered that the loans that Fairbanks was servicing for CSFB did not perform as well as they should.[477] Fannie Mae reviewed CSFB and Fairbanks' subservicing operations.[478] In April 2003, after CFSB had audited Fairbanks' servicing practices, Fannie Mae began to more thoroughly examine Fairbanks by sending employees to investigate their operations.[479] The employees discovered numerous problems with Fairbanks' servicing practices.

In May 2003, Fairbanks released its senior management team.[480] Later that month, Fannie Mae sent a letter to Fairbanks outlining its concerns and stating that Fairbanks agreed not to attempt to sell or deliver any loans to Fannie Mae or add to the portfolio of loans it was servicing for Fannie Mae, with limited exceptions, until it corrected the problems.[481] The letter also required Fairbanks to immediately cease assessing improper charges and to reimburse

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[474] Telephone Interview with Sam Smith, Vice President, Single-Family Operations, Eastern Business Center (Mar. 6, 2006).

[475] *Id.*

[476] *Id.*

[477] Telephone Interview with Zach Oppenheimer, Senior Vice President, Single Family Mortgage Business (Mar. 6, 2006).

[478] *Id.*

[479] Telephone Interview with Sam Smith, Vice President, Single-Family Operations, Eastern Business Center (Mar. 6, 2006).

[480] Telephone Interview with Sam Smith, Vice President, Single-Family Operations, Eastern Business Center (Mar. 6, 2006).

[481] *See* May Letter from Zach Oppenheimer, Senior Vice President, Single Family Mortgage Business, to Fairbanks Capital Corporation (May 23, 2003).

any borrowers for improper fees it charged them.[482] At that time, Fairbanks was servicing $7.9 billion worth of Fannie's loans.[483] Fairbanks' new management team cooperated with Fannie Mae and created a 40-point plan that addressed the issues that Fannie Mae identified, plus others.[484] Fannie Mae has continued to work closely with Fairbanks to resolve the issues identified and to verify that they have been corrected.[485]

E. Impact of Fannie Mae's Loan Repurchase Policy

Mr. Lavalle claims that when Fannie Mae rejects a loan for purchase, it is labeled "scratch and dent" and transferred to an aggressive or predatory servicer, which drives the loan into default and the borrower into bankruptcy. Mr. Lavalle contends this practice will result in liability for Fannie Mae. Mr. Lavalle wants Fannie Mae to warn borrowers that their loans have been rejected and are going to an aggressive servicer.

Fannie Mae's Selling Guide establishes financial parameters for the types of mortgages it accepts for purchase.[486] It can reject loans that do not meet the requirements.[487] Some requirements are non-negotiable while others Fannie Mae is willing to negotiate. For instance, Fannie Mae can purchase only those loans that are within its loan limits, which may be adjusted each year.[488] Fannie Mae, however, allows variances for other requirements, enabling certain large lenders to sell Fannie Mae loans that do not meet the requirements set forth in the

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[482] *Id.*

[483] Telephone Interview with Sam Smith, Vice President, Single-Family Operations, Eastern Business Center (Mar. 6, 2006).

[484] *Id.*

[485] Telephone Interview with Robert Sanborn, Vice President, National Servicing Organization (Mar. 7, 2006).

[486] *See* Selling Guide VII-104.03.

[487] Interview with John Gang, Vice President, Asset Acquisitions and Custody (Dec. 8 2005).

[488] *See* Federal National Mortgage Association Charter Act, Sec. 302(b)(2), 12 U.S.C. § 1717. The loan limit for a single-family mortgage is $417,000 for 2006. See News Release, Fannie Mae (Nov. 29, 2005), at www.fanniemae.com/newsreleases/2005/3649.jhtml?p=Media&s=News+Releases.

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Selling Guide.[489] About five percent of the loans lenders sell to Fannie Mae for its portfolio have variances, and about 40 percent of the loans lenders sell for MBS have variances.[490] In these cases, the lenders have implemented additional policies and procedures that make loans that fall outside of Fannie Mae's guidelines less risky than usual, and thus Fannie Mae is willing to purchase them.[491] Lenders rarely attempt to sell Fannie Mae loans that do not meet Fannie Mae's guidelines or that Fannie Mae has not approved to purchase in a separate contract.[492]

Fannie Mae, however, requires lenders to repurchase loans in some circumstances.[493] Repurchases can arise for a variety of reasons. For instance, mortgages in a portfolio or MBS pool violate a contractual selling warranty; improper servicing of a portfolio mortgage has materially adverse effects on the value of a mortgage or property; an adjustable-rate mortgage in an MBS pool is converted to a fixed-rate mortgage, or an MBS pool mortgage that has 24 payments past due. As an alternative to the repurchase, some mortgages will be transferred from an MBS pool to Fannie Mae's portfolio.[494] The number of repurchases has been fairly minor in recent years. A fraud team in Fannie Mae's National Underwriting Center

[489] Interview with John Gang, Vice President, Asset Acquisitions and Custody (Dec. 8, 2005). *See also* Single-Family MBS Prospectus, January 1, 2006, p. 41 (stating "We also may waive or modify our eligibility and loan underwriting requirements or policies when we purchase mortgage loans.").

[490] Interview with John Gang, Vice President, Asset Acquisitions and Custody (Dec. 8, 2005).

[491] *Id.* For instance, the lenders may require the borrowers to provide more paychecks as evidence of employment than they ordinarily would for less risky types of loans, or the lenders may conduct a more thorough house inspection than it ordinarily would.

[492] *Id.*

[493] Selling Guide, I-208. *This section of the Selling Guide was updated January 31, 2006.* Fannie Mae "clarified [its] policies concerning when lenders may (or must) repurchase a loan from [its] portfolio or their MBS pool, and [its] removal of delinquent special servicing MBS loans by reclassification of such loans as Fannie Mae portfolio loans."

[494] Selling Guide, I-208. It states: "We will not require the immediate repurchase of a mortgage when we identify significant underwriting deficiencies during a post-purchase review—as long as the mortgage is current, was not originated based on fraud or misrepresentation, and is not in violation of our mortgage eligibility requirements (including any applicable selling warranties) ***and*** the lender that sold the mortgage (or is now servicing it) is in good standing with us and is otherwise eligible to receive our 'no-repurchase-of-performing-mortgages' exemption (as discussed in *Section 208.08*). Should the mortgage later become delinquent, we will review the individual circumstances to determine whether repurchase is warranted at that time. ..."

reviews a subset of the mortgages that Fannie Mae purchases or securitizes to ensure that they meet Fannie Mae's eligibility criteria and underwriting standards.[495] If they do not, Fannie Mae can require lenders to repurchase them.[496]

From 2002 to 2004, lenders repurchased about 10,000 loans, worth about $1.1 billion, that they had sold to Fannie Mae.[497] Fannie Mae owned an average of 15.2 million loans worth about $1.8 trillion during that period.[498]

F. Findings Regarding Predatory Servicing

Fannie Mae officials are sensitive to the issues raised by predatory lending and servicing. Fannie Mae has extensive rules and procedures to protect borrowers, and those procedures have been augmented in recent years. Mr. Lavalle's suggestion that Fannie Mae adopt "best practices" procedures modeled after the Fairbanks consent order has already been implemented. In 2004, Fannie Mae issued three circulars setting forth extensive additional servicing requirements after reviewing the Fairbanks order. In the view of Fannie Mae officials, the consent order requirements were not entirely appropriate for its universe of servicers, which are generally not working in the subprime markets. When Fannie Mae departed from the Fairbanks requirements, it often gave its servicers more discretion to deal with borrowers.

Mr. Lavalle has proposed a "best practices" model that goes even further than the Fairbanks consent order. His proposals would appear to increase the cost of servicing

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[495] *Id.*

[496] Interview with Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Nov. 22, 2005).

[497] Repurchases Chart, E-mail dated Mar. 1, 2006, with attachment from Marianne Sullivan. This figure reflects the active and foreclosed loans that lenders repurchased from Fannie Mae. It does not include cases in which upon foreclosure Fannie Mae sells the real-estate-owned ("REO") it acquired after foreclosure. In those cases, Fannie Mae may seek reimbursement on the loss because it had requested the lender repurchase the loan; these are referred to as make wholes and are not included in the figure above.

[498] All Active Single-Family Loans Chart, E-mail dated Mar. 1, 2006, with attachment from Marianne Sullivan, Senior Vice President, Credit Loss Management.

considerably and might not increase significantly borrower safety. Without additional evidence that Fannie Mae's servicers are acting improperly, we find that Fannie Mae has adopted practices that are consistent with the law and reasonably designed to prevent predatory servicing.

The financial parameters Fannie Mae establishes for purchasing loans or for establishing MBS pools are essential to its financial health. Enforcing those requirements by requiring lenders to repurchase loans that do not conform to the parameters or have other issues is essential and complies with basic contract requirements. In our view, Mr. Lavalle has not presented evidence that repurchased loans will necessarily be improperly serviced and borrowers injured.

Predatory servicing outside the universe of Fannie Mae servicers is an issue that has gained considerable attention from federal and state regulators in recent years. Fannie Mae should police servicers on its mortgages, but it is not in a position to police servicers when it requires the repurchase of loans. That function is best served by government regulators and civil lawsuits. Mr. Lavalle's proposal that Fannie Mae inform borrowers whenever it requires the repurchase of loans is impractical and unnecessary, except to the extent fraud has been discovered, which is discussed separately.

VI.
FRAUD INVESTIGATIONS AND REPORTING

A. Mr. Lavalle's Concerns Regarding Fannie Mae's Fraud Procedures

Mr. Lavalle believes that Fannie Mae has an ethical obligation to inform borrowers of any fraud that it discovers involving their loans.[499] He claims that loan originators and mortgage servicers often discover fraud in their due diligence and quality control

[499] E-mail from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors (July 22, 2005).

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processes.[500] He states that these frauds are reported to MARI (Mortgage Asset Research Institute, Inc.), an industry database, but questions whether borrowers are ever informed of the fraud.[501]

B. OFHEO's Mortgage Fraud Reporting Regulation

Fannie Mae's focus on detecting mortgage fraud has increased significantly in the past several years. OFHEO requires Fannie Mae to report mortgage fraud or possible mortgage fraud to it. Fannie Mae has been submitting fraud reports since September 2005. Fannie Mae, however, does not report possible mortgage fraud directly to borrowers under the OFHEO procedures.[502]

Under the Mortgage Fraud Reporting regulation,[503] mortgage fraud is defined as "a material misstatement, misrepresentation, or omission relied upon by [Fannie Mae] to fund or purchase—or not to fund or purchase—a mortgage, including a mortgage associated with a mortgage-backed security or similar financial instrument issued or guaranteed by [Fannie Mae]."[504] Possible mortgage fraud "means that [Fannie Mae] has a reasonable belief, based upon a review of information available to [Fannie Mae], that mortgage fraud may be occurring or has occurred."[505]

Under the OFHEO rule, Fannie Mae is required to report mortgage fraud or possible mortgage fraud to OFHEO when it:

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[500] *Id.*

[501] *Id.*

[502] Interview with Marianne Sullivan, Senior Vice President, Credit Loss Management (Nov. 16, 2005); Interview with Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Nov. 22, 2005).

[503] 12 C.F.R. § 1731.

[504] 12 C.F.R. § 1731.2(c). It states that "[s]uch mortgage fraud includes, but is not limited to, a material misstatement, misrepresentation, or omission in identification and employment documents, mortgagee or mortgagor identity, and appraisals that are fraudulent."

[505] 12 C.F.R. § 1731.2(e).

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a. Identifies that a board member, officer, employee, or contractor engaged by [Fannie Mae] has or may have perpetrated such fraud.

b. Identifies institutional (seller/servicer) fraud, such as lack of collateral, theft of custodial funds, non-remittance of pay-off, or multiple delivery of same loan.

c. Receives notification by law enforcement or other governmental authority that such authority is conducting an investigation or prosecution of mortgage fraud involving loans owned by [Fannie Mae], absent a legal directive from such authority not to report such fraud.

d. Identifies a pattern of related mortgage fraud or possible mortgage fraud as defined under reviewable internal procedures or standards.

e. Identifies that there is a substantial likelihood that the mortgage fraud or possible mortgage fraud will receive significant public exposure or publicity.

f. Identifies mortgage fraud or possible mortgage fraud that is otherwise serious or significant to [Fannie Mae].[506]

In addition, Fannie Mae "may not require the repurchase of or may not decline to purchase a mortgage, mortgage backed security, or similar financial instrument because of possible mortgage fraud without promptly reporting to the Director [of OFHEO] under § 1731.4. [Fannie Mae] may decline such purchase or require such repurchase if it is reporting mortgage fraud or possible mortgage fraud in accordance with § 1731.4."[507]

In order to fulfill its reporting duties, Fannie Mae must submit a Mortgage Fraud Incident Notice ("MFIN") to OFHEO's Examiner-in-Charge for Fannie promptly after it identifies or is notified by authorities of mortgage fraud or possible mortgage fraud, but not more

[506] OFHEO Director's Advisory, Policy Guidance, Issuance Date: July 25, 2005, Subject: Examination for Mortgage Fraud Reporting.

[507] 12 C.F.R. § 1731.3.

than ten days after such identification or notification.[508] In situations requiring immediate attention – such as "where [Fannie Mae] has identified that there is a substantial likelihood that the mortgage fraud or possible mortgage fraud will receive significant public exposure or publicity; where [Fannie Mae] has received notification by a law enforcement or other authority that such authority is conducting an investigation or prosecution of mortgage fraud involving loans owned by [Fannie Mae]; or where [Fannie Mae] has identified that mortgage fraud or possible mortgage fraud may have a significant impact on the safe and sound operations of [it]" – Fannie Mae must immediately notify OFHEO's Examiner-in-Charge for Fannie Mae by telephone or electronic communication.[509] This report is in addition to submitting a MFIN. Fannie Mae also must submit to the Examiner-in-Charge a quarterly report on the status of cases submitted in the quarter on the MFIN.[510]

Once a MFIN has been submitted, Fannie Mae and Freddie Mac "may *not* disclose, without the prior written approval of the Director, to the party or parties connected with the mortgage fraud or possible mortgage fraud that it has reported such fraud . . . ."[511] Fannie Mae and Freddie Mac, however, are not prohibited from "[d]isclosing or reporting such fraud pursuant to legal requirements, including reporting to appropriate law enforcement or other governmental authorities; or [t]aking any legal or business action it may deem appropriate, including any action involving the party or parties connected with the mortgage fraud or possible

[508] OFHEO Director's Advisory, Policy Guidance, Issuance Date: July 25, 2005, Subject: Examination for Mortgage Fraud Reporting. *See also* 12 C.F.R. pt. 1731.4, requiring Fannie Mae and Freddie to "report promptly mortgage fraud or possible mortgage fraud in writing to the Director in such format and under such notification procedures as prescribed by OFHEO."

[509] OFHEO Director's Advisory, Policy Guidance, Issuance Date: July 25, 2005, Subject: Examination for Mortgage Fraud Reporting.

[510] *Id.*

[511] 12 C.F.R. § 1731.4(c).

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mortgage fraud."[512] Fannie Mae "does not waive any privilege it may claim under law by reporting mortgage fraud or possible mortgage fraud . . . ."[513]

Under the new OFHEO regulation, Fannie Mae also must "establish adequate and efficient internal controls and procedures and an operational training program to assure an effective system to detect and report mortgage fraud or possible mortgage fraud . . . ."[514] The system should include at least the following types of controls and procedures:

> 1. *Mortgage fraud officer.* Designation of a management official with overall responsibility for the mortgage fraud detection, investigation, and reporting system ("mortgage fraud officer");
>
> 2. *Central reporting point.* A central point to report mortgage fraud;
>
> 3. *Central repository(ies).* Central repositories for mortgage fraud information;
>
> 4. *Continued business.* Designation of the mortgage fraud officer(s) or senior management officer(s) to approve any continued business with any person or entity suspected of mortgage fraud;
>
> 5. *Internal publication.* Internal publication of the mortgage fraud reporting procedures and anti-fraud policies;
>
> 6. *External publication.* External publication of the Enterprise's contacts to receive notices or tips of mortgage fraud; and
>
> 7. *Other.* Such other standards as provided by OFHEO.[515]

In addition, Fannie Mae's Board of Directors, or a committee of the Board, "shall cause [Fannie Mae] to conduct a review of the anti-fraud detection, investigation, and reporting policies at least annually, and shall document its consideration of the results of that review in the minutes of the

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[512] *Id.*

[513] 12 C.F.R. §1731.4(e).

[514] 12 C.F.R. § 1731.5.

[515] OFHEO Director's Advisory, Policy Guidance, Issuance Date: July 25, 2005, Subject: Examination for Mortgage Fraud Reporting.

Board or Board committee."[516] The Mortgage Fraud Reporting rule contains sanctions pursuant to which OFHEO "may subject the Enterprise or [its] board members, officers, or employees ... to supervisory action ... under the Federal Housing Enterprises Safety and Soundness Act of 1992 (12 U.S.C. §§ 4501-4641), including but not limited to, cease-and-desist proceedings and civil money penalties."[517]

C. Fannie Mae's Implementation of Fraud Detection and Reporting Measures

1. Internal Practices

Fannie Mae recently implemented policies to help it detect and prevent fraud. In 2004, it created a corporate Anti-Fraud Policy that requires its employees to report possible fraud.[518] The Policy broadly defines fraud as including "any intentional act or omission affecting or involving, or potentially affecting or involving, Fannie Mae, that is committed or attempted for the purpose of securing an improper or unlawful gain or benefit for Fannie Mae or any other individual or entity, regardless of whether the gain or benefit is actually realized."[519] The definition applies even if the act or omission does not meet the legal definition of fraud.[520]

The policy requires the managers of business units to identify and evaluate activities that create risks for fraud within their business unit, and implement fraud prevention and detection measures.[521] The measures include notifying the Office of Corporate Compliance ("OCC") or the Office of Corporate Justice ("OCJ") when potential fraud is discovered, and

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[516] *Id.*

[517] 12 C.F.R. § 1731.6.

[518] Single Family Anti-Fraud Protocols and Procedures, p. 1. *See also* Code of Business Conduct/Policies, Mortgage Fraud Reporting, What you need to know (available on Fannie Mae's internal website).

[519] Policies and Procedures, Anti-Fraud (available on Fannie Mae's internal website). *See also* Single Family Anti-Fraud Protocols and Procedures, p. 1.

[520] Policies and Procedures, Anti-Fraud.

[521] *Id.*

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changing any prevention or monitoring systems that allowed fraud to occur.[522] The OCC and OCJ are part of the Office of Corporate Compliance, Ethics and Investigations.[523] The Policy also requires managers to tell all employees in their business units about the anti-fraud measures and incorporate them into their unit's compliance plan, which they previously developed with the OCC.[524] The compliance plans include an Anti-Fraud Matrix that details the controls in place to protect against certain identified fraud scenarios.[525]

When the OCC or OCJ receives a report of fraud, they consult with each other to determine whether the alleged fraud raises a viable claim of fraud under the Anti-Fraud Policy.[526] If it does, the OCJ notifies the Chief Compliance Officer, the General Counsel, and the Office of Auditing and Operations Risk, and directs prompt action to ensure that it does not involve Fannie Mae and that Fannie Mae does not derive any improper gain from the activity, and/or it conducts an investigation to determine whether fraud has occurred.[527] The OCJ must notify the OCC, the Chief Compliance Officer, the General Counsel, and the Office of Auditing and Operations Risk of all findings and any actions taken as a result of the investigation.[528] The General Counsel regularly notifies the Board of Directors of any findings of fraud, and all investigations and findings of investigations of alleged fraud that may involve a Fannie Mae officer.[529]

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[522] *Id.*

[523] Telephone interview with Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Mar. 3, 2006).

[524] Policies and Procedures, Anti-Fraud.

[525] Single Family Anti-Fraud Protocols and Procedures, p. 3; Telephone interview with Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Feb. 28, 2006).

[526] Policies and Procedures, Anti-Fraud.

[527] *Id.*

[528] *Id.*

[529] *Id.*

Under the Anti-Fraud Policy, "every employee has the responsibility to report information he or she may receive or possess about possible fraud, including possible mortgage fraud."[530] Examples of possible mortgage fraud that employees must report "include, but are not limited to:

- Patterns of inflated appraisals or false documentation,
- Instances in which an institution such as a seller/sevicer is involved in the possible fraud,
- Knowledge that a law enforcement agency is conducting an investigation, or
- A substantial likelihood that the possible mortgage fraud will receive significant publicity."[531]

Employees who have information about possible mortgage fraud must report it internally to a mortgage fraud tips e-mailbox, a Fannie Mae officer, the OCJ, or the OCC.[532] These individuals, in turn, must send the information to the Single Family Anti-Fraud Team ("Anti-Fraud Team"), which is responsible for collecting all information or tips regarding possible mortgage fraud, and managing the internal and external reporting of the possible fraud.[533] The Anti-Fraud Team also administers the mortgage fraud tips e-mailbox.[534]

The Single Family Mortgage Business division developed its own anti-fraud procedures in 2005.[535] The Single Family Anti-Fraud Protocols and Procedures ("Protocols and

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[530] Code of Business Conduct/Policies, Mortgage Fraud Reporting, What you need to know (available on Fannie Mae's internal website).

[531] *Id.*

[532] *Id.*

[533] Telephone interview with Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Feb. 27, 2006). *See also* Anti-Fraud Policy and Program, October 25, 2005, p. 5. The Single Family Anti-Fraud Team previously belonged to the National Underwriting Center, but is now a separate group in the Single Family Mortgage Business division.

[534] Fannie Mae Response to OFHEO Mortgage Fraud Reporting Rule.

[535] *See* Single Family Anti-Fraud Protocols and Procedures, p. 1.

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Procedures") explain how the corporate Anti-Fraud Policy applies to the division.[536] The Protocols and Procedures focus on two categories of mortgage fraud – institutional fraud and loan level fraud.[537] Institutional fraud is "intentional fraud that is perpetrated by or with the cooperation of a Fannie Mae approved seller or servicer of mortgages or one or more representatives of a Fannie Mae approved seller or servicer."[538] It includes the sale of fraudulent loans or double selling loans, and mortgage servicers' misappropriation or mishandling of escrow funds or custodial accounts.[539] Loan level fraud, on the other hand, "involves intentional material misrepresentation by one or more parties to the loan transaction," and includes falsifying documents related to employment or assets, property flipping, valuation fraud, and borrower identity theft.[540]

Under the Protocols and Procedures, just as under the corporate Anti-Fraud Policy, each Single Family Mortgage Business unit is responsible for identifying activities that create risks for fraud, implementing prevention and detection measures, and creating compliance plans and Anti-Fraud Matrixes.[541] Fourteen business units in the Single Family Mortgage

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[536] *Id.* at 1.

[537] *Id.* at 2.

[538] *Id.*

[539] *Id.*

[540] *Id.*

[541] *Id.* at 3.

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Business division completed Anti-Fraud Matrixes in 2005.[542] The division has since reorganized its structure, and the Anti-Fraud Matrixes will be updated this year to reflect those changes.[543]

In order for a business unit to discontinue or change any anti-fraud control in its compliance plan, the officer who manages the business unit must approve the change, notify the Vice President of Single Family Anti-Fraud Initiatives in writing, and ensure that the OCC Director assigned to that business unit agrees with the change.[544] The Anti-Fraud Matrix is then modified to reflect the change.[545]

Each business unit must periodically test the anti-fraud controls described in their Anti-Fraud Matrix, using simulated scenarios when practicable, in order to evaluate the measures.[546] The Protocols and Procedures state that the measures are to be reviewed and revised on a quarterly basis.[547] Measures related to Sarbanes-Oxley ("SOX") are currently being tested by PWC and Fannie Mae's outside auditor, Deloitte and Touche.[548] PWC is consulting with the Office of Corporate Compliance, Ethics and Investigations to develop a process for testing SOX and non-SOX related measures, and plans to implement the process this year.[549]

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[542] They were: Business and Product Development; Credit and Automated Underwriting; National Servicing Center; National Underwriting Center; National Property Disposition Center; Anti-Fraud Initiatives; Eastern Business Center; National Business Center; Western Business Center; Lender Channel; Investor Channel; eChannel; Lender Strategies and Management; and Specialty Lending - Manufactured Housing. E-mail from Peter Kopperman, Vice President for Anti-Fraud Initiatives, to Ambika Biggs (Feb. 28, 2006).

[543] Telephone interview with Peter Kopperman (Feb. 28, 2006), Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business; E-mail from Peter Kopperman, Vice President for Anti-Fraud Initiatives, to Ambika Biggs (Feb. 28, 2006).

[544] Single Family Anti-Fraud Protocols and Procedures, p. 4.

[545] *Id.*

[546] *Id.* at 3.

[547] *Id.* at 3.

[548] E-mail dated Mar. 3, 2006, from Peter Kopperman, Vice President, Anti-Fraud Initiatives, to Ambika Biggs.

[549] *Id.*

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The Protocols and Procedures require Single Family Mortgage Business employees to notify the Anti-Fraud Team if they receive or identify information that leads them to suspect that institutional or loan level fraud has occurred.[550] The procedures regarding how the Anti-Fraud Initiatives unit – which includes the Anti-Fraud Team, the Vice President of Anti-Fraud Initiatives, the Director of Anti-Fraud Initiatives,[551] and the Manager of Fraud Reporting[552] – shares that information with other Fannie Mae management personnel.[553]

First, the Anti-Fraud Team determines whether the suspected fraud involves Fannie Mae loans or a Fannie Mae seller or servicer.[554] If neither Fannie Mae loans nor a Fannie Mae seller or servicer is involved, the Anti-Fraud Team logs the information onto a Watch List so future related patterns can be identified.[555] However, if the information is specific in terms of the loans, lenders or parties affected, the Director of Anti-Fraud Initiatives and the Manager of Fraud Reporting notify the Vice President of Anti-Fraud Initiatives and the attorney for the Office of Corporate Compliance, regardless of whether the suspected fraud involves Fannie Mae loans or lenders.[556] In cases in which a Fannie Mae seller or servicer is involved, but Fannie Mae loans are not involved, the Anti-Fraud Team sends the information to the Vice President of Single Family Operations responsible for that entity so that it can investigate whether the entity

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[550] Single Family Anti-Fraud Protocols and Procedures, p. 6.

[551] Bill Brewster currently fills this position.

[552] Jane Everett currently fills this position.

[553] Telephone interview with Peter Kopperman, President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Mar. 3, 2006).

[554] Single Family Anti-Fraud Protocols and Procedures, p. 8. The Single Family Anti-Fraud Protocols and Procedures state that the NUC Fraud Team makes this determination. The Single Family Anti-Fraud Team previously belonged to the National Underwriting Center, but is now a separate group in the Single Family Mortgage Business division. The Anti-Fraud Team still uses the procedures that the NUC Fraud Team created. Interview with Bill Brewster, Director, Anti-Fraud Initiatives (Nov. 7, 2005).

[555] Single Family Anti-Fraud Protocols and Procedures, p. 8.

[556] Telephone interview with Peter Kopperman, President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Mar. 3, 2006). *See also* Single Family Anti-Fraud Protocols and Procedures, p. 8.

has operational or other risk issues that need to be addressed, or whether the case involves institutional fraud.[557]

If Fannie Mae loans are involved, the Vice President of Anti-Fraud Initiatives notifies the Vice President of Single Family Operations for the location of the seller or servicer; the Vice President and Deputy General Counsel, SWRO; the OCC; the OCJ; the Chief Compliance Officer; the Senior Vice President of Credit Loss Management and Quality Assurance; the Senior Vice President of the location; the Single Family Credit Officer; the Chief Risk Officer; the location Vice President of Marketing; and the Director of News and Public Affairs.[558] The Anti-Fraud Team then investigates.[559] In cases of suspected pattern fraud, the Anti-Fraud Team and Vice President for Single Family Operations conduct a preliminary review to determine if there is evidence of suspected fraud, and the Vice President and Deputy General Counsel, SWRO reviews this.[560] In cases of suspected institutional fraud, the Anti-Fraud Team works with the Vice President of Single Family Operations, the Vice President and Deputy General Counsel, SWRO and the Vice President of Single Family Anti-Fraud Initiatives.[561]

As explained above, under the corporate Anti-Fraud Policy, when the OCJ and OCC receive reports of fraud, they consult with each other to determine if the reported activity raises a claim of fraud under the Policy.[562] They then communicate their determination to the Chief Compliance Officer; the Office of Auditing and Operations Risk; the Vice President and Deputy General Counsel, SWRO; the Vice President of Anti-Fraud Initiatives; the Director of

[557] Single Family Anti-Fraud Protocols and Procedures, p. 8.

[558] Telephone interview with Peter Kopperman, President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Mar. 3, 2006).

[559] *Id.*

[560] Single Family Anti-Fraud Protocols and Procedures, p. 8.

[561] *Id.* at 8.

[562] *Id.* at 13; Policies and Procedures, Anti-Fraud.

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Anti-Fraud Initiatives; the Vice President of Single Family Operations; and the General Counsel.[563] If the report of possible fraud involves misrepresentation on a single loan or on multiple loans that do not appear to be part of institutional or pattern mortgage fraud, or if the OCJ does not designate the report as stating a viable claim of fraud, then the Vice President of Single Family Operations determines the appropriate business remedy.[564] In cases in which the lender's relationship with Fannie Mae may be altered, or if repurchase is the remedy and the lender cannot or will not repurchase the loans, legal counsel for the location must be consulted.[565] The Vice President and Deputy General Counsel and Chief Compliance Officer must be notified and provided an opportunity to provide input in those cases.[566]

If the OCJ determines that a viable claim of institutional or pattern fraud exists, the Vice President of Single Family Anti-Fraud Initiatives, the Vice President of Single Family Operations and other staff from that location work together, with input from the Vice President and Deputy General Counsel, SWRO, to recommend the best business remedy and provide input on possible legal remedies.[567]

The Senior Vice President of Internal Audit provides the Board of Directors' Audit Committee with a monthly report of all mortgage fraud incidents that occurred.[568] In addition, each month the Interim Vice President for Operational Risk Oversight in the Corporate Chief Credit Officer organization reports all losses that occurred in the Single Family division to

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[563] Single-Family Anti-Fraud Protocols and Procedures, p. 13; Telephone interview with Peter Kopperman, Single Family Vice President of Anti-Fraud Initiatives (Mar. 3, 2006).

[564] Single-Family Anti-Fraud Protocols and Procedures, p. 14.

[565] *Id.*

[566] *Id.*

[567] *Id.*

[568] Telephone interview with Peter Kopperman, Single Family Vice President of Anti-Fraud Initiatives (Mar. 3, 2006).

the Board of Directors, including losses related to mortgage fraud.[569] These losses are contained in loss incident reports. Each time the Anti-Fraud Team discovers possible fraud, it sends a loss incident report to its Compliance Business Unit Interface, who in turn submits it to the Director for Single Family Operational Risk Management. The Director compiles all the loss incident reports for Single Family and submits them to the Interim Vice President for Operational Risk Oversight, who reports them to the Board of Directors.[570]

The Anti-Fraud Team also plans to begin issuing monthly reports in April 2006 that include status updates on its investigations of suspected fraud, material misrepresentations or serious misconduct.[571] It will follow the procedure already included in the Protocols and Procedures, which states that the reports are sent to: OCC; OCJ; Chief Compliance Officer; General Counsel; Single Family Vice President of Operations; Single Family Vice President of Servicing; Single Family Vice President of Anti-Fraud Initiatives; Servicing, Risk and/or Underwriting Directors; Director of Corporate Risk and Insurance; location counsel; Vice President and Deputy General Counsel, SWRO; Senior Vice President of Credit Loss Management and Quality Assurance; Single Family Credit Officer; Chief Risk Officer; and Director of News and Public Affairs.[572]

The Anti-Fraud Initiatives unit is working with the Chief Compliance Officer and external consultants to conduct a thorough review of Fannie Mae's anti-fraud program.[573] It

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[569] E-mail dated Mar. 2, 2006, from Peter Kopperman, Single Family Vice President of Anti-Fraud Initiatives.

[570] *Id.*

[571] Single Family Anti-Fraud Protocols and Procedures, p. 9. Telephone interview with Bill Brewster, Director of Anti-Fraud Initiatives (Mar. 1, 2006).

[572] Single Family Anti-Fraud Protocols and Procedures, pp. 9-10; Telephone interview with Bill Brewster, Director of Anti-Fraud Initiatives (Mar. 1, 2006).

[573] Next Steps for Anti-Fraud Initiatives, contained in the October 25, 2005 document entitled Anti-Fraud Policy and Program, prepared by Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business [hereinafter Next Steps for Anti-Fraud Initiatives] .

anticipates the results of that review to be available in the second quarter of this year.[574] The unit also plans to develop a technology platform and repository in order to centrally track mortgage fraud tips, manage fraud cases, and report to management and OFHEO.[575] It expects the system to be completed by the fourth quarter of this year.[576] In addition, it plans to update the Protocols and Procedures so they apply to a broader corporate audience and reflect the recent changes in procedures, and to provide the corresponding training.[577]

2. Reporting to OFHEO

In addition to reporting mortgage fraud internally, Fannie Mae has undertaken extensive efforts to implement the new OFHEO fraud rules for single family mortgages. Fannie Mae has been required to report possible mortgage fraud to OFHEO under the Mortgage Fraud Reporting rule since August 29, 2005.[578] The Anti-Fraud Team is responsible for notifying OFHEO of possible mortgage fraud for the Single Family Mortgage Business division.[579]

The Anti-Fraud Team collects information related to possible mortgage fraud, analyzes it, and determines whether it must be reported to OFHEO under the rule.[580] The Anti-Fraud Team

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[574] Telephone interview with Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Feb. 28, 2006).

[575] Next Steps for Anti-Fraud Initiatives.

[576] Telephone interview with Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Feb. 28, 2006).

[577] Next Steps for Anti-Fraud Initiatives. Telephone interview with Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Mar. 3, 2006).

[578] Telephone interview with Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Feb. 27, 2006).

[579] National Underwriting Center (NUC) Fraud Team Procedures for Reporting Mortgage Fraud and Possible Mortgage Fraud to OFHEO. The NUC Fraud Team has been renamed the Single-Family Anti-Fraud Team. Fannie Mae has separate policy and procedures for reporting mortgage fraud or possible mortgage fraud for its Housing and Community Development business. *See* Business Process Model, section i. in the Mortgage Fraud Reporting Implementation September 2005 report to OFHEO ("Business Process Model").

[580] National Underwriting Center (NUC) Fraud Team Procedures for Reporting Mortgage Fraud and Possible Mortgage Fraud to OFHEO.

consists of the Reporting Team, Investigation Team, and Team Management.[581] The Reporting Team reviews information submitted by Fannie Mae employees and external parties regarding suspected mortgage fraud. The procedures Fannie Mae employees use to submit information regarding mortgage fraud was detailed in the section on internal reporting. Consumers also can submit mortgage fraud tips to the e-mailbox or via a toll-free number.[582]

If the Reporting Team determines that it has reasonable grounds to suspect fraud, it assigns an investigator from the Investigation Team to examine the information.[583] Fannie Mae only reports patterns of ten or more loans that contain possible fraud and have some other commonality.[584] After the Investigation Team initiates investigation, the Reporting Team determines whether the case must be reported to OFHEO, and if so, whether it must be reported immediately.[585] The Anti-Fraud Team has discretion regarding the timing of reports. If the Reporting team determines that the information must be reported to OFHEO immediately, it notifies OFHEO and then drafts a MFIN.[586] If it does not have to be reported immediately, the Reporting Team drafts the MFIN and the Manager of Fraud Reporting notifies the following individuals that the MFIN is ready for review:[587] Vice President, Anti-Fraud Initiatives; Director,

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[581] *See* Business Process Model.

[582] Fannie Mae Response to OFHEO Mortgage Fraud Reporting Rule; Single-Family Anti-Fraud Protocols and Procedures, p. 6.

[583] Business Process Model, Flowchart 1.1 – Single-Family – Collect Fraud Information and Draft MFIN Form Process.

[584] Interview with Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Nov. 22, 2005).

[585] Business Process Model, Flowchart 1.1 – Single-Family – Collect Fraud Information and Draft MFIN Form Process.

[586] Business Process Model, Flowchart 1.1 – Single-Family – Collect Fraud Information and Draft MFIN Form Process.

[587] National Underwriting Center (NUC) Fraud Team Procedures for Reporting Mortgage Fraud and Possible Mortgage Fraud to OFHEO. *See also* Business Process Model, Flowchart 1.1 – Single-Family – Collect Fraud Information and Draft MFIN Form Process.

Anti-Fraud Initiatives; and Associate Counsel, Office of Corporate Compliance.[588] The reviewers determine whether the MFIN is applicable and accurate, insert appropriate comments, and approve the MFIN once their review is complete.[589]

After each reviewer has approved the MFIN, the Team Management, which consists of the Manager of Fraud Reporting, Vice President of Anti-Fraud Initiatives and Director of Anti-Fraud Initiatives, notifies the National Underwriting Center Systems Team that the MFIN is ready for submission to OFHEO.[590] The Systems Team then sends the MFIN to OFHEO, the Office of Regulatory Compliance and OCC, the Reporting Team and the Investigation Team.[591] Fannie Mae is in the process of updating the manner in which information regarding possible mortgage fraud flows, as it continues to make changes to its fraud reporting procedures.[592]

Fannie Mae reported to OFHEO ten suspected incidents of mortgage fraud in September 2005 (which was the first report and covered historic investigations); one in November 2005; one in December 2005; and one in January 2006.[593] Since the reporting rule did not become effective until the end of August 2005, the Third Quarter Report on MFINs only includes the ten cases Fannie Mae reported in September 2005. Of those, the number of loans thought to be involved in the suspected fraud ranged from ten to 771, and the estimated unpaid

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[588] Miriam Smolen currently fills this position.

[589] National Underwriting Center (NUC) Fraud Team Procedures for Reporting Mortgage Fraud and Possible Mortgage Fraud to OFHEO.

[590] *Id. See also* Business Process Model, Flowchart 3.1 – Single-Family – Submission of MFIN Form to OFHEO Process.

[591] National Underwriting Center (NUC) Fraud Team Procedures for Reporting Mortgage Fraud and Possible Mortgage Fraud to OFHEO. *See also* Business Process Model, Flowchart 3.1 – Single-Family – Submission of MFIN Form to OFHEO Process.

[592] Telephone interview with Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Feb. 28, 2006).

[593] *Id.*

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principal balance ("UPB") ranged from $356,600 to nearly $113 million.[594] Seven cases involved appraisal issues, six involved borrower issues, and one involved institutional fraud issues.[595] The investigation involving institutional fraud was closed, with no fraud found.

In addition to reporting mortgage fraud or possible mortgage fraud, the OFHEO regulation also requires Fannie Mae to establish certain internal controls and procedures and a training program. In April 2005, Fannie Mae created the position of Vice President of Anti-Fraud Initiatives to fill the role of mortgage fraud officer, as required under OFHEO's regulation.[596] As for OFHEO's requirements regarding a central reporting point and repository for mortgage fraud, Fannie Mae has e-mailboxes for both Fannie Mae employees and external parties to report possible mortgage fraud.[597] Fannie Mae also receives tips from consumers through the Consumer Resource Center ("CRC").[598] When the CRC receives a telephone call alleging fraud, it collects as much information as possible and records it on a Report of Suspected Mortgage Fraud, which it submits to the Anti-Fraud Team.[599] The CRC then transfers the call to the Anti-Fraud Team for further data collection.[600] The Anti-Fraud Team maintains all mortgage fraud tips and cases.[601] The tips and cases are currently maintained in an end-user managed application, but this will transition into a centrally managed application this year.[602]

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[594] Fannie Mae Quarterly Status Report of Mortgage Fraud Incident Notices, 3rd Quarter of 2005, 7/1/2005 Through 9/30/2005.

[595] *Id.*

[596] Fannie Mae Response to OFHEO Mortgage Fraud Reporting Rule.

[597] *Id.* All Fannie Mae staff has access via the intranet to the central e-mailbox, MortgageFraud_Tips@fanniemae.com, and external parties have access to the e-mailbox via www.FannieMae.com and www.eFannieMae.com.

[598] Single-Family Anti-Fraud Protocols and Procedures, p. 6.

[599] *Id.*

[600] *Id.*

[601] Fannie Mae Response to OFHEO Mortgage Fraud Reporting Rule.

[602] *Id.*

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As for the requirement that Fannie Mae designate mortgage fraud or senior management officers to approve any continued business with an entity suspected of mortgage fraud, Fannie Mae's Single Family credit delegation is a function that defines who is responsible for approving or terminating sellers and servicers and the management processes for making those decisions.[603]

OFHEO also requires Fannie Mae to publish its mortgage fraud reporting procedures and anti-fraud policies internally. The corporate Anti-Fraud Policy and the Protocols and Procedures are available to all Fannie Mae staff on Fannie Mae's intranet.[604]

Turning to the next OFHEO rule requirement, Fannie Mae must publish information on who external parties should contact to report mortgage fraud notices or tips. Fannie's websites, www.FannieMae.com and www.eFannieMae.com, instruct individuals to report suspected mortgage fraud to a toll free number (for the CRC) or to the central e-mailbox, as described above.[605] Finally, as for training, Fannie Mae has conducted a training program in the Single Family division on preventing and detecting mortgage fraud, and plans to conduct a corporate version this year.[606]

D. Lessons from the First Beneficial Case

The discovery of a fraud committed by First Beneficial Mortgage Corp. ("First Beneficial"), based in North Carolina, demonstrates that Fannie Mae's practice of not informing victims of mortgage fraud creates a risk of liability. In 2004, Fannie Mae entered into a Consent

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[603] *Id.*

[604] *Id.*; E-mail from Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business, to Ambika Biggs (Feb. 28, 2005).

[605] Fannie Mae Response to OFHEO Mortgage Fraud Reporting Rule. *See also* http://www.fanniemae.com/contact/ and http://www.efanniemae.com/utility/legal/antifraud.jsp.

[606] Fannie Mae Response to OFHEO Mortgage Fraud Reporting Rule.

Order in which it forfeited $7.5 million to the United States because it received funds that another company had obtained by fraud.[607] First Beneficial defrauded Fannie Mae by selling it fraudulent loans.[608] When Fannie Mae discovered the loans were fraudulent, it demanded First Beneficial repurchase the loans.[609] In order to obtain the funds to repurchase the mortgages, First Beneficial defrauded Ginnie Mae by using the same scheme that it had used on Fannie Mae.[610] Ginnie Mae suffered more than $23 million in damages as a result of the fraud.[611]

The Justice Department conducted an investigation of Fannie Mae on behalf of Ginnie Mae.[612] In the Consent Order, Fannie Mae agreed that the funds were forfeitable under applicable laws and stated that it did not "wish to retain those funds or benefit from the receipt of such funds."[613] It forfeited the funds, which were $6,522,188.08, plus $978,328.00 in interest, to the United States.[614] It had standing to file a claim or petition under 21 U.S.C. § 853(n) for the return of the funds under the Preliminary Order of Forfeiture,[615] and to request a hearing to determine if it received the funds without knowledge of their fraudulent origin, but it waived that right in the Consent Order.[616] The Consent Order explicitly stated that Fannie Mae was a victim

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[607] Press Release, Department of Justice, Dec. 8, 2004.

[608] *U.S. v. McLean*, 131 Fed. App'x. 34, 36 (4th Cir. 2005). First Beneficial's owners, James and Macy McLean, as well as other First Beneficial employees, recruited individuals to sign mortgage loan notes to secure funds for homes that either did not exist or that were owned by someone other than the borrower named on the note. These fraudulent notes were then sold to Fannie Mae. The McLean's were convicted of various federal offenses in a separate criminal case. The section on accounting and securities fraud addresses Fannie Mae's procedures for ensuring that promissory notes that it purchases are adequately backed by houses.

[609] *Id.* at 37.

[610] *Id.*

[611] Press Release, Department of Justice, Dec. 8, 2004.

[612] *Id.*

[613] *U.S. v. McLean*, Consent Order of Forfeiture, ¶ 6, , No. 3:02CR156-T (W.D.N.C., Dec. 8, 2004).

[614] *Id.* at ¶ 8.

[615] *Id.* at ¶ 10.

[616] Press Release, Department of Justice, (Dec. 8, 2004).

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of a mortgage fraud scheme perpetrated by First Beneficial,[617] and that the order did not "constitute or [should not] be construed as an admission by Fannie Mae of guilt of, violation of, or noncompliance with, any federal, state or local law, statute, regulation, or public policy."[618]

Although Fannie Mae was ordered to forfeit the funds because they were the product of fraud, and not because Fannie Mae failed to warn Ginnie Mae of First Beneficial's mortgage fraud scheme, the Justice Department and members of Congress focused on the fact that Fannie Mae did not disclose the fraud after discovering it, enabling First Beneficial to resell the fraudulent loans to Ginnie Mae.[619] During the criminal trial of the owners of First Beneficial, investigators discovered that Fannie Mae did not notify regulators of the fraud.[620]

Representatives Richard Baker, R-La., Sue Kelly, R-N.Y., and Robert Ney, R-Ohio, wrote a letter to then Fannie Mae Chief Executive Franklin Raines stating that they were "very concerned that the U.S. taxpayers may have been put at risk when certain loans were sold by First Beneficial Mortgage to Ginnie Mae after many of the same loans were determined to be fraudulent by the executives at Fannie Mae."[621] They asked whether Fannie Mae sought to inform OFHEO, HUD, Ginnie Mae or the Department of Justice that First Beneficial was attempting to sell fraudulent loans, and whether Fannie Mae notifies state and federal authorities when it discovers a lender has sold it fraudulent loans.[622] They also questioned whether Fannie

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[617] *U.S. v. McLean*, Consent Order of Forfeiture, ¶ 3, No. 3:02CR156-T (W.D.N.C., Dec. 8, 2004).

[618] *Id.* at ¶ 15.

[619] Dawn Kopecki, "Fannie Seeks to Settle Federal Mtge Fraud Case – Sources,' Dow Jones News Service, December 3, 2004.

[620] *Id.*

[621] *Id.; see also* Letter from Reps. Richard Baker, R-La., Sue Kelly, R-N.Y., and Robert Ney, R-Ohio to Mr. Raines (Dec. 1, 2004).

[622] Letter from Reps. Richard Baker, R-La., Sue Kelly, R-N.Y., and Robert Ney, R-Ohio (Dec. 1, 2004).

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Mae discloses the fact that it has suspended a lender, which would put others on notice that the lender may have engaged in criminal activity.[623]

OFHEO's fraud regulation was issued, in part, in response to the *First Beneficial* case.[624] The regulation, however, still does not require Fannie Mae or anyone else to inform the borrowers, who may be victims, of the fraud.

E. The Olympia Fraud Response Model

In at least one case in which Fannie Mae discovered a lender fraud, it took measures to ensure that borrowers were informed and any harm corrected. In the fall of 2004, Fannie Mae discovered that Olympia Mortgage Corporation ("Olympia") had defrauded borrowers who refinanced their mortgages. Olympia sold mortgages to Fannie Mae, and Fannie Mae remitted the purchase price to Olympia for payment of the mortgages.[625] Olympia was supposed to use the funds to pay off the borrowers' mortgage notes, but it failed to do so.[626] As a result, the borrowers had two mortgages on their property, instead of the one refinanced mortgage.[627] The fraud involved about 240 loans that were worth about $40 million in total.[628]

When Fannie Mae discovered the fraud, it transferred the mortgages from Olympia to Cenlar, a subservicer that Fannie Mae entrusted with the responsibility of correcting the damage to borrowers.[629] Cenlar reviewed each loan that was involved in Olympia's fraud and

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[623] *Id.*

[624] *See* OFHEO New Release, OFHEO Proposes Regulation to Require Fannie Mae and Freddie Mac to Report Mortgage Fraud, (Feb. 22, 2005). The news release states that the proposed rule cited First Beneficial, Olympia, and United Homes LLC as recent examples of fraud or alleged fraud.

[625] Interview with Bill Brewster, Director of Anti-Fraud Initiatives (Nov. 7, 2005).

[626] *Id.*

[627] *Id.*

[628] Interview with John Gang, Vice President, Asset Acquisitions and Custody (Dec. 8, 2005).

[629] Interview with Mercy Jimenez, Senior Vice President of the National Business Center (Nov. 7, 2005).

corrected any problems resulting from the fraud.[630] Cenlar also worked with borrowers and credit ratings agencies to remove inaccurate information from borrowers' credit records.[631] In late 2004, Fannie Mae issued a press release to inform investors that Fannie Mae had purchased the loans out of the pool, so there would be a quick pay down on the loans instead of a stream of monthly payments on them.[632] The press release informed investors that Fannie Mae had forced the lender to repurchase the loans, but it did not say it was due to fraud.[633]

F. Findings Regarding Fraud Procedures

In the area of fraud reporting, Fannie Mae has implemented procedures to comply with OFHEO reporting requirements. In the view of Fannie Mae executives, predatory practices are prevalent in the subprime market in which Fannie Mae participates to only a limited extent. Of Fannie Mae's 1,500 active servicers, only 33 are non-traditional servicers, and not even all of those are subprime servicers.[634] Mr. Lavalle's target subprime servicers – EMC Mortgage, Litton Loan Servicing, Ocwen, and SPS – were primary servicers for less than one percent of Fannie Mae's loans from 2002 to 2004.[635] Fannie Mae's enforcement of servicer requirements has placed a greater emphasis in recent years on identifying and correcting predatory lending and servicing issues and detecting fraud. Fannie Mae has created the position of Vice President for Anti-Fraud Initiatives which gives these enforcement efforts visibility within the company. Fannie Mae also is using an extensive computer analysis of its portfolio to detect anomalies

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[630] *Id.*

[631] *Id.*

[632] Interview with John Gang, Vice President, Asset Acquisitions and Custody (Dec. 8, 2005).

[633] *Id.*

[634] Telephone Interview with Rick Bauerband, Director of Non-Traditional Servicing (Mar. 14, 2006); E-mail attachment of a chart of the Servicer Counts for Year-Ends 2002-2004, from Marianne Sullivan, Senior Vice President, Credit Loss Management (Mar. 1, 2006).

[635] All Active Single-Family Loans chart from Marianne Sullivan, Senior Vice President, Credit Loss Management.

which are then investigated.[636] These analyses are now being specifically used for enforcement purposes. To date, the level of fraud detected has been relatively minor, only 13 incidents reported from September 2005 through January 2006, most of which occurred before September 2005.[637]

VII.
ACCOUNTING AND SECURITIES FRAUD

A. Fannie Mae's Financial Investigations and Reviews

Fannie Mae is in the process of extensively reviewing and restating its financial results from previous years. In November 2003, OFHEO began a special examination of Fannie Mae's accounting practices and policies.[638] Although it has not completed its review, OFHEO reported its findings to date on September 17, 2004, because they raised serious issues that warranted immediate attention.[639] Fannie Mae's Board agreed to take immediate action to address the issues raised in the report.[640] In February 2005, Fannie Mae announced that OFHEO had notified it of additional accounting and internal controls issues that OFHEO had identified.[641] On March 7, 2005, Fannie Mae and OFHEO entered into a supplement to address

[636] Telephone interview with Steve Holden, Director of Loan Portfolio Risk (Jan. 28, 2006); Interview of Dror Oppenheimer, Vice President for Asset Development and Management (Dec. 7, 2005).

[637] Fannie Mae Quarterly Status Report of Mortgage Fraud Incident Notices, 3rd Quarter of 2005, 7/1/2005 Through 9/30/2005; Interview with Peter Kopperman, Vice President, Anti-Fraud Initiatives, Single-Family Mortgage Business (Feb. 28, 2006).

[638] Executive Summary, A Report to the Special Review Committee of the Board of Directors of Fannie Mae, Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Rudman Report").

[639] Report of Findings to Date, Special Examination of Fannie Mae, Office of Compliance, Office of Federal Housing Enterprise Oversight, September 17, 2004 [hereinafter "the OFHEO Report"].

[640] News Release, Fannie Mae, Fannie Mae Directors Agree to Correct Accounting Treatments, Raise Capital Surplus as Required by OFHEO (Sept. 27, 2004).

[641] U.S. Securities and Exchange Commission Form 12b-25, for period ended December 31, 2004.

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the newly discovered concerns.[642] OFHEO has yet to issue its final report on its special examination of Fannie Mae.[643]

After OFHEO made its September 2004 report, Fannie Mae requested that the SEC's Office of the Chief Accountant review how Fannie Mae applied Financial Accounting Standard ("FAS") No. 91 and FAS 133, which deal with deferred price adjustments, and derivatives and hedging activities, respectively.[644] The SEC reviewed Fannie Mae's accounting practices for 2001 through mid-2004 and found that Fannie Mae had not complied with the accounting requirements for FAS 91 and FAS 133.[645] The SEC advised Fannie Mae to restate the financial statements it had filed with the SEC. Fannie Mae has stated that the interim and audited reports and the independent auditor's reports that it filed for that period should not be relied upon.[646] It is in the process of restating its financial statements.[647]

Also in September 2004, the Board's Special Review Committee asked U.S. Senator Warren Rudman and the law firm Paul, Weiss, Rifkin, Wharton & Garrison, LLP, ("Paul, Weiss") to conduct an extensive review of the issues raised in the OFHEO report, as well as others issues relating to accounting, governance, internal controls and structure.[648] The Board released the report ("Rudman Report") on the investigation on February 23, 2006.[649]

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[642] *Id.*

[643] News Release, Fannie Mae, Statement by Stephen B. Ashley, Chairman of the Board of Directors (Feb. 23, 2006).

[644] U.S. Securities and Exchange Commission Form 12b-25, for period ended December 31, 2004.

[645] Press Release, U.S. Securities and Exchange Commission, Office of the Chief Accountant Issues Statement on Fannie Mae Accounting (Dec. 15, 2004), available at http://www.sec.gov/news/press/2004-172.htm.

[646] U.S. Securities and Exchange Commission Form 12b-25, for period ended December 31, 2004.

[647] U.S. Securities and Exchange Commission Form 12b-25, for period ended December 31, 2004.

[648] News Release, Statement by Stephen B. Ashley, Chairman of the Board of Directors (Feb. 23, 2006).

[649] *Id.*; *see also* Executive Summary, A Report to the Special Review Committee of the Board of Directors of Fannie Mae, Paul, Weiss, Rifkind, Wharton & Garrison LLP [hereinafter "the Rudman Report"].

In light of these investigations, we have limited our review of Mr. Lavalle's assertions to determining whether his issues are addressed through tests and analyses designed to ensure the accuracy of financial reporting or are under review in the current review of accounting controls and restatement of financial statements.

B. Mr. Lavalle's Accounting and Securities Concerns

Mr. Lavalle has accused Fannie Mae of engaging in accounting and securities fraud arising from the other issues he raises. He has specifically focused on the following four areas: (1) impact of servicer frauds on Fannie Mae's financial statements; (2) the alleged failure to remove paid-off promissory notes from MBS pools; (3) the question of whether terms of MBS's comply with true sale accounting rules; and (4) whether the transfer of holder status to servicers during foreclosure proceedings are accounted for properly.

1. Impact of Servicer Frauds

Mr. Lavalle claims that the fraudulent practices of servicers distort Fannie Mae's financial statements. When mortgage servicing abuses are discovered, each mortgage needs to be reamortized and recalculated to reflect the correct principal balances and loan-to-value ratios ("LTVs"), Mr. Lavalle asserts.[650] He questions whether these recalculations are being done.[651] Mr. Lavalle alleges that when servicers engage in predatory servicing, they are employing a number of financial engineering schemes designed to boost their profits. These schemes have a direct effect on the income cash flow, mortgage servicing right ("MSR") values, LTVs, principal and interest, asset values, principal values, amortization of balances, servicing fees and net

[650] E-mail dated Oct. 7, 2005, from Nye Lavalle to Mark Cymrot.

[651] *Id.*

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liquidation proceeds.[652] These schemes affect what servicers, investors, Fannie Mae and MBS trusts report, he claims.[653]

Mr. Lavalle complains about the following fraudulent schemes: misapplication of payments via delayed application to principal, application to suspense/unapplied accounts, escrow overpayments, failure to timely credit prepayments and payments, and payments to non-recoverable fees instead of principal and interest; force-placed insurance schemes; escrow account schemes; and fee schemes.[654] "[O]nce an error or manipulated engineering scheme occurs, every transaction from that date forward is affected," Mr. Lavalle asserts.[655] The amount the borrower pays, the amount of the payment that is applied towards principal, the amount of interest that accrues, and the late fees charged are affected by the scheme, he claims.[656] This impact is especially true for negative amortization and ARM loans when the amount that is applied to principal and interest is calculated using the current monthly principal balance, he claims.[657] These faulty numbers in turn affect reports to investors and rating agencies, and SEC filings, he alleges.[658] In order to fix these errors, the loans must be audited manually to correct each point of error, he asserts.[659]

Mr. Lavalle asserts that if the errors are truly mistakes, and not the result of financial engineering schemes, about 50 percent of the errors should be over-charges and about

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[652] Nye Lavalle, report on his allegations against Fannie Mae (Feb. 2, 2006) (unpublished report), sent as attachment to e-mail dated Feb. 2, 2006 10:25 EST to Mark Cymrot.

[653] *Id.*

[654] *Id.*

[655] *Id.*

[656] *Id.*

[657] *Id.*

[658] *Id.*

[659] *Id.*

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50 percent should be under-charges.[660] If the overcharges constitute more than 60 percent of the errors, and especially if they constitute between 80 to 99.9 percent of the errors, that is proof of financial engineering schemes, he claims.[661] In order to determine what percentage of errors are beneficial or detrimental to borrowers, Fannie Mae would need to conduct ARM, payoff figure, servicing and escrow audits on a pool of loans either by auditing each loan or taking a random sample of the pool, he asserts.[662]

Mr. Lavalle estimates that Fannie Mae has miscalculated the amount of principal balance claims due and owing on ARM loans, Alt A, B and C paper and negative amortization loans by 10 to 25 percent.[663] He projects a 2.5 to 5 percent miscalculation of principal balances due and owing for standard A paper loans with traditional fixed 15- and 30-year terms.[664] He claims that he bases his estimates on discussions with servicers and mortgage audit firms, and his research of auditing, quality assurance and due diligence firms, reports and websites.[665]

Mr. Lavalle alleges that when the mortgage servicers report inaccurate financial information, Fannie Mae's financial statements become distorted. Inaccurate principal balances also may cause Fannie Mae to overpay servicing fees, he claims, because servicing fees are typically calculated based on outstanding principal balances.[666] In addition, Mr. Lavalle alleges that Fannie Mae uses this inaccurate financial information provided by its servicers in its filings with the Securities and Exchange Commission ("SEC") and in its prospectus, so the

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[660] *Id.*

[661] *Id.*

[662] *Id.*

[663] *Id.*

[664] *Id.*

[665] *Id.*

[666] E-mail dated July 22, 2005, from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors.

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characteristics of loan pools are inflated over their true values.[667] Thus, investors receive information that is false, in violation of state and federal securities laws, RICO and Deceptive Trade Practices laws, Mr. Lavalle claims.[668]

2. Promissory Notes in MBS Pools

Mr. Lavalle raises issues regarding promissory notes in MBS pools. He questions what processes are in place for taking paid off promissory notes out of MBS pools.[669] Mr. Lavalle claims to have been informed by mortgage industry executives that paid off promissory notes are still part of securitized pools.[670] He has not provided any documentary evidence of these statements. Mr. Lavalle alleges that fraudulent duplicate promissory notes are being sold, traded, and placed in securitized pools.[671] Thus, in some cases two promissory notes are being sold for the same debt and one property serves as collateral.

He asserts that Fannie Mae has transformed promissory notes into "fiat money" because they are not backed by a fixed asset.[672] He fears Fannie Mae is claiming that the securities it issues are backed by mortgages when in fact they are not.[673]

3. True Sale Opinions

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[667] *Id.*

[668] *Id.*

[669] Telephone Interview with Nye Lavalle (Nov. 1, 2005).

[670] *Id.* In support of his allegations, Mr. Lavalle refers generally to Margery A. Colloff, "The Role of the Trustee in Mitigating Fraud in Structured Financings," J. of Structured Finance (Winter 2005). The article states "Government-reimbursed programs are at the top of the list [of hot spots for fraud]" because "[c]ollateral may be overvalued, or non-existent, or pledged to more than one transaction. No one knows because the collateral is often in the custody of the servicer or another business party, not the trustee." *Id.* at 3.

[671] Telephone Interview with Mr. Lavalle (Nov. 1, 2005). *See* E-mail dated Nov. 30, 2005, with attachments from Carl Erickson, which include an allegedly fraudulent promissory note. Mr. Erickson claims that two different companies – Freddie Mac and the Charles F. Curry Company – claimed to be the owner of the note at the same time. Mr. Erickson has communicated with Mr. Lavalle, as is evidenced in the e-mail.

[672] Telephone Interview with Nye Lavalle (Nov. 23, 2005).

[673] Telephone Interview with Nye Lavalle (Nov. 1, 2005) *See also* e-mail from Mr. Lavalle to Ms. House (Jan. 8, 2004).

Mr. Lavalle questions how Fannie Mae and Freddie Mac are dealing with the issue of "true sales" in securitization transactions. He claims that the majority of securitization transactions is not true sales, but instead is the financing of receivables that should be accounted for on the balance sheet.[674] He asserts that some of these sales may not be true sales because the transactions contain recourse provisions that require the lender to repurchase the loan from the pool or replace it if there is a problem with the loan.[675] He also claims that Fannie Mae has "side and verbal implicit and moral recourse agreements with many ... parties and counter-parties to various securitization transactions."[676]

Mr. Lavalle has asked, "Once in a SPV/SPE or QSPE trust, what time period can a note that has gone 'into trust' be allowed to come out for a discovered fraud, problem, foreclosure or default? ... If after a certain time period, doesn't this practice constitute a violation of the 'true sale' provisions and mandate that such assets and liabilities be carried on balance sheet? Doesn't this destroy the 'trust' and 'remote bankruptcy' treatments?"[677]

4. Impact of Holder Status During Foreclosures

Fannie Mae's foreclosure practices could have an effect on its financial statements, Mr. Lavalle claims. Fannie Mae's foreclosure guidelines transfer holder status from Fannie Mae to the servicer at the time of foreclosure. Mr. Lavalle questions whether the loans should come off Fannie Mae's books at that point.

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[674] Telephone interview with Nye Lavalle (Nov. 1, 2005); E-mail dated Dec. 19, 2003, from Nye Lavalle to then-Fannie Mae Chairman and Chief Executive Officer Franklin Raines and other Fannie Mae employees, as well as other individuals.

[675] Telephone interview with Nye Lavalle (Nov. 1, 2005).

[676] E-mail dated July 22, 2005, from Nye Lavalle to Mr. Mudd, Ms. House, and various members of Fannie Mae's Board of Directors.

[677] Nye Lavalle, report on his allegations against Fannie (Feb. 2, 2006) (unpublished report), sent as attachment to e-mail dated Feb. 2, 2006, to Mark Cymrot.

C. Servicer Reports of Financial Transactions

Mr. Lavalle's claims regarding servicer fraud are essentially an attack on the integrity of Fannie Mae's financial reporting. Fannie Mae has the LASER computer system through which servicers report transactions regarding mortgages. Fannie Mae's Loan Portfolio Risk unit conducts numerous statistical analyses of servicer portfolios to ensure they perform as expected.[678] One area specifically reviewed is quality control; that is an analysis of how accurate a lender's reports are.[679] Anomalies are investigated and further analysis or corrective action is undertaken through the appropriate business unit.[680] The lender reporting system is also subject to internal and external audits, including the current investigations by OFHEO and Fannie Mae's auditors. It, thus, appears that Fannie Mae's accounting system addresses Mr. Lavalle's concerns about servicer reporting. In light of the pending external reviews, we have not undertaken a review of Mr. Lavalle's specific concerns.

D. Under-Collateralization of MBS Pools

1. Paid Off Promissory Notes

Fannie Mae also has a variety of computer systems for lenders and servicers to report MBS information, including the LASER and MAST systems.[681] The LASER system is for loan level reporting, while the MAST system is for pool level reporting.[682] Fannie Mae calculates its own expectations for this data based upon its past experiences.[683] Anomalies from the usual results are identified and Fannie Mae works with servicers to determine the reasons for

[678] Interview with Steve Holden, Director, Loan Risk Portfolio (Jan. 27, 2006).

[679] *Id.*

[680] *Id.*

[681] Interview of Dror Oppenheimer, Vice President, Asset Development and Management (Dec. 7, 2005).

[682] *Id.*

[683] *Id.*

the variations and resolve any issues that may arise.[684] In addition, Fannie Mae's Custodian Unit and the private certified custodians conduct physical checks of information contained on the mortgage documents when they arrive.[685] Fannie Mae also conducts post-purchase quality control and reviews. The pay down schedules are reconciled to the actual cash received to ensure that pay offs and other transactions are being properly accounted for.[686] After the *Olympia* fraud, Fannie Mae built additional functions into its system to check for duplicate loans and pay offs.

2. Duplicate Loans for Same Property

Fannie Mae has procedures in place to prevent it from purchasing fraudulent duplicate loans. In the wake of discovering *Olympia* fraud, Fannie Mae implemented a process to check for duplicate loans.[687] Fannie Mae's credit analytics produce a monthly report listing all instances in which the same address is listed for more than one loan and then they investigate the discrepancy.[688] In the majority of the cases in which the same address is listed for multiple loans, the property has multiple units (i.e., condominiums), and the unit numbers were not recorded.[689] Fannie Mae now uses information provided by the United States Postal Service to determine whether an address that is listed for more than one loan belongs to a multi-unit property.[690] Fannie Mae has had a few minor incidents, but has not found any systematic

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[684] *Id.*

[685] Interview of Debra Thompson, Director, Asset Acquisitions and Custody (Nov. 8, 2005).

[686] Interview of Dror Oppenheimer, Vice President for Asset Development and Management (Dec. 7, 2005).

[687] Interview with Dror Oppenheimer, Vice President for Asset Development and Management (Dec. 7, 2005).

[688] *Id.*

[689] *Id.*

[690] *Id.*

fraud.[691] In those cases in which duplicate loans have been found, NSO's quality control unit determines how the issue should be resolved and whether the seller must repurchase the loan.[692]

3. Inflated Property Appraisals

Fannie Mae also has procedures in place to protect itself against appraisal fraud. When Fannie Mae purchases a loan, the lender reports the mortgaged property's address, appraised value, and sales price.[693] Employees in Fannie Mae's loan portfolio risk team compare the appraised value to the value on Fannie Mae's automated valuation model ("AVM").[694] Fannie Mae does not have the value for every mortgaged property, but it can estimate values if it has the tax assessment, the number of rooms and square footage of the property, or if it has dealt with the loan previously.[695]

If there is a large discrepancy between the appraised value and the value on the AVM, the loan portfolio risk team flags the discrepancy for the underwriters to review.[696] Oftentimes the flag is due to a model error. For instance, the homeowner may have renovated the house, increasing its value, but Fannie Mae may be unaware of the renovation.[697] If Fannie Mae does discover appraisal fraud, the lender must repurchase the loan.[698]

With respect to MBS financial reporting, Fannie Mae's accounting system has systems to ensure loans backing MBS are properly accounted for. In light of the pending external reviews, we have not undertaken additional efforts to test these systems.

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[691] *Id.*

[692] *Id.*

[693] Telephone interview with Steve Holden, Director of Loan Portfolio Risk (Jan. 28, 2006).

[694] *Id.*

[695] *Id.*

[696] *Id.*

[697] *Id.*

[698] *Id.*

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E. True Sale Opinions

Mr. Lavalle has questioned whether Fannie Mae's policy of removing certain loans from MBS trusts negates the "true sale" qualities of a transaction.[699] As previously explained, Fannie Mae can require lenders to repurchase mortgages for a variety of reasons, such as violations of a selling warranty, improper servicing that has adversely affected the value of portfolio mortgages, ARMs in MBS pools have been converted to fixed-rate mortgages, or MBS pool mortgages have 24 payments past due.[700] Instead of requiring the lender to repurchase a delinquent special servicing option MBS pool mortgage, Fannie Mae also can automatically reclassify the mortgage as a portfolio mortgage.[701]

Mr. Lavalle asserts that recourse provisions requiring or allowing lenders to repurchase loans or take loans out of an MBS pool may mean that the initial sales transaction was not a "true sale" and should not be accounted for as such.[702]

For tax and accounting purposes, when lenders sell whole mortgages to Fannie Mae, those loans are recorded on Fannie Mae's balance sheet as assets.[703] When a lender sells loans to Fannie Mae to be securitized, the loans are not recorded on Fannie Mae's balance sheet because they are not Fannie Mae's assets.[704] Rather, a trust is established under the trust

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[699] Nye Lavalle, report on his allegations against Fannie Mae (Feb. 2, 2006) (unpublished report), sent as attachment to e-mail to Mark Cymrot (Feb. 2, 2006 10:25 EST).

[700] Selling Guide, I-208.

[701] *Id.*

[702] E-mail dated Dec. 19, 2003, from Nye Lavalle to Frank Raines and others.

[703] Interview with Kirk Silva, Vice President in Accounting Policy (Nov. 23, 2005); Interview with Greg Williams, Director of Finance (Nov. 8, 2005).

[704] Mortgage Backed Securities: Basics of Fannie Mae MBS: Basics of MBS Market & Pools, available at http://www.fanniemae.com/mbs/mbsbasics/market. *See also* U.S. Securities and Exchange Commission, Form 10-K, Annual Report for fiscal year ended December 31, 2003, p. 90 (Fannie has since determined that "its previously filed interim and audited financial statements for the periods from January 2001 through the second quarter of 2004 must be restated and should no longer be relied upon.").

indenture and the assets are placed in that trust.[705] Fannie Mae "holds the mortgage loans, in [its] capacity as trustee under the trust indenture, for the benefit of all the holders of certificates of the same issue."[706] Fannie Mae issues certificates that represent a fractional undivided beneficial ownership interest in the pool of loans.[707] "Each beneficial owner of a certificate will be considered to be the beneficial owner of a pro rata undivided interest in each of the mortgage loans included in that particular pool" and "must report on its federal income tax return its pro rata share of the entire income from each mortgage loan in that particular pool, consistent with the beneficial owner's method of accounting."[708]

The only circumstance in which a loan in a pool for securitization would be recorded on Fannie Mae's accounting books is if the loan becomes delinquent and Fannie Mae purchases it out of the pool.[709] In all other cases, the trust holds the assets.[710]

In order for Fannie Mae to keep an MBS trust's assets off-balance sheet, the trust must meet certain criteria that establish it as a Qualified Special Purpose Entity ("QSPE").[711] Under Financial Accounting Standard ("FAS") No. 140, the trust must be beyond the reach of the entity to qualify as a QSPE. If the trust does not meet the requirement for a QSPE, FASB Interpretation ("FIN") No. 46 requires the party that stands to gain or lose the most from a

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[705] Interview with Kirk Silva, Vice President in Accounting Policy (Nov. 23, 2005). *See also* Single-Family MBS Prospectus, January 1, 2006, p. 18.

[706] Single-Family MBS Prospectus, January 1, 2006, p. 18.

[707] *Id.* at 18.

[708] *Id.* at 45, 46.

[709] Interview with Dror Oppenheimer, Vice President for Asset Development and Management (Dec. 7, 2005). In some cases, Fannie Mae purchases the loan from the pool if the borrower is four months delinquent. In other cases, Fannie Mae does not purchase the loan until the point of foreclosure. *See also* Interview with Greg Williams, Director of Finance (Nov. 8, 2005). Sometimes when the trust creates MBS, Fannie purchases the MBS. In those cases, the MBS that are reflected on Fannie Mae's accounting books are investments.

[710] Interview with Kirk Silva, Vice President in Accounting Policy (Nov. 23, 2005). There is *not* a separate accounting book for the trust.

[711] *Id.*

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Special Purpose Entity ("SPE") whose ownership is otherwise unclear to consolidate the SPE's financial data in its own statements.[712]

The Rudman Report addresses situations in which Fannie Mae invests in MBS that it guarantees. From time to time, Fannie Mae acquires interest in MBS, and at times, it has acquired 100 percent of the MBS from certain trusts.[713] When FIN 46 was adopted in 2003, Fannie Mae had to determine whether those trusts should be consolidated into its balance sheet.[714] It created Megas, trusts into which it transferred wholly-owned MBS trusts, and then sold one percent of the beneficial interest in each Mega to a third party.[715] Fannie Mae believed this would enable it to avoid consolidating the trusts onto its balance sheets because it would no longer have the unilateral ability to dissolve the trusts.[716] This approach proved to be incorrect, and management is now reviewing these transactions as part of its restatement effort.[717]

With respect to other aspects of the true sale issue, Fannie Mae did not obtain independent true sale opinions prior to its current financial restatement.[718] Fannie Mae is in the process of reviewing transactions to determine whether they constitute true sales and has retained two law firms to provide legal opinions on the issue.[719] We, therefore, have not addressed this issue further.

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[712] Tim Reason, "FIN 46 and Balance-Sheet Consolidation," CFO Magazine, September 24, 2004.

[713] Rudman Report, p. 16.

[714] *Id.*

[715] *Id.*

[716] *Id.*

[717] *Id.* at 16-17.

[718] Interview with Kirk Silva, Vice President in Accounting Policy (Nov. 23, 2005).

[719] *Id.*

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F. Accounting for Holder Status in Foreclosure

Mr. Lavalle has questioned on whose accounting books promissory notes are recorded in cases in which servicers or MERS claim to be the holder and owner of the notes during foreclosure actions.[720] Fannie Mae's Servicing Guide makes it clear that Fannie Mae is at all times the owner of the note.[721] The mortgage, thus, is accounted for in Fannie Mae's accounting books.[722] Holder status can change during the life of a mortgage, even when Fannie Mae or a Fannie Mae trust is the owner. Even in these instances, the asset remains on Fannie Mae's (or the trust's) balance sheet, and not the servicer's.[723]

An individual can be the holder of a promissory note without being the owner of the note. The U.C.C., which determines whether an entity is a holder or not, does not address ownership of negotiable instruments.[724] The U.C.C. states that the "right to enforce an instrument and ownership of the instrument are two different concepts."[725] Thus, when Fannie Mae transfers the holder status to servicers, Fannie Mae continues to account for the mortgage on its accounting books because it remains the owner.[726]

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[720] Telephone Interview with Nye Lavalle (Feb. 6, 2006).

[721] Servicing Guide, VIII-102. This section of the Guide is on the initiation of foreclosure proceedings. It states: "Fannie Mae is at all times the owner of the mortgage note, whether the note is in our portfolio or whether we own it as trustee for an MBS trust."

[722] Interview with Dror Oppenheimer, Vice President for Asset Development and Management (Dec. 7, 2005); Telephone Interview with Robin Gillespie, Vice President and Deputy General Counsel. (Mar. 16, 2006).

[723] Telephone Interview with Kirk Diehl, Senior Manager in Accounting Policy (Mar. 22, 2006); Interview with Dror Oppenheimer, Vice President for Asset Development and Management (Dec. 7, 2005).

[724] U.C.C. Revised Article 3-203, Official Comment states: "Ownership rights in instruments may be determined by principles of the law of property, independent of Article 3, which do not depend upon whether the instrument was transferred under Section 2-302."

[725] U.C.C. Revised Article 3-203, Official Comment.

[726] Telephone Interview with Kirk Diehl, Senior Manager in Accounting Policy (Mar. 22, 2006); Telephone Interview with Robin Gillespie, Vice President and Deputy General Counsel. (Mar. 16, 2006).

G. Findings Regarding Accounting and Securities Fraud

Since Fannie Mae's accounting system is undergoing extensive external review from OFHEO and independent accountants and lawyers, we have not undertaken a separate review of Mr. Lavalle's assertions regarding Fannie Mae's financial statements. The issues raised by Mr. Lavalle are addressed in the accounting system, and any issues regarding these issues should be resolved as a result of the current reviews.

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Office of the Attorney General
Economic Crimes Division

UNFAIR, DECEPTIVE AND UNCONSCIONABLE ACTS IN FORECLOSURE CASES

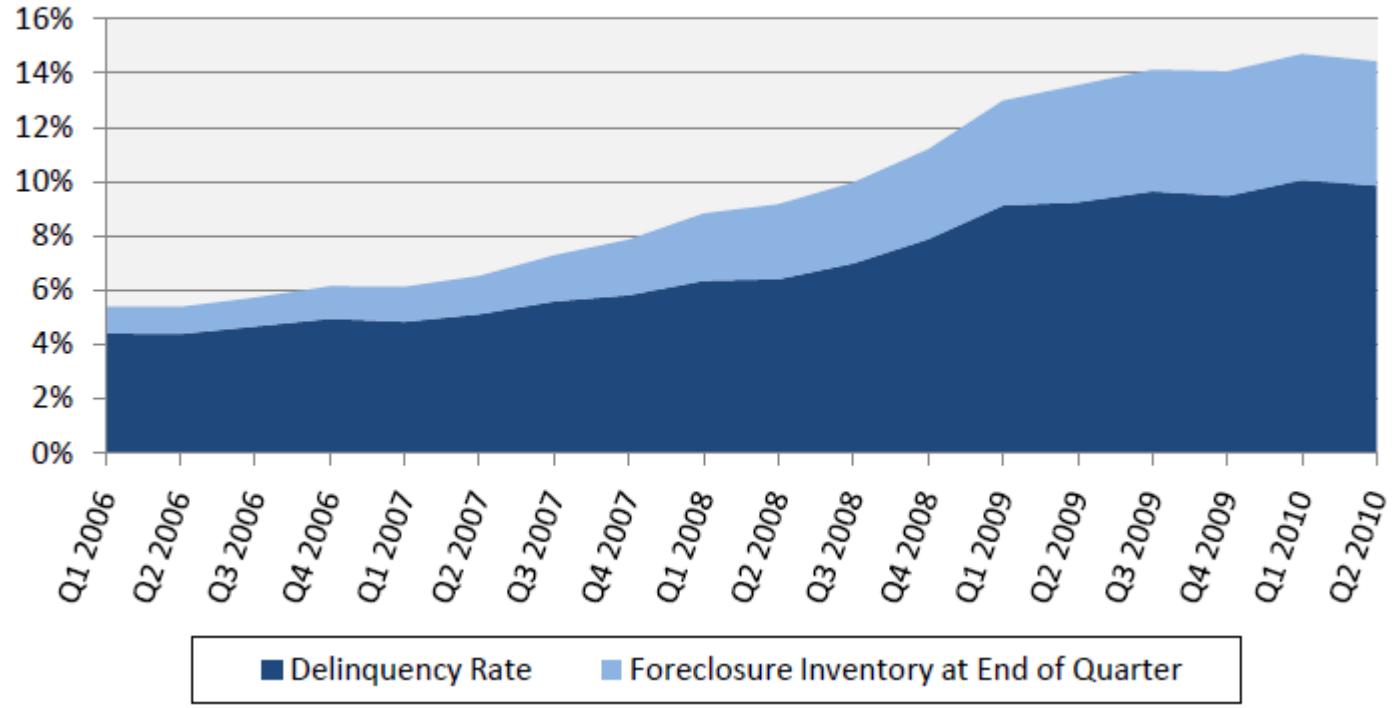
PREPARED BY: JUNE M. CLARKSON, THERESA B. EDWARDS AND RENE D. HARROD

Overview of Foreclosure Industry

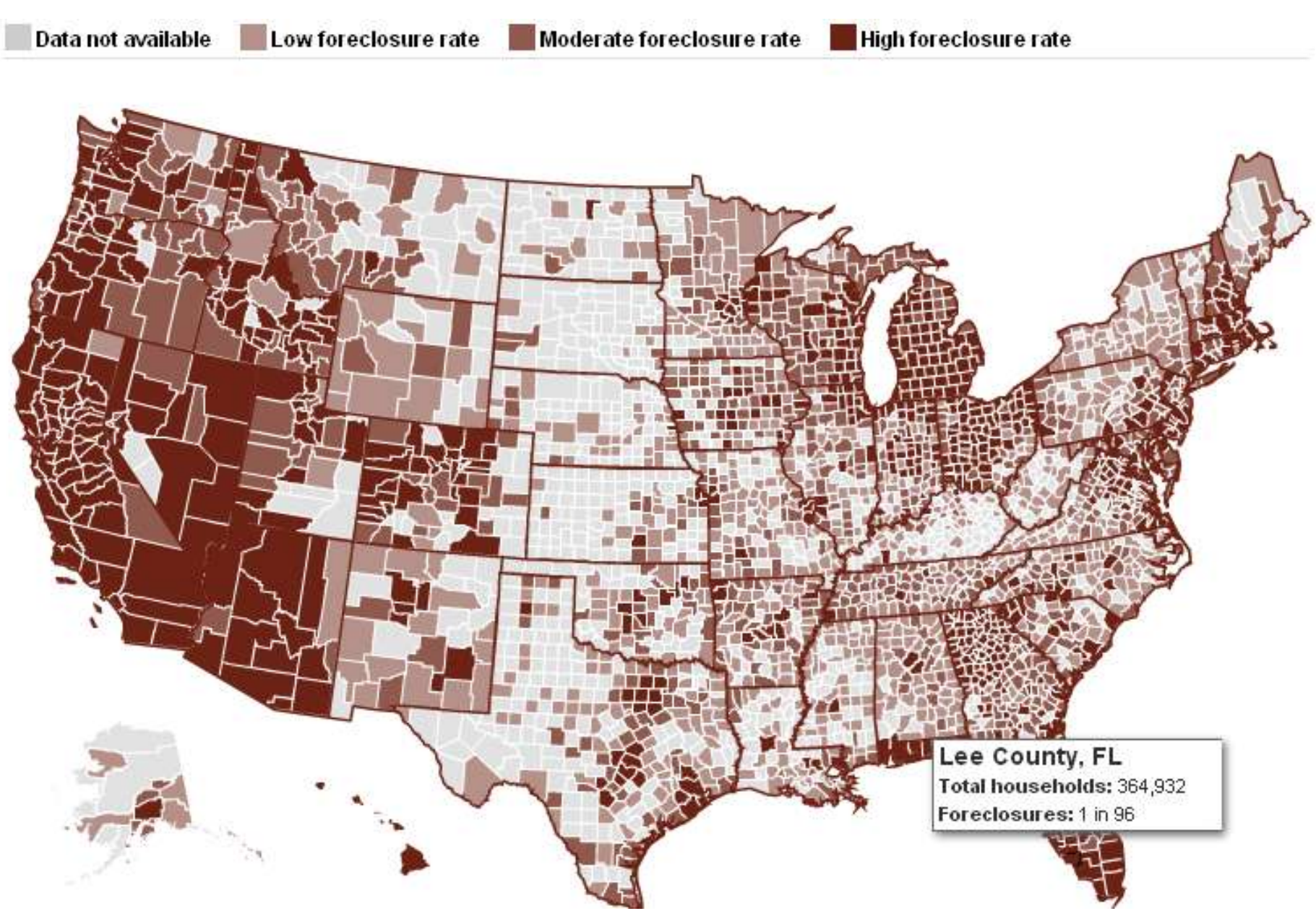
- Florida Attorney General investigation
- 50 State Multi-State Team Investigation
- Law firms began withdrawing documents
- Banks suspended foreclosures

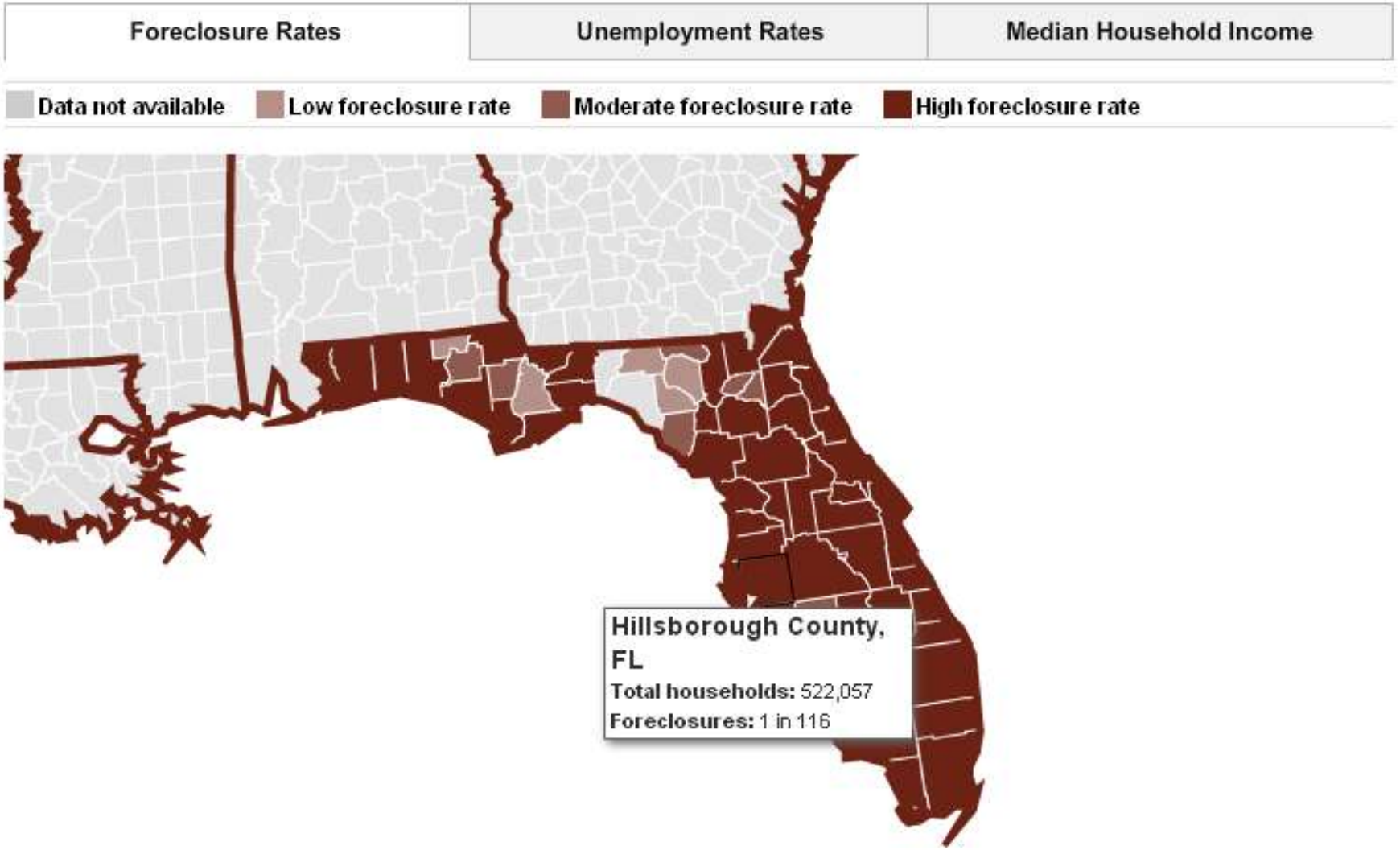
Delinquency & Foreclosure Rates 2006-2010

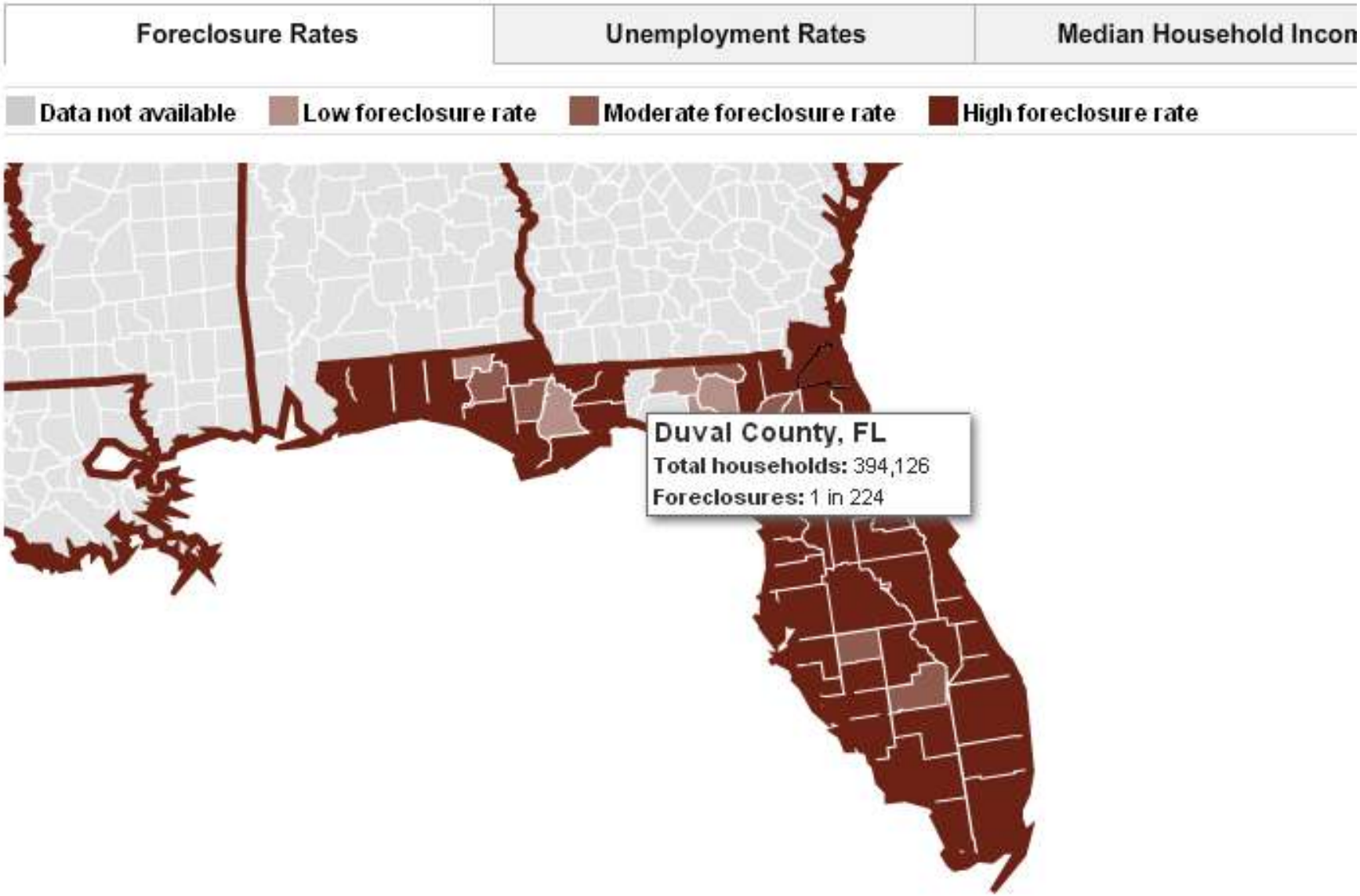
Figure 3: Delinquency and Foreclosure Rates (2006-2010)[200]



Source: Oversight Panel Oversight Report, Examining the Consequences of Mortgage Irregularities for Financial Stability and Foreclosure Miigation


Data not available
Low foreclosure rate
Moderate foreclosure rate
High foreclosure rate
Lee County, FL
Total households: 364,932
Foreclosures: 1 in 96


Foreclosure Rates
Unemployment Rates
Median Household Income
Data not available
Low foreclosure rate
Moderate foreclosure rate
High foreclosure rate
Hillsborough County, FL
Total households: 522,057
Foreclosures: 1 in 116


Foreclosure Rates
Unemployment Rates
Median Household Incon
Data not available
Low foreclosure rate
Moderate foreclosure rate
High foreclosure rate
Duval County, FL
Total households: 394,126
Foreclosures: 1 in 224

The History of Mortgages in America

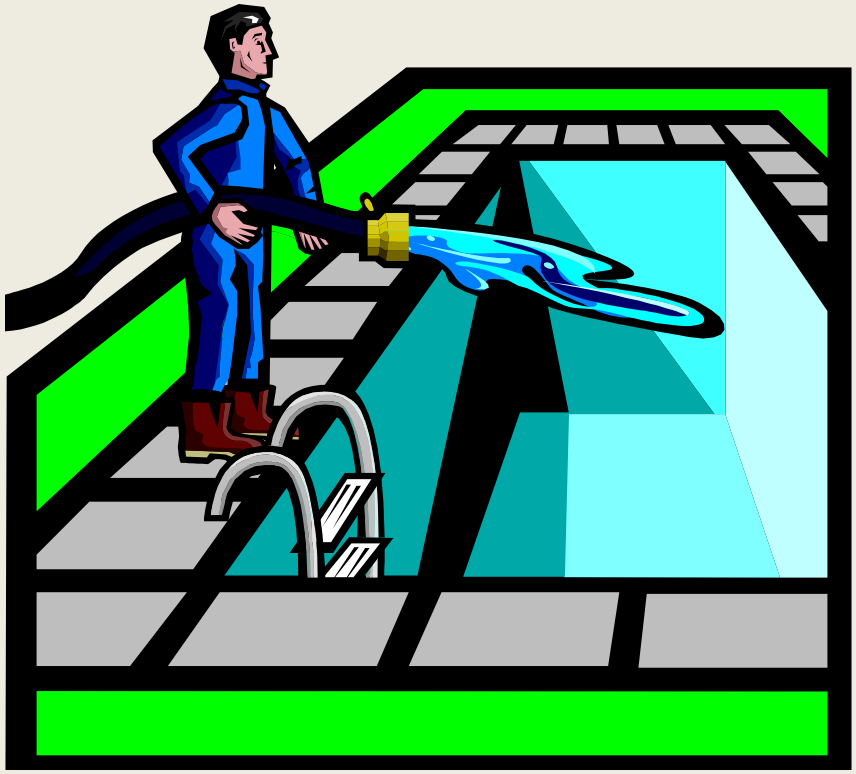
- Bankers used to take the original note and mortgage and secure it in the bank vault.

Mortgage-Backed Trusts

- As the mortgage industry grew, bankers began securing the notes in mortgage-backed trusts
- Trusts are a bundle of 5,000 notes secured by mortgages
- A bundle of notes may contain 5,000 notes and mortgages with a face value of $1.5 Billion

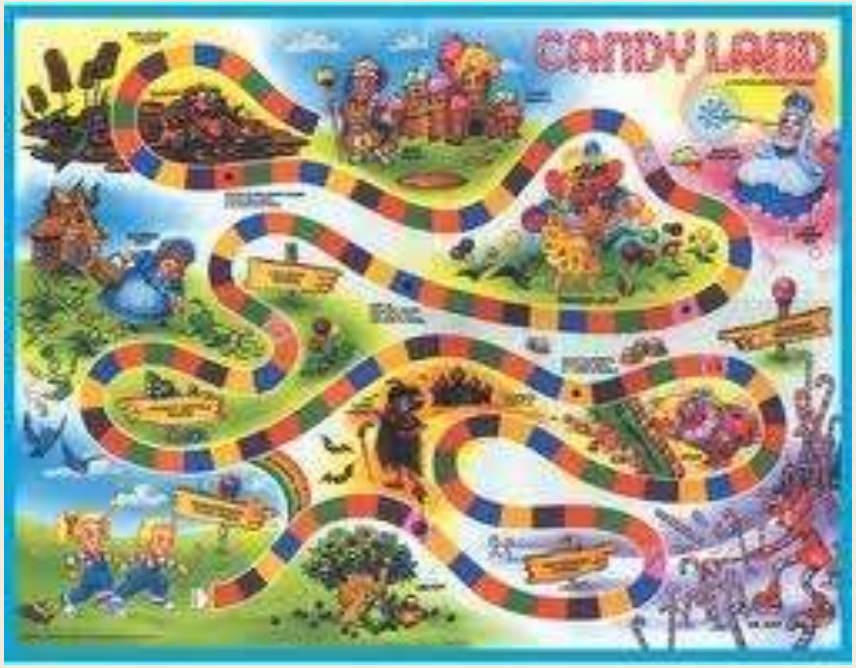
Sales & Servicing of Trusts

- These Trusts were packaged as Residential Mortgage-Backed Securities (“RMBS”) and could be sold to investors in bite-sized pieces
- The rules for the operation of these RMBS trusts were set forth in “Pooling and Servicing Agreements”



The Travels of a RMBS bundle

- Trust bundles travel from:
  - The Lender
  - To the Depositor
  - To the Securities Company
  - To the Trustee



When it doesn't work quite right . . .

- Sometimes a note or a mortgage gets lost.

When it doesn't work quite right . . .

- Sometimes the document custodians are lax about their procedures.
- That appears to be the situation here in Florida as well as across the nation.

When it doesn't work quite right . . .

- Sometimes there are just too many documents to keep track of any single Note or Mortgage.

When it doesn't work quite right . . .

- Keep in mind these are some of the largest banks in the country . . . losing ownership paperwork!!

IMPORTANT: The Key

- The key to the problems regarding foreclosures of mortgages are the ASSIGNMENTS of mortgage.

IMPORTANT: The Key

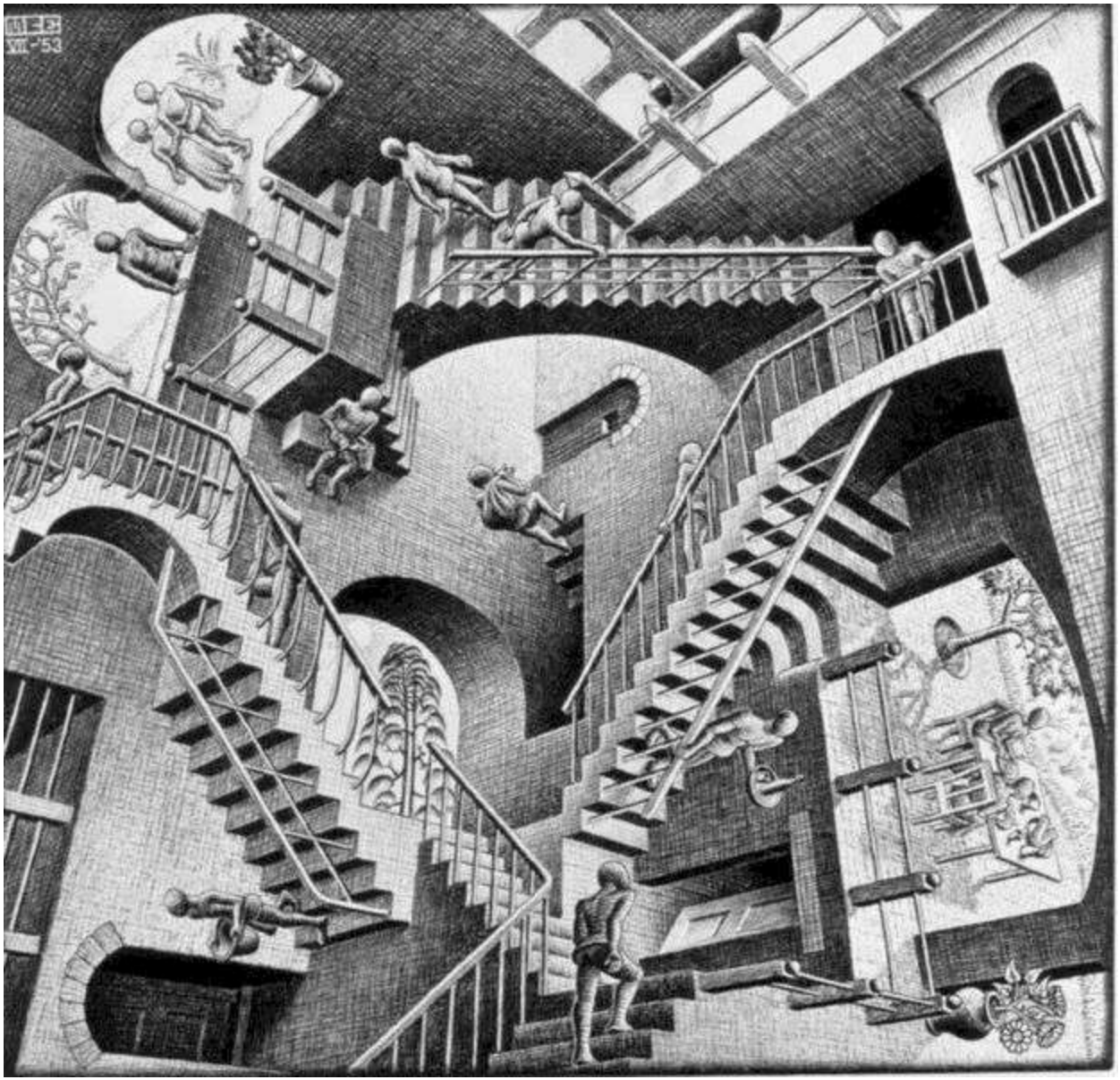
- Assignments of mortgage operate to transfer ownership of the mortgage from one bank to another.
- You sue on the note but foreclose under the mortgage.

What if there is no valid assignment?

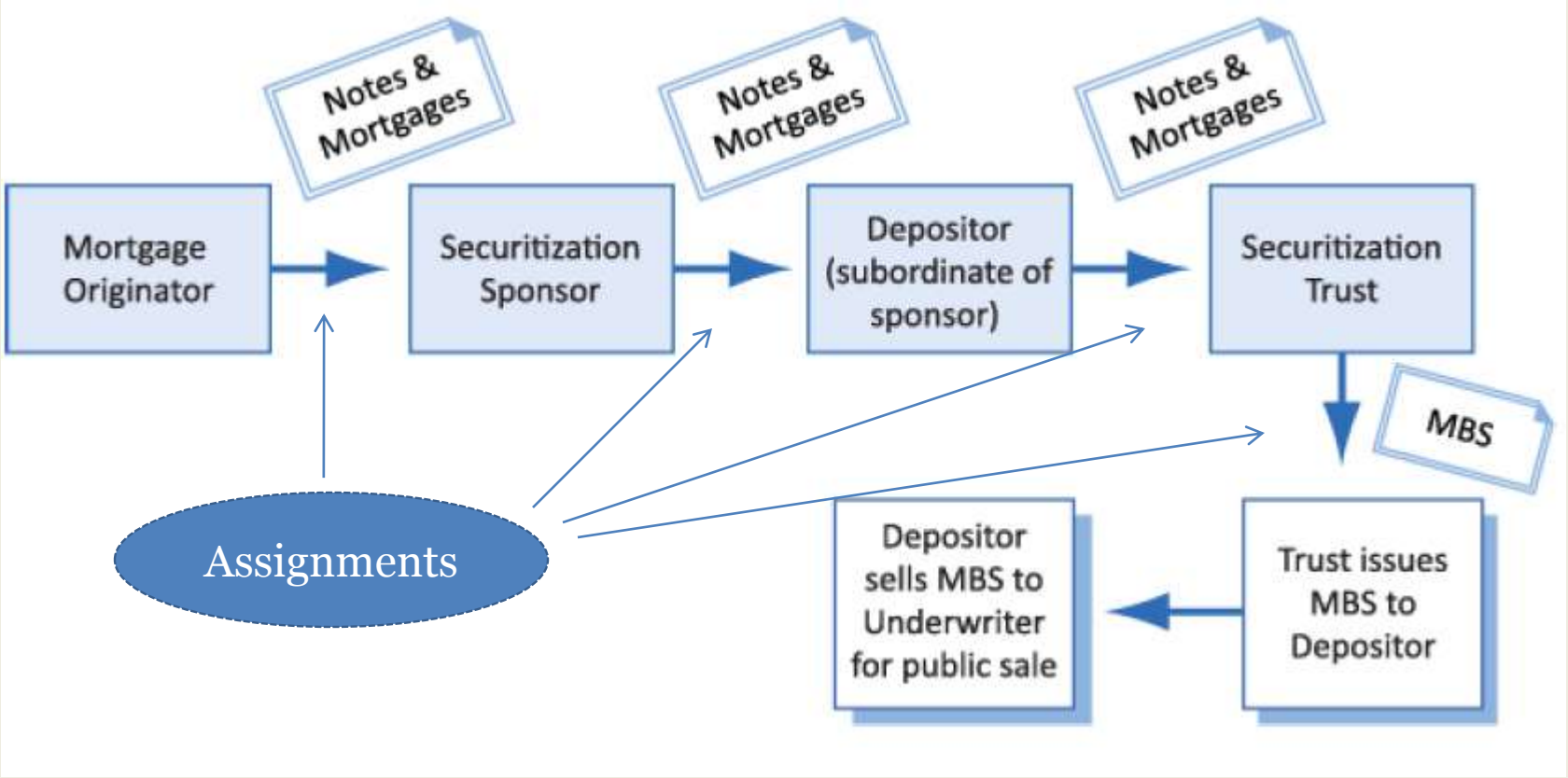
- A valid assignment transfers the ownership of the mortgage and allows the assignee of the assignment to begin a foreclosure action.
- Only the holder/owner of the note and mortgage can institute a foreclosure action if the homeowner stops making their mortgage payments.

If the mortgage is not properly assigned….

the result is chaos.



The Paperwork in Securitization Process



Source: Oversight Panel Oversight Report, Examining the Consequences of Mortgage Irregularities for Financial Stability and Foreclosure Miigation

Sample Assignment of Mortgage

CRef#:10/28/2008-PRef#:A030-POF
Date:10/16/2008-Print Batch ID:2679
Property Address:
3281W LAKE DR
FORT PIERCE, FL 34982

This Space for Recorder's Use Only

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, **Mortgage Electronic Registration Systems, Inc. as nominee for American Home Mortgage Acceptance, Inc.**, whose address is **6501 Irvine Center Drive, Irvine, CA 92618**, does by these presents hereby grant, bargain, sell, assign, transfer, convey, set over and deliver unto **AMERICAN HOME MORTGAGE SERVICING, INC., a DELAWARE CORPORATION, F/K/A AH MORTGAGE ACQUISITION CO., INC.**, whose address is **6501 Irvine Center Drive Irvine, CA 92618**, the following described mortgage, securing the payment of a certain promissory note(s) for the sum listed below, together with all rights therein and thereto, all liens created or secured thereby, all obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such mortgage.

Original Borrower(s): **RIGOBERTO GUERRERO**
Original Mortgagee: **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR AMERICAN HOME MORTGAGE ACCEPTANCE, INC.**
Date of Mortgage: **07/09/2004** Loan Amount: **$97,850.00**
Recording Date: **08/04/2004** Book: **2035** Page: **1387** Document #: **2454536**
Misc. Comments: **LEGAL DESCRIPTION: LEGAL DESCRIPTION: THE NORTH HALF OF LOT 2 AND ALL OF LOT 22, BLOCK 1 OF SILVER LAKES PARK, ACCORDING TO THE PLAT HEREOF AS RECORDED IN PLAT BOOK 10, PAGE(S) 4, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORDIA.**

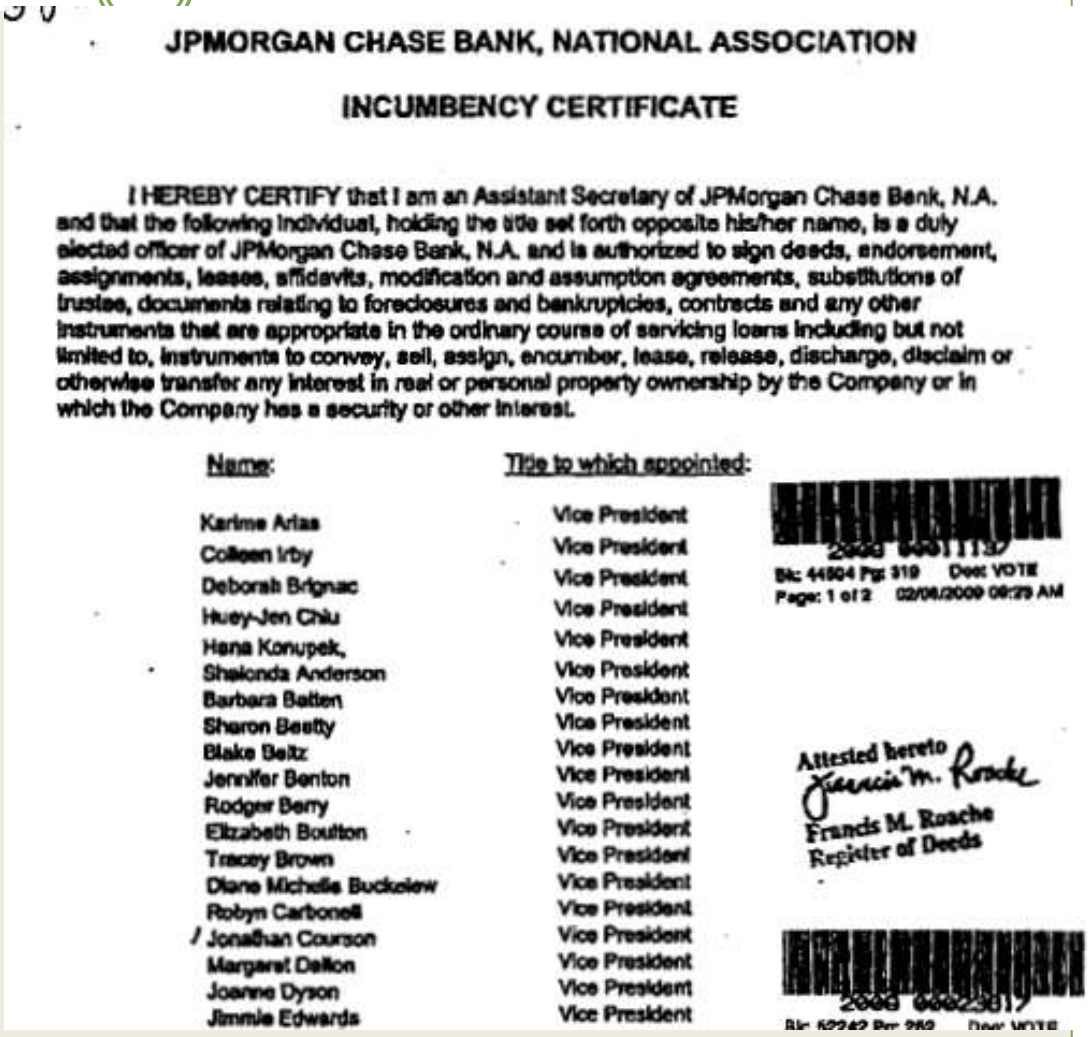
and recorded in the official records of the **County of St. Lucie**, State of **Florida** affecting Real Property and more particularly described on said Mortgage referred to herein.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on this date of **10/21/2008**.

Mortgage Electronic Registration Systems, Inc. as nominee for American Home Mortgage Acceptance, Inc.

Execution of the Assignments

- The Banks appointed individuals to execute the assignments



JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

INCUMBENCY CERTIFICATE

I HEREBY CERTIFY that I am an Assistant Secretary of JPMorgan Chase Bank, N.A. and that the following individual, holding the title set forth opposite his/her name, is a duly elected officer of JPMorgan Chase Bank, N.A. and is authorized to sign deeds, endorsement, assignments, leases, affidavits, modification and assumption agreements, substitutions of trustee, documents relating to foreclosures and bankruptcies, contracts and any other instruments that are appropriate in the ordinary course of servicing loans including but not limited to, instruments to convey, sell, assign, encumber, lease, release, discharge, disclaim or otherwise transfer any interest in real or personal property ownership by the Company or in which the Company has a security or other interest.

Name:	Title to which appointed:
Karime Arias	Vice President
Colleen Irby	Vice President
Deborah Brignac	Vice President
Huey-Jen Chiu	Vice President
Hana Konupek,	Vice President
Shelonda Anderson	Vice President
Barbara Batten	Vice President
Sharon Beatty	Vice President
Blake Beltz	Vice President
Jennifer Benton	Vice President
Rodger Berry	Vice President
Elizabeth Boulton	Vice President
Tracey Brown	Vice President
Diane Michelle Buckalew	Vice President
Robyn Carbonell	Vice President
Jonathan Courson	Vice President
Margaret Dalton	Vice President
Joanne Dyson	Vice President
Jimmie Edwards	Vice President

Bk: 44804 Pg: 319 Doc: VOTE
Page: 1 of 2 02/06/2009 09:29 AM

Attested hereto
Francis M. Roache
Register of Deeds

Example Appointments through a Limited Power of Attorney for executing Assignments

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENT, that JPMorgan Chase Bank, National Association ("JPMorgan Chase"), successor in interest to the loans and mortgage notes formerly serviced by Washington Mutual Bank, by and through its officers hereby constitutes and appoints LPS Default Solutions, Inc. ("LPS") its true and lawful Attorney-in-Fact, in its name, place and stead and for its benefit, with full power of substitution in connection with mortgage loans or mortgage notes serviced by JPMorgan Chase on its own behalf or those serviced for others that are referred by JPMorgan Chase to LPS to provide administrative default support services.

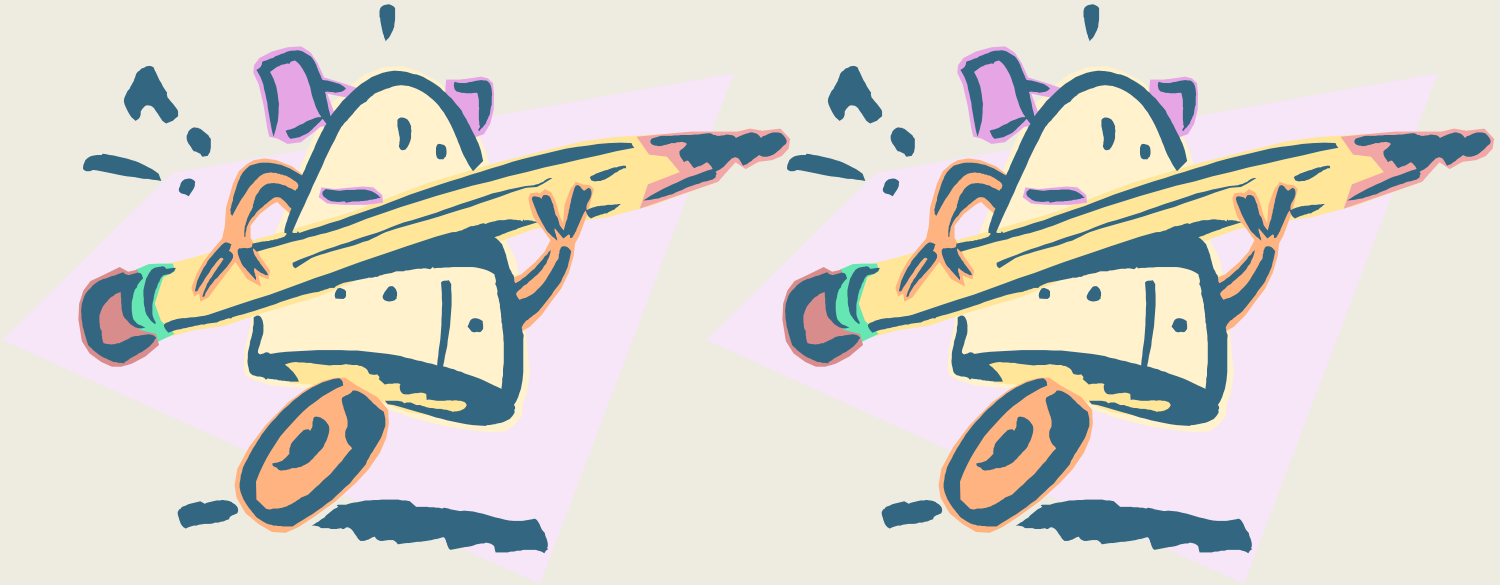
LPS shall discharge its duties and exercise the authority granted under this Limited Power of Attorney by and through the following employees of LPS:

Bill Newland	1st Vice President	Christina Allen	Manager
Chris Hymer	1st Vice President	Eric Tate	Manager
Greg Lyons	Vice President	Jeanelle Gray	Manager
Matthew Rogina	Vice President	Jodi Sobotta	Manager
Scott Walter	Vice President	Laura Hescott	Manager
Amy Weis	Assistant Vice President	Liquenda Allotey	Manager
Christine Anderson	Assistant Vice President	Mathew Casey	Manager
Chrys Houston	Assistant Vice President	Reginald Lynch	Manager
Dory Goebel	Assistant Vice President	Rick Wilken	Manager
John Cody	Assistant Vice President		

JPMorgan Chase hereby grants to LPS the authority to act in any manner necessary and proper to exercise the powers enumerated in the paragraph below and in accordance with that certain Default Services Agreement, as it may be amended or extended from time to time (the "Agreement") between Washington Mutual Bank and LPS (and its predecessor FNFS), pursuant to which LPS is providing certain foreclosure, bankruptcy and other mortgage loan related administrative support services to JPMorgan Chase in furtherance of its servicing obligations.

Execution of the Assignments

- Many individuals who executed the assignments knew nothing about the documents they were signing, these individuals are referred to as “robo-signers”



Execution of the Assignments

- Individuals included bank employees, law firm employees (lawyers, paralegals, and even secretaries) and document preparation and processing company employees
- Thousands and thousands and thousands of assignments . . . signed weekly.

Fraudulent Practices come in all shapes and sizes

- Robo-signers
- Fake witnesses
- Fake notaries
- Fake documents
- False affidavits

Problems with Assignments

- Not executed by the authorized person
- Signatures not witnessed properly by the “witnesses”
- Signatures not properly notarized by a notary

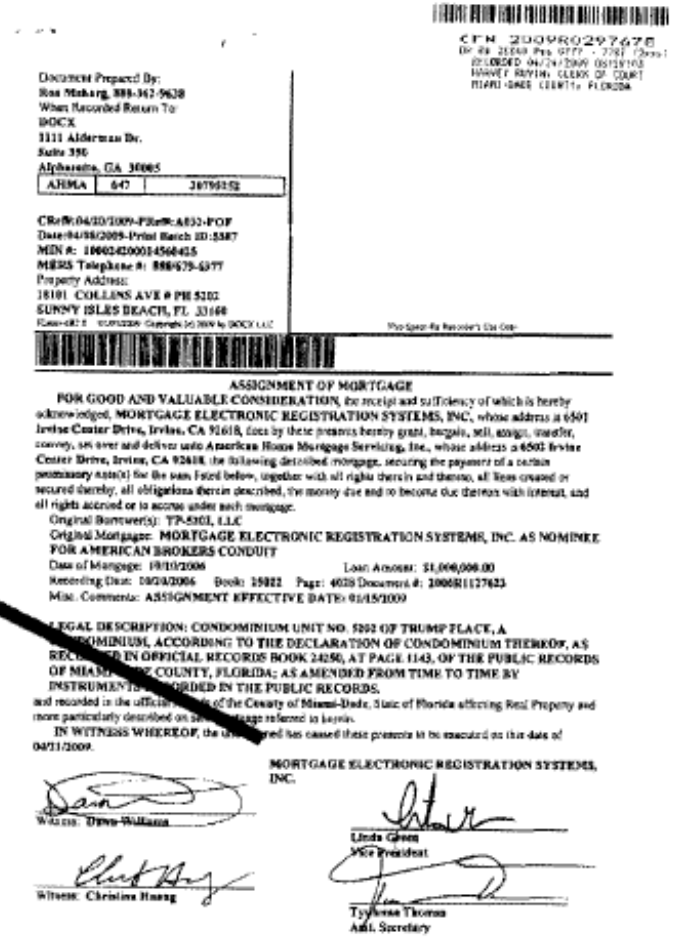
Forgeries in Assignments

- Example:
  Variations of Linda Green

Signature 1

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

Linda Green
Vice President



CFN 2009R0297675

Document Prepared By:
Ron Moberg, 888-362-9638
When Recorded Return To:
DOCX
3111 Alderman Dr.
Suite 350
Alpharetta, GA 30005

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., whose address is 6501 Irvine Center Drive, Irvine, CA 92618, does by these presents hereby grant, bargain, sell, assign, transfer, convey, set over and deliver unto American Home Mortgage Servicing, Inc., whose address is 6501 Irvine Center Drive, Irvine, CA 92618, the following described mortgage, securing the payment of a certain promissory note(s) for the sum listed below, together with all rights therein and thereto, all liens created or secured thereby, all obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such mortgage.

Original Borrower(s): TP-5302, LLC
Original Mortgagee: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR AMERICAN BROKERS CONDUIT
Date of Mortgage: 10/10/2006 Loan Amount: $1,000,000.00
Recording Date: 10/20/2006 Book: 25022 Page: 4028 Document #: 20061127623
Misc. Comments: ASSIGNMENT EFFECTIVE DATE: 01/15/2009

LEGAL DESCRIPTION: CONDOMINIUM UNIT NO. 5202 OF TRUMP PLACE, A CONDOMINIUM, ACCORDING TO THE DECLARATION OF CONDOMINIUM THEREOF, AS RECORDED IN OFFICIAL RECORDS BOOK 24250, AT PAGE 1143, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; AS AMENDED FROM TIME TO TIME BY INSTRUMENTS RECORDED IN THE PUBLIC RECORDS.

and recorded in the official records of the County of Miami-Dade, State of Florida affecting Real Property and more particularly described on said mortgage referred to herein.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on this date of 04/11/2009.

Witness: Dawn Williams

Witness: Christina Huang

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

Linda Green
Vice President

Tyrheese Thomas
Asst. Secretary

Forgeries in Assignments

- Example:
  Variations of Linda Green

Signature 2

American Home Mortgage Servicing, Inc. as successor-in-interest to Option One Mortgage Corporation

Linda Green
Vice President

CFN 2009R0496306

Document Prepared By:
Ron Meberg, 888-262-9638
When Recorded Return To:
DOCX
1111 Alderman Dr.
Suite 350
Alpharetta, GA 30005

AHMA	847	46083200

CRef#:07/12/2009-PRef#:A031-POF
Date:06/30/2009-Print Batch ID:6315
Property Address:
17317 SW 143RD CT
MIAMI, FL 33177-3753

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, **American Home Mortgage Servicing, Inc.** as successor-in-interest to Option One Mortgage Corporation, whose address is 6501 Irvine Center Drive, Irvine, CA 92618, does by these presents hereby grant, bargain, sell, assign, transfer, convey, set over and deliver unto **Wells Fargo Bank, N.A.** as Trustee for Option One Mortgage Loan Trust 2006-1 Asset-Backed Certificates, Series 2006-1, whose address is 9062 **Old Annapolis Road, Columbia, MD 21045-1951**, the following described mortgage, securing the payment of a certain promissory note(s) for the sum listed below, together with all rights therein and thereto, all liens created or secured thereby, all obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such mortgage.

Original Borrower(s): WINSTON JARQUIN A SINGLE MAN JOINED BY ELEUTERIO JARQUIN AND CASTA VARGAS AS TENANTS IN COMMON
Original Mortgagee: OPTION ONE MORTGAGE CORPORATION, A CALIFORNIA CORPORATION
Date of Mortgage: 10/19/2005 Loan Amount: $210,000.00
Recording Date: 11/08/2005 Book: 23940 Page: 3789-3800 Document #: 2005R1158889
Misc. Comments: ASSIGNMENT EFFECTIVE DATE 06/29/2009
LEGAL DESCRIPTION: LOT 29, IN BLOCK 6, OF MARALEX HOMES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 146, AT PAGE 7, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

and recorded in the official records of the County of Miami-Dade, State of Florida affecting Real Property and more particularly described in said Mortgage referred to herein.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on this date of 07/06/2009.

American Home Mortgage Servicing, Inc. as successor-in-interest to Option One Mortgage Corporation

Witness: Dawn Williams

Witness: Christina Hardy

Linda Green
Vice President

Tywanna Thomas
Asst. Vice President

Forgeries in Assignments

- Example:
  Variations of Linda Green

Signature 3

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

Linda Green

Linda Green
Vice President

CFN 2008R0455151

Document Prepared By:
Rae Meleary, 888-263-9420
When Recorded Return To:
DOCX
1111 Alderman Dr.
Suite 350
Alpharetta, GA 30005

Property Address:
553 NE 64 STREET
MIAMI, FL 33138

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**, whose address is 6303 Irvine Center Drive, Irvine, CA 92618, does by these presents hereby grant, bargain, sell, assign, transfer, convey, set over and deliver unto Ameritrac Home Mortgage Servicing, Inc., whose address is 6302 Irvine Center Drive, Irvine, CA 92618, the following described mortgage, securing the payment of a certain promissory note(s) for the sum stated below, together with all rights therein and thereto, all liens created or otherwise thereby, all obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such mortgage.

Original Borrower(s): ADRIANA NOEMI CALIFRE, A SINGLE WOMAN
Original Mortgagee: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR BEACON FINANCIAL MORTGAGE BANKERS CORP.
Date of Mortgage: 08/15/2007 Loan Amount: $792,000.00
Recording Date: 09/05/2007 Book: 25325 Page: 3826
Misc. Comments: LEGAL DESCRIPTION: LOT 19, LESS THE SOUTH 5 FEET THEREOF BLOCK 8, OF NORTHGATE RESUBDIVISION OF BLOCK 8, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 9 AT PAGE 53, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

and recorded in the official records of the County of Miami-Dade, State of Florida affecting Real Property and more particularly described on said Mortgage referred to herein.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on this date of 08/06/2008.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

Witness:

Linda Green
Vice President

Witness: Helen Thomas

Jessica Olsh
Asst. Secretary

State of GA
County of Fulton

On this date of 08/06/2008, before me, the undersigned notary, a Notary Public duly commissioned, qualified and acting within and for the aforementioned State and County, personally appeared the within named Linda Green and Jessica Olsh, known to me (or identified to me on the basis of satisfactory evidence) that they are the Vice President and Asst. Secretary respectively of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and in behalf of said corporation and that said corporation executed the same, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

Witness my hand and official seal on the date hereinabove set forth.

Notary Public:

Shantavia Thomas
NOTARY PUBLIC
Fulton County
State of Georgia
My Commission Expires
January 29, 2012

Forgeries in Assignments

- Example:

Variations of Linda Green

Signature 4

Mortgage Electronic Registration Systems, Inc. as nominee for American Home Mortgage Acceptance, Inc.

Linda Green

Linda Green
Vice President

CFN 2008R0643337

Document Prepared By:
Ron Moberg, 888-363-9638
When Recorded Return To:
DOCX
1111 Alderman Dr.
Suite 350
Alpharetta, GA 30005

AHMA | 647 | 0020845978

Property Address:
2291 NW 95TH STREET
MIAMI, FL 33147

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, Mortgage Electronic Registration Systems, Inc. as nominee for American Home Mortgage Acceptance, Inc., whose address is 4501 Irvine Center Drive, Irvine, CA 92618, does by these presents hereby grant, bargain, sell, assign, transfer, convey, set over and deliver unto American Home Mortgage Servicing, Inc., whose address is 4501 Irvine Center Drive, Irvine, CA 92618, the following described mortgage, securing the payment of a certain promissory note(s) for the sum listed below, together with all rights therein and thereto, all liens created or secured thereby, all obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such mortgage.

Original Borrower(s): EDWARD R SHELTON AND TANGELA SHELTON, HIS WIFE
Original Mortgagee: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR AMERICAN HOME MORTGAGE ACCEPTANCE, INC.
Date of Mortgage: 12/12/2005 Loan Amount: $[illegible]
Recording Date: 12/18/2005 Book: 24092 Page: 0864 0890 Document #: 2005R1340423
Mtg. Comments: LEGAL DESCRIPTION: LOT 7, IN BLOCK 5, OF EAST GULFAIR, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 48, AT PAGE 47, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

and recorded in the Official records of the County of Miami-Dade, State of Florida affecting Real Property and more particularly described on said Mortgage referred to herein.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on this date of 08/11/2008.

Mortgage Electronic Registration Systems, Inc. as nominee for American Home Mortgage Acceptance, Inc.

Witness: Karen Hall

Witness: Helen Thomas

Linda Green
Vice President

Jessica Clark
Asst. Secretary

Forgeries in Assignments

- Example:

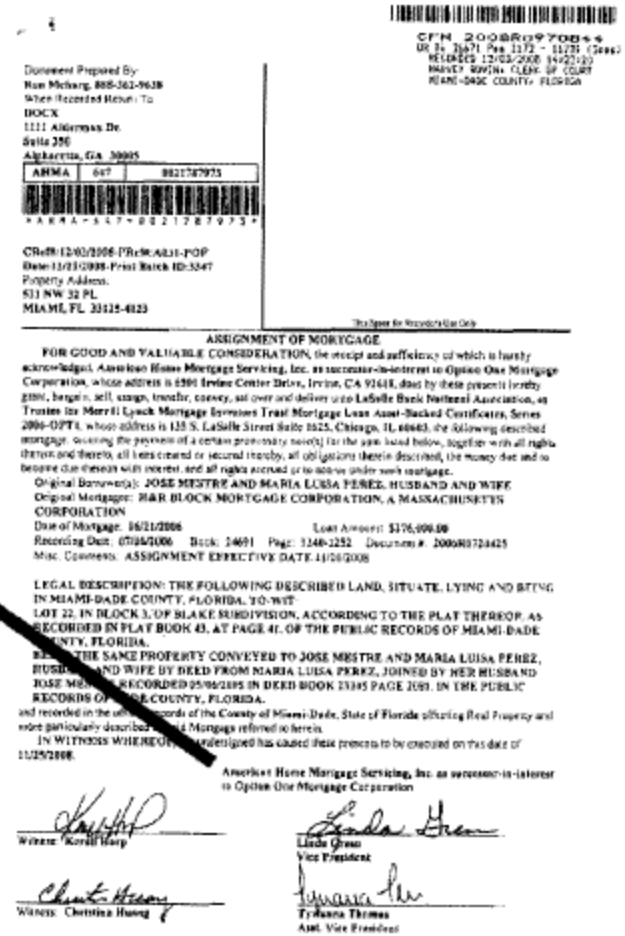
Variations of Linda Green

Signature 5

American Home Mortgage Servicing, Inc. as successor-in-interest to Option One Mortgage Corporation

Linda Green

Linda Green
Vice President



CFN 2008R0970854

Document Prepared By:
Nan Meiberg, 888-362-9638
When Recorded Return To:
DOCX
1111 Alderman Dr.
Suite 250
Alpharetta, GA 30005

ARMA | 647 | 0021787973

CRef#:12/03/2008-PRe9C4A31-POP
Date:11/13/2008-Print Batch ID:3547
Property Address:
531 NW 32 PL
MIAMI, FL 33125-4123

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, American Home Mortgage Servicing, Inc. as successor-in-interest to Option One Mortgage Corporation, whose address is 4300 Irvine Center Drive, Irvine, CA 92618, does by these presents hereby grant, bargain, sell, assign, transfer, convey, set over and deliver unto LaSalle Bank National Association, as Trustee for Merrill Lynch Mortgage Investors Trust Mortgage Loan Asset-Backed Certificates, Series 2006-OPT4, whose address is 135 S. LaSalle Street Suite 1625, Chicago, IL 60603, the following described mortgage, securing the payment of a certain promissory note(s) for the sum listed below, together with all rights therein and thereto, all liens created or secured thereby, all obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such mortgage.

Original Borrower(s): JOSE MESTRE AND MARIA LUISA PEREZ, HUSBAND AND WIFE
Original Mortgagee: H&R BLOCK MORTGAGE CORPORATION, A MASSACHUSETTS CORPORATION
Date of Mortgage: 06/21/2006 Loan Amount: $176,000.00
Recording Date: 07/06/2006 Book: 24691 Page: 3240-3252 Document #: 20060724425
Misc. Comments: ASSIGNMENT EFFECTIVE DATE 11/05/2008

LEGAL DESCRIPTION: THE FOLLOWING DESCRIBED LAND, SITUATE, LYING AND BEING IN MIAMI-DADE COUNTY, FLORIDA, TO-WIT:
LOT 22, IN BLOCK 3, OF BLAKE SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 43, AT PAGE 41, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.
BEING THE SAME PROPERTY CONVEYED TO JOSE MESTRE AND MARIA LUISA PEREZ, HUSBAND AND WIFE BY DEED FROM MARIA LUISA PEREZ, JOINED BY HER HUSBAND JOSE MESTRE, RECORDED 05/06/2005 IN DEED BOOK 23305 PAGE 2093, IN THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.
and recorded in the official records of the County of Miami-Dade, State of Florida affecting Real Property and more particularly described on said Mortgage referred to herein.
IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on this date of 11/25/2008.

American Home Mortgage Servicing, Inc. as successor-in-interest to Option One Mortgage Corporation

Witness: Korell Harp

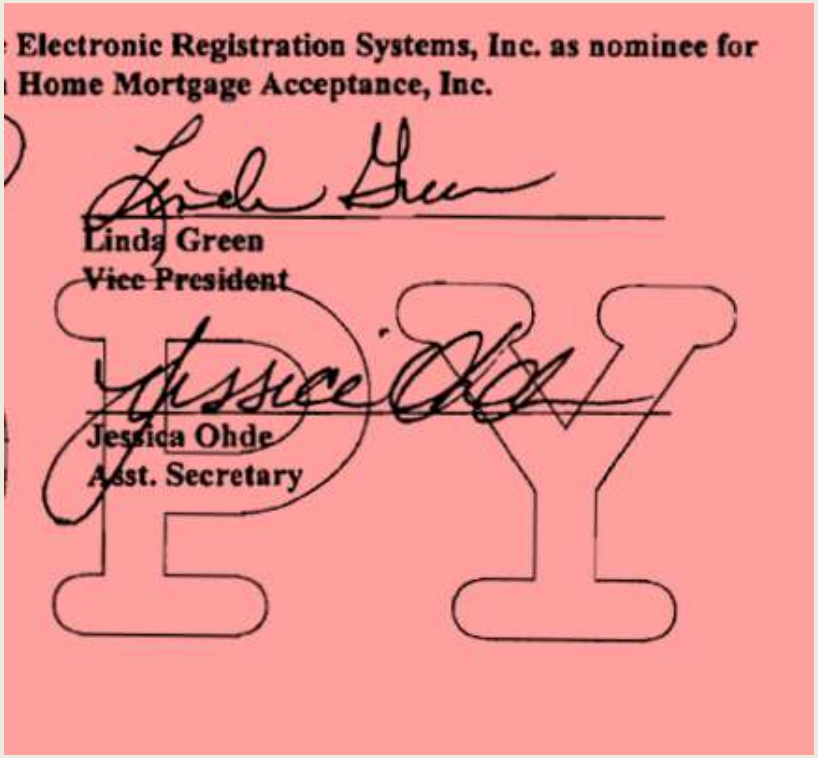
Witness: Christina Hueng

Linda Green
Vice President

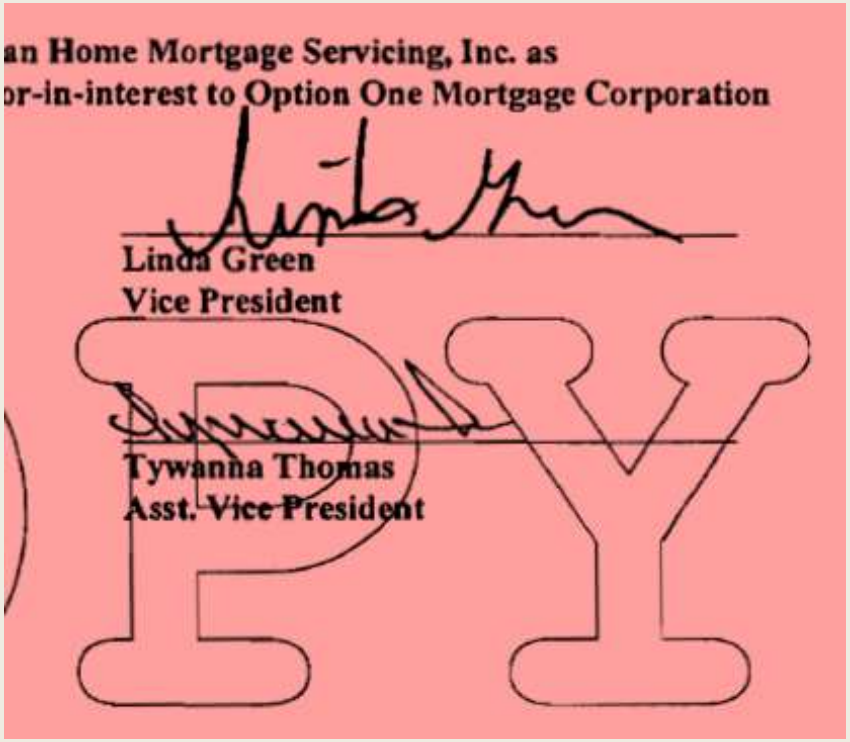
Tyranna Thomas
Asst. Vice President

Vice President Linda Green Signature

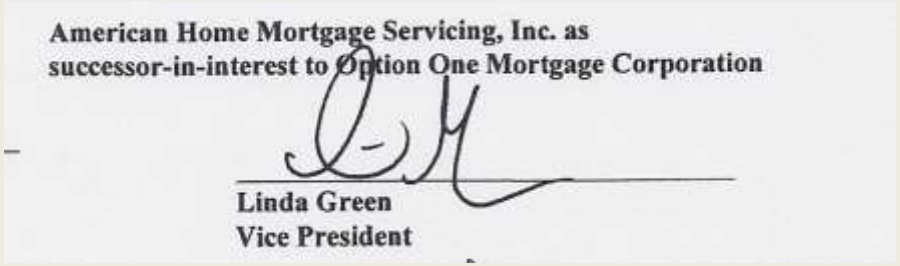
Sample One

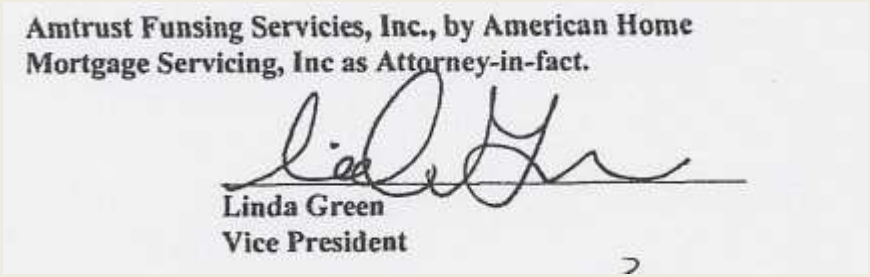


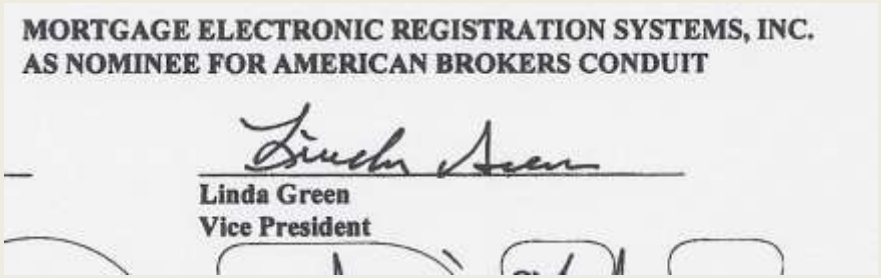
Sample Two

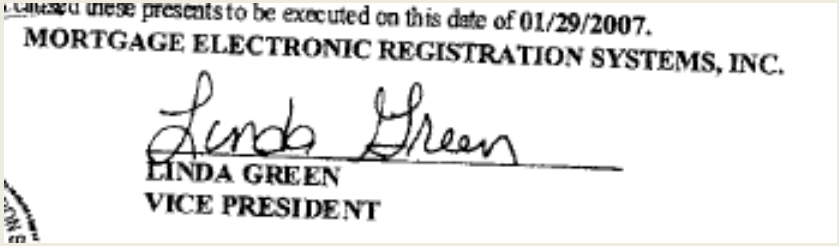


Who is the Real Linda Green?









Linda Green

Linda Green's "signature" appears on hundreds of thousands of mortgage assignments.

She is listed as an officer of dozens of banks and mortgage companies.

A Few of Linda Green's Many Job Titles

- Vice President, American Home Mortgage Servicing, Inc.
- Vice President, Amtrust Funding
- Vice President, Argent Mortgage Company
- Vice President, American Brokers Conduit
- Vice President, Bank of America
- Vice President, Citi Residential Lending
- Vice President, First Franklin, a Division of National City Bank of Indiana
- Vice President, Mortgage Electronic Registration Systems, Inc. (MERS), as Nominee for American Home Mortgage Acceptance
- Vice President, MERS, as Nominee for Family Lending Services
- Vice President, MERS, as Nominee for HLB Mortgage
- Vice President, Option One Mortgage Corporation
- Vice President, Sand Canyon Corporation
- Vice President, Seattle Mortgage Company
- Vice President, Wells Fargo Bank, N.A.

Scott Anderson, Ocwen employee

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR DELTA FUNDING CORPORATION

By: _____
Name: Scott W. Anderson
Title: Vice President

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR FIDELITY MORTGAGE A DIVISION OF DELTA FUNDING CORPORATION

By: _____
Name: Scott Anderson
Title: Vice President

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR DELTA FUNDING CORP.

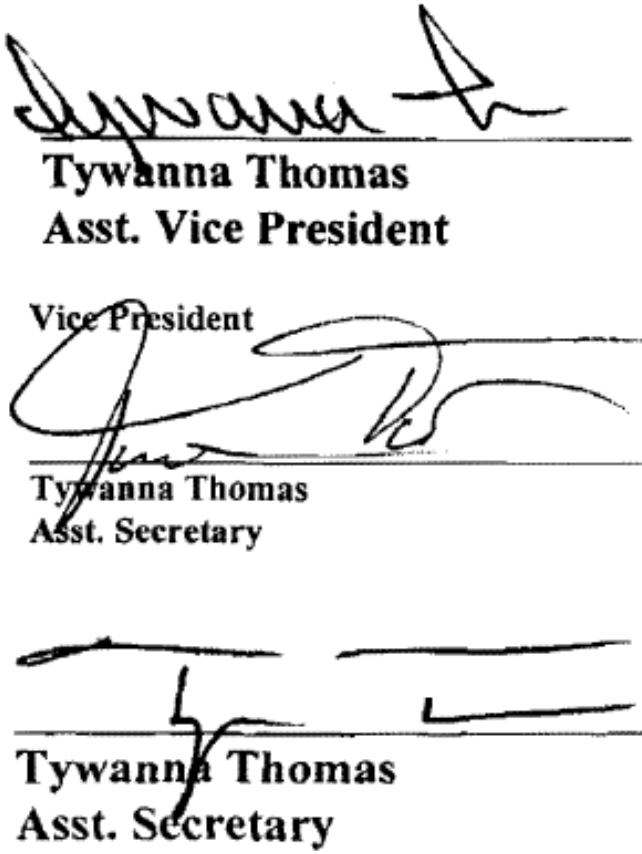
By: _____
Name: Scott Anderson
Title: Vice President

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR DELTA FUNDING CORPORATION

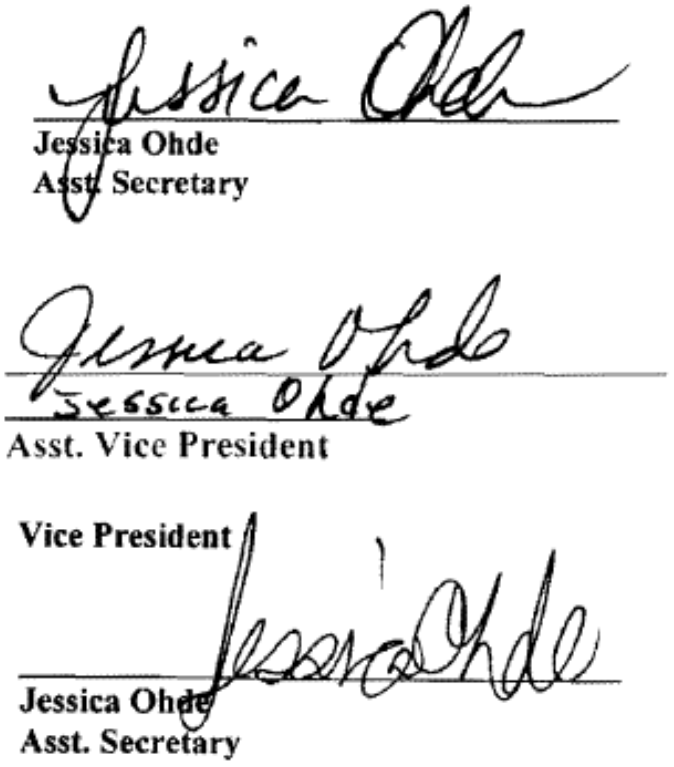
By: _____
Name: Scott Anderson
Title: Vice President

Forgeries by Mortgage Servicers

Who is Tywanna Thomas?



Who is Jessica Ohde?



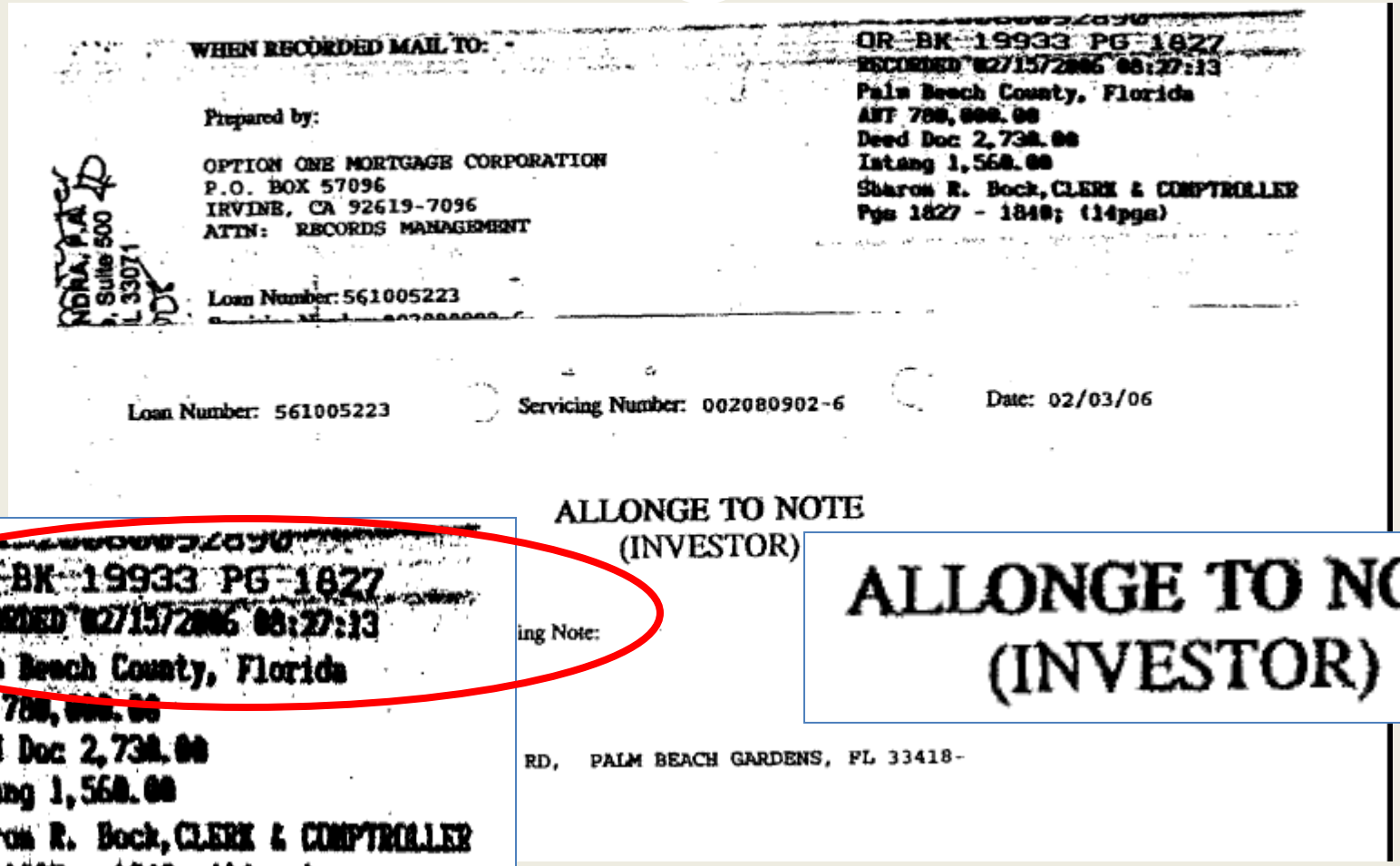
A Mortgage Servicing Company

- Mortgage servicing companies help banks obtain foreclosure by preparing documents necessary to facilitate the foreclosure in Court.
- These companies hire robo-signers who execute the documents by the tens of thousands per month.

Mortgage Servicing Companies

- DocX had offices employing dozens of workers producing thousands of fraudulent assignments.
- Lender Processing Services produced 2,000 assignments each working day.
- GMAC (including its first famous robo-signer, Jeffrey Stephan) also produces 2,000 assignments every day.
- Nationwide Title Clearing out of the Tampa area also produces 2,000 assignments every day.

Forgeries in Other Documents



WHEN RECORDED MAIL TO:

OR BK 19933 PG 1827
RECORDED 02/15/2006 08:27:13
Palm Beach County, Florida
ANT 780,000.00
Deed Doc 2,730.00
Intang 1,560.00
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1827 - 1840; (14pgs)

Prepared by:

OPTION ONE MORTGAGE CORPORATION
P.O. BOX 57096
IRVINE, CA 92619-7096
ATTN: RECORDS MANAGEMENT

Loan Number: 561005223

Loan Number: 561005223 Servicing Number: 002080902-6 Date: 02/03/06

ALLONGE TO NOTE
(INVESTOR)

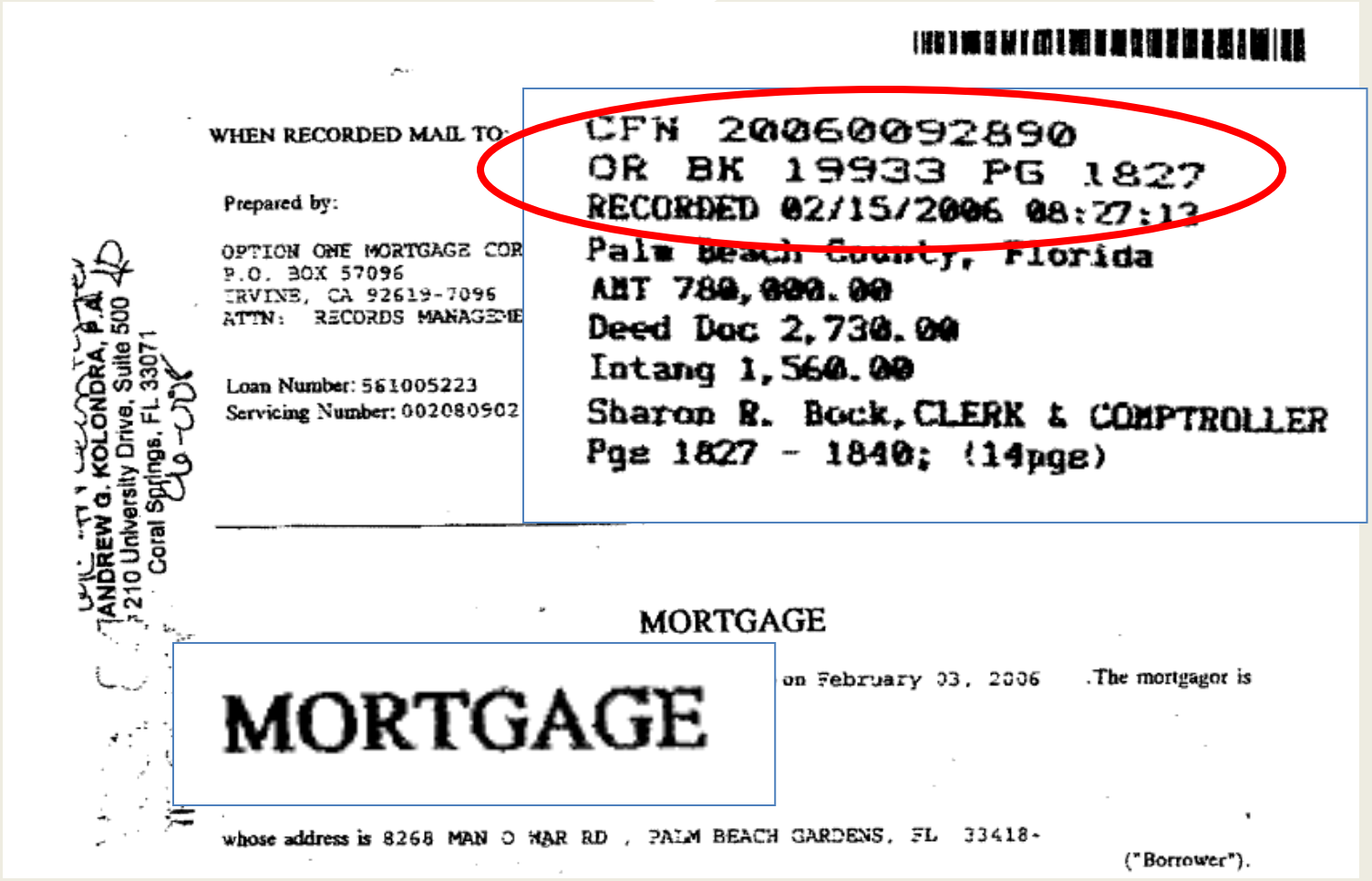
ing Note:

RD, PALM BEACH GARDENS, FL 33418-

OR BK 19933 PG 1827
RECORDED 02/15/2006 08:27:13
Palm Beach County, Florida
ANT 780,000.00
Deed Doc 2,730.00
Intang 1,560.00
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1827 - 1840; (14pgs)

ALLONGE TO NOTE
(INVESTOR)

Forgeries in Other Documents



WHEN RECORDED MAIL TO:

Prepared by:

OPTION ONE MORTGAGE COR
P.O. BOX 57096
IRVINE, CA 92619-7096
ATTN: RECORDS MANAGEME

Loan Number: 561005223
Servicing Number: 002080902

CFN 20060092890
OR BK 19933 PG 1827
RECORDED 02/15/2006 08:27:13
Palm Beach County, Florida
ANT 780,000.00
Deed Doc 2,730.00
Intang 1,560.00
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1827 - 1840; (14pgs)

ANDREW G. KOLONDRA, P.A.
210 University Drive, Suite 500
Coral Springs, FL 33071

MORTGAGE

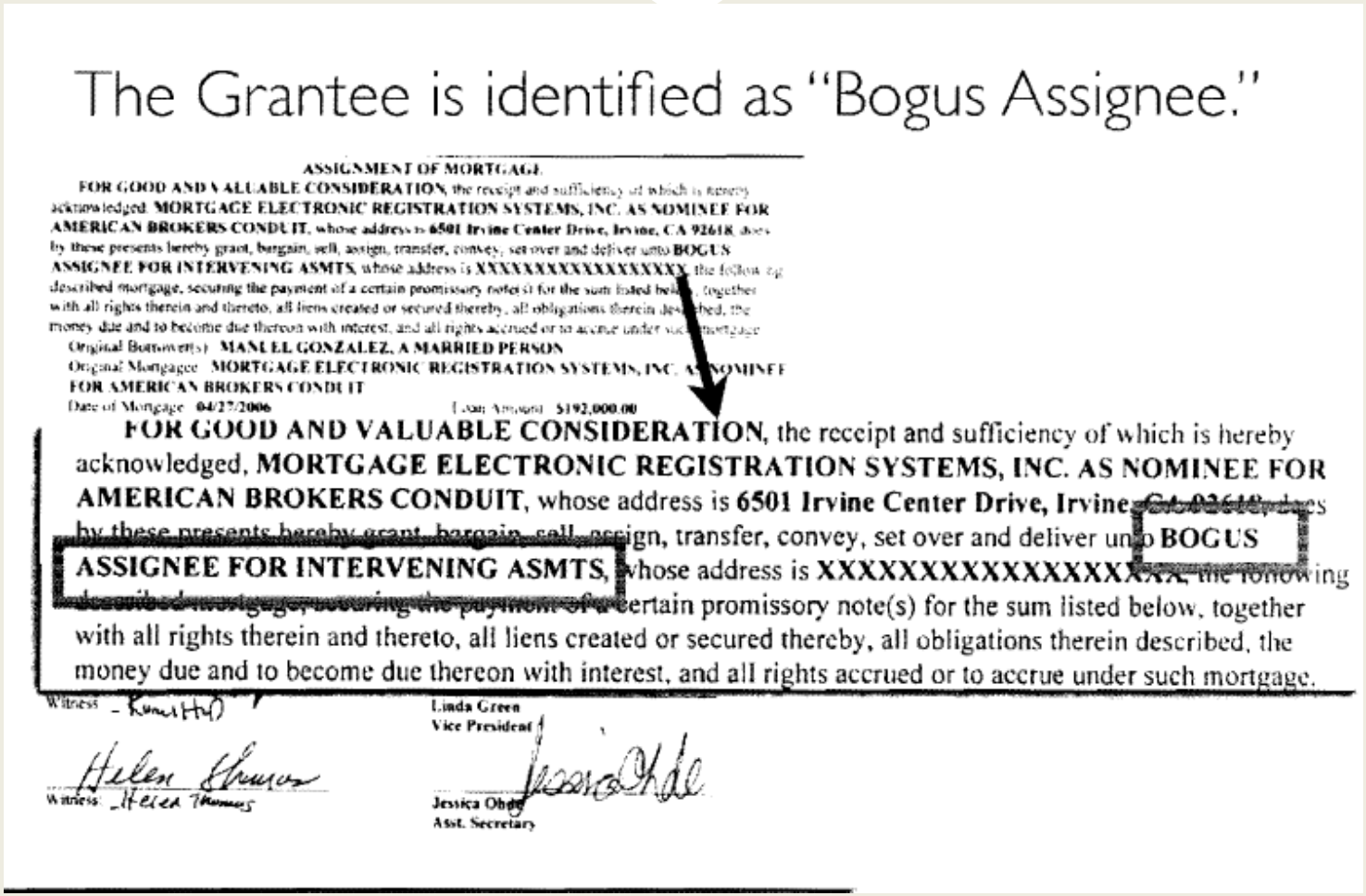
MORTGAGE

on February 03, 2006 .The mortgagor is

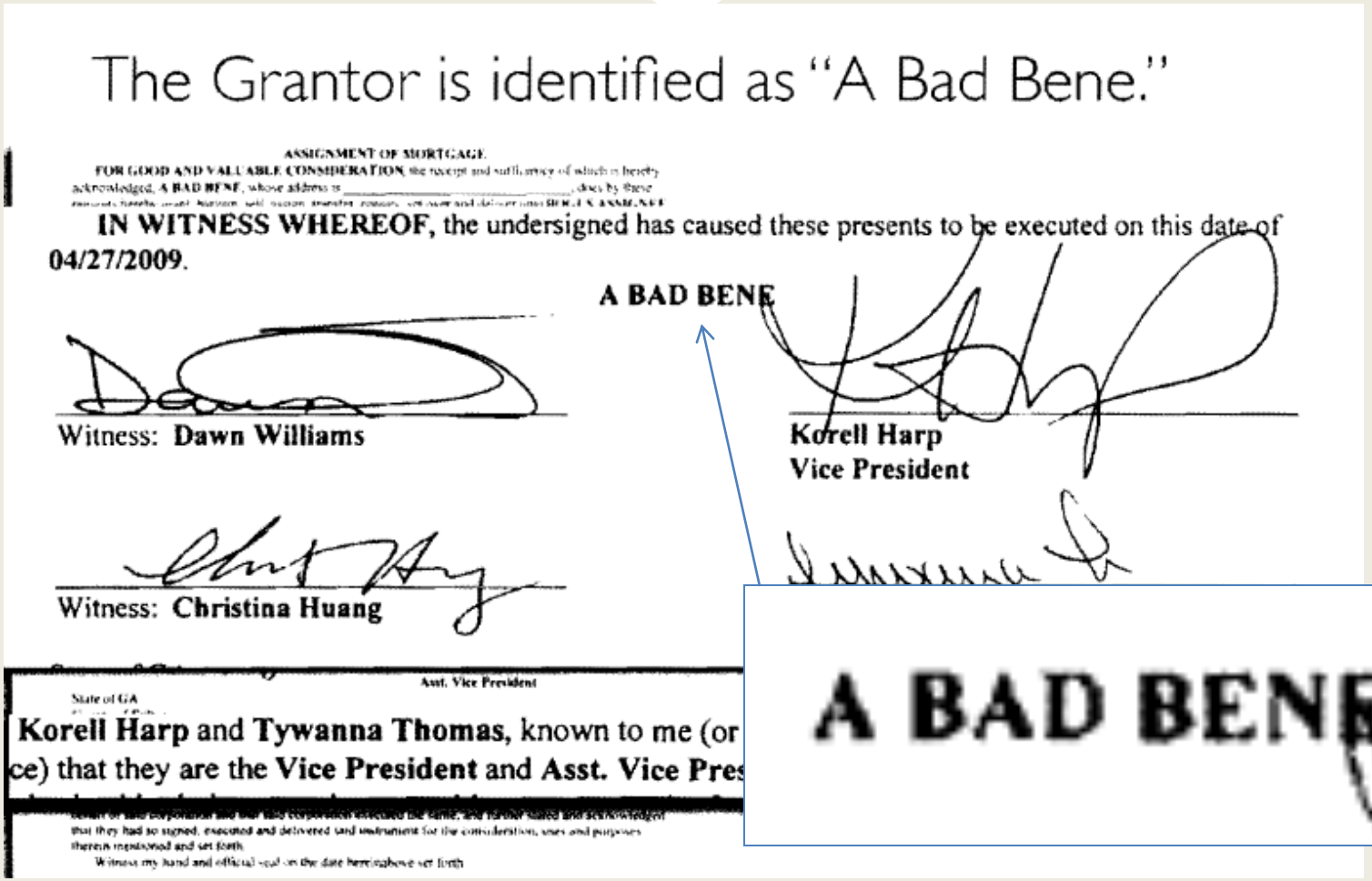
whose address is 8268 MAN O WAR RD , PALM BEACH GARDENS, FL 33418-

("Borrower").

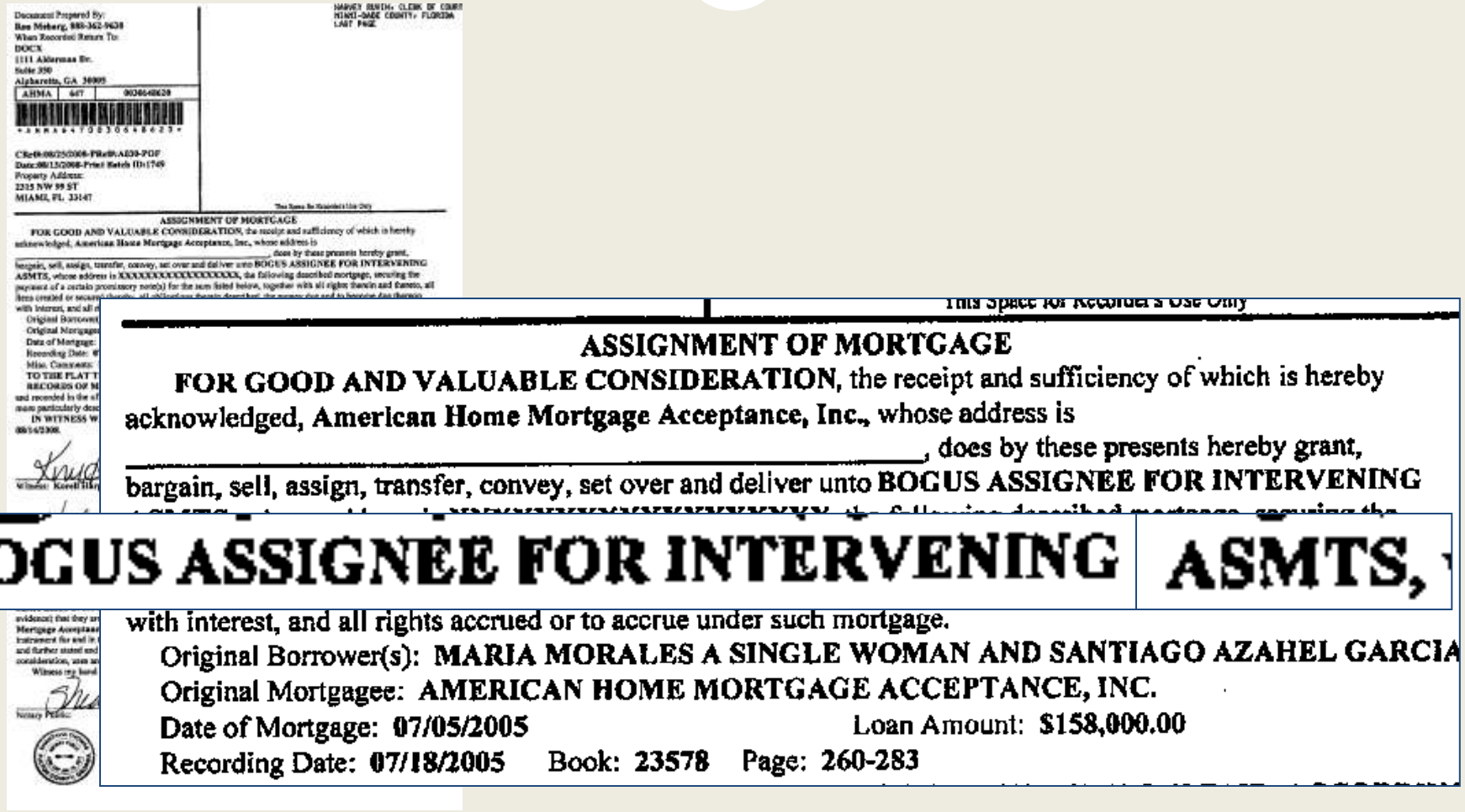
Examples of Bogus Documents



Examples of Bogus Documents



Examples of Bogus Documents



Document Prepared By:
Ree Meberg, 800-362-9638
When Recorded Return To:
DOCX
1111 Alderman Dr.
Suite 350
Alpharetta, GA 30005

AHMA | 647 | 9036648620

Property Address:
2315 NW 99 ST
MIAMI, FL 33147

HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA
LAST PAGE

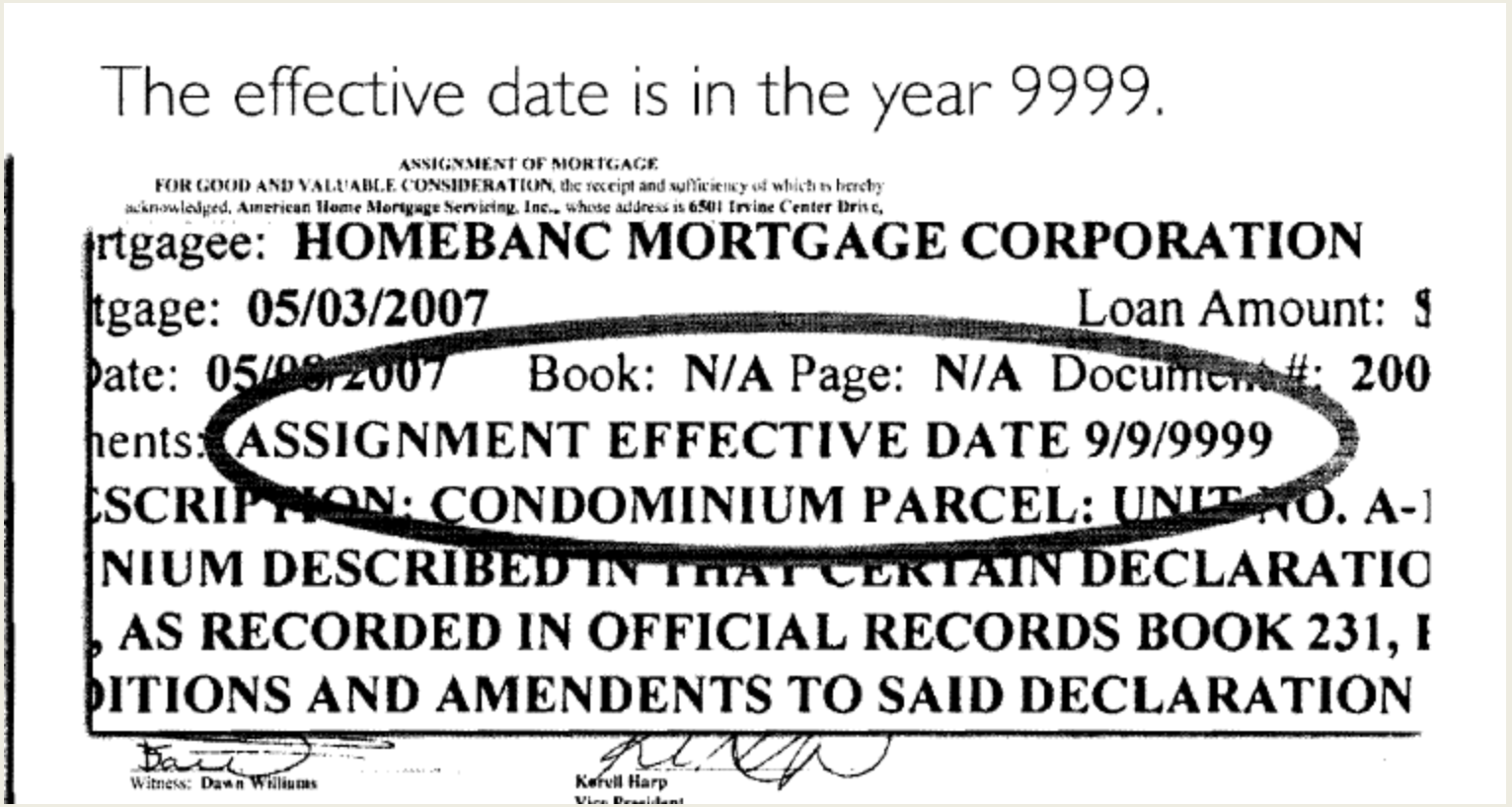
This Space for Recorder's Use Only

ASSIGNMENT OF MORTGAGE

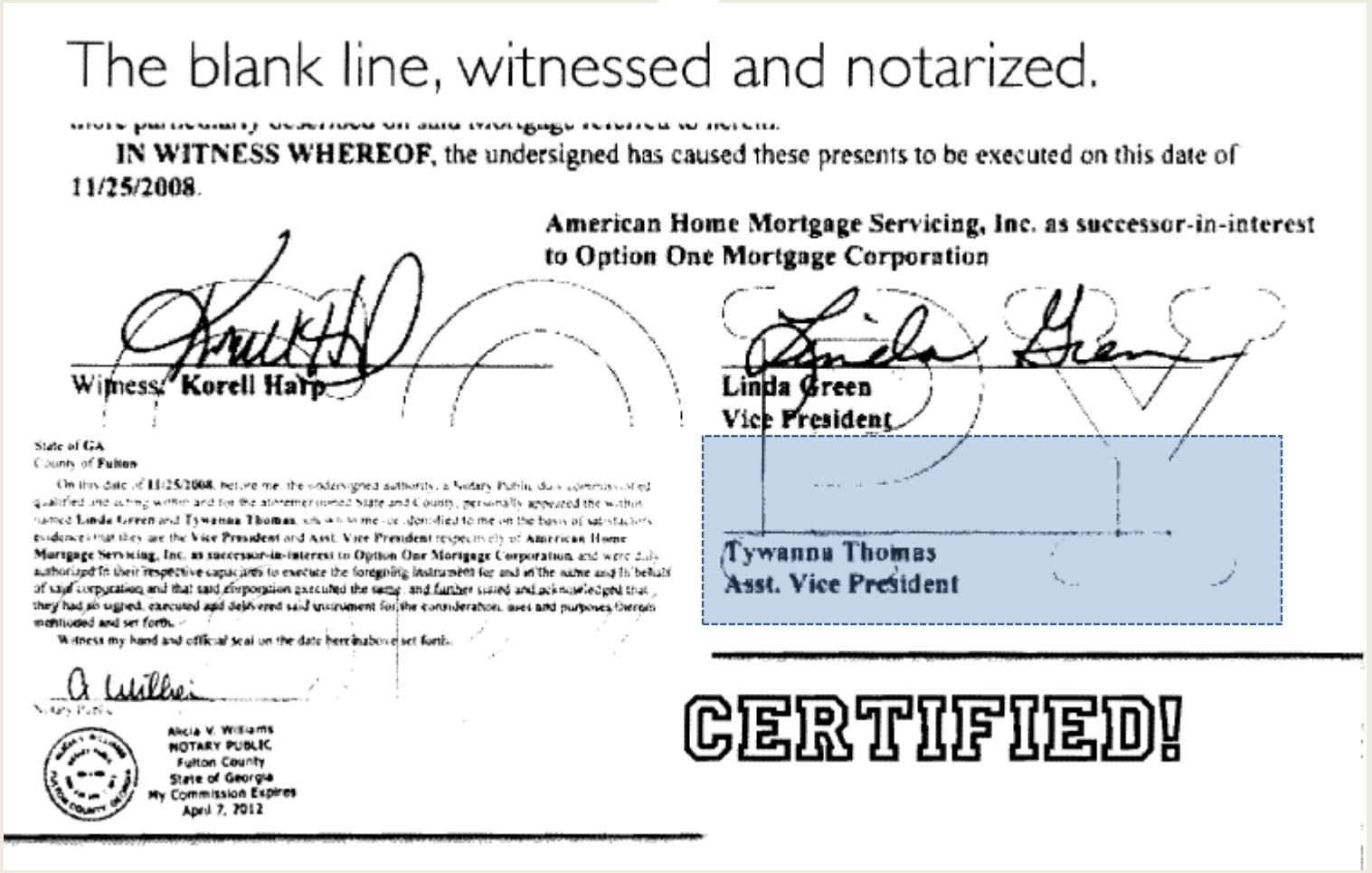
FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, **American Home Mortgage Acceptance, Inc.**, whose address is _____, does by these presents hereby grant, bargain, sell, assign, transfer, convey, set over and deliver unto **BOGUS ASSIGNEE FOR INTERVENING ASMTS,** with interest, and all rights accrued or to accrue under such mortgage.

Original Borrower(s): **MARIA MORALES A SINGLE WOMAN AND SANTIAGO AZAHEL GARCIA**
Original Mortgagee: **AMERICAN HOME MORTGAGE ACCEPTANCE, INC.**
Date of Mortgage: **07/05/2005** Loan Amount: **$158,000.00**
Recording Date: **07/18/2005** Book: **23578** Page: **260-283**

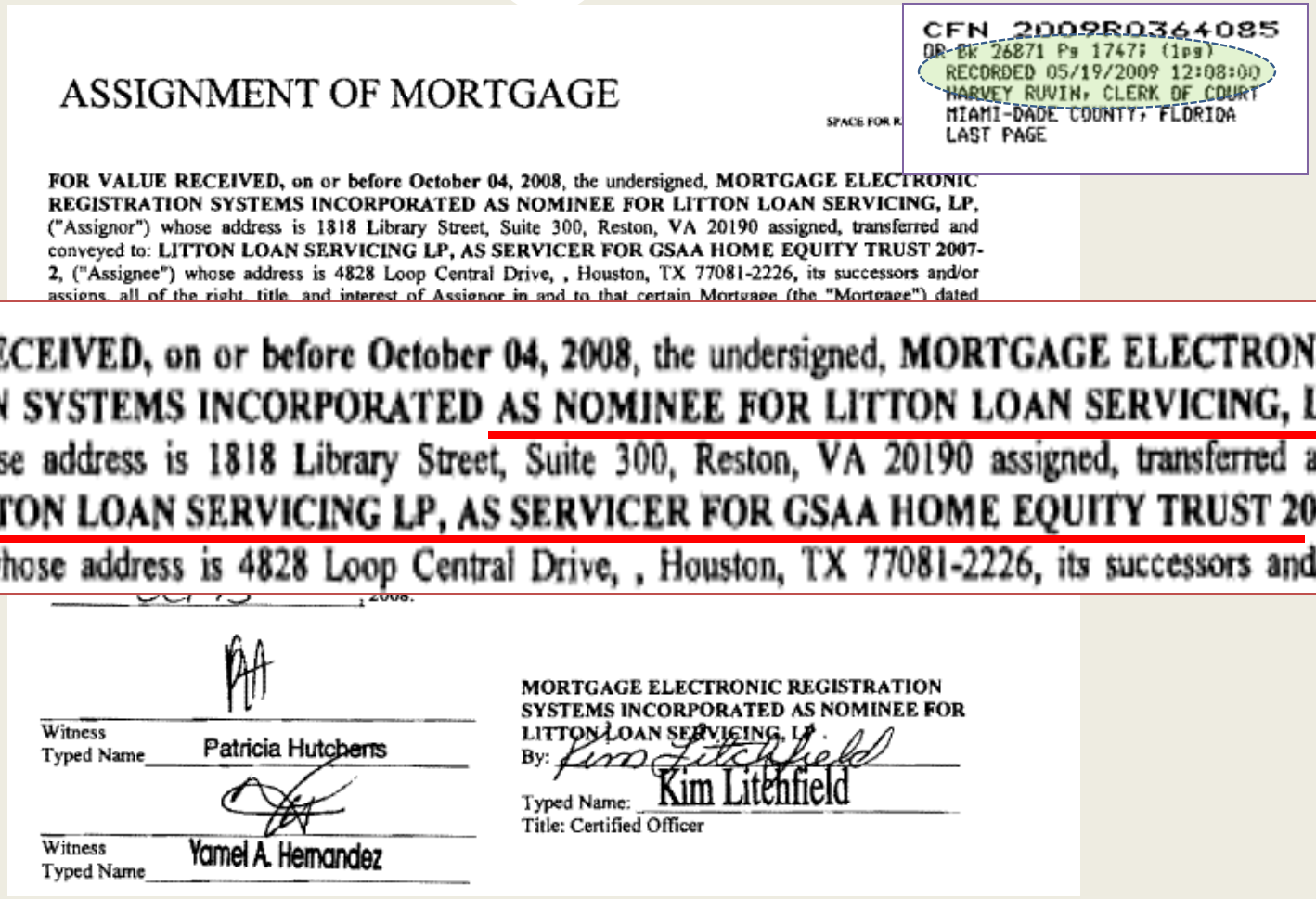
Examples of Bogus Documents



Examples of Bogus Documents



Assignment of Mortgage



CFN 2009R0364085
OR Bk 26871 Pg 1747; (1pg)
RECORDED 05/19/2009 12:08:00
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA
LAST PAGE

ASSIGNMENT OF MORTGAGE

SPACE FOR R

FOR VALUE RECEIVED, on or before October 04, 2008, the undersigned, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR LITTON LOAN SERVICING, LP**, ("Assignor") whose address is 1818 Library Street, Suite 300, Reston, VA 20190 assigned, transferred and conveyed to: **LITTON LOAN SERVICING LP, AS SERVICER FOR GSAA HOME EQUITY TRUST 2007-2**, ("Assignee") whose address is 4828 Loop Central Drive, , Houston, TX 77081-2226, its successors and/or assigns all of the right, title, and interest of Assignor in and to that certain Mortgage (the "Mortgage") dated

FOR VALUE RECEIVED, on or before October 04, 2008, the undersigned, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR LITTON LOAN SERVICING, LP**, ("Assignor") whose address is 1818 Library Street, Suite 300, Reston, VA 20190 assigned, transferred and conveyed to: **LITTON LOAN SERVICING LP, AS SERVICER FOR GSAA HOME EQUITY TRUST 2007-2**, ("Assignee") whose address is 4828 Loop Central Drive, , Houston, TX 77081-2226, its successors and/or

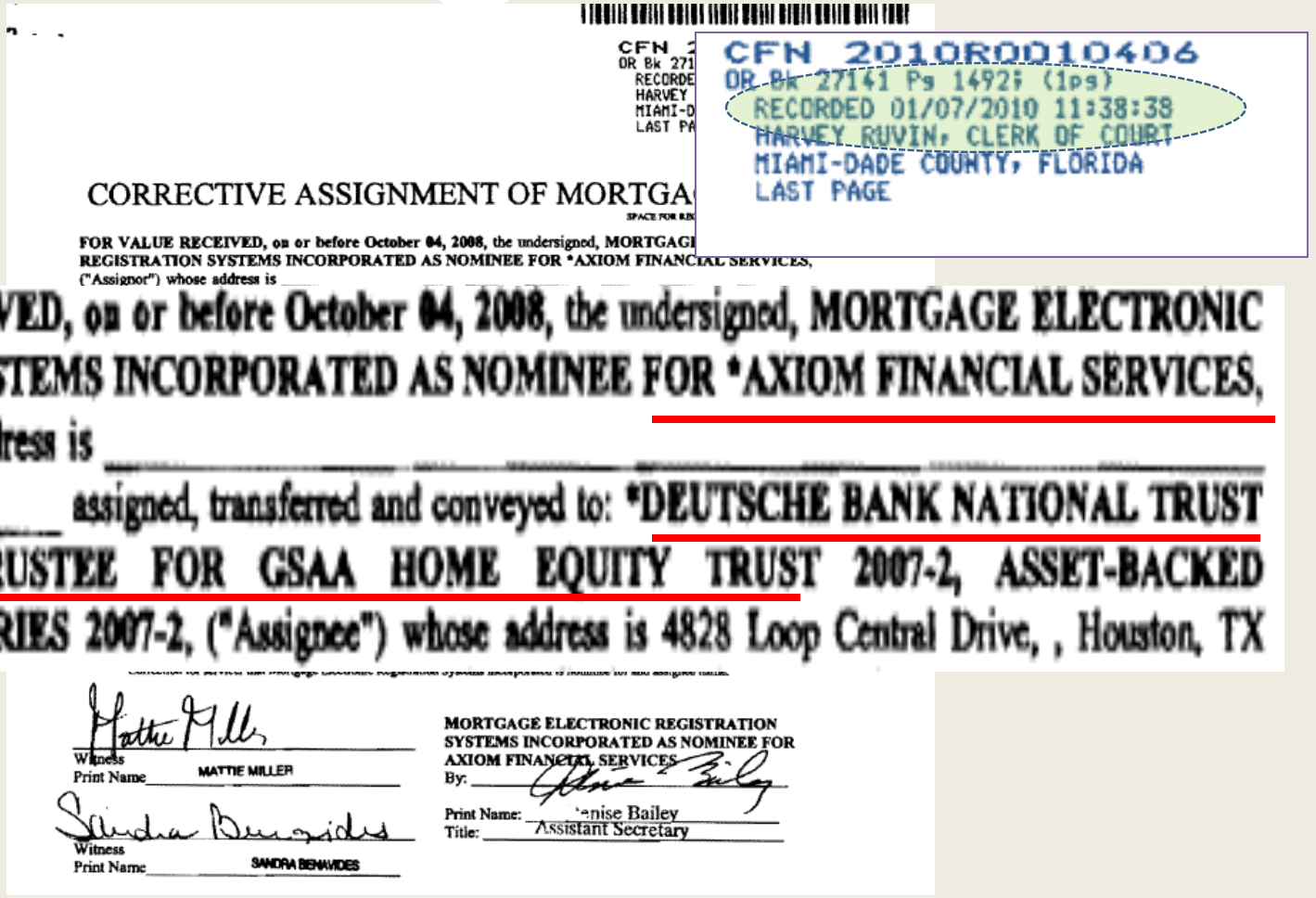
2008.

Witness
Typed Name Patricia Hutchens

Witness
Typed Name Yamel A. Hernandez

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR LITTON LOAN SERVICING, LP
By:
Typed Name: Kim Litchfield
Title: Certified Officer

Corrective Assignment of Mortgage



CFN 2010R0010406
OR Bk 27141 Ps 1492; (1ps)
RECORDED 01/07/2010 11:38:38
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA
LAST PAGE

CORRECTIVE ASSIGNMENT OF MORTGA

FOR VALUE RECEIVED, on or before October 04, 2008, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR *AXIOM FINANCIAL SERVICES, ("Assignor") whose address is _____

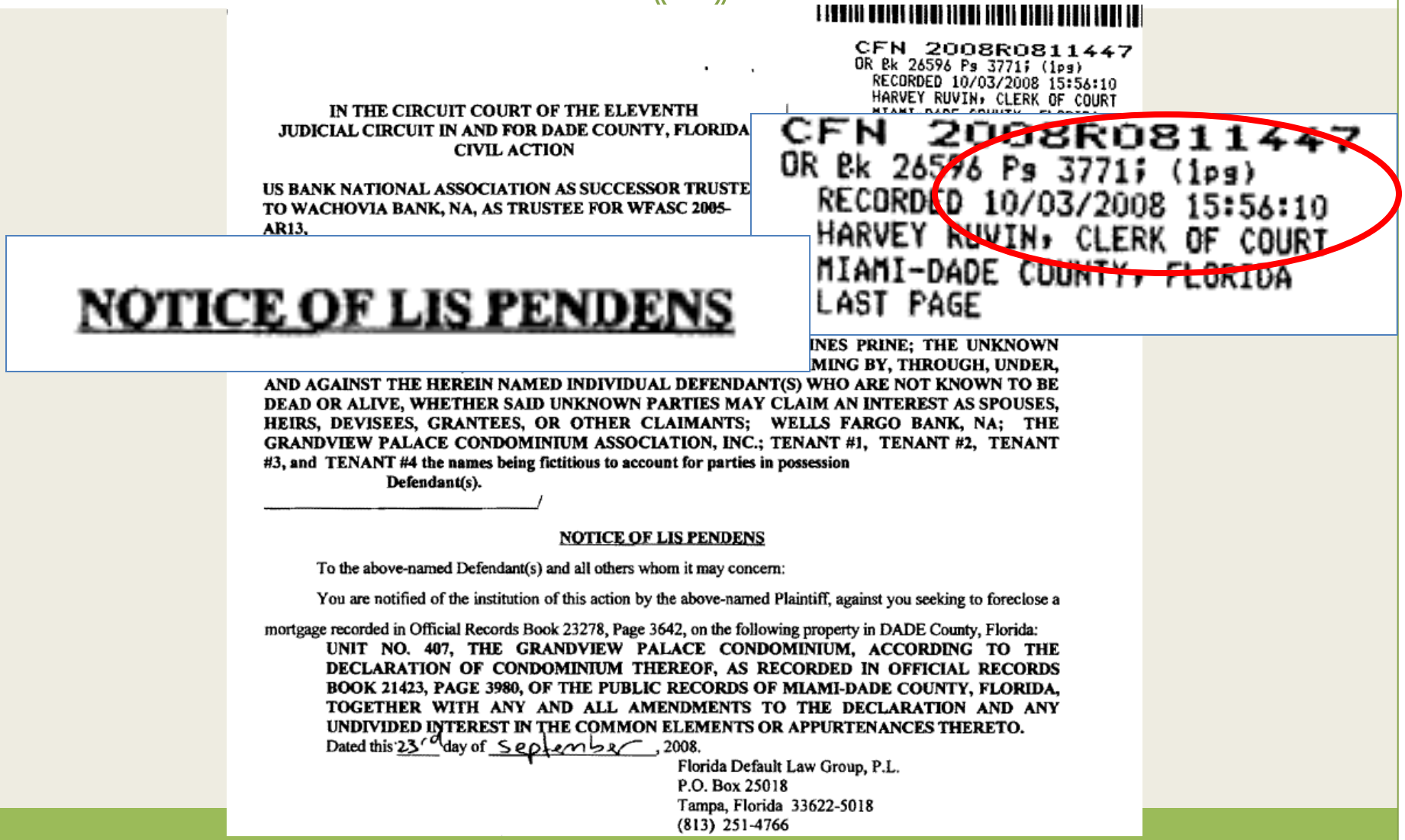
FOR VALUE RECEIVED, on or before October 04, 2008, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR *AXIOM FINANCIAL SERVICES, ("Assignor") whose address is _____ assigned, transferred and conveyed to: *DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR GSAA HOME EQUITY TRUST 2007-2, ASSET-BACKED CERTIFICATES, SERIES 2007-2, ("Assignee") whose address is 4828 Loop Central Drive, , Houston, TX

Witness
Print Name MATTIE MILLER

Witness
Print Name SANDRA BENAVIDES

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INCORPORATED AS NOMINEE FOR AXIOM FINANCIAL SERVICES
By: _____
Print Name: Denise Bailey
Title: Assistant Secretary

Filing Lis Pendens Without Standing



CFN 2008R0811447
OR Bk 26596 Ps 3771; (1pg)
RECORDED 10/03/2008 15:56:10
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA
LAST PAGE

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
CIVIL ACTION

US BANK NATIONAL ASSOCIATION AS SUCCESSOR TRUSTE
TO WACHOVIA BANK, NA, AS TRUSTEE FOR WFASC 2005-
AR13,

NOTICE OF LIS PENDENS

INES PRINE; THE UNKNOWN
MING BY, THROUGH, UNDER,
AND AGAINST THE HEREIN NAMED INDIVIDUAL DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR ALIVE, WHETHER SAID UNKNOWN PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEES, OR OTHER CLAIMANTS; WELLS FARGO BANK, NA; THE GRANDVIEW PALACE CONDOMINIUM ASSOCIATION, INC.; TENANT #1, TENANT #2, TENANT #3, and TENANT #4 the names being fictitious to account for parties in possession
Defendant(s).
_____/

NOTICE OF LIS PENDENS

To the above-named Defendant(s) and all others whom it may concern:

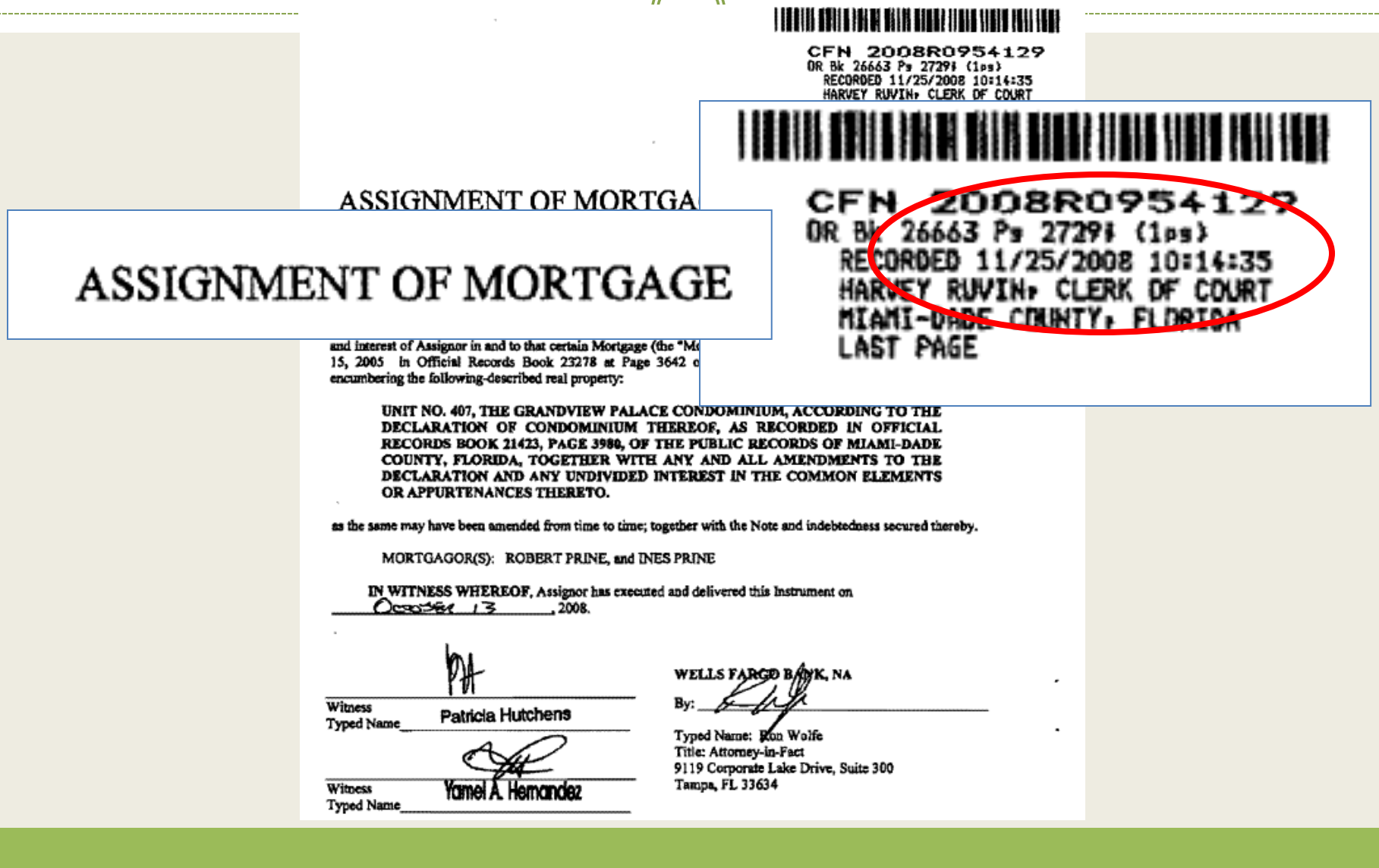
You are notified of the institution of this action by the above-named Plaintiff, against you seeking to foreclose a mortgage recorded in Official Records Book 23278, Page 3642, on the following property in DADE County, Florida:

UNIT NO. 407, THE GRANDVIEW PALACE CONDOMINIUM, ACCORDING TO THE DECLARATION OF CONDOMINIUM THEREOF, AS RECORDED IN OFFICIAL RECORDS BOOK 21423, PAGE 3980, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, TOGETHER WITH ANY AND ALL AMENDMENTS TO THE DECLARATION AND ANY UNDIVIDED INTEREST IN THE COMMON ELEMENTS OR APPURTENANCES THERETO.

Dated this 23rd day of September, 2008.

Florida Default Law Group, P.L.
P.O. Box 25018
Tampa, Florida 33622-5018
(813) 251-4766

Assignments *After* Lis Pendens



CFN 2008R0954129
OR Bk 26663 Pg 2729 (1pg)
RECORDED 11/25/2008 10:14:35
HARVEY RUVIN, CLERK OF COURT

CFN 2008R0954129
OR Bk 26663 Pg 2729 (1pg)
RECORDED 11/25/2008 10:14:35
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA
LAST PAGE

ASSIGNMENT OF MORTGAGE

ASSIGNMENT OF MORTGA

and interest of Assignor in and to that certain Mortgage (the "M
15, 2005 in Official Records Book 23278 at Page 3642 o
encumbering the following-described real property:

UNIT NO. 407, THE GRANDVIEW PALACE CONDOMINIUM, ACCORDING TO THE DECLARATION OF CONDOMINIUM THEREOF, AS RECORDED IN OFFICIAL RECORDS BOOK 21423, PAGE 3980, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, TOGETHER WITH ANY AND ALL AMENDMENTS TO THE DECLARATION AND ANY UNDIVIDED INTEREST IN THE COMMON ELEMENTS OR APPURTENANCES THERETO.

as the same may have been amended from time to time; together with the Note and indebtedness secured thereby.

MORTGAGOR(S): ROBERT PRINE, and INES PRINE

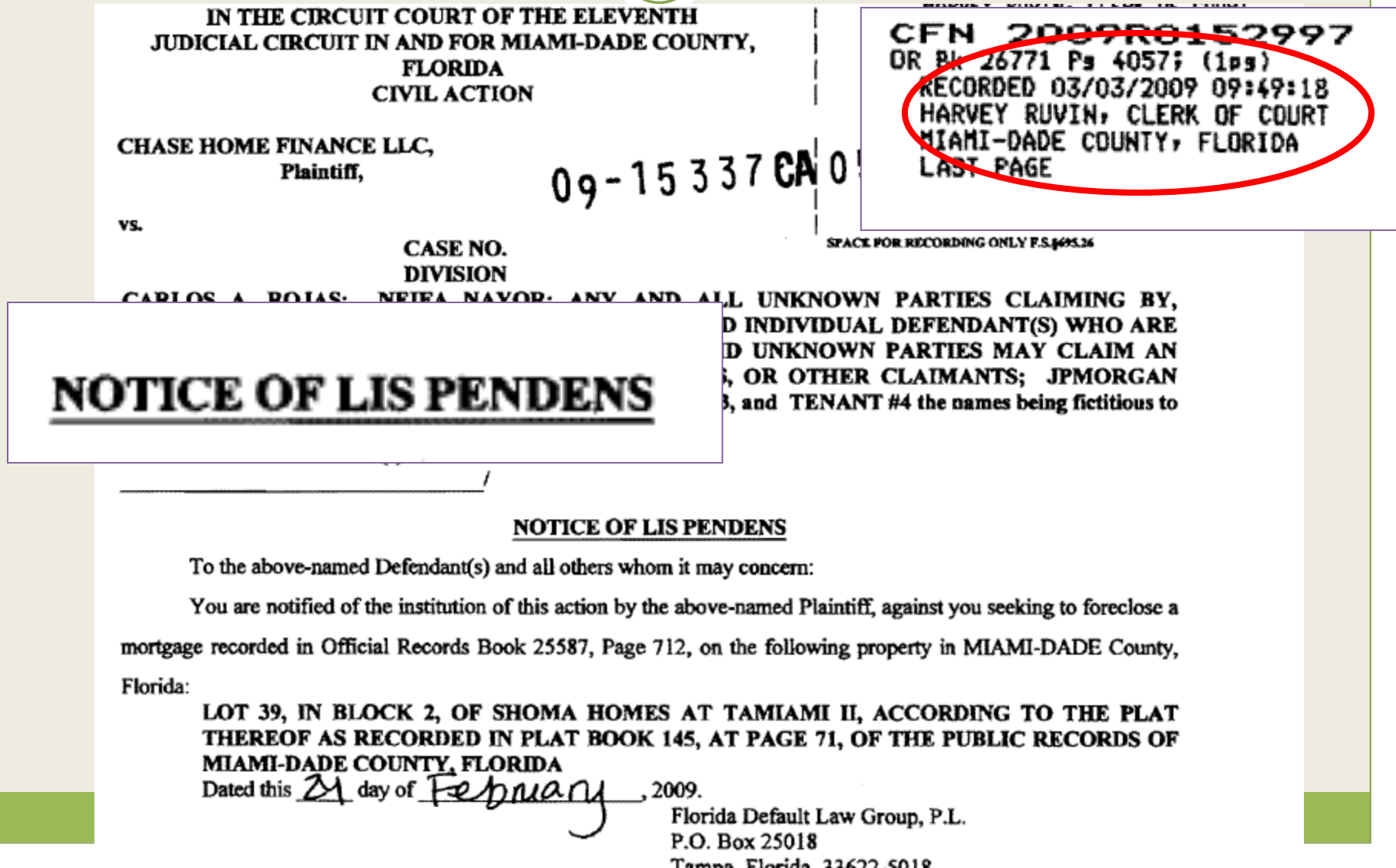
IN WITNESS WHEREOF, Assignor has executed and delivered this Instrument on
October 13, 2008.

Witness
Typed Name Patricia Hutchens

Witness
Typed Name Yamel A. Hernandez

WELLS FARGO BANK, NA
By:
Typed Name: Ron Wolfe
Title: Attorney-in-Fact
9119 Corporate Lake Drive, Suite 300
Tampa, FL 33634

Filing Lis Pendens Without Standing



IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY,
FLORIDA
CIVIL ACTION

CHASE HOME FINANCE LLC,
Plaintiff,

09-15337 CA 01

vs.

CASE NO.
DIVISION

CFN 2009R0152997
OR Bk 26771 Pg 4057; (1pg)
RECORDED 03/03/2009 09:49:18
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA
LAST PAGE

SPACE FOR RECORDING ONLY F.S.§695.26

CARLOS A. ROJAS; NEIFA NAYOR; ANY AND ALL UNKNOWN PARTIES CLAIMING BY,
D INDIVIDUAL DEFENDANT(S) WHO ARE
D UNKNOWN PARTIES MAY CLAIM AN
, OR OTHER CLAIMANTS; JPMORGAN
, and TENANT #4 the names being fictitious to

NOTICE OF LIS PENDENS

/

NOTICE OF LIS PENDENS

To the above-named Defendant(s) and all others whom it may concern:

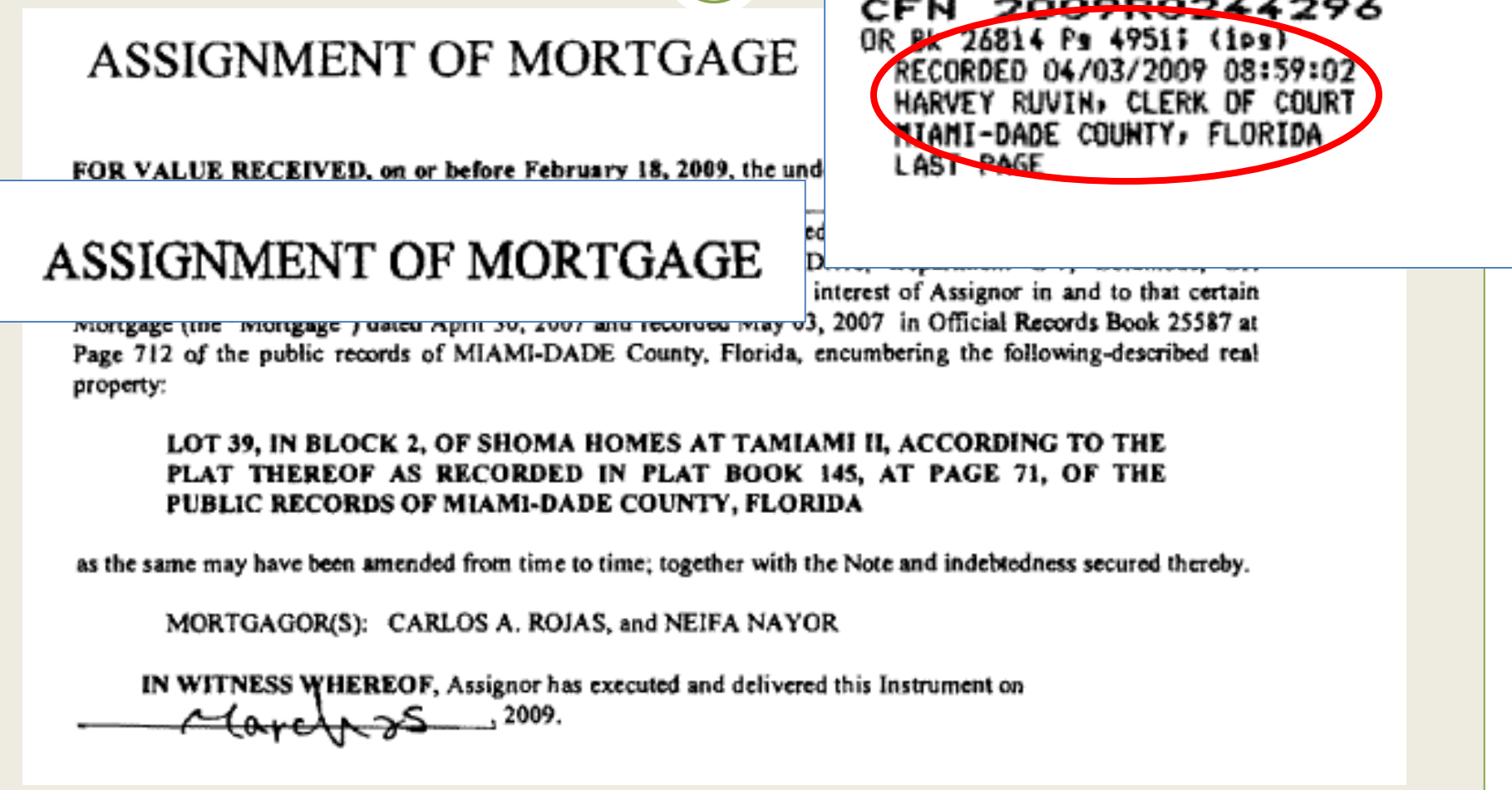
You are notified of the institution of this action by the above-named Plaintiff, against you seeking to foreclose a mortgage recorded in Official Records Book 25587, Page 712, on the following property in MIAMI-DADE County, Florida:

LOT 39, IN BLOCK 2, OF SHOMA HOMES AT TAMIAMI II, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 145, AT PAGE 71, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA

Dated this 24 day of February, 2009.

Florida Default Law Group, P.L.
P.O. Box 25018
Tampa, Florida 33622-5018

Assignments *After* Lis Pendens



CFN 20090244296
OR Bk 26814 Pg 4951; (1pg)
RECORDED 04/03/2009 08:59:02
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA
LAST PAGE

ASSIGNMENT OF MORTGAGE

ASSIGNMENT OF MORTGAGE

FOR VALUE RECEIVED, on or before February 18, 2009, the und

interest of Assignor in and to that certain
Mortgage (the "Mortgage") dated April 30, 2007 and recorded May 03, 2007 in Official Records Book 25587 at Page 712 of the public records of MIAMI-DADE County, Florida, encumbering the following-described real property:

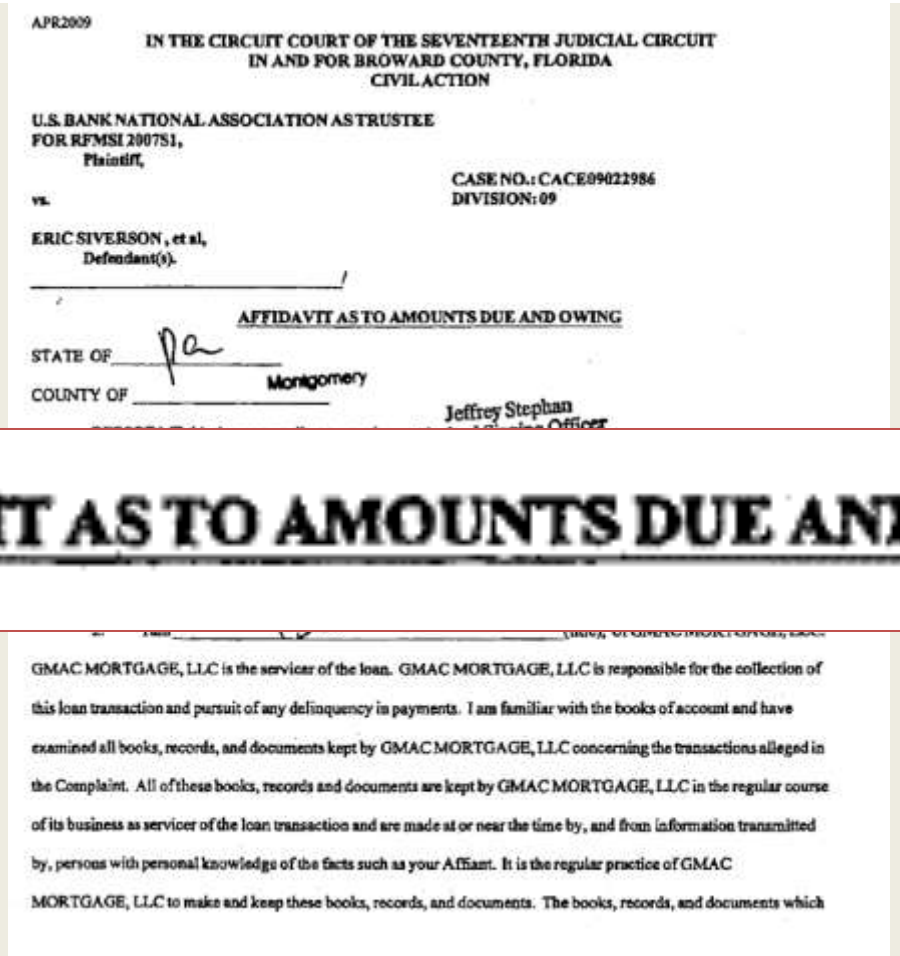
LOT 39, IN BLOCK 2, OF SHOMA HOMES AT TAMIAMI II, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 145, AT PAGE 71, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA

as the same may have been amended from time to time; together with the Note and indebtedness secured thereby.

MORTGAGOR(S): CARLOS A. ROJAS, and NEIFA NAYOR

IN WITNESS WHEREOF, Assignor has executed and delivered this Instrument on
_____, 2009.

Affidavit of Amounts Due



APR2009

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA
CIVIL ACTION

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE
FOR RFMSI 2007S1,
Plaintiff,

vs.

CASE NO.: CACE09022986
DIVISION: 09

ERIC SIVERSON, et al,
Defendant(s).

AFFIDAVIT AS TO AMOUNTS DUE AND OWING

STATE OF Pa

COUNTY OF Montgomery

Jeffrey Stephan

AFFIDAVIT AS TO AMOUNTS DUE AND OWING

GMAC MORTGAGE, LLC is the servicer of the loan. GMAC MORTGAGE, LLC is responsible for the collection of this loan transaction and pursuit of any delinquency in payments. I am familiar with the books of account and have examined all books, records, and documents kept by GMAC MORTGAGE, LLC concerning the transactions alleged in the Complaint. All of these books, records and documents are kept by GMAC MORTGAGE, LLC in the regular course of its business as servicer of the loan transaction and are made at or near the time by, and from information transmitted by, persons with personal knowledge of the facts such as your Affiant. It is the regular practice of GMAC MORTGAGE, LLC to make and keep these books, records, and documents. The books, records, and documents which

Affidavit of Amounts Due

APR2009

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA
CIVIL ACTION

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE
FOR RFMSI 2007S1,
Plaintiff,

CASE NO.: CACE09022986
DIVISION: 09

vs.

ERIC SIVERSON , et al,
Defendant(s).

_____/

AFFIDAVIT AS TO AMOUNTS DUE AND OWING

STATE OF Pa

COUNTY OF Montgomery

Jeffrey Stephan

I am familiar with the books of account and have examined all books, records, and documents kept by GMAC MORTGAGE, LLC concerning the transactions alleged in the Complaint. All of these books, records and documents are kept by GMAC MORTGAGE, LLC in the regular course of its business as servicer of the loan transaction and are made at or near the time by, and from information transmitted by, persons with personal knowledge of the facts such as your Affiant. It is the regular practice of GMAC MORTGAGE, LLC to make and keep these books, records, a

FURTHER AFFIANT SAYETH NOT.

Type Name Here

Jeffrey Stephan
Limited Signing Officer

Withdrawal of Affidavits of Amounts Due

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA
CIVIL ACTION

U.S. BANK NATIONAL ASSOCIATION AS
TRUSTEE FOR RFMSI 2007S1,
Plaintiff,
vs.

CASE NO.: CACE-09-022986
DIVISION: 09

NOTICE

NOTICE

Pursuant to Rule 4-3.5, Rules of Professional Conduct of the Rules Regulating The Florida Bar, the undersigned law firm hereby notifies the Court as follows:

1. An affidavit of indebtedness was served in the above-styled matter in support of Plaintiff's motion for summary judgment, ("the Affidavit").

2. The undersigned law firm has recently been notified that the information in the Affidavit may not have been properly verified by the affiant; and accordingly, the Affidavit is hereby withdrawn.

3. The undersigned law firm was not aware of the foregoing information when the Affidavit was filed with the Court.

4. The undersigned law firm drafted the Affidavit based upon the information and business records provided by its client, and to the best of its knowledge and information, believes, in good faith, that the amounts reflecting the indebtedness contained therein accurately reflected the information provided by its client and were believed to be correct when filed.

5. A new, properly verified affidavit will be filed when and as appropriate.

Withdrawal of Affidavits of Amounts Due

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA
CIVIL ACTION

U.S. BANK NATIONAL ASSOCIATION AS
TRUSTEE FOR RFMSI 2007S1,
Plaintiff,
vs.

CASE NO.: CACE-09-022986
DIVISION: 09

ERIC SIVERSON, et al,

Defendant(s).
_____/

NOTICE

Pursuant to Rule 4-3.3, Rules of Professional Conduct of the Rules Regulating The Florida Bar, the undersigned law firm hereby notifies the Court as follows:

2. The undersigned law firm has recently been notified that the information in the Affidavit may not have been properly verified by the affiant; and accordingly, the Affidavit is hereby withdrawn.

with the Court.

4. The undersigned law firm drafted the Affidavit based upon the information and business records provided by its client, and to the best of its knowledge and information, believes, in good faith, that the amounts reflecting the indebtedness contained therein accurately reflected the information provided by its client and were believed to be correct when filed.

5. A new, properly verified affidavit will be filed when and as appropriate.

1. Note the address of the Assignor, Home Savings of America F. A. (HSA) is blank. HSA was acquired in 1998 by Washington Mutual Bank (WAMU) they no longer exist.

ASSIGNMENT OF MORTGAGE

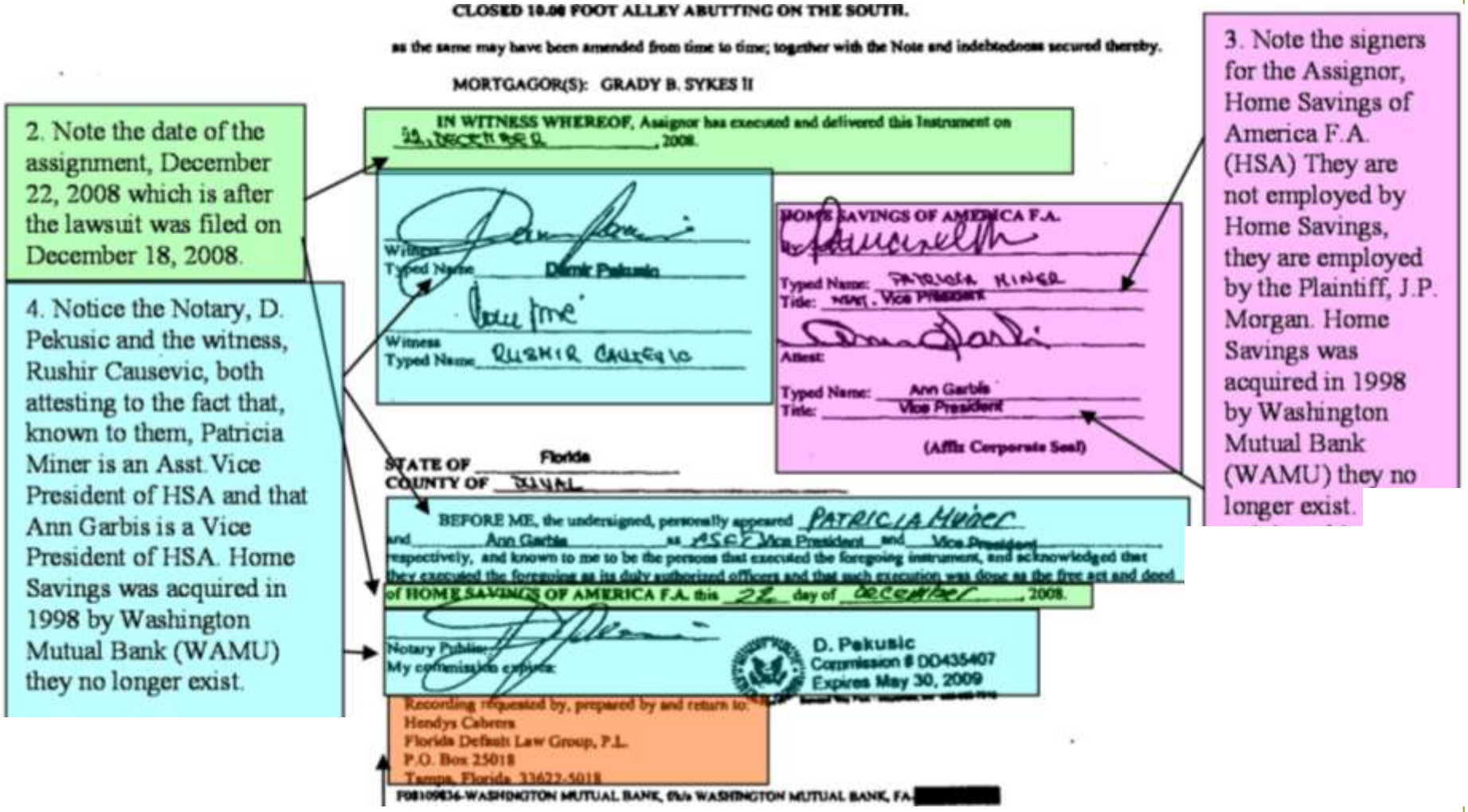
SPACE FOR RECORDING ONLY F S [illegible] 36

FOR VALUE RECEIVED, on or before December 12, 2008, the undersigned, HOME SAVINGS OF AMERICA F.A., ("Assignor") whose address is [redacted] **assigned, transferred and conveyed to: JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, ("Assignee") whose address is 7255 Baymeadows Way, Mailstop Jaxa 2035, Jacksonville, FL 32256, its successors and/or assigns, all of the right, title, and interest of Assignor in and to that certain Mortgage (the "Mortgage") dated August 26, 1988 and recorded September 06, 1988 in Official Records Book 5495 at Page 1186 of the public records of HILLSBOROUGH County, Florida, encumbering the following-described real property:**

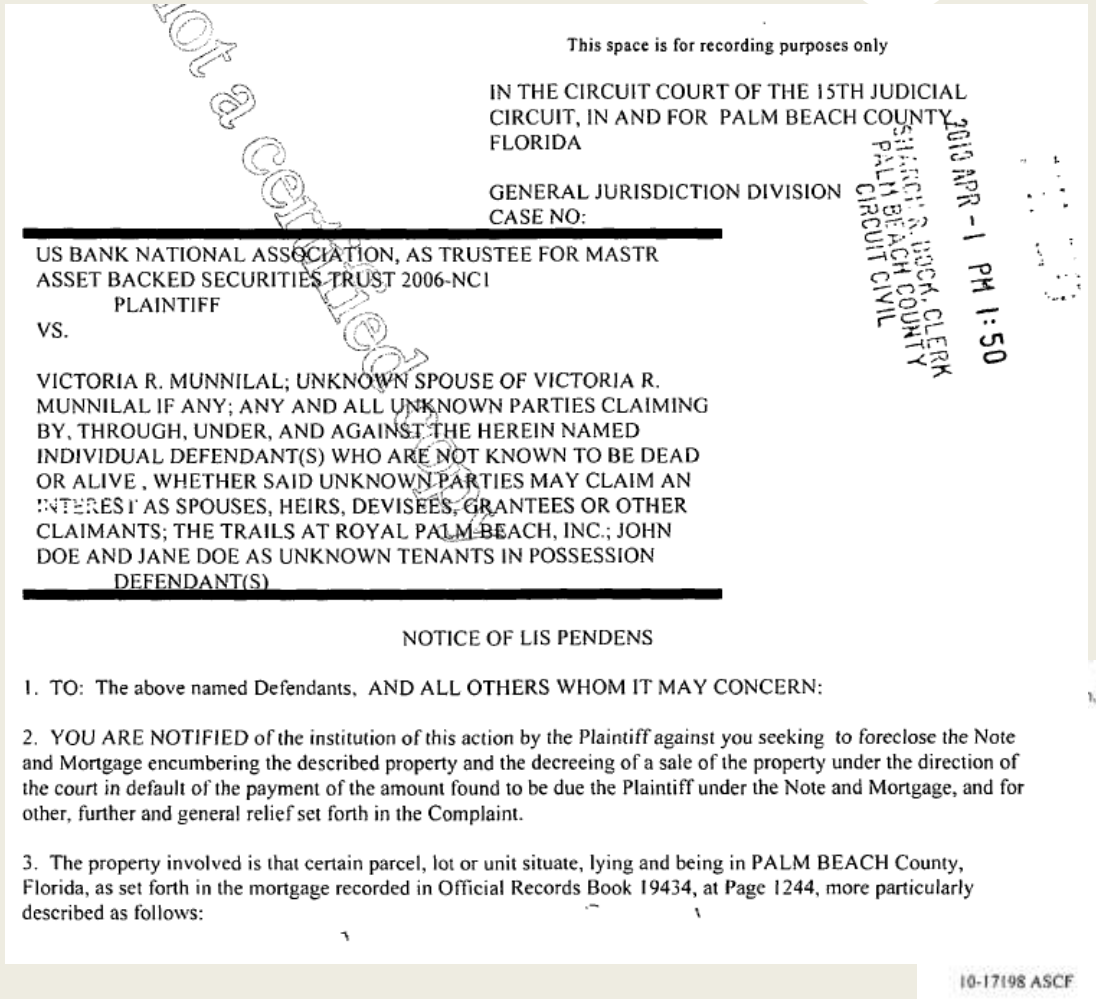
LOT 8, BLOCK G, REVISED MAP OF BAY CITY, ACCORDING TO MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 3, PAGE 54, OF THE PUBLIC RECORDS OF HILLSBOROUGH COUNTY, FLORIDA. TOGETHER WITH THE NORTH 1/2 OF CLOSED 10.00 FOOT ALLEY ABUTTING ON THE SOUTH.

as the same may have been amended from time to time; together with the Note and indebtedness secured thereby.

MORTGAGOR(S): GRADY B. SYKES II


CLOSED 10.00 FOOT ALLEY ABUTTING ON THE SOUTH.
as the same may have been amended from time to time; together with the Note and indebtedness secured thereby.
MORTGAGOR(S): GRADY B. SYKES II
IN WITNESS WHEREOF, Assignor has executed and delivered this Instrument on
22, DECEMBER, 2008.
Witness
Typed Name: Dzemir Pekusic
Witness
Typed Name: RUSHIR CAUSEVIC
HOME SAVINGS OF AMERICA F.A.
By:
Typed Name: PATRICIA KINER
Title: ASST. VICE PRESIDENT
Attest:
Typed Name: Ann Garbis
Title: Vice President
(Affix Corporate Seal)
STATE OF Florida
COUNTY OF DUVAL
BEFORE ME, the undersigned, personally appeared PATRICIA KINER
and Ann Garbis as ASST Vice President and Vice President
respectively, and known to me to be the persons that executed the foregoing instrument, and acknowledged that they executed the foregoing as its duly authorized officers and that such execution was done as the free act and deed of HOME SAVINGS OF AMERICA F.A. this 22 day of DECEMBER, 2008.
Notary Public:
My commission expires:
D. Pekusic
Commission # DD435407
Expires May 30, 2009
Recording requested by, prepared by and return to:
Hendys Cabrera
Florida Default Law Group, P.L.
P.O. Box 25018
Tampa, Florida 33622-5018
F08109836-WASHINGTON MUTUAL BANK, f/k/a WASHINGTON MUTUAL BANK, FA-
2. Note the date of the assignment, December 22, 2008 which is after the lawsuit was filed on December 18, 2008.
3. Note the signers for the Assignor, Home Savings of America F.A. (HSA) They are not employed by Home Savings, they are employed by the Plaintiff, J.P. Morgan. Home Savings was acquired in 1998 by Washington Mutual Bank (WAMU) they no longer exist.
4. Notice the Notary, D. Pekusic and the witness, Rushir Causevic, both attesting to the fact that, known to them, Patricia Miner is an Asst. Vice President of HSA and that Ann Garbis is a Vice President of HSA. Home Savings was acquired in 1998 by Washington Mutual Bank (WAMU) they no longer exist.

Sample Notice of Lis Pendens



This space is for recording purposes only

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION
CASE NO:

US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MASTR ASSET BACKED SECURITIES TRUST 2006-NC1
PLAINTIFF
VS.

VICTORIA R. MUNNILAL; UNKNOWN SPOUSE OF VICTORIA R. MUNNILAL IF ANY; ANY AND ALL UNKNOWN PARTIES CLAIMING BY, THROUGH, UNDER, AND AGAINST THE HEREIN NAMED INDIVIDUAL DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR ALIVE , WHETHER SAID UNKNOWN PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEES OR OTHER CLAIMANTS; THE TRAILS AT ROYAL PALM BEACH, INC.; JOHN DOE AND JANE DOE AS UNKNOWN TENANTS IN POSSESSION
DEFENDANT(S)

2010 APR -1 PM 1:50
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

NOTICE OF LIS PENDENS

1. TO: The above named Defendants, AND ALL OTHERS WHOM IT MAY CONCERN:

2. YOU ARE NOTIFIED of the institution of this action by the Plaintiff against you seeking to foreclose the Note and Mortgage encumbering the described property and the decreeing of a sale of the property under the direction of the court in default of the payment of the amount found to be due the Plaintiff under the Note and Mortgage, and for other, further and general relief set forth in the Complaint.

3. The property involved is that certain parcel, lot or unit situate, lying and being in PALM BEACH County, Florida, as set forth in the mortgage recorded in Official Records Book 19434, at Page 1244, more particularly described as follows:

10-17198 ASCF

), Broward County, Florida, this 31 day of March, 2010.

MARIE A. FOX
Bar #: 43909
Miriam Mendieta
Bar #: 0866880
Law Offices of David J. Stern, P.A.
Attorney for Plaintiff
900 South Pine Island Road, Suite 400
Plantation, FL 33324-3920
(954) 233-8000

Stamped signature on Assignment of Mortgage

This form was prepared by: **New Century Mortgage Corporation**
address: **18400 Von Karman, Ste 1000**
Irvine, CA 92612

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is **18400 Von Karman, Suite 1000, Irvine, CA 92612**
does hereby grant, sell, assign, transfer and convey, unto US Bank National Association, as Trustee for the Structured Asset Securities Corporation Mortgage Loan Trust, 2006-NC2
a corporation organized and existing under the laws of (herein "Assignee"),
whose address is
a certain Mortgage dated **February 29, 2006** , made and executed by
WASNEL PETIT-BIEN, A Single Man and ELCIE PREPETIT, A Single Woman, As Joint Tenants

to and in favor of **New Century Mortgage Corporation** upon the
following described property situated in **PALM BEACH** County, State of Florida
See Legal Description Attached Hereto and Made a Part Hereof

such Mortgage having been given to secure payment of **TWO HUNDRED THIRTY-SIX THOUSAND AND 00/100**
($ 236,000.00) which Mortgage is of record in Book, Volume, or Liber
(Include the Original Principal Amount)
No. 20013 , at page **936** (or as No.) of the **County** Records of
PALM BEACH County, State of Florida, together with the note(s) and obligations therein described and the money due and to become due thereon with interest, and all rights accrued or to accrue under such Mortgage.
TO HAVE AND TO HOLD the same unto Assignee, its successor and assigns, forever, subject only to the terms and conditions of the above-described Mortgage.
IN WITNESS WHEREOF, the undersigned Assignor has executed this Assignment of Mortgage on

Witness: **New Century Mortgage Corporation** (Assignor)
Witness: Stephen L. Nagy (Typed Name)
Attest: **Stephen L. Nagy / V.P.\Records Management**
Seal:

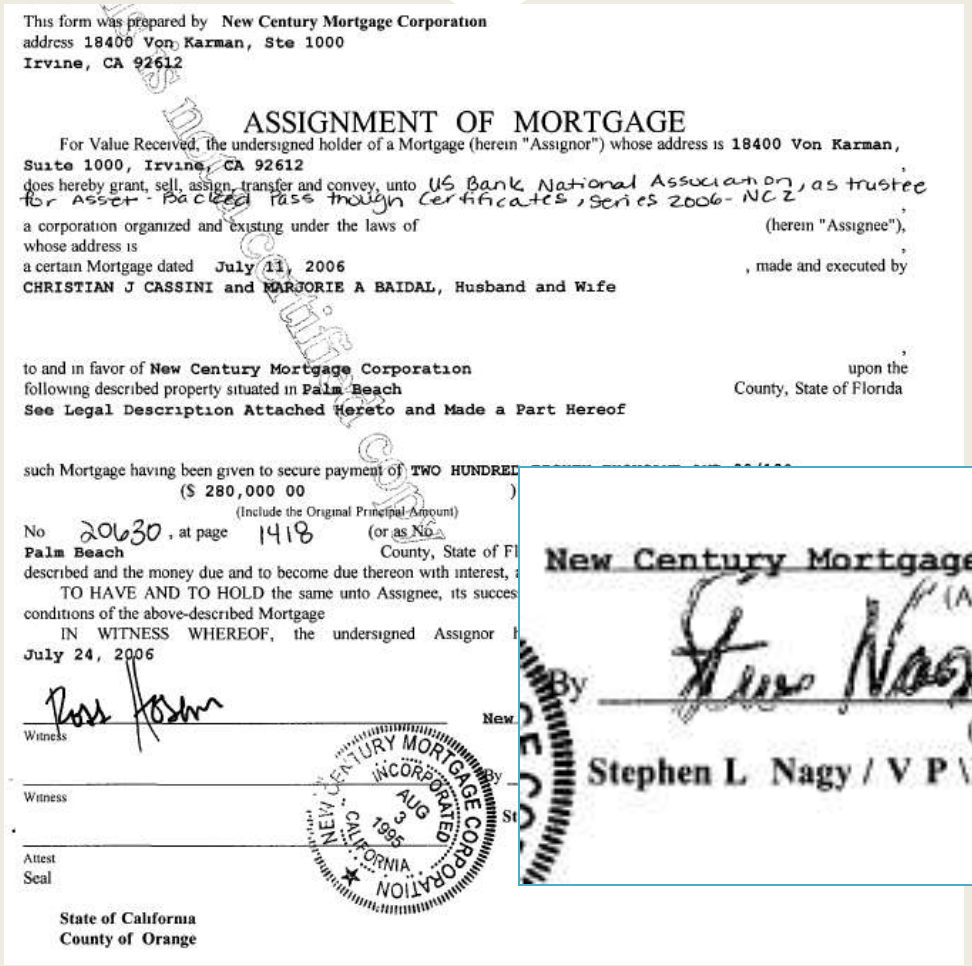
State of California
County of Orange

The foregoing instrument was acknowledged before me this **March 06, 2006** by
Stephen L. Nagy / V.P.\Records Management
of **New Century Mortgage Corporation** , a
California corporation, on behalf of the corporation. He/She is personally known to me or has produced as identification.

Andres Rojas

Florida Assignment of Mortgage with Acknowledgment
6515W(FL) 11/01
1006710035

Stamped Signatures



This form was prepared by **New Century Mortgage Corporation**
address **18400 Von Karman, Ste 1000**
Irvine, CA 92612

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is **18400 Von Karman, Suite 1000, Irvine, CA 92612**
does hereby grant, sell, assign, transfer and convey, unto US Bank National Association, as trustee for Asset-Backed Pass Though Certificates, Series 2006-NC2
a corporation organized and existing under the laws of (herein "Assignee"),
whose address is
a certain Mortgage dated **July 11, 2006** , made and executed by
CHRISTIAN J CASSINI and MARJORIE A BAIDAL, Husband and Wife

to and in favor of **New Century Mortgage Corporation** upon the
following described property situated in **Palm Beach** County, State of Florida
See Legal Description Attached Hereto and Made a Part Hereof

such Mortgage having been given to secure payment of **TWO HUNDRED**
($ 280,000 00)
(Include the Original Principal Amount)
No 20630, at page 1418 (or as No.
Palm Beach County, State of Fl
described and the money due and to become due thereon with interest,
TO HAVE AND TO HOLD the same unto Assignee, its succes
conditions of the above-described Mortgage
IN WITNESS WHEREOF, the undersigned Assignor
July 24, 2006

Witness **New**

Witness By

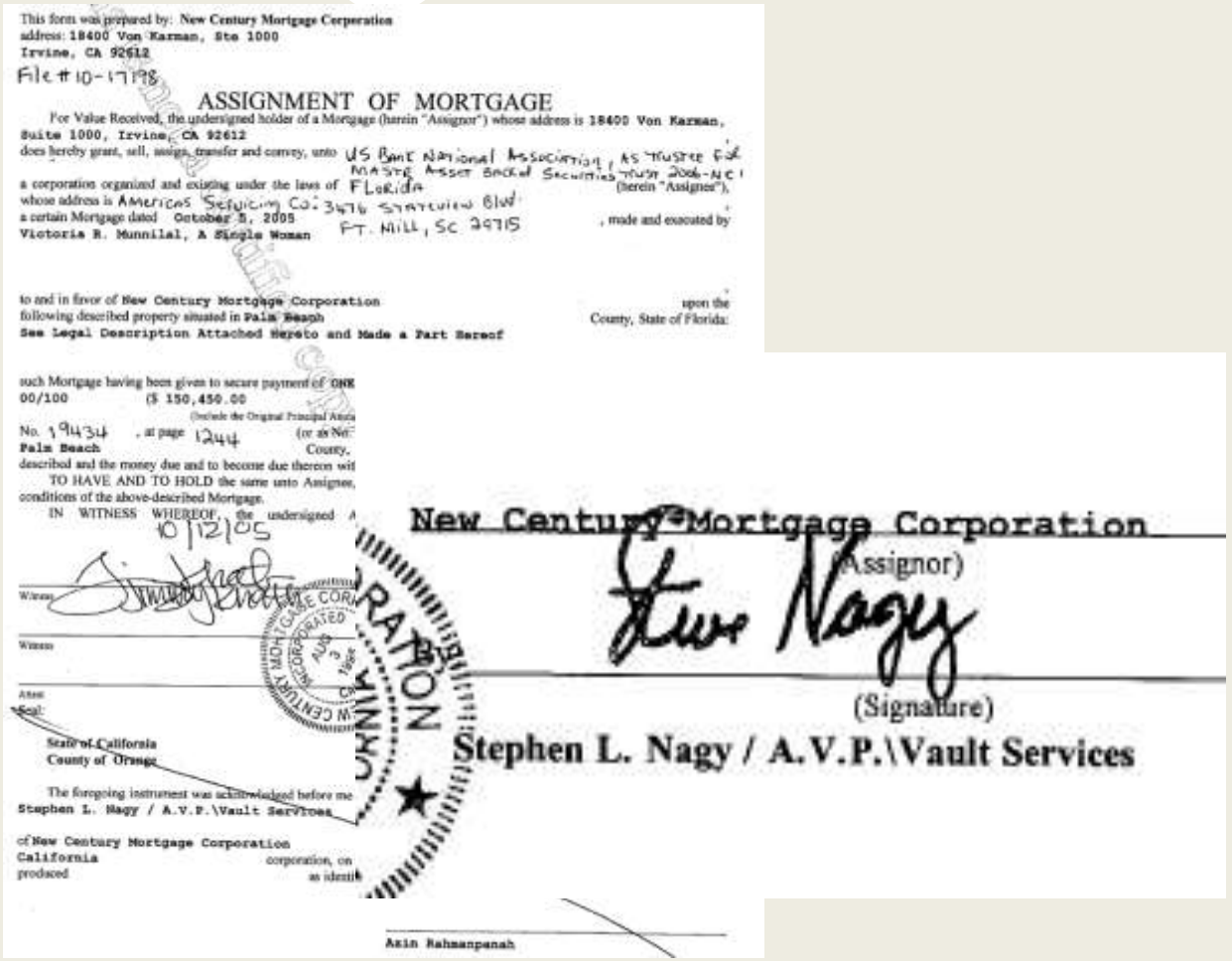
Attest St
Seal

State of California
County of Orange

NEW CENTURY MORTGAGE CORPORATION INCORPORATED AUG 3 1995 CALIFORNIA

New Century Mortgage Corporation
(Assignor)
By
(Signature)
Stephen L Nagy / V P \Records Management

Stamped Signatures



This form was prepared by: New Century Mortgage Corporation
address: 18400 Von Karman, Ste 1000
Irvine, CA 92612
File # 10-17198

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is 18400 Von Karman, Suite 1000, Irvine, CA 92612 does hereby grant, sell, assign, transfer and convey, unto US Bank National Association, as Trustee for Master Asset Backed Securities Trust 2006-NC1 a corporation organized and existing under the laws of Florida (herein "Assignee"), whose address is Americas Servicing Co: 3476 Stateview Blvd Ft. Mill, SC 29715 a certain Mortgage dated October 5, 2005, made and executed by Victoria R. Munnilal, A Single Woman

to and in favor of New Century Mortgage Corporation upon the following described property situated in Palm Beach County, State of Florida:
See Legal Description Attached Hereto and Made a Part Hereof

such Mortgage having been given to secure payment of ONE 00/100 ($ 150,450.00
(Include the Original Principal Amou
No. 19434 , at page 1244 (or as Ins
Palm Beach County,
described and the money due and to become due thereon wit
TO HAVE AND TO HOLD the same unto Assignee,
conditions of the above-described Mortgage.
IN WITNESS WHEREOF, the undersigned A
10/12/05

Witness

Witness

Attest:
Seal:

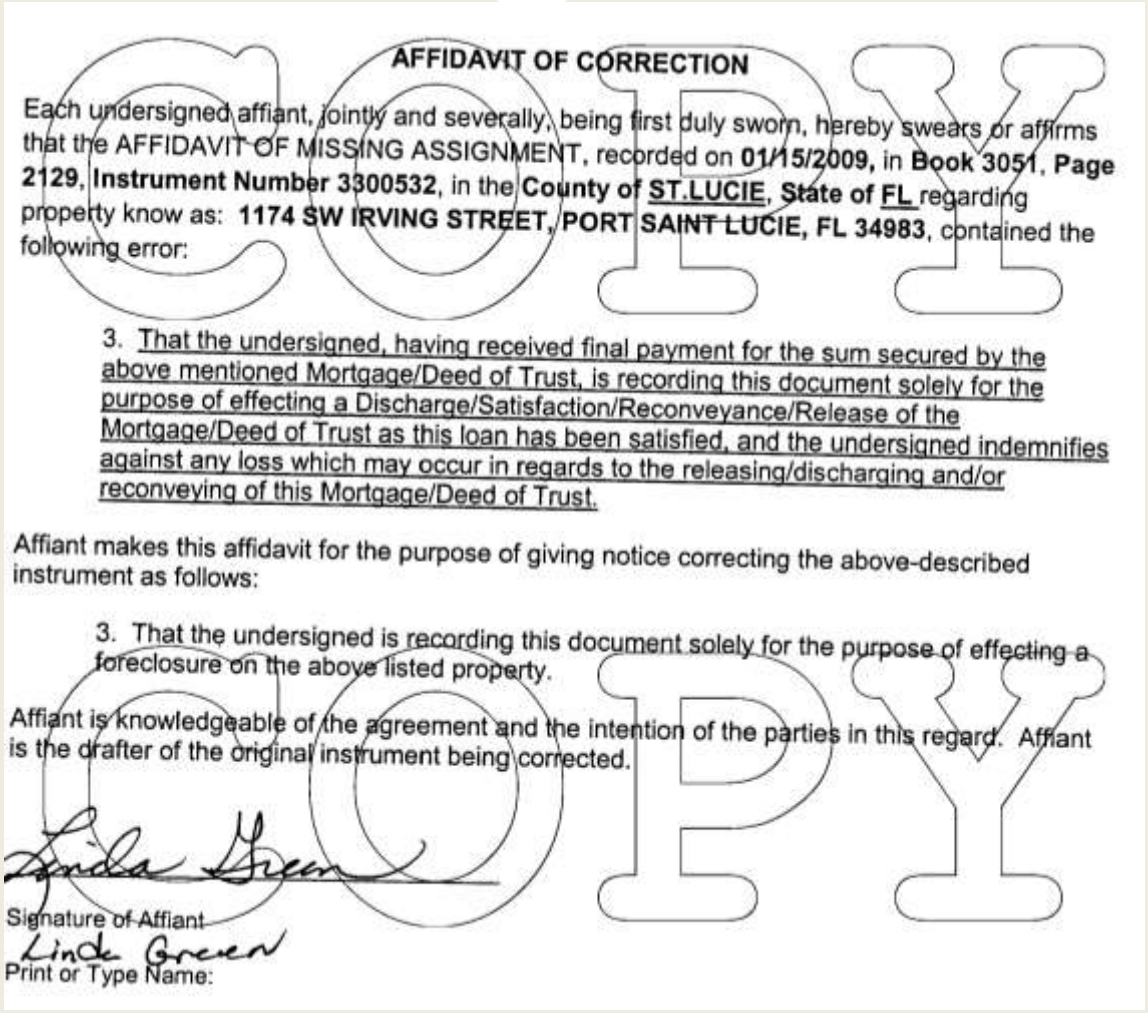
State of California
County of Orange

The foregoing instrument was acknowledged before me
Stephen L. Nagy / A.V.P.\Vault Services
of New Century Mortgage Corporation
California corporation, on
produced as identi

Asin Rahmanpanah

New Century Mortgage Corporation
(Assignor)
Steve Nagy
(Signature)
Stephen L. Nagy / A.V.P.\Vault Services

Affidavit of Correction due to assignment of a mortgage that had been fully paid (St. Lucie Co.)



AFFIDAVIT OF CORRECTION

Each undersigned affiant, jointly and severally, being first duly sworn, hereby swears or affirms that the AFFIDAVIT OF MISSING ASSIGNMENT, recorded on **01/15/2009,** in **Book 3051**, **Page 2129**, **Instrument Number 3300532**, in the **County of ST.LUCIE**, **State of FL** regarding property know as: **1174 SW IRVING STREET, PORT SAINT LUCIE, FL 34983**, contained the following error:

3. That the undersigned, having received final payment for the sum secured by the above mentioned Mortgage/Deed of Trust, is recording this document solely for the purpose of effecting a Discharge/Satisfaction/Reconveyance/Release of the Mortgage/Deed of Trust as this loan has been satisfied, and the undersigned indemnifies against any loss which may occur in regards to the releasing/discharging and/or reconveying of this Mortgage/Deed of Trust.

Affiant makes this affidavit for the purpose of giving notice correcting the above-described instrument as follows:

3. That the undersigned is recording this document solely for the purpose of effecting a foreclosure on the above listed property.

Affiant is knowledgeable of the agreement and the intention of the parties in this regard. Affiant is the drafter of the original instrument being corrected.

Linda Green

Signature of Affiant

Linda Green

Print or Type Name:

COPY

Affidavit of Correction due to an assignment of mortgage that had been fully paid. (Palm Beach Co.)

AFFIDAVIT OF CORRECTION

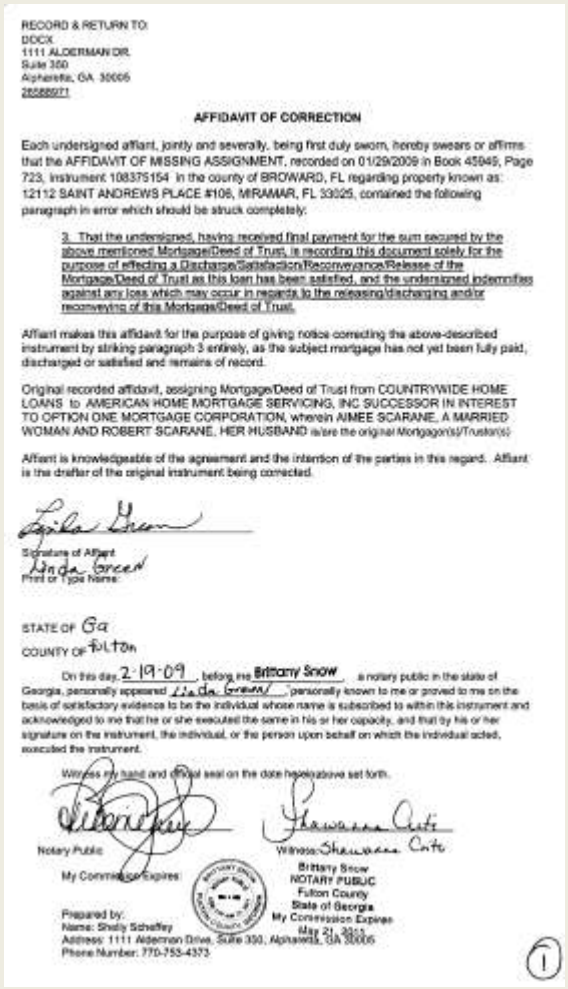
Each undersigned affiant, jointly and severally, being first duly sworn, hereby swears or affirms that the AFFIDAVIT OF MISSING ASSIGNMENT, recorded on **01/13/2009,** in **Book 23034, Page 0986, Instrument Number 20090015260**, in the **County of PALM BEACH**, **State of FL** regarding property know as: **3720 37TH WAY, WEST PALM BEACH, FL 33407**, contained the following error:

3. That the undersigned, having received final payment for the sum secured by the above mentioned Mortgage/Deed of Trust, is recording this document solely for the purpose of effecting a Discharge/Satisfaction/Reconveyance/Release of the Mortgage/Deed of Trust as this loan has been satisfied, and the undersigned indemnifies against any loss which may occur in regards to the releasing/discharging and/or reconveying of this Mortgage/Deed of Trust.

Affiant makes this affidavit for the purpose of giving notice correcting the above-described instrument as follows:

3. That the undersigned is recording this document solely for the purpose of effecting a foreclosure on the above listed property.

Affidavits of Correction due assignments of mortgage that had been fully paid (Broward Co. and Palm Beach Co.)



RECORD & RETURN TO:
DOCX
1111 ALDERMAN DR.
Suite 350
Alpharetta, GA 30005
26588071

AFFIDAVIT OF CORRECTION

Each undersigned affiant, jointly and severally, being first duly sworn, hereby swears or affirms that the AFFIDAVIT OF MISSING ASSIGNMENT, recorded on 01/29/2009 in Book 45945, Page 723, Instrument 108375154 in the county of BROWARD, FL regarding property known as: 12112 SAINT ANDREWS PLACE #106, MIRAMAR, FL 33025, contained the following paragraph in error which should be struck completely:

3. That the undersigned, having received final payment for the sum secured by the above mentioned Mortgage/Deed of Trust, is recording this document solely for the purpose of effecting a Discharge/Satisfaction/Reconveyance/Release of the Mortgage/Deed of Trust as this loan has been satisfied, and the undersigned indemnifies against any loss which may occur in regards to the releasing/discharging and/or reconveying of this Mortgage/Deed of Trust.

Affiant makes this affidavit for the purpose of giving notice correcting the above-described instrument by striking paragraph 3 entirely, as the subject mortgage has not yet been fully paid, discharged or satisfied and remains of record.

Original recorded affidavit, assigning Mortgage/Deed of Trust from COUNTRYWIDE HOME LOANS to AMERICAN HOME MORTGAGE SERVICING, INC SUCCESSOR IN INTEREST TO OPTION ONE MORTGAGE CORPORATION, wherein AIMEE SCARANE, A MARRIED WOMAN AND ROBERT SCARANE, HER HUSBAND is/are the original Mortgagor(s)/Trustor(s)

Affiant is knowledgeable of the agreement and the intention of the parties in this regard. Affiant is the drafter of the original instrument being corrected.

Linda Green
Signature of Affiant
Linda Green
Print or Type Name:

STATE OF Ga
COUNTY OF Fulton

On this day 2-19-09, before me Brittany Snow, a notary public in the state of Georgia, personally appeared Linda Green, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within this instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf on which the individual acted, executed the instrument.

Witness my hand and official seal on the date hereinabove set forth.

Notary Public
My Commission Expires:
Witness: Shawanna Cole

Brittany Snow
NOTARY PUBLIC
Fulton County
State of Georgia
My Commission Expires
May 21, 2011

Prepared by:
Name: Shelly Schaffey
Address: 1111 Alderman Drive, Suite 350, Alpharetta, GA 30005
Phone Number: 770-753-4373

1

CFN 20090046569
OR BK 23074 PG 1643
RECORDED 02/11/2009 11:45:46
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLL
Pg 1643; (1pg)

RECORD & RETURN TO:DOCX
1111 ALDERMAN DR.
Suite 350
Alpharetta, GA 30005
AHMA 647-26177521

AFFIDAVIT OF CORRECTION

Each undersigned affiant, jointly and severally, being first duly sworn, hereby swears or affirms that the AFFIDAVIT OF MISSING ASSIGNMENT, recorded on **01/13/2009**, in **Book 23034, Page 0806, Instrument Number 20090015260**, in the **County of PALM BEACH**, **State of FL** regarding property know as: **3720 37TH WAY, WEST PALM BEACH, FL 33407**, contained the following error:

3. That the undersigned, having received final payment for the sum secured by the above mentioned Mortgage/Deed of Trust, is recording this document solely for the purpose of effecting a Discharge/Satisfaction/Reconveyance/Release of the Mortgage/Deed of Trust as this loan has been satisfied, and the undersigned indemnifies against any loss which may occur in regards to the releasing/discharging and/or reconveying of this Mortgage/Deed of Trust.

Affiant makes this affidavit for the purpose of giving notice correcting the above-described instrument as follows:

3. That the undersigned is recording this document solely for the purpose of effecting a foreclosure on the above listed property.

Affiant is knowledgeable of the agreement and the intention of the parties in this regard. Affiant is the drafter of the original instrument being corrected.

Linda Green
Signature of Affiant
Linda Green
Print or Type Name:

STATE OF Ga
COUNTY OF Fulton

Brittany Snow

On this 2/9/09, before me _____, a notary public in the state of Georgia, personally appeared Linda Green, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within this instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf on which the individual acted, executed the instrument.

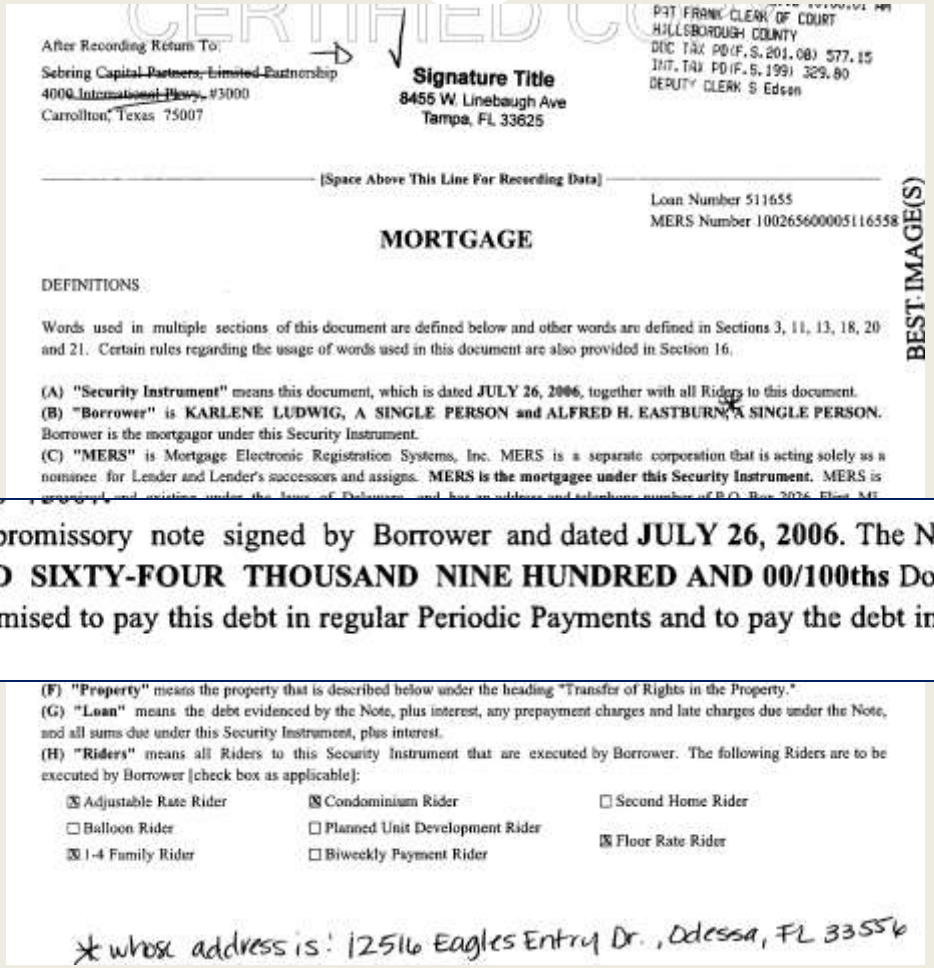
Witness my hand and official seal on the date hereinabove set forth.

Notary Public
My Commission Expires:
Witness: Shawanna Cole

Brittany Snow
NOTARY PUBLIC
Fulton County
State of Georgia
My Commission Expires
May 21, 2011

Prepared by: Shelly Schaffey, 770-753-4373 ext. 2248

$164k Question



PAT FRANK CLERK OF COURT
HILLSBOROUGH COUNTY
DOC TAX PD(F.S.201.08) 577.15
INT. TAX PD(F.S.199) 329.80
DEPUTY CLERK S Edson

After Recording Return To:
Sebring ~~Capital Partners, Limited Partnership~~
~~4000 International Pkwy.~~ #3000
Carrollton, Texas 75007

Signature Title
8455 W. Linebaugh Ave
Tampa, FL 33625

[Space Above This Line For Recording Data]

Loan Number 511655
MERS Number 100265600005116558

BEST IMAGE(S)

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) **"Security Instrument"** means this document, which is dated **JULY 26, 2006**, together with all Riders to this document.
(B) **"Borrower"** is **KARLENE LUDWIG, A SINGLE PERSON and ALFRED H. EASTBURN, A SINGLE PERSON.** Borrower is the mortgagor under this Security Instrument.
(C) **"MERS"** is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is

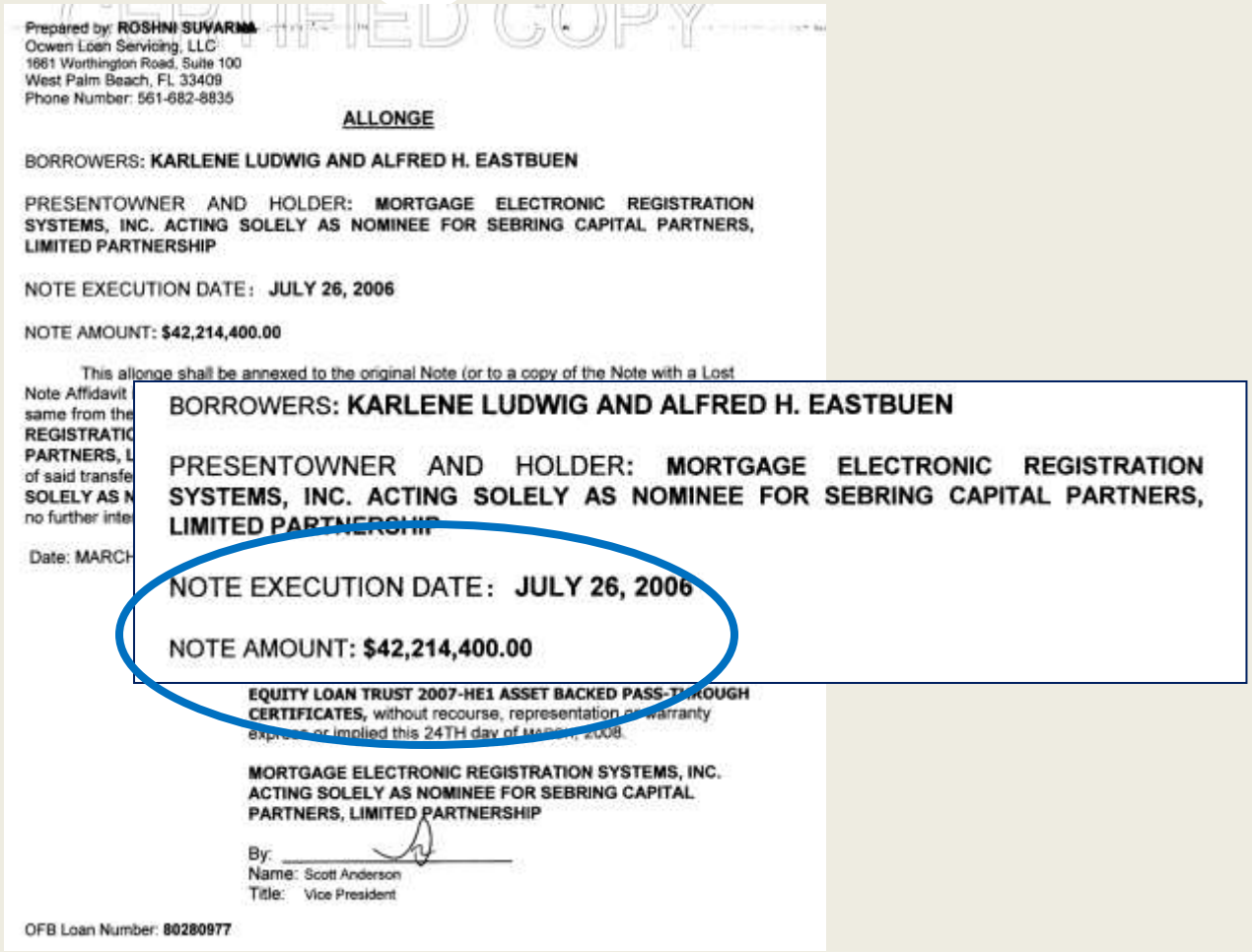
(E) "Note" means the promissory note signed by Borrower and dated **JULY 26, 2006**. The Note states that Borrower owes Lender **ONE HUNDRED SIXTY-FOUR THOUSAND NINE HUNDRED AND 00/100ths** Dollars (U.S.**$164,900.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **AUGUST 1, 2036**.

(F) **"Property"** means the property that is described below under the heading "Transfer of Rights in the Property."
(G) **"Loan"** means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) **"Riders"** means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☒ Adjustable Rate Rider	☒ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☒ Floor Rate Rider
☒ 1-4 Family Rider	☐ Biweekly Payment Rider	

* whose address is: 12516 Eagles Entry Dr., Odessa, FL 33556

And you thought your mortgage was high?



Prepared by: ROSHNI SUVARNA
Ocwen Loan Servicing, LLC
1661 Worthington Road, Suite 100
West Palm Beach, FL 33409
Phone Number: 561-682-8835

ALLONGE

BORROWERS: **KARLENE LUDWIG AND ALFRED H. EASTBUEN**

PRESENTOWNER AND HOLDER: **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR SEBRING CAPITAL PARTNERS, LIMITED PARTNERSHIP**

NOTE EXECUTION DATE: **JULY 26, 2006**

NOTE AMOUNT: **$42,214,400.00**

This allonge shall be annexed to the original Note (or to a copy of the Note with a Lost Note Affidavit
same from the
REGISTRATIC
PARTNERS, L
of said transfe
SOLELY AS N
no further inte

Date: MARCH

BORROWERS: **KARLENE LUDWIG AND ALFRED H. EASTBUEN**

PRESENTOWNER AND HOLDER: **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR SEBRING CAPITAL PARTNERS, LIMITED PARTNERSHIP**

NOTE EXECUTION DATE: **JULY 26, 2006**

NOTE AMOUNT: **$42,214,400.00**

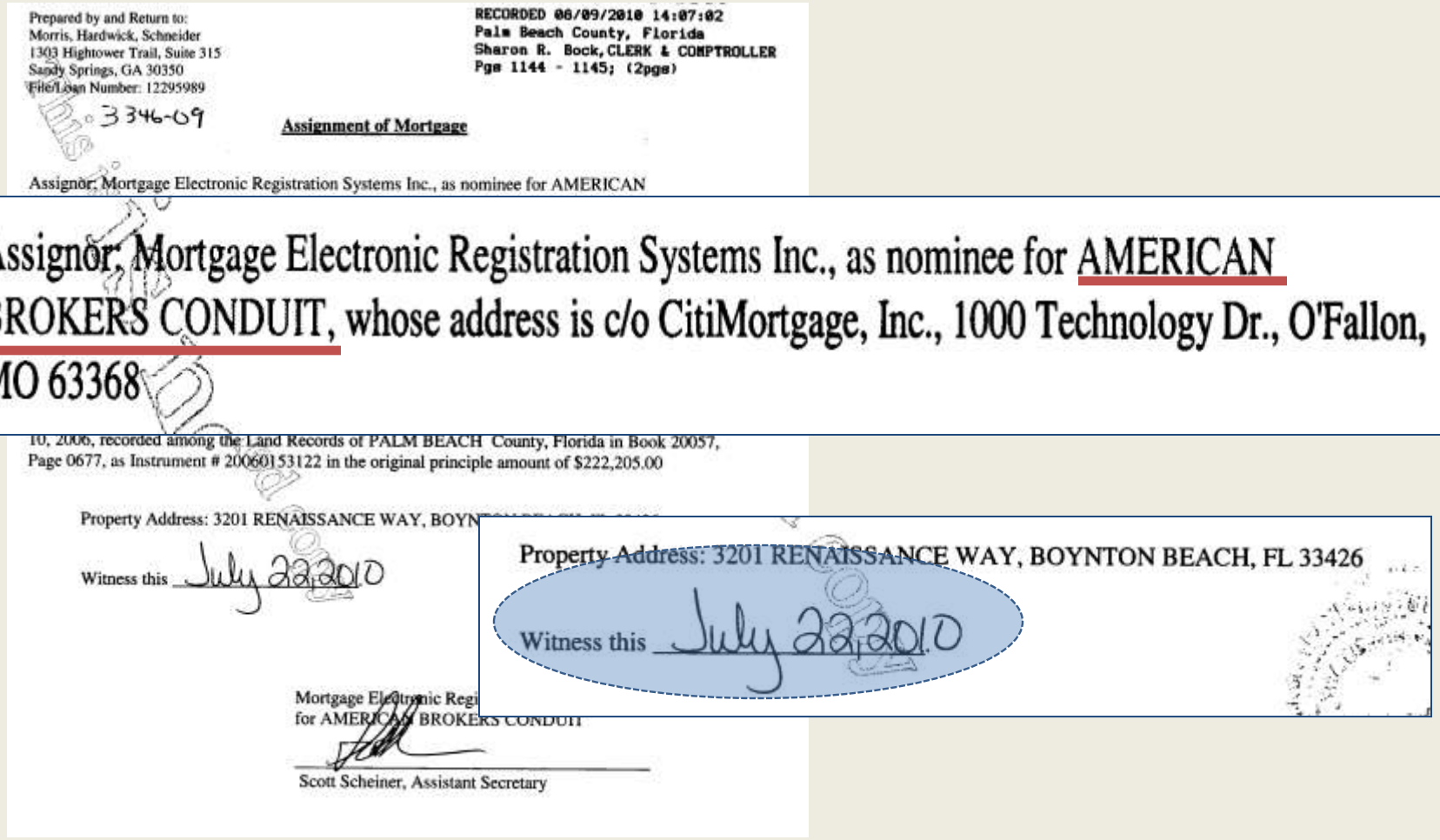
EQUITY LOAN TRUST 2007-HE1 ASSET BACKED PASS-THROUGH CERTIFICATES, without recourse, representation or warranty
express or implied this 24TH day of MARCH, 2008.

**MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
ACTING SOLELY AS NOMINEE FOR SEBRING CAPITAL
PARTNERS, LIMITED PARTNERSHIP**

By: _____
Name: Scott Anderson
Title: Vice President

OFB Loan Number: **80280977**

Assignment for Defunct Assignee



Prepared by and Return to:
Morris, Hardwick, Schneider
1303 Hightower Trail, Suite 315
Sandy Springs, GA 30350
File/Loan Number: 12295989

RECORDED 06/09/2010 14:07:02
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1144 - 1145; (2pgs)

3346-09

Assignment of Mortgage

Assignor: Mortgage Electronic Registration Systems Inc., as nominee for AMERICAN BROKERS CONDUIT, whose address is c/o CitiMortgage, Inc., 1000 Technology Dr., O'Fallon, MO 63368

10, 2006, recorded among the Land Records of PALM BEACH County, Florida in Book 20057, Page 0677, as Instrument # 20060153122 in the original principle amount of $222,205.00

Property Address: 3201 RENAISSANCE WAY, BOYNTON BEACH, FL 33426

Witness this July 22, 2010

Mortgage Electronic Regi
for AMERICAN BROKERS CONDUIT

Scott Scheiner, Assistant Secretary

American Brokers Conduit BANKRUPT 8/7/2007

Official Form 1 (04/07)

United States Bankruptcy Court **DISTRICT OF DELAWARE**	**Voluntary Petition**
Name of Debtor (if individual, enter Last, First, Middle): American Home Mortgage Holdings, Inc.	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec./Complete EIN or other Tax I.D. No. (if more than one, state all): 13-4066303	Last four digits of Soc. Sec./Complete EIN or other Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State): 538 Broadhollow Road Melville, NY	Street Address of Joint Debtor (No. and Street, City, and State):
County of Residence or of the Suffolk, NY	
Mailing Address of Debtor (i	
Location of Principal Assets	

Type of D
(Form of Org
(Check on

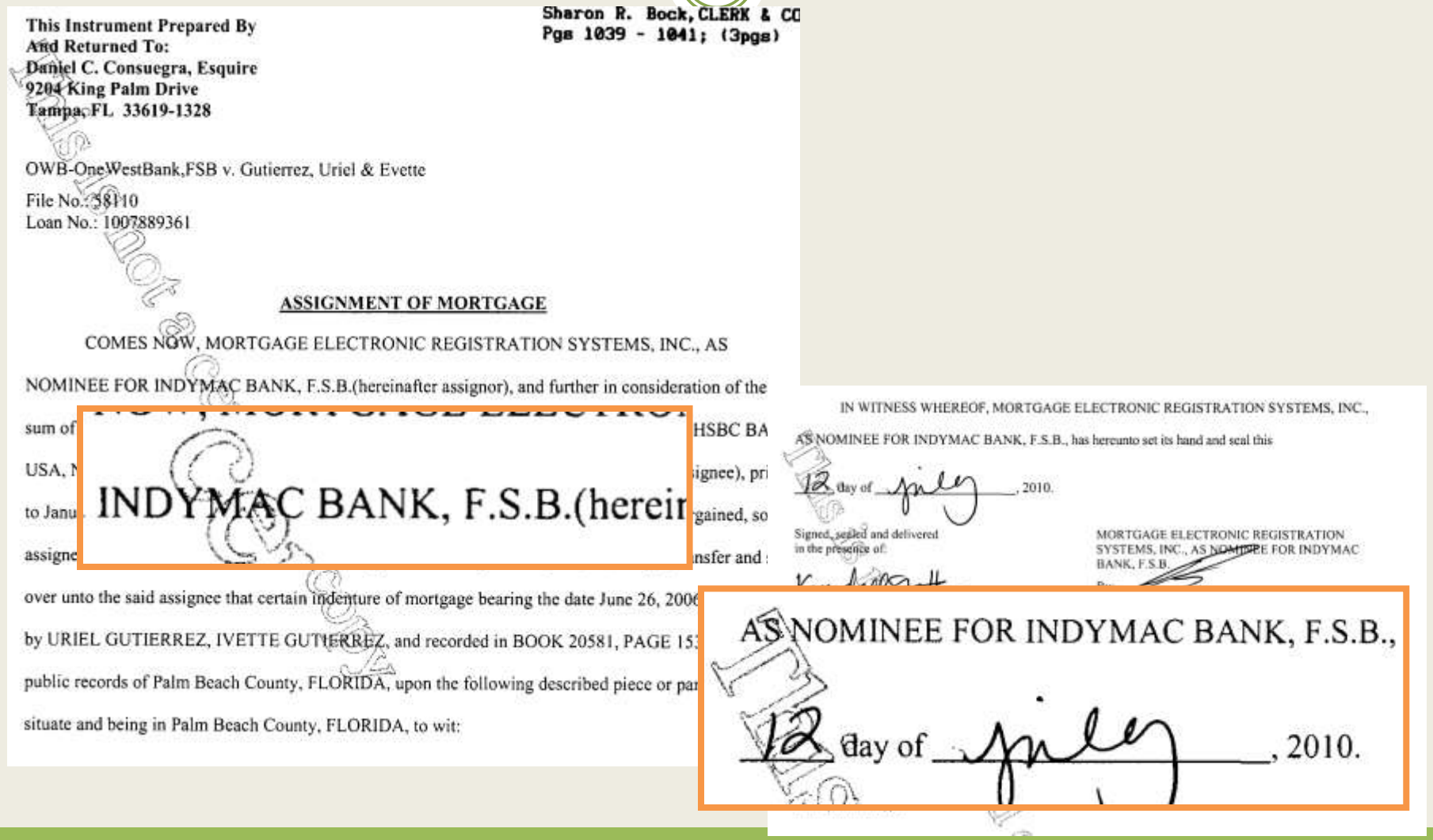
- ☐ Individual (includes Joi
  See Exhibit D on page 2
- ☒ Corporation (includes L
- ☐ Partnership
- ☐ Other (If debtor is not o
  check this box and state

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
AMERICAN HOME MORTGAGE HOLDINGS, INC., a Delaware corporation, et al.,	:	Case No. 07-11047 (CSS)
Debtors.	:	Joint Administration Pending

AGENDA OF MATTERS SCHEDULED FOR FIRST DAY HEARING ON AUGUST 7, 2007 AT 3:00 P.M. (ET)

Assignment by a defunct institution



This Instrument Prepared By
And Returned To:
Daniel C. Consuegra, Esquire
9204 King Palm Drive
Tampa, FL 33619-1328

Sharon R. Bock, CLERK & CO
Pgs 1039 - 1041; (3pgs)

OWB-OneWestBank,FSB v. Gutierrez, Uriel & Evette

File No.: 38110
Loan No.: 1007889361

ASSIGNMENT OF MORTGAGE

COMES NOW, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR INDYMAC BANK, F.S.B.(hereinafter assignor), and further in consideration of the sum of [illegible] HSBC BA USA, N[illegible]signee), pri to Janu[illegible]gained, so assigne[illegible]nsfer and over unto the said assignee that certain indenture of mortgage bearing the date June 26, 2006 by URIEL GUTIERREZ, IVETTE GUTIERREZ, and recorded in BOOK 20581, PAGE 15[illegible] public records of Palm Beach County, FLORIDA, upon the following described piece or par situate and being in Palm Beach County, FLORIDA, to wit:

INDYMAC BANK, F.S.B.(herein

IN WITNESS WHEREOF, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR INDYMAC BANK, F.S.B., has hereunto set its hand and seal this 12 day of July, 2010.

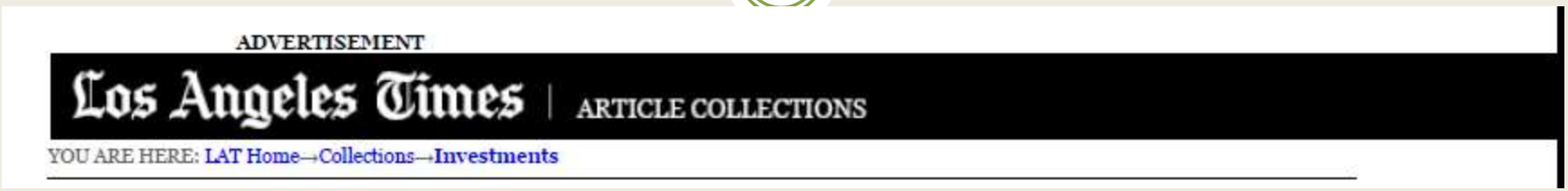
Signed, sealed and delivered in the presence of:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR INDYMAC BANK, F.S.B.

AS NOMINEE FOR INDYMAC BANK, F.S.B.,

12 day of July, 2010.

IndyMac, out of business CLOSED July 2008



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Los Angeles Times | ARTICLE COLLECTIONS

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Federal regulators seize crippled IndyMac Bank

A run on the Pasadena thrift ends in one of the biggest financial failures ever. Doors will reopen Monday.

July 12, 2008 | Kathy M. Kristof and Andre

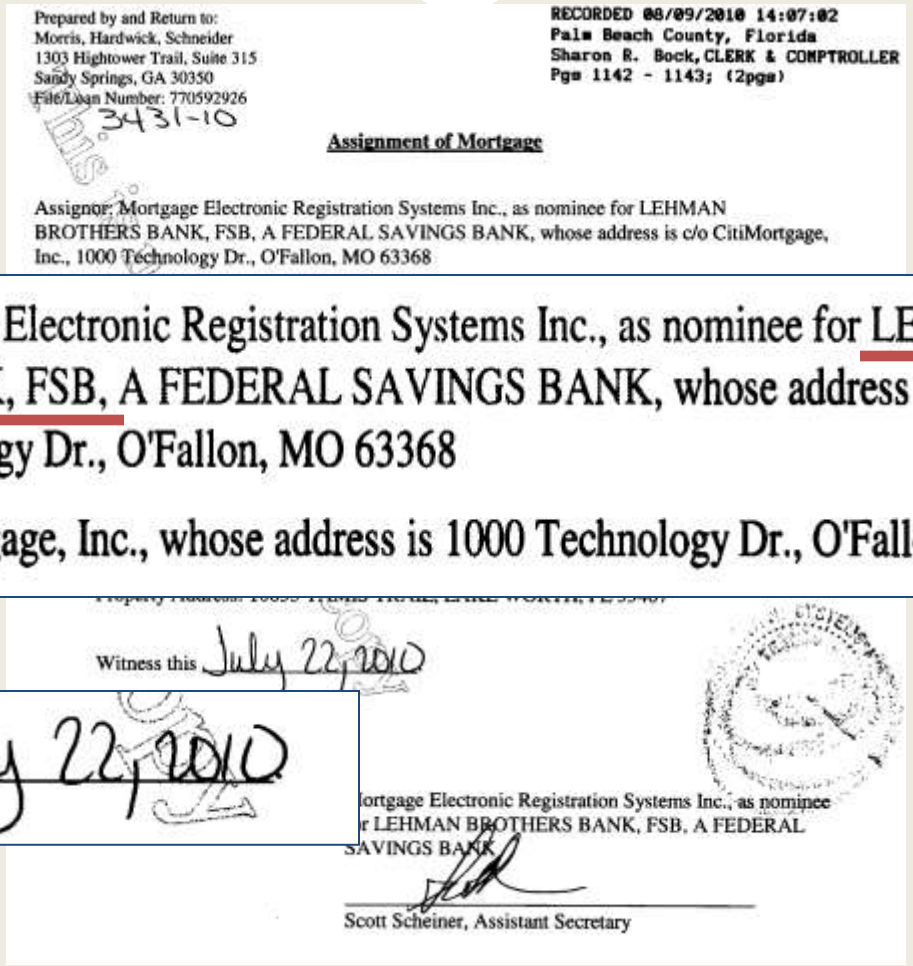
July 12, 2008

The federal government took control of Pasadena-based IndyMac Bank on Friday in what regulators called the second-largest bank failure in U.S. history.

* * *

The bank's 33 branches will be closed over the weekend, but the Federal Deposit Insurance Corp. will reopen the bank on Monday as IndyMac Federal Bank, said the Office of Thrift Supervision in Washington.

Assignment for Defunct Assignee



Prepared by and Return to:
Morris, Hardwick, Schneider
1303 Hightower Trail, Suite 315
Sandy Springs, GA 30350
File/Loan Number: 770592926
3431-10

RECORDED 08/09/2010 14:07:02
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1142 - 1143; (2pgs)

Assignment of Mortgage

Assignor: Mortgage Electronic Registration Systems Inc., as nominee for LEHMAN BROTHERS BANK, FSB, A FEDERAL SAVINGS BANK, whose address is c/o CitiMortgage, Inc., 1000 Technology Dr., O'Fallon, MO 63368

Assignor: Mortgage Electronic Registration Systems Inc., as nominee for LEHMAN BROTHERS BANK, FSB, A FEDERAL SAVINGS BANK, whose address is c/o CitiMortgage, Inc., 1000 Technology Dr., O'Fallon, MO 63368

Assignee: CitiMortgage, Inc., whose address is 1000 Technology Dr., O'Fallon, MO 63368

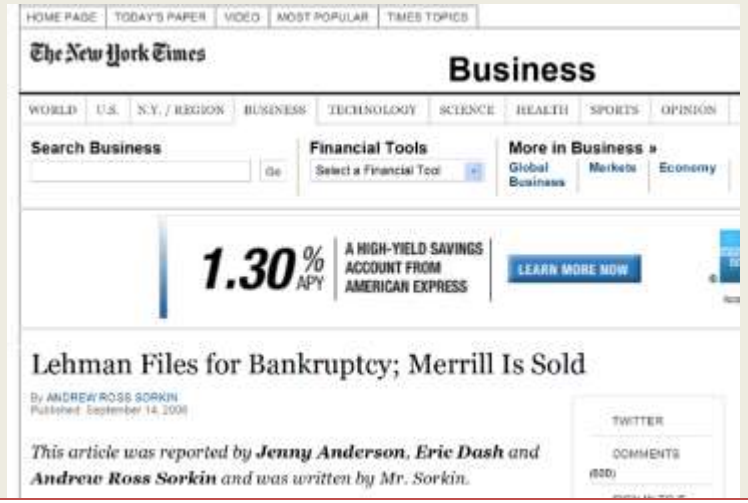
Witness this July 22, 2010

Witness this July 22, 2010

ortgage Electronic Registration Systems Inc., as nominee
r LEHMAN BROTHERS BANK, FSB, A FEDERAL
SAVINGS BANK

Scott Scheiner, Assistant Secretary

Lehman Brothers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Lehman Files for Bankruptcy; Merrill Is Sold

By ANDREW ROSS SORKIN
Published: September 14, 2008

*This article was reported by **Jenny Anderson**, **Eric Dash** and **Andrew Ross Sorkin** and was written by Mr. Sorkin.*

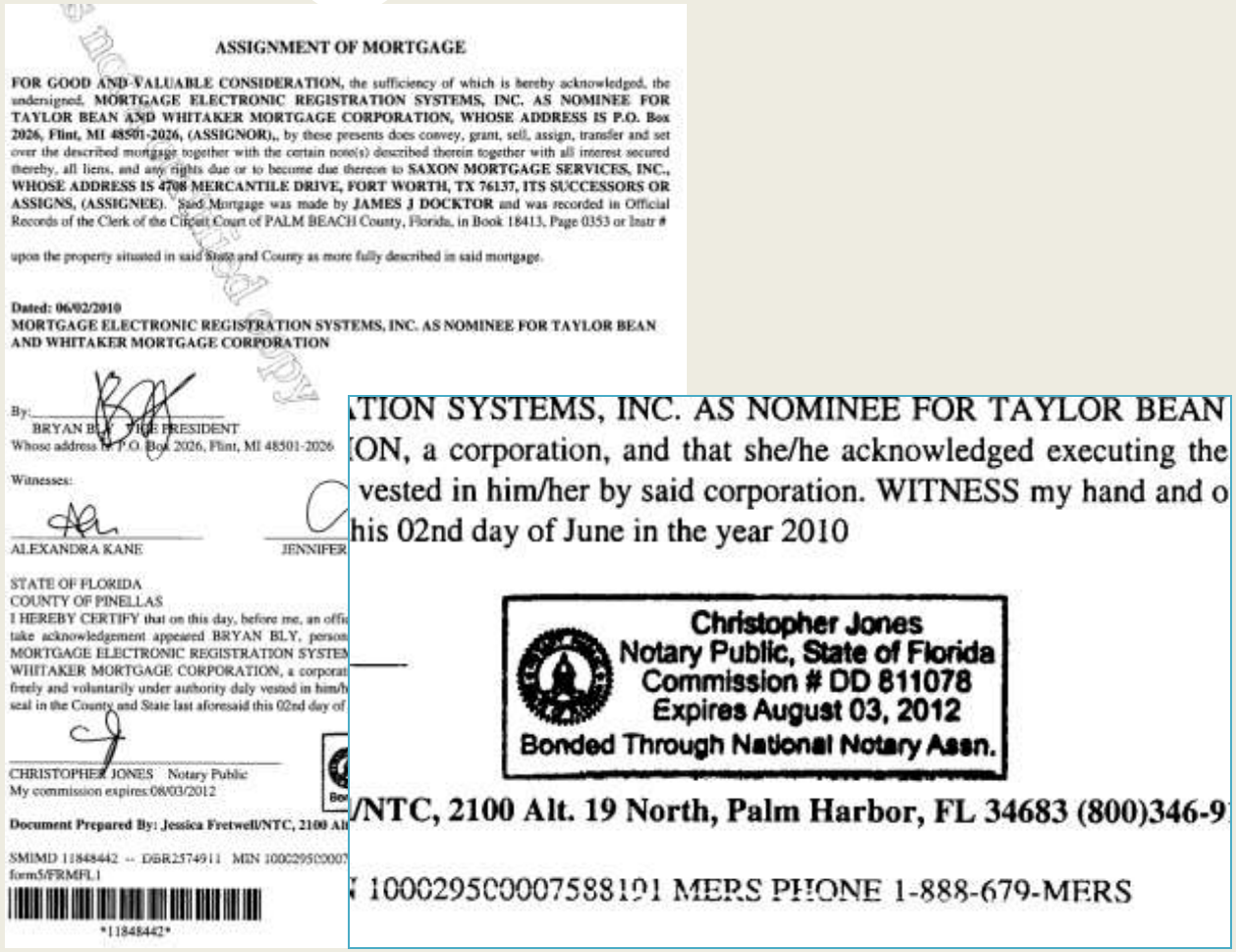
TWITTER

COMMENTS

Lehman Files for Bankruptcy; Merrill Is Sold

By ANDREW ROSS SORKIN
Published: September 14, 2008

Notary Issues



ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR TAYLOR BEAN AND WHITAKER MORTGAGE CORPORATION, WHOSE ADDRESS IS P.O. Box 2026, Flint, MI 48501-2026, (ASSIGNOR),**, by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to **SAXON MORTGAGE SERVICES, INC., WHOSE ADDRESS IS 4708 MERCANTILE DRIVE, FORT WORTH, TX 76137, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE).** Said Mortgage was made by **JAMES J DOCKTOR** and was recorded in Official Records of the Clerk of the Circuit Court of PALM BEACH County, Florida, in Book 18413, Page 0353 or Instr #

upon the property situated in said State and County as more fully described in said mortgage.

Dated: 06/02/2010
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR TAYLOR BEAN AND WHITAKER MORTGAGE CORPORATION

By:_____
BRYAN BLY VICE PRESIDENT
Whose address is P.O. Box 2026, Flint, MI 48501-2026

Witnesses:

ALEXANDRA KANE JENNIFER

STATE OF FLORIDA
COUNTY OF PINELLAS
I HEREBY CERTIFY that on this day, before me, an offi
take acknowledgement appeared BRYAN BLY, person
MORTGAGE ELECTRONIC REGISTRATION SYSTE
WHITAKER MORTGAGE CORPORATION, a corporat
freely and voluntarily under authority duly vested in him/h
seal in the County and State last aforesaid this 02nd day of

CHRISTOPHER JONES Notary Public
My commission expires:08/03/2012

Document Prepared By: Jessica Fretwell/NTC, 2100 Alt

SMIMD 11848442 -- DBR2574911 MIN 100029500007
form5/FRMFL1

11848442

ATION SYSTEMS, INC. AS NOMINEE FOR TAYLOR BEAN
ION, a corporation, and that she/he acknowledged executing the
vested in him/her by said corporation. WITNESS my hand and o
his 02nd day of June in the year 2010

Christopher Jones
Notary Public, State of Florida
Commission # DD 811078
Expires August 03, 2012
Bonded Through National Notary Assn.

/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9

100029500007588191 MERS PHONE 1-888-679-MERS

Impossible Notaries- Stamps are only good for ***four years*** in Florida

Prepared by: Jaicel Valverde
OCWEN LOAN SERVICING, LLC
1661 Worthington Road Suite 100
West Palm Beach, FL 33409
Phone Number: 561-682-8835
497172887727
Attorney Code: 24079

ASSIGNMENT OF
FLORID

This **ASSIGNMENT OF MORTGAGE** is from N
whose address is c/o Ocwen Loan Servicing, LLC. 1661 Wort
("Assignor") to **DEUTSCHE BANK NATIONAL TRUS**
ESTATE CAPITAL TRUST 2005-HE3 MORTGAGE P
HE3 address is C/O OCWEN LOAN SERVICING, LLC. 1
Florida, 33409 ("Assignee").

For good and valuable consideration, the receipt a
Assignor does by these presents hereby grant, bargain, sell, transfer and
transferees and assigns forever, all of the right, title and interest of said A
describing land therein, duly recorded in the Office of the Public Rec
FLORIDA, as follows;
Mortgagor: RUFINO AQUINO AND VILMA AQUINO
Mortgagee: NEW CENTURY MORTGAGE CORPORATION
Document Date: JUNE 08, 2005
Amount: $ 200,000.00
Recording Date: JUNE 23, 2005
Book/Volume/Docket/Liber: 18793
Page/Folio: 1479
Instrument: 20050388757
Property Address: 1201 PINE SAGE CIRCLE, WEST PALM BEACH, FL
LEGAL DESCRIPTION:

Lot 1, of THE PALM CLUB, A RESIDENTIA
DEVELOPMENT, according to the Plat there
of the Clerk of the Circuit Court in and for P
Florida, recorded in Plat Book 45, Page 131.

Mortgagor: RUFINO AQUINO AND VI
Mortgagee: NEW CENTURY MORTGA
Document Date: JUNE 08, 2005
Amount: $ 200,000.00
Recording Date: JUNE 23, 2005
Book/Volume/Docket/Liber: 18793
Page/Folio: 1479

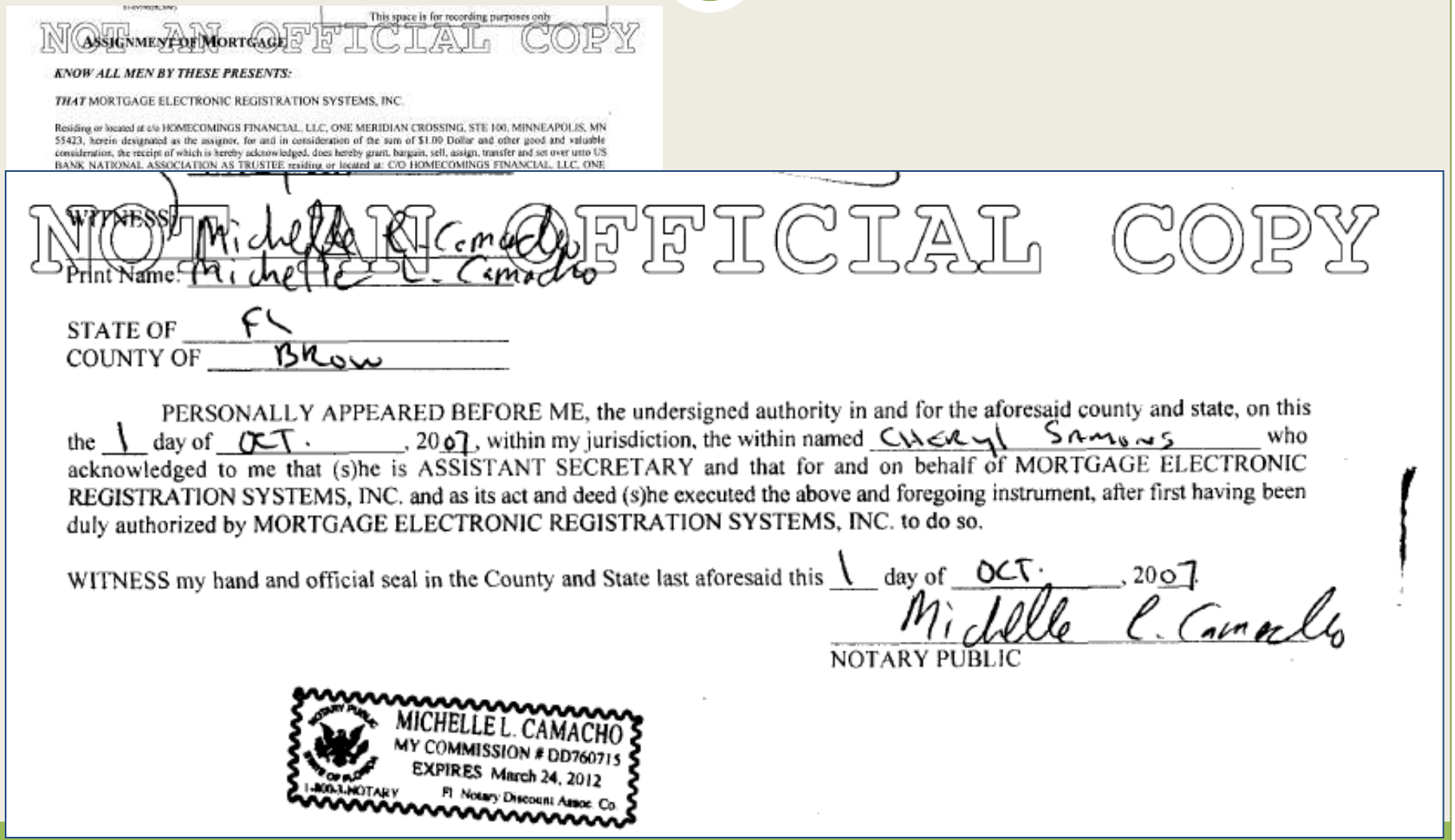
for NEW CENTURY
execute the foregoing instrument. He/She is personally k

ss my hand and official seal.

NOTARY PUBLIC-STATE OF FLORIDA
Elsie Ramirez
Commission # DD914835
Expires: AUG. 09, 2013
BONDED THRU ATLANTIC BONDING CO., INC.

Notary Public

Impossible Notaries



This space is for recording purposes only

NOT AN OFFICIAL COPY

ASSIGNMENT OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS:

THAT MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

Residing or located at c/o HOMECOMINGS FINANCIAL, LLC, ONE MERIDIAN CROSSING, STE 100, MINNEAPOLIS, MN 55423, herein designated as the assignor, for and in consideration of the sum of $1.00 Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over unto US BANK NATIONAL ASSOCIATION AS TRUSTEE residing or located at: C/O HOMECOMINGS FINANCIAL, LLC, ONE

NOT AN OFFICIAL COPY

WITNESS

Print Name: Michelle L. Camacho

STATE OF FL

COUNTY OF Brow

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the 1 day of OCT., 2007, within my jurisdiction, the within named Cheryl Samons who acknowledged to me that (s)he is ASSISTANT SECRETARY and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

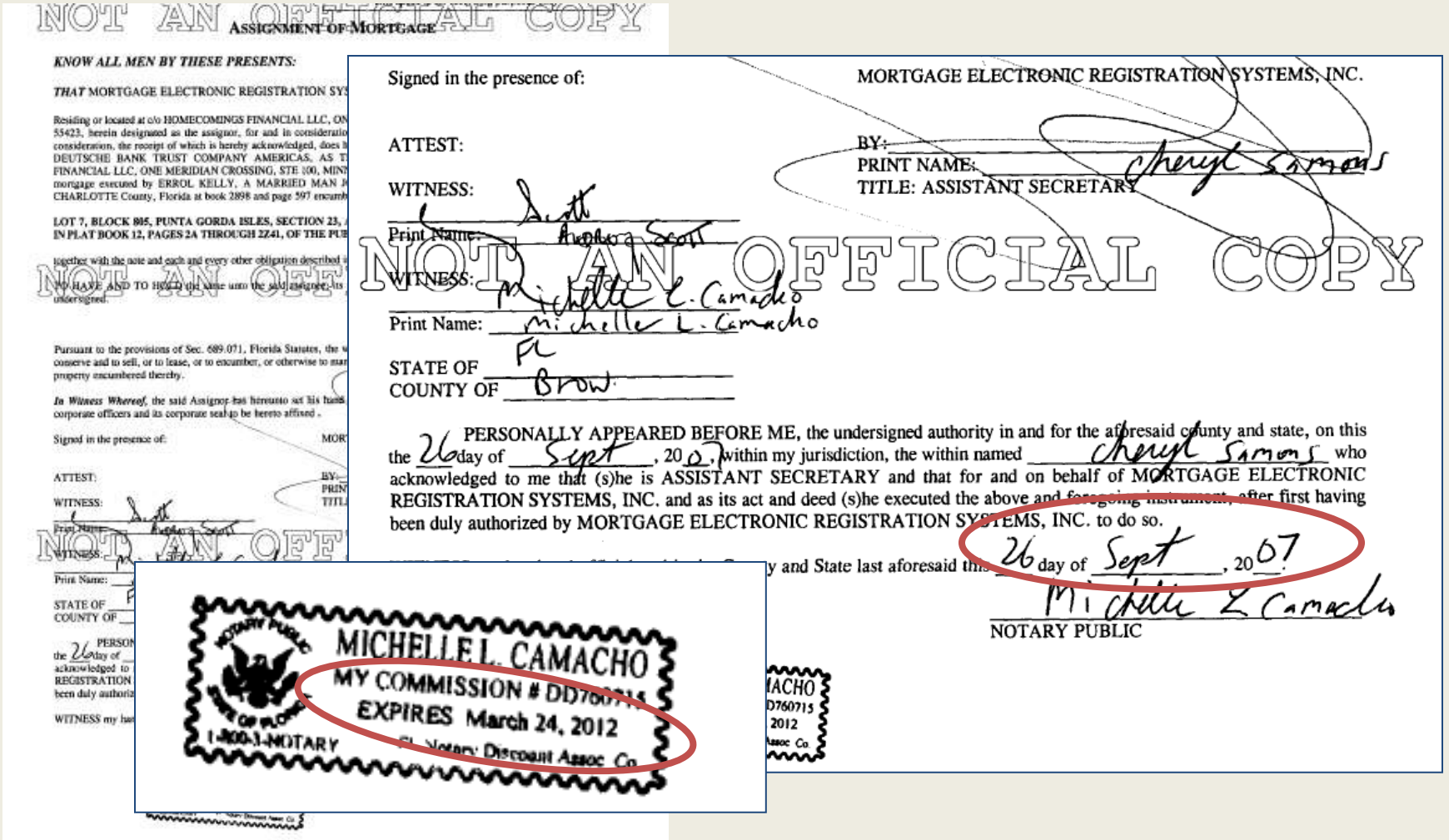
WITNESS my hand and official seal in the County and State last aforesaid this 1 day of OCT., 2007.

Michelle L. Camacho

NOTARY PUBLIC

MICHELLE L. CAMACHO
MY COMMISSION # DD760715
EXPIRES March 24, 2012
1-800-3-NOTARY
FI Notary Discount Assoc. Co.

Impossible Notaries



NOT AN OFFICIAL COPY

ASSIGNMENT OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS:

THAT MORTGAGE ELECTRONIC REGISTRATION SYS

Residing or located at c/o HOMECOMINGS FINANCIAL LLC, ON
55423, herein designated as the assignor, for and in consideratio
consideration, the receipt of which is hereby acknowledged, does h
DEUTSCHE BANK TRUST COMPANY AMERICAS, AS T
FINANCIAL LLC, ONE MERIDIAN CROSSING, STE 100, MINN
mortgage executed by ERROL KELLY, A MARRIED MAN J
CHARLOTTE County, Florida at book 2898 and page 597 encumb

LOT 7, BLOCK 805, PUNTA GORDA ISLES, SECTION 23,
IN PLAT BOOK 12, PAGES 2A THROUGH 2Z41, OF THE PUB

together with the note and each and every other obligation described i

TO HAVE AND TO HOLD the same unto the said assignee, its
undersigned.

Pursuant to the provisions of Sec. 689.071, Florida Statutes, the w
conserve and to sell, or to lease, or to encumber, or otherwise to mar
property encumbered thereby.

In Witness Whereof, the said Assignor has hereunto set his hand
corporate officers and its corporate seal to be hereto affixed .

Signed in the presence of:

ATTEST:

WITNESS:

Print Name:

WITNESS:

Print Name:

STATE OF
COUNTY OF

PERSON
the 26 day of
acknowledged to
REGISTRATION
been duly authori

WITNESS my han

Signed in the presence of:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

ATTEST:

BY:
PRINT NAME: Cheryl Samons
TITLE: ASSISTANT SECRETARY

WITNESS:

Print Name: Audrey Scott

WITNESS:

Print Name: Michelle L. Camacho

STATE OF FL
COUNTY OF Brow

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the 26 day of Sept, 20 07, within my jurisdiction, the within named Cheryl Samons who acknowledged to me that (s)he is ASSISTANT SECRETARY and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

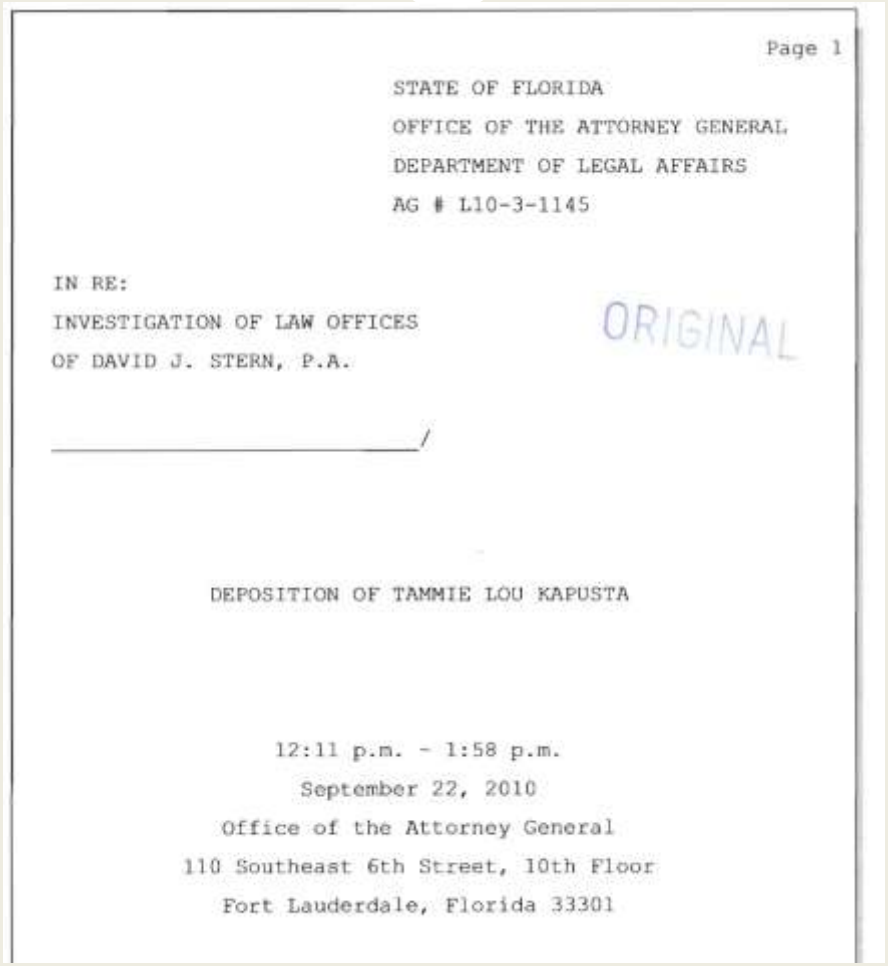
y and State last aforesaid this 26 day of Sept, 20 07

Michelle L Camacho
NOTARY PUBLIC

NOTARY PUBLIC
STATE OF FLORIDA
MICHELLE L. CAMACHO
MY COMMISSION # DD760715
EXPIRES March 24, 2012
1-800-3-NOTARY
FL Notary Discount Assoc Co

MACHO
D760715
2012
Assoc Co

Sworn Testimony of Tammie Lou Kapusta



STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LEGAL AFFAIRS
AG # L10-3-1145

IN RE:
INVESTIGATION OF LAW OFFICES
OF DAVID J. STERN, P.A.

ORIGINAL

_____/

DEPOSITION OF TAMMIE LOU KAPUSTA

12:11 p.m. - 1:58 p.m.
September 22, 2010
Office of the Attorney General
110 Southeast 6th Street, 10th Floor
Fort Lauderdale, Florida 33301

Testimony of Tammie Lou Kapusta,
former employee of Law Offices of David J. Stern, P.A.

Q Would these notaries be there watching her [Cheryl Samons] as she signed?

A No.

Q She would just sit there and sign stacks of them?

A Correct. As far as notaries go in the firm I don't think any notary actually used their own notary stamp. The team used them.

Q There were just stamps around?

A Yes.

Q And you actually saw that?

A I was part of that.

Sample Assignment of Mortgage

ASSIGNMENT OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS:

THAT MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

Residing or located at c/o WELLS FARGO BANK, N.A., 3476 STATEVIEW BLVD., FT. MILL, SC 29715 herein designated as the assignor, for and in consideration of the sum of $1.00 Dollar and other good and valuable considerations, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over unto US BANK NATIONAL ASSOCIATION NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE FOR THE HOLDER BEAR STEARNS ASSET BACKED SECURITIES I TRUST 2006-2M1 residing or located at: C/O AMERICA' S SERVICING COMPANY, 3476 STATEVIEW BLVD, FT. MILL, SC 29715 herein designated as the assignee, the mortgage executed by THOMAS A GRODFR recorded in LEE County, Florida at book INSTRUMENT # 2005000101558 and page (recumbering the property more particularly described as follows:

CONDOMINIUM UNIT NO. 1203, IN BEAU RIVAGE, A CONDOMINIUM, ACCORDING TO THE DECLARATION THEREOF, RECORDED IN OFFICIAL RECORDS BOOK 4668, PAGES 73-216, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AS AMENDED AND/OR SUPPLEMENTED FROM TIME TO TIME/

together with the note and each and every other obligation described in said mortgage and the money due and to become due thereon

TO HAVE AND TO HOLD the same unto the said assignee, its successors and assigns forever, but without recourse on the undersigned.

Pursuant to the provisions of Sec. 689.071, Florida Statutes, the within named Trustee has the power and authority to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the above-described mortgage and the real property encumbered thereby.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed.

Signed in the presence of:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

ATTEST:

BY:
PRINT NAME: CHERYL SAMONS
TITLE: ASSISTANT SECRETARY

WITNESS:

Print Name:

WITNESS:

Print Name:

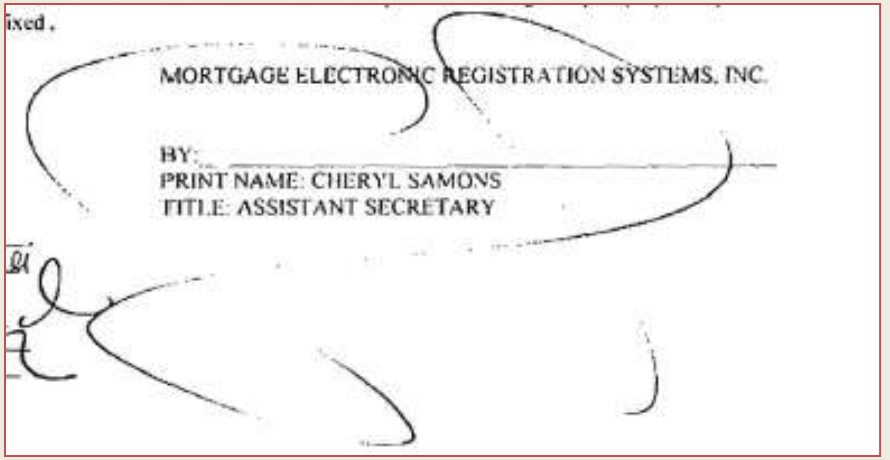
STATE OF FLORIDA
COUNTY OF BROWARD

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the 3RD day of MAY, 2008, within my jurisdiction, the within named CHERYL SAMONS who acknowledged to me that (s)he is ASSISTANT SECRETARY and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. so to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 3RD day of MAY, 2008.

NOTARY PUBLIC

ANDREA WILSON
Notary Public - State of Florida
My Commission Expires Sep 6, 2010
Commission # DD 592879
Bonded By National Notary Assn.



Testimony of Tammie Lou Kapusta,
former employee of Law Offices of David J. Stern, P.A.

Q So this was an assignment signing table?

A Correct. Assignments or Affidavit A's that she was signing.

Q What's an Affidavit A?

A The indebtedness affidavit.

Q Okay.

A I think that's all Cheryl signed for. I think Beth signed for the rest. There's your Exhibit E's. We had different exhibits. That's how they signed them. When Cheryl was out of the office Tammie would sign them or Beth would go sign them.

Q Beth would sign but it would say Cheryl Samons?

A Correct.

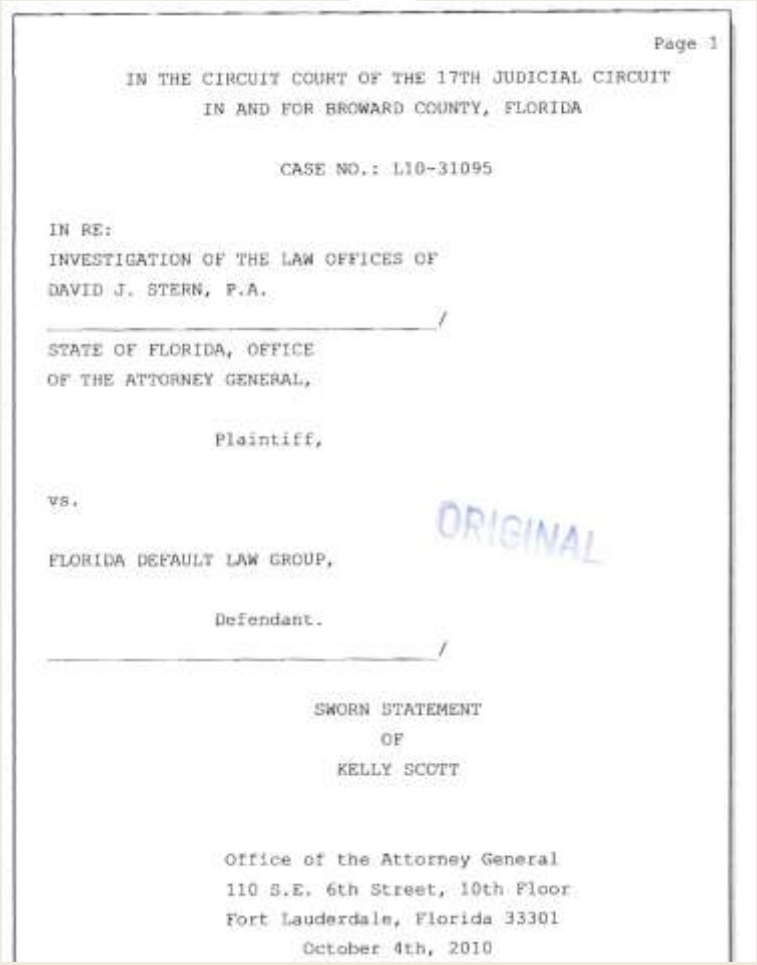
Q And Beth would be the signer?

A Correct.

Q Or Tammie Sweat?

A Right.

Testimony of Kelly Scott,
former employee of Law Offices of David J. Stern, P.A.



IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: L10-31095

IN RE:
INVESTIGATION OF THE LAW OFFICES OF
DAVID J. STERN, P.A.
_____/

STATE OF FLORIDA, OFFICE
OF THE ATTORNEY GENERAL,

Plaintiff,

vs.

ORIGINAL

FLORIDA DEFAULT LAW GROUP,

Defendant.
_____/

SWORN STATEMENT
OF
KELLY SCOTT

Office of the Attorney General
110 S.E. 6th Street, 10th Floor
Fort Lauderdale, Florida 33301
October 4th, 2010

Testimony of Kelly Scott,
former employee of Law Offices of David J. Stern, P.A.

Q. Other than Cheryl going around twice a day to sign the documents that she was reading, was there anyone else that did that, as well?

A. Only Cheryl. And only when Cheryl was out of town, that she would go on vacation, there was someone else that would sign on her behalf. Who was it? I really don't know.

Q. But they signed Cheryl's name?

A. Yes.

Q. And when you said those were the papers that were up on the long table on the four floors, what types of documents were those?

A. Motions for Summary Judgment and Assignments of Mortgage.

* * *

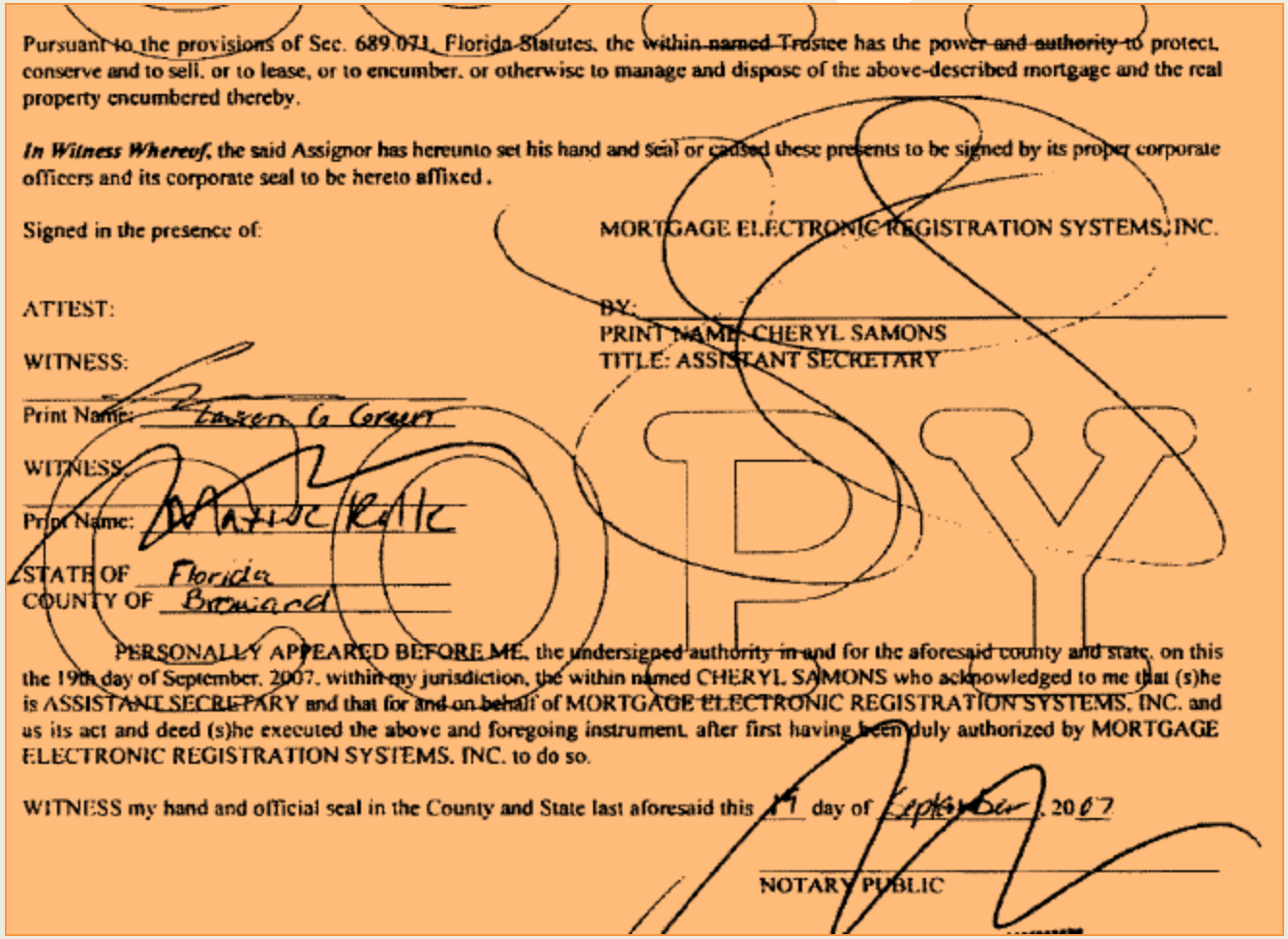
Q. But whatever was on those long tables, nobody was reading? They were just putting their names on them?

A. Yes, they were just putting their names.

Q. Yes, there was no one reading them?

A. Yes, there was no reading them.

Cheryl Samons "signature"



Pursuant to the provisions of Sec. 689.071, Florida Statutes, the within named Trustee has the power and authority to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the above-described mortgage and the real property encumbered thereby.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed.

Signed in the presence of:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

ATTEST:

BY: _____
PRINT NAME: CHERYL SAMONS
TITLE: ASSISTANT SECRETARY

WITNESS:

Print Name: Lauren La Corsair

WITNESS:

Print Name: Natalie Kelly

STATE OF Florida
COUNTY OF Broward

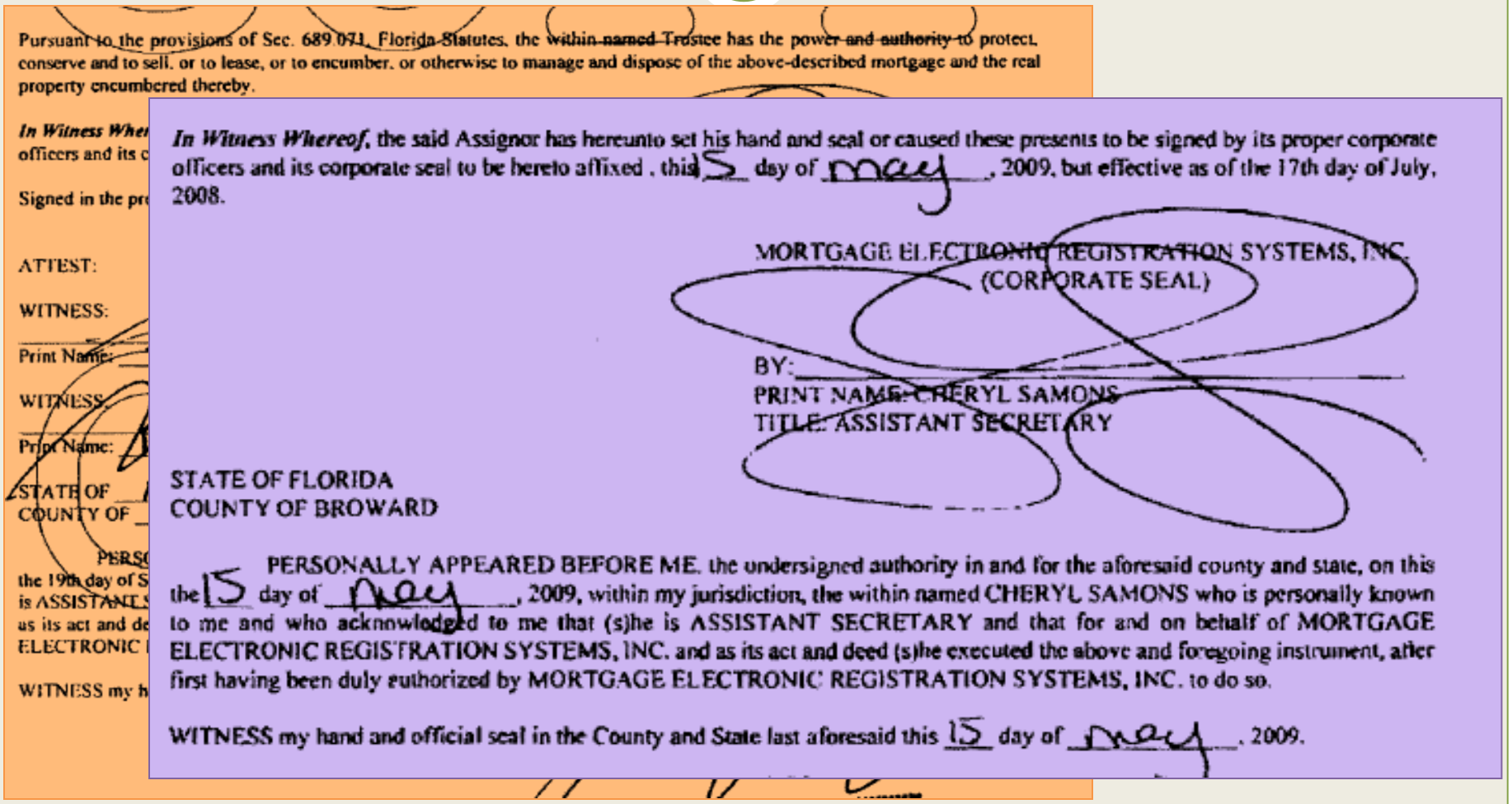
PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the 19th day of September, 2007, within my jurisdiction, the within named CHERYL SAMONS who acknowledged to me that (s)he is ASSISTANT SECRETARY and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 19 day of September, 2007

NOTARY PUBLIC

COPY

Cheryl Samons "signature"



Pursuant to the provisions of Sec. 689.071, Florida Statutes, the ~~within named Trustee~~ has the power ~~and authority~~ to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the above-described mortgage and the real property encumbered thereby.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed , this 5 day of may, 2009, but effective as of the 17th day of July, 2008.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
(CORPORATE SEAL)

BY:
PRINT NAME: CHERYL SAMONS
TITLE: ASSISTANT SECRETARY

STATE OF FLORIDA
COUNTY OF BROWARD

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the 15 day of may, 2009, within my jurisdiction, the within named CHERYL SAMONS who is personally known to me and who acknowledged to me that (s)he is ASSISTANT SECRETARY and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 15 day of may, 2009.

ATTEST:

WITNESS:

Print Name:

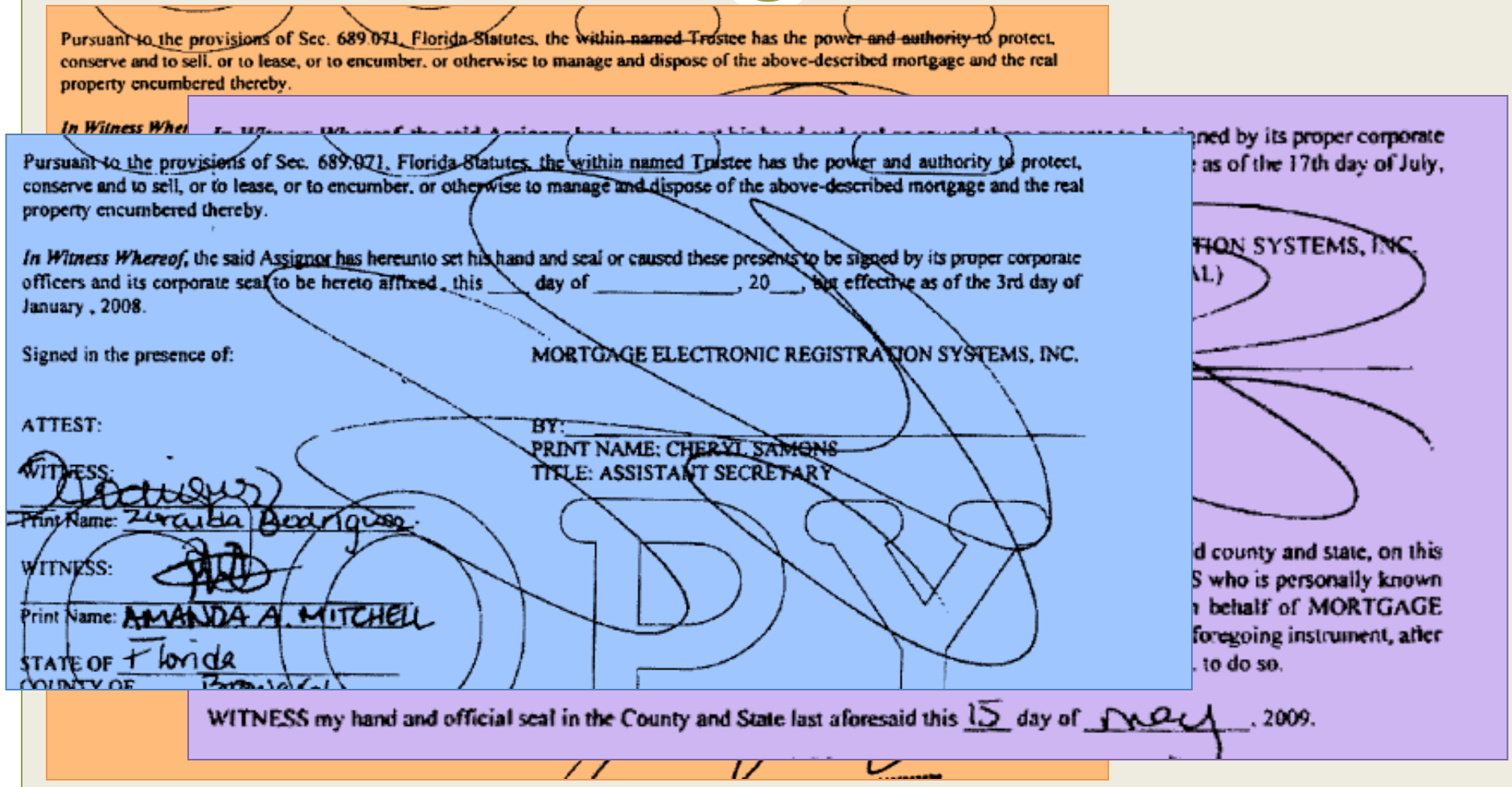
WITNESS:

Print Name:

STATE OF
COUNTY OF

WITNESS my h

Cheryl Samons "signature"



Pursuant to the provisions of Sec. 689.071, Florida Statutes, the within named Trustee has the power and authority to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the above-described mortgage and the real property encumbered thereby.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed, this ____ day of _____, 20___, but effective as of the 3rd day of January, 2008.

Signed in the presence of:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

ATTEST:

BY:
PRINT NAME: CHERYL SAMONS
TITLE: ASSISTANT SECRETARY

WITNESS:
Print Name: Zuraiba Rodriguez

WITNESS:
Print Name: AMANDA A. MITCHELL

STATE OF Florida
COUNTY OF

Pursuant to the provisions of Sec. 689.071, Florida Statutes, the within named Trustee has the power and authority to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the above-described mortgage and the real property encumbered thereby.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed, this ____ day of _____, 20___, but effective as of the 3rd day of January, 2008.

Signed in the presence of:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

ATTEST:

BY:
PRINT NAME: CHERYL SAMONS
TITLE: ASSISTANT SECRETARY

WITNESS:
Print Name: Zuraiba Rodriguez

WITNESS:
Print Name: AMANDA A. MITCHELL

STATE OF Florida
COUNTY OF

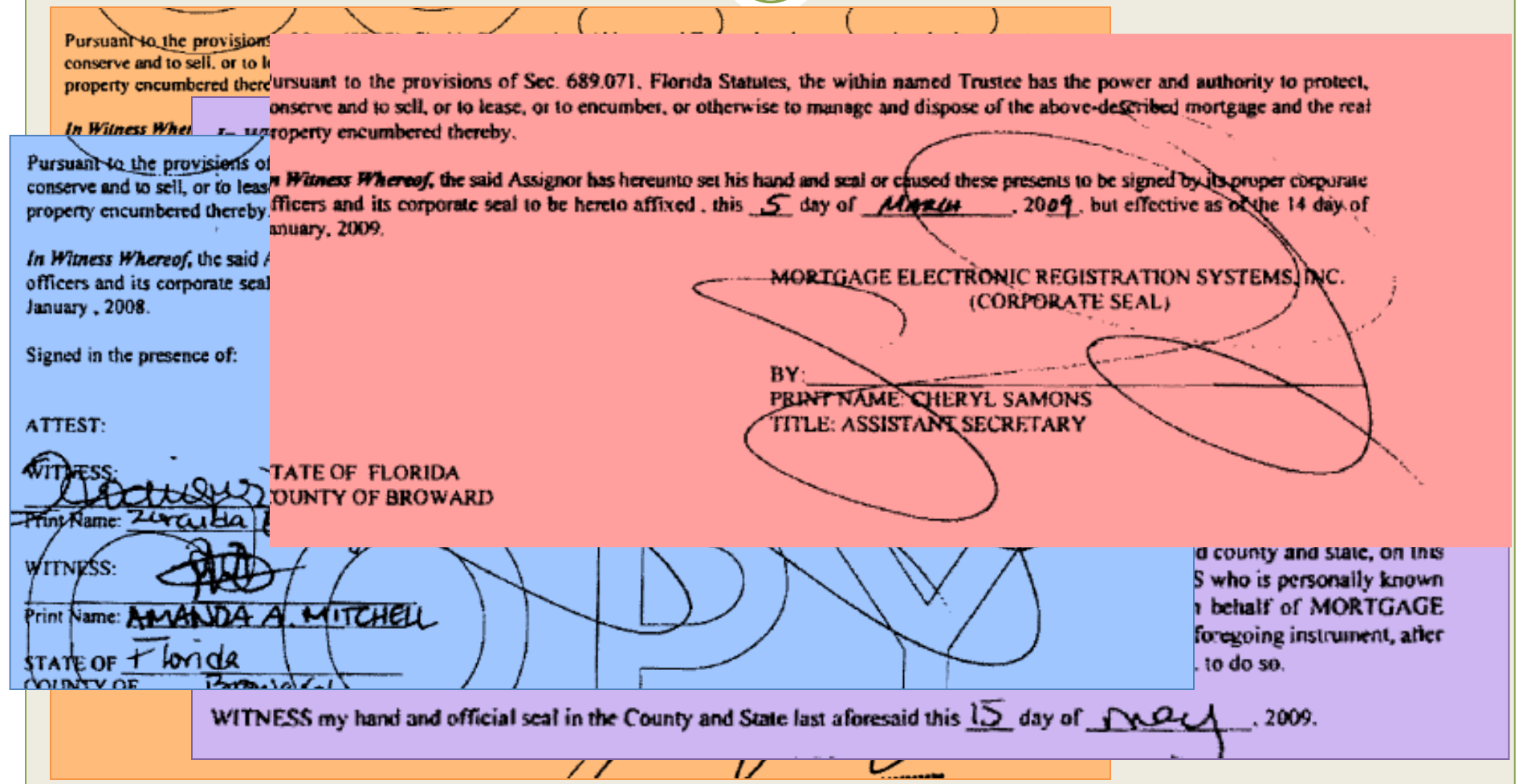
ned by its proper corporate
as of the 17th day of July,

TION SYSTEMS, INC.
AL)

d county and state, on this
S who is personally known
behalf of MORTGAGE
foregoing instrument, after
to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 15 day of May, 2009.

Cheryl Samons "signature"



Pursuant to the provisions of Sec. 689.071, Florida Statutes, the within named Trustee has the power and authority to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the above-described mortgage and the real property encumbered thereby.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed , this 5 day of March , 2009 , but effective as of the 14 day of January, 2009.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
(CORPORATE SEAL)

BY:
PRINT NAME: CHERYL SAMONS
TITLE: ASSISTANT SECRETARY

STATE OF FLORIDA
COUNTY OF BROWARD

Pursuant to the provisions of
conserve and to sell, or to lease
property encumbered thereby.

In Witness Whereof, the said
officers and its corporate seal
January , 2008.

Signed in the presence of:

ATTEST:

WITNESS:
Print Name: Zuraiba

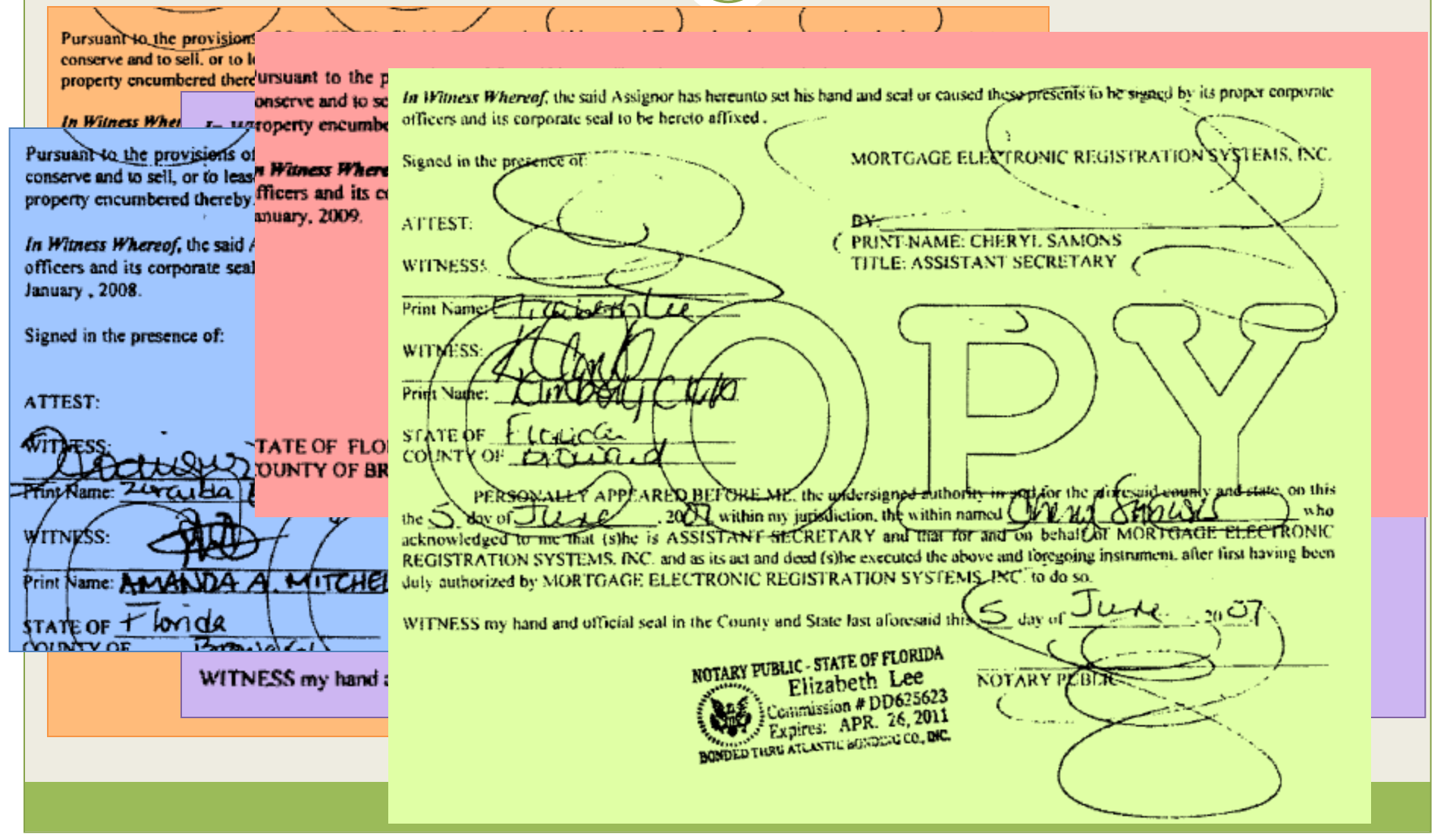
WITNESS:
Print Name: AMANDA A. MITCHELL

STATE OF Florida
COUNTY OF

d county and state, on this
S who is personally known
n behalf of MORTGAGE
foregoing instrument, after
to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 15 day of May , 2009.

Cheryl Samons "signature"



In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed.

Signed in the presence of:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

ATTEST:

BY:

PRINT NAME: CHERYL SAMONS
TITLE: ASSISTANT SECRETARY

WITNESS:

Print Name: Elizabeth Lee

WITNESS:

Print Name: Kimberly Cato

STATE OF Florida
COUNTY OF Duval

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the 5 day of June, 2007, within my jurisdiction, the within named Cheryl Samons who acknowledged to me that (s)he is ASSISTANT SECRETARY and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 5 day of June, 2007.

NOTARY PUBLIC - STATE OF FLORIDA
Elizabeth Lee
Commission # DD625623
Expires: APR. 26, 2011
BONDED THRU ATLANTIC BONDING CO., INC.

NOTARY PUBLIC

COPY

Sample Assignment of Mortgage

Document Prepared By:
Ron Meharg, 888-362-9638
When Recorded Return To:
DOCX
1111 Alderman Dr.
Suite 350
Alpharetta, GA 30005

AHMA	647	30225886

CH:0/-04/08/2009-Pkt#0A071-POF
Date:03/27/2009-Print Batch ID:5129
Property Address:
3281 W LAKE DR
FORT PIERCE, FL 34882
FloridaR2.0~ (c)(03/2002 (Copyright (c) 2009 by DOCX, LLC

COPY

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, **American Home Mortgage Servicing, Inc. as successor-in-interest to Option One Mortgage Corporation**, whose address is **6501 Irvine Center Drive, Irvine, CA 92618**, does by these presents hereby grant, bargain, sell, assign, transfer, convey, set over and deliver unto **Citibank, N.A. as Trustee for American Home Mortgage Investment Trust 2004-3 Mortgage Backed Notes, Series 2004-3**, whose address is **111 Wall Street, 5th Floor/Zone 2, New York 10005**, the following described mortgage, securing the payment of a certain promissory note(s) for the sum listed below, together with all rights therein and thereto, all liens created or secured thereby, all obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such mortgage.

Original Borrower(s): **RIGOBERTO GUERRERO**
Original Mortgagee: **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR AMERICAN HOME MORTGAGE ACCEPTANCE, INC.**
Date of Mortgage: **07/09/2004** Loan Amount: **$97,850.00**
Recording Date: **08/04/2004** Book: **2035** Page: **1387** Document #: **2454536**
Misc. Comments: **ASSIGNMENT EFFECTIVE DATE: 3/26/2009**

LEGAL DESCRIPTION: THE NORTH HALF OF LOT 21 AND ALL OF LOT 22, BLOCK 1 OF SILVER LAKES PARK, ACCORDING TO THE PLAT HEREOF AS RECORDED IN PLAT BOOK 10, PAGE(S) 4, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA.

and recorded in the official records of the **County of St. Lucie**, State of **Florida** affecting Real Property and more particularly described on said Mortgage referred to herein.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on this date of **03/31/2009**.

American Home Mortgage Servicing, Inc. as successor-in-interest to Option One Mortgage Corporation

Witness: **Lisa Whitfield**

Linda Green
Vice President

Witness: **Christina Huang**

Tywasha Thomas
Asst. Vice President

COPY COPY COPY

Misuse of Falsified Assignments

- Improper assignments were recorded in the county land records offices
- Improper assignments were submitted to the Court in support of foreclosure motions
- Improper assignments were accepted by the Court as valid assignments that substantiated the foreclosure
- Homeowners were foreclosed upon based upon falsified assignments, by a bank who was not the true holder of the note.
- If the foreclosure judgment is obtained by a bank that does not hold the note, then the homeowner risks a second lawsuit by the real note holder, and possibly a having a second judgment against them on one property.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL ACTION

DEUTSCHE BANK TRUST COMPANY
AMERICAS AS TRUSTEE,
Plaintiff,
vs.

CASE NO.: 50-2008-CA-018381
DIVISION: AW

MICHAEL PETERS, et al,

Defendant(s).
_____/

MOTION TO RATIFY FINAL SUMMARY JUDGMENT
OF MORTGAGE FORECLOSURE *NUNC PRO TUNC*

COMES NOW Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE ("Plaintiff"), by and through the undersigned counsel and files this *Motion to Ratify Final Summary Judgment of Mortgage Foreclosure Nunc Pro* (the "Motion") and in support thereof states as follows:

BACKGROUND FACTS

1. On May 24, 2010 this Court entered a *Final Summary Judgment of Mortgage Foreclosure* in favor of Plaintiff. A judicial sale is scheduled for December 30, 2010.

2. The undersigned law firm has recently been advised that the information contained in the *Affidavit as to Amounts Due and Owing* submitted in support of Plaintiff's Motion for Summary Judgment may not have been properly verified by the affiant.

3. A Notice to this effect has been filed with the Court by the undersigned law firm.

4. Plaintiff has also submitted a new, properly verified affidavit by affiant which shows that the amounts reflecting the indebtedness contained in the original affidavit were accurate when filed. (The new, properly verified affidavit is attached hereto and incorporated by reference as Exhibit "A").

5. Based on the foregoing Plaintiff has sought to notify the Court of the foregoing verification issues and now seeks the ratification of the *Final Summary Judgment of Mortgage Foreclosure nunc pro tunc* as an additional reasonable remedial measure.

6. For the reason more fully set forth below, Plaintiff believes that entry of an Order granting this Motion in its entirety is appropriate.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL ACTION

DEUTSCHE BANK TRUST COMPANY
AMERICAS AS TRUSTEE,
Plaintiff,
vs.

CASE NO.: 50-2008-CA-018381
DIVISION: AW

MICHAEL PETERS, et al,

Defendant(s).
_____/

MOTION TO RATIFY FINAL SUMMARY JUDGMENT OF MORTGAGE FORECLOSURE *NUNC PRO TUNC*

COMES NOW Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE ("Plaintiff"), by and through the undersigned counsel and files this *Motion to Ratify Final Summary Judgment of Mortgage Foreclosure Nunc Pro* (the "Motion") and in support thereof states as follows:

– BACKGROUND FACTS –

2. The undersigned law firm has recently been advised that the information contained in the *Affidavit as to Amounts Due and Owing* submitted in support of Plaintiff's Motion for Summary Judgment may not have been properly verified by the affiant.

reflecting the indebtedness contained in the original affidavit were accurate when filed. (The new, properly verified affidavit is attached hereto and incorporated by reference as Exhibit "A").

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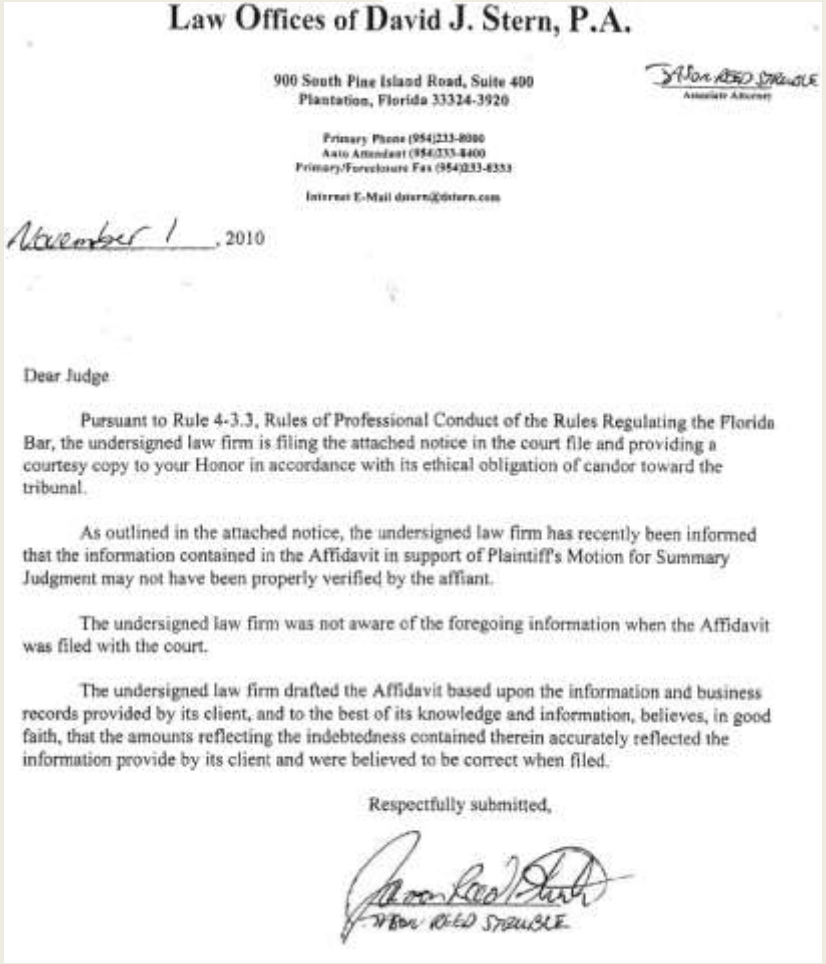
6. For the reason more fully set forth below, Plaintiff believes that entry of an Order granting this Motion in its entirety is appropriate.

Notices to Court of Improper Affidavits



Law Offices of David J. Stern, P.A.

900 South Pine Island Road, Suite 400
Plantation, Florida 33324-3920

DAVID ROLD STRAUSS
Associate Attorney

Primary Phone (954)233-8000
Auto Attendant (954)233-8400
Primary/Foreclosure Fax (954)233-8333

Internet E-Mail dstern@dstern.com

November 1, 2010

Dear Judge

Pursuant to Rule 4-3.3, Rules of Professional Conduct of the Rules Regulating the Florida Bar, the undersigned law firm is filing the attached notice in the court file and providing a courtesy copy to your Honor in accordance with its ethical obligation of candor toward the tribunal.

As outlined in the attached notice, the undersigned law firm has recently been informed that the information contained in the Affidavit in support of Plaintiff's Motion for Summary Judgment may not have been properly verified by the affiant.

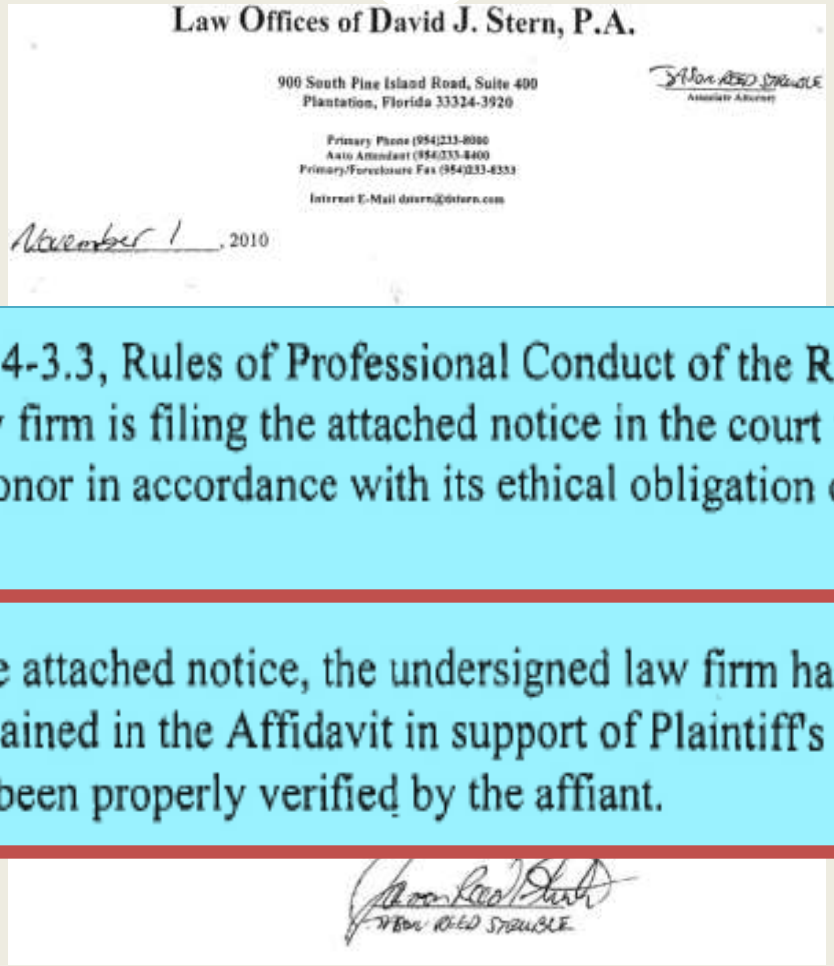
The undersigned law firm was not aware of the foregoing information when the Affidavit was filed with the court.

The undersigned law firm drafted the Affidavit based upon the information and business records provided by its client, and to the best of its knowledge and information, believes, in good faith, that the amounts reflecting the indebtedness contained therein accurately reflected the information provide by its client and were believed to be correct when filed.

Respectfully submitted,

DAVID ROLD STRAUSS

Notices to Court of Improper Affidavits



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DAVID J. STERN

Real Estate in Florida (in pictures)

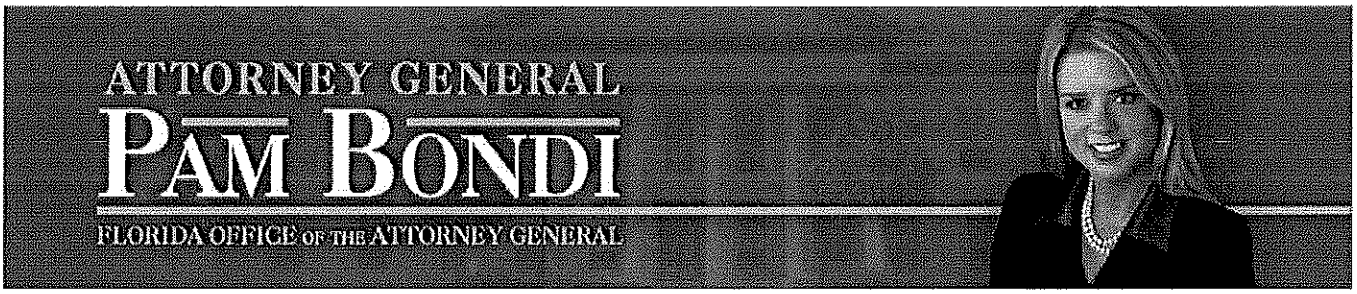
Real Estate in Florida (in pictures)

Real Estate in Florida (in pictures)

Solutions for Foreclosures in Florida???

- Any solution must include:
  - Assuring the integrity to the judicial foreclosure process
    - Documents submitted must be true and accurate
    - Affidavits must be proper in substance and form
    - Assignments must be properly executed and accurate
  - Due process rights to the foreclosed homeowners
    - Proper service of process on the homeowner
    - Proper standing to sue by the plaintiff Bank
    - Substantive review of paperwork prior to foreclosure
  - Foreclosures will have to go forward and there will be many more next year, but they need to done within the law.

Filing # 21840608 Electronically Filed 12/19/2014 05:36:28 PM

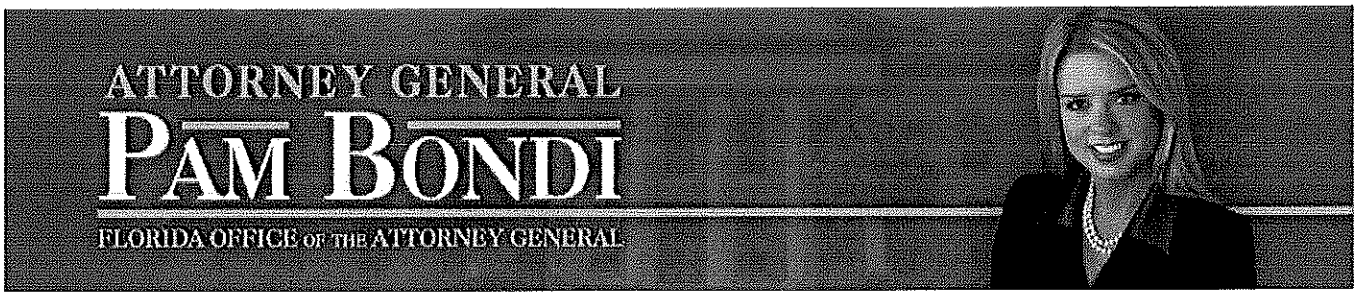


Consumer Protection Division

The complaint cited below relates to a civil, not a criminal case. A filed complaint does not constitute proof of any violation of law.

Case Number:	L10-3-1094
Subject:	Lender Processing Services, Inc.
Subject's Business:	Foreclosure
Subject's Address:	601 Riverside Avenue, Jacksonville, FL 32204
Date of Settlement or Judgment:	01/31/2013
View Settlement or Judgment Document:	

Florida Toll Free Numbers:
- Fraud Hotline 1-866-966-7226
- Lemon Law 1-800-321-5366



Consumer Protection

Active public consumer-related investigations

The Attorney General's Office investigates and litigates civil cases involving certain Florida Statutes, including civil theft and deceptive trade practices. We receive hundreds of telephone calls and letters daily from businesses and individuals seeking public record information on commercial enterprises with which they are conducting -- or might conduct -- business. The listing that follows is intended to offer these businesses and individuals an alternative communications source for such information which, under Florida's Government in the Sunshine laws, is public record and available to any citizen for inspection.

To continue, click here.

Some consumer complaints are administered by the state Division of Consumer Services under the direction of Agriculture & Consumer Affairs Commissioner. Complaints may be registerd against those entities regulated by the Division. For a list of those entities and a complaint form click here..

Florida Toll Free Numbers:

- Fraud Hotline 1-866-966-7226
- Lemon Law 1-800-321-5366

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August 19, 2014

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Florida AG Pam Bondi Pressured By Targets Of Investigations To Soften Approach, Critics Say

Posted: 10/12/11 06:34 PM ET

FORT LAUDERDALE, Fla. -- Last December, when she was still investigating foreclosure fraud as a top lawyer in the Florida attorney general's office, June Clarkson gave a PowerPoint presentation to a legal association.

Her presentation amounted to an indictment of Lender Processing Services, or LPS, a company near the center of ongoing state investigations into claims that foreclosures have been rushed en masse through the legal machinery, without proper documentation. She flashed images of paperwork on a screen under the heading "forgeries," asserting that LPS' former subsidiary, Docx, had produced phony documents to justify unlawful foreclosures.

The legal association later sent Clarkson a thank-you note, calling her tutorial "invaluable." Word of her presentation reached New York, where a state Supreme Court judge cited it in a harshly-worded ruling that a bank lacked the right to foreclose on a Brooklyn home.

But the Jacksonville-based LPS was furious, particularly about one slide in the presentation: an image of the children's board game Candyland, a satirical reference to the mortgage securitization process. The following month, a lawyer for LPS sent a letter to Clarkson and Theresa Edwards -- a colleague who co-authored the presentation -- calling their PowerPoint display "irresponsible" and "inflammatory," adding: "The legitimate question at this point is whether you are still capable of conducting this investigation."

Upper management in the attorney general's office, which also received a copy of the LPS complaint, ultimately answered that question in the negative. The incoming director of the division of economic crimes admonished the two assistant state attorneys general, they say. In May, Clarkson and Edwards resigned under threat of being fired, according to the attorney general's office.

Florida has some of the highest rates of foreclosure in the country, and is home to many of the companies accused of improper document handling, yet the state's enforcement apparatus has treated many of these companies with striking lenience, according to former state prosecutors and lawyers who represent Florida homeowners.

Many cite the forced departure of Clarkson and Edwards as a vivid example of how mortgage companies and law firms successfully exploit connections to Florida's attorney general to soften legal probes, insulating themselves against the consequences of alleged law-breaking.

"The division of economic crimes has long fostered an atmosphere in which, as Clarkson and Edwards found out, and as I have found out in seven-and-half years of having one effort after another squelched, bold action is rare," declared Andrew Spark, a former assistant attorney general in Florida, in a blistering memo he released publicly before resigning in August. "The people of the State of Florida have the right to better, but under its current management, the situation can only get worse."

"Like the Securities and Exchange Commission ignoring Bernard Madoff's scams, our office -- like so many agencies -- was asleep at the wheel while the future of the state's economy was being ravaged by mortgage fraud -- when it really mattered," Spark continued.

Florida Attorney General Pam Bondi, through spokeswoman Jennifer Meale, declined repeated requests for comment. But Meale dismissed assertions that the agency has softened its enforcement against improper foreclosure practices. "We aggressively prosecute wrongdoing regardless of the subject of the investigation," Meale said in an email.

Bondi has drawn criticism from local lawyers for accepting campaign contributions from companies the attorney general is investigating. LPS and its former parent Fidelity National Financial -- which is under investigation by the attorney general, as part of the LPS probe -- together contributed at least $2,000 to Bondi's campaign last year, according to the National Institute on Money in State Politics.

Executives of ProVest, a Tampa-based company that notifies homeowners of a foreclosure, and which is being investigated by the state attorney general, also made personal contributions to Bondi's campaign. Chief executive and founder Scott Strady, president James Ward and executive vice president Victor Draper each contributed $500 to Bondi's campaign, according to the National Institute on

TAB I

Money in State Politics.
"No amount of campaign contributions" affects Bondi's commitment to fulfilling her duties, Meale said in an email.
As the news of Clarkson and Edward's forced departures spread through Florida this summer via local blogs and newspaper reports, the resulting public outcry challenged the notion that the state was really looking out for homeowners. Official explanations from the attorney general that the pair had been ousted for poor job performance did not appear to win over many skeptics.
"It felt like finally someone was listening," said attorney Matthew Weidner, who represents homeowners in foreclosure. "That's why the announcement of the firings was such a punch to the gut."
State Sen. Eleanor Sobel, a Hollywood, Fla., Democrat, along with another state lawmaker, wrote to U.S. Attorney General Eric Holder, asking that the terminations of Clarkson and Edwards be "reviewed by an investigatory agency not directly associated with the State of Florida in an effort to get the most neutral review."
As pressure mounted, Bondi herself called for an investigation into the ouster, even as her office maintained the personnel decision was "mundane." A Florida agency, the Department of Financial Services, opened an investigation in August. DFS Inspector General Ned Luczynski, who is conducting the probe, declined to comment on it.
"Here we finally have two superstars, and they get the axe," Sobel said. "They got fired for doing a good job."

A FAMILIAR COMPLAINT

Among some of those who have recently worked in the state attorney general's office, such complaints seemed only to confirm the ways of the institution as they knew it -- one vulnerable to the influence of politically-connected outsiders.
"They don't want to be aggressive toward corporations," said a former assistant state attorney general who asked not to be named because of concerns about his current job. "If they were as aggressive as they could be, or wanted to be, they would double the size of the economic crimes division," he added, noting that the division is funded by recoveries from its cases.
The office seems to be guided by an attitude of "don't push too much," this former employee said.
Spark, the former assistant attorney general who penned the critical memo, worked in the Tampa bureau. He said the office suffered from what he termed "litigation-phobia," describing several cases in which top-ranking officials pushed for what he viewed as premature resolutions, before a full investigation could take place.
In one case, Spark opened an investigation into an auto dealership that was using deceptive advertising, he said. It turned out that a lawyer who represented the auto dealership, Robert Shimberg, had served on Bondi's transition team. According to Spark, his superiors noted that Shimberg was the dealership's counsel as they urged Spark not to pursue a full investigation.
In his memo, Spark cites an email he received from Richard Lawson, director of the division of economic crimes, which said that Shimberg was a lawyer for the "very prominent" business. "You should be aware of this in case the [attorney general] has any questions," Lawson said in that email, according to Spark's memo.
Meale, the attorney general's spokeswoman, declined to comment on Spark's memo, citing the existence of an internal investigation into the former employee. Shimberg called Spark's portrayal "ridiculous."
Other developments at the attorney general's office have provoked charges that the agency is often intertwined with companies it ought to be aggressively prosecuting. Two high-ranking employees recently left their posts for jobs at companies under investigation. Joe Jacquot, former deputy attorney general, left government service for a job as senior vice president of government affairs at LPS, the company announced in June.
Jacquot recused himself from discussions and actions involving LPS, as of late October of last year. He told a reporter from the News Service of Florida that he had nothing to do with the investigations of foreclosure firms initiated under the previous attorney general, Bill McCollum.
Mary Leontakianakos, formerly director of the division of economic crimes, this year went to work for the Fort Lauderdale-based foreclosure law firm Marshall C. Watson, which the state attorney general was investigating. Edwards, who was working the Marshall Watson case with Clarkson, said the $2 million settlement with the company in March was less than the $7 million she had wanted.
Leontakianakos, now chief counsel at Marshall Watson, said through a spokeswoman that she was not at all involved with the settlement with the law firm.
"I am very proud of my service at the Florida Attorney General's office," she said through the spokeswoman.

A REPRIMAND FROM ON HIGH

Clarkson and Edwards say the first clear sign of trouble came in February, courtesy of a visit from Lawson, the director of the division of economic crimes -- the first time they met him. He quickly signaled that he was fielding a lot of negative reports about them back in the state capital, they recalled.
According to Clarkson and Edwards, Lawson told them: "I expected to come down here and find a couple of coyotes."
Reached on his cellphone, Lawson declined to be interviewed for this story.
Lawson said he didn't want to hear any more complaints about the two attorneys, according to Clarkson and Edwards.
"I said to him, 'How can we stop opposing counsel from contacting you?'" Clarkson said. "The way he was talking to us, I thought there was nothing he would do but fire us."
Only one month earlier, Joan Meyer, a lawyer at Baker & McKenzie who was representing LPS, had written the letter of complaint, asserting that Clarkson and Edwards had unfairly impugned the company in their PowerPoint presentation.
LPS provides software to banks to manage mortgages, and to law firms that process foreclosures for banks. The company has come to dominate the foreclosure industry: More than half of all American mortgages in foreclosure are processed with its software, according to the company.
In addition to the allegations that its Docx unit fabricated foreclosure documents, LPS has confronted accusations from plaintiffs, including a trustee for the U.S. Department of Justice, that the company engaged in illegal fee-splitting -- accepting kickbacks from law firms that win foreclosure business. LPS chief executive Lee Kennedy said the fee-splitting charges were "without merit" and noted during a conference call this summer that three of these cases had been either dismissed or resolved in the company's favor.
The PowerPoint presentation featured assignments of mortgage -- which are crucial in proving the right to foreclose on a home -- bearing the signature of Linda Green, a former Docx employee who signed as a "vice president" of a host of companies she did not work for, including Bank of America, Wells Fargo and American Home Mortgage Servicing.
Several Docx employees signed the name Linda Green -- as officers of these companies -- resulting in various "Linda Green" signatures that differed markedly, the presentation suggested.
"Who is the real Linda Green?" the PowerPoint asked.
In her letter to Clarkson and Edwards, Meyer -- the LPS attorney -- argued that the practice of signing as a "vice president" of a company was approved by the various institutions involved.
And LPS has said it ended the policy that produced the apparently differing signatures. When LPS discovered that multiple employees were signing as Linda Green, it fired the manager who was responsible and shut down Docx last year, the company has said.
Meyer lamented that Clarkson and Edwards had "already acted as judge and jury with written publications of your conclusions," adding: "We have already contacted your supervisors in the Florida Attorney General's Office in Tallahassee to request an investigation of your conduct."
The attorney general's office initially defended the PowerPoint, which bears the seal of the office on its first page.
Mark Hamilton, who was interim director of the division of economic crimes in the weeks before Lawson took that job, told Meyer in a letter that the PowerPoint was intended for educational purposes, and that the documents used were publicly available.

"First and foremost the presentation was provided as a general overview of the types of documents our office has received from third parties as a result of the foreclosure crisis," he wrote. "The investigation by our office into the issues surrounding the foreclosure crises is ongoing in nature and the presentation should not be viewed as intended to comment on the liability of any particular company."

Two days before Hamilton wrote that letter, a senior official in the attorney general's office -- who ranked above Clarkson and Edwards -- gave a similar presentation to the Florida Senate. Trish Conners, associate deputy attorney general, used some of the very same documents that appeared in the earlier PowerPoint presentation.

But the attorney general's office concluded that the presentation by Clarkson and Edwards crossed a line. This particular use of those LPS documents -- even though they were obtained from third parties -- was inappropriate, said Meale, the spokeswoman for the attorney general.

A difference between the presentation by Clarkson and Edwards and the presentation by Conners was that Conners "did not draw any conclusions" about an ongoing investigation, Meale said. Using words such as "fraud" and "forgery" is "completely inappropriate until an investigation is complete and wrongdoing has been substantiated," Meale added in an email.

LPS spokeswoman Michelle Kersch said the company did not play a part in the dismissal of Clarkson and Edwards.

"The Florida Attorney General's decision to dismiss Ms. Clarkson and Ms. Edwards was not requested by LPS nor were we consulted in the matter," Kersch said in an emailed statement. "From the very start of these inquiries, LPS has only been interested in ensuring a fair and transparent process. This letter was sent in pursuit of that goal and did not request that any employee be terminated from the Florida Attorney General's office."

'SITTING ON YOUR HANDS'

Clarkson and Edwards' aggressive tack on foreclosures garnered enemies beyond LPS. Shapiro & Fishman, a law firm based in Boca Raton that the attorney general accused of using fabricated documents to speed through foreclosures, took issue with a subpoena the attorneys served last year. The order was "outrageously broad" and "totally sloppy," said attorney Gerald Richman, president of the firm Richman Greer, who represents Shapiro & Fishman.

Richman's complaints extended beyond the subpoena to the conduct of Clarkson and Edwards. "They acted very unprofessionally in the way they treated us, and the way they treated the investigation," he said, calling them "arrogant." He went over their heads to complain to their supervisor, he said.

Clarkson and Edwards dismissed that characterization. "If you don't bow down to him, you're arrogant," Clarkson said. Edwards explained that her aggression toward opposing counsel comes with the job description: "That's when you get your best deals, when you push them really hard," she said.

But Richman ultimately claimed victory. He said his interactions with Clarkson and Edwards were a factor in the attorney general's decision to force them out.

"I think the experience with us, along with other things, led to the firing," he said. "In my opinion, the firing was totally justified based on how they treated people."

Meale, the spokeswoman for the attorney general, said that "no one group or subject of an investigation has any ability to make a personnel decision in the attorney general's office."

A judge ultimately sided with Richman on his complaint about the subpoena, ruling in October to quash the attorney general's demand for documents. Palm Beach County Judge Jack Cox called the subpoena "vague," "invasive" and "unduly burdensome" in his ruling.

Critics including Clarkson and Edwards noted that Cox was subsequently nominated as a candidate for a seat on the prestigious Fourth District Court of Appeal -- by a commission that included Richman.

McCollum, the attorney general at the time, filed a motion for a rehearing, arguing that the court's "fundamental premise" in its decision to quash the subpoena was "mistaken."

But Judge Cox stuck with his initial decision. In April, while Bondi was in office, the Fourth District Court of Appeal ruled that the attorney general could not investigate Shapiro under the statute it was using.

Bondi's office never appealed that ruling. And the attorney general has not filed any new subpoenas against foreclosure law firms since the ruling, Meale acknowledged.

"What our office is doing right now is considering all possible strategies for moving forward," she said.

Others have a different view, accusing the attorney general of stalling in the interest of letting the malefactors off the hook.

"Are you just sitting on your hands?" asked April Charney, an attorney at the nonprofit Jacksonville Area Legal Aid, who defends homeowners and trains other lawyers. "Have you been so co-opted and infiltrated you're just helping them run the statue of limitations? As far as I can tell, that's what's happening."

'SO MUCH MORE'

Clarkson and Edwards are in the process of starting a new law firm that will represent homeowners. Before moving to their new office in Fort Lauderdale, they temporarily occupied a cramped space in a two-story building in nearby Hollywood, the walls adorned with Joan Miro reproductions.

On a damp August morning, the phone rang. A man claiming to be a whistle-blower was on the line, detailing what he saw as a pattern of fraud at his former employer. Clarkson and Edwards scribbled notes as they listened.

"I can't get any lawyers involved," the man said through the phone. "They're all scared because of what happened to you guys."

Clarkson and Edwards are keen to stay in the game, they say, even as they come to terms with the reality that they will be unable to take on wrongdoing on a large scale, deprived of the attorney general's office as a platform for prosecution.

"People are still contacting us," Clarkson said. "They think we're still lawyers on the case, and we're not. But they know we know things that probably won't ever get out now."

"There's so much more to expose, is the problem," she added. "There's so much more."

IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JOSE RODRIGUEZ AKA JOSE R. RODRIGUEZ

Appellant,

vs.

BANK OF AMERICA, N.A.,

Appellee.
_____/

CASE No. 3D17-272
LT No. 13-30447

APPELLANTS' MOTION TO DISQUALIFY THE THIRD DISTRICT COURT OF APPEAL

The Appellant JOSE RODRIGUEZ AKA JOSE R. RODRIGUEZ ("Appellant"), by and through undersigned counsel, files this Motion to Disqualify the Third District Court of Appeal and states:

This Court owes a constitutional duty to the parties who come before it to uphold the rule of law. This Court owes its allegiance to the rule of law. This Court would not exist but for the rule of law defended by those that fought to protect and defend our Constitution and the rights of all citizens. The Judiciary sets the standard for the respect that we owe the rule of law as a free and democratic society.

Under the rule of law as envisioned by our founding fathers, the ten judges

of this Honorable Court would never tolerate a party to the $25 Billion National Mortgage Settlement that continued a repeated, recalcitrant, and organized fraud on the courts for years. Yet, the same day this Honorable Court issued a per curiam affirmance in this case, it also PCA'd a second foreclosure case involving the same false evidence as presented herein. Appellants respectfully submit there are objective reasons to fear this Honorable Court will not be fair and impartial in deciding the pending request for a written opinion or for rehearing *en banc*.

In this case, and many others involving Appellee and the Bank of New York Mellon ("BONYM"), the Liebler Gonzalez and Portuando law firm ("the LGP firm") executed a coordinated scorched earth assault on the truth. Four years ago, the Honorable Judge David Miller issued two detailed orders finding bad faith and outrageous conduct against Bank of America ("BANA") and the LGP firm by stonewalling discovery into the fraud upon the court presented herein. See attached as Exhibit A.

BANA services the portfolio of Trusts like the one in this case, where BONYM acts as trustee of a Trust containing a pool of loans originated by Countrywide Home Loan Inc. ("Countrywide"), the now defunct and disgraced subprime mortgage originator. In those cases, BANA created false MERS assignments, backdated Countrywide endorsements and engaged in other fraudulent conduct. The LGP firm egregiously violated its ethical obligations to

the rule of law as though it knew such misconduct would be untouchable.

Most recently, Judge Miller issued an order to show cause why this is not criminal conduct. See transcript attached as Exhibit B. There is an arraignment set for July 10, 2018. The order sets forth a detailed account of misconduct that goes back years. Misconduct that this Appellant's counsel repeatedly presented to this Court which this Court has again issued PCA's. Misconduct that should not be tolerated in the good order of society.

This Court has again allowed this misconduct without discussion. This Court refuses to apply the doctrine of unclean hands to bad corporate citizens who commit fraud upon the court in equitable actions of foreclosure. Respectfully, this Court should enforce the law equally or disqualify itself from these proceedings. Above all, this Court should jealously guard the rule of law.

Appellant joins in, adopts, reavers, and renews the Motion to Disqualify the Third District Court of Appeal filed in HSBC v. Buset, in Third DCA case number 3D17-272. See attached as Exhibit C. For the reasons set forth therein, and for the reasons set for herein, Appellants have an objective reasonable fear this Honorable Court will not fairly and impartially adjudicate the pending Motion for Written Opinion and for Rehearing En Banc.

The *Buset* motion to disqualify this Honorable Court set forth a myriad of objective reasons to question this Court's impartiality, including the various

articles in the Daily Business Review, the most recent of which stated:

> There is no question that the Third District is pro-business and couldn't care less about homeowners…. [The Third DCA] abuses per curiam affirmances, or PCAs, to avoid explaining their rulings on lender standing,… [and] misuses the tool to strategically sidestep writing opinions that could provide grounds for rehearing. Instead, they say it uses the decisions to wipe out options for further review and avoid conflicts with other district courts.

That Motion to Disqualify the Third District Court of Appeal was a first in the history of Florida jurisprudence. Yet, this Court denied the motion to disqualify without comment and then denied rehearing in *Buset* to permit HSBC to foreclose based on what the trial judge found was false testimony, false evidence, and unclean hands for lying about and violating her court order.

To emphasize its point, this Court then issued PCAs in this case and the other case involving a judge who struck all the pleadings alleging the fraud and threatened Appellant's counsel with bar complaints, contempt and sanctions. That judge refused to grant a continuance to allow a proper motion to disqualify to be filed in clear violation of Florida Supreme Court precedent. The Florida Supreme Court issued a public reprimand to the Honorable Judge Cheryl Aleman for less objectionable conduct, finding this abuse of discretion to be an abuse of power. *In re Aleman*, 995 So. 2d 395, 399 (Fla. 2008).

As set forth in the *Buset* Motion to Disqualify, the result in that case which this Court also PCA'd conflicts with dozens of rulings of every DCA that issued

opinions on standing which require proof the endorsement was in place before filing the action.

No court should ignore that BANA ordered the destruction of evidence under a court ordered subpoena resulting in a military grade wipe of 1.88 billion objects of data, metadata and encryption codes. It should matter more that BANA engaged in the destruction of evidence than the borrower hasn't paid. The doctrine of unclean hands is still good Florida Supreme court law. Yet, the PCA ignores all these issues and affirms the misconduct without comment.

In 2005, Wall Street pushed though the Bankruptcy Abuse Prevention and Consumer Protection Act leaving borrowers without significant bankruptcy relief from the coming financial crisis. Since 2005, BANA bloated its total assets by a full trillion dollars, from $1.2 Trillion to $2.2 Trillion, while paying billions of dollars in various settlements and fines for bad corporate behavior. To top it off, BANA just got a $2.7 Billion tax cut.

Meanwhile, BANA and Countrywide are largely responsible for wiping out the majority of wealth accumulated by communities of color and a significant portion of middle class wealth following the financial crash of 2008. As a result of the $25 Billion National Mortgage Settlement, Bank of America only provided 23,983 first lien mortgage modifications nationwide as of the NMS Monitors Second Interim Consumer Relief Report Regarding Defendant Bank of America

filed March 18 2014. See attached as Exhibit D. This is not democracy. It is oligarchy.

Thomas Jefferson once said Banks were more dangerous than standing armies and would leave us homeless and penniless in the nation our forefathers founded. Republican President Theodore Roosevelt was a patriot willing to stand up to JP Morgan whose monopolistic practices undermined the rule of law. This Court should be a key player in ensuring a level playing field for the powerless and the powerful. It is more important as the misconduct is by bad corporate citizens. As the seal of this Honorable Court states: "Sat cito si recte" meaning soon enough if done correctly.

There are objective reasons, including the Court's abuse of the PCA in this case, which require this Motion to Disqualify be granted. To deny this motion which states objective reasons to fear this Court is not fair or impartial is an abuse of power. It would be a clear violation of the ethical and judicial canons governing each judge on this Honorable Court. The rule of law must prevail.

Undersigned counsel for the Appellant has communicated regarding this motion with opposing counsel who objects to the relief requested herein.

WHEREFORE, Appellants respectfully request this Honorable Court grant this Motion to Disqualify the Third DCA, and grant any further relief deemed mete and just.

CERTIFICATION OF GOOD FAITH

I hereby certify that this motion for disqualification and the foregoing facts are true and correct to the best of my knowledge and belief and that this motion for disqualification is presented in good faith.

/s/ *Bruce Jacobs*
Bruce Jacobs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed to service@lgplaw.com, jbr@lgplaw.com, Jessica B. Reyes, Esq., Liebler, Gonzales & Portuondo, 44 West Flagler Street, Miami, Florida 33130; and fl.service@phelanhallinan.com, John D Cusick, Esq., Phelan Hallinan, PLC, 2727 West Cypress Creek Road, Ft. Lauderdale, Florida 33309 this 6th day of June, 2018.

Respectfully submitted,

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IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR FREEMONT HOME LOAN TRUST 2005-B, MORTGAGE BACKED CERTIFICATES, SERIES 2005-B

CASE No. 3D16-1383

LT No. 12-38811

Appellant,

vs.

JOSEPH T. BUSET, et. al.,

Appellee.

_____/

APPELLEE'S MOTION TO DISQUALIFY THE THIRD DISTRICT COURT OF APPEAL

Respectfully submitted,

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Appellee, JOSEPH T. BUSET ("Appellee"), by and through undersigned counsel, files this Motion to Disqualify the Third District Court of Appeal and states:

Appellee believes there are objective reasons to question whether this Honorable Court will fairly and impartially adjudicate the pending Motion for Rehearing and Rehearing En Banc in this case. For many years, undersigned counsel has taken appeals providing greater and greater detail about continued widespread problems in foreclosures such as: trial witnesses trained to commit perjury, evidence fabricated and backdated by perjury to falsely prove standing, stonewalling of discovery, unconstitutional striking of pleadings and discovery into that fraud, and even destruction of evidence under subpoena in violation of the Sarbanes Oxley Act.

This Court is bound by Florida Supreme Court precedent that "one who comes into equity must come with clean hands else all relief will be denied him regardless of merit of his claim, and it is not essential that act be a crime; it is enough that it be condemned by honest and reasonable men." *Roberts v. Roberts*, 84 So.2d 717 (Fla. 1956). The Florida Supreme Court also noted "the principle or policy of the law in withholding relief from a complainant because of 'unclean hands' is punitive in its nature." *Busch v. Baker*, 83 So. 704 (Fla. 1920).

Yet, undersigned counsel and his clients have objective reasons to fear this Court's rulings and oral argument questions in his 36 appeals since 2010, objectively

call into question whether there is an institutional bias in favor of banks. This Court has ***never*** ruled in favor of a foreclosure defendant undersigned counsel represented.

In ***every*** appeal taken to conclusion from a final judgment of foreclosure, this Court has issued a PCA, refused rehearing or rehearing *en banc*, and refused to write an opinion. This occurred even after being advised other District Courts of Appeal wrote opinions reaching the result argued by undersigned counsel. In the few cases appealed from judgments for the homeowner, ***this Court reversed every one*** by stating facts contradicted by the record, misapplying the standard of review, and/or not addressing Florida Supreme Court or Florida District Court of Appeal precedent that reached a contrary result. These are objective reasons to question this court's impartiality, especially considering the specifics in the cases discussed below.

Less than a month ago, on Monday, February 12, 2018, the Daily Business Review published a front page article entitled, Can He Say That? Frustrated Attorney Asks 'what's wrong with the Third DCA, by Samantha Joseph. See attached as Appendix A. The article reported "there is no question that the Third District is pro-business and couldn't care less about homeowners." This alone is an objective reason to question this Court's impartiality.

The article further charged that this Court "abuses per curiam affirmances, or PCAs, to avoid explaining their rulings on lender standing,… [and] misuses the tool

to strategically sidestep writing opinions that could provide grounds for rehearing. Instead, they say it uses the decisions to wipe out options for further review and avoid conflicts with other district courts." As set forth herein, undersigned counsel has observed this exact same problem in his foreclosures appeals before this Court which is another objective reason to question this Court's impartiality.

Moreover, the article laid out statistical, empirical evidence that this Honorable Court reversed on standing in favor of the banks 87% of the time, while over the same time period, the 1st, 2nd, 4th and 5th DCA's all reversed on standing in favor of the homeowners between 73%-84% of the time. This is not just an anomaly. The Daily Business Review article attached a press release that set forth:

> … of its sixteen written opinions addressing standing in recent-era foreclosure cases, the Third District has only ruled for a property owner twice. *66 Team, LLC v. JPMorgan Chase Bank Nat. Ass'n,* 187 So. 3d 929 (Fla. 3rd DCA 2016) and *Riocabo v. Fed. Nat'l Mortgage Ass'n*, 230 So. 3d 579 (Fla. 3rd DCA 2017). (Consider that in 66 Team, the bank did not admit any documents or evidence at trial to prove its case. And in *Riocabo*, the bank confessed error - admitting that it must lose on appeal.)… The neighboring Fourth District has issued 120 written foreclosure opinions on standing, 87 (73%) have been in favor of property owners. On this same issue, the Second District has issued 43 written opinions, 36 (84%) have been for property owners; the First District has ruled for owners 83% of the time; and the Fifth District has found for owners 72% of the time…. But, the Third District has ruled for a property owner only twice (13%). It's also noteworthy that the Third has only issued sixteen written foreclosure opinions on standing – the fewest of any appellate court in the state. There is apparently no justifiable way to explain this.

Undersigned counsel is not at war with the Court or making reckless personal attacks against any particular judge. He is making this motion because he is obligated by his oath as an attorney to zealously defend his clients, even at his own personal and professional risk. Assuming there is an institutional bias against homeowners that favors banks, this motion is the proper vehicle to address it. The impact of a perceived institutional bias on our democracy is far bigger than this lawyer or any of the ten judges on this Court. This Court should not punish undersigned counsel for raising concern about the impartiality of the judiciary.

Yet, in several appeals, this Court has specifically named undersigned counsel in its decision and unfairly maligned his character and professionalism. As the Florida Supreme Court recognized long ago:

> In the profession of law, a good reputation is the practitioner's most valuable asset. It is unfortunate, but nevertheless true, that public accusation of dishonest or unethical conduct, whether valid or not, leaves an everlasting scar. Whatever may be reasonably done to prevent such damage and unwarranted publicity, should be done. *In re Dade Cty. Bar Ass'n President's & State Attorney's Special Committee*, 116 So. 2d 1, 4 (Fla. 1959).

In one of his first foreclosure appeals before this Court, *Delsa Bernardo v. PNC Mortgage*, (3D12-1071) this Court issued a PCA and ordered undersigned counsel to show cause why he should not be sanctioned for raising frivolous arguments. In that case, PNC admitted its summary judgment affidavit falsely claimed it was an owner of the loan when it was merely a servicer a day before oral

argument. Moreover, the Fourth DCA days later reversed another foreclosure on the same argument that the summary judgment affidavit failed to address an affirmative defense challenging the validity of the endorsement.

A review of the oral argument video will show undersigned counsel responded to a threat of sanctions by Senior Judge Alan Schwartz by citing to a concurring opinion wherein Judge Schwartz said it was "distasteful" and "deeply painful" to rule for a homeowner in *Spencer v. EMC Mortgage Corp*., 97 So. 3d 257 (Fla. 3rd DCA 2012). Undersigned counsel retained a board certified appellate lawyer who responded to the show cause order. See attached as Appendix B. This Court never discharged the show cause order or imposed sanctions. It did chill taking appeals.

That chill was reinforced in the very next appeal wherein this Court refused to correct an opinion that implied undersigned counsel lied to the trial judge in a case where counsel never even appeared at the trial level. *BAC Home Loans Serv., Inc. v. Headley*, 130 So. 3d 703, 707 (Fla. 3rd DCA 2013). Bank lawyers quickly seized that ruling to unfairly malign undersigned counsel as dishonest before trial judges.

On December 2, 2013, the Daily Business Review published a lead story about these two appeals entitled: Justice Watch: Foreclosure Attorneys Targeted in Third DCA Ruling, by John Pacenti. See attached as Appendix C. The threat was so chilling that over the next year, undersigned counsel dismissed every appeal he filed, fearful this Court overtly and objectively targeted his appeals for unfair treatment.

Undersigned counsel eventually set his fears of taking appeals aside, reinvigorated in his ethical obligation of zealous advocacy as he exposed more blatant misconduct, systemic fraud, and gross violations of due process in foreclosures. In time, undersigned counsel began repeatedly seeking *en banc* review as each issue either got PCA'd or reversed in favor of the bank.

Each time, undersigned counsel argued the case had exceptional importance as the result "may reasonably and negatively influence the public's perception of the judiciary's ability to render meaningful justice." *University of Miami v. Wilson*, 948 So.2d 774, 791 (Fla. 3rd DCA 2006). Yet, this Court unanimously denied ***every*** motion for rehearing *en banc* without comment and never explained its PCA.

In stark contrast, the Fourth DCA granted undersigned counsel's motion for rehearing, withdrew its PCA, and entered an opinion reversing the final judgment of foreclosure where the bank failed to prove the note was endorsed before filing the complaint. *See, U.S. Bank v. Sharlene Lewis*, 2016 WL 899912 (Fla. 4th DCA 2016). The Daily Business Review wrote an article describing this result as a "unicorn" and the "Holy Grail" in achieving such a rare appellate feat. See attached as Appendix D. Yet, this Court repeatedly issued a PCA and refused to write an opinion in every appeal raising this same exact issue undersigned counsel raised in *Lewis* before this Court, another objective reason to question its impartiality.

Most recently, undersigned counsel began making the arguments presented herein that suggested the Code of Judicial Conduct, Canon 3 E(1) mandates that "a judge ***shall*** disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned..."(emphasis added). As set forth below, this Court never addressed the disqualification issue. However, in the *Barek* decision discussed extensively below, the Court accused undersigned counsel of making "personal attacks" on the court and reminded counsel of his ethical obligations, without actually finding misconduct. Like with the *Headley* opinion, bank attorneys seized on the *Barek* order to attack undersigned counsel below.

Undersigned counsel's work to expose continued misconduct in foreclosures by the largest financial institutions in the world has been newsworthy. It will continue to be newsworthy so long as banks continue to break the law. Each judge takes an oath to support and defend the constitution, and to ensure the rich and poor are held equally accountable to the law. Despite that, this Court has permitted a foreclosure system to be undermined by unclean hands without comment.

As set forth herein, the objective reasons for seeking disqualification are part of a pattern of conduct that appears calculated to favor banks over borrowers. As the highest guardians of our constitutional democracy, sworn to ensure that all branches of government (including the judiciary) follow the law, Appellate Judges

are held to a very high standard. There can be no social or economic justice without a fair and impartial judiciary.

This concern is heightened when rich and powerful banks stand accused of unclean hands in equitable actions of foreclosures. Certainly, civil rights attorneys faced similar or worse backlash as undersigned counsel has faced for defending positions deemed unpopular at the time. They, and the judges who ruled in their favor, made history for their courageous commitment to social and economic justice.

I. <u>There is Support in Florida Law for Disqualification of an Entire Appellate Court Provided the Motion is Legally Sufficient</u>

A. *The Importance of a Fair and Neutral Judiciary to Our Democracy The United States Supreme Court has recognized that constitutional precept of a neutral, detached judiciary is fundamental to a healthy democracy:*

> The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality … safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process…. It preserves both the appearance and reality of fairness, … by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

Due process guarantees the right to a neutral, detached judiciary in order "to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected interests." *Carey v. Piphus*, 425 U.S. 247, 262 (1978); *Taylor v. Hayes*, 418 U.S. 488, 501 (1974);

State v. Steele, 348 So. 2d 398 (Fla. 3rd DCA 1977). "A party that steps into the ring against its opponent should not believe that it will be felled by the referee. *See Nateman v. Greenbaum*, 582 So. 2d 643, 648-49 (Fla. 3rd DCA 1991). (Baskin, J., dissenting, joined by Barkdull, J., in denial of motion for rehearing en banc).

"It is the duty of Courts to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. The exercise of any other policy tends to discredit the judiciary and shadow the administration of justice." *Crosby v. State*, 97 So. 2d 181, 184 (Fla. 1957). The Florida Supreme Court recognized that "prejudice of a judge is a delicate question to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised, should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned." *Livingston v. State*, 441 So. 2d 1083, 1086 (Fla. 1983).

In *Livingston,* the Florida Supreme Court instructed:

> it is a matter of no concern what judge presides in a particular cause, but it is a matter of grave concern that justice be administered with dispatch, without fear or favor or the suspicion of such attributes. The outstanding big factor in every lawsuit is the truth of the controversy. Judges, counsel, and rules of procedure are secondary factors designed by the law as instrumentalities to work out and arrive at the truth of the controversy. The judiciary cannot be too circumspect, neither should it be reluctant to retire from a cause under circumstances that would shake the confidence of litigants in a fair and impartial adjudication of the issues raised. *Id.*

The rules regarding judicial disqualification "were established to ensure public confidence in the integrity of the judicial system…." *Livingston* at 1086; *Goines v. State*, 708 So. 2d 656, 661 (Fla. 4th DCA 1998)(noting that the public acceptance of judicial decision-making turns on popular trust in judges as neutral magistrates; judicial system fails to present plausible basis for respect when judge's impartiality can reasonably be questioned).

B. *The Law Permits Disqualification of an Entire Appellate Court If the Motion is Legally Sufficient and the Judges Agree their Impartiality is Reasonably Questioned, Requiring Disqualification*

The Florida Supreme Court has recognized that "the disqualification of an appellate judge is a matter which rests largely within the sound discretion of the individual involved." *Giuliano v. Wainwright*, 416 So.2d 1180, 1181 (1982). As this Court noted "when a litigant seeks to disqualify … a judge of a district court of appeal, a different, more personal standard applies. That standard was enunciated by the Florida Supreme Court in *In re Carlton*, wherein the Court held that 'each justice must determine for himself both the legal sufficiency of a request seeking his disqualification and the propriety of withdrawing in any particular circumstances.'" 378 So.2d 1212, 1216 (Fla.1979) (On Request for Disqualification). *Clarendon Nat. Ins. Co. v. Shogreen*, 990 So. 2d 1231, 1233 (Fla. 3rd DCA 2008).

In *Shogreen*, this Court noted that the Florida Supreme Court "has approved the application of the *Carlton* standard when that court's appellate-level judges were

faced with a court-wide motion for disqualification." *Id.* citing, *5–H Corp. v. Padovano*, 708 So.2d 244, 245–46 (Fla.1997). Thus, each judge of this Court must determine for themselves whether the instant motion is legally sufficient to warrant disqualification. Each judge must decide if there is sufficient reason to question their impartiality and withdraw. Due process demands nothing less.

Even where a motion for disqualification is deemed legally insufficient, judges may still voluntarily recuse themselves if they believe it would be in the best interests for the administration of justice. *In re Estate of Carlton*, 378 So. 2d 1212, 1220 (Fla. 1979). Moreover, the Code of Judicial Conduct, Canon 3 E(1) states: "A judge ***shall*** disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned..."(emphasis added). The *status quo* should not continue if the best interests for the administration of justice need change.

II. The Court's Refusal to Self-Regulate Is Grounds For Disqualification

Most recently, undersigned counsel began to make the argument that this Court should self-regulate without need to file this Motion to Disqualify. Each judge is bound by the judicial canons to jealously guard the integrity of the judiciary. Undersigned counsel respectfully submitted three successive pleadings that argued the Court's impartiality is objectively questioned. This Court moved forward without comment on the disqualification issues, which is another objective reason to

question this Court's impartiality. The Due Process Clause requires this Court give reasoned opinions for its results if due process is to have any meaning.

A. The Suggestion of Disqualification raised in Bank of America v. Jose Rodriguez in Third DCA Case Number 3D17-272

In Bank of America v. Jose Rodriguez, (3D17-272) undersigned counsel filed a Response to Bank of America's Motion to Dispense with Oral Argument on February 16, 2018. See attached as Appendix E. The response argued that:

> Oral argument in the public eye is necessary to maintain uniformity of decisions in this court and protect the integrity of the public's perception of this Court's ability to render meaningful justice in foreclosure cases. Alternatively, Appellant's counsel has clearly set forth facts which might reasonably cause the public to question the Court's impartiality which would require this Court to sua sponte issue an order to disqualify itself in accordance with the Code of Judicial Conduct, Canon 3 E(1).

In *Rodriguez*, undersigned counsel argued Bank of America engaged in an unconscionable scheme calculated to interfere with the judicial system's impartial ability to adjudicate foreclosures. The Honorable Judge David Miller issued two orders finding bad faith, outrageous conduct by Bank of America and its law firm to stonewall discovery. Bank of America fraudulently affixed a Countrywide Bank blank endorsement years after Countrywide ceased to exist and then backdated the endorsement through perjury by its highest Senior Executive Officers of the Bank.

Bank of America appealed Judge Miller and then moved to disqualify him. Subsequently, its lawyers threw a fundraiser for the successor judge, who promptly

struck all claims and defenses alleging any misconduct, vacated Judge Miller's sanctions orders and denied any further discovery. The successor judge then entered a summary judgment of foreclosure (without any significant findings of fact or conclusions of law) while a motion for sanctions under the Court's inherent contempt powers for fraud on the court was still pending.

The *Rodriguez* response to this Court attached the following email which showed Bank of America ordered a "military grade" destruction of evidence in violation of a subpoena served on its third party vendor, SourceHOV, formerly Sourcecorp in January of 2016, which also violated the Sarbanes Oxley Act that required Bank of America to retain records for seven years:

Friday, June 16, 2017 at 1:34:35 PM Pacific Daylight Time

Subject: RE: Subpoena to SOURCECORP - United States Ex Rel. Bruce Jacobs vs. Bank of America Corporation
Date: Friday, June 16, 2017 at 8:25:43 AM Pacific Daylight Time
From: Dimple Sehgal
To: Kohn, Robert
CC: Rachel Rose, Court Keeley, Anna Morales
Attachments: image004.jpg, image005.jpg, image006.gif, image007.png

Rob,

I don't believe we have anything more to produce, after our call on Wednesday we pushed to find all we could. We have confirmed that back in Feb 2016, BOA had us execute an extensive project to purge all its data, which we were obligated to do. Therefore, this is all we have.

Thank you,

Dimple Sehgal
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United States
o: +1. 972.821.4784 | m: +1.469.954.2216
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The destruction of evidence was so vast it took 90 days to torch all 1.88 **b**illion objects of data, meta data, and encryption keys subject to the court ordered subpoena. SourceHOV produced an email reporting to Bank of America that it began

destroying evidence on November 13, 2015, eleven days after Bank of America knew undersigned counsel requested information about Sourcecorp.

Bank of America produced a corporate representative who testified she knew almost nothing about Soucecorp. Yet, as she testified Bank of America knew nothing, SourceHOV was actively destroying evidence through February 11, 2016, a month after SourceHOV received its own subpoena to turn over those records. See email re: Bank of America Fastrieve Purge – Final Report attached as Appendix F.

This Honorable Court denied the motion to dispense and conducted oral argument in *Rodriguez*. However, the Court never asked either side a single question during oral argument. Not about the destruction of evidence, the striking of defenses, the allegations of perjury, Judge Miller's orders or the successor judge's decision to vacate those orders. There is no meaningful opportunity to be heard when nothing is questioned. This lack of questioning is another objective reason to question this Court's impartiality. If the Court issues another PCA to thwart further appellate review that will be yet another objective reason to question its impartiality.

The *Rodriguez* Motion argued there is objective reasons to question whether this Honorable Court has an institutional bias against homeowners, and those zealously advocating on behalf of homeowners, as evidenced by the Daily Business Review articles and the undersigned's body of appellate work before this DCA.

B. The Suggestion of Disqualification raised in *Kalev Barek v. HSBC National Bank USA N.A.*, in Third DCA Case Number 3D17-1426

On February 21, 2018, undersigned counsel filed a Motion for Rehearing *En Banc* on the Order Precluding the Filing of the Initial Brief in *Kalev Barek v. HSBC National Bank USA N.A.*. See attached as Appendix G. The *Barek* motion and the *Rodriguez* motion both made essentially the same argument questioning this Court's impartiality. The *Barek* motion argued that undersigned counsel "believes his body of appellate work before this Court supports the Article's conclusion that this Court 'abuses per curiam affirmances..., misuses the tool to strategically sidestep writing opinions that could provide grounds for rehearing…, and uses the decisions to wipe out options for further review and avoid conflicts with other district courts.'"

The *Barek* motion then argued that "most recently, the Court started dismissing appeals brought by [undersigned] counsel for reasons contrary to law…" and requested the entire court "determine whether this is an example of a fundamental breakdown in due process in an appeal brought by [undersigned] counsel. This Court has found in *United Auto* that it would be departure from the essential elements of law to dismiss an appeal when the deadline to file an initial brief is tolled under the rules."

The *Barek* motion further argued that undersigned counsel "fears that this Court's ruling prohibiting the timely filing of an initial brief is yet another attempt to silence homeowners and chill their counsel from bringing meritorious appeals to

challenge foreclosures because of an institutional bias in favor of wealthy and powerful banks…. to dismiss a meritorious appeal would negatively impact the public's perception of the Court's ability to render meaningful judgment in foreclosure cases if not corrected by the full court."

On March 13, 2018, this Court published an order reinstating the *Barek* appeal and the initial brief is now filed of record. See Order attached as Appendix H. Despite the myriad of accusatory statements found within the *Barek* Order, undersigned counsel did not, and would not engage in false, reckless or personal attacks on the integrity of the Court. Respectfully, undersigned counsel viewed the Court's order as another effort to unfairly chill his appellate advocacy. This is another objective reason to question the Court's impartiality.

The *Barek* Order also said "Mr. Jacobs never explained the relevance of a sanctions hearing conducted after the entry of the final judgment of foreclosure … nor attempted to explain why the November 28, 2016 sanctions hearing transcript if relevant to the appeal, had not been filed in any of the appellant's previous motions to supplement the record." However, on February 9, 2018, undersigned counsel did file a Motion for Rehearing on the Order Denying the Motion to Supplement the Record that explained "towards the end of the [sanctions hearing] transcript, the trial court made statements which directly relate to the Motion for Rehearing on the Final

Judgment which should be considered as part of the record for this appeal." See Motion attached as Appendix I.

The Court refused to allow undersigned counsel to supplement the record with that transcript and the initial brief was filed without it. The fact that this Court wrote in its opinion reinstating the appeal that there was no explanation why the sanctions hearing transcript was relevant is another objective reason to question the Court's impartiality. The relevance of the transcript was clearly asserted.

C. The Suggestion of Disqualification raised in Daniel Alexander v. Bayview Loan Servicing, LLC in Third DCA Case Number 3D17-272

Most recently, undersigned counsel filed a Motion for Rehearing, Rehearing *en banc* and request for a written opinion in Daniel Alexander v. Bayview Loan Servicing, LLC (3D16-2228). The *Alexander* Motion argued "it appears the big banks have all engaged in widespread fraud upon the court, supported by Senior Executives who suborned perjury and refused to turn over court ordered documents to cover up fraud upon the OCC, the HUD/OIG, the DOJ, the CFPB, the Federal Courts, the State Courts, the trial court, and this Honorable Court warranting discovery and an evidentiary hearing under Rule 1.540(b) on the motion to vacate judgment due to fraud and newly discovered evidence. Yet, this Court cancelled oral argument and entered a PCA without a written opinion, quietly shutting down any meaningful discussion into these serious allegations."

The *Alexander* motion argued there was a colorable claim of fraud because the same (1) Washington Mutual rubberstamped endorsement by Cynthia Riley, and (2) false mortgage assignment representing a transaction that never happened were used in that case and in Wells Fargo v. John Riley, under Palm Beach County Circuit Court Case Number 50-2016-CA-010759-XXXX-MB. In *Riley*, the Honorable Senior Judge Howard Harrison entered a final judgment finding unclean hands for using that same evidence in favor of a homeowner rendered on December 13, 2017. See attached as Appendix J.

The *Alexander* motion argued that, as Judge Harrison addressed in his final judgment finding unclean hands, there is a colorable claim that "Chase employed agents to affix the dead bank endorsement knowing WAMU had ceased to exist and Cynthia Riley lacked authority to endorse notes." It is a departure from the essential elements of law to resolve these allegations of misconduct by a PCA.

Moreover, the *Alexander* motion highlighted the Consent Judgment issued by the Office of the Comptroller of the Currency against JP Morgan Chase, Wells Fargo, Bank of America, etc, which resulted after the discovery that said banks "litigated cases without properly endorsed notes" in March of 2011 ("The 2011 OCC Consent Judgment"). The *Alexander* motion also argued another objective reason to question this Court's impartiality. "Every Florida appellate court, with the exception of this Court has reversed foreclosures obtained where the bank filed a complaint

alleging a lost note count and attaching an unendorsed copy of the note, and later produced an endorsed note."[1] This is the "unicorn" issue discussed by the Daily Business Review article where the Fourth DCA reversed its PCA.

[1]See, *Tilus v. AS Michai LLC*, 161 So.3d 1284 (Fla. 4th DCA 2015)(Trial judgment reversed because undated blank endorsement on original note filed after complaint is insufficient to prove standing); *Lloyd v. Bank of New York Mellon*, 160 So.3d 513 (Fla. 4th DCA 2015)(Trial judgment reversed without evidence endorsement occurred before filing the complaint through additional evidence); *Farkas v. U.S. Bank*, --- So.3d ----, 2015 WL 3396644 (Fla. 4th DCA 2015)(witness only proved standing at trial not at inception of case when complaint lacked any endorsements); *Jelic v. LaSalle Bank, Nat. Ass'n*, 160 So.3d 127 (Fla. 4th DCA 2015)(Trial reversed because no evidence showed when special endorsement was affixed to note, which was in favor of different bank); *Matthews v. Federal Nat. Mortg. Ass'n,* 160 So.3d 131 (Fla. 4th DCA 2015)(Trial judgment reversed where endorsed original note filed months after complaint with undated endorsement and backdate mortgage assignment); *Wright v. Deutsche Bank Nat. Trust Co*., 152 So.3d 1289 (Fla. 4th DCA 2015)(Trial judgment reversed when undated endorsed note introduced at trial after complaint attached unendorsed note); *Deutsche Bank Nat. Trust Co. v. Boglioli*, 154 So.3d 494 (Fla. 4th DCA 2015)(affirmed Final Judgment in favor of Borrower when witness could not testify when note was endorsed); *Joseph v. BAC Home Loans Servicing, LP*, 155 So.3d 444 (Fla. 4th DCA 2015)(Trial judgment reversed where no evidence note endorsed at time of filing complaint); *LaFrance v. U.S. Bank Nat. Ass'n*, 141 So.3d 754 (Fla. 4th DCA 2014)(Summary judgment reversed where complaint attached unendorsed note and trial evidence included undated endorsed note filed 3 years later); *Bristol v. Wells Fargo Bank, Nat. Ass'n*, 137 So.3d 1130 (Fla. 4th DCA 2014)(Summary judgment reversed where complaint attached unendorsed note and trial evidence included undated endorsed note filed 2 years later); *Zimmerman v. JPMorgan Chase Bank* No. 134 So.3d 501 (Fla. 4th DCA 2012)(Summary judgment reversed where complaint contained unendorsed note and original note filed months after complaint had undated endorsement without further evidence); *McLean v. JPMorgan Chase Bank*, 79 So. 3d 170 (Fla. 4th DCA 2012)(Summary judgment reversed in lost note count case where original note later produced with undated special endorsement); *Vidal v. Liquidation Properties, Inc*., 104 So. 3d 1274 (Fla. 4th DCA 2013)(Summary judgment reversed in lost note case where original note filed months after complaint with undated endorsement and backdated mortgage assignment); *Wells Fargo Bank NA, v. Bohatka*, 112 So. 3d 596 (Fla. 1st DCA 2013)(reversing dismissal with prejudice finding dismissal without prejudice appropriate where trial court found allonge never affixed to note and made formal complaint to the Florida Attorney General); *Focht v. Wells Fargo Bank* 124 So. 3d 308 (Fla. 2d DCA 2013)(Summary judgment reversed in lost note case where endorsed original note filed months after complaint with undated endorsement and backdate mortgage assignment); *Feltus v. U.S. Bank*, 80 So. 3d 375 (Fla. 2d DCA 2012)(Summary Judgment reversed when Bank filed lost note count and attached unendorsed note and never amended its complaint to present original note with endorsements); *Gonzales v. Deutsche Bank National Trust Company*, 95 So. 3d 251 (Fla. 2d DCA 2012)(Summary judgment reversed when undated blank endorsement filed with original note ten weeks after filing case); *Zervas v. Wells Fargo Bank, N.A*, 93 So. 3d 453 (Fla. 2d DCA 2012)(Summary judgment reversed in lost note case where original note filed months after complaint); *Cutler v. U.S. Bank*, 109 So. 3d 224 (Fla. 2d DCA 2012)(Summary judgment reversed in lost note case where original note with undated endorsement filed months after complaint); *BAC Funding Consortium, Inc. v. Jean-Jacques*, 28 So. 3d 936 (Fla. 2d DCA 2010)(reversed summary judgment in lost note count case where unendorsed note filed during case); *Verizzo v. Bank of New York*, 28 So. 3d 976 (Fla. 2nd DCA 2010)(reversed summary judgment where original note produced after filing lost note count case with endorsement not payable to Bank of New York); *Gorel v. Bank of New York Mellon*, --- So.3d ----, 2015 WL 2129505 (Fla. 5th DCA 2015)(Trial judgment reversed when undated specific endorsement to third party not attached to the complaint); *Gee v. U.S. Bank, N.A*, 72 So. 3d 211 (Fla. 5th DCA 2011)(Summary judgment reversed when complaint alleged lost note count and no facts supporting reestablishment claim in record); G*reen v. JP Morgan Chase Bank, NA*. 109 So. 3d 1285 (Fla 5th DCA 2013)(reversed summary judgment when undated blank endorsement on note filed one year into case).

Similar to other motions submitted by the undersigned to this Court, the *Alexander* motion points out the familiar failure of this Court to address the issue of unclean hands irrespective of how boldly it is presented before it. Instead, this Court persistently issues a PCA shortly after oral argument or after it has canceled argument altogether. There is no well settled law on point that could justify a PCA after cancelling oral argument. This is another objective reason to question this Court's impartiality.

To emphasize the foregoing, the *Alexander* motion goes through an exhaustive list of opinions by Federal District Court Judges, Federal Bankruptcy Judges, the Second District Court of Appeal, the Fourth District Court of Appeal, and Circuit Court Judges throughout South Florida who have also spoken out against banks and made those accountable who have engaged in fabrication of evidence, perjury, and widespread fraud.

The *Alexander* motion provided a clear, specific and detailed explanation that shows the judgment was based on a dead bank robostamped endorsement which is unauthorized under Fla. Stat. §673.3081, that was backdated by perjured testimony, and would entitle Appellant to set aside the judgment.

As such, the denial of a Motion for Rehearing *En Banc* and for a written opinion are further objective reasons to question this Court's impartiality, especially in light of the seriousness of the allegations raised and the recent Daily Business

Review articles discussed in previous sections. The *Alexander* motion argued that "this Court's per curium affirmance of the trial court's final judgment was arbitrary, capricious, and a denial of Appellant's constitutional right to due process protected by the Florida and United States Constitutions."

The *Alexander* motion argued "a District Court may refuse to issue a written opinion for any reason or for no reason at all. However, it is "fundamental black letter law" that a District Court should write an opinion unless "the points of law raised are so well settled that a further writing would serve no useful purpose." *Elliot v. Elliot*, 648 So. 2d 137, 138 (Fla. 4th DCA 1994).

The law is well settled in favor of the borrowers on this issue of an endorsed note first appearing after the filing of the complaint without an endorsement. This Court's silence on the point creates the perception of an institutional bias for the wealthy and powerful over the poor which is unconstitutional, unethical, and unacceptable to those entrusted to guard our democracy at the level of an appellate court judge. Sanctions serve a societal need as a specific and general deterrent to greater misconduct. Since banking institutions seem to be unaffected by previous methods of "punishment" and even greater misconduct occurs after those sanctions, even greater sanctions must be imposed.

Despite all this, on March 21, 2018, this Honorable Court denied rehearing, rehearing *en banc*, and refused to write an opinion to explain its PCA in *Alexander*.

The trial judge gave no reason for denying the Rule 1.540(b) motion without taking evidence. The Rule 1.540(b) motion raised the same defense by which Judge Harrison found unclean hands because of the same Cynthia Riley endorsement for Washington Mutual affixed years after Washington Mutual ceased to exist.

With all this set forth in the *Alexander* initial and reply brief, this Court cancelled oral argument, issued a PCA and refused to grant rehearing or write an opinion. This is another objective reason to question the impartiality of this Court. Judge Harrison believed this evidence established a colorable claim of fraud by a party to the $25 Billion National Mortgage Settlement. It is reasonable under these facts to assume this Court is doing as the Daily Business Review article suggested, abusing the PCA to block further appellate review into egregious misconduct by wealthy and powerful banks.

III. The Court's Repeated Misapplication of the Standard of Review, Misstatement of the Facts in the Record, and Disobedience to Florida Supreme Court Law is an Objective Basis to Question its Impartiality

A. *The Pending Motion for Rehearing in HSBC v. Buset*

The pending motion for rehearing *en banc* in this case asks this Court to reconsider its reversal of the Honorable Judge Beatrice Butchko who found unclean hands as the Appellant, and its servicer Ocwen Home Loans Servicing LLC ("Ocwen") presented false evidence and testimony at trial, violated a discovery order

calculated to expose that falsity, and falsely represented it complied with that order. Judge Butchko also excluded Appellant's evidence as untrustworthy.

The motion argues this case is of exceptional importance as the result has already negatively impacted the public's perception of the Court's ability to render meaningful justice. As the media continues to run stories about the misconduct of banks undersigned counsel, the Court should concern itself with the importance of a neutral and impartial judicial system to our democracy. If this court refuses to act or disqualify itself, it may do harm to the public's perception of the judiciary, which would be very destructive to our great democracy.

The pending motion argues the Court's ruling misapplied the standard of review. Specifically, there can be no abuse of discretion when the Honorable Senior Circuit Court Judge Howard Harrison of Palm Beach County also found unclean hands against Wells Fargo and JP Morgan Chase after each party similarly presented false evidence and false testimony at trial, and also violated a discovery order calculated to expose that falsity.

Moreover, the Second DCA, generally, and the Honorable Judge Judith Kreeger, specifically, agreed with Judge Butchko's analysis to exclude the evidence provided by the plaintiff banks as hearsay and untrustworthy. There is no abuse of discretion if judges agree with Judge Butchko's decision to exclude evidence at trial.

The pending motion also argues this Court's opinion did not accurately restate the facts in the record. Specifically, this Court found there was no showing that the excluded evidence was untrustworthy. Yet, Judge Butchko made detailed findings that undersigned counsel impeached the witness who objectively appeared to be unsure of her own testimony. Moreover, Ocwen's witness could not explain why two default letters issued a week apart had a $1,900 difference in the amount due.

This Court also "carried with the case" but never ruled on the renewed motion to relinquish, strike as sham or dismiss this appeal as premature. That motion argued that the Consumer Financial Protection Bureau (the "CFPB") recently found Ocwen's Head of Servicing described its records as an "absolute trainwreck" and its practice was to board loans from prior servicers without checking them for accuracy. The motion argued Appellant's brief was a sham as it asserted Ocwen trained the witness to testify all loans are audited before boarding, making them trustworthy, which was determined to be false.

Judge Butchko took judicial notice of the New York State Department of Financial Services $150 Million Consent Judgment that also found Ocwen's records untrustworthy. Judge Butchko found the witness' testimony about Ocwen' boarding process was a "legal fiction" as there was no audit. This Court's opinion agreed that Ocwen never audited loans during the boarding process. Yet, the Court remained silent as to Ocwen's practice of training its trial witnesses to give false testimony

that audits occurred before boarding, a practice that reasonable and honest judges should strongly condemn. Unclean hands is a valid defense to foreclosure. Yet, Appellee reasonably fears this Court will not enforce, or hold banks accountable to, this Florida law due to its documented history with similar institutional practices.

Finally, the motion for rehearing *en banc* argues the Court's opinion ignores Florida Supreme Court precedent. This Court's opinion pronounces, without citation, that ownership is not an element of proof to establish standing to foreclose. *Cf. Smith v. Kleiser*, 107 So. 262 (Fla. 1926); *Edason v. Central Farmers Trust Co*., 129 So. 698 (Fla. 1930)(a party must own and hold the note to have standing to foreclose). The Court's ruling is an unconstitutional retroactive impairment of contract in violation of Article I, section 10, of the Florida Constitution since at the time Appellee's loan originated, he could defend that Appellant failed to prove it owns and holds the note and mortgage. This Court overruled the Florida Supreme Court on standing, another objective reason to question the Court's impartiality.

B. *The Motion to Certify Conflict, to Relinquish Jurisdiction to Determine if Ocwen's Witness Gave False Testimony to Admit Prior Servicer's Records Under False Pretenses, and/or for Rehearing or Rehearing En Banc in Deutsche Bank Nat. Tr. Co., Inc. v. De Brito in Third DCA Case Number 3D16-1466*

Buset is one of three recent cases where the trial court ruled in favor of undersigned counsel. In *De Brito*, Senior Judge Judith Kreeger specifically adopted the evidentiary analysis from *Buset* to exclude another Ocwen witness' testimony as

hearsay regarding the default letter. On June 4, 2017, this Court summarily denied, a "Motion to Certify Conflict, to Relinquish Jurisdiction to Determine if Ocwen's Witness Gave False Testimony to Admit Prior Servicer's Records Under False Pretenses, and/or for Rehearing or Rehearing En Banc" in *Deutsche Bank Nat. Tr. Co., Inc. v. De Brito* in Third DCA Case Number 3D16-1466. The motion alleged:

> The Court appears at page 5 of its opinion to have accepted as true that "all of the prior servicers' documents were verified for accuracy before incorporation into Ocwen's records." This statement is hearsay. The witness has no personal knowledge about the loan boarding process. Worse, this new rule of evidence is founded on training Ocwen and other servicers gave their trial witnesses which appears to be factually untrue. The major servicers apparently trained their witnesses to testify, falsely, that their loan boarding process verifies the prior servicer's records for accuracy and stops inaccurate loans from boarding.
>
> Government regulatory agencies such as the CFPB and trial courts are documenting evidence that loans board without any verification for accuracy at all. The Daily Business Review just published an article that asked: "Are loan servicers misleading courts about the process they follow to ensure records are thorough and accurate when mortgages are transferred from one servicer to another?" It is not only the CFPB that is making such findings. A copy of the Daily Business Review Article is attached as Appendix K.

The *De Brito* opinion unfairly characterized Judge Butchko's order as "a trial court's ruling from a separate and unrelated case before a different judge with different witnesses, evidence" and a "non-binding ruling in an unrelated case." However, both Judge Kreeger in *De Brito* and Judge Butchko in *Buset* excluded the default letters because the Ocwen trial witness testified that Ocwen trained them and that the same third party vendor, Moss Codilis, mailed the default letter for the prior

servicer. Both Judge Kreger and Judge Butchko found this was hearsay on hearsay since neither Ocwen witness had knowledge of the third party vendors' practices.

The Second DCA reached the same result in *Knight v. GTE Federal Credit Union*, 43 Fla. L. Weekly D348a (2nd DCA February 14, 2018). As such, neither Judge Kreeger nor Judge Butchko abused their discretion by excluding the default letters as reasonable judges agreed on the result. Moreover, the fact that this Court unfairly distinguished the *Buset* order from the *De Brito* order as "unrelated" when both discussed the same third party vendor used by Ocwen to mail default letters is yet another objective reason to question this Court's impartiality.

Furthermore, another objective reason to question this Court's impartiality is that this Court took no action to address the question of whether Ocwen trained its witnesses to give false testimony about the "audits" performed during its loan boarding process. Notably, this Court expressly found in *Buset* that Ocwen never audited loans during its boarding process and ignored the systemic perjury.

C. The Motion to Relinquish Jurisdiction and the Motion for Rehearing and Rehearing En Banc in Bank of New York v. Keith Simpson in Third DCA Case Number 3D16-2445

In *Simpson,* the trial court had granted a Motion to Vacate Judgment Due to Fraud under Rule 1.540(b) which raised the same grounds about false MERS assignments and a backdated Countrywide blank endorsement as asserted in *Bank of America v. Jose Rodriguez* discussed *supra.*

The Bank of New York and its servicer, Bank of America, both relied on a false MERS assignment and the same rubber stamped Countrywide blank endorsement to prove standing in *Simpson* and *Rodriguez*. Bank of America affixed all of those endorsements years after Countrywide ceased to exist and then suborned perjury by its highest level of Senior Executives to backdate the endorsement in an effort to defraud the OCC, HUD/OIG, the DOJ, the Federal Courts, the State Courts and this Honorable Court.

BONY appealed the order vacating the *Simpson* final judgment. During the appeal, on July 24, 2017, undersigned counsel filed a Third Amended Motion to Vacate Judgment due to Fraud and Newly Discovered Evidence under Rule 1.540(b) which set forth detailed facts establishing the same widespread misconduct by Bank of America also found in Bank of America v. Jose Rodriguez. See attached as Appendix L. The motion advised that Bank of America ordered SourceHOV to destroy evidence responsive to a subpoena as set forth in *Rodriguez* which was not known at the time of filing the Second Amended Rule 1.540(b) Motion.

Yet, two days later, on July 26, 2017, this Court summarily denied the motion to relinquish. Then, on August 9, 2017, this Court issued its opinion which reversed the trial judge and ordered the foreclosure judgment be reinstated. Specifically, this Court dismissed the detailed allegations showing the endorsement and assignment in *Simpson* were evidence of unclean hands by suggesting, "his current attorney,

Bruce Jacobs, .., alleges ongoing fraud committed by other banks...." In its opinion, this Court further suggests Mr. Jacobs was merely conducting "investigations into the general mortgage banking industry" and making "generalized allegations of fraudulent practices in the mortgage industry." This Court concluded:

> merely invoking current counsel's "investigations" into certain alleged fraudulent practices of the mortgage banking industry at that time does not meet the legal standards for evidence of fraud in this case. The record contains no specific allegations or any factual evidence that BNYM committed any fraud with regard to Simpson's mortgage.

Respectfully, this is another objective reason to question this Court's impartiality. The *Simpson* opinion did not fairly describe the specific allegations raised in the Third Amended Rule 1.540(b) Motion showing the endorsement and assignment presented in *Simpson* as evidence of standing were part of an unconscionable scheme calculated to interfere with the Court's impartial ability to fairly adjudicate that foreclosure, and many others. These were not generalized claims of fraudulent practices in the mortgage industry.

The *Simpson* Motion argued this Court's opinion conflicted with "controlling Florida Supreme Court precedent cited in Appellee's answer brief that holds 'a consent judgment is entitled to res judicata effect and may only be attacked in cases alleging fraud on the court.'" *Arrieta-Gimenez v. Arrieta-Negron*, 551 So. 2d 1184, 1186 (Fla. 1989). In direct conflict with *Arrieta-Gimenez*, this Court ruled a consent

judgment and a final judgment entered after trial on the merits are treated differently for purposes of Rule 1.540(b).

Yet, this Court never addressed the holding of *Arrietta-Gimenez* in its ruling. Strikingly, the Florida Supreme Court found in *Arrieta-Gimenez* that:

> Appellant ***had full access to discovery (in fact, the record reveals that appellant made full use of her discovery rights), and*** she ***had every right to reject the settlement offer until*** she ***could adequately explore*** the extent of her father's holdings in Puerto Rico. Id. (emphasis added).

In *Simpson*, this Court adopted that language, nearly verbatim to find:

> Simpson …***had full access to discovery (in fact, the record reveals that he made full use of his discovery rights*** until deciding to enter into the SRA), ***and*** he ***had every right to reject the settlement offer until*** he ***could adequately explore*** his defenses." (emphasis added).

Respectfully, there is no support in the record for any claim that Mr. Simpson's prior counsel acted competently. The trial judge in *Simpson* found:

> "Mr. Simpson's lawyer testified that she didn't even pursue developing all of the discovery. She came to an agreement with the plaintiff to stop discovery. I don't know why we aren't here on a motion about the competency of his prior counsel. The fact that a person was represented, missed deadlines, that is a serious matter."

After 14 months of "working on a loan mod" without success, that lawyer walked Mr. Simpson into a consent judgment in December of 2013 to get additional time for him to ask for that loan mod which never came. This is another example of this Court making findings not supported by the record to favor wealthy and powerful banks. It is another objective reason to question the Court's impartiality.

In fact, this misrepresentation in *Simpson* has misguided a Collier County Circuit Court Judge, Hugh Hayes, who cited *Simpson* and *Buset* into imposing sanctions against undersigned counsel for filing a very similar Rule 1.540(b) motion in Bank of New York v. Scott Sorenson, Collier County Circuit Court Case Number 2009-CA-8807. See response to Motion for Sanctions and Hearing Transcript attached as Appendix M. Judge Hayes also struck all defenses, counterclaims and discovery into the same scheme raised before this court in cases resulting in PCA's.

Not only are some judges allowing this misconduct to go unchecked, Judge Hayes relied on this Court to engage in a grotesque abuse of power. Judge Hayes ordered sanctions against undersigned counsel for filing a motion that said Bank of America ordered SourceHOV to destroy evidence under a subpoena. The Second DCA denied a motion to relinquish jurisdiction to hear that Rule 1.540(b) Motion.

Judge Hayes claimed undersigned counsel "lost sight of the fact that the client hasn't paid" and imposed sanctions. The pretext given was that undersigned counsel never set the Rule 1.540(b) motion for hearing. The ruling went forward even after undersigned counsel showed that the Rule 1.540(b) couldn't be set for hearing because the Second DCA refused to relinquish jurisdiction.

Respectfully, there is objective reason to question Judge Hayes' impartiality. His abuse of power should shock the conscience. The only attorney that should get sanctioned when there is widespread destruction of evidence under subpoena is the

attorney involved in the destruction, not the attorney reporting it. This Court should defend the integrity of the judiciary or permit another District Court of Appeal to impartially rule on the pending Motion for Rehearing and Rehearing *En Banc*.

CONCLUSION

Undersigned Counsel is a former Miami-Dade County prosecutor who personally fought a foreclosure on his own home involving essentially the same false MERS assignment and rubberstamped endorsement found in *Sorenson, Simpson* and *Rodriguez*. Thankfully, the Bank of New York settled that foreclosure with a very meaningful loan modification. That is what is supposed to happen when defenses are raised that have merit. The parties reach a settlement that is good for the system.

Our adversarial system of justice is founded on the concept that catching a party cheating is a strong incentive to force that party to settle. Yet, the Appellant here has never once made any meaningful settlement offers other than a modification with a higher monthly payment and a higher principal balance leaving the property underwater. The fact that HSBC, another party to the National Mortgage Settlement, has no fear of risk of litigation worth the slightest settlement discount in the face of allegations of unclean hands and sanctions under the Court's inherent contempt powers is further objective evidence to reasonably question this Court's impartiality as viewed by both sides of the foreclosure bar.

Undersigned counsel has filed many, many similar motions seeking *en banc* review since taking foreclosure appeals before this Court under the same theory, that the result "may reasonably and negatively influence the public's perception of the judiciary's ability to render meaningful justice." See attached as Appendix N– U. These appeals are replete with constitutional due process violations, allegations of misconduct, and other meritorious issues which this Court never addressed. These are further objective reasons to question the Court's impartiality.

When that failed, undersigned counsel started to indirectly suggest this Court should disqualify itself as its impartiality is objectively questioned. Undersigned counsel recognizes the import of filing a motion to disqualify this Court from foreclosure cases. The esteemed members of this Court have all made significant contributions to the legal profession. This Court should use undersigned counsel's work to hold these large financial institutions accountable to the law. If this Court cannot bring itself to strictly apply the Florida law against wealthy and powerful banks, it should disqualify itself, rather than risk damaging the public's perception of the Court's ability to render meaningful justice.

WHEREFORE, the Appellee respectfully requests that this Court grant the motion for disqualification, and any other relief as the Court deems mete and just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed to broderickp@gtlaw.com, okleshenj@gtlaw.com, flservice@gtlaw.com, starksm@gtlaw.com, daltonk@gtlaw.com, leonb@gtlaw.com, chalkleyt@gtlaw.com to Patrick Broderick, Esq., Greenberg Traurig, 777 S Flagler Dr Ste 300, West Palm Beach, FL 33401-6167 on 2nd day of April, 2018.

/S/ BRUCE JACOBS
BRUCE JACOBS

CERTIFICATION OF GOOD FAITH

I hereby certify that this motion for disqualification and the foregoing facts are true and correct to the best of my knowledge and belief and that this motion for disqualification is presented in good faith.

/S/ BRUCE JACOBS
BRUCE JACOBS

JURAT PAGE

Joseph Buset

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared JOSEPH BUSET who, being first duly sworn, on oath deposes and says that he has reviewed the Motion to Disqualify the Third District Court of Appeal and verifies the allegations create a true and correct fear that there are objective reasons to question whether this Court will be fair and impartial in adjudicating the Motion for Rehearing, Rehearing En Banc, pending in my case.

SWORN TO AND SUBSCRIBED before me this 2nd day of April, 2018.

NOTARY PUBLIC

My Commission Expires:

X Personally known to me, or
___ Produced I.D.: _____
___ Did take Oath
___ Did not take Oath

BRUCE JACOBS
Notary Public - State of Florida
My Comm. Expires Nov 22, 2018
Commission # FF 175095
Bonded through National Notary Assn.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *et. al.*, Plaintiffs, v. BANK OF AMERICA CORP., *et. al.*, Defendants.	)	Civil Action No. 12-00361 (RMC)

MONITOR'S SECOND INTERIM CONSUMER RELIEF REPORT REGARDING DEFENDANT BANK OF AMERICA, N.A.

The undersigned, Joseph A. Smith, Jr., in my capacity as Monitor under the Consent Judgment (Case 1:12-cv-00361-RMC; Document 11) filed in the above-captioned matter on April 4, 2012 ("Judgment"), respectfully files with the United States District Court for the District of Columbia ("Court") this Interim Consumer Relief Report ("Report") regarding the satisfaction by Bank of America, N.A., as of March 31, 2013, of its Consumer Relief credit obligations under the Judgment, as such obligations are set forth with more particularity in Exhibits D, D-1, E, and I thereto. This Report is filed pursuant to paragraph D.5 of Exhibit E. This Report is filed in response to a request made to me by Bank of America, N.A., pursuant to Section D.6 of Exhibit E to the Judgment. This Report is a determination by me that Bank of America, N.A. has satisfied its Consumer Relief obligations under the Judgment. This Report is not filed under paragraph 4 of Exhibit I and as such, except as to the finding required pursuant to paragraph 4.a.iii. of Exhibit I, this Report is not a determination by me that Bank of America, N.A. has satisfied all of its obligations under the Judgment relative to solicitation of Settlement Loan Modifications. [1]

[1] This Report does not address satisfaction by Bank of America, N.A., of its obligations for consumer relief under separate agreements with the States of California, Florida and Nevada.

I. Definitions

This section defines words or terms that are used throughout this Report. Words and terms used and defined elsewhere in this Report will have the meanings given to them in the sections of this Report where defined. Any capitalized terms used and not defined in this Report will have the meanings given them in the Judgment or the Exhibits attached thereto, as applicable. For convenience, a copy of the Judgment, without the signature pages of the Parties and including only Exhibit D, Exhibit D-1, Exhibit E and Exhibit I, is attached to this Report as Attachment 1.

In this Report:

i) *Actual Credit Amount* has the meaning given to the term in Section III.E.2. of this Report;

ii) *Consumer Relief* has the meaning given to the term in Section II.A. of this Report and consists of one or more of the forms of Consumer Relief and a refinancing program set out in Exhibits D and I;

iii) *Consumer Relief Report* means Servicer's formal, written assertion as to the amount of Consumer Relief credit earned, which report is given to the IRG and is the basis on which the IRG performs a Satisfaction Review;

iv) *Consumer Relief Requirements* means Servicer's obligations in reference to Consumer Relief as set forth in Article III, paragraph 5 of the Judgment, and in Exhibits D and D-1 and, for the purposes of this Report, Exhibit I paragraph 1.c. and related paragraphs 2.i. and 4.a.iii;

v) *Court* means the United States District Court for the District of Columbia;

vi) *Exhibit* or *Exhibits* mean any one or more of the exhibits to the Judgment;

vii) *Exhibit D* means Exhibit D to the Judgment;

viii) *Exhibit D-1* means Exhibit D-1 to the Judgment;

ix) *Exhibit E* means Exhibit E to the Judgment;

x) *Exhibit I* means Exhibit I to the Judgment;

xi) *First Interim Report* means the Interim Consumer Relief Report I filed with the Court on October 16, 2013, regarding Servicer's creditable Consumer Relief through December 31, 2012;

xii) *First Testing Period* will have the meaning given to the term in Section III.F.1. of this Report, and is the period from March 1, 2012, through December 31, 2012;

xiii) *Internal Review Group* or *IRG* means an internal quality control group established by Servicer that is independent from Servicer's mortgage servicing operations, as required by paragraph C.7 of Exhibit E;

xiv) *IRG Assertion or Assertion*, which is more fully defined in Section III.A. of this Report, refers to a certification given to me by the IRG regarding the credit amounts reported in Servicer's Consumer Relief Report;

xv) *LTV* means loan-to-value ratio and is the quotient of the relevant mortgage loan amount divided by the fair market value of property that is subject to a mortgage;

xvi) *Monitor* means and is a reference to the person appointed under the Judgment to oversee, among other obligations, Servicer's satisfaction of the Consumer Relief Requirements, and the Monitor is Joseph A. Smith, Jr., who will be referred to in this Report in the first person;

xvii) *Monitor Report* or *Report* means this report;

xviii) *Monitoring Committee* means the Monitoring Committee referred to in Section B of Exhibit E;

xix) *Participating Servicer* means one of the Servicers other than Bank of America, N.A.;

xx) *Primary Professional Firm* or *PPF* means BDO Consulting, a division of BDO USA, LLP;

xxi) *Professionals* mean the Primary Professional Firm and any other accountants, consultants, attorneys and other professional persons, together with their respective firms, I engage from time to time to represent or assist me in carrying out my duties under the Judgment;

xxii) *Reported Credit Amount* has the meaning given to the term in Section III.E.2. of this Report;

xxiii) Satisfaction Review means a review conducted by the IRG to determine Servicer's satisfaction of the Consumer Relief Requirements, as required in paragraph C.7 of Exhibit E;

xxiv) *Second Testing Period* will have the meaning given to the term in Section II.E. of this Report and is the period from January 1, 2013, through March 31, 2013;

xxv) Secondary Professional Firm or *SPF* means Crowe Horvath LLP;

xxvi) *Servicer* means Bank of America, N.A., and *Servicers* mean the following: (i) J.P. Morgan Chase Bank, N.A.; (ii) Ocwen Loan Servicing, LLC and Green Tree Servicing LLC, successors by assignment to Residential Capital, LLC and GMAC Mortgage, LLC; (iii) Bank of America, N.A; (iv) CitiMortgage, Inc.; and (v) Wells Fargo & Company and Wells Fargo Bank, N.A;

xxvii) *Settlement* means the Judgment and the four other consent judgments entered into by the Servicers to settle the claims described in the Judgment and the other consent judgments;

xxviii) *Settlement Loan Modification* means a first lien mortgage loan modification that satisfies the criteria for a mortgage loan modification as set out in Exhibit I;

xxix) *System of Record* or *SOR* means Servicer's business records pertaining primarily to its mortgage servicing operations and related business operations;

xxx) *Testing Population* has the meaning given to the term in Section III.E.1. of this Report;

xxxi) *Total Consumer Relief Funds* means the sum of the credit earned by Servicer as a result of the types of Consumer Relief set forth in Exhibit D-1, which Exhibit does not include relief through refinancing of loans;

xxxii) *Work Papers* means the documentation of the test work and assessments by the IRG with regard to Servicer's satisfaction of the Consumer Relief Requirements, which documentation is required to be sufficient for the PPF to substantiate and confirm the accuracy and validity of the work and conclusions of the IRG; and

xxxiii) *Work Plan* means the work plan established by agreement between Servicer and me pursuant to paragraphs C.11 through C.15 of Exhibit E.

II. Introduction

A. Forms of Consumer Relief

As reported in the First Interim Report, under the terms of the Judgment, Servicer is required to provide mortgage loan relief to certain distressed borrowers and a refinancing program to certain current borrowers who would not otherwise qualify for a refinance. The mortgage loan relief and refinancing program are required to be through one or more of the forms of consumer relief and a refinancing program set out in Exhibits D and I ("Consumer Relief"). These forms of Consumer Relief consist of:

- First Lien Mortgage Modifications[2]

[2] Exhibit D, ¶ 1; Exhibit D-1, ¶ 1; Exhibit I, ¶¶ 2, 7.f and h. Creditable First Lien Mortgage Modifications include: Standard Principal Reduction Modifications (Exhibit D-1, ¶ 1.i); Forbearance Conversions (Exhibit D-1, ¶ 1ii); Conditional Forgiveness Modifications (Exhibit D, ¶ 1.i); 180 DPD Modifications (Exhibit D, ¶ 1.f); FHA Principal

- Second Lien Portfolio Modifications[3]
- Other Credits
  - Enhanced Borrower Transitional Funds[4]
  - Short Sales and Deeds-in Lieu[5]
  - Deficiency Waivers[6]
  - Forbearance for Unemployed Borrowers[7]
  - Anti-Blight Loss Mitigation Activities[8]
  - Benefits for Servicemembers[9]
- Refinancing Program[10]

B. Consumer Relief – Eligibility Criteria and Earned Credits

As reflected in Exhibits D and I, each of the forms of Consumer Relief has unique eligibility criteria and modification requirements. In order for Servicer to receive credit with respect to Consumer Relief activities on any mortgage loan, these eligibility criteria and modification requirements must be satisfied with respect to such mortgage loan and such satisfaction has to be validated by me in

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Reductions (Exhibit D, ¶ 1.j(i)); Government Modifications (Exhibit D, ¶1.j(ii)); and Settlement Loan Modifications (Exhibit I, ¶¶ 2, 7.f and h).

3 Exhibit D, ¶ 2; Exhibit D-1, ¶ 2. Creditable Second Lien Portfolio Modifications include proprietary (non-MHA) second lien principal reductions, also known as "2.b Modifications" (Exhibit D, ¶ 2.b); second lien principal reductions based upon a completed non-HAMP first lien modification by a Participating Servicer in the Settlement, also known as "2.c Modifications" (Exhibit D, ¶ 2.c); second lien modifications conducted through the Making Home Affordable Program (including 2MP), the FHA Short Refinance Second Lien Program (FHA2LP) or the HFA Hardest Hit Fund (or any other appropriate governmental program), also known as "2.d Modifications" or "second lien government modifications" (Exhibit D, ¶ 2.d); and second lien extinguishments to support the future ability of individuals to become homeowners, also known as "2.e Extinguishments" (Exhibit D, ¶ 2.e).

4 Exhibit D, ¶ 3; Exhibit D-1, ¶ 3.

5 Exhibit D, ¶ 4; Exhibit D-1, ¶ 4. Creditable loss mitigation transaction types in the context of Short Sales and Deeds-in-Lieu include payments made to an unrelated second lien holder for release of a second lien in connection with a completed Short Sale or Deed-in-Lieu (Exhibit D-1, ¶4.i.); acceptance of a short sale, forgiveness of a deficiency and release of lien on a first lien loan or second lien loan (including extinguishment of an owned second lien) in connection with a successful short sale or deed-in-lieu (Exhibit D,¶4.b and c; Exhibit D-1,¶4.ii, iii and iv); and extinguishment of an owned second lien to facilitate a short sale or deed-in-lieu successfully conducted by a Participating Servicer (Exhibit D, ¶ 4.d; Exhibit D-1, ¶ 4.iv).

6 Exhibit D, ¶ 5; Exhibit D-1, ¶ 5.

7 Exhibit D, ¶ 6; Exhibit D-1, ¶ 6.

8 Exhibit D, ¶ 7; Exhibit D-1, ¶ 7. Creditable Anti-Blight Loss Mitigation Activities include forgiveness of principal associated with a property where Servicer does not pursue foreclosure (Exhibit D-1, ¶ 7.i); payment of cash for demolition of property (Exhibit D-1, ¶ 7.ii); and REO properties donated to accepting municipalities, nonprofits, disabled servicemembers or relatives of deceased servicemembers (Exhibit D-1, ¶ 7.iii).

9 Exhibit D, ¶ 8.

10 Exhibit D, ¶ 9.

accordance with the terms of the Judgment. As shown in the First Interim Report, the credits earned can vary based on timing, the form of Consumer Relief and the transaction type within each form.

With respect to the requirements pertaining to timing, Servicer may receive additional credit against its Consumer Relief Requirements for amounts credited pursuant to its Refinancing Program and for principal forgiveness in First Lien Mortgage Modifications and Second Lien Portfolio Modifications. This additional credit is in the amount of 25% of the actual credits earned on the foregoing activities completed on or after March 1, 2012, and implemented on or before February 28, 2013.[11] In contrast to the foregoing incentive for promptness, Servicer will incur a penalty of 125% of its unmet Consumer Relief Requirements if it does not meet all of its Consumer Relief Requirements within three years of March 1, 2012. That penalty will increase to 140% of its unmet Consumer Relief Requirements in cases in which Servicer also has failed to complete 75% of its total Consumer Relief Requirements within two years of March 1, 2012.[12]

With respect to the requirements applicable to the forms of Consumer Relief and the transaction types within each form, on an aggregate basis, at least 85% of the first lien mortgages on occupied properties for which Servicer may get credit for First Lien Mortgage Modifications must have an unpaid principal balance before capitalization at or below the highest GSE conforming loan limit caps as of January 1, 2010;[13] at least 30% of Servicer's Total Consumer Relief Funds must be through First Lien Mortgage Modifications;[14] and at least 60% of Servicer's Total Consumer Relief Funds must be through a combination of First Lien Mortgage Modifications and Second Lien Portfolio

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[11] Exhibit D, ¶ 10.a, b. Under the Judgment, March 1, 2012, is Servicer's "Start Date" for its Consumer Relief activities.

[12] Exhibit D, ¶ 10.c, d. Servicer satisfied its Consumer Relief Requirements within time periods that avoid the imposition of any of the penalties set out in Exhibit D, ¶ 10.c, d.

[13] Exhibit D, ¶ 1.b.

[14] Pursuant to Exhibit I, Servicer is required to make a deferred settlement payment in the amount of $850,000,000 no later than thirty days after the third anniversary of the Judgment's effective date. Exhibit I, ¶ 1.c. The amount of this required payment will be reduced by the amount by which Servicer exceeds its minimum credit amount for First Lien Mortgage Modifications. Exhibit I, ¶¶ 1.c, 3 and 4.

Modifications.[15] In contrast, no more than 12.5%, 5%, 10% and 12% of Servicer's Total Consumer Relief Funds may be through Forbearance Conversions, Enhanced Borrower Transitional Funds, Deficiency Waivers and Anti-Blight Loss Mitigation Activities, respectively.[16]

Finally, with respect to the requirements applicable to the forms of Consumer Relief on the basis of transaction types, there are differences in eligibility requirements and crediting methodology for transaction types within each of the forms of Consumer Relief; there are also differences in eligibility requirements and crediting methodology among the various forms of Consumer Relief. These differences were explained in detail in Section II.B.4 of the First Interim Report, and, as set out in that Section, in general, credit amounts for these types of relief are derived by multiplying the actual relief afforded to the borrower by a multiplier of between $0.05 and $1.00, depending upon a variety of factors, including, for example, the type of relief given, the loan's pre-modification LTV, the borrower's delinquency status and whether Servicer owns the loan or is servicing it for third party investors.[17] The credit amount for a refinanced loan is calculated by multiplying the difference between the pre-modification and post-modification interest rates by the unpaid principal balance and then multiplying the resulting product by a multiplier based upon the period of time during which the loan's reduced interest rate is to be in effect.[18]

C. Consumer Relief – Servicer's Obligations

Under the terms of the Judgment, Servicer is obligated to provide $8,574,200,000 in Consumer Relief. Servicer's Consumer Relief Requirements are allocated as follows: $7,626,200,000 of relief to

[15] Exhibit D-1. The requirement that at least 30% of Servicer's Total Consumer Relief Funds be through first lien modifications can be adjusted by 2.5% for excess refinancing program credits above the minimum amount required, and the requirement that at least 60% of Servicer's Total Consumer Relief Funds be through first and second lien modifications can be adjusted by 10% for excess refinancing program credits above the minimum amounts required. Exhibit D, ¶ 9.f; Exhibit D-1, ¶¶ 1, 2.

[16] Exhibit D-1.

[17] Exhibit D-1.

[18] Exhibit D, ¶ 9.e.

consumers who meet the eligibility requirements in paragraphs 1-8 of Exhibit D; and, $948,000,000 of refinancing relief to consumers who meet the eligibility requirements of paragraph 9 of Exhibit D.[19]

D. Consumer Relief – Monitor's Obligations

The Judgment requires that I determine whether Servicer has satisfied the Consumer Relief Requirements in accordance with the authorities provided in the Judgment and report my findings to the Court in accordance with the provisions of Sections D.3 through D.5 of Exhibit E.[20] Under Section D.5 of Exhibit E, I am required to file my report with the Court after each Satisfaction Review, and I am required to include in my report the number of borrowers assisted and credited activities conducted by Servicer pursuant to the Consumer Relief Requirements. I am also required to include in my report any material inaccuracies identified in prior State Reports filed by Servicer.[21] In the First Interim Report, I reported that Servicer had earned, through December 31, 2012, the following Consumer Relief Credit:[22]

[19] The Judgment also requires Servicer to establish a one-time nationwide program to solicit underwater borrowers with economic hardship meeting certain eligibility requirements for first lien modifications. Exhibit I, ¶¶ 2 and 7. I will report on Servicer's compliance with its borrower solicitation obligations when issuing my report in response to a request by Servicer for a Certification of Compliance. *See*, Exhibit I, ¶¶ 3 and 4.

[20] Exhibit E, ¶ C.5.

[21] Exhibit E, ¶ D.5. The Judgment requires that the Servicer, following the end of each quarter, "transmit to each state a report ('State Report') including general statistical data on Servicer's servicing performance, such as aggregate and state-specific information regarding the number of borrowers assisted and credited activities conducted pursuant to the Consumer Relief Requirements, as described in Schedule Y." Exhibit E, ¶ D.2.

[22] In addition, in the First Interim Report, I found that: (i) I had no reason to believe that Servicer had failed to comply with all of the requirements of Exhibit D to the Judgment, including those that are not subject to crediting (the "Non-Creditable Requirements"), for the period extending from March 1, 2012, to December 31, 2012; and (ii) I had not identified any material inaccuracies in the State Reports filed by Servicer for the quarter ending December 31, 2012.

Table 1

Type of Relief	Loan Count	Earned Credit Amount
First Lien Mortgage Modifications	**23,983**	**$2,170,117,846**
Settlement Loan Modification	19,755	2,038,797,290
Forbearance Forgiveness	4,228	131,320,556
Second Lien Portfolio Modifications	**141,539**	**$2,210,934,257**
2.e Modifications	141,539	$2,210,934,257
Refinancing Program	**7,514**	**$392,232,910**
Other Creditable Items	**122,384**	**$3,020,518,281**
Enhanced Borrower Transitional Funds	23,525	68,349,672
Short Sales/Deeds-in-Lieu	98,859	2,952,168,609
Total Consumer Relief Programs	**295,420**	**$7,793,803,294**

E. Consumer Relief – Servicer's Request

On May 15, 2013, after completing a Satisfaction Review, the IRG submitted to me an IRG Assertion on the amount of Consumer Relief credit that Servicer had claimed to have earned from January 1, 2013, through March 31, 2013 ("Second Testing Period"). Servicer has requested that, in addition to reporting on the IRG Assertion, I review its crediting activity for the Second Testing Period, validate that the amount of credit claimed in the IRG Assertion is accurate and in accordance with Exhibits D and D-1, and certify that it has satisfied its Consumer Relief Requirements. In other words, Servicer has requested that I perform a second interim review of Servicer's satisfaction of its Consumer Relief Requirements.

III. Review – Satisfaction of Consumer Relief Requirements

A. Overview

The IRG is charged with performing, among other reviews, a Satisfaction Review after the end of each calendar year and at other times during the term of the Judgment. In addition, Servicer may, in

its discretion, choose to have the IRG conduct a Satisfaction Review at the end of any quarter. Servicer elected to exercise this discretion and have the IRG conduct a Satisfaction Review for the Second Interim Period. Once the IRG completes a Satisfaction Review, the IRG is required to report the results of that work to me through an IRG Assertion. When I receive an IRG Assertion, with my Primary Professional Firm, I undertake necessary confirmatory due diligence and validation of Servicer's claimed Consumer Relief credits as reflected in the IRG Assertion and then file with the Court a report regarding my findings. As noted above in Section II.E, this Report pertains to my findings regarding an IRG Assertion covering the Second Interim Period. Also, as noted above, at Servicer's request, this Report includes a review of Servicer's satisfaction of its Consumer Relief Requirements.

B. Consumer Relief Satisfaction Review Process

In order to better accomplish the processes outlined in Section III.A above, Servicer and I agreed upon, and the Monitoring Committee did not object to, a Work Plan that, among other things, sets out the testing methods, procedures and methodologies that are to be used relative to confirmatory due diligence and validation of Servicer's claimed Consumer Relief and other obligations under Exhibit I. As contemplated in, and in furtherance of, the Work Plan, Servicer and I also agreed upon Testing Definition Templates that outline the testing methods and process flows to be utilized to assess whether, and the extent to which, the credits Servicer would be claiming for its Consumer Relief activities were earned credits, that is, credits that could be applied toward satisfaction of Servicer's Consumer Relief Requirements. The testing methods and process flows are described in detail in Section III.B. of the First Interim Report, and as set out in that Section, they entail the examination and testing by each of the IRG and the PPF of creditable activities, together with calculations based on the results of those examinations; and for some types of Consumer Relief transaction types, the review of state laws relative to the transaction types and the relief claimed by Servicer. In addition, it includes

both in-person and web-based meetings by the PPF with the IRG and the PPF's unfettered access to the IRG and the IRG's Work Papers during the PPF's confirmatory due diligence and validation of Servicer's assertions relative to its Consumer Relief activities.

C. Servicer's Assertions

In Servicer's Consumer Relief Report submitted to the IRG, Servicer claimed that for the Second Testing Period it was entitled to claim credit in the amount of $1,849,783,813 pursuant to Exhibits D, D-1 and I. Approximately 73% of the credit was a result of relief afforded to borrowers on loans in Servicer's mortgage loan portfolio that are held for investment; and the remainder was a result of relief afforded to borrowers on loans that Servicer was servicing for other investors.[23] Approximately 65% of Servicer's claimed credit was through First Lien Mortgage Modifications and approximately 34% was through Servicer's Refinancing Program. Deficiency Waivers made up less than 2% of Servicer's claimed credit. A breakdown of the Consumer Relief credit, by type of relief, claimed by Servicer for the Second Testing Period is set forth in Table 2, below:

[23] As described in Section III.F.3, below, as a result of findings made by the PPF during its testing of Servicer's Reported Consumer Relief Credit, IRG withdrew its IRG Assertion for the Second Testing Period and filed, on January 17, 2014, an amended IRG Assertion in which it removed from its claimed credit for the Second Testing Period all credit for the Other Credits Testing Population. The distribution of Servicer's claimed credit between those loans held for investment and those it was servicing for other investors set forth in this Section III.C does not include loans in the Other Credits Testing Population.

Table 2

Type of Relief	Loan Count	Claimed Credit Amount
First Lien Mortgage Modifications	**8,875**	**$1,195,078,426**
Settlement Loan Modifications	6,626	665,332,336
180 DPD Modifications	2,249	529,746,090
Refinancing Program	**12,733**	**$621,536,772**
Other Creditable Items	**6,830**	**$33,168,615**
Deficiency Waivers	6,830	33,168,615
Total Consumer Relief Programs	**28,438**	**$1,849,783,813**

D. Internal Review Group's Satisfaction Review

After submitting its IRG Assertion on May 15, 2013, the IRG reported to me the results of its Satisfaction Review, which report concluded that:

i) the Consumer Relief asserted by Servicer was based on completed transactions that were correctly reported by Servicer;

ii) Servicer had correctly credited such Consumer Relief activities, so that the claimed amount of credit is correct; and

iii) the claimed Consumer Relief correctly reflected the requirements, conditions and limitations set forth in Exhibits D, D-1 and I; and

iv) Servicer had fully satisfied its Consumer Relief Requirements.

According to the IRG's report to me, its Satisfaction Review was based on a detailed review of Servicer's relevant records and on statistical sampling to a 99% confidence level.[24] The report of the

[24] Confidence level is a measure of the reliability of the outcome of a sample. A confidence level of 99% in performing a test on a sample means there is a probability of at least 99% that the outcome from the testing of the sample is representative of the outcome that would be obtained if the testing had been performed on the entire population.

IRG with regard to its Satisfaction Review was accompanied by the IRG's Work Papers reflecting its review and analysis.

E. IRG Testing and Confirmation as to Consumer Relief Credit Earned

1. Population Definition/Sampling Approach. The IRG's testing of Servicer's Consumer Relief Report as to the amount of Consumer Relief credit earned first involved the IRG randomly selecting three statistically valid samples from all mortgage loans receiving Consumer Relief for which Servicer sought credit in the Second Testing Period. Each of these samples was drawn from one of three separate and distinct categories, each of which was treated as a testing population ("Testing Population"). These Testing Populations were: (i) First Lien Mortgage Modifications,[25] including Settlement Loan Modifications and 180 DPD Modifications; (ii) Refinancing Program;[26] and, (iii) Other Credits, including deficiency waivers.[27] The samples for each of these Testing Populations were selected utilizing Structured Query Language (SQL), which is a well-established and well-known database and data analysis software product. In determining the sample size, the IRG, in accordance with the Work Plan, utilized a 99% confidence level (one-tailed), 2.5% estimated error rate and 2% margin of error approach. The total number of loans in each Testing Population and the number of loans tested by the IRG, which number was equal to the number the Servicer and I had contemplated when developing the Work Plan, are set forth in Table 3, below:[28]

[25] Exhibit D, ¶ 1; Exhibit I, ¶¶ 2 and 7.
[26] Exhibit D, ¶ 9.
[27] Exhibit D, ¶¶ 3, 4 and 7.
[28] Throughout this Report, one dollar differences in totals are the result of rounding.

Table 3

Testing Population	Number of Loans in Credit Population	Total Reported Credit Amount	Number of Loans in IRG Sample	Total Reported Credit Amount in IRG Sample
First Lien Mortgage Modifications	8,875	$1,195,078,426	319	$43,191,111
Refinancing Program	12,733	$621,536,772	322	$15,577,054
Other Credits	6,830	$33,168,615	315	$1,666,870
Total Consumer Relief Programs	**28,438**	**$1,849,783,813**	**956**	**$60,435,034**

2. Approach to Testing Loans. For each of the loans in the samples drawn from the three Testing Populations, the IRG conducted an independent review to determine whether the loan was eligible for credit and the amount of credit reported by Servicer was calculated correctly. The IRG executed this review pursuant to and in accordance with the Testing Definition Templates and related test plans for each of the three Testing Populations by accessing from Servicer's System of Record the various data inputs required to undertake the eligibility determination and credit calculation for each loan. The IRG's process for testing is set out in Section III.E.2 of the First Interim Report.

After verifying the eligibility and recalculating credit for all loans in the sample for each Testing Population, the IRG calculated the sum of the recalculated credits for the sample for each Testing Population ("Actual Credit Amount") and compared that amount against the amount of credit claimed by Servicer for the sample of the respective Testing Population ("Reported Credit Amount"). According to the Work Plan, if the Actual Credit Amount equals the Reported Credit Amount or if the Reported Credit Amount is not more than 2.0% greater or less than the Actual Credit Amount for any of the three Testing Populations, the Reported Credit Amount will be deemed correct and Servicer's Consumer Relief Report will be deemed to have passed the Satisfaction Review and will be certified by the IRG to me. If, however, the IRG determined that the Reported Credit Amount for any of the

three Testing Populations exceeded the Actual Credit Amount by more than 2.0%, the IRG would inform Servicer, which would then be required to perform an analysis of the data of all loans in the Testing Population from which the sample had been drawn, identify and correct any errors and provide an updated Consumer Relief Report to the IRG. The IRG would then select a new sample and test the applicable Testing Population or Testing Populations against the updated report in accordance with the process set forth above. If the IRG determined that the Actual Credit Amount was greater than the Reported Credit Amount by more than 2.0% for a particular Testing Population, Servicer had the option of either (i) taking credit for the amount it initially reported to the IRG or (ii) correcting any underreporting of Consumer Relief credit and resubmitting the entire population of loans to the IRG for further testing in accordance with the process set forth above. Utilizing the steps set forth above, the IRG determined that the difference between the Reported Credit Amount and the Actual Credit Amount for each sample of the three Testing Populations was within the 2.0% error threshold described above. These findings by Testing Population are summarized in Table 4, below:

Table 4

Testing Population	Loans Sampled	Servicer Reported Credit Amount	IRG Calculated Actual Credit Amount	Amount Overstated/ (Understated)	% Difference
First Lien Mortgage Modifications	319	$43,191,111	$43,097,113	$93,998	0.22%
Refinancing Program	322	$15,577,054	$15,551,173	$25,881	0.17%
Other Credits	315	$1,666,870	$1,638,808	$28,062	1.71%

Based upon the results set forth above, the IRG certified that the amount of Consumer Relief credit claimed by Servicer in each Testing Population was accurate and conformed to the requirements in Exhibits D, D-1 and I. This certification was evidenced in the IRG Assertion attached to this report as Attachment 2, which assertion is in the form required by the Work Plan.

F. Monitor's Review of the IRG's Assertion on Consumer Relief Credit

1. Preliminary Review. As discussed in the First Interim Report, preliminary to the PPF's review of the IRG's Consumer Relief testing for the period extending from March 1, 2012, through December 31, 2012 ("First Testing Period"), I, along with the PPF and some of my other Professionals, met with representatives of Servicer to gain an understanding of its mortgage banking operations, SOR and IRG program, and the IRG's proposed approach for Consumer Relief testing, among other things. The knowledge gained during these meetings relative to the First Testing Period carried forward into the Second Testing Period and was supplemented by the PPF as necessary or appropriate through continued interaction with the IRG and Servicer.

2. Review. At my direction, the PPF conducted an extensive review of the testing conducted by the IRG relative to Consumer Relief crediting for the Second Testing Period. This review of Consumer Relief crediting began in late June, 2013, and continued, with only minimal interruption, until the filing of this Report. The principal focus of the reviews was the PPF's testing of the entire sample of loans in each of the three Testing Populations, following the processes and procedures set out in the Testing Definition Templates and the IRG's test plans. These reviews were of the same type as those undertaken by the PPF in performing its confirmatory work for the First Testing Period and included access to information of the type substantially identical to that to which it was afforded access relative to its confirmatory work for the First Testing Period.

3. Results of the PPF's Testing of Reported Consumer Relief Credit. In its review of the IRG's work for the Second Testing Period, as explained above, the PPF conducted detailed re-testing of the entire sample of loans originally tested by the IRG.

As described above, throughout its testing process, the PPF interacted extensively with the IRG to resolve issues that arose during the testing process. Most issues were resolved by the IRG providing additional evidence demonstrating that loans were eligible for credit or explanations concerning its testing methodology. Some of the issues resolved through this process included: (i) the type of evidence required to calculate the forgiveness amount for modifications of first liens that were being sub-serviced by another servicer; and (ii) the type of evidence required to demonstrate that the sub-serviced first lien modifications were, in fact, eligible for credit.

After completing the loan-level testing, the PPF determined that the IRG had correctly validated the Consumer Relief credit amounts reported by Servicer in two of the three Testing Populations. The results of the PPF's loan-level testing are set forth in Table 5, below:

Table 5

Testing Population	Loans Reviewed	Servicer Reported Credit Amount	PPF Calculated Actual Credit Amount	Amount Overstated/ (Understated)	% Difference
First Lien Mortgage Modifications	319	$43,191,111	$42,955,092	$236,019	0.55%
Refinancing Program	322	$15,577,054	$15,551,173	$25,881	0.17%
Other Credits	315	$1,666,870	$1,626,720	$40,150	2.47%

As set out in the table above, for each of the samples tested from the First Lien Mortgage Modifications and Refinancing Program, the difference between the Reported Credit Amount and the credit amount as calculated by the PPF was within the 2.0% margin of error permitted by the Work Plan; however, the PPF determined that the Reported Credit Amount for the sample from the Other

Credits Testing Population was overstated by more than the allowable 2.0% margin of error. The main causes of this overstatement, other than minor miscalculations of credit amounts on individual loans, were two-fold. As mentioned in Section III.E.2, above, during its own testing of the sample selected from the Other Credits Testing Population, the IRG determined that the Reported Credit Amount exceeded the Actual Credit Amount by $28,062, or 1.71%. Most of that overstatement resulted from Servicer erroneously claiming credit for seven Deficiency Waivers in relation to loans as to which a bankruptcy was pending or had occurred at the time of implementation of the Deficiency Waivers. During its testing, the PPF identified two additional instances in which the Servicer claimed credit for Deficiency Waivers in relation to loans that were ineligible for credit because the underlying mortgage had been in a third lien position.[29]

After consulting with the PPF, which in turn consulted with me and other Professionals engaged by me, Servicer and the IRG agreed that the Reported Credit Amount of the sample from the Other Credits Testing Population exceeded the Actual Credit Amount by more than 2.0%. As a result, the IRG withdrew its IRG Assertion for the Second Testing Period and filed, on January 17, 2014, an amended IRG Assertion in which it removed from its claimed credit for the Second Testing Period all credit for the Other Credits Testing Population.

Except for the claim of Deficiency Waivers credit with respect to two loans previously secured by third liens, the PPF's credit calculation and the IRG's credit calculation are substantially the same.

The PPF documented its findings in its work papers and has reported them to me. I then undertook an in-depth review of the IRG's Work Papers with the PPF, as well as the PPF's Work Papers.

[29] Servicer is only entitled to credit for Deficiency Waivers in relation to loans secured by first or second liens. Exhibit D-1, ¶ 5.1.

IV. State Reports/Reported Credit Amounts

In order to meet my obligation of identifying any material inaccuracies in the State Reports filed by Servicer for the quarter ending March 31, 2013, I conducted a comparison of the information contained in Servicer's Consumer Relief Report regarding Consumer Relief granted in the Second Testing Period to the "Quarter End" data contained in Servicer's State Report filed for the quarter ending March 31, 2013. This comparison revealed that there were three apparent differences between the aggregate amount of relief in a particular category of relief as reported by Servicer for credit in its Consumer Relief Report submitted to the IRG and the amount of relief for that category as reported by Servicer in its State Report filed for the quarter ending March 31, 2013. The apparent differences are set forth in Table 6, below:

Table 6

Testing Population	Aggregate Amount of Relief Reported in Servicer's State Report for Quarter Ending March 31, 2013	Aggregate Amount of Relief Reported in Servicer's Consumer Relief Report as of March 31, 2013	Difference
First Lien Modifications	$1,187,470,324	$1,513,938,601	$326,468,277
Second Lien Modifications	$18,569,035	-0-	$18,569,035
Deficiency Waivers	-0-	$331,686,151	($331,686,151)

At my direction, the PPF has made inquiry of Servicer and the IRG regarding these differences. Based on those inquiries, I have determined that the differences in the aggregate amounts of Consumer Relief afforded to borrowers through completed First Lien Mortgage Modifications and Deficiency Waivers were the result of Servicer seeking credit in the Second Testing Period for first lien principal modifications and deficiency waivers completed prior to December 31, 2012, for which it did not claim credit in the First Testing Period.[30] The difference in Second Lien Portfolio Modifications was

[30] In the First Interim Report, I noted that Servicer had elected not to seek credit during the First Testing Period for $326,468,277 in aggregate relief through First Lien Mortgage Modifications and $1,018,343,279 in aggregate relief

due to Servicer's election to not seek credit for certain creditable transactions. As a result, I have not identified any material inaccuracies in the State Reports filed by Servicer for the quarter ending March 31, 2013.

V. Total Consumer Relief Credit Earned by Servicer

A. Validated Consumer Relief Credit

Based upon the procedures described above and in the First Interim Report, from the Start Date through March 31, 2013, before taking into account any minimums or caps applicable to creditable activity or the allocation of excess relief under Servicer's Refinance program, Servicer is entitled to claim credit in the amount of $9,610,418,492 pursuant to Exhibits D, D-1 and I. Approximately 61% of the credit was a result of relief afforded to borrowers on loans in Servicer's mortgage loan portfolio that is held for investment; and the remainder was a result of relief afforded to borrowers on loans that Servicer was servicing for other investors. More than 35% of Servicer's earned credit has been through First Lien Mortgage Modifications and approximately 11% has been through Refinancing relief. Short-sales and other types of Consumer Relief, excluding Second Lien Portfolio Modifications, have made up approximately 31% of Servicer's earned credit. Second Lien Portfolio Modifications made up approximately 23% of Servicer's earned credit. In addition, Servicer has met its Total Consumer Relief Funds obligations, and its relief obligations relative to a Refinancing Program. A breakdown of the Consumer Relief credit, by type of relief, earned by Servicer from the Start Date through March 31, 2013, is set forth in Table 7, below:

through deficiency waivers that were afforded to borrowers and reported as part of Servicer's State Report for the quarter ending December 31, 2012.

Table 7

Type of Relief	Loan Count	Earned Credit Amount
First Lien Mortgage Modifications	**32,858**	**$3,365,196,272**
Settlement Loan Modification	26,381	2,704,129,626
Forbearance Forgiveness	4,228	131,320,556
180 DPD Modifications	2,249	529,746,090
Second Lien Portfolio Modifications	**141,539**	**$2,210,934,257**
2.e Modifications	141,539	$2,210,934,257
Refinancing Program	**20,247**	**$1,013,769,682**
Other Creditable Items	**122,384**	**$3,020,518,281**
Enhanced Borrower Transitional Funds	23,525	68,349,672
Short Sales/Deeds-in-Lieu	98,859	2,952,168,609
Total Consumer Relief Programs	**317,028**	**$9,610,418,492**

B. Servicer's Compliance with Caps and Minimums

At my direction, the PPF has conducted an analysis of the credit claimed by Servicer from the Start Date through March 31, 2013, and determined that, in conjunction with satisfying its Consumer Relief Requirements, Servicer has complied with the caps and minimums in Exhibits D and D-1. A summary of the PPF's findings regarding each of these caps and minimums is set forth below.

1. GSE-Conforming Loan Requirement for First Lien Mortgage Modifications. Exhibit D requires that 85% of the first lien mortgages on occupied properties for which Servicer may get credit for First Lien Mortgage Modifications must have an unpaid principal balance before capitalization at or below the highest GSE conforming loan limit caps as of January 1, 2010.[31] The PPF analyzed the entire population of First Lien Mortgage Modifications for which Servicer has sought credit and determined that $3,080,060,221, or 92% of the credit, was in relation to loans that had an unpaid

[31] Exhibit D, ¶ 1.b. GSE conforming loan limit caps as of January 1, 2010 are: 1 Unit - $729,750; 2 Units - $934,200; 3 Units - $1,129,250; and 4 Units - $1,403,400.

principal balance before capitalization at or below the highest GSE conforming loan limit caps as of January 1, 2010.

2. First Lien Mortgage Modifications and Second Lien Portfolio Modifications Minimums. Because Servicer earned $3,365,196,272 in credit—more than 44% of its Total Consumer Relief Funds credit requirement—through First Lien Mortgage Modifications, it satisfied the requirement that its First Lien Mortgage Modifications credit equal at least 30% of its Total Consumer Relief Funds requirement, or $2,287,860,000.[32] Moreover, because Servicer has exceeded by more than $850,000,000 its minimum First Lien Mortgage Modification requirement, in accordance with paragraph 4.a.iii. of Exhibit I, Servicer is relieved of the obligation to make the deferred payment of $850,000,000 set forth in paragraph 1.c of Exhibit I.[33]

Similarly, because Servicer earned $5,576,130,529 in credit—more than 73% of its Total Consumer Relief credit requirement—through the combination of First Lien Mortgage Modifications and Second Lien Portfolio Modifications, Servicer has satisfied the requirement that its combined First Lien Mortgage Modification and Second Lien Portfolio Modification credit equal at least 60% of its Total Consumer Relief Funds requirement.[34]

3. Maximums on Forbearance Conversions, Enhanced Borrower Transitional Funds, Deficiency Waivers and Anti-Blight Loss Mitigation Activities. Under the Judgment, no more than 12.5%, 5%, 10% and 12% of Servicer's Total Consumer Relief Funds may be through Forbearance Conversions, Enhanced Borrower Transitional Funds, Deficiency Waivers and Anti-Blight Loss Mitigation Activities, respectively.[35] Servicer complied with each of these limitations. Specifically, Servicer earned $131,320,556 in credit, or 1.72% of its Total Consumer Relief Funds requirement,

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[32] *See*, Exhibit D-1.
[33] *See*, footnote 14, above; Exhibit I, ¶¶ 1.c, 3 and 4.
[34] *See*, Exhibit D-1.
[35] Exhibit D-1.

through Forbearance Conversions; and $68,349,672 in credit, or less than 1% of its Total Consumer Relief Funds requirement, through Enhanced Borrower Transitional Funds. Servicer did not earn credit as a result of Deficiency Waivers or Anti-Blight Loss Mitigation Activities.

VI. Non-Creditable Consumer Relief Requirements and IRG Qualifications

The Judgment requires that I conduct an ongoing review of the qualifications and performance of the IRG.[36] As described in Section III.F. of the First Interim Report, the PPF and SPF, acting at my direction, have conducted interviews of IRG management personnel and have observed and assessed, on an ongoing basis, the IRG's independence, competence and performance. Throughout this process, I have not become aware of any facts that would lead me to question the independence, competence and performance of the IRG.

In addition, as described in Section IV of the First Interim Report, as part of my review of Servicer's Consumer Relief activities, I have undertaken an inquiry into whether Servicer complied with the Non-Creditable Requirements of Exhibit D. As part of that inquiry, in June 2013, the PPF and I interviewed certain members of Servicer's management who possessed knowledge concerning the manner in which Servicer selected the borrowers to whom it provided Consumer Relief pursuant to the Judgment. Based upon those interviews and the procedures described in Section III.F, above, I have no reason to believe that, in providing the Consumer Relief claimed during the Second Testing Period, Servicer did not continue to comply with the Non-Creditable Requirements

VII. Summary and Conclusions

On the basis of the information submitted to me and the work as described in this Report, (i) I find that the amount of Consumer Relief set out in Servicer's amended Consumer Relief Report for the period extending from January 1, 2013, to March 31, 2013, is correct and accurate within the

[36] *See*, Exhibit E, ¶ C.10.

tolerances permitted under the Work Plan, and (ii) I have not identified any material inaccuracies in the State Reports filed by Servicer for the quarter ending March 31, 2013.

Based upon my findings in subparagraphs (i) and (ii) of this Section VII, and my findings in the First Interim Report, I conclude that Servicer has (A) substantially complied with the material terms of Exhibits D and D-1 and has satisfied the minimum requirements and obligations, including the Non-Creditable Requirements, imposed upon it under Section III, paragraph 5 of the Consent Judgment to provide Consumer Relief under and pursuant to Exhibits D and D-1; and (B) satisfied the requirements of paragraph 4.a.iii. of Exhibit I, and is accordingly discharged of any obligation under paragraph 1.c. of Exhibit I. [37]

Prior to the filing of this Report, I have conferred with Servicer and the Monitoring Committee about my findings and I have provided each with a copy of my Report. Immediately after filing this Report, I will provide a copy of this Report to Servicer's Board of Directors, or a committee of the Board designated by Servicer.[38]

I respectfully submit this Report to the United States District Court for the District of Columbia, this 18th day of March 2014.

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[37] As described in footnote 19, above, the Judgment requires Servicer to establish a one-time nationwide program to solicit underwater borrowers with economic hardship meeting certain eligibility requirements for first lien modifications. Exhibit I, ¶¶ 2 and 7. I will report on Servicer's compliance with its borrower solicitation obligations when issuing my report in response to a request for a Certification of Compliance. *See*, Exhibit I, ¶¶ 3 and 4.

[38] Exhibit E, ¶ D.4.

CERTIFICATE OF SERVICE

I hereby certify that on this date I have filed a copy of the foregoing using the Court's CM/ECF system, which will send electronic notice of filing to the persons listed below at their respective email addresses.

This the 18th day of March, 2014.

/s/ Joseph A. Smith, Jr.
Joseph A. Smith, Jr.

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WELLS FARGO & COMPANY *(Defendant)*

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		CITIMORTGAGE, INC. *(Defendant)*

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BANK OF AMERICA CORPORATION *(Defendant)*

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WELLS FARGO BANK NATIONAL ASSOCIATION
(Defendant)

ATTACHMENT 1
Judgment and Exhibits D, D-1, E and I

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
APR - 4 2012
Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

BANK OF AMERICA CORP. *et al.*,

Defendants.

12 0361

Civil Action No. _____

CONSENT JUDGMENT

WHEREAS, Plaintiffs, the United States of America and the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia, and the District of Columbia filed their complaint on March 12, 2012, alleging that Bank of America Corporation, Bank of America, N.A., BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, Countrywide Home Loans, Inc., Countrywide Financial Corporation, Countrywide Mortgage Ventures, LLC, and Countrywide Bank, FSB (collectively, for the sake

of convenience only, "Defendant") violated, among other laws, the Unfair and Deceptive Acts and Practices laws of the Plaintiff States, the False Claims Act, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Servicemembers Civil Relief Act, and the Bankruptcy Code and Federal Rules of Bankruptcy Procedure;

WHEREAS, the parties have agreed to resolve their claims without the need for litigation;

WHEREAS, Defendant has consented to entry of this Consent Judgment without trial or adjudication of any issue of fact or law and to waive any appeal if the Consent Judgment is entered as submitted by the parties;

WHEREAS, Defendant, by entering into this Consent Judgment, does not admit the allegations of the Complaint other than those facts deemed necessary to the jurisdiction of this Court;

WHEREAS, the intention of the United States and the States in effecting this settlement is to remediate harms allegedly resulting from the alleged unlawful conduct of the Defendant;

AND WHEREAS, Defendant has agreed to waive service of the complaint and summons and hereby acknowledges the same;

NOW THEREFORE, without trial or adjudication of issue of fact or law, without this Consent Judgment constituting evidence against Defendant, and upon consent of Defendant, the Court finds that there is good and sufficient cause to enter this Consent Judgment, and that it is therefore ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355(a), and 1367, and under 31 U.S.C. § 3732(a) and (b), and over

Defendant. The Complaint states a claim upon which relief may be granted against Defendant. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b)(2) and 31 U.S.C. § 3732(a).

II. SERVICING STANDARDS

2. Bank of America, N.A. shall comply with the Servicing Standards, attached hereto as Exhibit A, in accordance with their terms and Section A of Exhibit E, attached hereto.

III. FINANCIAL TERMS

3. *Payment Settlement Amounts.* Bank of America Corporation and/or its affiliated entities shall pay or cause to be paid into an interest bearing escrow account to be established for this purpose the sum of $2,382,415,075, which sum shall be added to funds being paid by other institutions resolving claims in this litigation (which sum shall be known as the "Direct Payment Settlement Amount") and which sum shall be distributed in the manner and for the purposes specified in Exhibit B. Payment shall be made by electronic funds transfer no later than seven days after the Effective Date of this Consent Judgment, pursuant to written instructions to be provided by the United States Department of Justice. After the required payment has been made, Defendant shall no longer have any property right, title, interest or other legal claim in any funds held in escrow. The interest bearing escrow account established by this Paragraph 3 is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1 of the U.S. Internal Revenue Code of 1986, as amended. The Monitoring Committee established in Paragraph 8 shall, in its sole discretion, appoint an escrow agent ("Escrow Agent") who shall hold and distribute funds as provided herein. All costs and expenses of the Escrow Agent, including taxes, if any, shall be paid from the funds under its control, including any interest earned on the funds.

4. *Payments to Foreclosed Borrowers.* In accordance with written instructions from the State members of the Monitoring Committee, for the purposes set forth in Exhibit C, the Escrow Agent shall transfer from the escrow account to the Administrator appointed under Exhibit C $1,489,813,925.00 (the "Borrower Payment Amount") to enable the Administrator to provide cash payments to borrowers whose homes were finally sold or taken in foreclosure between and including January 1, 2008 and December 31, 2011; who submit claims for harm allegedly arising from the Covered Conduct (as that term is defined in Exhibit G hereto); and who otherwise meet criteria set forth by the State members of the Monitoring Committee. The Borrower Payment Amount and any other funds provided to the Administrator for these purposes shall be administered in accordance with the terms set forth in Exhibit C.

5. *Consumer Relief.* Defendant shall provide $7,626,200,000 of relief to consumers who meet the eligibility criteria in the forms and amounts described in Paragraphs 1-8 of Exhibit D, and $948,000,000 of refinancing relief to consumers who meet the eligibility criteria in the forms and amounts described in Paragraph 9 of Exhibit D, to remediate harms allegedly caused by the alleged unlawful conduct of Defendant. Defendant shall receive credit towards such obligation as described in Exhibit D.

IV. ENFORCEMENT

6. The Servicing Standards and Consumer Relief Requirements, attached as Exhibits A and D, are incorporated herein as the judgment of this Court and shall be enforced in accordance with the authorities provided in the Enforcement Terms, attached hereto as Exhibit E.

7. The Parties agree that Joseph A. Smith, Jr. shall be the Monitor and shall have the authorities and perform the duties described in the Enforcement Terms, attached hereto as Exhibit E.

8. Within fifteen (15) days of the Effective Date of this Consent Judgment, the participating state and federal agencies shall designate an Administration and Monitoring Committee (the "Monitoring Committee") as described in the Enforcement Terms. The Monitoring Committee shall serve as the representative of the participating state and federal agencies in the administration of all aspects of this and all similar Consent Judgments and the monitoring of compliance with it by the Defendant.

V. RELEASES

9. The United States and Defendant have agreed, in consideration for the terms provided herein, for the release of certain claims, and remedies, as provided in the Federal Release, attached hereto as Exhibit F. The United States and Defendant have also agreed that certain claims, and remedies are not released, as provided in Paragraph 11 of Exhibit F. The releases contained in Exhibit F shall become effective upon payment of the Direct Payment Settlement Amount by Defendant.

10. The State Parties and Defendant have agreed, in consideration for the terms provided herein, for the release of certain claims, and remedies, as provided in the State Release, attached hereto as Exhibit G. The State Parties and Defendant have also agreed that certain claims, and remedies are not released, as provided in Part IV of Exhibit G. The releases contained in Exhibit G shall become effective upon payment of the Direct Payment Settlement Amount by Defendant.

VI. SERVICEMEMBERS CIVIL RELIEF ACT

11. The United States and Defendant have agreed to resolve certain claims arising under the Servicemembers Civil Relief Act ("SCRA") in accordance with the terms provided in Exhibit H. Any obligations undertaken pursuant to the terms provided in Exhibit H, including

any obligation to provide monetary compensation to servicemembers, are in addition to the obligations undertaken pursuant to the other terms of this Consent Judgment. Only a payment to an individual for a wrongful foreclosure pursuant to the terms of Exhibit H shall be reduced by the amount of any payment from the Borrower Payment Amount.

VII. OTHER TERMS

12. The United States and any State Party may withdraw from the Consent Judgment and declare it null and void with respect to that party if the Consumer Relief Payments (as that term is defined in Exhibit F (Federal Release)) required under this Consent Judgment are not made and such non-payment is not cured within thirty days of written notice by the party.

13. This Court retains jurisdiction for the duration of this Consent Judgment to enforce its terms. The parties may jointly seek to modify the terms of this Consent Judgment, subject to the approval of this Court. This Consent Judgment may be modified only by order of this Court.

14. The Effective Date of this Consent Judgment shall be the date on which the Consent Judgment has been entered by the Court and has become final and non-appealable. An order entering the Consent Judgment shall be deemed final and non-appealable for this purpose if there is no party with a right to appeal the order on the day it is entered.

15. This Consent Judgment shall remain in full force and effect for three and one-half years from the date it is entered ("the Term"), at which time Defendant's obligations under the Consent Judgment shall expire, except that, pursuant to Exhibit E, Bank of America, N.A. shall submit a final Quarterly Report for the last quarter or portion thereof falling within the Term and cooperate with the Monitor's review of said report, which shall be concluded no later than six months after the end of the Term. Defendant shall have no further obligations under this

Consent Judgment six months after the expiration of the Term, but the Court shall retain jurisdiction for purposes of enforcing or remedying any outstanding violations that are identified in the final Monitor Report and that have occurred but not been cured during the Term.

16. Except as otherwise agreed in Exhibit B, each party to this litigation will bear its own costs and attorneys' fees associated with this litigation.

17. Nothing in this Consent Judgment shall relieve Defendant of its obligation to comply with applicable state and federal law.

18. The United States and Defendant further agree to the additional terms contained in Exhibit I hereto.

19. The sum and substance of the parties' agreement and of this Consent Judgment are reflected herein and in the Exhibits attached hereto. In the event of a conflict between the terms of the Exhibits and paragraphs 1-18 of this summary document, the terms of the Exhibits shall govern.

SO ORDERED this 4 day of April, 2012

Rosemary M Collyer

UNITED STATES DISTRICT JUDGE

EXHIBIT D

Consumer Relief Requirements

Any Servicer as defined in the Servicing Standards set forth in Exhibit A to this Consent Judgment (hereinafter "Servicer" or "Participating Servicer") agrees that it will not implement any of the Consumer Relief Requirements described herein through policies that are intended to (i) disfavor a specific geography within or among states that are a party to the Consent Judgment or (ii) discriminate against any protected class of borrowers. This provision shall not preclude the implementation of pilot programs in particular geographic areas.

Any discussion of property in these Consumer Relief Requirements, including any discussion in Table 1 or other documents attached hereto, refers to a 1-4 unit single-family property (hereinafter, "Property" or collectively, "Properties").

Any consumer relief guidelines or requirements that are found in Table 1 or other documents attached hereto, are hereby incorporated into these Consumer Relief Requirements and shall be afforded the same deference as if they were written in the text below.

For the avoidance of doubt, subject to the Consumer Relief Requirements described below, Servicer shall receive credit for consumer relief activities with respect to loans insured or guaranteed by the U.S. Department of Housing and Urban Development, U.S. Department of Veterans Affairs, or the U.S. Department of Agriculture in accordance with the terms and conditions herein, provided that nothing herein shall be deemed to in any way relieve Servicer of the obligation to comply with the requirements of the U.S. Department of Housing and Urban Development, U.S. Department of Veterans Affairs, and the U.S. Department of Agriculture with respect to the servicing of such loans.

Servicer shall not, in the ordinary course, require a borrower to waive or release legal claims and defenses as a condition of approval for loss mitigation activities under these Consumer Relief Requirements. However, nothing herein shall preclude Servicer from requiring a waiver or release of legal claims and defenses with respect to a Consumer Relief activity offered in connection with the resolution of a contested claim, when the borrower would not otherwise have received as favorable terms or when the borrower receives additional consideration.

Programmatic exceptions to the crediting available for the Consumer Relief Requirements listed below may be granted by the Monitoring Committee on a case-by-case basis.

To the extent a Servicer is responsible for the servicing of a mortgage loan to which these Consumer Relief Requirements may apply, the Servicer shall receive credit for all consumer relief and refinancing activities undertaken in connection with such

mortgage loan by any of its subservicers to the same extent as if Servicer had undertaken such activities itself.*

1. First Lien Mortgage Modifications

    a. Servicer will receive credit under Table 1, Section 1, for first-lien mortgage loan modifications made in accordance with the guidelines set forth in this Section 1.

    b. First liens on occupied[1] Properties with an unpaid principal balance ("UPB") prior to capitalization at or below the highest GSE conforming loan limit cap as of January 1, 2010 shall constitute at least 85% of the eligible credits for first liens (the "Applicable Limits").

    c. Eligible borrowers must be at least 30 days delinquent or otherwise qualify as being at imminent risk of default due to borrower's financial situation.

    d. Eligible borrowers' pre-modification loan-to-value ratio ("LTV") is greater than 100%.

    e. Post-modification payment should target a debt-to-income ratio ("DTI")[2] of 31% (or an affordability measurement consistent with HAMP guidelines) and a modified LTV[3] of no greater than 120%, provided that eligible borrowers receive a modification that meets the following terms:

        i. Payment of principal and interest must be reduced by at least 10%.

        ii. Where LTV exceeds 120% at a DTI of 31%, principal shall be reduced to a LTV of 120%, subject to a minimum DTI of 25% (which minimum may be waived by Servicer at Servicer's sole

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* If a Servicer holds a mortgage loan but does not service or control the servicing rights for such loan (either through its own servicing operations or a subservicer), then no credit shall be granted to that Servicer for consumer relief and refinancing activities related to that loan.

1 Servicer may rely on a borrower's statement, at the time of the modification evaluation, that a Property is occupied or that the borrower intends to rent or re-occupy the property.

2 Consistent with HAMP, DTI is based on first-lien mortgage debt only. For non-owner-occupied properties, Servicer shall consider other appropriate measures of affordability.

3 For the purposes of these guidelines, LTV may be determined in accordance with HAMP PRA.

discretion), provided that for investor-owned loans, the LTV and DTI need not be reduced to a level that would convert the modification to net present value ("NPV") negative.

f. DTI requirements may be waived for first lien mortgages that are 180 days or more delinquent as long as payment of principal and interest is reduced by at least 20% and LTV is reduced to at least 120%.

g. Servicer shall also be entitled to credit for any amounts of principal reduction which lower LTV below 120%.

h. When Servicer reduces principal on a first lien mortgage via its proprietary modification process, and a Participating Servicer owns the second lien mortgage, the second lien shall be modified by the second lien owning Participating Servicer in accordance with Section 2.c.i below, provided that any Participating Servicer other than the five largest servicers shall be given a reasonable amount of time, as determined by the Monitor, after that Participating Servicer's Start Date to make system changes necessary to participate in and implement this requirement. Credit for such second lien mortgage write-downs shall be credited in accordance with the second lien percentages and cap described in Table 1, Section 2.

i. In the event that, in the first 6 months after Servicer's Start Date (as defined below), Servicer temporarily provides forbearance or conditional forgiveness to an eligible borrower as the Servicer ramps up use of principal reduction, Servicer shall receive credit for principal reduction on such modifications provided that (i) Servicer may not receive credit for both the forbearance and the subsequent principal reduction and (ii) Servicer will only receive the credit for the principal reduction once the principal is actually forgiven in accordance with these Consumer Relief Requirements and Table 1.

j. Eligible modifications include any modification that is made on or after Servicer's Start Date, including:

    i. Write-offs made to allow for refinancing under the FHA Short Refinance Program;

    ii. Modifications under the Making Home Affordable Program (including the Home Affordable Modification Program ("HAMP") Tier 1 or Tier 2) or the Housing Finance Agency Hardest Hit Fund ("HFA Hardest Hit Fund") (or any other federal program) where principal is forgiven, except to the extent that state or federal funds paid to Servicer in its capacity as an investor are the source of a Servicer's credit claim.

iii. Modifications under other proprietary or other government modification programs, provided that such modifications meet the guidelines set forth herein.[4]

2. Second Lien Portfolio Modifications

a. Servicer is required to adhere to these guidelines in order to receive credit under Table 1, Section 2.

b. A write-down of a second lien mortgage will be creditable where such write-down facilitates either (a) a first lien modification that involves an occupied Property for which the borrower is 30 days delinquent or otherwise at imminent risk of default due to the borrower's financial situation; or (b) a second lien modification that involves an occupied Property with a second lien which is at least 30 days delinquent or otherwise at imminent risk of default due to the borrower's financial situation.

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[4] Two examples are hereby provided. Example 1: on a mortgage loan at 175% LTV, when a Servicer (in its capacity as an investor) extinguishes $75 of principal through the HAMP Principal Reduction Alternative ("PRA") modification in order to bring the LTV down to 100%, if the Servicer receives $28.10 in PRA principal reduction incentive payments from the U.S. Department of the Treasury for that extinguishment, then the Servicer may claim $46.90 of principal reduction for credit under these Consumer Relief Requirements:

LTV Reduction Band:	HAMP-PRA Incentive Amount Received:	Allowable Settlement Credit:
175% LTV to 140% LTV	$10.50 (35% LTV * $0.30)	$24.50 ((35% LTV-$10.50) * $1.00)
140% LTV to 115% LTV	$11.30 (25% LTV * $0.45)	$13.70 ((25% LTV-$11.30) * $1.00)
115% LTV to 105% LTV	$6.30 (10% LTV * $0.63)	$3.70 ((10% LTV-$6.30) * $1.00)
105% LTV to 100% LTV	None (no credit below 105% LTV)	$5.00 (5% LTV * $1.00)
Total:	**$28.10**	**$46.90**

Example 2: on a mortgage loan at 200% LTV, when a Servicer (in its capacity as an investor) extinguishes $100 of principal through a HAMP-PRA modification in order to bring the LTV down to 100%, if the Servicer receives $35.60 in PRA principal reduction incentive payments from Treasury for that extinguishment, then although the Servicer would have funded $64.40 in principal reduction on that loan, the Servicer may claim $55.70 of principal reduction for credit under these Consumer Relief Requirements:

LTV Reduction Band:	HAMP-PRA Incentive Amount Received:	Allowable Settlement Credit:
200% LTV to 175% LTV	$7.50 (25% LTV * $0.30)	$8.80 ((25% LTV-$7.50) * $0.50)
175% LTV to 140% LTV	$10.50 (35% LTV * $0.30)	$24.50 ((35% LTV-$10.50) * $1.00)
140% LTV to 115% LTV	$11.30 (25% LTV * $0.45)	$13.70 ((25% LTV-$11.30) * $1.00)
115% LTV to 105% LTV	$6.30 (10% LTV * $0.63)	$3.70 ((10% LTV-$6.30) * $1.00)
105% LTV to 100% LTV	None (no credit below 105% LTV)	$5.00 (5% LTV * $1.00)
Total:	**$35.60**	**$55.70**

c. Required Second Lien Modifications:

i. Servicer agrees that it must write down second liens consistent with the following program until its Consumer Relief Requirement credits are fulfilled:

1. A write-down of a second lien mortgage will be creditable where a successful first lien modification is completed by a Participating Servicer via a servicer's proprietary, non-HAMP modification process, in accordance with Section 1, with the first lien modification meeting the following criteria:

a. Minimum 10% payment reduction (principal and interest);

b. Income verified;

c. A UPB at or below the Applicable Limits; and

d. Post-modification DTI[5] between 25% and 31%.

2. If a Participating Servicer has completed a successful proprietary first lien modification and the second lien loan amount is greater than $5,000 UPB and the current monthly payment is greater than $100, then:

a. Servicer shall extinguish and receive credit in accordance with Table 1, Section 2.iii on any second lien that is greater than 180 days delinquent.

b. Otherwise, Servicer shall solve for a second lien payment utilizing the HAMP Second Lien Modification Program ("2MP") logic used as of January 26, 2012.

c. Servicer shall use the following payment waterfall:

i. Forgiveness equal to the lesser of (a) achieving 115% combined loan-to-value ratio ("CLTV") or (b) 30% UPB (subject to minimum forgiveness level); then

ii. Reduce rate until the 2MP payment required by 2MP logic as of January 26, 2012; then

[5] Consistent with HAMP, DTI is based on first-lien mortgage debt only. For non-owner-occupied properties, Servicer shall consider other appropriate measures of affordability.

iii. Extend term to "2MP Term" (greater of modified first or remaining second).

d. Servicer shall maintain an I/O product option consistent with 2MP protocols.

d. Eligible second lien modifications include any modification that is made on or after Servicer's Start Date, including:

i. Principal reduction or extinguishments through the Making Home Affordable Program (including 2MP), the FHA Short Refinance Second Lien ("FHA2LP") Program or the HFA Hardest Hit Fund (or any other federal program), except (to the extent) that state or federal funds are the source of a Servicer's credit claim.

ii. Second lien write-downs or extinguishments completed under proprietary modification programs, are eligible, provided that such write-downs or extinguishments meet the guidelines as set forth herein.

e. Extinguishing balances of second liens to support the future ability of individuals to become homeowners will be credited based on applicable credits in Table 1.

3. Enhanced Borrower Transitional Funds

Servicer may receive credit, as described in Table 1, Section 3, for providing additional transitional funds to homeowners in connection with a short sale or deed-in-lieu of foreclosure to homeowners for the amount above $1,500.

4. Short Sales

a. As described in the preceding paragraph, Servicer may receive credit for providing incentive payments for borrowers on or after Servicer's Start Date who are eligible and amenable to accepting such payments in return for a dignified exit from a Property via short sale or similar program. Credit shall be provided in accordance with Table 1, Section 3.i.

b. To facilitate such short sales, Servicer may receive credit for extinguishing second liens on or after Servicer's Start Date under Table 1, Section 4.

c. Short sales through the Home Affordable Foreclosure Alternatives (HAFA) Program or any HFA Hardest Hit Fund program or proprietary programs closed on or after Servicer's Start Date are eligible.

d. Servicer shall be required to extinguish a second lien owned by Servicer behind a successful short sale/deed-in-lieu conducted by a Participating Servicer (provided that any Participating Servicer other than the five largest servicers shall be given a reasonable amount of time, as determined

by the Monitor, after their Start Date to make system changes necessary to participate in and implement this requirement) where the first lien is greater than 100% LTV and has a UPB at or below the Applicable Limits, until Servicer's Consumer Relief Requirement credits are fulfilled. The first lien holder would pay to the second lien holder 8% of UPB, subject to a $2,000 floor and an $8,500 ceiling. The second lien holder would then release the note or lien and waive the balance.

5. Deficiency Waivers
    a. Servicer may receive credit for waiving deficiency balances if not eligible for credit under some other provision, subject to the cap provided in the Table 1, Section 5.i.
    b. Credit for such waivers of any deficiency is only available where Servicer has a valid deficiency claim, meaning where Servicer can evidence to the Monitor that it had the ability to pursue a deficiency against the borrower but waived its right to do so after completion of the foreclosure sale.
6. Forbearance for Unemployed Borrowers
    a. Servicer may receive credit for forgiveness of payment of arrearages on behalf of an unemployed borrower in accordance with Table 1, Section 6.i.
    b. Servicer may receive credit under Table 1, Section 6.ii., for funds expended to finance principal forbearance solutions for unemployed borrowers as a means of keeping them in their homes until such time as the borrower can resume payments. Credit will only be provided beginning in the 7th month of the forbearance under Table 1, Section 6.ii.
7. Anti-Blight Provisions
    a. Servicer may receive credit for certain anti-blight activities in accordance with and subject to caps contained in Table 1, Section 7.
    b. Any Property value used to calculate credits for this provision shall have a property evaluation meeting the standards acceptable under the Making Home Affordable programs received within 3 months of the transaction.
8. Benefits for Servicemembers
    a. Short Sales
        i. Servicer shall, with respect to owned portfolio first liens, provide servicemembers who qualify for SCRA benefits ("Eligible Servicemembers") a short sale agreement containing a predetermined minimum net proceeds amount ("Minimum Net Proceeds") that Servicer will accept for short sale transaction upon receipt of the listing agreement and all required third-party approvals. The Minimum Net Proceeds may be expressed as a

fixed dollar amount, as a percentage of the current market value of the property, or as a percentage of the list price as approved by Servicer. After providing the Minimum Net Proceeds, Servicer may not increase the minimum net requirements above the Minimum Net Proceeds amount until the initial short sale agreement termination date is reached (not less than 120 calendar days from the date of the initial short sale agreement). Servicer must document subsequent changes to the Minimum Net Proceeds when the short sale agreement is extended.

ii. Eligible Servicemembers shall be eligible for this short sale program if: (a) they are an active duty full-time status Eligible Servicemember; (b) the property securing the mortgage is not vacant or condemned; (c) the property securing the mortgage is the Eligible Servicemember's primary residence (or, the property was his or her principal residence immediately before he or she moved pursuant to a Permanent Change of Station ("PCS") order dated on or after October 1, 2010; (d) the Eligible Servicemember purchased the subject primary residence on or after July 1, 2006 and before December 31, 2008; and (e) the Eligible Servicemember relocates or has relocated from the subject property not more than 12 months prior to the date of the short sale agreement to a new duty station or home port outside a 50-mile radius of the Eligible Servicemember's former duty station or home port under a PCS. Eligible Servicemembers who have relocated may be eligible if the Eligible Servicemember provides documentation that the property was their principal residence prior to relocation or during the 12-month period prior to the date of the short sale agreement.

b. Short Sale Waivers

i. If an Eligible Servicemember qualifies for a short sale hereunder and sells his or her principal residence in a short sale conducted in accordance with Servicer's then customary short sale process, Servicer shall, in the case of an owned portfolio first lien, waive the additional amount owed by the Eligible Servicemember so long as it is less than $250,000.

ii. Servicer shall receive credit under Table 1, Section 4, for mandatory waivers of amounts under this Section 8.b.

c. With respect to the refinancing program described in Section 9 below, Servicer shall use reasonable efforts to identify active servicemembers in its owned portfolio who would qualify and to solicit those individuals for the refinancing program.

9. Refinancing Program

    a. Servicer shall create a refinancing program for current borrowers. Servicer shall provide notification to eligible borrowers indicating that they may refinance under the program described herein. The minimum occupied Property eligibility criteria for such a program shall be:

        i. The program shall apply only to Servicer-owned first lien mortgage loans.

        ii. Loan must be current with no delinquencies in past 12 months.

        iii. Fixed rate loans, ARMS, or I/Os are eligible if they have an initial period of 5 years or more.

        iv. Current LTV is greater than 100%.

        v. Loans must have been originated prior to January 1, 2009.

        vi. Loan must not have received any modification in the past 24 months.

        vii. Loan must have a current interest rate of at least 5.25 % or PMMS + 100 basis points, whichever is greater.

        viii. The minimum difference between the current interest rate and the offered interest rate under this program must be at least 25 basis points or there must be at least a $100 reduction in monthly payment.

        ix. Maximum UPB will be an amount at or below the Applicable Limits.

        x. The following types of loans are excluded from the program eligibility:

            1. FHA/VA

            2. Property outside the 50 States, DC, and Puerto Rico

            3. Loans on Manufactured Homes

            4. Loans for borrowers who have been in bankruptcy anytime within the prior 24 months

            5. Loans that have been in foreclosure within the prior 24 months

    b. The refinancing program shall be made available to all borrowers fitting the minimum eligibility criteria described above in 9.a. Servicer will be free to extend the program to other customers beyond the minimum eligibility criteria provided above and will receive credit under this Agreement for such refinancings, provided that such customers have an

LTV of over 80%, and would not have qualified for a refinance under Servicer's generally-available refinance programs as of September 30, 2011. Notwithstanding the foregoing, Servicer shall not be required to solicit or refinance borrowers who do not satisfy the eligibility criteria under 9.a above. In addition, Servicer shall not be required to refinance a loan under circumstances that, in the reasonable judgment of the Servicer, would result in Troubled Debt Restructuring ("TDR") treatment. A letter to the United States Securities and Exchange Commission regarding TDR treatment, dated November 22, 2011, shall be provided to the Monitor for review.

c. The structure of the refinanced loans shall be as follows:

    i. Servicer may offer refinanced loans with reduced rates either:

        1. For the life of the loan;

        2. For loans with current interest rates above 5.25% or PMMS + 100 basis points, whichever is greater, the interest rate may be reduced for 5 years. After the 5 year fixed interest rate period, the rate will return to the preexisting rate subject to a maximum rate increase of 0.5% annually; or

        3. For loans with an interest rate below 5.25% or PMMS + 100 basis points, whichever is greater, the interest rate may be reduced to obtain at least a 25 basis point interest rate reduction or $100 payment reduction in monthly payment, for a period of 5 years, followed by 0.5% annual interest rate increases with a maximum ending interest rate of 5.25% or PMMS + 100 basis points.

    ii. The original term of the loan may be changed.

    iii. Rate reduction could be done through a modification of the existing loan terms or refinance into a new loan.

    iv. New term of the loan has to be a fully amortizing product.

    v. The new interest rate will be capped at 100 basis points over the PMMS rate or 5.25%, whichever is greater, during the initial rate reduction period.

d. Banks fees and expenses shall not exceed the amount of fees charged by Banks under the current Home Affordable Refinance Program ("HARP") guidelines.

e. The program shall be credited under these Consumer Relief Requirements as follows:

i. Credit will be calculated as the difference between the preexisting interest rate and the offered interest rate times UPB times a multiplier.

ii. The multiplier shall be as follows:

1. If the new rate applies for the life of the loan, the multiplier shall be 8 for loans with a remaining term greater than 15 years, 6 for loans with a remaining term between 10 and 15 years and 5 for loans with a remaining term less than 10 years.

2. If the new rate applies for 5 years, the multiplier shall be 5.

f. Additional dollars spent by each Servicer on the refinancing program beyond that Servicer's required commitment shall be credited 25% against that Servicer's first lien principal reduction obligation and 75% against that Servicer's second lien principal reduction obligation, up to the limits set forth in Table 1.

10. Timing, Incentives, and Payments

a. For the consumer relief and refinancing activities imposed by this Agreement, Servicer shall be entitled to receive credit against Servicer's outstanding settlement commitments for activities taken on or after Servicer's start date, March 1, 2012 (such date, the "Start Date").

b. Servicer shall receive an additional 25% credit against Servicer's outstanding settlement commitments for any first or second lien principal reduction and any amounts credited pursuant to the refinancing program within 12 months of Servicer's Start Date (e.g., a $1.00 credit for Servicer activity would count as $1.25).

c. Servicer shall complete 75% of its Consumer Relief Requirement credits within two years of the Servicer's Start Date.

d. If Servicer fails to meet the commitment set forth in these Consumer Relief Requirements within three years of Servicer's Start Date, Servicer shall pay an amount equal to 125% of the unmet commitment amount; except that if Servicer fails to meet the two year commitment noted above, and then fails to meet the three year commitment, the Servicer shall pay an amount equal to 140% of the unmet three-year commitment amount; provided, however, that if Servicer must pay any Participating State for failure to meet the obligations of a state-specific commitment to provide Consumer Relief pursuant to the terms of that commitment, then Servicer's obligation to pay under this provision shall be reduced by the amount that such a Participating State would have received under this provision and the Federal portion of the payment attributable to that

Participating State. The purpose of the 125% and 140% amounts is to encourage Servicer to meet its commitments set forth in these Consumer Relief Requirements.

11. Applicable Requirements

The provision of consumer relief by the Servicer in accordance with this Agreement in connection with any residential mortgage loan is expressly subject to, and shall be interpreted in accordance with, as applicable, the terms and provisions of the Servicer Participation Agreement with the U.S. Department of Treasury, any servicing agreement, subservicing agreement under which Servicer services for others, special servicing agreement, mortgage or bond insurance policy or related agreement or requirements to which Servicer is a party and by which it or its servicing affiliates are bound pertaining to the servicing or ownership of the mortgage loans, including without limitation the requirements, binding directions, or investor guidelines of the applicable investor (such as Fannie Mae or Freddie Mac), mortgage or bond insurer, or credit enhancer, provided, however, that the inability of a Servicer to offer a type, form or feature of the consumer relief payments by virtue of an Applicable Requirement shall not relieve the Servicer of its aggregate consumer relief obligations imposed by this Agreement, i.e., the Servicer must satisfy such obligations through the offer of other types, forms or features of consumer relief payments that are not limited by such Applicable Requirement.

EXHIBIT D-1

Table 1[1]

Menu Item	Credit Towards Settlement	Credit Cap
Consumer Relief Funds		
1. First Lien Mortgage Modification[2]		*Minimum 30% for First Lien Mods*[3] *(which can be reduced by 2.5% of overall consumer relief funds for excess refinancing program credits above the minimum amount required)*
PORTFOLIO LOANS		
i. First lien principal forgiveness modification	LTV </= 175%: $1.00 Write-down=$1.00 Credit LTV > 175%: $1.00 Write-down=$0.50 Credit (for only the portion of principal forgiven over 175%)	
ii. Forgiveness of forbearance amounts on existing modifications	$1.00 Write-down=$0.40 Credit	*Max 12.5%*

[1] Where applicable, the number of days of delinquency will be determined by the number of days a loan is delinquent at the start of the earlier of the first or second lien modification process. For example, if a borrower applies for a first lien principal reduction on February 1, 2012, then any delinquency determination for a later second lien modification made pursuant to the terms of this Agreement will be based on the number of days the second lien was delinquent as of February 1, 2012.

[2] Credit for all modifications is determined from the date the modification is approved or communicated to the borrower. However, no credits shall be credited unless the payments on the modification are current as of 90 days following the implementation of the modification, including any trial period, except if the failure to make payments on the modification within the 90 day period is due to unemployment or reduced hours, in which case Servicer shall receive credit provided that Servicer has reduced the principal balance on the loan. Eligible Modifications will include any modification that is completed on or after the Start Date, as long as the loan is current 90 days after the modification is implemented.

[3] All minimum and maximum percentages refer to a percentage of total consumer relief funds.

Menu Item	Credit Towards Settlement	Credit Cap
iii. Earned forgiveness over a period of no greater than 3 years – provided consistent with PRA	LTV </= 175%: $1.00 Write-down=$.85 Credit LTV > 175%: $1.00 Write-down=$0.45 Credit (for only the portion of principal forgiven over 175%)	
SERVICE FOR OTHERS		
iv. First lien principal forgiveness modification on investor loans (forgiveness by investor)	$1.00 Write-down=$0.45 Credit	
v. Earned forgiveness over a period of no greater than 3 years – provided consistent with PRA	LTV </= 175%: $1.00 Write-down=$.40 Credit LTV > 175%: $1.00 Write-down=$0.20 Credit (for only the portion of principal forgiven over 175%)	
2. Second Lien Portfolio Modifications		*Minimum of 60% for 1st and 2nd Lien Mods (which can be reduced by 10% of overall consumer relief funds for excess refinancing program credits above the minimum amounts required)*
i. Performing Second Liens (0-90 days delinquent)	$1.00 Write-down=$0.90 Credit	

Menu Item	Credit Towards Settlement	Credit Cap
ii. Seriously Delinquent Second Liens (>90-179 days delinquent)	$1.00 Write-down=$0.50 Credit	
iii. Non-Performing Second Liens (180 or more days delinquent)	$1.00 Write-down=$0.10 Credit	
3. *Enhanced Borrower Transitional Funds*		*Max 5%*
i. Servicer Makes Payment	$1.00 Payment=$1.00 Credit (for the amount over $1,500)	
ii. Investor Makes Payment (non-GSE)	$1.00 Payment=0.45 Credit (for the amount over the $1,500 average payment established by Fannie Mae and Freddie Mac)	
4. Short Sales/Deeds in Lieu		
i. Servicer makes payment to unrelated 2nd lien holder for release of 2nd lien	$1.00 Payment=$1.00 Credit	
ii. Servicer forgives deficiency and releases lien on 1st lien Portfolio Loans	$1.00 Write-down=$0.45 Credit	
iii. Investor forgives deficiency and releases lien on 1st Lien investor loans	$1.00 Write-down=$0.20 Credit	
iv. Forgiveness of deficiency balance and release of lien on		

Menu Item	Credit Towards Settlement	Credit Cap
Portfolio Second Liens		
Performing Second Liens (0-90 days delinquent)	$1.00 Write-down=$0.90 Credit	
Seriously Delinquent Second Liens (>90-179 days delinquent)	$1.00 Write-down=$0.50 Credit	
Non-Performing Second Liens (180 or more days delinquent)	$1.00 Write-down=$0.10 Credit	
5. Deficiency Waivers		*Max 10%*
i. Deficiency waived on 1st and 2nd liens loans	$1.00 Write-down=$0.10 Credit	
6. Forbearance for unemployed homeowners		
i. Servicer forgives payment arrearages on behalf of borrower	$1.00 new forgiveness=$1.00 Credit	
ii. Servicer facilitates traditional forbearance program	$1.00 new forbearance = $0.05 Credit	
7. Anti-Blight Provisions		*Max 12%*
i. Forgiveness of principal associated with a property where Servicer does not pursue foreclosure	$1.00 property value=$0.50 Credit	

Menu Item		Credit Towards Settlement	Credit Cap
ii.	Cash costs paid by Servicer for demolition of property	$1.00 Payment=$1.00 Credit	
iii.	REO properties donated to accepting municipalities or non-profits or to disabled servicemembers or relatives of deceased servicemembers	$1.00 property value=$1.00 Credit	

EXHIBIT E

Enforcement Terms

A. Implementation Timeline. Servicer anticipates that it will phase in the implementation of the Servicing Standards and Mandatory Relief Requirements (i) through (iv), as described in Section C.12, using a grid approach that prioritizes implementation based upon: (i) the importance of the Servicing Standard to the borrower; and (ii) the difficulty of implementing the Servicing Standard. In addition to the Servicing Standards and any Mandatory Relief Requirements that have been implemented upon entry of this Consent Judgment, the periods for implementation will be: (a) within 60 days of entry of this Consent Judgment; (b) within 90 days of entry of this Consent Judgment; and (c) within 180 days of entry of this Consent Judgment. Servicer will agree with the Monitor chosen pursuant to Section C, below, on the timetable in which the Servicing Standards and Mandatory Relief Requirements (i) through (iv) will be implemented. In the event that Servicer, using reasonable efforts, is unable to implement certain of the standards on the specified timetable, Servicer may apply to the Monitor for a reasonable extension of time to implement those standards or requirements.

B. Monitoring Committee. A committee comprising representatives of the state Attorneys General, State Financial Regulators, the U.S. Department of Justice, and the U.S. Department of Housing and Urban Development shall monitor Servicer's compliance with this Consent Judgment (the "Monitoring Committee"). The Monitoring Committee may substitute representation, as necessary. Subject to Section F, the Monitoring Committee may share all Monitor Reports, as that term is defined in Section D.2 below, with any releasing party.

C. Monitor

Retention and Qualifications and Standard of Conduct

1. Pursuant to an agreement of the parties, Joseph A. Smith Jr. is appointed to the position of Monitor under this Consent Judgment. If the Monitor is at any time unable to complete his or her duties under this Consent Judgment, Servicer and the Monitoring Committee shall mutually agree upon a replacement in accordance with the process and standards set forth in Section C of this Consent Judgment.

2. Such Monitor shall be highly competent and highly respected, with a reputation that will garner public confidence in his or her ability to perform the tasks required under this Consent Judgment. The Monitor shall have the right to employ an accounting firm or firms or other firm(s) with similar capabilities to support the Monitor in carrying out his or her duties under this Consent Judgment. Monitor and Servicer shall agree on the selection of a "Primary Professional Firm," which must have adequate capacity and resources to perform the work required under this agreement.

The Monitor shall also have the right to engage one or more attorneys or other professional persons to represent or assist the Monitor in carrying out the Monitor's duties under this Consent Judgment (each such individual, along with each individual deployed to the engagement by the Primary Professional Firm, shall be defined as a "Professional"). The Monitor and Professionals will collectively possess expertise in the areas of mortgage servicing, loss mitigation, business operations, compliance, internal controls, accounting, and foreclosure and bankruptcy law and practice. The Monitor and Professionals shall at all times act in good faith and with integrity and fairness towards all the Parties.

3. The Monitor and Professionals shall not have any prior relationships with the Parties that would undermine public confidence in the objectivity of their work and, subject to Section C.3(e), below, shall not have any conflicts of interest with any Party.

   (a) The Monitor and Professionals will disclose, and will make a reasonable inquiry to discover, any known current or prior relationships to, or conflicts with, any Party, any Party's holding company, any subsidiaries of the Party or its holding company, directors, officers, and law firms.

   (b) The Monitor and Professionals shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a conflict of interest for the Monitor or Professionals. The Monitor and Professionals shall disclose any conflict of interest with respect to any Party.

   (c) The duty to disclose a conflict of interest or relationship pursuant to this Section C.3 shall remain ongoing throughout the course of the Monitor's and Professionals' work in connection with this Consent Judgment.

   (d) All Professionals shall comply with all applicable standards of professional conduct, including ethics rules and rules pertaining to conflicts of interest.

   (e) To the extent permitted under prevailing professional standards, a Professional's conflict of interest may be waived by written agreement of the Monitor and Servicer.

   (f) Servicer or the Monitoring Committee may move the Court for an order disqualifying any Professionals on the grounds that such Professional has a conflict of interest that has inhibited or could inhibit the Professional's ability to act in good faith and with integrity and fairness towards all Parties.

4. The Monitor must agree not to be retained by any Party, or its successors or assigns, for a period of 2 years after the conclusion of the terms of the engagement. Any Professionals who work on the engagement must agree not to work on behalf of Servicer, or its successor or assigns, for a period of 1 year after the conclusion of the term of the engagement (the "Professional Exclusion Period"). Any Firm that performs work with respect to Servicer on the engagement must agree not to perform work on behalf of Servicer, or its successor or assigns, that consists of advising Servicer on a response to the Monitor's review during the engagement and for a period of six months after the conclusion of the term of the engagement (the "Firm Exclusion Period"). The Professional Exclusion Period and Firm Exclusion Period, and terms of exclusion may be altered on a case-by-case basis upon written agreement of Servicer and the Monitor. The Monitor shall organize the work of any Firms so as to minimize the potential for any appearance of, or actual, conflicts.

Monitor's Responsibilities

5. It shall be the responsibility of the Monitor to determine whether Servicer is in compliance with the Servicing Standards and the Mandatory Relief Requirements (as defined in Section C.12) and whether Servicer has satisfied the Consumer Relief Requirements, in accordance with the authorities provided herein and to report his or her findings as provided in Section D.3, below.

6. The manner in which the Monitor will carry out his or her compliance responsibilities under this Consent Judgment and, where applicable, the methodologies to be utilized shall be set forth in a work plan agreed upon by Servicer and the Monitor, and not objected to by the Monitoring Committee (the "Work Plan").

Internal Review Group

7. Servicer will designate an internal quality control group that is independent from the line of business whose performance is being measured (the "Internal Review Group") to perform compliance reviews each calendar quarter ("Quarter") in accordance with the terms and conditions of the Work Plan (the "Compliance Reviews") and satisfaction of the Consumer Relief Requirements after the (A) end of each calendar year (and, in the discretion of the Servicer, any Quarter) and (B) earlier of the Servicer assertion that it has satisfied its obligations thereunder and the third anniversary of the Start Date (the "Satisfaction Review"). For the purposes of this provision, a group that is independent from the line of business shall be one that does not perform operational work on mortgage servicing, and ultimately reports to a Chief Risk Officer, Chief Audit

Executive, Chief Compliance Officer, or another employee or manager who has no direct operational responsibility for mortgage servicing.

8. The Internal Review Group shall have the appropriate authority, privileges, and knowledge to effectively implement and conduct the reviews and metric assessments contemplated herein and under the terms and conditions of the Work Plan.

9. The Internal Review Group shall have personnel skilled at evaluating and validating processes, decisions, and documentation utilized through the implementation of the Servicing Standards. The Internal Review Group may include non-employee consultants or contractors working at Servicer's direction.

10. The qualifications and performance of the Internal Review Group will be subject to ongoing review by the Monitor. Servicer will appropriately remediate the reasonable concerns of the Monitor as to the qualifications or performance of the Internal Review Group.

Work Plan

11. Servicer's compliance with the Servicing Standards shall be assessed via metrics identified and defined in Schedule E-1 hereto (as supplemented from time to time in accordance with Sections C.12 and C.23, below, the "Metrics"). The threshold error rates for the Metrics are set forth in Schedule E-1 (as supplemented from time to time in accordance with Sections C.12 and C.23, below, the "Threshold Error Rates"). The Internal Review Group shall perform test work to compute the Metrics each Quarter, and report the results of that analysis via the Compliance Reviews. The Internal Review Group shall perform test work to assess the satisfaction of the Consumer Relief Requirements within 45 days after the (A) end of each calendar year (and, in the discretion of the Servicer, any Quarter) and (B) earlier of (i) the end of the Quarter in which Servicer asserts that it has satisfied its obligations under the Consumer Relief Provisions and (ii) the Quarter during which the third anniversary of the Start Date occurs, and report that analysis via the Satisfaction Review.

12. In addition to the process provided under Sections C.23 and 24, at any time after the Monitor is selected, the Monitor may add up to three additional Metrics and associated Threshold Error Rates, all of which (a) must be similar to the Metrics and associated Threshold Error Rates contained in Schedule E-1, (b) must relate to material terms of the Servicing Standards, or the following obligations of Servicer: (i) after the Servicer asserts that it has satisfied its obligation to provide a refinancing program under the framework of the Consumer Relief Requirements ("Framework"), to provide notification to eligible borrowers indicating

that such borrowers may refinance under the refinancing program described in the Framework, (ii) to make the Refinancing Program available to all borrowers fitting the minimum eligibility criteria described in 9.a of the Framework, (iii) when the Servicer owns the second lien mortgage, to modify the second lien mortgage when a Participating Servicer (as defined in the Framework) reduces principal on the related first lien mortgage, as described in the Framework, (iv) with regard to servicer-owned first liens, to waive the deficiency amounts less than $250,000 if an Eligible Servicemember qualifies for a short sale under the Framework and sells his or her principal residence in a short sale conducted in accordance with Servicer's then customary short sale process, or (v) without prejudice to the implementation of pilot programs in particular geographic areas, to implement the Framework requirements through policies that are not intended to disfavor a specific geography within or among states that are a party to the Consent Judgment or discriminate against any protected class of borrowers (collectively, the obligations described in (i) through (v) are hereinafter referred to as the "Mandatory Relief Requirements"), (c) must either (i) be outcomes-based (but no outcome-based Metric shall be added with respect to any Mandatory Relief Requirement) or (ii) require the existence of policies and procedures implementing any of the Mandatory Relief Requirements or any material term of the Servicing Standards, in a manner similar to Metrics 5.B-E, and (d) must be distinct from, and not overlap with, any other Metric or Metrics. In consultation with Servicer and the Monitoring Committee, Schedule E-1 shall be amended by the Monitor to include the additional Metrics and Threshold Error Rates as provided for herein, and an appropriate timeline for implementation of the Metric shall be determined.

13. Servicer and the Monitor shall reach agreement on the terms of the Work Plan within 90 days of the Monitor's appointment, which time can be extended for good cause by agreement of Servicer and the Monitor. If such Work Plan is not objected to by the Monitoring Committee within 20 days, the Monitor shall proceed to implement the Work Plan. In the event that Servicer and the Monitor cannot agree on the terms of the Work Plan within 90 days or the agreed upon terms are not acceptable to the Monitoring Committee, Servicer and Monitoring Committee or the Monitor shall jointly petition the Court to resolve any disputes. If the Court does not resolve such disputes, then the Parties shall submit all remaining disputes to binding arbitration before a panel of three arbitrators. Each of Servicer and the Monitoring Committee shall appoint one arbitrator, and those two arbitrators shall appoint a third.

14. The Work Plan may be modified from time to time by agreement of the Monitor and Servicer. If such amendment to the Work Plan is not objected to by the Monitoring Committee within 20 days, the Monitor shall proceed to implement the amendment to the Work Plan. To the extent possible, the Monitor shall endeavor to apply the Servicing Standards uniformly across all Servicers.

15. The following general principles shall provide a framework for the formulation of the Work Plan:

    (a) The Work Plan will set forth the testing methods and agreed procedures that will be used by the Internal Review Group to perform the test work and compute the Metrics for each Quarter.

    (b) The Work Plan will set forth the testing methods and agreed procedures that will be used by Servicer to report on its compliance with the Consumer Relief Requirements of this Consent Judgment, including, incidental to any other testing, confirmation of state-identifying information used by Servicer to compile state-level Consumer Relief information as required by Section D.2.

    (c) The Work Plan will set forth the testing methods and procedures that the Monitor will use to assess Servicer's reporting on its compliance with the Consumer Relief Requirements of this Consent Judgment.

    (d) The Work Plan will set forth the methodology and procedures the Monitor will utilize to review the testing work performed by the Internal Review Group.

    (e) The Compliance Reviews and the Satisfaction Review may include a variety of audit techniques that are based on an appropriate sampling process and random and risk-based selection criteria, as appropriate and as set forth in the Work Plan.

    (f) In formulating, implementing, and amending the Work Plan, Servicer and the Monitor may consider any relevant information relating to patterns in complaints by borrowers, issues or deficiencies reported to the Monitor with respect to the Servicing Standards, and the results of prior Compliance Reviews.

    (g) The Work Plan should ensure that Compliance Reviews are commensurate with the size, complexity, and risk associated with the Servicing Standard being evaluated by the Metric.

(h) Following implementation of the Work Plan, Servicer shall be required to compile each Metric beginning in the first full Quarter after the period for implementing the Servicing Standards associated with the Metric, or any extension approved by the Monitor in accordance with Section A, has run.

Monitor's Access to Information

16. So that the Monitor may determine whether Servicer is in compliance with the Servicing Standards and Mandatory Relief Requirements, Servicer shall provide the Monitor with its regularly prepared business reports analyzing Executive Office servicing complaints (or the equivalent); access to all Executive Office servicing complaints (or the equivalent) (with appropriate redactions of borrower information other than borrower name and contact information to comply with privacy requirements); and, if Servicer tracks additional servicing complaints, quarterly information identifying the three most common servicing complaints received outside of the Executive Office complaint process (or the equivalent). In the event that Servicer substantially changes its escalation standards or process for receiving Executive Office servicing complaints (or the equivalent), Servicer shall ensure that the Monitor has access to comparable information.

17. So that the Monitor may determine whether Servicer is in compliance with the Servicing Standards and Mandatory Relief Requirements, Servicer shall notify the Monitor promptly if Servicer becomes aware of reliable information indicating Servicer is engaged in a significant pattern or practice of noncompliance with a material aspect of the Servicing Standards or Mandatory Relief Requirements.

18. Servicer shall provide the Monitor with access to all work papers prepared by the Internal Review Group in connection with determining compliance with the Metrics or satisfaction of the Consumer Relief Requirements in accordance with the Work Plan.

19. If the Monitor becomes aware of facts or information that lead the Monitor to reasonably conclude that Servicer may be engaged in a pattern of noncompliance with a material term of the Servicing Standards that is reasonably likely to cause harm to borrowers or with any of the Mandatory Relief Requirements, the Monitor shall engage Servicer in a review to determine if the facts are accurate or the information is correct.

20. Where reasonably necessary in fulfilling the Monitor's responsibilities under the Work Plan to assess compliance with the Metrics or the satisfaction of the Consumer Relief Requirements, the Monitor may request information from Servicer in addition to that provided under

Sections C.16-19. Servicer shall provide the requested information in a format agreed upon between Servicer and the Monitor.

21. Where reasonably necessary in fulfilling the Monitor's responsibilities under the Work Plan to assess compliance with the Metrics or the satisfaction of the Consumer Relief Requirements, the Monitor may interview Servicer's employees and agents, provided that the interviews shall be limited to matters related to Servicer's compliance with the Metrics or the Consumer Relief Requirements, and that Servicer shall be given reasonable notice of such interviews.

Monitor's Powers

22. Where the Monitor reasonably determines that the Internal Review Group's work cannot be relied upon or that the Internal Review Group did not correctly implement the Work Plan in some material respect, the Monitor may direct that the work on the Metrics (or parts thereof) be reviewed by Professionals or a third party other than the Internal Review Group, and that supplemental work be performed as necessary.

23. If the Monitor becomes aware of facts or information that lead the Monitor to reasonably conclude that Servicer may be engaged in a pattern of noncompliance with a material term of the Servicing Standards that is reasonably likely to cause harm to borrowers or tenants residing in foreclosed properties or with any of the Mandatory Relief Requirements, the Monitor shall engage Servicer in a review to determine if the facts are accurate or the information is correct. If after that review, the Monitor reasonably concludes that such a pattern exists and is reasonably likely to cause material harm to borrowers or tenants residing in foreclosed properties, the Monitor may propose an additional Metric and associated Threshold Error Rate relating to Servicer's compliance with the associated term or requirement. Any additional Metrics and associated Threshold Error Rates (a) must be similar to the Metrics and associated Threshold Error Rates contained in Schedule E-1, (b) must relate to material terms of the Servicing Standards or one of the Mandatory Relief Requirements, (c) must either (i) be outcomes-based (but no outcome-based Metric shall be added with respect to any Mandatory Relief Requirement) or (ii) require the existence of policies and procedures required by the Servicing Standards or the Mandatory Relief Requirements, in a manner similar to Metrics 5.B-E, and (d) must be distinct from, and not overlap with, any other Metric or Metrics. Notwithstanding the foregoing, the Monitor may add a Metric that satisfies (a)-(c) but does not satisfy (d) of the preceding sentence if the Monitor first asks the Servicer to propose, and then implement, a Corrective Action Plan, as defined below, for the material

term of the Servicing Standards with which there is a pattern of noncompliance and that is reasonably likely to cause material harm to borrowers or tenants residing in foreclosed properties, and the Servicer fails to implement the Corrective Action Plan according to the timeline agreed to with the Monitor.

24. If Monitor proposes an additional Metric and associated Threshold Error Rate pursuant to Section C.23, above, Monitor, the Monitoring Committee, and Servicer shall agree on amendments to Schedule E-1 to include the additional Metrics and Threshold Error Rates provided for in Section C.23, above, and an appropriate timeline for implementation of the Metric. If Servicer does not timely agree to such additions, any associated amendments to the Work Plan, or the implementation schedule, the Monitor may petition the court for such additions.

25. Any additional Metric proposed by the Monitor pursuant to the processes in Sections C.12, C.23, or C.24 and relating to provision VIII.B.1 of the Servicing Standards shall be limited to Servicer's performance of its obligations to comply with (1) the federal Protecting Tenants at Foreclosure Act and state laws that provide comparable protections to tenants of foreclosed properties; (2) state laws that govern relocation assistance payments to tenants ("cash for keys"); and (3) state laws that govern the return of security deposits to tenants.

D. Reporting

Quarterly Reports

1. Following the end of each Quarter, Servicer will report the results of its Compliance Reviews for that Quarter (the "Quarterly Report"). The Quarterly Report shall include: (i) the Metrics for that Quarter; (ii) Servicer's progress toward meeting its payment obligations under this Consent Judgment; (iii) general statistical data on Servicer's overall servicing performance described in Schedule Y. Except where an extension is granted by the Monitor, Quarterly Reports shall be due no later than 45 days following the end of the Quarter and shall be provided to: (1) the Monitor, and (2) the Board of Servicer or a committee of the Board designated by Servicer. The first Quarterly Report shall cover the first full Quarter after this Consent Judgment is entered.

2. Following the end of each Quarter, Servicer will transmit to each state a report (the "State Report") including general statistical data on Servicer's servicing performance, such as aggregate and state-specific information regarding the number of borrowers assisted and credited activities conducted pursuant to the Consumer Relief Requirements, as described in Schedule Y. The State Report will be delivered simultaneous with the

submission of the Quarterly Report to the Monitor. Servicer shall provide copies of such State Reports to the Monitor and Monitoring Committee.

Monitor Reports

3. The Monitor shall report on Servicer's compliance with this Consent Judgment in periodic reports setting forth his or her findings (the "Monitor Reports"). The first three Monitor Reports will each cover two Quarterly Reports. If the first three Monitor Reports do not find Potential Violations (as defined in Section E.1, below), each successive Monitor Report will cover four Quarterly Reports, unless and until a Quarterly Report reveals a Potential Violation (as defined in Section E.1, below). In the case of a Potential Violation, the Monitor may (but retains the discretion not to) submit a Monitor Report after the filing of each of the next two Quarterly Reports, provided, however, that such additional Monitor Report(s) shall be limited in scope to the Metric or Metrics as to which a Potential Violation has occurred.

4. Prior to issuing any Monitor Report, the Monitor shall confer with Servicer and the Monitoring Committee regarding its preliminary findings and the reasons for those findings. Servicer shall have the right to submit written comments to the Monitor, which shall be appended to the final version of the Monitor Report. Final versions of each Monitor Report shall be provided simultaneously to the Monitoring Committee and Servicers within a reasonable time after conferring regarding the Monitor's findings. The Monitor Reports shall be filed with the Court overseeing this Consent Judgment and shall also be provided to the Board of Servicer or a committee of the Board designated by Servicer.

5. The Monitor Report shall: (i) describe the work performed by the Monitor and any findings made by the Monitor's during the relevant period, (ii) list the Metrics and Threshold Error Rates, (iii) list the Metrics, if any, where the Threshold Error Rates have been exceeded, (iv) state whether a Potential Violation has occurred and explain the nature of the Potential Violation, and (v) state whether any Potential Violation has been cured. In addition, following each Satisfaction Review, the Monitor Report shall report on the Servicer's satisfaction of the Consumer Relief Requirements, including regarding the number of borrowers assisted and credited activities conducted pursuant to the Consumer Relief Requirements, and identify any material inaccuracies identified in prior State Reports. Except as otherwise provided herein, the Monitor Report may be used in any court hearing, trial, or other proceeding brought pursuant to this Consent Judgment pursuant to Section J, below, and shall be admissible in evidence in a proceeding brought under this Consent Judgment pursuant to Section J, below. Such admissibility shall not prejudice Servicer's right

and ability to challenge the findings and/or the statements in the Monitor Report as flawed, lacking in probative value or otherwise. The Monitor Report with respect to a particular Potential Violation shall not be admissible or used for any purpose if Servicer cures the Potential Violation pursuant to Section E, below.

Satisfaction of Payment Obligations

6. Upon the satisfaction of any category of payment obligation under this Consent Judgment, Servicer, at its discretion, may request that the Monitor certify that Servicer has discharged such obligation. Provided that the Monitor is satisfied that Servicer has met the obligation, the Monitor may not withhold and must provide the requested certification. Any subsequent Monitor Report shall not include a review of Servicer's compliance with that category of payment obligation.

Compensation

7. Within 120 days of entry of this Consent Judgment, the Monitor shall, in consultation with the Monitoring Committee and Servicer, prepare and present to Monitoring Committee and Servicer an annual budget providing its reasonable best estimate of all fees and expenses of the Monitor to be incurred during the first year of the term of this Consent Judgment, including the fees and expenses of Professionals and support staff (the "Monitoring Budget"). On a yearly basis thereafter, the Monitor shall prepare an updated Monitoring Budget providing its reasonable best estimate of all fees and expenses to be incurred during that year. Absent an objection within 20 days, a Monitoring Budget or updated Monitoring Budget shall be implemented. Consistent with the Monitoring Budget, Servicer shall pay all fees and expenses of the Monitor, including the fees and expenses of Professionals and support staff. The fees, expenses, and costs of the Monitor, Professionals, and support staff shall be reasonable. Servicer may apply to the Court to reduce or disallow fees, expenses, or costs that are unreasonable.

E. Potential Violations and Right to Cure

1. A "Potential Violation" of this Consent Judgment occurs if the Servicer has exceeded the Threshold Error Rate set for a Metric in a given Quarter. In the event of a Potential Violation, Servicer shall meet and confer with the Monitoring Committee within 15 days of the Quarterly Report or Monitor Report indicating such Potential Violation.

2. Servicer shall have a right to cure any Potential Violation.

3. Subject to Section E.4, a Potential Violation is cured if (a) a corrective action plan approved by the Monitor (the "Corrective Action Plan") is determined by the Monitor to have been satisfactorily completed in

accordance with the terms thereof; and (b) a Quarterly Report covering the Cure Period reflects that the Threshold Error Rate has not been exceeded with respect to the same Metric and the Monitor confirms the accuracy of said report using his or her ordinary testing procedures. The Cure Period shall be the first full quarter after completion of the Corrective Action Plan or, if the completion of the Corrective Action Plan occurs within the first month of a Quarter and if the Monitor determines that there is sufficient time remaining, the period between completion of the Corrective Action Plan and the end of that Quarter.

4. If after Servicer cures a Potential Violation pursuant to the previous section, another violation occurs with respect to the same Metric, then the second Potential Violation shall immediately constitute an uncured violation for purposes of Section J.3, provided, however, that such second Potential Violation occurs in either the Cure Period or the quarter immediately following the Cure Period.

5. In addition to the Servicer's obligation to cure a Potential Violation through the Corrective Action Plan, Servicer must remediate any material harm to particular borrowers identified through work conducted under the Work Plan. In the event that a Servicer has a Potential Violation that so far exceeds the Threshold Error Rate for a metric that the Monitor concludes that the error is widespread, Servicer shall, under the supervision of the Monitor, identify other borrowers who may have been harmed by such noncompliance and remediate all such harms to the extent that the harm has not been otherwise remediated.

6. In the event a Potential Violation is cured as provided in Sections E.3, above, then no Party shall have any remedy under this Consent Judgment (other than the remedies in Section E.5) with respect to such Potential Violation.

F. Confidentiality

1. These provisions shall govern the use and disclosure of any and all information designated as "CONFIDENTIAL," as set forth below, in documents (including email), magnetic media, or other tangible things provided by the Servicer to the Monitor in this case, including the subsequent disclosure by the Monitor to the Monitoring Committee of such information. In addition, it shall also govern the use and disclosure of such information when and if provided to the participating state parties or the participating agency or department of the United States whose claims are released through this settlement ("participating state or federal agency whose claims are released through this settlement").

2. The Monitor may, at his discretion, provide to the Monitoring Committee or to a participating state or federal agency whose claims are released through this settlement any documents or information received from the Servicer related to a Potential Violation or related to the review described in Section C.19; provided, however, that any such documents or information so provided shall be subject to the terms and conditions of these provisions. Nothing herein shall be construed to prevent the Monitor from providing documents received from the Servicer and not designated as "CONFIDENTIAL" to a participating state or federal agency whose claims are released through this settlement.

3. The Servicer shall designate as "CONFIDENTIAL" that information, document or portion of a document or other tangible thing provided by the Servicer to the Monitor, the Monitoring Committee or to any other participating state or federal agency whose claims are released through this settlement that Servicer believes contains a trade secret or confidential research, development, or commercial information subject to protection under applicable state or federal laws (collectively, "Confidential Information"). These provisions shall apply to the treatment of Confidential Information so designated.

4. Except as provided by these provisions, all information designated as "CONFIDENTIAL" shall not be shown, disclosed or distributed to any person or entity other than those authorized by these provisions. Participating states and federal agencies whose claims are released through this settlement agree to protect Confidential Information to the extent permitted by law.

5. This agreement shall not prevent or in any way limit the ability of a participating state or federal agency whose claims are released through this settlement to comply with any subpoena, Congressional demand for documents or information, court order, request under the Right of Financial Privacy Act, or a state or federal public records or state or federal freedom of information act request; provided, however, that in the event that a participating state or federal agency whose claims are released through this settlement receives such a subpoena, Congressional demand, court order or other request for the production of any Confidential Information covered by this Order, the state or federal agency shall, unless prohibited under applicable law or the unless the state or federal agency would violate or be in contempt of the subpoena, Congressional demand, or court order, (1) notify the Servicer of such request as soon as practicable and in no event more than ten (10) calendar days of its receipt or three calendar days before the return date of the request, whichever is sooner, and (2) allow the Servicer ten (10) calendar days from the receipt of the notice to obtain a protective order or stay of production for the

documents or information sought, or to otherwise resolve the issue, before the state or federal agency discloses such documents or information. In all cases covered by this Section, the state or federal agency shall inform the requesting party that the documents or information sought were produced subject to the terms of these provisions.

G. Dispute Resolution Procedures. Servicer, the Monitor, and the Monitoring Committee will engage in good faith efforts to reach agreement on the proper resolution of any dispute concerning any issue arising under this Consent Judgment, including any dispute or disagreement related to the withholding of consent, the exercise of discretion, or the denial of any application. Subject to Section J, below, in the event that a dispute cannot be resolved, Servicer, the Monitor, or the Monitoring Committee may petition the Court for resolution of the dispute. Where a provision of this agreement requires agreement, consent of, or approval of any application or action by a Party or the Monitor, such agreement, consent or approval shall not be unreasonably withheld.

H. Consumer Complaints. Nothing in this Consent Judgment shall be deemed to interfere with existing consumer complaint resolution processes, and the Parties are free to bring consumer complaints to the attention of Servicer for resolution outside the monitoring process. In addition, Servicer will continue to respond in good faith to individual consumer complaints provided to it by State Attorneys General or State Financial Regulators in accordance with the routine and practice existing prior to the entry of this Consent Judgment, whether or not such complaints relate to Covered Conduct released herein.

I. Relationship to Other Enforcement Actions. Nothing in this Consent Judgment shall affect requirements imposed on the Servicer pursuant to Consent Orders issued by the appropriate Federal Banking Agency (FBA), as defined in 12 U.S.C. § 1813(q), against the Servicer. In conducting their activities under this Consent Judgment, the Monitor and Monitoring Committee shall not impede or otherwise interfere with the Servicer's compliance with the requirements imposed pursuant to such Orders or with oversight and enforcement of such compliance by the FBA.

J. Enforcement

1. **Consent Judgment.** This Consent Judgment shall be filed in the U.S. District Court for the District of Columbia (the "Court") and shall be enforceable therein. Servicer and the Releasing Parties shall waive their rights to seek judicial review or otherwise challenge or contest in any court the validity or effectiveness of this Consent Judgment. Servicer and the Releasing Parties agree not to contest any jurisdictional facts, including the Court's authority to enter this Consent Judgment.

2. **Enforcing Authorities.** Servicer's obligations under this Consent Judgment shall be enforceable solely in the U.S. District Court for the

District of Columbia. An enforcement action under this Consent Judgment may be brought by any Party to this Consent Judgment or the Monitoring Committee. Monitor Report(s) and Quarterly Report(s) shall not be admissible into evidence by a Party to this Consent Judgment except in an action in the Court to enforce this Consent Judgment. In addition, unless immediate action is necessary in order to prevent irreparable and immediate harm, prior to commencing any enforcement action, a Party must provide notice to the Monitoring Committee of its intent to bring an action to enforce this Consent Judgment. The members of the Monitoring Committee shall have no more than 21 days to determine whether to bring an enforcement action. If the members of the Monitoring Committee decline to bring an enforcement action, the Party must wait 21 additional days after such a determination by the members of the Monitoring Committee before commencing an enforcement action.

3. **Enforcement Action.** In the event of an action to enforce the obligations of Servicer and to seek remedies for an uncured Potential Violation for which Servicer's time to cure has expired, the sole relief available in such an action will be:

(a) Equitable Relief. An order directing non-monetary equitable relief, including injunctive relief, directing specific performance under the terms of this Consent Judgment, or other non-monetary corrective action.

(b) Civil Penalties. The Court may award as civil penalties an amount not more than $1 million per uncured Potential Violation; or, in the event of a second uncured Potential Violation of Metrics 1.a, 1.b, or 2.a (*i.e.*, a Servicer fails the specific Metric in a Quarter, then fails to cure that Potential Violation, and then in subsequent Quarters, fails the same Metric again in a Quarter and fails to cure that Potential Violation again in a subsequent Quarter), where the final uncured Potential Violation involves widespread noncompliance with that Metric, the Court may award as civil penalties an amount not more than $5 million for the second uncured Potential Violation.

Nothing in this Section shall limit the availability of remedial compensation to harmed borrowers as provided in Section E.5.

(c) Any penalty or payment owed by Servicer pursuant to the Consent Judgment shall be paid to the clerk of the Court or as otherwise agreed by the Monitor and the Servicer and distributed by the Monitor as follows:

1. In the event of a penalty based on a violation of a term of the Servicing Standards that is not specifically related to conduct in bankruptcy, the penalty shall be allocated, first, to cover the costs incurred by any state or states in prosecuting the violation, and second, among the participating states according to the same allocation as the State Payment Settlement Amount.

2. In the event of a penalty based on a violation of a term of the Servicing Standards that is specifically related to conduct in bankruptcy, the penalty shall be allocated to the United States or as otherwise directed by the Director of the United States Trustee Program.

3. In the event of a payment due under Paragraph 10.d of the Consumer Relief requirements, 50% of the payment shall be allocated to the United States, and 50% shall be allocated to the State Parties to the Consent Judgment, divided among them in a manner consistent with the allocation in Exhibit B of the Consent Judgment.

K. **Sunset.** This Consent Judgment and all Exhibits shall retain full force and effect for three and one-half years from the date it is entered (the "Term"), unless otherwise specified in the Exhibit. Servicer shall submit a final Quarterly Report for the last quarter or portion thereof falling within the Term, and shall cooperate with the Monitor's review of said report, which shall be concluded no later than six months following the end of the Term, after which time Servicer shall have no further obligations under this Consent Judgment.

EXHIBIT I

BANK OF AMERICA/COUNTRYWIDE SETTLEMENT AGREEMENT

1. *Financial Terms.* Total settlement obligation of $3,232,415,075.00 ("BOA/CFC Settlement Amount"), in the manner provided below and subject to the terms and conditions provided herein.

    a. Pursuant to Paragraph 3 of the Consent Judgment, $2,382,415,075.00 ("Initial BOA/CFC Settlement Payment") shall be paid by electronic funds transfer no later than seven days after the Effective Date of the Consent Judgment, in accordance with written instructions to be provided by the United States Department of Justice ("DOJ"), and shall be distributed in the manner and for the purposes identified in Paragraph 1 of Exhibit B to the Consent Judgment.

    b. BOA/CFC shall also be responsible for their share of attorneys' fees for qui tam relators.

    c. $850,000,000.00 ("Deferred BOA/CFC Settlement Payment") shall be paid by electronic funds transfer no later than thirty days after the third anniversary of the Effective Date of the Consent Judgment (or, if a request for a Certification of Compliance is pending at that time or if BOA/CFC are exercising their right to cure pursuant to Paragraph 4.c, thirty days after such request is denied and any dispute with respect to such denial is resolved or thirty days after BOA/CFC have failed to cure such deficiency), in accordance with written instructions to be provided by DOJ, to be deposited, subject to 28 U.S.C. § 527 (Note), into the Federal Housing Administration's ("FHA") Capital Reserve Account in the manner and for the purposes identified in Paragraph 1.a.i of Exhibit B to the Consent Judgment, except that:

        i. As provided in Paragraph 3.a, BOA/CFC shall have no obligation to make the Deferred BOA/CFC Settlement Payment if the Monitor has issued a Certification of Compliance pursuant to Paragraph 4.a; and

        ii. As provided in Paragraph 3.b, BOA/CFC shall have an obligation to make only a partial Deferred BOA/CFC Settlement Payment if the Monitor has issued a Certification of Partial Compliance pursuant to Paragraph 4.b.

2. *Settlement Loan Modification Program.* BOA/CFC shall conduct a one-time nationwide modification program to be offered to underwater borrowers with economic hardship on first-lien loans ("Settlement Loan Modification Program").

    a. BOA/CFC shall solicit, in accordance with the Settlement Loan Modification Program Solicitation Requirements, all Potentially Eligible Borrowers with mortgages meeting conditions (i) through (v) in the definition of Eligible Mortgage in Paragraph 7.d.

b. As of the Effective Date of the Consent Judgment, BOA/CFC shall defer any foreclosure sale on a Potentially Eligible Borrower with a mortgage meeting conditions (i) through (v) in the definition of Eligible Mortgage in Paragraph 7.d until the Settlement Loan Modification Program Solicitation Requirements have been completed with respect to that borrower.

c. Borrowers with mortgages meeting conditions (i) through (v) in the definition of Eligible Mortgage in Paragraph 7.d who are not Potentially Eligible Borrowers may apply for a Settlement Loan Modification. However, BOA/CFC are not required to solicit such borrowers.

d. Unless otherwise required by law, BOA/CFC shall require only the Required Documentation, consistent with the FHA's verification of income standards, in connection with an application for a Settlement Loan Modification.

e. Subject to Paragraph 2.f, and notwithstanding whether BOA/CFC have satisfied their minimum requirement under Part 1 of the Consumer Relief Requirements, BOA/CFC shall provide a Settlement Loan Modification to any borrower (other than a borrower who chooses not to provide written consent under Paragraph 2.h) who holds an Eligible Mortgage and who satisfies the conditions for the offer set forth in Paragraphs 7.g-h and accepts the offer (unless such borrower is not a Potentially Eligible Borrower and BOA/CFC no longer own the mortgage servicing rights for the relevant loan).

f. Borrowers who qualify for and accept a Settlement Loan Modification shall get a trial offer. If the borrower remains current for ninety days following commencement of the trial, the loan modification shall, on written acceptance by the borrower, become permanent and BOA/CFC shall return the loan to normal servicing. BOA/CFC shall promptly, after successful completion of the trial, send the borrower documentation of the modification for acceptance of the modification by the borrower.

g. The Settlement Loan Modification Program shall use the United States Department of the Treasury's ("Treasury") Net Present Value Model, including any amendments thereto.

h. With respect to any borrower who has ever been eligible to be referred to foreclosure consistent with the requirements of the Home Affordable Modification Program ("HAMP") and, with written consent (it being understood that, so long as the borrower states he or she consents to be evaluated under the Settlement Loan Modification Program in lieu of HAMP and such statement is reflected by BOA/CFC in their servicing system or mortgage file, such written consent will be obtained only from borrowers who enter into a final modification agreement under the Settlement Loan Modification Program), any other borrower who is eligible for HAMP, BOA/CFC may, in lieu of any evaluation of such borrower under HAMP TIER 1 or TIER 2, evaluate such borrower under the Settlement Loan

Modification Program. With respect to any borrower potentially eligible for both HAMP and the Settlement Loan Modification Program, (i) BOA/CFC agree to provide internal Quality Assurance ("QA") coverage to the loans subject to the terms of this Agreement and potentially eligible for HAMP (which include HAMP TIER 1 and, once effective, HAMP TIER 2) (the "HAMP Eligible Loans"), substantially similar to QA coverage for loans eligible for the Making Home Affordable ("MHA") program; (ii) BOA/CFC agree to allow Treasury and its compliance agent for the MHA program the right to review the nature and scope of testing, results of the testing, and the execution of remediation plans derived from the testing on the HAMP Eligible Loans; (iii) BOA/CFC agree to implement any reasonable recommendations from Treasury and its compliance agent to improve the QA testing of the HAMP Eligible Loans; and (iv) BOA/CFC shall provide a monthly report to Treasury detailing (A) the aggregate number of borrowers who have accepted a modification under the Settlement Loan Modification Program, both on a monthly basis and a cumulative basis (excluding those identified in response to clause (B)); (B) the aggregate number of borrowers who consented to be evaluated for a modification under the Settlement Loan Modification Program in lieu of a HAMP TIER 1 or TIER 2 modification and accepted a modification under the Settlement Loan Modification Program, both on a monthly basis and a cumulative basis; and (C) the cumulative number of completed Settlement Loan Modification Program modifications from (A) and (B) that are still outstanding and current (defined as not more than 59 days past due) as of such month. Notwithstanding the foregoing, any borrower whose consent is required to be evaluated for the Settlement Loan Modification Program in lieu of evaluation of such borrower under HAMP TIER 1 or TIER 2 may, if such borrower is denied a Settlement Loan Modification, thereafter request to be evaluated for HAMP TIER 1 or TIER 2.

i. Settlement Loan Modifications shall be treated as Qualified Loss Mitigation Plan modifications.

j. Notwithstanding any provision in this Agreement to the contrary, credit for obligations with respect to the Deferred BOA/CFC Settlement Payment shall be provided for first-lien principal forgiven and shall be calculated in accordance with Exhibit D to the Consent Judgment. Credit shall be provided for first-lien principal forgiven, whether under the Settlement Loan Modification Program or otherwise. BOA/CFC shall begin to receive credit against the Deferred BOA/CFC Settlement Payment once they exceed their minimum requirement under Part 1 of the Consumer Relief Requirements (*i.e.*, 30% of total consumer relief funds, subject to a reduction of 2.5% as a result of excess refinancing program credits); provided, however, that BOA/CFC shall retain, in their sole discretion, the right to apply first-lien principal forgiven in excess of their minimum requirement under Part 1 of the Consumer Relief Requirements to other aspects of the Consumer Relief Requirements.

3. *Satisfaction of Obligations.*

   a. If the Monitor issues a Certification of Compliance pursuant to Paragraph 4.a, BOA/CFC shall be deemed to have satisfied their obligation under Paragraph 1.c.

   b. If the Monitor issues a Certification of Partial Compliance pursuant to Paragraph 4.b, BOA/CFC shall be deemed to have partially satisfied their obligation under Paragraph 1.c. If the Monitor issues a Certification of Partial Compliance pursuant to Paragraph 4.b, the amount owed under Paragraph 1.c shall be reduced by the amount that BOA/CFC exceeded their minimum requirement under Part 1 of the Consumer Relief Requirements.

4. *Compliance.* BOA/CFC may request that the Monitor issue a Certification of Compliance or Certification of Partial Compliance at any time before thirty days after the third anniversary of the Effective Date of the Consent Judgment. In connection with such request, BOA/CFC may inform the Monitor that BOA/CFC have complied with the conditions required for the issuance of the applicable Certification of Compliance or Certification of Partial Compliance, as set forth in Paragraphs 4.a-b. The Monitor shall act expeditiously to determine if such a Certification of Compliance or Certification of Partial Compliance is warranted and may take steps necessary to verify that the conditions required for the issuance of the applicable Certification of Compliance or Certification of Partial Compliance have been satisfied, using methods consistent with Exhibit E to the Consent Judgment (Enforcement Terms). The Monitor and BOA/CFC shall work together in good faith to resolve any disagreements or discrepancies with respect to a Certification of Compliance or Certification of Partial Compliance. In the event that a dispute cannot be resolved, the Monitor or BOA/CFC may petition the Court for resolution in accordance with Section G of Exhibit E to the Consent Judgment (Enforcement Terms).

   a. The Monitor shall issue a Certification of Compliance if BOA/CFC (i) materially complied with the Settlement Loan Modification Program Solicitation Requirements; (ii) provided a Settlement Loan Modification to materially all Potentially Eligible Borrowers (excluding borrowers who chose not to provide written consent under Paragraph 2.h) with an Eligible Mortgage who satisfied the conditions for the offer set forth in Paragraphs 7.g-h and accepted the offer; and (iii) the total amount of first-lien principal forgiven exceeds BOA/CFC's minimum requirement under Part 1 of the Consumer Relief Requirements by at least $850,000,000.00. At BOA/CFC's request, the Monitor may make determination (i) prior to, and independently of, making determinations (ii) and (iii).

   b. If BOA/CFC exceed their minimum requirement under Part 1 of the Consumer Relief Requirements by an amount less than the Deferred BOA/CFC Settlement Payment, the Monitor shall issue a Certification of Partial Compliance. Such Certification of Partial Compliance shall specify

the exact amount by which BOA/CFC exceeded their minimum requirement under Part 1 of the Consumer Relief Requirements.

c. The Monitor shall provide BOA/CFC notice and an opportunity to cure if he or she determines (i) during the three years after the Effective Date of the Consent Judgment, that BOA/CFC are not in material compliance with the Settlement Loan Modification Program Solicitation Requirements, or (ii) that BOA/CFC have not provided a Settlement Loan Modification to materially all Potentially Eligible Borrowers (excluding borrowers who chose not to provide written consent under Paragraph 2.h) with an Eligible Mortgage who satisfied the conditions for the offer set forth in Paragraphs 7.g-h and accepted the resulting offer.

5. *Releases.*

a. Subject to the exceptions in Paragraph 11.a-k, and m-n (concerning excluded claims) of Exhibit F to this Consent Judgment, and notwithstanding anything to the contrary in Paragraphs 2.c, 3.b, and 11.o of Exhibit F to this Consent Judgment, effective upon payment of the Initial BOA/CFC Settlement Payment, the United States fully and finally releases Bank of America Corporation and any current or former Affiliated Entities (to the extent Bank of America Corporation or any current Affiliated Entity retains liability associated with such former Affiliated Entity), and the predecessors, successors, and assigns of any of them, as well as any current directors, officers, and employees and any former directors, officers, and employees of any of the foregoing (subject to Paragraphs 5.d and 5.e), individually and collectively, from any civil or administrative claims or causes of action whatsoever that the United States has or may have, and from any monetary or non-monetary remedies or penalties (including, without limitation, multiple, punitive or exemplary damages), whether civil or administrative, that the United States may seek to impose, based on Covered Origination Conduct (as defined in Exhibit F to this Consent Judgment) that has taken place as of 11:59 p.m., Eastern Standard Time on February 8, 2012, with respect to any FHA-insured mortgage loan that is secured by a one- to four-family residential property either that was insured by FHA on or before April 30, 2009, or for which the terms and conditions of the mortgage loan were approved by an FHA direct endorsement underwriter on or before April 30, 2009, under the Financial Institutions Reform, Recovery, and Enforcement Act, the False Claims Act, the Program Fraud Civil Remedies Act, the Civil Monetary Penalties Law, the Racketeer Influenced and Corrupt Organizations Act, the Real Estate Settlement Procedures Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Truth in Lending Act, the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1691(d) (“Reason for Adverse Action”) or § 1691(e) (“Appraisals”), sections 502 through 509 (15 U.S.C. §§ 6802-6809) of the Gramm-Leach Bliley Act except for section 505 (15 U.S.C. § 6805) as it applies to section 501(b) (15 U.S.C. §

6801(b)), or that the United States Department of Housing and Urban Development ("HUD") has actual and present authority to assert and compromise, or that the Civil Division of the United States Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. § 0.45; provided, however, that, except to the extent that such claim is otherwise released under the Consent Judgment, HUD-FHA does not release any administrative claims (or any judicial enforcement of such claims) for assessments equal to the amount of the claim under the Program Fraud Civil Remedies Act, or any rights to request for indemnification (*i.e.*, for single damages, but not for double damages, treble damages, or penalties) administratively pursuant to the governing statute and regulations, including amendments thereto, with respect to any loan for which a claim for FHA insurance benefits had not been submitted for payment as of 11:59 p.m., Eastern Standard Time, December 31, 2011.

b. The release in Paragraph 5.a shall not apply to any mortgage loan acquired by Bank of America Corporation or any Affiliated Entity after February 8, 2012.

c. The United States agrees and covenants that, upon payment of the Initial BOA/CFC Settlement Payment, HUD-FHA shall withdraw the Notices of Violation issued by HUD's Mortgagee Review Board on October 22, 2010, and November 2, 2010.

d. The release in Paragraph 5.a shall not apply to former officers, directors, or employees of Bank of America Corporation or of any Affiliated Entity with respect to claims or causes of action or remedies that the United States may have or may seek to impose under the False Claims Act or the Financial Institutions Reform, Recovery, and Enforcement Act.

e. Notwithstanding any other term of this Agreement, administrative claims, proceedings or actions brought by HUD against any current or former director, officer, or employee for suspension, debarment, or exclusion from any HUD program are specifically reserved and are not released.

6. *Servicing Standards*. In the event of a conflict between the requirements of the servicing standards in Exhibit A to the Consent Judgment and the servicing provisions in Paragraph 5 of the Settlement Agreement entered into by and among the Bank of New York Mellon and BOA/CFC on June 28, 2011, BOA/CFC's obligations shall be governed by the servicing standards in Exhibit A to the Consent Judgment and Section IX.A of the servicing standards in Exhibit A to the Consent Judgment shall not apply.

7. *Definitions.*

a. *Affiliated Entity*. Affiliated Entity means entities that are directly or indirectly controlled by, or control, or are under common control with, Bank of America

Corporation as of or prior to 11:59 PM Eastern Standard Time on February 8, 2012. The term "control" with respect to an entity means the beneficial ownership (as defined in Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended) of 50 percent or more of the voting interest in such entity.

b. *BOA/CFC*. BOA/CFC means Bank of America Corporation, Bank of America, N.A., Countrywide Financial Corporation, and Countrywide Home Loans, Inc.

c. *Consumer Relief Requirements.* Consumer Relief Requirements are the requirements imposed on BOA/CFC to provide a minimum amount of relief pursuant to Exhibit D to the Consent Judgment.

d. *Eligible Mortgage.* An Eligible Mortgage is a mortgage that meets the following criteria:

    i. The mortgage is a first-lien mortgage.

    ii. The borrower was sixty days or more delinquent on his or her mortgage payments as of January 31, 2012.

    iii. The property securing the mortgage has not been sold in a foreclosure sale and is not subject to a judgment of foreclosure.

    iv. The mortgage is serviced by BOA/CFC (as of the Start Date as defined in Exhibit D to the Consent Judgment (Consumer Relief Requirements)) and is either part of a Countrywide securitization (and for which BOA/CFC have the delegated authority to modify principal) or is in the held-for-investment portfolio of Bank of America Corporation or any of its Affiliated Entities.

    v. The mortgage is permitted to be modified by BOA/CFC following the Settlement Loan Modification Program under applicable law and investor, guarantor, insurer or other credit support counterparty directive or contract (as in effect on February 9, 2012); for the purposes of this provision only, a modification is considered to be permitted if it would not subject BOA/CFC to adverse action under such law, directive or contract, such as indemnity, mandatory buy-in, compromise of insurance coverage, fines or penalties.

    vi. The borrower has a debt-to-income ratio ("DTI") of 25% or greater.

e. *PMMS*. PMMS is the Primary Mortgage Market Survey promulgated by the Federal Home Loan Mortgage Corporation, or any successor thereto.

f. *Potentially Eligible Borrower.* A Potentially Eligible Borrower is a borrower who meets the following criteria:

i. The borrower presently holds the mortgage and was the owner-occupant of the residential property securing the mortgage at the time of origination.

ii. The borrower has not previously defaulted on a modification that afforded terms equal to or more favorable than those in the HAMP guidelines.

iii. The loan-to-value ratio ("LTV") of the property securing the borrower's mortgage exceeds 100% at the current market price of the property.

iv. The borrower is one whom BOA/CFC are not prohibited or prevented by law or by contract either from soliciting or from providing principal modification.

g. *Required Documentation.* Required Documentation shall consist of the following documents:

i. Credit Report.

ii. Salaried/Hourly Wages – Most recent pay stub.

iii. Self-Employed – Verbal financial information followed by completed P&L template certified by customer.

iv. Alimony and Child Support – Copy of legal agreement specifying amount to be received (customer shall certify twelve-month continuance if not included in legal agreement) and most recent bank statement, deposit slip or canceled check as evidence.

v. Other Taxable and Non-Taxable Benefits (Social Security / Disability / Pension / Public Assistance) – Award Letter OR most recent bank statement AND, if non-taxable, also need 4506-T.

vi. Rental Income – Signed letter from customer detailing details of rental income AND most recent bank statement, deposit slip or canceled check as evidence.

vii. Unemployment Benefits –

1. Pursuant to the requirements of FHA HAMP, unemployment benefits can be included as income with a benefit letter supporting twelve-month continuance, AND

either two most recent bank statements, deposit slips or canceled checks as evidence, OR 4506T.

viii. Other Income (investment / part-time employment / etc.) – All sources of income shall be documented.

ix. Non-Borrower Income – With respect to non-borrower income, BOA/CFC shall apply the above rules depending upon type of income being used for qualifying non-borrower.

h. *Settlement Loan Modification.* A Settlement Loan Modification is a modification made according to the following priority:

i. All delinquent interest payments and late fees will be capitalized.

ii. Principal will be forgiven in the amount necessary to achieve a DTI of 25%, subject to the provision that the LTV need not be reduced below 100%.

iii. If, following the principal reduction step, DTI is above 31%, the interest rate will be reduced to the extent necessary to achieve a DTI of 31%, but in no event will the interest rate be reduced below 2% (beginning at year five, any reduced interest rate will be adjusted upward, so as to increase the net present value ("NPV") of modifications). HAMP step rate requirements will be utilized, as summarized below:

1. Modified rate no lower than 2% is in effect for five years.

2. At the end of five years, the rate steps up at (up to) 1% per year, until the PMMS rate in effect at the time of the modification is reached (rounded to the nearest eighth).

3. Once the PMMS rate is reached, then the rate is fixed for the remainder of the loan term.

iv. If, following the interest rate reduction step, DTI is above 31%, provide payment relief through forbearance until the end of the term of the loan in the amount necessary to achieve a DTI of 31%.

v. Consistent with HAMP, the combined impact of forgiveness and forbearance will go no lower than a floor of 70% LTV.

vi. In all instances, the adjustments must be limited so as to provide a positive NPV, with the calculation based on the Treasury NPV model outcome. If, following the priority above, the modification produces a negative NPV, the steps in the priority will be adjusted (in reverse order) to produce successive 1% increases in DTI (but

in no event higher than 42%), and the NPV model will be re-run after each 1% payment adjustment. Modifications will be offered at the lowest DTI solution that is NPV-positive. There will be no modification if payments greater than 42% DTI are required to make the modification NPV-positive. BOA/CFC will be able to receive no more than 15% of their overall credit for First-Lien Mortgage Modifications under Exhibit D to the Consent Judgment from loans for which the modification is altered under this Paragraph 7.h.vi because the modification would otherwise have produced a negative NPV.

vii. Subject to Paragraphs 7.h.i-vi, and the provision that LTV need not be reduced below 100%, there is no percentage limit on the reduction of unpaid principal balances.

i. *Settlement Loan Modification Program Solicitation Requirements.* The Settlement Loan Modification Program Solicitation Requirements shall meet at least the following requirements:

i. If no Right Party Contact, as defined in Chapter II of the MHA Handbook, is established with the borrower since delinquency, BOA/CFC shall make a minimum of four telephone calls over a period of at least thirty days, at different times of the day.

ii. If no Right Party Contact is established with the borrower since delinquency, BOA/CFC shall send two proactive solicitations with a thirty-day response period, one via certified mail and the other via regular mail.

iii. Any contact with borrowers, whether by telephone, mail or otherwise, shall advise borrowers that they may be eligible for the Settlement Loan Modification Program.

iv. If Right Party Contact is established over the phone and the borrower expresses interest in the Settlement Loan Modification Program, BOA/CFC shall send one reactive package with a fifteen-day response period.

v. If the borrower does not respond by submitting the Required Documentation, BOA/CFC shall send another reactive package with a fifteen-day response period.

vi. If Right Party Contact is established but the borrower submits an incomplete set of the Required Documentation, BOA/CFC shall exhaust any remaining reasonable effort calls to complete the Required Documentation before declining these loans.

vii. BOA/CFC shall consider input from state attorneys general or non-governmental organizations regarding best practices for borrower solicitation.

j. *United States*. United States means the United States of America, its agencies, and departments.

ATTACHMENT 2
IRG Assertion

IRG Assertion

I am the Manager of the Internal Review Group of Bank of America. To the best of my knowledge, after undertaking reasonable due diligence, I certify that the Consumer Relief Report of Servicer for the period ending March 31, 2013 and the outcomes of the Satisfaction Review are based on a complete and accurate performance of the Work Plan by the IRG. This IRG Assertion is given to the Monitor, as identified in the Consent Judgment, pursuant to Section C.7 and D.1 of Exhibit E to the Consent Judgment (Enforcement Terms) and Section I.B.4 and Section III of the Work Plan.

Paula Bradham

Paula Bradham

NATIONAL

Consumer Relief **See Note 1** **Reported Credits from 12/31/2012 through 3/31/2013** ***$s in Millions***	**Current Period** **$ Credit**	**Reported to Date** **$ Credit**
First Lien Modifications	**1,195.1**	**3,365.2**
Second Lien Modifications	**-**	**2,216.4**
Other Programs (see Note 2)	**33.2**	**3,053.7**
i. Other – Short Sales/Deed-in-Lieu	-	2,952.2
ii. Other – All Except Short Sales/Deed-in-Lieu	33.2	101.5
Refinancing Program	**621.5**	**1,013.8**
Total Consumer Relief	**1,849.8**	**9,649.1**

Notes:

1) This report reflects Consumer Relief Credits calculated as required in Appendix D. Actual consumer benefit is reflected in Schedule Y.

2) Other Programs include the following:
   a. Enhanced Borrower Transition Funds Paid by Servicer (excess of $1,500)
   b. Short Sales/Deed in Lieu
   c. Servicer Payments to Unrelated 2nd Lien Holder for Release of 2nd Lien
   d. Forbearance for Unemployed Borrowers
   e. Anti-Blight
      i. Forgiveness of Principal Associated with a Property When No FCL
      ii. Cash Costs Paid by Servicer for Demolition of Property
      iii. REO Properties Donated
   f. Deficiency Waivers

Confidential

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 2009-87096-CA-01

THE BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS WALT, INC.,
ALTERNATIVE LOAN TRUST 2007-0A4
MORTGAGE PASSTHROUGH CERTIFICATES,
SERIES 2007-0A4 PASSTHROUGH
CERTIFICATES, SERIES 2007-0A4,

Plaintiff,

-vs-

RYAN ATKIN,

Defendant.

_____/

Proceedings had and taken place before the Honorable Judge David C. Miller, at the Dade County Courthouse at 73 W. Flagler Street, Miami, Florida 33130, Room 5-3 for hearing on Thursday, May 24, 2018 at 10:05 a.m.

APPENDIX "G"

APPEARANCES:

On Behalf of the Plaintiff:

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BY: LAURA CARBO, ESQUIRE

On Behalf of the Defendant:

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efile@jakelegal.com
BY: BRUCE JACOBS, ESQUIRE

On Behalf of the Witness:

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44 W. Flagler Street, Floor 25
Miami, Florida 33130-1808
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dfk@lgplaw.com
BY: DORA KAUFMAN, ESQUIRE
AND PETER HERNANDEZ, ESQUIRE
AND MIGUEL CORDANO, ESQUIRE

INDEX OF EXHIBITS

COURT'S EXHIBITS MARKED

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(Thereupon, the following proceedings were had:)

THE COURT: Okay. Plaintiff?

MS. CARBO: Yes, Your Honor, we're --

THE COURT: Go right ahead.

MS. CARBO: -- ready to proceed.

THE COURT: Okay.

MS. CARBO: There are maybe some housekeeping issues, because numerous motions were filed within the last couple of days. I'll address them as they're raised. But I am --

THE COURT: Okay.

MS. CARBO: -- here with my two witnesses. And it's a nine-year-old case. We're ready to go to trial today, Your Honor.

THE COURT: Okay. Then, sir --

MR. JACOBS: Thank you. Thank you, Your Honor.

THE COURT: -- you're on.

MR. JACOBS: Bruce Jacobs on behalf of Mr. Atkin. So, Your Honor, here's the situation. This is a nine-year-old case. There's been [unintelligible] judgment entered twice already that it both be vacated because of bankruptcy stays that were in effect at the time the judgments were entered. So, the client hired me, I want to say, a week ago because he knew that, you know, it was going to trial. And he was being represented by a friend, and that guy wasn't

really knowledgeable about any of the issues.

And the first thing I did when I got involved was I started to look through the case. And I started to see all kinds of things that caused me alarm. And I started to file all kinds of documents. And the first thing I did, actually, was ask counsel to give me the trial exhibits. And that was probably a week ago. And every time she responded by -- my office would ask for the trial exhibits. They would send over some kind of pleading that had nothing to do with trial exhibits. And then my office would respond, "Thank you for this. Can we please have the trial exhibits?" which they didn't provide until last night at about 8:40. They dumped, like, seven emails filled with what appears to be hundreds if not thousands of pages of documents that are all the trial exhibits for this case.

So, I'm not ready to go to trial, because I don't think it's fair to drop all of your trial exhibits on me the night before trial, when I've been asking to -- for you for some time now --

THE COURT: Mm-hmm.

MS. CARBO: May I see evidence of the asking? The first --

MR. JACOBS: Sure. [Unintelligible] --

MS. CARBO: -- knowledge I received of the request for the trial exhibits was at 10:30 this -- yesterday

morning, Your Honor. That was --

THE COURT: Okay.

MS. CARBO: -- the first notice I received. And --

MR. JACOBS: Well, [unintelligible] --

MS. CARBO: -- in addition, Your Honor, the Defendant was represented by counsel up until the 15th, at which time -- the 16th -- Mr. Jacobs substituted in. Whether or not his counsel was prepared to proceed or was a proper counsel is not an issue, Your Honor. He was represented by counsel for over two years. And therefore this late change in attorneys should not move to delay a case of this age.

THE COURT: This is 2009, right?

MS. CARBO: Yes, Your Honor.

THE COURT: 2009. Trying to look up the file -- 87096. Is there a bankruptcy now? Flag came up, "Bankruptcy." That may have been an old flag.

MS. CARBO: There's no bankruptcy presently, to my knowledge.

THE COURT: Okay. Substitution Order was signed May 16th. And that same day, we got maybe 10 Requests for Judicial Notice, which various --

MS. CARBO: There's actually --

THE COURT: -- and sundry --

MS. CARBO: -- 13, Your Honor, outstanding.

THE COURT: Okay.

MS. CARBO: There's also --

THE COURT: Okay.

MS. CARBO: -- several Motions in Limine.

THE COURT: Looks like 15 and Motions in Limine.

MS. CARBO: There's Motions to Strike. There's -- we were peppered with motions, Your Honor.

MR. JACOBS: So, Your Honor, I'm looking from --

MS. CARBO: Well, I still would like to see the request for the exhibits --

MR. JACOBS: Sure, I'm --

MS. CARBO: -- which I have no seen.

THE COURT: Okay. Say what you have.

MR. JACOBS: So, I'm seeing that I have emails from all day yesterday, asking them for the exhibits. My paralegal told me they had asked for them when they first got in the case, which is our usual practice. But I don't see the email from that yet. So, we're checking back with the office to see if there is an actual email on that. But we still --

MS. CARBO: The first knowledge I received of it was 10:30 yesterday morning, Your Honor. I worked as expeditiously as possible to get the exhibits together. I was too busy dealing with the numerous motions that were filed by Defense. As Your Honor can see, we filed opposition and Motions to Strike each and every one of the motions that

were filed by Defense.

THE COURT: That's not yet on the docket [unintelligible].

MS. CARBO: Okay, well, we have it.

THE COURT: This docket --

MS. CARBO: This --

THE COURT: Yeah, I know. Docket doesn't catch up to that time.

MS. CARBO: It was a miraculous feat, Your Honor, to be able to respond to all of those motions in a week.

THE COURT: Well, is there any other case that needs to be heard? Yes, let's -- while they're looking for emails and while we're gearing up for, I guess, a lot of rulings. Let's go ahead and take care of the easy one.

(OFF THE RECORD)

(ON THE RECORD)

THE COURT: Well, what did we do about finding or not finding emails or --

MR. JACOBS: Sir, I have [unintelligible] --

THE COURT: -- requests for records?

MR. JACOBS: I need to see if it came through yet. So, my office -- I showed Counsel an email from the 22nd where we -- in the morning, where we asked for the trail exhibits. We then forwarded that email again on the --

THE COURT: Well, what happened on -- no response?

MR. JACOBS: No response.

THE COURT: Okay.

MS. CARBO: I --

MR. JACOBS: So, on the 23rd, we forwarded it again, in the morning. And here's the -- May 22nd, 2018, at 10:21 a.m. It was sent to eservice@tromberglawgroup.com. And it was, "Good morning, in reference to [unintelligible], please provide all trial exhibits." That was re-forwarded again on the 23rd, in the morning. No response.

And then during -- throughout the course of the day, they were filing pleadings. Three or four different pleadings got filed in response to the things we had filed. And each time we got another pleading, we again said -- responded by saying, "Please give us the trial exhibits." And then at 8:40 in the evening, they sent us seven emails with PDFs of the trial exhibits.

And I -- my office is telling me that the -- that there is also an email from the 18th. But they're having some difficulty locating it. They were actually on their way here to drop some things off. So, they're racing back to the office to get the 18th email. But that is -- my understanding is that there was also an email sent on the 18th, when we first got on the case, saying, "Please give us the trial exhibits."

MS. CARBO: Respectfully, Your Honor --

THE COURT: Yes?

MS. CARBO: -- those emails were sent to an eService group. No one reached out to me as an attorney. The first I became aware of this was yesterday, that email yesterday at 10:30 in the morning. And I acted as expeditiously as possibly [sic] to get them the exhibits.

Your Honor, we did that as a courtesy. There -- originally we sent a notice to the attorney who was representing the Borrower at the time the trial was set, advising that we would be happy to meet to exchange exhibits. We got no response, no request. I feel that it's not our responsibility to have new counsel up to speed --

MR. JACOBS: You need to --

MS. CARBO: -- if prior counsel didn't request the exhibits timely. I'd like to point out, Your Honor, that all of these motions that were filed were untimely with respect to the Trial Order and should not even be heard by the Court because the time for filing motions and the time for filing exhibit and witness list expired long before this counsel came on board. And nothing was filed. This was a pro se Answer filed by the Borrower in 2014. There are no affirmative defenses.

THE COURT: What happened, well, between 2009 and 2014?

MS. CARBO: There were bankruptcies filed, Your

Honor. This is --

THE COURT: Okay.

MS. CARBO: But his counsel is -- Counsel came on board for the Borrower in 2016. No motions to amend were made. Nothing was done to amend the pleadings. Nothing.

THE COURT: Well, we did have an amendment of the pleadings just in February. Change the name of the Plaintiff. I'm not sure if that's --

MS. CARBO: It --

THE COURT: -- a significant change or not.

THE COURT: No, Your Honor. It wasn't an amendment. It was just a misnomer that was corrected. My meaning was that there was no amendment to the answer, Your Honor. So, there still is no affirmative defense interposed in this action.

MR. JACOBS: So, Your Honor, I kind of agree with Counsel in some ways and disagree with others. For starters, as I said, I came into the case because the lawyer who was representing Mr. Atkin had obviously very little idea of how to properly defend a foreclosure.

The first thing that I did was to file the Motion for the Court to issue an Order to Show Cause in the case, because I think that what we're dealing with is beyond just raising defenses. And I'd like an opportunity to discuss that with Your Honor procedurally.

I certainly could have, and have in many of my cases, filed motions to amend and counterclaims and things like that; however, I think that because of the nature of the case we're dealing with, because of the environment that we're in, I would rather -- I think it's a much stronger appellate position for the Court to address this through an order to show cause, as opposed to a motion to amend that is filed at the last minute, because the truth is what really matters here. And whether or not there's misconduct is what really matters here. It's not, in my opinion, whether or not the -- I don't think it's fair to impose the rules in a way that would result in a mockery of the system. That a client that has been repeatedly engaged in misconduct in an equitable action should be allowed to say, "Well, the rules say that you can't say anything about that anymore," I don't think --

MS. CARBO: Objection, Your Honor.

MR. JACOBS: -- that that is really what we should --

MS. CARBO: I object to this --

MR. JACOBS: -- what the rule is talking about.

MS. CARBO: -- argument, Your Honor.

MR. JACOBS: I mean, I know Counsel is going to object.

THE COURT: Why don't you wait until he at least takes a breath?

MR. JACOBS: You know --

MS. CARBO: I'm not sure he will, Your Honor.

THE COURT: Multiple objections aren't any stronger than a single objection. Let's --

MR. JACOBS: [Unintelligible] --

THE COURT: -- wait until he finishes; then you can object and we'll all listen.

MR. JACOBS: So, here's what I would say, Your Honor. I understand that Counsel is going to object to everything that I'm about to say. And I respectfully understand her objection. And I disagree with her objection. And I ask the Court to just allow me to be heard on this issue about the rule to show cause, because I think that that is the primary focus that we should be focusing on right now, before we talk about "let's see if the default letter got mailed or if the payment history is accurate," because if there's misconduct in the case, that, I think, should be addressed separate and apart. It pulls it all out of the normal course of litigation.

THE COURT: Okay. Well, I have not yet seen the Order to Show Cause, I don't believe.

MR. JACOBS: So, I have a copy for Your Honor here.

THE COURT: So, I'll look at it.

MR. JACOBS: It's Defendant's Verified Motion for Order to Show Cause.

THE COURT: Well, wait a minute. I think this was on my desk this morning. And I started to look at it, not realizing it was on for trial today. "Defendant's Verified Motion for Order to Show Cause by Plaintiff should not be held in criminal contempt and sanctioned under the Court's inherent contempt power for fraud upon the Court." That's filed May 21st? That's this case?

MR. JACOBS: Yes.

THE COURT: Okay. That --

MR. JACOBS: Your Honor, just to make the record clear --

THE COURT: I just started looking at this, this morning, before the other hearing started.

MS. CARBO: It's not to the right address.

MR. JACOBS: Service to Tromberg Law Group?

MS. CARBO: No, it's not eService. We never received it. We never received --

MR. JACOBS: Okay, well, Your Honor --

MS. CARBO: -- anything until yesterday.

MR. JACOBS: -- just so the record is clear, when my office did send an email to service@tromberglawgroup.com --

MS. CARBO: That's not our email.

MR. JACOBS: -- saying that we had just entered the case for our client, "Trial is upcoming, May 24th. Please

provide a copy of the Trial Order and trial exhibits," over. Counsel is saying that the email address is wrong. But we did send them follow-up emails on the 22nd and 23rd and didn't get the documents until the afternoon. But that is all the information we have about the request for trial exhibits.

THE COURT: It looks like this Order to Show Cause was sent to a jalterman@tromberglawgroup.com [phonetic]; was that received?

MS. CARBO: Yes, Your Honor, that was received.

THE COURT: Okay. And eservice@tromberg --

MS. CARBO: That's our correct --

THE COURT: -- lawgroup.com.

MS. CARBO: -- email address, Your Honor.

THE COURT: Where was this other thing sent?

MS. CARBO: Service.

MR. JACOBS: The other one didn't have the "e" before the service. It just said "service@."

THE COURT: Ah.

MR. JACOBS: So, that's probably why the email didn't get responded to on day one. But they didn't respond on the 22nd or the 23rd, until 8:40 at night.

MS. CARBO: I didn't see the 22nd. May I see that?

MR. JACOBS: Oh, sure.

MS. CARBO: The 23rd was the first I became aware

of it, and I acted that day, Your Honor.

MR. JACOBS: Sure.

MS. CARBO: I think that's beyond the issue at this point, because now --

MR. JACOBS: So --

MS. CARBO: -- we're jumping backwards instead of forward.

MR. JACOBS: Your Honor --

THE COURT: Your Honor, if this were a case in law, I would be a lot less forgiving. But this is a case in equity. And it -- already, it's starting to feel like I have choices to make that would result in -- and I always try and take a long view -- result in either a wrongful foreclosure or, if I went ahead with it and it was a successful foreclosure, could be a legal malpractice case, or it could get reversed for any one of a number of reasons.

I don't know why the case is nine years old, unless I go back to the beginning. I know you say with the bankruptcies -- but sometimes --

MR. JACOBS: I mean, there was a FWOP.

THE COURT: I think I was around back in 2009. And nobody was doing -- neither side was doing much on these cases to move them forward. Let me go back. So, just to look at the docket, there's a Complaint in 2009. There was a Motion to Dismiss in March of 2010, an Answer filed eight

months later by the condo association. This file is so old I can't even look at the documents on the docket; I can just tell you what the title is. Somebody filed a Motion to Dismiss. Somebody set Motions to be Heard in 2011. There was a suggestion of bankruptcy in December 2011, a FWOP Notice in January of 2013. In February of 2013, the Debtor voluntarily dismissed the bankruptcy. Someone showed enough good cause, apparently, to keep this matter alive, although the next document is a Final Disposition document signed by Ronald Wolf [phonetic] and Associates. I think that's Plaintiff's -- would've been the Plaintiff's lawyer.

MS. CARBO: Respectfully, Your Honor, that was probably the Final Disposition of the bankruptcy so that we could proceed.

THE COURT: I see.

MS. CARBO: Not "we." My firm didn't become involved until 2015. But the prior counsel --

THE COURT: No, this is a -- disposed by judge.

MR. JACOBS: It was a trial.

THE COURT: Final Disposition.

MR. JACOBS: It was a trial that ended with a Final Judgment from the bank that had to be vacated because there was a stay in place.

THE COURT: Through the bankruptcy.

MR. JACOBS: But if Your Honor looks at the trial

exhibits that were filed at the trial -- it's the original Note and Mortgage exhibit -- you'll see that they filed -- at the trial, there was a exhibit that was -- the Note without any allonge, no endorsement.

MS. CARBO: And that's how we're proceeding, Your Honor.

MR. JACOBS: There was --

MS. CARBO: Our Note does not have a -- an allonge. We're --

THE COURT: Well, let him finish. Let him finish.

MS. CARBO: I'm sorry.

THE COURT: That's okay.

MR. JACOBS: There was a Note without an allonge, no endorsement. There was a Pooling and Servicing Agreement. And there was what purported to be a Mortgage Loan Schedule; however, the Mortgage Loan Schedule has 68 fields. And the definition of mortgage loan schedule in the Pooling and Servicing Agreement says it should have 20 fields.

MS. CARBO: Your Honor, if I may?

THE COURT: I saw that in your motion; I'm not sure what that means.

MS. CARBO: What the relevance is to our proceeding today?

MR. JACOBS: So, what it means is that --

MS. CARBO: I have my --

MR. JACOBS: Again, I --
THE COURT: I'm trying to figure it out myself.
MS. CARBO: -- exhibits.
THE COURT REPORTER: One at a time.
THE COURT: Maybe we can --
MS. CARBO: I'm sorry.
THE COURT: -- figure it out together and find out that it has no merit. Maybe there is no merit. I've got to at least --
MS. CARBO: Okay. Thank you, Your Honor.
THE COURT: -- keep my ear open.
MR. JACOBS: So, let me start from the beginning, Your Honor. If you notice the Complaint, what you see in the Complaint in this case is that they filed a --
THE COURT: I can't even see the Complaint on the docket, so if you have a copy --
MR. JACOBS: We have -- do we have a copy of the Complaint in the file?
THE COURT: It goes back too far.
MR. JACOBS: Your Honor, I'm going to hand you up a copy of the Complaint. And what -- you'll notice a few things about that document.
THE COURT: Does the Plaintiff agree this was the original filing?
MS. CARBO: Yes; yes, Your Honor.

MR. JACOBS: So, there's a couple things you'll notice. First off, the Plaintiff in the case is Bank of New York Mellon as Trustee of a 2005 securitized trust.

THE COURT: It says 2007 on here; I'm sorry.

MR. JACOBS: I'm sorry; 2007 securitized trust --

THE COURT: Okay.

MR. JACOBS: -- right, which is the -- which we'll get to later, is that is a trust that was created in 2007. Had a closing date in 2007. If it ever acquired this loan, it acquired it before 2007 when the Trust closed.

So, when you go into the exhibits that they used to show that they have the right to foreclose, they have a copy of the Mortgage, which is kind of irrelevant to the question. There is an Assignment Mortgage that I dogeared for you. And then there's a copy of a Note that is payable to Countrywide Home Loans, Inc. And you'll notice that the --

THE COURT: I'm looking for the Assignment.

MR. JACOBS: Is it Countrywide or somebody else?

THE COURT: I'm not very good at finding a dog's ear.

MR. JACOBS: I'm sorry. It was payable to a Liberty Mortgage of South Florida 10 [phonetic], LLC.

THE COURT: Maybe you can find it on -- I don't see it.

MR. JACOBS: If you look at the -- after the

Mortgage. Right after the Mortgage.

THE COURT: [Unintelligible] something to put on this thing. Right after the Mortgage.

MR. JACOBS: Right after the mortgage, you'll see I folded it like a dog's ear. Next page. Keep going. Keep going.

THE COURT: [Unintelligible].

MR. JACOBS: There it is. A few more pages. Thank you. There it is.

THE COURT: Oh.

MR. JACOBS: That folded page.

THE COURT: It was folded at the bottom.

MR. JACOBS: Right.

THE COURT: Okay.

MR. JACOBS: So, you'll notice that there's a MERS Assignment that was attached as evidence of standing. And what the Assignment says is that MERS, the Mortgage Electronic Registration Service, "does hereby grant, sell, assign, transfer, set over, and convey to" the Plaintiff Trust the Note and Mortgage for this loan. And it's signed by Karen Graham [phonetic]. And it was executed months after the default. The default was in September of 2011. So, this is a document that's created about a year after the origination -- after the default of the loan. And it is signed by this Karen Graham.

And it is there for one purpose, is for the Court to see, "Oh, the Plaintiff has the right to foreclose. Why? Because MERS sold the Note and Mortgage to the Plaintiff, according to this document, which was recorded in the public records and attached to the Complaint as evidence of standing and signed by Karen Graham." And I keep pointing to Karen Graham because Karen Graham was a lawyer who worked for the Marshall Watson [phonetic] Law Firm. She was the managing attorney of the firm. And I gave Your Honor -- in Exhibit B to the Motion is the Florida Bar vs. Karen Alena [phonetic] Graham, Florida Bar File No. 2012-51,340(17I), where she entered a conditional guilty plea for a Consent Judgment with the Florida Bar. She got suspended for 60 days because her firm was actively involved in the Robel [phonetic] assignment scandals. And the -- all of the involvement that was going on at the time that we entered into the National Mortgage Settlement [phonetic], it was all work that was being done by the Marshall Watson Law Firm, which later became Choice Legal, because Marshall Watson and Karen Graham were all involved in this whole scandal.

So, I just want to make clear that in the federal lawsuit that I filed with the -- I filed a false claims act case against Bank of America based on the work that I find in this case, too. And what happened was that I had made the argument that they were making claims to HUD for premiums for

HUD insurance on loans that they had foreclosed using false evidence. And Judge Ursula Engarow [phonetic] found in that case, when she denied the Motion to Dismiss, that using the endorsements and the assignments like we see in this case would fall under the scope of conduct barred by the National Mortgage Settlement.

Some of the lawyers from Liebler Gonzales and Portuando, those were the firms that were representing Bank of America in that case. They're here today, watching these proceedings. I don't believe they are -- they've entered an appearance yet. But in that case, the bank was -- had to answer the Complaint. And they answered and says MERS does not sign -- does not own or assign notes, periods. So, they are acknowledging in federal court that MERS cannot assign the note and mortgage. They say that MERS can assign the mortgage, except for Florida law and Supreme Court law going back 100 years says you can't assign a mortgage without the note. That's a legal malady.

So this is one of these pieces of evidence that I submit Judge Engara [phonetic] was correct. This is the type of conduct that falls in the scope of conduct barred by the National Mortgage Settlement. National Mortgage said, "We are going to pay our share of $25 billion and give people principal balance reductions," which now we know -- one of the things I gave a Request for Judicial Notice on is,

nationwide, Bank of America gave 23,000 first-lien principal balance reductions for the whole country. So, I don't really think that they necessarily met the goals that everyone had expected from that.

But meanwhile, there's still -- they were supposed to stop using -- they were only supposed to use evidence that was competent. And here you have a document which -- they acknowledge in federal court MERS cannot assign the note, cannot sell the note, doesn't own the own the note. And that is just truth. MERS has no right to do any of this. So, I submit that that's the first problem, is you have a -- what appears to be a robo-signed assignment of mortgage, representing a transaction that did not happen. MERS did not sell the Note and Mortgage to the Plaintiff in -- you know, a year after the loan went into default. Just never happened.

THE COURT: Well, this looks like 2009, it happened. The default was 2011?

MR. JACOBS: The -- I'm sorry.

THE COURT: 2008.

MR. JACOBS: The -- it was 2008. I'm sorry; I'm getting my dates a little messed up.

THE COURT: Okay.

MR. JACOBS: But the default was in 2008.

THE COURT: All right.

MR. JACOBS: And --

THE COURT: That makes perfect sense.

MR. JACOBS: Right. And the loan was September of -- the default was September of 2008. And the Assignment says that there was -- that two months before filing this lawsuit the -- MERS sold the Note and Mortgage to the Plaintiff, which isn't true.

THE COURT: All right.

MS. CARBO: Objection --

THE COURT: Let's just -- all right.

MS. CARBO: -- Your Honor.

THE COURT: For the record, so, October 29th, 2009, MERS at least by the face of the document tried to assign the Mortgage from, it looks like, Liberty Mortgage of South Florida to Bank of New York and the Trust.

MR. JACOBS: Well, I don't -- I'd -- I would disagree with that, Your Honor.

THE COURT: I mean --

MR. JACOBS: [Unintelligible] --

THE COURT: I'm just saying, for the face of it, that's what it looks like. I'm just going by the dates, October 29th, 2009; December 2nd of '09. So, less than two months later, they filed the complaint. Got it.

MR. JACOBS: So, what it says, Your Honor, is that MERS as Nominee for Liberty Mortgage of South Florida X, LLC, does hereby -- present language -- sell the -- does hereby

grant, bargain, sell, assign, transfer, and set over onto the Bank of New York -- onto the Plaintiff in this case the Mortgage, together with the Note; do you see that?

THE COURT: Yes.

MR. JACOBS: So, that is the language that -- and my position is that it is legally impossible for this Trust to have acquired this loan in 2009 from either MERS or from Liberty Mortgage of South Florida --

MS. CARBO: Your Honor, if I may?

MR. JACOBS: -- because -- I mean, I'm not done, by a long shot, trying to --

THE COURT: I didn't hear --

MR. JACOBS: -- lay my argument down.

THE COURT: I didn't hear a pause.

MS. CARBO: Okay. I'm sorry; I did.

THE COURT: You [unintelligible] --

MR. JACOBS: So -- and I'll just note, Your Honor, this is prepared by the Law Offices of Marshall C. Watson [phonetic], according to the top left corner, and signed by the managing attorney, who is signing here as the assistant secretary for MERS.

And I submit, Your Honor, that MERS cannot sell the Note and Mortgage. And I will -- when we get to the evidentiary standpoint of this issue, when we actually have -- god willing, we have a hearing on this, an evidentiary hearing, I

will be able to show you that the MERS policies and procedures say you cannot include, together with the note, as an assignment -- as part of their assignment of mortgage, because as Bank of America acknowledged in the federal case, MERS cannot assign and does not own any notes.

THE COURT: Do you have something on that point?

MR. JACOBS: Yes, I do, Your Honor.

THE COURT: [Unintelligible] --

MR. JACOBS: If you look at the Request for Judicial Notice --

MS. CARBO: Your Honor, since there is a pause, may I advise the Court that this is a wild goose chase? We're not proceeding on the assignment of mortgage. That's not being offered into evidence on my case in chief in this matter. This is a complete wild goose chase intended to sway the Court to some belief that all the documents which have been filed by Defense Counsel may have some relevance. But they don't.

Bank of America is not a party to this action. We're not using this Assignment of Mortgage to proceed. It's not even being offered into evidence. He's making arguments that would be made if it should be offered in evidence, just to try to sway the Court to some --

THE COURT: Well, as long as I've known Mr. Jacobs -- and I was here before the foreclosure thing got crazy --

he's been trying to make law. So, I'm going to at least let him make his case. And then we'll --

MS. CARBO: Thank you, Your Honor.

THE COURT: -- see where that -- where we end up.

MS. CARBO: It's just --

THE COURT: I know that sometimes it hasn't gone anywhere. But you have -- I have to let him make his case.

MS. CARBO: Thank you, Your Honor.

MR. JACOBS: All right. Let me go to my computer. [Unintelligible] I have a --

MS. CARBO: And also, Your Honor, the National Mortgage Settlement was in 2011, long after December -- so, to hold them to a -- even though they're not a party here, even though we're not submitting the Assignment, to hold them to standards that were instituted in 2011 is beyond belief at this point.

MR. JACOBS: Well, Your Honor, just to address the point, first off, last night one of the documents I got was a Assignment of -- was this Assignment of Mortgage as a trial exhibit that was provided to me last night by the Plaintiff's counsel. And it's addressed on their witness and exhibit list. And it also has an exhibit stamp that shows it was made an exhibit at the 2013 trial. Although it's not in the record in the 2013 trial, it was clearly identified as being provided in the case to the Court, because the Court stamped

it.

So, Your Honor, I have a copy of the Key-10 [phonetic] here. And I'll just show you one of the paragraphs. Showing Counsel. This is the Answer from the Key-10, right? This is the docket. I'll give you 120 of the Key-10 case. This is part of the Request for Judicial Notice that we did on [unintelligible] 16. And it says MERS admit that it does not own or assign -- Plaintiff has admitted MERS does not own or assign notes, okay? So --

THE COURT: Now, as an aside, number three on the trial list is an Assignment of Mortgage. Is there a different Assignment of Mortgage that was going to be an exhibit in this case?

MS. CARBO: There is a -- we're not relying upon the Assignment of Mortgage, Your Honor, in this case.

MR. JACOBS: Well --

THE COURT: I understand. But --

MS. CARBO: I withdraw that. I'll withdraw that from the trial exhibit, Your Honor.

THE COURT: But that's -- but the Assignment of Mortgage -- it's number three on the exhibit list -- is the same Assignment of Mortgage we're talking about right now.

MS. CARBO: There was a corrected Assignment of Mortgage, but we're not relying upon either one, Your Honor, in this case.

THE COURT: Okay. I don't know that I see anything called Corrected Assignment of Mortgage.

MR. JACOBS: I've never been provided a corrected Assignment of Mortgage.

MS. CARBO: It's filed. It's been recorded with the Court.

MR. JACOBS: Do you have a copy for me? Can I see it?

MS. CARBO: I don't believe I have it, because we're not relying upon it.

THE COURT: Well, I don't see it listed. But maybe it'll be important someday. Okay.

MR. JACOBS: So --

THE COURT: Well, at least I know that the -- at some point, someone was thinking that this might be important to the case.

MR. JACOBS: Well, it's not --

THE COURT: The Plaintiff, anyway.

MR. JACOBS: What I'd say, Your Honor, is that there is -- and I will provide it. I'm just pulling it up right now.

THE COURT: Well, you were going to show me something about --

MR. JACOBS: So, what I was going to show you --

THE COURT: Something that you had.

MR. JACOBS: -- is that I have --
THE COURT: That MERS can't assign anything.
MR. JACOBS: I have, Your Honor, the --
THE COURT: Something that says that.
MR. JACOBS: This is a PDF. This is a PDF of the Answer that was filed by the Liebler Gonzalez Portuando firm and other counsel. Look at paragraph 43 of the Answer. It specifically says --
THE COURT: And who are they representing in this case?
MR. JACOBS: Bank of America.
THE COURT: Okay. So, it's not this client.
MR. JACOBS: Well, respectfully, Your Honor, you've got to -- let me make sure something is abundantly clear here. You have a trust, okay, and that trust acts through two arms. One arm is the servicer, Bank of America. And if you look at the Complaint, Bank of America signed as Servicer for Bank of New York Mellon in this case.
MS. CARBO: No, Your Honor.
MR. JACOBS: Look at the Complaint.
MS. CARBO: It's 2009. There was no --
MR. JACOBS: Well, I'll tell you that Bank of America, as -- for --
THE COURT: Hold on.
MR. JACOBS: Then what I'm confused with, Your

Honor, just so you understand this -- I have this same exact motion now going in front of Judge Brownyn Miller [phonetic]. The Millers are up now.

THE COURT: Lucky us.

MR. JACOBS: So -- and what's happening is --

THE COURT: Do you have a copy of that Complaint, again, because there's an issue about --

MS. CARBO: I don't believe --

THE COURT: -- Bank of America being involved as Servicer from the outset.

MS. CARBO: I believe Your Honor has it. I don't believe it was sent back to --

THE COURT: Oh, you're right. I do have it. I was just having the Assignment. Okay. Let's see.

MR. JACOBS: All right. Here's a paper copy. We found it. So, if you look at --

THE COURT: Where in there does it talk about Bank of America servicing, again?

MR. JACOBS: I thought it had been signed in the signature block, but it might -- I might be thinking of the other --

MS. CARBO: No, it's a --

MR. JACOBS: -- Bank of America --

MS. CARBO: -- 2009 case. It was before the certifications were required, Your Honor.

THE COURT: Right, I don't see anything.

MS. CARBO: And, Your Honor, just to clarify the record, here is a copy of the exhibit sheet from the prior trial. There is no Assignment of Mortgage that was submitted at that trial. Would Your Honor like to view this, or --

THE COURT: I think that -- but I think they conceded that it was not on the list.

MR. JACOBS: Right.

THE COURT: But it had some kind of stamp. Maybe it was just marked for identification, never made it. I do not see a reference to Bank of America. But there's a lot of pages here.

MR. JACOBS: So --

THE COURT: So, why should this -- why should anything said by the lawyers for Bank of America in a federal case be imposed upon the Plaintiff in this case?

MR. JACOBS: So, let me explain to you how the transactions work so you can understand the dynamics that -- we're really talking about the same parties that are all working in unison together and had been for the longest time that we've been dealing with this issue.

So, the way it's -- the way these transactions are structured, the way this happened, went down, was Countrywide was originating loans. And those loans were being originated to sell into the secondary market. That's what Countrywide

was the best at, they were the biggest at. And they would sell them to Fanny Mae [phonetic] and Freddie Mac [phonetic], wherever they could sell them to. And if they couldn't sell them to one of the government-sponsored entities, which paid more, they would sell them in pools to secure -- to investors who wanted to buy mortgage-backed securities.

THE COURT: Okay.

MR. JACOBS: And those pools would be the trusts. And there'd be two parties that would go forward once the trust was established. There would be the master servicer, who was in charge of handling the borrower, handling the payments, handling the courts, the foreclosures. That was the master servicer's responsibility. In this deal, that was Bank -- Countrywide, now Bank of America.

Then there was also the trustee, who was in this case Bank of New York. And their function was to collect the payments after all the money was paid, whatever needed to be paid to the servicer. The money was then funneled to the trustee. The trustee would then disperse those monies to the investors and provide reports to the investors about the performance of the trust.

So, this is an issue now that we've been dealing with. And I'll just make sure the Court is aware that Judge Brownyn Miller has a hearing set on June 4th -- June 1st; I'm sorry -- in a Bank of New York Mellon case because she has issued

four orders compelling Bank of New York to produce records in Bank of America's possession. And they had filed two affidavits saying, "We don't have access to that."

Judge Miller ordered that I could depose the witness in New York. I flew up to New York, and the witness admitted, "Of course we have access to these records." They're the servicer for the trust. They have all the records that are required to be turned over under different provisions of the pooling and servicing agreement. So, Judge Miller ordered them, a fourth time, "Give over the documents." And they still haven't done it.

Meanwhile, the law firm of Liebler Gonzalez and Portuando, who represents both Bank of New York and Bank of America, and have done it since the days that Your Honor was involved in cases like this, involving these issues -- and I just want to make sure the Court is aware that Your Honor had -- in a Bank of America case, there was the two orders that Your Honor entered, finding bad faith against the Liebler Gonzales and Portuando law firm. And I gave you a stack of these already. And these orders, Your Honor, were all later vacated by a successor judge, which, you know --

THE COURT: Okay.

MR. JACOBS: -- I disagree with. And it's been affirmed on appeal, so I disagree with that, as well. But the bottom line -- it was PCA'd, actually, on appeal, and

refused to write a -- to issue a written opinion or to be here en banc [phonetic], all that.

But what is -- what I thought was interesting is that at that time Your Honor had ordered the Bank of America to produce a corporate representative to talk about the endorsements that were being placed on the note and how Bank of America did that, and it was being done in conjunction with orders from -- Judge Barry Stone in Broward as well as Stanford Blake in Miami had all ordered the same depositions to be compelled.

And the Bank -- and the Liebler Gonzalez and Portuando law firm produced Maria Gardner [phonetic] as the corporate rep for Bank of New York Mellon and Bank of America in about 15 different cases. And that was the witness who gave false testimony -- is what I think ultimately we're going to get to when we get to the -- if we do get to the end of the line in all this, because the testimony that they've given in multiple depositions was that Bank of America -- or Countrywide had endorsed all the original notes within days. They had imaged them upon receipt from the closing table, and then they endorsed them. And then nobody made any records of that.

And now, years later, when they are producing these notes and these endorsements that were part of this whole, like, "Why were all the lost note cases filed without copies

of the endorsement on the note?" like here. And what happened was that they had said through these senior, senior executives at Bank of America that every note was imaged and then endorsed within days of origination. Problem is, in the federal case, they produced all of the images that they have for all the notes that we were -- the 39 notes we were dealing with. And there's no images from within days of origination. And images of the notes taken months and years after origination have no endorsement on it.

So, all of these are issues that we are -- that will come into play during the course of this. But I just want to make sure the Court is aware that -- the question Your Honor asked is, "Why does it matter? Why are we talking about Bank of America, when Bank of New York Mellon is involved -- is the Plaintiff in this case?"

And I submit to Your Honor that what you'll ultimately find in all of these cases is that Bank of America was the one that said, "Okay, we are in trouble now. The robo-signing scandal happened. They've realized that the OCC has asked us to identify why all of the notes have no endorse -- why they're litigating cases without properly endorsed notes. And as a result of that, Bank of America set in motion this unconscionable scheme to say, "We're going to rubber-stamp the endorsement on the note and then have senior executives backdate that endorsement to within days of origination, in

order to make it look like Countrywide actually endorsed the notes while it still existed, knowing that Countrywide had no endorsement on the note at the time that Countrywide went out of business."

So, what's happening here, Your Honor, is it's kind of a corporate shell game in a way. The Trust doesn't have any way of acting. It doesn't have employees. It doesn't have officers. It's just a legal entity that holds assets. And what you're dealing with here is a -- the lawsuit is being filed in the name of Bank of New York Mellon by Bank of America. And Bank of America is acting as the Servicer at the time that all the evidence is being created and at the time that the case is being litigated and now has since, you know, transferred servicing/sub-servicing off to other people and done whatever they can do to distance themselves from this issue.

But I resubmit, Your Honor, that the -- before you rule out anything because Bank of America is not named party here and is not the present Servicer, I would say that that is part of the game, the unconscionable scheme that they're relying on to deflect the Court away from the true bad actors in this case. And Your Honor's orders from 2011, although -- sorry, it was 2014. Yeah, December of 2014, there were two orders that Your Honor entered against Bank of America, saying, "You're not giving over the information that would

show how these endorsements were added."

And we're talking about the same exact endorsements here, because although Counsel has not -- although they're saying now that they're not relying on the allonge, either, I think that what you'll ultimately find is that it was attached to a Motion for Summary Judgment in this case. There was a copy of the Note and Mortgage that was produced as -- when you see all the Summary Judgment Affidavits, there's an affidavit that attaches a copy of the Note with this allonge.

And the reason why I know the allonges are suspect, Your Honor, is in my personal foreclosure one of the things that was the first smoking gun that I thought I had discovered of now many was that in my case I had a David Spector [phonetic] endorsement. Mr. Spector left Countrywide in 2006. And yet what happened was my allonge, which is just like this document, appeared from nowhere. The allonge was found to be in their records in 2011, which is five years after Mr. Spector left the company and three years after Countrywide went out of business. And yet it had a David Spector endorsement from Countrywide, which was only in their possession. The document, the allonge itself, their own records say they got it in 2011.

So, ultimately what's happening, Your Honor, is this is a much bigger issue, I think, than just Bank of New York

Mellon, because Bank of America cases were involved in this, too. Bank of America used the same stamps. The reason why we went off on the False Claims Act, Your Honor, is we found Bank of America cases that Bank of America did with FHA loans -- that they used the same rubber stamps from Michelle Stoleen [phonetic] or David Spector and Laurie Metter [phonetic] in 39 cases throughout Florida and Ohio.

And those were all document -- or they told the federal court that every one of those endorsements had been added within days of origination, after they had -- the notes had been imaged. And then we later find out that they don't have images. And the images they do have from months and years later have no endorsements on them, all of which leads us to the ultimate --

You know, what we found was the most egregious conduct so far was there was a woman that was here earlier from Bank of America named Sandra Prestia. She was here in the gallery. I guess she left now. But Ms. Prestia was -- there was a Notice of Taking Deposition of -- in a Bank of New York Mellon case, because we had seen information in that case that the note had been -- I'm sorry, can -- it's a little distracting to have -- I don't know -- Counsel is not an attorney of record in the case.

MS. KAUFMAN: We are counsel --

MR. JACOBS: And she's just standing over me.

MS. KAUFMAN: Your Honor --

MR. JACOBS: And I would just ask that she --

MS. KAUFMAN: Attorney --

MR. JACOBS: -- give me some space to --

THE COURT REPORTER: Your name?

MS. KAUFMAN: Attorney Dora Kaufman and Peter Hernandez of Liebler Gonzalez. We are counsel for the witness and -- for the witness Sandra Prestia on behalf -- the subpoenaed witness on behalf of Bank of America, subpoenaed just on three categories: ownership of the loan on the day the lawsuit was filed, December 2, 2009; servicing of the pre-suit demand letter, although there are no defenses, October 17th --

MR. JACOBS: I'm just asking her to sit down while I finish my --

MS. KAUFMAN: -- and --

THE COURT: [Unintelligible] --

MS. KAUFMAN: -- and the default by failing to make payments, which is not disputed, from and after September 1 of 2008. We were counsel. Our office was counsel in the suit he's just bringing up, in the Banac [phonetic] vs. Jenny Rodriguez. In that case, Mr. Jacobs stipulated to the vacation of Your Honor's Sanctions Order. Also, further --

MR. JACOBS: No.

MS. KAUFMAN: -- that case was --

MR. JACOBS: Only one.

MS. KAUFMAN: That case was really -- was quite different because the sole borrower admitted she owed the debt to Bank of America --

THE COURT: But --

MS. KAUFMAN: -- and was ordered -- in that case, yes, thousands -- more than 1,500 pages were produced in response to the order. And --

THE COURT: I think --

MS. KAUFMAN: And his allegations are false.

THE COURT: Counsel, excuse me, I think the whole issue is you're standing up while he's trying to make his case. And I don't know that you standing next to him is assisting in any way. If you can make notes, I'll be glad to listen to you, as well. But I don't want it to break this up too much.

MS. KAUFMAN: I'm just -- we wanted to address what we consider misleading, with all due respect --

THE COURT: Make a list.

MS. KAUFMAN: -- representations as to Jenny Rodriguez and as to Ms. Prestia's testimony and Ms. Garner's testimony.

THE COURT: Okay.

MS. KAUFMAN: And so that the record -- so Your Honor, more importantly, is clear as to --

THE COURT: Okay, well, we're not --

MS. KAUFMAN: -- happened in Jenny Rodriguez, which is miles apart from this lawsuit --

THE COURT: Okay.

MS. KAUFMAN: -- where for trial purposes today no endorsement is at issue, to our understanding.

THE COURT: Okay. Well, please have a seat and make good notes. And you can address it issue by issue, fact by fact, when it's your turn.

MS. KAUFMAN: Thank you, Your Honor.

MR. GONZALEZ: Thank you.

THE COURT: Okay. Make good notes --

MR. JACOBS: So, Your Honor --

THE COURT: -- because Mr. Jacobs tends to go on a long time. And he says --

MR. JACOBS: There's a lot to cover.

THE COURT: -- a lot of things. So, make good notes, please.

MR. JACOBS: Thank you.

THE COURT: Thank you.

MR. JACOBS: So, Your Honor, what I was trying to get to was counsel for Bank of America is here with Sandra Prestia, who is a witness in this case because they were the ones that were doing the servicing at the time that the loan went into foreclosure in 2009. And they're the ones that

prepared the evidence. They're the ones that, you know, are responsible for what we're talking about here. And --

THE COURT: Okay. I'm looking for a Motion for -- I'm looking -- you know, you may be noticing I'm looking at the docket. I'm looking for a Motion for Summary Judgment that has the Assignment or -- I'm sorry; the Note with the allonge on it that you're referring to.

MR. JACOBS: If you --

THE COURT: It's not on the Complaint in this case.

MR. JACOBS: If you look at the --

MS. CARBO: Your Honor, it was --

THE COURT: Somewhere along the lines --

MS. CARBO: -- 2016. I will concede that it was an error, Your Honor. I don't know why it was filed, but --

THE COURT: Well, I still want to see it.

MS. CARBO: -- it was --

THE COURT: Just to kind of believe it. It was -- somebody once said, "Believe nothing of what you hear and only half of what you see."

MR. JACOBS: Your Honor, if you look at the --

THE COURT: That was -- somebody famous said that, not me.

MR. JACOBS: It was attached to the exhibits, or to the Affidavits in support of the Motion for Summary Judgment. The -- I think it was one -- either the acceleration one or

the other one.

MS. CARBO: If, Your Honor -- may I --

THE COURT: It was the filing after --

MS. CARBO: I may approach?

THE COURT: Yes.

MS. CARBO: This is the Affidavit, Your Honor. And the last page is the --

THE COURT: Okay. So,

MS. CARBO: I'm sorry. If I may, Your Honor?

THE COURT: Well, yeah, can I --

MS. CARBO: It's the last page.

THE COURT: I don't know if I need to -- the Affidavit of Indebtedness, I guess I'll just mark this for our record here today. Is this the whole last thing, the whole note? The last five or six pages?

MR. JACOBS: Just see if there's an allonge. There's -- if there's an allonge to it, that's what I was looking for.

MS. CARBO: Yes.

THE COURT: Is that --

MS. CARBO: Yes, Your Honor. But --

THE COURT: It seems to me at one point this may have been all that one thing, right? Somebody was supposed to make it one thing. So, first page, it says, "Adjustable Rate Note." The second page of the Note. Third page of the

Note. The fourth page, four of four, that has a signature of Ryan Atkin. The fifth page, which is not numbered, but it's attached next in order would be the Pre-Payment Penalty Addendum signed by Mr. Atkin. And attached to that is the allonge. So that, for all intents and purposes, is one document at the time it was filed; is that correct? The Note, with its --

MS. CARBO: I don't know how --

THE COURT: -- riders and allonges?

MS. CARBO: I don't believe it was one document, because it's not attached to the original note. I can't represent that it's one document. I don't know why it is attached to that Affidavit, Your Honor. I can't explain it.

THE COURT: Well, it does have a loan number. But the loan number is scratched off on the copy I have, which is I guess sort of interesting. But it does have Borrower Ryan Atkin, the address, the loan date. October 20, 2006, is that the loan we're here on?

MR. JACOBS: Yes, Your Honor.

MS. CARBO: Yes, Your Honor, but we're not proceeding on that Affidavit. That Affidavit is moot at this point.

THE COURT: Well, it may be moot but it apparently wasn't there when the case was filed, was there when this Affidavit was filed in February of 2016; that may or may not

mean something. So I'm just going to ask -- we'll make that a Court Exhibit 1.

MR. JACOBS: Your Honor, I have also for Your Honor the --

THE COURT: And also I think we need a copy of the Complaint. So make that No. 2. So, 1 will be the Complaint, because it's not on the docket.

(Thereupon, Court's Exhibit 1 and 2 were marked for the record.)

MR. JACOBS: And, Your Honor, I can have this emailed over and have it printed up. But this is the Assignment of Mortgage that was attached to the Complaint. And there is on page two of what was sent to me an official stamp saying, "Admitted into evidence as Exhibit 2," the Assignment of Mortgage, from the trial, November 7th, 2013. This is what the Plaintiff produced to me last night. So I believe this was -- although it's not --

THE COURT: Go ahead and print that out.

MS. CARBO: It's not [unintelligible].

THE COURT: I'm not sure -- and then we -- the other side can see it. Do you need to send it to my JA and she can print it.

MR. JACOBS: Probably. That's the -- that was what was page two.

MS. CARBO: It wasn't assigned. It wasn't admitted

into evidence. It wasn't used. As I already noted --

MR. JACOBS: I'm just noting that this is --

MS. CARBO: -- the evidence --

MR. JACOBS: -- what it's stamped, and that's what they gave me. So --

THE COURT: You guys can argue about what it means later. I'm just trying to get a record here. That's part of my job, is to get a record. Juan, will you tell Barbara that she's about to get an email? She needs to make three copies of it and bring it in, please.

MR. JACOBS: So --

THE COURT: In fact, Counsel, can you do that? Just go up and talk to my JA. You're -- you can go right through this door. And make sure you bring back at least three -- how about five copies? Other people may want a copy.

MR. JACOBS: So, let's back up, Your Honor.

THE COURT: Okay.

MR. JACOBS: And I think it will be easier, now that we have some background, to kind of go through what we're dealing with here, why I asked the Court to consider issuing an Order to Show Cause. And I want to make sure the Court understands what I think procedurally I'm trying to do here. So, I filed the same -- I'm about to file the same exact motion in front of Judge Brownyn Miller, who's got the

same Bank of New York Mellon as Plaintiff of a securitized trust with the same endorsement and the same assignment, slightly varied. But it's the same story, the same issue that we've been fighting about.

And in that case, just like Your Honor had found back in 2014 that Bank of America was stonewalling, outrageous bad faith conduct about producing evidence in the orders you entered, the -- Judge Miller has now entered four orders and has set a sanctions hearing for the beginning of June where she's going to address this whole issue because the documents that I have since been asking for in all of my cases after the -- we settled the False Claims Act case was, "Give me all the images of the note that you have," so I could see the dates that they were uploaded and you could see whether or not they were endorsed at that time. And in Judge Miller's case, they're not turning any of that over, despite four orders. And I submit it's probably because it's going to show what they show in the federal case, that there's -- that -- their misconduct there.

But the idea here is Rule 3.840 [phonetic], which is the rule that deals with indirect criminal contempt. And indirect criminal contempt is something that is dealt with either by affidavit -- and I submit that my Verified Motion is the legal equivalent of an affidavit, although I'm more than happy to go back and put this into an affidavit form if

the Court thinks that that would be more conducive to making sure that the appellate issues are minimized.

But the other thing is that the Court can on its own motion, without need for an affidavit, issue an Order to Show Cause: why the Plaintiff should not be held in indirect criminal contempt. And in this case, I would submit it would be the Bank of New York Mellon and Bank of America, because the two of them are acting in concert, have been doing this in -- throughout all of my cases. It's the same lawyers doing the same legal work, making the same legal arguments, presenting the same witnesses on behalf of both entities. So it's not as though there's really any difference. And they're both representing the same trust, trying to propose mortgages using the same evidence. So, I think that the idea is, "Does the Court think that there's something that would qualify as indirect criminal contempt in this case?"

And I submit that there's three things that I saw immediately upon looking at the case. The first thing you have is Bank of New York Mellon trying to foreclose on a -- they had a Note payable to Liberty Mortgage. So, under straight UCC, they had no right to foreclose that Mortgage. But they attach to their Complaint this Karen Graham Assignment of Mortgage that says, "MERS and/or Liberty Mortgage, two months before we filed the foreclosure, sold the Note and Mortgage to the Plaintiff," which is a lie. And

the Bank of America Answer shows that, because Bank of America admits MERS cannot sell or assign -- doesn't own any notes, cannot assign any notes. Yet, here's a document that if -- but for a lawyer like me coming in and making sure that the point was made, you might think it was a legal document and would give you the right to survive a motion to dismiss, because obviously the motion to dismiss would fail -- should be granted if you're here to foreclose on a note payable to Liberty Mortgage and you have no evidence to show that you have any right to enforce that note payable to Liberty Mortgage. And that's what the whole MERS assignment was. And that was the robo-signing scandal, the MERS assignments that they were using.

And I also submit that if you go back further in time, what I put into the motion is that Judge Gordon here in Miami struck all of the original foreclosures back in 2005 because they were all filed in the name of MERS, saying MERS owns and holds the note and mortgage. And I have, you know, a citing for Your Honor that -- that ruling where Judge Gordon conducted a very extensive hearing and got them all to admit that MERS doesn't own anything. And he struck all of the cases as a sham.

And then afterwards, Fannie Mae's lawyers investigated the whole -- Florida MERS Embarrassment, it was called -- and determined that, yes, they -- there were lawyers in Florida

and other states that were lying to the courts about MERS. So here is MERS, now, 2.0, coming back after the National Mortgage Settlement. That's what to me is most interesting, is that there's still -- it's still being produced as an exhibit in a trial yesterday.

You know, it had been produced as an exhibit in a trial, according to the stamp that is on the back of the document given to me, in 2013, which is after the National Mortgage Settlement. And it's clearly not competent evidence of anything. And it's just a document cooked up in the back room by Bank of America's lawyers, who were signing it as MERS employees. And that's part of the reason why Ms. Graham got a 60-day suspension from the Florida Bar. So, that, to me, is just straight misconduct, point one. Unclean hands, if you will, which should be a bar to the equitable relief of foreclosure.

Now you go to the trial in 2013. And I think it's important for Your Honor to recognize that through 2009 and 2013, yes, there were bankruptcy filings. But there were also FWOPs and literally no effort to move the case to any conclusion, forever. It got set for trial by the Court. And they showed up in front of Judge Rothenberg -- or, not Rothenberg; Arthur -- I'm forgetting his name. He was in the Probate Court for a long time.

THE COURT: Arthur Rothenberg is the only one I

know.

MR. JACOBS: Is it Arthur Rothenberg? I was thinking maybe -- all right. So, Arthur Rothenberg; that's fine. So, Judge Rothenberg is sitting in foreclosure, you know, mass jury trials. And they come to court and they say, "Here is the note. It's payable to Liberty Mortgage." And the only other evidence that they present that's in the listing is this -- is the mortgage loan -- is the Pooling and Servicing Agreement and the Mortgage Loan Schedule that's attached. That's the last two major documents that you see in the -- attached in the court file; however, we do see that they at least presented at the hearing -- someone marked it as an exhibit -- this Assignment of Mortgage. So, flashing that around is all part of this idea of letting the judge say, "Nothing to see here. Please disperse."

And what happens, Your Honor, is they go into trial and they present the Pooling and Servicing Agreement and this Mortgage Loan Schedule as evidence of ownership, that they own the Note and Mortgage because here's the Pooling and Service Agreement and here's the Mortgage Loan Schedule, except for that Mortgage Loan Schedule is not the Mortgage Loan Schedule for this Trust. It can't be, because when you look at the Pooling and Service Agreement, there is a definition of Mortgage Loan Schedule. It's in the -- you just scroll down to the definitions sections. And what it

says is the Mortgage Loan Schedule shall have the following information for each mortgage loan that enters into the trust. And it lists them, 1 through 20.

And when you look at the -- the first thing I did, because I have, Your Honor, the Riley [phonetic] order, which -- I gave a copy already to counsel. I had -- Judge Harrison in Palm Beach County did a trial with me. And the first thing that he called unclean hands was the same thing we see in this case. They presented a copy of the Pooling and Servicing Agreement. And what they said was a redacted copy of the Mortgage Loan Schedule, except for the same problem. If the Mortgage Loan Schedule according to the PSA has 20 fields, then those are 20 fields. That's it. But what happens in Riley and here is that the Mortgage Loan Schedule has a lot more than that. Matter of fact, in this case, it's got 68 fields.

So, we're clearly dealing with some type of data, you know, field. I don't know. I think it's probably something to do with the loan-boarding than anything. But it's not the Mortgage Loan Schedule for this Trust as it was represented to the Court, who entered a final judgment based on a note that's not payable to Plaintiff, an Assignment of Mortgage that was certainly identified and according to the record attached and provided to me was admitted into evidence but not reflected in the actual trial exhibits in -- from the

court record. But you have this Mortgage Loan Schedule which cannot be the Mortgage Loan Schedule for this Trust. Impossible. And that is the same thing that Judge Harrison noted as a finding of unclean hands in the Riley case, because they were doing the same thing.

So, that is now at, you know, five years into the case, they presented at least two obviously false pieces of evidence of standing. And then they come back on a Motion for Summary Judgment. And now what you're hearing from Counsel is, "Woah, woah, hold on; we don't need the allonge anymore," but they produced it and went in and filed a motion which I think -- would reasonable and honest men condemn that as misconduct? Because if you were to condemn someone filing an allonge --

And I submit that the only reason why they wouldn't want to use it is because they know that it was endorsed after Countrywide went out of business in 2009, which is exactly what happened in my case and why I'm asking Your Honor to consider this from a Order to Show Cause place, because if Your Honor enters it even on your own motion, then what happens is exactly what Judge Acharte [phonetic] did. And I learned a lot from Judge Acharte.

And I'll hand you a copy of the Order to Show Cause that he basically instructed me to do, line by line, as he checked all of the rules for issuing orders to show cause in my

Marianne Dytek [phonetic] case, because what happened in Dytek is that the -- in that case is that the -- Dytek refused to turn over evidence of their -- the policy manuals to -- that would show whether or not their boarding process actually checks loans for accuracy before they board. And he had ordered them to produce it, and they didn't. Then, when they finally produced it, it showed that they don't check the loans for accuracy before they board.

And he issued -- and he had instructed me to issue exactly that. And I think we follow the same exact procedure that Judge Acharte followed, because he -- I respect him very much, and I think he knows more than anyone, at least that I've seen so far, how to make sure that this is done right according to the rules. And we know that whatever happens here, you should expect that they're going to appeal everything. And we should do our best to be as technically correct as we can, to make sure that we don't do anything that would be, you know, outside the bounds of the rules.

But what he did was he basically set up an arraignment. This creates a new case. If tomorrow Your Honor, you know, just resets us for trial and they dismiss the case, under the Bank of New York vs. Pino [phonetic] case, which is Florida Supreme Court, even if there's fraud going on here the Court loses jurisdiction to do anything about it, because they've dismissed. And I think that the reason why I'm asking for

the Order to Show Cause is a jurisdictional issue.

That -- let them -- and I want to make sure it's clear. If the Court issues the Order to Show Cause, that is a separate basis for jurisdiction, even if they want to dismiss their case because they don't want Your Honor to figure out that they filed this allonge and it was created after with endorsements that couldn't have been there, and all the other things are true that I'm telling you. You still have the grounds to keep them and to do something about this should Your Honor feel like it's necessary to vindicate the integrity of the judiciary.

So, to me, what I'm asking the Court to recognize is -- this is three different things that have been filed in this case before we even got to trial that are all, in my opinion, completely out of bounds. And what's really important and I think the Court should recognize is particularly these endorsements that you see on this Summary Judgment Affidavit.

So, I have been following up, since Your Honor ordered those depositions to take place three years ago -- four years ago now -- in 2014 and found that they were violating the orders to provide discovery. And what I've discovered since is that the OCC, after the National Mortgage -- after the robo-signing scandal broke, issued a Consent Order against Bank of America, said, "We find you're litigating these cases without properly endorsed notes," forced them into the

independent foreclosure arena, which was that boondoggle that resulted in three of them getting $400 checks.

The review was, amongst other things, they were supposed to -- the first thing they were supposed to say is how many cases between 2009 and 2010 were they litigating without a properly endorsed note, because there was a finding that they were litigating cases without properly endorsed notes. Three days after the OCC Consent Order went into effect, Bank of America creates these 90-day delinquent note process, which Maria Gardner, who you ordered to be deposed, never mentioned anything about.

And Sandra Prestia, who is the witness in this case -- I had issued Notices of Deposition -- and I have them here for Your Honor -- that went back to November of 2015, saying, "What's going on here? I see this mention of Source Corp and this IFR endorsement review, independent proposal review, endorsement review? In one of my cases that the note was not endorsed when it was filed, then it went to do this review and then it comes back with an endorsement, what's going on with Source Corp?"

And Ms. Prestia testified in that case as the corporate rep for the Bank of New York Mellon. But she was employee of Bank of America. And she was testifying for both of them that Bank of America doesn't know anything about that. "We don't know who Source Corps is. We know something about

them, but I couldn't really figure out much." "Well, did you call the collateral department that actually made the comments about Source Corp?" "We couldn't find their phone number," was the testimony.

While they're doing that, Your Honor, the evidence is that Bank of America sent instructions to the bank -- to Source Corp, which was the entity that was doing the -- was part of this delinquent note endorsement process. They were the record-keepers of that process. They had all the information that they were obligated to keep.

And what you'll notice in this emails -- when I subpoenaed Bank of America -- Source Corp in the case that Ms. Prestia had testified to -- and they had gotten a subpoena on January 15th. They were served a subpoena. And they produced no documents. Matter of fact, they produced only a contract that was, like, after the entries from the 2013 -- or from the 2012 IFR endorsement review and Source Corp entries. And then later I forced them to give me the contract that showed that there was this delinquent note endorsement process.

But meanwhile, in the federal case, I subpoenaed them again. And they responded. And they said, "Well, we were told to destroy our records by Bank of America."

THE COURT: I'm going to make this a Court exhibit, since you're handing it to me. It's not evidence, but this

is to show the record what's going on here. It's a February -- I'm sorry, a Friday, June 16th, 2017, email from Dimple, D-I-M-P-L-E, Sehgal, S-E-H-G-A-L, to Robert Kohn, K-O-H-N.

(Thereupon, Court's Exhibit 3 was marked for the record.)

MR. JACOBS: So, what you --

THE COURT: We're on three?

MR. JACOBS: -- see when you look at that email --

THE CLERK: Court Exhibit No. 3.

MR. JACOBS: -- is the email starts off with an email in the P-Tam [phonetic] case, the False Claims Act case, where they're saying, "We don't have anything else, because we were told to destroy our records, to purge the records, by Bank of America."

And then they attached as it -- the second email, which was the email from Source Corps to Bank of America in February of 2016, which was a month after I had issued the subpoena to Source Corp. And what it shows is they went through and systemically destroyed the data, the metadata, and the encryption codes. Like, military-grade-style destruction of evidence for 1.88 billion records that were in Source Corp's records.

And it started right after I started to send the Notices of Taking Deposition, which I also have for Your Honor. And it continued even after the deposition got -- even after they

received a subpoena. So, they were destroying these records, knowing that I had asked for them and had subpoenaed them. And they were relevant to all the investigations that I'm doing in my cases. Those are the subpoenas that I was sending to both Bank of New York, asking for them to produce witnesses to explain what's going on here, as well as the subpoena to Bank of America and the -- or to Source Corps and the -- and return of service, all of which --

THE COURT: Okay, well, let me just note this is Case No. 0A-59791, Amended Notice of Taking Videotape Depo.

MR. JACOBS: Here's another one.

THE COURT: For Source Corp. Another one to the person with the most knowledge. Another is Notice of Intent to Serve a Subpoena, Notice of Taking Video Depo. And there's something marked Bank of America Statement of Work, Confidential. That's not in the -- is that the --

MR. JACOBS: So, that is --

THE COURT: -- same category?

MR. JACOBS: That is the contract that was produced by Source Corp under threat of sanctions. And if you look to the flow charts behind it, those are the flow charts showing the delinquent note endorsement process. And it's basically, "We're going to find the note, we're going to endorse it, and then we're going to send it -- fax it to Source Corp, who is going to upload it into a -- turn it into a document that can

be uploaded into Bank of America's system, and keep records of it."

THE COURT: Okay, well, this is almost impossible to read.

MR. JACOBS: Well, I actually -- do we have the color copy of that? I have a -- I do -- they did just produce to me -- the Liebler Gonzalez and Portuando firm in my Broward cases just produced a color copy that had never been produced pursuant to Your Honor's orders back in the day about any of this.

THE COURT: Okay. As Exhibit 4, I'm going to hand my clerk the four Notices of Taking Video Depo that I was referencing. And I still don't know --

THE CLERK: And I'm marking it as Court Exhibit No. 4, for the record.

(Thereupon, Court's Exhibit 4 was marked for the record.)

MS. CARBO: Your Honor, I know this is -- you're giving him leeway. But I want to, for the record, go on objecting to all of this evidence that's coming in.

THE COURT: It's not evidence yet.

MS. CARBO: Well --

THE COURT: I'm just marking it for the --

MS. CARBO: -- all of the documents --

THE COURT: -- purpose of knowing what we're

talking about here.

MS. CARBO: -- and all the testifying that is being done by the attorney with absolutely no evidence whatsoever as to the allegations that are being made through him, Your Honor --

THE COURT: I --

MS. CARBO: -- if I may; thank you.

THE COURT: -- can appreciate and hold that lawyers don't give evidence unless they're a witness. And just -- that's not happening. This is sort of a Motion for Order to Show Cause. And this is --

MS. CARBO: With absolutely no facts yet relevant to the case at bar. So, Your Honor, I --

THE COURT: Okay.

MS. CARBO: It's a continuing objection I'm making for the record. I'll make additional comments when --

THE COURT: Thank you.

MS. CARBO: -- and if he finishes today.

THE COURT: The Statement of Work, we'll make it Exhibit 5. But this is the one that has mostly --

MR. JACOBS: I will get --

THE COURT: -- illegible content.

(Thereupon, Court's Exhibit 5 was marked for the record.)

MR. JACOBS: We will substitute it with the color

copy that's legible.

THE COURT: Okay.

MR. JACOBS: Your Honor, the only thing that I wanted to point out -- and I'll stand up. This was produced to me in one of my Bank of New York cases involving Mr. Samuel [phonetic]. And in this case, what you'll notice is two screenshots. Both of them are BOC404R [phonetic] screenshots. Both of them say the date the note -- the endorse --

THE COURT: Sorry, what kind of? Oh, BOC403R [phonetic]?

MR. JACOBS: Both. Yeah, those are screenshots that are -- that I've asked for in all my cases that are the screenshots showing the -- what the bank's records reflected about the possession of the note and when they came into possession of the endorsed note. And I just want the Court to see that it's two screenshots of the same exact screen from a year apart. And -- you know, after we filed the False Claims Act and before. And the one that I got before shows that the original note was received in 2011. And the one that I got after now changes that and says, "We received the original note back when the loan originated."

THE COURT: September --

MR. JACOBS: With the endorsement.

THE COURT: -- of '06.

MR. JACOBS: Right. So, that is, to me, another example of the unending effort that we're seeing in these cases where the Bank of New York Mellon and Bank of America are foreclosing on these loans and going -- not just destroying evidence, which respectfully, besides the subpoena -- Sar Baines Oxley [phonetic] is a federal statute that says you can't destroy records that could be used for litigation, for seven years. And they clearly violated Sar Baines Oxley, too. And here is them changing their own records.

THE COURT: That will be --

MR. JACOBS: Backdating them.

THE COURT: Those two pages will be the next exhibit we'll get to.

THE CLERK: Court Exhibit 6.

THE COURT: Six?

(Thereupon, Court's Exhibit 6 was marked for the record.)

MR. JACOBS: So, here's ultimately, Your Honor, what I'm trying to get back to. I know that -- I don't know if Your Honor has ever seen the Busett [phonetic] order that --

THE COURT: Yes.

MR. JACOBS: -- Judge Butchko [phonetic] entered.

THE COURT: Yes.

MR. JACOBS: And I know Your Honor has seen the

order from -- the 3rd DCA opinion on Busett.

THE COURT: Correct.

MR. JACOBS: And I submit that what we're dealing with here is very different from Busett. Busett was a different servicer, different -- they were dealing with a specific endorsement, not a blank endorsement. It was not a rubber-stamped endorsement. They had a different type of language in the assignment of mortgage that -- there was no reference to transferring the note.

So, all of these things, Your Honor, come down, to me, to say, if I -- if you understand what I'm saying, what I'm saying is they're making up evidence in the backroom still, and knowing that it's not competent. They are destroying evidence. They're back-dating evidence. They're committing perjury at the highest levels of Bank of America on behalf of the Bank of New York Mellon, all of which --

To take a foreclosure that under the -- under Florida Supreme Court law has always said -- and actually US Supreme Court law going back 170 years -- no one should ever get equitable relief if there's unclean hands. And unclean hands is, "Would reasonable and honest men condemn anything that's happening here?"

And if Your Honor would agree that there's unclean hands here, particularly because we're dealing with the Bank of America -- and I don't know if Your Honor had a chance yet to

look at Judge Klein's [phonetic] opinions. Judge Klein is a federal judge from California who basically sanctioned Bank of America $45 million for a loan mod that was from hell. And he did it because he saw that there was a culture of corruption. A "lawlessness" is what he talked about.

And it's 100-something page order that I think trailblazes a new legal theory of how to address a entity like Bank of America with $2.5 trillion in assets that is basically thumbing its nose at the court system. And what he did was he said -- and the issue is the sanctions awards that you can do -- and Your Honor may recall in the last order that Your Honor had entered finding sanctions under the Inequitable Conduct [unintelligible], you asked if there was any additional law that would allow you to do something other than just, you know, award attorney's fees, because obviously Bank of America is not going to be bothered by paying my attorney's fees.

But what Judge Klein did is he lays a roadmap, and a very well-detailed roadmap that shows that there is a fundamental breakdown in the regulatory structure that the banks are -- have been -- you know, he called it a trimera [phonetic]

. The OCC investigations, everything is being blocked by a bank that says that they're too big to -- that nobody can

touch them.

And by imposing $45 million and making it go to five law schools that have consumer protection programs, he was doing it for the public good. And I have my own ideas about what we can do for the public good with a proper sanction of this entity that's still doing this work. But ultimately what I'm trying to do is to set up a proceeding now, a indirect criminal contempt proceeding. And I don't mean to use the word "criminal" to -- for, you know, salacious purposes. But that's what the law says. If you want to punish a bad actor to vindicate the integrity of the judiciary, that is done through indirect criminal contempt.

So, the idea here is that if Your Honor understands what I'm saying, I think that whatever happens here, I'm trying to make sure that procedurally I can be in a position to defend the case on the merits. And unfortunately my client had terrible lawyers before me who didn't file any affirmative defenses, which is, respectfully, I think, the reason why I have to go this route. But I think this is the very route to go anyway, because ultimately it gives Your Honor jurisdiction to address this issue.

Did they present false evidence in this case attached to the Complaint, at the trial, and then attached to their Summary Judgment Motions? And if they've done those three things, then the Court can find that that's indirect criminal

contempt. That's fabrication of evidence. And we can then have a hearing on what would be an appropriate sanction and how best to vindicate the integrity of the judiciary.

So, I don't know if Your Honor has any questions for me about all this. But I've tried to give you the shortest version of this story, which has taken me years and years of work to, you know, uncover. But I think that it makes it clear. In this case in particular, there is -- the evidence they've tried three times to present is false. They shouldn't get a fourth time at trial without the Court addressing these issues in a proper vehicle, like an Order to Show Cause.

THE COURT: Okay. Now?

MS. CARBO: First, Your Honor, I want to state for the record that the time to bring any motions in this proceeding is long past, according to the Order of Setting a Trial in this matter. This motion was filed untimely.

Second, Your Honor, the motion was not set for hearing today. This is a quasi-evidentiary hearing of which we were given no notice, no opportunity to prepare, and according to the case law, that's completely improper. And I cite Celebrity Cruises vs. Fernandez [phonetic], 149 S.3d 744.

Then, Your Honor, I would submit that there has been no discovery in this proceeding. All of the cases that he alleges sanctions were ordered, et cetera, all evolved around

discovery. I'm going to have to let Bank of America address the specific issues, because I wasn't involved in some of those cases. But I think that they need to be heard as well by the Court.

THE COURT: Sure, I will. I'll let that happen.

MS. CARBO: Again, I oppose all of the testimony given, "testimony" given, by Opposing Counsel. I believe that it's improper, that there is absolutely no evidence before this court of anything improper, of any fraud. All that he's referred to are documents which we're not even submitting as evidence in this case, Your Honor. So --

THE COURT: Well, what is your case today, that would avoid all of those prior issues?

MS. CARBO: We don't need the endorsement to proceed, Your Honor, in this case. And we don't need the Assignment to proceed. We have additional evidence that was supplied to Defense Counsel and which we can substantiate our right to pursue this foreclosure.

THE COURT: And what is that evidence? You want to proffer that?

MS. CARBO: We have the PSAs and Mortgage Loan Schedules to show that this loan was transferred to the current Plaintiff. And we have the original Note, Your Honor, which is critical.

THE COURT: May I see the original Note?

MS. CARBO: The original Note should have been delivered to Your Honor.

MR. GORANITIS: It's here, Your Honor. May I approach?

THE COURT: Yes.

MS. CARBO: The original Note was filed long ago, with the original [unintelligible]. It was in the Court file.

THE COURT: Okay. So, somebody went and got it from the Clerk?

MS. CARBO: That's correct.

MR. JACOBS: May I see the Mortgage Loan Schedule that you're talking about? Is this it, Counsel?

MS. CARBO: No, that's the redacted one. Here is [unintelligible].

THE COURT: Juan, do we have notes from the June 2015 trial that would show -- I guess that's on top of the Note here. I note there was a limited power of attorney on this exhibit list. You didn't refer to that just now. Is that --

MS. CARBO: We have a limited -- to show -- the Servicer can testify on behalf of the Plaintiff, Your Honor. But that's the purpose of the limited power, correct.

THE COURT: I see. And that is a Bank of America servicer?

MS. CARBO: No, the --

THE COURT: No?

MS. CARBO: -- Servicer now is Shellpoint [phonetic] Mortgage, although we do --

MR. JACOBS: That's the Sub-servicer.

MS. CARBO: We did subpoena Bank of America since they had -- they were servicing the loan at the time of the --

THE COURT: Okay. I see.

MS. CARBO: -- of the [unintelligible].

MR. JACOBS: My understanding is that Bank of America is still the Master Servicer of the loan under the Preliminary Service Agreement; is that not correct?

MS. CARBO: You'll have to ask the Bank of America witness.

MR. JACOBS: Are you guys still the Master Servicer?

MS. CARBO: Not at this point. Not at this point. When she's on the stand.

THE COURT: Well, I will observe that the copy of the exhibit list with the attached Adjustable Rate Note appears to be an original, it looks like twice previously canceled. One is scratched out but one is still there. On the front page, it's marked Plaintiff's Exhibit 1 at the June 9th 2015 trial, Case No. 09-87096, which is this case.

And on the back, maybe stuck to it with some kind of glue -- I'm not sure if it's a self-adhesive thing or not. But it does say Admitted into Evidence as Exhibit No. 1. Does not have a judge's signature, but this is -- I saw a copy of this earlier. But it is actually affixed to the last page, page four of four, of the original Note. Let me give this package to Juan. Mark it as -- for now, a Court Exhibit --

THE CLERK: No. 7.

THE COURT: -- 7.

(Thereupon, Court's Exhibit 7 was marked for the record.)

MR. JACOBS: And, Your Honor, I've given you copies now of what was produced to me yesterday of the Assignment of Mortgage, which appears -- I imagine has the same stamp showing that the Assignment of Mortgage was admitted into evidence as Exhibit 2.

MS. CARBO: Not admitted, Your Honor.

THE COURT: Well, the problem with this is we've got an Assignment of Mortgage page one of one, and stapled to that is what's copied -- oh, no. Stapled to that is maybe the --

MR. JACOBS: What is the sticker that --

THE COURT: What's on the reverse side of that exhibit is Exhibit 2.

MR. JACOBS: Right.

MS. CARBO: Yes, Your Honor. But it wasn't admitted into evidence. It wasn't signed by the judge. It wasn't marked by the clerk. And it doesn't appear on the list that was previously submitted, on the evidence list that was submitted.

MR. JACOBS: Well, because it's in between whatever --

MS. CARBO: So, maybe it was -- they were going to use it, but it wasn't admitted.

THE COURT: I guess maybe it was pre-marked.

MS. CARBO: That's correct, Your Honor.

THE COURT: In spite -- in some fashion. Doesn't even look like it was pre-marked by the clerk. Looks like it may have been pre-marked by Counsel.

MS. CARBO: Right. But it was not used at the trial.

THE COURT: Okay. But this was produced to the plaintiff -- I mean, sorry; the Defense lawyer in this case last night?

MS. CARBO: Your Honor, I gave him full disclosure of all of the documents that we had in our possession.

THE COURT: Okay.

MS. CARBO: It wasn't necessarily to be used as an exhibit. I do not intend to use it on this trial.

THE COURT: But he had to be prepared to deal with it. So that's why --

MS. CARBO: That's correct.

THE COURT: -- I guess, I'm seeing it.

MS. CARBO: That's correct, Your Honor. I -- there's a lot of documents that I delivered --

THE COURT: Okay.

MS. CARBO: -- for --

THE COURT: For the record, I'll make that another Court Exhibit. Number --

THE CLERK: Eight.

THE COURT: Eight?

THE CLERK: Yes.

THE COURT: Okay.

(Thereupon, Court's Exhibit 8 was marked for the record.)

THE COURT: And go ahead, if I can let you finish. So, you're relying on -- you got the original Note and a Mortgage Loan Schedule and --

MS. CARBO: And Purchase and Sale Agreement, which show that the loan was transferred to our client, the Plaintiff.

MR. JACOBS: So, Your Honor, briefly, to be heard, the original Note is not payable to the Plaintiff and without an endorsement or allonge is irrelevant, basically. It shows

they don't have standing.

And we're still -- I think we're still -- I'm having my office look at it now. But it appears as though we're dealing with the same exact Mortgage Loan Schedule with 68 fields on it. And it's not the fields -- when you look at page 14 of the Pooling and Servicing Agreement --

THE COURT: Well, wait, let me see the Mortgage Loan Schedule. Can we see that?

MS. CARBO: It is --

THE COURT: Because I'm not sure -- I guess when we talk about the number of fields, it's a blank, to fill out information. That kind of field.

MR. JACOBS: Sir, if you notice, the first page has a --

THE COURT: Counsel, you want to see this?

MS. CARBO: This is our exhibit, Your Honor.

THE COURT: Oh.

MS. CARBO: And the only reason I --

THE COURT: What is this?

MS. CARBO: I only have one copy of it. That's the Mortgage Loan Schedule, because it lists the loan numbers of several other -- of all the individuals. So, that has to be en camera [phonetic], please, Your Honor.

THE COURT: Oh.

MS. CARBO: We can't let that be --

THE COURT: All right, well --
MS. CARBO: -- disclosed.
THE COURT: -- Mr. Jacobs just had it in his hand.
MS. CARBO: I gave it to his --
MR. GORANITIS: It's in order.
MS. CARBO: His representative asked me to see what I was showing the Court before I handed it --
THE COURT: Oh, I see. Okay. That -- so --
MR. JACOBS: It's all right.
THE COURT: They don't really have this yet.
MS. CARBO: Not -- no, Your Honor --
THE COURT: Okay.
MS. CARBO: -- because I couldn't send it --
MR. JACOBS: I have a redacted version of it, Your Honor.
MS. CARBO: We sent the redacted version via email, because I --
MR. JACOBS: Right.
THE COURT: Okay. Well, this is maybe, what three inches? Maybe not. Two-and-a-half inches thick?
MR. JACOBS: But, Your Honor, what I'd ask --
THE COURT: Lot of paper here. There's something flagged. So let me just look at what's flagged.
MS. CARBO: That was just so that the witness could find our loan. Well, no that was put --

MR. GORANITIS: I just flagged that right now. You can take that out.

MR. JACOBS: No, no. Don't take it out. Let me explain to you what's going on here, Your Honor. If you look at the definition of Mortgage Loan Schedule on page 14 of the Pooling and Servicing Agreement, it says --

THE COURT: Do I have the Pooling and Servicing Agreement?

MR. JACOBS: It's right here.

MS. CARBO: And, Your Honor --

MR. JACOBS: You're reading from it.

MS. CARBO: This isn't being offered for evidence, though, it's --

THE COURT: I know. I'm just trying to understand if this is even significant.

MR. JACOBS: So, Your Honor --

THE COURT: That's why I'm trying to --

MR. JACOBS: The Mortgage Loan Schedule --

THE COURT REPORTER: One at a time.

MR. JACOBS: The Mortgage Loan Schedule is an underlying defined term with all -- with the capitals at the beginning of each mortgage loan and schedule.

THE COURT: Right.

MR. JACOBS: It says, "The list of mortgage loans as from time to time amended by the Master Servicer to

reflect the addition of substitute mortgage loans and the deletion of deleted mortgage loans pursuant to the provisions of this agreement transfer to the Trustee as part of the Trust Fund and from time to time subject to disagreement attach this agreement as Schedule 1 setting forth the following information with respect to each mortgage loan."

And there's 20 different -- or looks like, I'm sorry -- yeah, 20 different specific data fields. The first one is the loan number. And that appears to be the first one. Let me look at the -- that is the first; that is correct.

The second one says, "Reserved." The third one says the mortgager's name and the street address of the mortgaged property, including the zip code. You don't see that in the Mortgage Loan -- if you look at the first page, the top columns which identify the field, that's not there. The maturity date is not next. The original principal balance is not next.

MS. CARBO: Your Honor, if they're alleging non-compliance with a PSA --

MR. JACOBS: No, I'm alleging that --

MS. CARBO: -- the case law --

THE COURT REPORTER: One at a time.

MS. CARBO: The case law is abundantly clear that a borrower is not -- does not have standing to contest the provisions of the Purchase and Sale Agreement and whether it

was complied with as a third party.

THE COURT: The problem is you said you were going to rely upon the Purchase and Sale Agreement to establish your ownership in this case.

MS. CARBO: That's correct.

THE COURT: Well, ordinarily that's not -- I've not seen that before. Usually --

MS. CARBO: It -- it's --

THE COURT: -- no one questions it that far and we don't get a Purchase and Sale Agreement in evidence, do we?

MS. CARBO: Yes, I've used it many times, Your Honor.

MR. JACOBS: But, Your Honor, the --

THE COURT: I haven't seen it. So --

MR. JACOBS: The key is --

MS. CARBO: That actually is --

THE COURT: I guess it -- but they're questioning the validity of the Purchase and Sale Agreement that you're going to offer into evidence.

MS. CARBO: Which they're not entitled to do, by law. They are not a third-party beneficiary of the Purchase and Sale Agreement. The case law is abundantly clear. I can get the cite for Your Honor if you so desire it.

THE COURT: What is --

MS. CARBO: They do not have standing.

MR. JACOBS: Let me clarify what's going on here, Your Honor. That's not the issue. I'm not alleging that there's non-compliance with the Pooling and Servicing Agreement. I'm not alleging that at all. I'm saying that the Pooling and Servicing Agreement defines the fields of the Mortgage Loan Schedule. The document you have in your hand, they have represented is the Mortgage Loan Schedule for this Trust. And as Judge Harrison found in Riley, if you look at the actual fields, they don't match up with the 20 different entries of data fields that are required to be the Mortgage Loan Schedule.

So, that document is something, but it's not the Mortgage Loan Schedule for this trust, because the Mortgage Loan Schedule for this Trust would have as column three the Mortgagor's name and street address, and the zip code of the property.

THE COURT: So, if I look at page one of this collection of records, you're saying --

MR. JACOBS: Top column.

THE COURT: -- there are not enough fields on the cover page --

MR. JACOBS: So --

THE COURT: -- of this collection of records to match what you're saying --

MR. JACOBS: The --

THE COURT: -- should be there in the Mortgage Loan Schedule?

MR. JACOBS: Let me say it differently, Your Honor. What you have there is a spreadsheet that goes across many pages. So, you see some of the tabs that we put on are tabs that have that same -- at the top, there's a -- more columns with names on it, identifying the -- if you look at the one, the tab on the left, I think that'll make it a little easier. I'm sorry; the one on the right, the big yellow PostIt. You'll see that across the top there is a whole bunch of other fields.

THE COURT: Okay, so I --

MR. JACOBS: Right?

THE COURT: I've seen the fields. Loan number, that's one?

MR. JACOBS: Right.

THE COURT: Package number, two?

MR. JACOBS: Right.

THE COURT: City, three? Am I doing that --

MR. JACOBS: Yeah, I mean --

THE COURT: Four is zip. Five, current SCH balance. I guess six would be PI amount, original. And then, seven, PI amount. Now, if I read across the page, escrow payment amount, that's number eight?

MR. JACOBS: I mean, what I'll tell you, Your

Honor, is this. When you look through every one of the pages that has the column, which I've done already, there's 68 identified columns in that document. Sixty-eight of them.

THE COURT: Okay. Well, this appears to be more than one page. So, could the Defense -- I'm sorry; could the Plaintiff put together out of this a representative sample of what it would look like if I were looking at it on a computer screen, so that --

MR. JACOBS: I mean, I think the easiest thing to do is to pull --

THE COURT: And we can maybe make copies and tape it together, or maybe there's an extra version?

MS. CARBO: That's the redacted copy, right?

THE COURT: Because this doesn't appear --

MS. CARBO: Thank you very much.

THE COURT: I can't tell what this would look like on a computer screen, but --

MS. CARBO: Actually, Your Honor --

THE COURT: -- because of the way it's printed.

MS. CARBO: Counsel has provided what Your Honor has just requested.

THE COURT: Okay.

MS. CARBO: It's on more than one page, because it -- that way this time.

THE COURT: Okay. So, does Defense agree that this

particular document is what you had? And that's the redacted version of this? Am I calling this right? This is the Mortgage Loan Schedule?

MS. CARBO: Mortgage Loan Schedule, that's correct.

MR. JACOBS: Yeah, this is it. This is it.

THE COURT: For one loan?

MS. CARBO: No, no, no. Your Honor. That's why --

MR. JACOBS: For the Trust.

THE COURT: That's what I'm saying.

MS. CARBO: That's why I have to ask --

THE COURT: This is for a lot of loans.

MS. CARBO: -- that that be held en camera, Your Honor --

THE COURT: Okay.

MS. CARBO: -- because the loan -- there's hundreds of loans represented there.

THE COURT: Yeah. We're going to break for lunch in a minute. Can somebody try to match from this large collection of records, or maybe highlight from the large collection of records, what is given to the Defendant as a redacted version? Because I don't know that I'm ever going to be able to match it myself.

MS. CARBO: Yes, Your Honor, we will do that during lunch.

THE COURT: So that can be done over the lunch

break.

MS. CARBO: Absolutely.

THE COURT: And we'll come back in about an hour.

MR. JACOBS: Okay.

THE COURT: And -- because I've been sitting here for a long time.

(Discussion Re: highlighting document)

THE COURT: Speak loud enough for the record.

THE COURT REPORTER: And you're Mr. Aaronson, right?

MR. HERNANDEZ: Peter Hernandez, on behalf of [unintelligible].

THE COURT REPORTER: Oh, sorry.

MS. CARBO: Your Honor, I -- before you -- we break, Your Honor --

MR. HERNANDEZ: Limited appearance for [unintelligible] --

MS. CARBO: I'm sorry; I have two witnesses sitting here. Should they remain? I mean, are we going to take testimony at trial? I was just curious, Your Honor.

THE COURT: I don't know. I'm sorry. I wish I could predict. Do you --

MS. PRESTIA: This just all seems very legal.

THE COURT: It -- everybody wants -- I don't want to keep the witnesses if they're not going to be needed. But

I don't know for sure if they're not going to be needed. So, we can agree to let the witnesses go if the Plaintiff wants to let them go, and reschedule the trial portion and just deal with these issues today, or hang out and see if we get to the trial.

MS. CARBO: Your Honor, I would agree to do that or like to do that, but only if -- excuse me? Only if we do not permit any further motions, any further discovery, anything further filed. It would be as if the trial date that we have in the future is today.

THE COURT: I can't predict that.

MS. CARBO: Then no. Then, no, Your Honor, we have to try to go today, please, because --

THE COURT: Okay.

MS. CARBO: -- we've already got bombarded --

THE COURT: Fine.

MS. CARBO: -- [unintelligible].

THE COURT: Then the witnesses will have to hang around. So, I'll see you all back here at 1:00.

MS. CARBO: Thank you, Your Honor.

MR. JACOBS: Thank you.

(OFF THE RECORD)

(ON THE RECORD)

THE COURT: Where are we? Where did we leave off?

MR. JACOBS: When we left off, they were proffering

the Mortgage Loan Schedule.

THE COURT: Okay. We going to -- that's right, put together something that I could tell where you got the redacted information from, the larger collection.

MS. CARBO: We've marked and highlighted each line that matches the current schedule.

THE COURT: Oh, my gosh. Okay. I see how that works. What do the numbers mean at the top of the loan schedule? There's, like, a one. And it encompasses seven columns. And then there's a two that encompasses --

MS. CARBO: Right.

THE COURT: -- another --

MS. CARBO: Your Honor, those were meant to --

THE COURT: -- number of columns.

MS. CARBO: -- conform with the blue stickers that are on each page. So, the one is that portion.

THE COURT: I see.

MS. CARBO: And the two is the next portion. It's -- every one is the second-to-last page that relates to the specific loan. So, if you go to the second-to-last page, you'll see it's highlighted for the specific loan, the second-to-last page in each package under those headings right there. So, give you a chance to review? I mean, you don't -- that doesn't say the same thing as --

MR. JACOBS: I'm -- that's fine. I'm --

MS. CARBO: Your Honor, Defense doesn't contest that they're the same.

THE COURT: Just trying to understand what I'm looking at. So, it goes all the way across, right?

MS. CARBO: That's correct. And that's that -- just that one --

THE COURT: Okay.

MS. CARBO: -- number-one portion.

THE COURT: I can't find in Group No. 10 anything that corresponds with -- I see the top, the heading is Payoff Penalty WIN Months. Within Months? Or I'm not sure what that means. There's something in this package that --

MS. CARBO: May I approach, Your Honor?

THE COURT: -- is either -- there are a bunch of numbers on little pages. See here, number 10? Payout Penalty. May be just blank, but there are numbers in it.

MS. CARBO: It may have been on --

THE COURT: Is that the number?

MS. CARBO: -- the prior page, because they continued over. May I -- if I may --

THE COURT: Sure.

MS. CARBO: See, there.

THE COURT: Well, that goes --

MS. CARBO: No?

THE COURT: -- from Y --

MS. CARBO: To 12. Here, that's the 12, 36.
THE COURT: So where is that in this?
MS. CARBO: That's -- all of them are the second-to-last page.
THE COURT: I looked for something to be highlighted and I didn't see it.
MS. CARBO: Oh, I'm sorry; we must have missed one.
THE COURT: Maybe I missed it.
MS. CARBO: Yeah.
THE COURT: Here it is. Oh. Got it. Okay, 36, then 11. Okay. Well, it looks like -- I think I can return this collection of what I call two-and-a-half to three inches of paper to the Plaintiffs. They do match what is on the more comprehensive spreadsheet that contains a lot of loans. If I count these columns, are those the fields you're talking about?
MR. JACOBS: Right.
THE COURT: So there must be 40.
MR. JACOBS: There's more than 20, by far.
THE COURT: More than 20, at least. Depends on what you count as a column, but there may be 14 on the first page. So, there could be a lot. All right. So, six -- where do you come from 6 fields to 20 fields or 40 fields?
MR. JACOBS: Okay.
THE COURT: I can't count all these. Has the

Plaintiff counted all what they think are fields?

MS. CARBO: No.

THE COURT: Okay, I don't know what we're talking about, then, in terms of --

MR. JACOBS: So, when you look at the Pooling and Servicing Agreement that was filed in the trial back before Judge Rothenberg --

THE COURT: Okay.

MR. JACOBS: -- there is on page 14 the definition of Mortgage Loan Schedule. And it lays out that it's setting forth the following information with respect to each mortgage loan. It's roman numeral 1 through roman numeral 20. And it's none of those -- it's just not -- you know, some of those things are in there also, but they're just not in this order. And they're not -- there's more than 20. So, it's just a different --

THE COURT: Can I see what you're looking at --

MR. JACOBS: Sure.

THE COURT: -- Mr. Jacobs?

MR. JACOBS: And this is what was found in the Riley case to be unclean hands. So, just to be clear, Your Honor, I'm not arguing any kind of noncompliance with the Trust as, you know, some kind of Castillo defense. What I'm saying is that's not the Mortgage Loan Schedule. It's just -- just like that Assignment of Mortgage is fake, just like

the endorsements are fake, that's not the real Mortgage Loan Schedule. It can't be, because if you follow the order, none of them match up.

MS. CARBO: Your Honor, there's nothing that says they have to be in this particular order. Now, is he testifying as to what is or is not the Mortgage Loan Schedule?

THE COURT: Well, I'm just -- I'm trying to compare them myself. And maybe with the Plaintiff's help I can do that. But let me see if it makes some sense.

MS. CARBO: The parties may have agreed to one thing and then done another. I mean, there's no requirement that it comport to what's in that PSA.

MR. JACOBS: And just to be clear, Your Honor --

MS. CARBO: And if --

THE COURT: Well, but I guess the --

MS. CARBO: There's no requirement.

THE COURT: -- Pooling and Servicing Agreement that says what a -- what the Mortgage Loan Schedule should look like is -- may or may not conflict with what the Mortgage Loan Schedule is being offered into evidence as.

MS. CARBO: Quite frankly, Your Honor, so what if the parties may have agreed otherwise later?

MR. JACOBS: Well --

MS. CARBO: I don't know. It's not an issue that

can be raised under the Castillo vs. Deutsche Bank [phonetic] case, 89 S.3d 1069, the court -- 3rd District Court clearly noted that "because the Appellant is neither a party nor a third-party Beneficiary of the Trust, Appellants lack standing to raise the issue and affirm the Final Judgment." The issue that they had raised, what they failed to comply, was the Pooling and Servicing Agreement. And that's exactly the issue that's being made here, Your Honor.

THE COURT: No, there -- no, I don't perceive it that way. I don't perceive that they're saying they didn't comply with the Pooling and Servicing Agreement. It's just what's described as a Mortgage Loan Schedule in the Pooling and Servicing Agreement is not what's being offered as evidence. So there's a credibility issue that's being raised, right?

MR. JACOBS: So, Your Honor, just so we're clear, the procedural steps that I'm asking that we take, this is not evidence. Nothing that I'm presenting today is anything other than a -- which -- information upon which the Court can make their own Motion for an Order to Show Cause to issue, or I -- or you can use the Verified Motion that I filed. But I'm trying to give it all so that you see what -- there's a reason to issue an Order to Show Cause.

Once you issue an Order to Show Cause, if you follow Judge Acharte's process that he used, there would be an

arraignment of Bank of America and Bank of New York Mellon. And they would be then --

THE COURT: Well, who are you suggesting? In the form you gave me, it was a couple of lawyers --

MR. JACOBS: Well, that was --

THE COURT: -- and a witness.

MR. JACOBS: So, what happened in that case was Judge Acharte instructed me just to name the two lawyers and the witness who were involved with not turning over the documents that he had ordered that show that they were giving misconduct. What I ask for in this case is -- this is clearly Bank of New York Mellon and Bank of America, two corporations that absolutely can be held in indirect criminal contempt of court for their misconduct.

THE COURT: Who do you propose is the body that is -- can be held in -- or is it a corporate --

MR. JACOBS: It's corporate.

THE COURT: -- [unintelligible]?

MR. JACOBS: I'm asking --

MS. CARBO: [Unintelligible] --

MR. JACOBS: -- for there to be an Order to Show Cause to be issued against Bank of New York Mellon and Bank of America.

THE COURT: And what do you -- did they name a representative to show up?

MR. JACOBS: I mean, they would --

THE COURT: Is that the idea?

MR. JACOBS: They --

THE COURT: I don't know. I've never done this.

MR. JACOBS: So, what I understand would be the proper procedure is Your Honor issues the Order to Show Cause to Bank of America and to Bank of New York Mellon. Bank of America's counsel is here and Bank of America -- Bank of New York Mellon's counsel is also here. And they would certainly be able to take that and serve that.

And what would happen is Your Honor would then set a arraignment. And then Bank of America and Bank of New York Mellon would be able to bring their own counsel to plead to the Order to Show Cause. They would --

MS. CARBO: Respectfully, Your Honor, what is the misconduct?

MR. JACOBS: If I could finish what I'm --

MS. CARBO: But I'm not --

THE COURT: He's not finished. Hold on.

MR. JACOBS: So, if I -- if Your Honor enters the Order to Show Cause, the first due process that the parties would get would be an arraignment. They could plead guilty and say, "Yes, this is evidence that --"

THE COURT: When you say they, it's got to be, like, a mouth. There has to be a person.

MR. JACOBS: The bank -- I mean, it would be Bank of America and Bank of New York Mellon. And they'll produce whoever they want to produce to represent --

THE COURT: All right.

MR. JACOBS: -- them.

THE COURT: I guess that's --

MS. CARBO: You know, they're -- the --

THE COURT: -- a good idea, but how to do it.

MR. JACOBS: It's a corporation. And the corporation will act through whatever attorneys or representatives that they choose to act through. But what would happen is the -- that there would be an arraignment. If the Court -- if they plead not guilty, there will be a trial set. If they plead guilty, there will be a sentencing set.

THE COURT: So, this is -- but -- and the action that you think gives rise to some kind of problem for them is the what?

MR. JACOBS: So --

THE COURT: Putting on or taking off of an allonge?

MR. JACOBS: So, here's what I'd say, Your Honor.

THE COURT: That from first --

MR. JACOBS: I mean, they have produced in this case the Assignment of Mortgage, which is false. They have produced the Mortgage Loan Schedule, which is false. They

have produced --

THE COURT: That's this.

MR. JACOBS: Right.

THE COURT: That's this document --

MR. JACOBS: Right.

THE COURT: -- you're talking about here. And I'll just mark that Loan Schedule as --

THE CLERK: As Court Exhibit 9.

THE COURT: That'll be nine.

(Thereupon, Court's Exhibit 9 was marked for the record.)

MS. CARBO: Your Honor, as I --

MR. JACOBS: They produced the -- in the case they filed the Affidavit for a Summary Judgment attaching a copy of the endorsements, which were added after Countrywide went out of business. And part of this whole unconscionable scheme to let the courts believe that it was all done within days of origination --

THE COURT: So, it's the Assignment, the Loan Schedule, and the Affidavit endorsement issue.

MR. JACOBS: And the endorsement. Those three issues give rise at the Court -- if I'm able to establish at the trial that would happen -- assuming they deny everything at arraignment, we'll have a trial. And I'll be able to present my evidence, and then they can present their evidence

as to why it is that I'm wrong, that this is the actual Mortgage Loan Schedule.

THE COURT: Okay.

MR. JACOBS: They can present evidence that the allonge was properly endorsed before Countrywide went out of business. They can present whatever evidence they want. And then the Court would conduct a hearing, a trial on that. And once the trial is conducted, if Your Honor finds that this is misconduct, then Your Honor would set a sentencing date. And there would be an opportunity for me to present evidence that these -- that this bank, as we look at Judge Klein's order, has been sanctioned many, many, many times in increasing amounts. And I would be asking for the Court to impose a significant sanction because it's repeated misconduct after being sanctioned for the same misconduct. And they'll present their mitigating circumstances why you shouldn't sanction them.

THE COURT: Okay. I'm still working on the cause issue, if any. I have the Loan Schedule marked. Did we mark the Assignment as I -- with a number?

MR. JACOBS: Yes, I believe it's marked.

THE COURT: Let's get that.

MR. CORDAN: Your Honor, if I may?

THE COURT: Right now, I'm just trying to lay things out. Just one second while I get organized so I know

what they're talking about before I can let you address each one.

MR. CORDANO: Thank you.

THE COURT REPORTER: And your name again? I'm sorry.

MR. CORDANO: Miguel Cordano, limited appearance.

THE COURT REPORTER: Cordano?

MR. CORDANO: Miguel Cordano for Liebler Gonzalez and Portuando.

THE COURT REPORTER: How do you spell your last name, please?

MR. CORDANO: C-O-R-D-A-N-O.

THE COURT: Help him find the documents in particular.

MR. JACOBS: Here's a copy of the --

MR. CORDANO: I'll give you my card later.

THE COURT REPORTER: Okay.

MR. CORDANO: Limited appearance for Bank of America as to the [unintelligible] only.

MR. JACOBS: Oh, and, Your Honor, I do have the photocopies --

THE COURT: Now, wait, wait. I need to take that back.

MR. JACOBS: Sure.

THE COURT: Wish the bench were bigger.

MR. JACOBS: And this is the better copies of the --

THE COURT: [Unintelligible] the Affidavit?

MR. JACOBS: That's the Statement of Work that was -- now I have the --

THE COURT: Well, hold onto that.

MR. JACOBS: -- better copies of that.

MS. CARBO: What? What is that?

THE COURT: It's the Statement of Work; there's a better copy. But I'm trying to stay on track here. The Affidavit that you said the endorsement was added after they went out business, has that been marked yet?

MR. JACOBS: Summary Judgment Affidavit, I believe that was marked. They produced that. The Affidavit in Support of Summary Judgment.

MS. CARBO: Your Honor, a number of exhibits -- I have to voice my continuing objection. These have no relation to this case whatsoever. There's been no discovery in this case.

THE COURT: You may be absolutely right. They're not even evidence yet. I'm just trying to mark for identification what we're talking about here. And quite frankly the paper is flying. And I didn't know I'd be doing this today. Where's -- can you help him find the Assignment that you're talking about so that the Plaintiffs can address

this in a fashion that I can follow?

MR. JACOBS: With the allonge, with the [unintelligible] which we submit as part of the --

THE COURT: Okay. So, we're talking about Exhibit 2 for identification, the last page, the allonge.

MR. JACOBS: Right.

THE COURT: We're talking about the Loan Schedule Agreement that is alleged to have a different number of fields than described in the Pooling and Servicing Agreement and therefore it's alleged it's phony evidence. And Court Exhibit 8 for identification, this Assignment of Mortgage which couldn't -- allegedly couldn't legally exist.

MR. JACOBS: And was attached to the Complaint and produced --

MS. CARBO: It was not.

MR. JACOBS: -- as exhibits for the trial in 2015 and was produced to me as a trial exhibit. And it's on the witness and exhibit list for this trial.

THE COURT: Okay.

MR. JACOBS: That is not competent evidence.

THE COURT: Now, before we start, does the Plaintiff want to try and show me how I can determine the validity of this loan schedule. Loan schedule?

MR. JACOBS: Mortgage Loan Schedule.

THE COURT: Mortgage Loan Schedule and the -- page

14 and 15 of the PSA's loan -- Mortgage Loan Schedule features, small I through roman numeral 20. Is that something that -- they're -- the Defense is representing those 20 numbers to be fields. There's more than 20 columns. I'm just wondering if there's a real easy explanation or if that's something we should wait to get a Show Cause Order, because --

MS. CARBO: Your Honor, I believe the client would trying testify to that. But if they put more information than was required in a PSA, how does that show misconduct or falsity? I just --

THE COURT: It might show that what's being offered -- it might. I'm not saying it is. I don't know. There may be some really good explanations, because I haven't seen this stuff before. Quite frankly, I've never looked this deeply into it. I've done 1,000 foreclosures, I think. But if this is -- if the loan -- Mortgage Loan Schedule is -- if this is what's being offered in evidence and it's not really the -- a Mortgage Loan Schedule, then that could be a problem.

MS. CARBO: Yes, Your Honor.

THE COURT: I think that's what's being suggested here.

MS. CARBO: But what evidence do we have that that isn't anything but a Mortgage Loan Schedule? There's --

THE COURT: The --

MS. CARBO: -- no evidence other than his specious allegations.

THE COURT: The Pooling -- the description of it in the Pooling and Servicing Agreement.

MS. CARBO: I understand, Your Honor.

THE COURT: That's where -- listen, I'm not saying there's anything wrong with it yet. I'm just trying to give you guys an opportunity today to put on the record anything you need to put on the record for me to consider --

MS. CARBO: Yes, Your Honor.

THE COURT: -- in addressing this motion.

MS. CARBO: The PSA is an agreement between two parties unrelated to the Borrower. The Borrower is -- has -- does not have standing to raise any issues in connection with compliance with the PSA. There's been absolutely no testimony, no evidence --

THE COURT: All right, you've said half a dozen times, and he's said half a dozen times they're not questioning the compliance. They're suggesting the evidence you're offering, the Mortgage Loan Schedule that's being offered to prove your case today, is phony. That's their suggestion; not mine.

MS. CARBO: But there's nothing to support that. There's been no discovery.

THE COURT: I'll say it again.

MS. CARBO: There's been no depositions, Your Honor. There's been nothing.

THE COURT: The Mortgage -- the Pooling and Servicing Agreement description of the Mortgage Loan Schedule is allegedly different from the Mortgage Loan Schedule that's being offered. That's what you're presented with. Don't argue with that. Just if there's anything else you want on the record about it, I'm happy to listen. But we can't keep going around in the same circle and get anywhere.

MR. CORDANO: Your Honor, just quickly. I'm sorry.

THE COURT: Anybody. Please.

MS. KAUFMAN: Your Honor, now, just quickly on behalf of -- as noted earlier, Miguel Cordano, myself, and Peter Hernandez entered a limited appearance on behalf of the witness, Bank of America. There was a limited subpoena. I read the three categories. Ms. Prestia is here on behalf of Bank of America. Bank of America is not and has never been a party.

But just so -- to make -- we have never seen -- he's referred to a Motion to Order to Show Cause. The docket as of last night did not reflect filing of any Motion for Order to Show Cause. We have never been provided a Motion for Order to Show Cause. We understand now that there has been a Response to the Motion. We haven't seen the Response. We haven't seen the document.

In very short, as Your Honor knows, it's well established in the 3rd DCA under Celebrity Cruises vs. Fernandez, 149 S.3d 744, even if you had a Notice of Hearing, the granting of relief which is not sought by the Notice of Hearing -- there's no Notice of Hearing here and certainly no service on us, and that is not -- Bank of America is not a party -- or which it spans the scope of a hearing violates due process.

THE COURT: Yes.

MS. KAUFMAN: So, certainly if there's an effort here today or a tenance [phonetic], at it appears there is, to seek any relief against Bank of America, that's -- that would be precluded under binding 3rd DCA law and is improper. We have not seen any Motion for Order to Show Cause. We haven't seen a response. There's no Notice of Hearing on today. Even if the Court were to permit a motion when Plaintiff's counsel advises that the Trial Order provided that motion is cut off long before the motion was filed, we're prejudiced. There's no due process. We have not seen any motion for Order to Show Due Cause. There's been no motion to join Bank of America as a party.

THE COURT: I think --

MS. KAUFMAN: And I just want to raise that.

THE COURT: Can I get you -- I think Bank of America can relax a little bit if not completely. There's

nothing asking for relief against Bank of America in his motion.

MR. CORDANA: But he did nor tenes [phonetic].

MS. KAUFMAN: He did make a nor tenes comment. That's the only reason, Your Honor, that we're making this objection.

THE COURT: I see. Okay.

MS. KAUFMAN: In an abundance of caution.

THE COURT: Okay. Well, that's not even been filed.

MR. JACOBS: So, let me --

THE COURT: This is not set for an evidentiary hearing. I -- considering that this is being raised as a separate suggestion of criminal conduct in the face of evidence about to be presented, I think I need to stop the trial process and give Bank of New York Mellon, the Plaintiff in this case, an opportunity to fully respond, because this just came in, and perhaps conduct a hearing now that we've laboriously labeled and marked the things that we're going to be talking about in the future. We could give the Plaintiff more time to digest this and, like, actually put something in writing. I haven't seen a written response.

MS. CARBO: We didn't --

MR. JACOBS: They didn't, Your Honor.

MS. CARBO: -- respond, Your Honor. We didn't

respond.

THE COURT: That was done, what, last night?

MS. CARBO: Let me check the date.

MR. JACOBS: It was filed yesterday.

THE COURT: Is it everything you want? Because I could set a hearing that --

MS. CARBO: No, Your Honor, he's raised issues on several exhibits that were never provided to us. So, I would need to confer with my client and determine how we would address it. There was no notice of this being heard today.

THE COURT: I --

MS. CARBO: We came here for a trial.

THE COURT: So did I.

MS. CARBO: Okay.

THE COURT: And the other trials went very smoothly. This one, Mr. Jacobs has done a lot of work over the course of years to be able to be standing here in front of everybody and making these suggestions, allegations. So, I propose that we set this for some kind of evidentiary hearing, special set.

MR. JACOBS: Well, Your Honor, let me make sure the Court understands, before -- because right now what is before the Court is all the information that the Court has its own -- the Court can on its own motion under the 3.840 -- that's what I'm asking the Court to do. We're not -- to have an

evidentiary hearing before we actually issue the Order to Show Cause would not be following the procedure set forth in 3.840. So we're going to -- I think that we should have an evidentiary hearing, for sure. But the proper way to do this -- and what counsel is talking about, they haven't gotten Notice of the Motion for an Order to Show Cause. You don't even need a Motion for an Order to Show Cause.

Your Honor can on your own motion, now that you've heard everything that you've seen before you -- on your own motion say, "I find that what Mr. Jacobs has presented warrants an Order to Show Cause against Bank of America and Bank of New York Mellon." And the Court, if it does it on their own motion, is saying, "I think that you guys are both involved in something that on its face there is a reason to get to an evidentiary hearing on it." And the key, Your Honor, is this: by issuing the Order to Show Cause, you're giving them an opportunity to be heard.

THE COURT: Will you read the rule?

MS. CARBO: Your Honor, I'd like to --

MR. JACOBS: 3.840 is the rule.

MS. CARBO: I --

MR. JACOBS: And what is important I think for the Court to understand is this is only -- this is not the -- there is no need for an evidentiary hearing to determine whether the Court is going to enter an Order to Show Cause.

The Court has the right on its own motion to say, "I have seen enough right now that I think an Order to Show Cause should issue against these two parties, because I understand that they are both involved in -- Bank of New York Mellon and Bank of America are the parties that set this whole thing in motion."

MS. CARBO: If I may, Your Honor?

MR. JACOBS: And if -- I'm not done. So, if Your Honor sees that already, then under the rule you would issue your own motion. You would issue the Order to Show Cause. That starts the due process. They don't get -- it's not a due process issue of "oh, you've issued the Order to Show Cause in your own motion without an evidentiary hearing first." There's no --

THE COURT: No, it does say the judge --

MS. CARBO: Yes, it does.

THE COURT: On the judge's own motion or on affidavit of any person having knowledge of the facts may issue and sign an order directing -- directed to the defendant. This should be the defendant of the motion --

MR. JACOBS: Right.

THE COURT: -- responding to the motion.

MS. CARBO: And respectfully, Your Honor, that's --

THE COURT: And sort of turn into a defendant.

MS. CARBO: It further says that one requirement is

that an affidavit attesting to personal knowledge be submitted. We do not have an affidavit.

MR. JACOBS: No, that's not true.

MS. CARBO: All that's been submitted --

MR. JACOBS: Look at the rule. It says, "On the judge's own motion."

MS. CARBO: Let me -- may I please --

THE COURT REPORTER: One at a time, please.

MS. CARBO: -- finish?

MR. JACOBS: There's two things.

MS. CARBO: He's relying -- Your Honor, it's my -- I have the forum.

THE COURT: It does say the judge -- on the judge's own motion or on an affidavit --

MS. CARBO: Yes, Your Honor, but the case law --

THE COURT: -- by a person with knowledge.

MS. CARBO: -- has interpreted it and made the standard very high and required strict compliance with 3.840. None of the documents that have been supplied here are properly before the Court. None are admissible evidence. He is not permitted to testify as to them.

THE COURT: Well, then I'm going to let some discovery take place before this. There's enough, I think, for me to think there's some explaining to do. The Assignment that in one case Bank of America says can't exist

and yet here it is, here's one right here that was in our Court file. A Loan Schedule that has a lot more or appears to at least -- doesn't "have", it appears to have a lot more fields and information in it than what is described in the Pooling and Servicing Agreement. And an Affidavit of Indebtedness that has an allonge with a redacted loan number but which was attached to an Affidavit in Support of a Motion for Summary Judgment in the case that is not now part of the Note.

And I'm thinking -- there used to be a statute that was enforced back when the paper wasn't all over the world and before the electronic era. It all had to be stapled. Remember that one? It all had to be together and bound so that a judge could actually tell what was there or what wasn't there along the way. I even had a hearing in a $175 million foreclosure where they asked me to take notice of where the staple holes were in the document. It never got tested on appeal when I let it go forward, because the guy showed up with $175 million the morning of the sale and redeemed. And he made good on his promise that the Court would never get him to trial, because he came up with the money. It was unbelievable. But I don't expect that's going to save the day here.

MR. CORDANO: Your Honor, quickly?

THE COURT: Yes, go ahead.

MR. CORDANO: I hate to [unintelligible]. I just want to clarify. So, the motion doesn't really apply to Bank of America, right? It's correct? It doesn't apply?

THE COURT: Very indirectly, because I'm being asked to take note of what Bank of America admitted or said or took a position on in a separate case --

MR. CORDANO: Right.

THE COURT: -- that would seem to now be at odds with what's going on in this case. And I understand from the Plaintiff in this case that Bank of America was in some way, somewhere along the line, a servicer in this.

MR. CORDANO: Right.

THE COURT: Although that's not alleged in this case, but it's coming out.

MR. JACOBS: Respectfully, Your Honor --

MR. CORDANA: Your Honor, [unintelligible] --

THE COURT: So, I'm not issuing an Order to Show Cause against Bank of America, by any stretch --

MR. CORDANO: Right.

THE COURT: -- at least not on a nore tenes [phonetic] motion, I'm not going to do that.

MR. JACOBS: So, let me just -- before we make that decision, because, again, it's not my motion anymore, here's what I'm asking the Court to recognize. The evidence I've given you is that Bank of America, that endorsement that you

see attached to the Summary Judgment Affidavit, which was attached years after the case was filed, years after the case went to trial, now they produce this allonge which has an endorsement on it that Bank of America put on and Bank of America senior executives have testified multiple times now was actually put on within days of origination.

THE COURT: Okay, let -- fine. But I'm not on an -- on -- in the present procedural posture of the case, I'm not going to issue an Order to Show Cause why Bank of America shouldn't be held in indirect criminal contempt. That should be if it ever gets filed. And I'm not suggesting it should be filed. If it ever gets filed, it should probably be done after we have a better record.

And I don't know who or what you need to do to get these documents in an admissible form. I know by looking at the order that Judge Acharte signed that there was some difficulty in getting even a deposition taken other than at midnight, and even that didn't work. So, what do you propose?

MR. JACOBS: So here's what I want to make sure the Court is aware of. All of this, the Assignment, the endorsement, the Mortgage Loan Schedule, all of this, Bank of America is behind the curtain. That's the Wizard of Oz.

THE COURT: Well, but the problem -- I think you need to get that established as a matter of fact, and maybe

by --

MR. JACOBS: Well --

THE COURT: -- a person with knowledge. But right now --

MR. JACOBS: What I --

THE COURT: -- it's not in my record.

MR. JACOBS: Well, what I've given you in the record, Your Honor, is the Bank of America flow chart showing the 90-day delinquent note endorsement process, which --

THE COURT: Well, but that's -- how does that connect to this case?

MR. JACOBS: So, let me explain, Your Honor.

MR. CORDANO: Your Honor, due process requires --

THE COURT: Let's mark that.

MR. JACOBS: Right.

THE COURT: This is the statement --

MR. JACOBS: That is the --

THE COURT: -- that's now legible?

MR. JACOBS: That is the legible copy.

THE COURT: Let's mark this a Court Exhibit, to know what we're talking about.

MR. CORDANO: Your Honor, it has nothing to do with the bank. Due process requires that we be served, we be notified. And unfortunately, knowing -- and I -- he's my friend and I know him. He's going to talk and filibuster

this whole hearing until we're done.

THE COURT: For that reason and the reason that it's not admissible yet in this court --

MR. CORDANO: Right.

THE COURT: I don't see a connection, a reliable connection between that flow chart and what -- and this case yet that means anything.

MS. CARBO: Then also, Your Honor --

MR. JACOBS: So, let me say this, Your Honor. Here's what I think, okay? I can go back to my office and swear out an affidavit to the following facts: that Bank of America was the party that set this whole thing in motion. Bank of America created the delinquent note endorsement process three days after the OCC issued the consent order saying, "Tell us every case that you're litigating without properly endorsed notes." As part of that delinquent note endorsement process, they engaged Source Corp to take all the images of the notes that they were endorsing with these rubber stamps and put them into their system.

THE COURT: But you only know that because you think you found it in another case, right?

MR. JACOBS: No, no. I know that because of the testimony I've gotten in these cases.

THE COURT: Right, but I -- but if you're asking me to take judicial notice of that testimony -- see, I don't

think you're the person to talk about it. I think if you want to put together that evidence in some fashion --

MR. JACOBS: Well --

THE COURT: I'll look at it.

MR. JACOBS: Here's what I'd say, Your Honor. The evidence that I already have from the deposition I just took in Judge Miller's -- in Judge Bronwyn Miller's case, where we're going to be asking for the same Order to Show Cause -- and I am doing this a little bit on -- too fast because I just got a New York case. But I am asking in that case for the Order to Show Cause to issue against Bank of New York and Bank of America because they have been producing the same witnesses throughout the entire course. They're the ones that produced Michelle Sowander [phonetic]. They produced Maria Gardner pursuant to your order, pursuant to Judge Stone's order. Maria Gardner testified for both witness -- both Bank of New York and Bank of America.

MR. CORDANO: Your Honor, if I may --

MR. JACOBS: I'm not done. So, they set up this whole --

MR. CORDANO: He's my friend. And he's said, "I'm not done."

MR. JACOBS: Because I'm -- I took a breath to start the next sentence, and I don't want to get cut off here every time.

MR. CORDANO: No, but you're talking and talking and talking and talking.

MS. CARBO: And you're not --

MR. CORDANO: And the judge already ruled.

THE COURT REPORTER: One at a time, please.

MR. JACOBS: Again, if I could finish without being told that --

THE COURT: Go ahead.

MR. JACOBS: I'll -- I appreciate that. When Bank of America and Bank of New York Mellon were ordered by Your Honor and by Judge Stone to produce a witness to explain "How did these endorsements get added?" they both produced Maria Gardner. And Your Honor issued sanctions before and after saying they violated my order to produce the documents. And what you gave was outrageous bad faith. That's what your order said. And now we are here four years later, and we're dealing with the same exact parties, who have appeared together by the same attorneys. And all of it, Your Honor, the evidence is that the Countrywide endorsement didn't get added by the Bank of New York Mellon. Bank of New York --

THE COURT: I think we're -- you're repeating [unintelligible] --

MS. CARBO: And --

MR. CORDANO: Yes. Your Honor --

THE COURT: Listen, I can take, without even

batting an eyelash -- I can take judicial notice of everything in my file. Not my file; it's not really "mine." In this file that I happen to have the pleasure of sitting on.

MR. JACOBS: And we had filed a Request for Judicial Notice.

THE COURT: What did you say? It's 2009-87096. I'll take judicial notice of that. I will accept and consider the things that have been given to me today, the exhibits that have been given to me today, if they're in this case, like the -- this Mortgage Loan Schedule, because that's being offered as evidence in this case, albeit it's in with a lot of other stuff. So, I don't even know how to answer this at this point.

MS. CARBO: Normally just --

THE COURT: But a lot of it needs to be -- you have the redacted -- maybe we should substitute the redacted portion --

MR. JACOBS: Yes.

THE COURT: -- seal this --

MS. CARBO: It has been sealed.

THE COURT: -- in some fashion to show what the Court looked at. And I'll need an order sealing, because this contains --

MR. CORDANO: Private information from other loans.

THE COURT: Exactly. So -- but I'll need an actual order, under Rule 2.14, that complies with that rule before I can actual seal this. In the meantime, I'll just hold it in my office. I'll stick it in a drawer back there and --

MR. CORDANO: Yes.

MS. CARBO: But, Your Honor, if I may substitute it with the redacted -- an actual redacted copy?

MR. JACOBS: [Unintelligible]

THE COURT: Is there another there, other than black ink?

MS. CARBO: It's a little small, but you can see the top -- a copy of this was provided to Defense Counsel, as well.

MR. JACOBS: As long as it's the one with the --

MS. CARBO: That's just our loan.

MR. JACOBS: And all the columns? That's fine. I have no objection.

THE COURT: I guess I'll have to look through and see if it has --

MR. JACOBS: So, what I was going to suggest, Your Honor, is kind of meeting me halfway. I think that if Your Honor issues the order, she'll -- Bank of New York Mellon has filed a Response to my Motion. There's no due process concerns about that.

MS. CARBO: Yes, there is, Your Honor.

MR. JACOBS: I would like -- well --

MS. CARBO: There's [unintelligible] --

MR. JACOBS: The -- any due process concerns would be addressed by them having an arraignment and being able to start the process at the arraignment situation. I'll wait for the -- for Your Honor to finish.

MS. CARBO: What is occurring here, Your Honor, is that he's getting around the Trial Order, which closed discovery in this matter. If all of these issues had been properly raised at the proper time, the discovery would have supported the Plaintiff's side. But that hasn't been done. You're permitting him to bring in extraneous materials, extraneous information, nothing supported by any affidavits or any facts, nothing my client has had the opportunity to oppose, because they have not been -- there's been no discovery. If the attorney was interested in doing this, they should've had depositions. But all of that has been closed by the Trial Order, Your Honor. This is completely improper. This is a nine-year-old case.

MR. JACOBS: So they should be allowed to move forward with evidence that's not competent?

MS. CARBO: We're not moving forward. We've already represented to the Court we're not moving forward with the assignment. We're not moving forward with the

allonge. Why they should even be considered in this case is beyond my understanding. The Mortgage Loan Schedule? Put the witness on the stand. She'll testify that that's a part of their business records. And that's how it exists in their business records.

MR. JACOBS: I just think it's interesting that they're not going forward with two of the pieces of evidence that normally you see in all the cases. I --

MS. CARBO: We don't need to.

MR. JACOBS: Very rarely. I mean, I don't know. I've never seen --

MS. CARBO: Because we wanted to avoid these issues. And discovery [unintelligible] --

MR. JACOBS: I'm going to argue with Counsel. Your Honor, what I would ask is that Your Honor issue the Order to Show Cause against Bank of New York. I will put in the facts, as I did for Judge Acharte, that lay everything out. I will also provide you with an affidavit of my knowledge about Bank of America separately. And I would ask that we have a hearing, a separate hearing, on whether or not --

MR. CORDANO: Unfortunately, he's asking for --

THE COURT REPORTER: One at a time.

MR. CORDANO: -- an advisory [unintelligible].

MR. JACOBS: No, I'm not asking for advisory [unintelligible].

MR. CORDANO: You're asking for the judge to tell you what to do. You have to learn --

MR. JACOBS: And if I can finish.

MR. CORDANO: You have to do it on your own.

THE COURT: Please don't interrupt. And I'm not going to tell him what to do.

MR. JACOBS: So, here's what I'm --

THE COURT: I wish I could tell him what to do.

MR. JACOBS: Here's what I'm -- if I can finish what I'm trying to say.

MS. CARBO: Respectfully, Your Honor, there's no --

THE COURT: Bad joke.

MS. CARBO: -- there's not sufficient evidence. There's no evidence to issue an Order to Show Cause.

MR. JACOBS: I don't want to argue with Counsel. I just want to finish saying -- making the statement.

MS. CARBO: There is no evidence --

THE COURT REPORTER: One at a time, please.

THE COURT: There are some things that don't link this Affidavit impossibility -- you were talking about some other cases. And something else Bank of America said in another case. I don't have the authority, I don't believe, at this point, to consider those statements. And I'm not going to take the word of Counsel, because that's not appropriate. You're not a witness and you don't want to

become a witness in the case, I don't think.

MR. JACOBS: Hold on, Your Honor. Let me -- if I can be heard on this.

THE COURT: You have been.

MR. JACOBS: Well --

THE COURT: The Order to Show Cause I'm going to reserve on, pending the completion of any evidentiary offering that the Defense wants to make, including as against Bank of America if the Defendant chooses to file a motion like they did against New York Mellon. They want to file that against Bank of America, I guess it would have to be served and there would have to be discovery. And if you forego that, we'll just deal with the Bank of New York Mellon the way you plead it so far. I'm happy to do that; leave it alone; let's just go and consider the bank -- your allegations as against Bank of New York Mellon. But, for example, I'm not going to use information that you gleaned from another case that you're aware of. And I'm certainly not going to use information that -- I don't even remember from four years ago on some sanction order that I issued that never went anywhere.

MR. JACOBS: But respectfully, Your Honor, I've already filed in this case under the proper rules Request for Judicial Notice. You're allowed to take judicial notice.

THE COURT: No one has said anything objecting.

MR. JACOBS: Let -- making sure the Court is aware, there are binders here of all Requests for Judicial Notices of everything that I've talked about. There's all -- they are all things that have been filed in other cases, because this is not just happening in this case. This happens to be one of the best --

MR. CORDANO: Bank of America is not a party to this.

MR. JACOBS: If I could not be interrupted every five seconds.

MR. CORDANO: You have been talking on and on --

THE COURT REPORTER: Hello? One at a time, please.

MR. JACOBS: Because I'm the one asking for the relief. So, Your Honor, the point is this --

MR. CORDANO: [Unintelligible] measure the time we --

MR. JACOBS: I have already filed a Request --

THE COURT: Shh.

MR. CORDANO: Sorry, Your Honor.

MR. JACOBS: I have already filed 30-some-odd Requests for Judicial Notices saying this is the answer that they filed in the federal case. You're allowed to take judicial notice of that. All of that will come into play at the evidentiary hearing. It is perfectly legal and appropriate for you to take judicial notice of whatever is in

any other file.

THE COURT: Where do you have the judicial notice? Show me the Request for Judicial Notice that talks about this Assignment of Mortgage. You showed me something, but I never saw a Request for Judicial Notice.

MS. CARBO: Your Honor, we filed opposition to every one of those judicial notices. We filed opposition. That's something that will have to be -- I mean, that will take four hours to [unintelligible].

MR. CORDANO: Bank of America is not a party to this suit. We shouldn't be part of any of this. We have not received any copy. This is not a -- I mean, we were not -- we don't know how many motions --

THE COURT: I don't know how many times that --

MR. CORDANO: -- [unintelligible] anything. Why are we even going to address Bank of America? Should be denied. His [unintelligible] motion should be denied, period. It's absolutely --

MS. CARBO: It's in the wrong place.

MR. CORDANO: -- lack of due process --

MS. CARBO: Let him proceed --

MR. CORDANO: -- completely. And he's talking and talking and talking. And I understand, you have to listen to everything he has to say, and I appreciate it.

THE COURT: I believe I already ruled that Bank of

America is not going to be facing an Order to Show Cause --

MR. CORDANO: Thank you, Your Honor.

THE COURT: -- on an nore tenes [phonetic] motion.

MR. CORDANO: Thank you, Your Honor.

THE COURT: I don't think I need to say it again. I'm not retracting it from that.

MR. CORDANO: Thank you, Your Honor.

MR. JACOBS: So, Your Honor --

THE COURT: I already said that if that gets -- something gets filed in the future, I'll address it in the future. But right now, I just want to see -- let's talk about -- there's only three things. What do you want me to take judicial notice of so that I could consider your allegations of impropriety regarding the filing of this Assignment of Mortgage in this case?

MR. JACOBS: We have this May 16th, 2018. We filed a Request for Judicial Notice in this case. And what we --

THE COURT: What case is this? That's this, in --

MR. JACOBS: In --

THE COURT: What case has the testimony regarding [unintelligible]?

MR. JACOBS: It is the Answer to the federal -- it was the Answer that was filed in the federal Pican [phonetic] case by Bank of America.

THE COURT: Okay, do you have a copy of that?

MR. JACOBS: I have a printout of -- I have it on my computer. I can get it for Your Honor. It's in the -- the Court should have it. It's already been filed with the Court on the 16th.

MS. CARBO: Your Honor?

THE COURT: Yeah, but what gets filed with the Clerk doesn't hit the docket for a long time. Not for weeks.

MS. CARBO: Your Honor, this is different parties involved. I mean, how that can be -- Your Honor can take judicial notice of that right now without hearing argument I think is -- we need to --

THE COURT: I think we're about to hear agreement on it.

MS. CARBO: Then we need to -- let me get my --

THE COURT: Yeah.

MS. CARBO: -- opposition in order.

THE COURT: Yeah, I'm not --

MS. CARBO: But --

THE COURT: Right now all I'm asking him to do is to show me the Answer, and then we can talk about it.

MS. CARBO: And, Your Honor --

MR. JACOBS: So here's -- in this case, on March -- on May 16th, 2018, at 12:31 p.m., we filed a Request for Judicial Notice of the Defendant's Answer in the Key-10 case.

THE COURT: Bruce Jacobs vs. Bank of America, case

number what?

MR. JACOBS: 1-15-CV-24585-UU [phonetic].

THE COURT: Okay.

MR. JACOBS: All right? And when you go through the answer and you look at paragraph -- for example, you know, 43 is one of the paragraphs that has it. Paragraph 43, Defendants admit that MERS did not own and/or assign notes. And --

THE COURT: Can you print that? Send it to --

MR. JACOBS: We'll have that printed up right now.

THE COURT: Send it to Barbara.

MR. CORDANO: Just to clarify, is this in connection with -- which? I'm confused. Is this --

THE COURT: It's in connection with trying to have me take judicial notice of a court file so that I'll know whether Bank of New York Mellon did anything wrong by using this MERS assignment.

MR. CORDANO: Your Honor, and of course Bank of New York would have an opportunity, I'm assuming, to -- before -- well --

THE COURT: Right now all we're talking about is whether I'm going to take judicial notice.

MR. CORDANO: Right, and they're going to -- okay.

MR. JACOBS: So, here's what --

THE COURT: I'm just concerned that -- sorry.

MR. JACOBS: Here's --

THE COURT: Don't --

MR. CORDANO: I'm so sorry.

THE COURT: Take a deep breath. And let's just talk about one thing at a time.

MR. CORDANO: It's just that I thought we were coming for a trial. And we have the witness waiting forever.

THE COURT: I think the witness can leave. We're not going to have a trial. That's for sure. Not today. Someday, maybe.

MR. JACOBS: Here's what I'm trying to make sure the Court understands. They have not presented a single case that says that the Court cannot see the facts before you and decide --

THE COURT: Mr. Jacobs, you make a very compelling argument. And sometimes they are righteous.

MR. JACOBS: Right.

THE COURT: It's my job to sift through those that are righteous and those that may not be, at least not in the eyes of some courts.

MR. JACOBS: Sure.

THE COURT: They may ultimately be righteous. But, you know, if the Court says they're not, it's like what my father always told me: my mother is right, whether she's right or wrong. The 3rd District sort of is right. Whether

they're right or wrong, they're right. I mean, they make the reality for us. So, I need to be very careful about the details, because that's sometimes what matter the most.

MR. JACOBS: Right.

THE COURT: And admissibility of evidence matters a lot.

MR. JACOBS: Right, but --

THE COURT: So, let's first deal with the Request to take Judicial Notice of that Answer in the federal court. What's the Plaintiff's response to that Request for Judicial Notice?

MS. CARBO: Your Honor, I'm locating the response, if I may. First, Your Honor, I would like to state for the record that the Assignment of Mortgage is superfluous under the Dusett [phonetic] case, 2018 Fl. App. Lexus 1660 [phonetic]. The Court specifically noted right before head note 14 that the Assignment of Mortgage was superfluous and that it's unnecessary because Florida law has always held that the mortgage file was the Note. So, the Assignment of Mortgage is not being offered in this matter. And in addition, there is no standing for this party to raise any issue as in connection with the Assignment of Mortgage.

Your Honor, if the Assignment of Mortgage contains superfluous language, that is not a finding of misconduct. Someone made an error. It could -- there could be a variety

of reasons why the Note was included. It was before there was a mandate but -- or before the Answer that was filed that he's referring to. That was -- this was done --

THE COURT: I think you're skipping to what could be relevant for me to hear at a show cause hearing.

MS. CARBO: But --

THE COURT: But I'm not there yet.

MS. CARBO: But the problem is --

THE COURT: What's your argument as to whether I should take judicial notice of the answer in that federal case?

MS. CARBO: It's not relevant, Your Honor, first of all. Second of all, Your Honor, it doesn't give an adjudicative fact of what Your Honor -- could assist Your Honor in this case. Therefore, there's no reason to take judicial notice. We're not relying upon that assignment. He's -- this is a red herring which is going to the latest trial, which has already been delayed for nine years. My two witnesses are sitting here all day, trying to get heard by Your Honor. And unfortunately he's going off on a tangent. We're not using that assignment.

THE COURT: There have been lots of delays in this case, some by the parties, maybe some by the Court. I haven't --

MS. CARBO: Okay.

THE COURT: -- looked at it in detail.

MS. CARBO: Also, Your Honor --

THE COURT: I'm sorry about further delays, but I think it's important to look at these things once the issues are raised.

MS. CARBO: Okay. If I may continue, Your Honor.

THE COURT: Yes.

MS. CARBO: The action, the federal action parties, are not the parties here before the Court today. The Court isn't authorized to take judicial notice of records in a different case pending or disposed of in a court outside the record before this case.

THE COURT: Okay, is that in the rule --

MS. CARBO: We --

THE COURT: -- evidence rules somewhere?

MS. CARBO: I have cases, Your Honor. We've cited --

THE COURT: Okay.

MS. CARBO: Bergoine [phonetic] Land Development, Inc., v. Knight [phonetic], 307 S.2d 240; Abichandani [phonetic] vs. Related Homes of Tampa, 696 S.2d 802; Costacos [phonetic] vs. Johnson, 85 S.2d 594. In order -- the transcript in question doesn't shed light on the issues currently before the Court in this matter. So, in addition to the inadmissibility, it's irrelevant and immaterial.

Judicial notice was not intended to fill a vacuum created by the failure of a party to prove an essential fact. Moore [phonetic] vs. Chaktowachi [phonetic] Electric Coop, 196 S.2d 788; Huff [phonetic] vs. State, 495 S.2d 145. There's absolutely no reason for this Court to go off on a tangent to something completely unrelated to the case at issue. If he is off on a witch hunt, let him do it in Judge Miller's case. There's no place or proper forum in this case, Your Honor.

MR. JACOBS: So, Your Honor, I think that the rule specifically says the Court shall take judicial notice if I filed a notice, which I did. The rule says you shall take judicial notice of what's in a court file. We're dealing with --

THE COURT: What rule did you file it under?

MR. JACOBS: The judicial notice rule in my computer --

THE COURT: Well, there's several different ones.

MR. JACOBS: It's the --

THE COURT: Some are mandatory, some are discretionary.

MR. JACOBS: It's a -- it would be discretionary except for I filed the notice, which makes it mandatory.

THE COURT: Well --

MR. JACOBS: That's the way the rule works, if Your Honor looks at the rule.

THE COURT: Well, 90.201, the Court shall. 90.202, matters which may. So, I'm trying to find out which rule you're thinking you're filing it under.

MS. CARBO: This is a matter which may, not shall, Your Honor.

MR. JACOBS: Your Honor, if you look at the rule, what it says is --

THE COURT: Which one?

MR. JACOBS: The first rule.

THE COURT: 90.201, shall?

MR. JACOBS: The shall.

THE COURT: Must be?

MR. JACOBS: It says the Court shall take judicial notice if there was notice of the things that were [unintelligible] in the second --

MS. CARBO: Unless we file objection, which we've done.

MR. JACOBS: I don't think that that's --

THE COURT: All right, rule 90.203 says -- it's actually a statute. "Compulsory judicial notice upon request. The Court shall take judicial notice of any matter in 90.202 when a party requests it and gives each adverse party timely written notice of the request, proof of which was filed with the Court to enable the adverse party to prepare to meet the request and furnish to the Court with

sufficient information to enable it to take judicial notice of the matter." And under 202, what -- which subsection are you --

MR. JACOBS: Court files.

THE COURT: Records, that was number six. Records of any court of the state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States. So --

MR. JACOBS: So, we gave notice, written notice filed with the Court on the 16th. They responded. So they had time. And now that they've responded, it is a shell. I'm asking the Court to take judicial notice of --

THE COURT: Give me a response to that. This is a record of a federal court. They've requested notice. They've given timely notice for you to respond. You have responded. So, relevance, I'm overruling that objection to take judicial notice. What were the others?

MS. CARBO: Your Honor, he is citing court proceedings in which none of the parties here today were parties and were not given an opportunity to inquire as to any of the issues in those proceedings. I believe, Your Honor, that it's improper to take judicial notice of proceedings in which we were not parties.

THE COURT: Okay. Then, I'm going to overrule the objection. I will take judicial notice of that answer. And

the particular -- there may be other portions of the answer, but the paragraph that was read to me. Number what?

MR. JACOBS: Number 43.

THE COURT: Forty-three, as I -- that was just presented to me. And that calls into question whether the Plaintiff did anything wrong or not with respect to the filing of this assignment of mortgage marked Court Exhibit 8 for identification here today.

MS. CARBO: Your Honor, I'm sorry; I'd like to also point out that that answer was filed long after the assignment was prepared.

THE COURT: That may be in the response to come. There may be nothing wrong with filing the assignment. That's a hearing for another day.

MS. CARBO: Right.

MR. JACOBS: It was produced in this case yesterday to me.

THE COURT: There's certainly a question about it, a good question about it. But a lot of good questions have good answers. So, now, the Affidavit of Indebtedness was filed in this case, Court Exhibit 2 for identification at the hearing today. And that does have the allonge, which by statute should be attached to any note. But now the note being offered without the allonge, correct?

MS. CARBO: Well, Your Honor, that was offered --

THE COURT: That's enough to call into question the Plaintiff's conduct.

MS. CARBO: The note was -- the note that's attached to the Complaint did not have an allonge. The note submitted to the Court at trial, the original, does not have an allonge, Your Honor. So, it's not being submitted with an allonge at this time.

THE COURT: Well, but it was submitted -- attached to an affidavit --

MS. CARBO: That's correct.

THE COURT: -- of indebtedness. So, the fact that the Plaintiff is submitting documents of a questionable nature is what I think a rule to show cause is designed to ferret out. The other document -- what was -- oh, we already said that. The loan schedule, loan mortgage schedule?

MS. CARBO: Mortgage Loan Schedule.

THE COURT: Mortgage Loan Schedule, thank you. It's getting late, or maybe it's just a long hearing. That was redacted and given to me. I will have that marked. It's very small. But I looked and compared it to the larger version. It is the same. So we'll mark that as another Court exhibit here today.

MS. CARBO: And may I take the larger version?

THE COURT: That was produced in this case. So, you need to see the larger version?

MS. CARBO: There's other -- I'd like to take it back. There's other loan --

THE COURT: I'm going to hold onto this. You know what? I looked at it. I verified it.

MS. CARBO: That's --

THE COURT: You can have that back.

MS. CARBO: Thank you, because there's other rows.

THE COURT: So, nobody is going to seal it then.

MS. CARBO: There's other loans.

THE COURT: That's easier.

MS. CARBO: I don't want to leave that -- yeah.

THE COURT: That's fine. That's fine.

MS. CARBO: Okay. Thank you.

THE COURT: I don't need it.

MR. JACOBS: Does that have an exhibit number?

MS. CARBO: I'm sorry; that was --

THE COURT: Mr. Jacobs, I don't need that larger sheet for any reason in your opinion, do I? It's been marked for identification.

MR. JACOBS: The one that they have redacted with all the columns is what I think is --

THE COURT: Correct.

MR. JACOBS: It's fine. So, Your Honor, I just wanted to make --

THE COURT: So, Exhibit No. 9. I'm going to direct

that Plaintiffs keep Exhibit No. 9 intact in their possession --

MS. CARBO: I will do so.

THE COURT: -- if it ever needs to be produced again in this case.

MS. CARBO: Thank you, Your Honor.

MR. JACOBS: So, Your Honor, I just want to make sure the Court is aware there are a number of Judicial Notices that we filed. Are all things that were part of court files then filed in other cases all dealing this same issue, many of them dealing with the same law firms that we're dealing with. They're all Bank of New York Mellon and/or Bank of America cases.

THE COURT: Well, we need to go through them one by one if you want me to do that.

MR. JACOBS: So, that's fine -- I'd start with the Request for Judicial Notice of the transcript of Maria Gardner. This is in the -- this was in all of the cases that were taken pursuant to your Court's order with Judge Stone's order and Judge Blake's order back in 2014. This is the deposition of Bank of America's and -- Bank of America's corporate rep saying every note was imaged and endorsed within days of origination. So that would conflict with this allonge we submit was created years later.

THE COURT: Okay. Response to that request for

judicial notice?

MS. CARBO: Your Honor, [unintelligible] there's so many here.

THE COURT: I know. Let's take a short break. Couple minutes.

(OFF THE RECORD)

(ON THE RECORD)

THE COURT: Now you've had a chance to find what we're talking about?

MS. CARBO: Yes, Your Honor.

THE COURT: Excellent.

MS. CARBO: The opposition that we filed states that the use of prior testimony is only allowed in an instance where the [unintelligible] is unavailable and only when there is testimony taken in the course of judicial proceeding, the party against whom the evidence is being offered was a party in the former proceeding, the issues in the prior case are similar to those at the case at hand, and substantial reason is shown why the original witness is not available. And we've cited Ibar [phonetic] vs. State, 938 S.2d 451. And, Your Honor, it would -- I submit that taking judicial notice of this transcript would not shed light on any of the issues currently before the Court in this matter. Again, Defense is trying to fill a vacuum created by the failure of a party to prove an essentially fact. And I cited

before Moore vs. Chakowatci [phonetic] Electric Coop and Huff vs. State. Your Honor, a prior transcript of a deposition of a party in a prior case, there simply has been no connection as to why it should be submitted in this case or why it's relevant to this case.

MR. JACOBS: So, Your Honor, I think what counsel is not fairly describing about the deposition is this is not just a deposition of a party. This is a corporate record -- corporate representative's deposition for Bank of New York Mellon and Bank of America. So, that is an admission. So, therefore there's no hearsay issue. It is the statement of both Bank of New York Mellon, the Plaintiff in this case, and Bank of America.

THE COURT: How is it a statement of the Bank of New York Mellon?

MR. JACOBS: Because Maria Gardner was produced as the corporate representative for Bank of New York Mellon and Bank of America in 14 different cases.

THE COURT: Is that in the transcript?

MR. JACOBS: Yes.

THE COURT: That you're asking me to take --

MR. JACOBS: Yes.

THE COURT: -- judicial notice of? Can you read the page and line that talks about --

MR. JACOBS: Sure.

THE COURT: -- her connection to this Plaintiff?

MR. JACOBS: Give me one second.

MS. CARBO: Actually, Your Honor, the witness in that transcript identified herself as an employee of Recon Trust, who is not a party to this action and who was not the lender named on the subject note. It's completely irrelevant to these proceedings, Your Honor. It's a completely different party that was deposed.

MR. JACOBS: I mean, I know that the Liebler Gonzalez and Portuando law firm was the law firm that was working with me in those depos. And I'm sure that they would be willing to acknowledge that, yes, they were producing them -- her as the witness for both the Bank of New York Mellon and Bank of America. Meanwhile, I'll keep looking to find that language in the -- here, Your Honor. All right, so there's a question --

THE COURT: What page?

MR. JACOBS: I'm on page 19.

THE COURT: Line? I'm sorry; 19?

MR. JACOBS: Right, on page 19 of the transcript. All right, so, here's the question, "On Ms. Mansa's [phonetic] letter of November 23rd, 2014, on page 12 -- page 3, there are 12 cases. Are there court orders associated with each of those 12 cases?" "No, there are not." "All right, so are the court orders that you were about to present

to us related to any of those 12 cases?" And then we go talking about the different orders that have happened in different cases. And I'm just trying to look for the -- okay, hold on.

THE COURT: Let -- take a moment. Off the record.

(OFF THE RECORD)

(ON THE RECORD)

THE COURT: So, Your Honor, here's a -- at page 18, Ms. Coba [phonetic], who is an attorney for Liebler Gonzalez Portuando says, "Thank you, Your Honor, as Ms. Manzo [phonetic] and other Liebler Gonzalez Portuando attorney pointed out, aside from the Jenny Rodriguez order," which was the Bank of America vs. Rodriguez that Your Honor had entered orders compelling this deposition to go forward, "which caused the deposition to occur on this date, you're also here on orders issued in the Bank of America vs. Amida Frey [phonetic] matter." Gives the case number. And that case, Judge Treywick [phonetic] ordered the Plaintiff to produce -- to assist in the identification of a representative of the master document custodian with the most knowledge of the collateral file for this loan. As Ms. Mazna [phonetic] related, that was complied with. And in February 2013, Ms. Gardner was made available to the Defense Counsel for deposition. Due to a conflict tin the schedule we decided to [unintelligible] the deposition at that time. Additionally,

in the case Bank of New York vs. Richard von Hauman [phonetic] --

THE COURT: I'm sorry, I didn't get the connection between Bank of America and her for that deposition.

MR. JACOBS: She was being produced pursuant to --

THE COURT: But read it again, because --

MR. JACOBS: She --

THE COURT: Some court order somewhere. I lost the last couple words of --

MR. JACOBS: So, there is the --

THE COURT: You trailed off on some --

MR. JACOBS: The Bank of America vs. Jenny Rodriguez order, that is the order that Your Honor entered compelling them to produce the corporate representative for the document custodian who knows about the endorsements.

THE COURT: Was she there in compliance with that order?

MR. JACOBS: She was there in -- what she says is that that's what caused the deposition to occur on this date.

THE COURT: Read that section that you say --

MR. JACOBS: "As Ms. Mesa [phonetic] pointed out, aside from the Jenny Rodriguez order," your order, "which caused this deposition to occur on this date, we are also here on orders issued in the Bank of America vs. Amida Frey matter, which Judge Treywick ordered the Plaintiff to produce

-- to assist in the identification of a representative of the master document custodian with the most knowledge of the collateral file for this loan."

THE COURT: Okay, what's the case number of the order that you think she was there in compliance on that you referred to as my case?

MR. JACOBS: I have the order right here. This is the -- this is the order which she --

THE COURT: Did you want to look at this?

MR. JACOBS: I gave her a copy.

MS. CARBO: Your Honor, I don't see the relevance of this order at all and --

MR. JACOBS: This is --

THE COURT: Well, I'm trying to see if that witness was there that day as a representative --

MS. CARBO: And I was just --

THE COURT: -- in part --

MS. CARBO: I was just informed --

THE COURT: -- of Bank of America.

MS. CARBO: -- that order was vacated. So, I don't see the relevance of that at all. And the fact of the matter remains that this was a representative of Recon, who is not a party here. She was not appearing --

MR. JACOBS: So, all right.

THE COURT: Wait. Hold on. I'm looking at this

order. What, do I order something at the end of this?

MR. JACOBS: And there was a request for judicial notice with this order, as well.

THE COURT: Who was the witness in that deposition?

MR. JACOBS: Maria Gardner. She was produced as the corporate rep in 13 cases.

THE COURT: Okay, hold on.

MR. JACOBS: Fourteen cases.

MS. CARBO: As a representative of Recon. She was employed by Recon, not --

MR. JACOBS: She --

MS. CARBO: -- any party here.

MR. JACOBS: She was produced as the corporate rep for Bank of New York Mellon and Bank of America. She was an employee of Recon which is a wholly owned subsidiary of Bank of America that was doing the document restraining order for Bank of New York Mellon.

MS. CARBO: Again, Bank of America is not in this action. Your Honor, I think we're losing sight of the whole reason for judicial notice. Judicial notice was for the courts to take notice of certain facts without proof because they're already known to the Court.

I can cite US Hammers [phonetic], 241 Federal 542. "Judicial notice should be done with great caution, only to matters of common and general knowledge authoritatively

established and free from doubt or uncertainty." Nielson vs. Carney Gross [phonetic], 159 S.2d 489. "The caution arises from the belief that taking evidence subject to certain safeguards is the best way to resolve disputes. But when a matter is judicially noticed, it's taken as true without the necessity of offering evidence by a party who ordinarily should have done so. Historically, it applies to self-evident truths that no reasonable person could question, truisms that approach platitudes or banalities." Harty vs. Johns Mandal Sales Corp [phonetic], 681 Half [phonetic] 2d 334.

Your Honor, this simply is not a transcript of a party not a party in this proceeding where the issues may have been completely different and were completely different. The issues in that case from that order appear to be discovery violations. That hasn't occurred here, Your Honor.

MR. JACOBS: Your Honor, at paragraph 23 --

THE COURT: I just found paragraph 23. It says, "Accordingly, this Court hereby orders the Plaintiff," and in the case 2013-30447, which has been referred to as my case because I guess I was the judge on it at that time. That case, Bank of America vs. Jenny Rodriguez, it says, "Accordingly, this Court hereby orders the Plaintiff," which -- in this case, Bank of America, "to produce Ms. Garner for deposition as its corporate representative for the first area

of inquiry at Defense Counsel's office." So, I'm not sure what the first area of inquiry is.

MR. JACOBS: The endorsements.

THE COURT: Then read that sentence again --

MR. JACOBS: So --

THE COURT: -- out of the deposition.

MR. JACOBS: At the deposition, they acknowledge that the witness was there pursuant to that order which caused the deposition to occur on this date. There was also an order from Bank of America vs. Anida Frey where Judge Treywick ordered the Plaintiff to produce -- to assist in the identification of a representative on the master document custodian for the Plaintiff with the most knowledge of the collateral filed for the loan.

THE COURT: Okay. I'm satisfied that the -- that that representative was there on behalf of Bank of America. And I will take judicial notice of what that person said on behalf of Bank of America at that time.

MR. JACOBS: And just to --

THE COURT: And only insofar as it will be for an Order to Show Cause as against Bank of New York Mellon --

MR. JACOBS: And just to clarify --

THE COURT: -- in connection with the -- I guess, are we still talking about the allonge?

MR. JACOBS: This is the endorsement allonges, yes.

And just to clarify, Your Honor, it also goes on to say, "Additionally, in the case of Bank of New York vs. Richard von Hauman [phonetic]," with a Broward case number, "Ms. Gardner is also here to depose as the person with the most knowledge of the first area of inquiry we have detailed in the correspondence sent to Mr. Jacobs." And they have -- they describe the list of cases.

So what I'm trying to make abundantly clear to the Court is Your Honor had said to Bank of America, "Produce a corporate rep to deal with the question of how the endorsement is added." Judge Stone said to Bank of New York Mellon, "Produce a corporate rep to tell how the endorsements were added." Bank of America and Bank of New York Mellon both produced Maria Gardner, who happens to be a senior executive at Recon Trust as their corporate representative. So, these are the statements of the Servicer and the Trustee related to these endorsements and how they got there. That's why they are all admissions.

THE COURT: Well, I'm going to overrule the objection and take judicial notice of that. At the appropriate time, it'll be considered as evidence.

MR. JACOBS: Okay. So, there's also the Linda Dimartini [phonetic] -- Request for Judicial Notice of the transcript of Linda Dimartini in Kemp [phonetic] vs. Countrywide. So this is a -- I have copies for Counsel that

I'll pass up to the Court, too. But this is what I'm talking about, Kemp vs. Countrywide.

So, Your Honor, this -- what's happening in this case is Kemp vs. Countrywide was a trial that was done in New Jersey bankruptcy court before the chief judge of the New Jersey bankruptcy court. And Ms. Dimartini was the senior team leader for Bank of America; in that forum it was BAC Home Loan Servicing.

And she was being -- the issue in Kemp was the bank had filed a note without any endorsement or allonge on behalf of Bank of New York Mellon and then produced at trial a copy of the note with an allonge that had an endorsement from Countrywide.

And the testimony that Ms. Gardner gave -- or that Ms. Dimartini gave said, "I'm the senior supervisor. I've been doing this work for -- since 2006." This was the testimony of 2009. "I have never seen a note with a blank endorsement on it. Anytime that there was ever a question where they wanted to see a note, the procedure was to create an allonge and attach that to the note. That was our procedure."

So, that would be additional evidence showing that the testimony of Bank of New York Mellon and Bank of America -- that every note was imaged and endorsed within days of [unintelligible] with these rubber stamps couldn't be true, because Ms. Dimartini testified in federal court that the

three years she did the work, she never saw any note with an endorsement on it. And any note that needed an endorsement, they prepared an allonge.

And the allonge was what was presented to the Court, which is exactly what we have here. We have an allonge that is being presented that wasn't attached to the original complaint, wasn't attached at the trial, and isn't attached today. But it was created at some point, which is all part of the -- why I'm saying that the Court should look at this as not separating Bank of America and Bank of New York. They're both doing the same thing. So, that was another Request for Judicial Notice that we had asked for.

THE COURT: Response to the Request for Judicial Notice of that deposition --

MS. CARBO: Your Honor, the way this --

THE COURT: -- or testimony? I'm sorry; that was trial testimony, wasn't it?

MS. CARBO: Yes, a trial --

THE COURT: Yeah.

MS. CARBO: Not trial. A --

MR. JACOBS: No, it was trial testimony.

MS. CARBO: I think it was --

THE COURT: No, it says -- well, it says deposition transcript.

MR. JACOBS: It was trial transcript. I will

correct that on it.

THE COURT: Okay. The request says -- okay.

MR. JACOBS: It was trial testimony, according to the --

THE COURT: In looking at the, yes, transcript of hearing before the Honorable Judith Wizmur, W-I-Z-M-U-R, United States bankruptcy judge. Okay.

MS. CARBO: Your Honor, again, this witness identified herself as an employee as Bank of America, who is not a party to this action, not a Lender on the subject Note, is not the Servicer of the loan at this time, and it's proposed that her testimony can shed no light on the issues in this action.

The transcript is inadmissible hearsay. It's a statement made. It's -- we can -- we were not given the opportunity to cross-examine this witness. I believe this one is actually in another state, a New Jersey case, Your Honor. It's irrelevant hearsay, and hearsay within hearsay, which is inadmissible.

He's trying to authenticate the recorded statement, but there's nothing to authenticate that statement. There's nothing under the admissibility of business records, under hearsay, to authenticate it.

It's from another case. The Court can't take judicial notice of records in a different case. Your Honor, in order

to prove a matter contained in the record of a case other than the one being litigated, this party must offer the other court file or certified copies. No certified copies have been submitted of any of these documents. How do we know that these are actual, true copies of what was actually in the court file? How do we know they were even in the court file, Your Honor? They may not have even been in the court file. These may have just been transcripts that were in the possession of Defendant.

The use of prior testimony is only allowed where the declarant is unavailable, the testimony taking the course of a digital proceeding. The party against whom the evidence is being offered was a party in the former proceeding, which is not the case in this transcript. The issues are similar to those in the case at hand. They are not what has been posited. And we do not have a case where an allonge appeared and is being offered in evidence. We're not offering this allonge in evidence.

And again, there's no reason shown why the original witness is not available. This -- if he's going to try to try this on deposition transcripts, Your Honor, it's completely improper. We're going to have witnesses. He can cross-examine our witnesses to his heart's delight. But to permit these -- this trial to be done on transcripts of files where we were never permitted cross-examination is completely

improper, Your Honor. The facts contained therein are not facts of which a court should take judicial notice.

Yes, you can take judicial notice that the depositions were taken. But whatever transpired within those transcripts is not something that we were given the opportunity -- my client was given the opportunity to oppose, to question upon, and I submit --

THE COURT: Is that a --

MS. CARBO: -- it's completely improper.

THE COURT: How is this admissible?

MR. JACOBS: All right. It's admissible as a statement by a party opponent.

THE COURT: Well --

MS. CARBO: Well --

MR. JACOBS: You have Bank of America, which you had, Your Honor --

THE COURT: But they're not a party to the case.

MR. JACOBS: That's true.

THE COURT: You keep --

MR. JACOBS: But you have -- if I am -- if the Trust is the party to the case and the Trust operates through Bank of America and Bank of America's statements are admissions by a party opponent, they are the agent. So, it is the -- it -- I -- you are talking now -- whether or not you can have a party that gives this testimony -- that -- you

have basically the -- Bank of America is the one pulling all the levers and putting all the evidence before the Court. They're the ones that did all this. That's what these depositions show. And they also show that they are not being truthful about what they did, because Ms. Dimartini's testimony, speaking for Bank of America, said on a Bank of New York Mellon loan -- says, "I never saw any endorsements on any notes ever, that all that -- any time I needed to have an endorsement, I would create an allonge for litigation purposes." That's her testimony.

So, because of that, that is a statement by a party opponent. And I think that if I am the principal and my agent is out there making statements, I am bound by the statement of my agent. So, Bank of America is making statements. And it should be noted that Bank of America and Bank of New York Mellon are making -- using the same witness to make the same statements. Even more so, it's not like we're dealing with --

THE COURT: Well, that case was different. This case does not involve my -- the current case we're sitting in right now and you're moving for show -- to show cause does -- as far as I know, does not mention Bank of America.

MR. JACOBS: No. What --

THE COURT: They're not a party to this case nor are they identified even as a servicing agent in this case.

MR. JACOBS: What Ms. Dimartini says is that Bank of New York, which is the precursor of Bank of New York Mellon, was being -- having their loans serviced by Bank of America, BAC Home Loan Servicing. And the process was to get the note, which -- it never had any endorsements on it, and then endorse the note with an -- using an allonge. That was the system in place.

THE COURT: But it's not an admission of a party opponent in this -- for this case.

MR. JACOBS: If she is -- it's the same dynamic, Your Honor. Bank of New York Mellon was the Plaintiff. Bank of New York Mellon was the party that was trying to get relief in the federal court. That's why she did it on behalf of Bank of New York.

THE COURT: I see Countrywide Home Loans as a party in the --

MR. JACOBS: That's true. And remember, Your Honor, this is all by design, to make it harder to understand what's happening here. But what --

MS. CARBO: Objection, Your Honor.

MR. JACOBS: -- she says is that the -- that she's working for Bank of New York. This is a --

THE COURT: No, she says, "I'm employed by Bank of America."

MS. CARBO: America.

MR. JACOBS: Right, but she's -- she does talk about the Bank of New York. Let me find the page for you, Your Honor. Give me a second.

THE COURT: How are you going to establish in this case -- what facts do we have in this case to establish that Bank of America is -- was servicing this loan at any point in time?

MR. JACOBS: So, you have the Bank of America lawyers --

THE COURT: Well --

MR. JACOBS: -- who are subpoenaed to be here to represent the Bank of America witness who was subpoenaed to be here because Bank of America was servicing the loan until they service-transferred it sometime after the case got filed, to Bank of -- to this new servicer. But when you look at Dimartini, page eight of the cross, she says, "Today, who is the owner of the loan?" Answer, "Bank of New York." So, you know, as Trustee for the Certificate Holder, C. Webbs [phonetic] Asset-Backed Security Series --

THE COURT: I'm sorry; I missed that.

MR. JACOBS: Go to page eight of the cross-examination.

THE COURT: In that -- in the trial transcript?

MR. JACOBS: In the trial -- it starts actually on page --

THE COURT: No, I need something in this case that says Bank of America is the Servicer. Is it in the pre-trial catalog that this person coming here --

MR. JACOBS: Let me find for you the --

THE COURT: Is it the Servicer of this loan?

MR. JACOBS: Your Honor, here is the --

THE COURT: I just don't know why -- I mean, even if it's true and even if it's obvious, there's no evidentiary link.

MR. JACOBS: Well, here's a -- one of the exhibits produced to me is a letter dated October 16th, 2009, from Bank of America talking about a payment adjustment notice. So, Bank of America was absolutely servicing this loan. We have payment histories from Bank of America that start in 2006 and go through 2012.

THE COURT: Those were tendered to you in this case?

MR. JACOBS: In this case, Bank of America --

THE COURT: May I see?

MR. JACOBS: -- payment histories.

MS. CARBO: Yeah, Bank of America did --

MR. JACOBS: So Bank of America had this --

MS. CARBO: [Unintelligible] --

MR. JACOBS: Bank of America was the Servicer of this loan through 2012.

MS. CARBO: They serviced it, but they're not a party --

THE COURT: [Unintelligible].

MR. JACOBS: -- in this proceeding, Your Honor. And that's the distinction.

MR. JACOBS: Your Honor, you also have these details that show the -- there's document details. Some of the screenshots, we'll be asking for more of. But it's -- Bank of America was the one who's been holding the Note and has been moving it around to Recon Trust, its wholly owned subsidiary. So, Bank of America is the mouthpiece in court of the Trust for this loan. That's how it works.

THE COURT: So, it would appear that Bank of America is the party moving the paper around.

MR. JACOBS: They're the ones creating all the evidence.

THE COURT: And --

MS. CARBO: During the time that --

THE COURT: -- they are the ones to testify --

MS. CARBO: -- they serviced the loan.

THE COURT: -- at trial. And so you want me to take another Bank of America rep's testimony offered in bankruptcy court for the truth of the matter they talk about.

MR. JACOBS: For -- it wouldn't be hearsay because it's a statement by a party -- in that case, she said -- at

page seven, she says --

THE COURT: Okay. I find -- all right. I find there is sufficient indication that Bank of America was the agent of this Plaintiff in our case for the purpose of handling all this paper. And therefore, their representative's statements will be binding, just as the testimony that was going to be given in today's trial by the Bank of America representative would have been competent to satisfy this Plaintiff's evidentiary burden. So, I'll take judicial notice.

MS. CARBO: Your Honor?

MR. JACOBS: So, Your Honor --

THE COURT: Please take some of this stuff back.

MR. JACOBS: Your Honor.

THE COURT: And I can't [unintelligible] --

MS. CARBO: It's not clear to me as to what issues and what part of that transcript and what part of that deposition. I don't understand what facts he's trying to establish --

THE COURT: It was already read into the record.

MS. CARBO: -- through that testimony.

THE COURT: And right now this is not the hearing, the show cause hearing. This is just enough to get me to issue the order, I believe.

MR. JACOBS: So, Your Honor, there's --

THE COURT: And now we're talking about what evidence may come in. At least, I'm addressing these --

MS. CARBO: I --

MR. JACOBS: So, Your Honor, I'm asking you to take --

THE COURT: -- Requests for Judicial Notice.

MS. CARBO: Excuse me, is this all for the purposes of the Order to Show Cause hearing? Because that's not my understanding. Was this --

MR. JACOBS: Yeah.

MS. CARBO: -- for the purposes of the trial --

MR. JACOBS: This is not the trial.

MS. CARBO: -- or the Order to Show Cause?

MR. JACOBS: This is for the Order -- we're still on the Order for Cause hearing.

THE COURT: We're still on the Motion for Order to Show Cause.

MR. JACOBS: So, Your Honor, I would also ask the Court to take judicial notice of the Response in Discovery Statement filed by Bank of America in the False Claims Act case and the --

MS. CARBO: The -- I'm sorry; in what case?

MR. JACOBS: In the US Exrial [phonetic] Bruce Jacobs vs. Bank of America court. So, in that case, Your Honor, the judge had required there to be -- both parties to

talk about the discovery that -- problems that we were having. And one of the things that the -- that we were dealing with was we were pointing out that the -- in one of our cases there was a loss no count [phonetic] case. They had no images on the note ever. They didn't -- with any endorsements on it. It looks like it was being endorsed by David Stern's law office, because that's the only party that ever had a copy of the note with an endorsement on it.

And what was the response that was given in the case was that they say that "Plaintiff knows full well that an endorsed copy was filed in 2010, prior to the National Mortgage Settlement.

"Second, the EMB Trust files produced to Plaintiff show that Recon Trust received the note in 2003. And Defendant's uncontroverted sworn testimony, which Plaintiff has, is that Recon Trust endorsed the notes shortly thereafter receipt.

"Third, as Defendant's Interrogatory Responses explain, Defendant's practice prior to March of 2011 was to image notes before endorsement, which at times led to unendorsed copies of notes being filed initially in foreclosure actions."

So, this is a statement they made to a federal judge, saying that all the notes were imaged and then endorsed within days or origination, which is also what Ms. Gardner says and what Ms. Solanger [phonetic] says. And the point --

the reason or it is, A, you have Ms. Dimartini's testimony, who says, "I never saw any notes with a rubber-stamped endorsement on it in the years I worked, from 2006 to 2009."

And B, we have, in the other cases that we're asking the Court to take Judicial Notice of, they have produced to us images of notes taken months and years after origination that have no endorsements on it, which means that they couldn't have been -- there is no images within days of origination and that there is images months and years later that are not endorsed, which shows that they were not being truthful with the federal court about these -- the same exact endorsement that appears --

THE COURT: Yeah, but you spring-boarded off into other unnamed cases.

MR. JACOBS: Well --

THE COURT: So, I'm not going there with you.

MR. JACOBS: This is a -- the testimony from Ms. Gardner is any note that has that endorsement on it, any one in the country, was put on within days of origination by someone who worked for Recon Trust; that the note was received, it was imaged, and then it was endorsed within days of origination.

That's the party line that all the executives have given. And all of those statements are false. And the reason we know they're false is because they have no images

of any of the notes within days of origination.

THE COURT: Maybe I'm losing track of -- what are you trying to prove this for, for this case?

MR. JACOBS: In this case, you have an allonge that has an endorsement on it.

THE COURT: That wasn't on, then was on, then wasn't on?

MR. JACOBS: So --

THE COURT: Do you want to prove that it was on or wasn't on?

MR. JACOBS: What I'm trying to prove is that they added that endorsement to that allonge after Countrywide went out of business.

THE COURT: And you think that by doing that in opposition to a Motion for Summary Judgment when they filed their Affidavit, that that's enough of unclean hands --

MR. JACOBS: So, here's what --

THE COURT: -- to stop them from proceeding in this case?

MR. JACOBS: Let me ask you --

THE COURT: Part of the big picture?

MR. JACOBS: Here's the analogy I give. If I write you a check and you die, God forbid, and Plaintiff's counsel finds that check, and she signs your name to the back of it and endorses it to herself and then has Liebler Gonzalez and

Portuando prepare a official document, records in the public record that says, "Of course Judge Miller gave this note, this negotiable instrument, to Plaintiff's counsel for her to cash it," and all of it was a lie by senior executives -- if that's what's happening here, which is what's happening here, then what you're seeing is, as they're being told by the National Mortgage Settlement -- promising to only use competent evidence in foreclosures, they are preparing these back-dated assignments, which they are back-dating through the perjury of their senior executives and covering the whole thing up, even to the point of destroying evidence.

THE COURT: Why does that matter in this case?

MR. JACOBS: Because this -- they're trying to cover up the fact that that endorsement was added years after Countrywide went out of business, which would make it invalid and would make -- that's the problem with all these [unintelligible].

MS. CARBO: We're not relying on it.

THE COURT: See, they're not trying to use the endorsement in this case.

MR. JACOBS: But they did already. They filed it on a --

THE COURT: Does the fact that they filed it attached to the Note do something to the merits of this case one way or the other?

MR. JACOBS: Here's what I would tell you, Your Honor. If I didn't come here raising the issues that I -- you'll never know now. But what you -- what you can reasonably presume is if I didn't come here and say, "Judge, all this stuff is wrong," they would've -- they could have put all of it into evidence. They certainly put it into the record in the case. They didn't present that at summary judgment. And they didn't have any of the other documents that they're telling you -- they didn't attach to the Summary Judgment Motion the Pooling and Servicing Agreement and the Mortgage Loan Schedule. They didn't attach the Assignment of Mortgage. They just attached the Note with the blank endorsement on the allonge. And that is misconduct, because they know that that's not competent evidence. And that is just the third --

THE COURT: So that misconduct, in your opinion and what you'd like the Court to believe, is enough to find that they're in court with unclean hands and shouldn't --

MR. JACOBS: I think that --

THE COURT: -- be allowed to get an equitable remedy.

MR. JACOBS: I think that the Karen Graham robo-signed Assignment of Mortgage attached to the Complaint is unclean hands. I think the production of a Mortgage Loan Schedule that can't be the Mortgage Loan Schedule is unclean

hands. I think the production of an endorsement that is added years after the company went out of business and then backdated by perjury is --

MR. JACOBS: Objection, Your Honor; none of that is evidence.

MR. JACOBS: -- unclean hands. All three of them together --

MS. CARBO: None of those facts --

MR. JACOBS: -- would be reason for the Court to issue the Order to Show Cause.

THE COURT: Okay.

THE COURT REPORTER: Your Honor, I need to switch out disk.

THE COURT: You may.

THE COURT REPORTER: Thank you.

(OFF THE RECORD)

(ON THE RECORD)

MS. CARBO: Your Honor, I'd just like to reiterate for the record that all of these motions were untimely under the order setting this for trial. They were not notice for hearing today. And I believe that it's improper to keep going forward on all of these motions. I wanted to address the fact of the missing allonge and the problem -- quite honestly, Your Honor, the allonge is lost. We couldn't rely upon it even if we wanted to. And that's the reason we are

not proceeding with the allonge at this point. We would've --

THE COURT: Well, I think that's the kind of thing you would say if we get to the show cause hearing.

MS. CARBO: Yes, Your Honor, but is losing an allonge misconduct? Because that's what it appears he's --

THE COURT: I don't know.

MS. CARBO: -- alleging [unintelligible].

THE COURT: Now are you testifying?

MS. CARBO: Well, Your Honor --

THE COURT: You see, that's the problem I'm having.

MS. CARBO: What's good for the goose should be good for the gander.

THE COURT: No, no, this is just -- is there enough to go forward with a hearing? That's what I'm dealing with. I'm not trying to decide anything together --

MS. CARBO: Yes, I understand.

THE COURT: -- except whether we should have an evidentiary hearing or not.

MS. CARBO: I just don't believe that this is the proper case.

THE COURT: Believe me, I'm not looking forward to a hearing.

MS. CARBO: I don't believe this is the proper case. We're not relying upon it. The factual issues are --

THE COURT: I understand.

MS. CARBO: -- different.

THE COURT: I understand, but that's --

MR. JACOBS: Your Honor --

THE COURT: We're going down the road. And let's see if -- where we end up.

MR. JACOBS: So, Your Honor, the next Request for -- so, is Your Honor taking the judicial notice of the Response that they filed in the federal case that lays out their --

THE COURT: Well, did I get a full response to that yet?

MS. CARBO: No, I don't believe you did, Your Honor.

THE COURT: I did not.

MS. CARBO: I would like to reiterate the fact that the parties are different in that case. The loan that's the subject of this action was originated in 2006. It's unrelated to the loans that were at issue in that case. Again, the Court -- there were not certified copies of any of these documents provided to the Court. The -- they are not -- they do not contain adjudicative facts which would assist the Court in making its determination in this particular proceeding.

THE COURT: Got any cases about depositions or

trial testimony in previous proceedings by the agent of the plaintiff or a party not being used by way of judicial notice? Is there a case on that or just a lot of --

MS. CARBO: There are cases. And I did cite them, Your Honor.

THE COURT: Yeah, but you -- I don't know about the facts of those cases.

MS. CARBO: It states a trial court -- if you'd like to see the cases, I have them, Your Honor.

THE COURT: Well, but what were the facts? Anything like this, where somebody was trying to -- I'll tell you what. I don't even think I need to go there right now. I think it's sufficient at least to get me to decide -- for me to use to decide whether to have a hearing or not. Whether they -- whether it gets used at the hearing later may be a different issue. Maybe not. But do you have anything like that? Anything on a show cause or a contempt order and what can -- what evidence can be used at that kind of hearing?

MS. CARBO: Well, Your Honor --

THE COURT: Because it does say, "On the Court's own motion." So, if the court smells a rat -- it's almost like if the Court smells a rat then you can go looking for one. But I'm not doing that. And I --

MS. CARBO: Well, there are --

THE COURT: -- don't smell a rat yet. All I see are some interesting questions.

MS. CARBO: The case law does state that a motion for indirect criminal contempt must be done by an affidavit attesting to personal knowledge, and there is no such affidavit that was submitted in this case. Everything that has been submitted here is hearsay. I have the cases cited in our opposition. The Order to Show case was never --

THE COURT: Well, we've already been down that road. No, I'm satisfied. We'll use that. I'll take judicial notice --

MR. JACOBS: So --

THE COURT: -- of that for today's purposes.

MR. JACOBS: The next thing I have, Your Honor, is Request for Judicial Notice of the -- there was an omnibus order that was entered in the Key-10 -- sorry. There was an Order to Show Cause that was -- that -- well, let me do this thing right.

MR. CORDANO: Your Honor, can I just say --

MR. JACOBS: [Unintelligible], Your Honor, there is an omnibus order that was entered --

MR. CORDANO: Your Honor, may I say a quick thing? And I'll leave and I won't say anything else, Your Honor, please.

THE COURT: Go right ahead.

MR. CORDANO: All right. Okay, limited appearance, Bank of America for the witness. My concern is that I just happened to have heard a few misrepresentations with this Request for Judicial Notice. And those misrepresentations include my law firm. And I'm just concerned. I just want to make sure that you -- the fact that we're not standing up and rejecting them and objecting to them and arguing is just because we're not served on this matter and we just happen to be spectators. But I --

THE COURT: Your silence will not be deemed an admission of any kind here today.

MR. CORDANO: Thank you, Your Honor.

THE COURT: I'm not making any --

MS. CARBO: And my objections --

THE COURT: -- calls on the evidence here today, anyway.

MS. CARBO: And my objections continue, as well, Your Honor --

THE COURT: Yes.

MS. CARBO: -- as to all of the statements made as purported factual statements as to the actions of any of the parties here or attorneys, because I think a couple of firms were on the line in the last --

THE COURT: Well --

MS. CARBO: -- ranting of Defense.

MR. JACOBS: Okay. So, Your Honor --

THE COURT: I never want to blame the lawyer for what a client might or might not do.

MR. CORDANO: Your Honor, would it make sense to postpone this hearing, just so that we have what --

MS. CARBO: Get more organized. I'd like to get the order in which these are going. I could -- the more organized --

MR. CORDANO: Just so --

MS. CARBO: There's 20 motions here, Your Honor. We've only been through three or four.

MR. CORDANO: I don't know if it makes sense or not.

MR. JACOBS: [Unintelligible], Your Honor. I've had them -- all these Requests for Judicial Notices, they all say the same thing. What you're dealing with is Bank of America and Bank of New York Mellon in concert have done this in multiple cases. And there's -- it's the same facts, the same evidence, the same testimony, the same witnesses. And this is, to me, one of the most glaring examples of misconduct, because it's three different types of misconduct in one case. It's not just the endorsement. It is the endorsement added to the allonge after the case gets filed.

MS. CARBO: But, Your Honor, this [unintelligible] been made a hundred times today.

THE COURT: Listen, I heard enough to issue the Order to Show Cause. I don't need every piece of evidence --

MR. JACOBS: That's fine.

THE COURT: -- because I'm not holding a hearing today. I'm not weighing evidence today. But I've heard enough allegations backed up by what purports to be evidence in enough forms to call upon this Plaintiff, Bank of New York Mellon, to show cause why they should not be held in indirect criminal contempt for the matters suggested by the Plaintiff as being evidence of unclean hands such that it might bar them from an equitable recovery in the case.

So, I'm going to ask the Plaintiff to draft the first version of the order, similar to what, I guess, Judge Acharte ended up signing. Pass it by the Plaintiffs and if there's disagreement you can both give me an order in word.

MR. JACOBS: Your Honor, to be clear, the concern that I have is, you know, they play this, you know, "No, this wasn't me; this was them. No, this wasn't me; this was me," back and forth for years now. And it's Bank of New York and Bank of America who -- I've given you the Request for Judicial Notice showing that they're both putting the same evidence out. It doesn't -- there is no difference except for what case they're on. Same lawyers, same witnesses, same everything.

And what I am fearful of is that if we just go out

against Bank of New York Mellon, you might ultimately get to the conclusion during the hearing that it's really Bank of America that has their hands dirty in this. And Bank of New York Mellon is going to try to say, "Oh, we didn't know. It was just Bank of America doing bad things."

And the truth is, if the Court on their own motion things that there is -- both of them are intimately involved, as evidenced in this case -- Bank of America serviced this loan through 2012.

MR. CORDANO: Your Honor --

MR. JACOBS: Everything that happened --

MR. CORDANO: The judge already ruled on this.

MR. JACOBS: Well, if I could finish speaking.

MR. CORDANO: No. I'm sorry. I apologize, Your Honor.

THE COURT: Please don't interrupt. Just be patient. It's not easy to be a judge and listen to either side, some days.

MR. CORDANO: Your Honor --

THE COURT: But you know something?

MR. CORDANO: [Unintelligible] being insulted --

THE COURT: It's my job.

MR. CORDANO: If you're being offended like this, it's just so -- I've never been -- have to sit through --

THE COURT: Don't take it personal. You're just

the lawyer. Don't take it personally.

MR. CORDANO: But if someone is there saying that my law firm --

MR. JACOBS: I like you. He's a very nice guy.

THE COURT REPORTER: One at a time.

MR. CORDANO: Someone is saying that my law firm -- he mentioned my law firm in this example that he gave to you, to misrepresent what the documents mean. And that, to me, is concerning. This situation --

THE COURT: You know --

MR. CORDANO: -- be rescheduled for another hearing.

THE COURT: I get concerned every time I hear people talk about me and I don't believe what they're saying.

MR. CORDANO: No one -- everyone says nice things.

THE COURT: But it doesn't matter.

MR. CORDANO: Everyone says good things.

THE COURT: But who cares?

MR. CORDANO: No one -- but --

THE COURT: Oh, no, no. Plenty of people have good things and bad things to say.

MR. CORDANO: Oh, come on.

THE COURT: It doesn't matter to me. You know, you got -- don't worry about it.

MS. CARBO: Your Honor?

THE COURT: It's -- what true is true. What's not true is not true. I'm not going to hold anything against your firm that was said here today unless it's proven that your firm knowingly put forth some horrible evidence that you knew was not --

MR. CORDANO: I know, but --

THE COURT: -- true evidence.

MR. CORDANO: But --

THE COURT: That would be the lawyer's problem.

MR. CORDANO: But [unintelligible] --

MS. CARBO: Your Honor, may I suggest --

THE COURT: I think I can separate out the two.

MS. CARBO: But --

MR. CORDANO: The only concern --

MS. CARBO: -- from the argument he's making --

THE COURT: I am not --

MS. CARBO: -- it sounds like we can't proceed without Bank of America.

THE COURT: -- going to add Bank of America to this order at this time. I don't --

MR. JACOBS: So --

MS. CARBO: So then --

THE COURT: -- know what vehicle you --

MS. CARBO: [Unintelligible].

THE COURT: I don't even have -- I don't even know

what you could do to put them on notice that there might -- that they might end up with a rule to show cause against them. I don't so far have any evidence that they put anything into the court file that I have. All I have, all I know for sure, is that Bank of New York Mellon is responsible for whatever ended up in this court file, because they're the Plaintiffs.

MR. JACOBS: But [unintelligible], Your Honor --

MR. CORDANO: We'll prepare an order, Your Honor.

MR. JACOBS: Bank of New York Mellon -- and I would just ask Counsel, please -- he's made himself clear 100 times. He doesn't like the fact that I'm still talking about Bank of America.

THE COURT: Yeah, but I've ruled on it four times.

MR. JACOBS: But here --

THE COURT: So it's getting a little bit much for me, too.

MR. JACOBS: So, I'm sorry, Your Honor; just give me this last shot at it.

MR. CORDANO: Thank you [unintelligible].

MR. JACOBS: At the time that the Complaint was filed, Bank of America was the Servicer. At the time that the endorsement was created, Bank of America was the Servicer. The testimony is only Bank of America people had anything to do with that endorsement.

At the time that the Assignment was created and attached to the Complaint with the instructions to use that as evidence, that was done under Bank of America's watch. So -- and I can come back and present you an affidavit that says all this. But I've given you all of this evidence that Bank of America's fingerprints are all over this.

And I just want the Court to recognize that I think from a due process standpoint, if the only concern you have is due process --

THE COURT: That's a big concern.

MR. JACOBS: That's the -- that's my concern, too.

THE COURT: Don't minimize that.

MR. JACOBS: I want to give them whatever response to whatever -- that whatever they need to do --

MS. CARBO: So that means time, but --

MR. JACOBS: I just am saying, at this point now they've been here, counsel for Bank of America has been here all day. They've seen all the issues that are presented. And I'd say let them present some kind of pleading or some explanation as to why the Court shouldn't impose a Order to Show Cause against them, as well.

I will prepare the one for Bank of New York, which is going to have Bank of America's name throughout it anyway, because that's the party that was doing all the acts. And then they can have an opportunity to convince Your Honor

whether they should or should not be part of it. And --

THE COURT: You know, it occurs to me you had a case going against Bank of America. You settled it.

MR. JACOBS: Right.

THE COURT: Now, this -- the only Plaintiff I have is Bank of New York Mellon as Trustee.

MR. JACOBS: Well, but -- I mean, I --

THE COURT: So, that's the only party that filed anything, the only party that attached something to an Affidavit, the only party that is trying to offer evidence here.

MR. JACOBS: I think that Judge [unintelligible] Miller had --

THE COURT: Now, if a witness -- if you had waited until the end of the trial and a witness had done something, maybe there's a witness issue. But that didn't happen.

MR. JACOBS: That's the -- that was exactly the point. Judge -- I think it was Judge [unintelligible] Miller who made that point. If the witness had stood on the stand and lied or presented fake evidence and it was doing it as an agent for the Plaintiff, the Court could certainly issue an Order to Show Cause to the witness. "Why am I not going to hold you contempt?"

THE COURT: Sure.

MR. JACOBS: "You're not a party to the case."

THE COURT: But that didn't happen yet.

MR. JACOBS: Well, but what I'm asking the Court to understand is Bank of America created the false evidence in this case. They were doing -- they were Servicers at the time.

THE COURT: I'm not going to --

MS. CARBO: If that's --

THE COURT: I can't debate it with you any further.

MS. CARBO: If that's the case, Your Honor, then why should Bank of --

THE COURT: Bank of America was not going to put in the allonge, you know, through their witness.

MS. CARBO: And neither was Bank of New York, Your Honor.

THE COURT: But Bank of New York filed it previously.

MS. CARBO: That's --

THE COURT: See, that's the problem.

MR. JACOBS: I guess the only other question I have, Your Honor --

THE COURT: I'm differentiating between something the Plaintiff did versus something their agent may have prepared that they used and put into evidence.

MR. JACOBS: So, last point, then, is --

MS. CARBO: But if, Your Honor, it wasn't put into

evidence, Your Honor, that --

MR. JACOBS: I know that what I've seen in all my cases --

THE COURT REPORTER: One at a time. One a time, please.

MR. JACOBS: I know what I've seen in all my cases, is that Bank of America is actually the Master Servicer because of the deal documents, the Pooling and Servicing Agreement. The Servicer in this case started as Countrywide and then became Bank of America.

THE COURT: Okay.

MR. JACOBS: And what keeps happening is they have said, "Oh, there's a Sub-servicer," which in this case would be Shellpoint.

So, I would like them to state under oath -- have some kind of filing under oath that they are not the Servicer, that they are still not the Master Servicer at the time in 2013 when the case went to trial and 2015 when the case went -- when the summary judgment was filed. If they were still Master Servicer, then they are the ones orchestrating everything that's happened here. And I think that that is a piece of information that I would need to then -- I think the Court can order them to say, you know, under oath, "Are you -- you know, file it in the next 24 hours. Are you the Master Servicer for this Trust?"

THE COURT: If you want to do some discovery, I'm -- you're going to have to try and seek that. I don't have any jurisdiction over Bank of America --

MR. JACOBS: Okay.

THE COURT: -- directly. So, I'm not going to order them to do anything.

MR. JACOBS: Okay. So, I will prepare the --

THE COURT: Even if I thought they were the worst in the world, I wouldn't do that. And I have no reason to believe one way or the other --

MR. JACOBS: Okay, I will prepare the order.

THE COURT: -- who is responsible for all this. You even mentioned at one point that David Stern's office added stuff after the fact.

MR. JACOBS: I believe that to be true, too.

THE COURT: So, I don't know if there was some law firm a long time ago that did some of this.

MR. JACOBS: So, I guess the question, Your Honor, is when do you want to make the arraignment date?

THE COURT: Let me open up my --

MS. CARBO: And, Your Honor, I'd like some specifics as to discovery. And I don't want this to be an open phishing expedition by Counsel.

THE COURT: Well, I don't have any desire one way or another. But sometimes less work is more desirable. How

long of a hearing do you anticipate?

MR. JACOBS: Well, the arraignment shouldn't be very long because it's just going to be them taking -- making a plea of guilty or not guilty. And then we would have a trial set, is how the procedure works.

THE COURT: How much time -- how far out do you think it should be?

MR. JACOBS: I mean, I think we could do the arraignment probably in, you know, end of June, ending in July.

THE COURT: And what does the Plaintiff think an arraignment date --

MS. CARBO: I would request 60 days, Your Honor. I think my client needs to review this matter.

MR. JACOBS: And if -- I just think 60 days delays this for two months before we even get to a trial.

MS. CARBO: They may want to involve other counsel. I don't know, Your Honor. I need to -- I need additional time.

THE COURT: Let me see. I think Friday, July 13th.

MS. CARBO: Friday the 13th.

THE COURT: Hope we don't have too many superstitious people.

MS. CARBO: Your Honor?

THE COURT: Friday July 13th at -- let me get a

time.

MS. CARBO: I'm sorry; what? Can we move it one more week, Your Honor? I'm sorry; I'm hearing that that's not a good date.

THE COURT: One more --

MS. CARBO: The 20th?

THE COURT: What's wrong with July 13th?

MS. CARBO: I think -- out of town.

MR. JACOBS: [Unintelligible] So, I don't think -- I think we should set it for the 13th. And if she's the lawyer, we'll be certainly happy to move it to any other day. But if she's not the lawyer, it would be silly to be scheduling around a lawyer's schedule that's not actually in the case.

THE COURT: We can do it earlier that week, sometime during the week of July 9th, I think is going to work.

MR. JACOBS: That works for me.

THE COURT: I think the Plaintiffs need to pick a day that -- I don't -- I can do it at 7:00 in the morning on the 9th, 10th, 11th, or 12th. I can do it right after Motion Calendar on the 10th, 11th, or 12th, which is at 9:00.

MR. JACOBS: I would say let's do it at 9:00 on the 10th.

THE COURT: All right.

MS. CARBO: 9:00 on the 10th?

THE COURT: 9:00 on July 10th.

MR. JACOBS: Okay.

THE COURT: All right, will you please tell Barbara?

MR. JACOBS: Yes.

THE COURT: Because Juan is -- Juan, yeah, go tell --

MR. JACOBS: Sir, I'm going to prepare the order. I'll show it to Counsel.

THE COURT: Okay.

MR. JACOBS: I've had this happen with Judge Achartes, where they don't want it to say anything and I want it to say as much detail as possible.

JUDICIAL ASSISTANT: Yes, Judge?

MR. JACOBS: So, if --

THE COURT: July 10th at 9:00, right?

MR. JACOBS: Right, July 10th, at 9:00.

THE COURT: 9:00. Squeeze in -- call it an arraignment.

JUDICIAL ASSISTANT: Can I have the case number?

THE COURT: Yes, it's --

JUDICIAL ASSISTANT: Okay, I'll bring this right back. So, July 10th at 9:00, arraignment. Okay, I got it. Okay. I'll bring it right back. July 10th at 9:00.

MS. CARBO: And, Your Honor, there's various --

THE COURT: And, I'm sorry, what were you saying?

MR. JACOBS: And the -- I forgot what I was saying; I'm sorry.

MS. CARBO: Where does it leave us with the foreclosure? We're going to have these proceedings include -- -

THE COURT: It will be delayed, pending the outcome of this hearing.

MR. JACOBS: Right. So, I'm going to prepare the order. I will show it to Counsel. Unless there's --

THE COURT: I'll give Counsel 48 hours to comment and to give me another one. If I don't -- by 72 hours, if there isn't an alternative, I'll just go ahead and sign the Defendant's. If there's an alternative, of course, I'll read them both and --

MS. CARBO: Thank you, Your Honor.

THE COURT: -- probably edit one or the other, the closest one that gets to what I want it to say. I'll edit it and make it sound right for me. And then we'll go forward. But it has to come through ecourtesy in Word so that I can edit it as needed.

MR. JACOBS: I'll be working on that, Your Honor. Thank you very much.

MS. CARBO: Thank you very much for your time, Your

Honor.

MR. CORDANO: Thank you, Your Honor.

(OFF THE RECORD)

(ON THE RECORD)

THE COURT: Okay, we are back on the record just to handle some exhibit issues. First, the Clerk is returning the original Note back to the Plaintiffs. So, Plaintiffs, if you'll acknowledge that.

MS. CARBO: Yes.

THE COURT: Okay, there's --

MS. CARBO: The exhibit number on the note is seven. It looks like a seven.

THE COURT: Okay. Back in Plaintiff's possession. We also failed or I failed to have the Pooling and Servicing Agreement that was going to be used as evidence in this case marked as an exhibit for today's hearing. It was shown to me. I looked at it. So, this is going to be Exhibit No. what?

THE CLERK: It'll be Exhibit No. 11.

(Thereupon, Court's Exhibit 11 was introduced for the record.)

THE COURT: That's 11. All Counsel should look to make sure we have Exhibits 1 through 11 marked with the Clerk. And if there's anything else, let me know. Plaintiff?

MS. CARBO: No, thank you very much, Your Honor.

THE CLERK: Also for the record, Judge, Exhibit 9 was subject to -- the ledger was subject to and was given back -- the unredacted version was given back to Counsel.

MS. CARBO: Right. I'll keep that. That was on the record.

THE COURT: Right, that's the one with the really, really, really tiny print.

MS. CARBO: No, no, no, this -- we submitted --

THE COURT: The one that we have in the record is the one with --

MS. CARBO: Right, but I have the marked -- mine.

THE COURT: Yes, and you'll keep that.

MS. CARBO: I will keep that.

THE CLERK: So this is -- I have it marked with the Exhibit 12.

MS. CARBO: Okay.

THE CLERK: So this will be Exhibit 12. I'm marking it now.

(Thereupon, Court's Exhibit 12 was introduced for the record.)

MS. CARBO: The redacted loan schedule.

THE CLERK: Yes, and I returned Exhibit 9, so it won't be on the docket.

THE COURT: So 9 is not in our possession. We've

substituted a redacted 9, and that's now called 12.

MR. JACOBS: And you have the color copy or the edited version of the Statement of Work contract?

THE COURT: I never --

MR. JACOBS: There was one that was 11, but then I gave you [unintelligible].

THE COURT: Go off the record.

(OFF THE RECORD)

(ON THE RECORD)

THE COURT: Are you done?

MS. CARBO: We are done. We just --

THE COURT: Did you renumber -- I heard you talking about the change of numbers?

MS. CARBO: No, we didn't change anything. We just added. We added.

MR. JACOBS: The only question we're trying to confirm is that -- the Plaintiffs -- I'm going to file -- I'm going to serve on them the proposed order. And then they're going to have 72 hours to --

THE COURT: Well --

MS. CARBO: Forty --

MR. JACOBS: Forty-eight hours to respond.

THE COURT: Forty-eight hours to get something back to me. If I don't see anything within 72, I'm just going to find an order.

MR. JACOBS: So, I will --

THE COURT: I'll -- maybe I could modify it.

MR. JACOBS: I'll serve it on you, eCourtesy --

THE COURT: eCourtesy.

MR. JACOBS: -- with the Word document [unintelligible] --

THE COURT: Yeah, but wait 72 hours after you give it to them. Three days. Give them three days to look at it.

MR. JACOBS: All right, so I'm going to serve it on them. Three days later I'm going to serve it on you and say, "I haven't heard back from them," or, "I have heard, and this is their response."

THE COURT: Exactly.

MR. JACOBS: Okay.

THE COURT: I'll need a letter to say either they haven't responded or we -- they've agreed to the form. "Even though they don't agree to the rulings, they agree that that's what was said." Something like that.

MR. JACOBS: Okay.

MS. CARBO: Thank you very much, Your Honor.

THE COURT: Okay. Thank you all for dragging me through this.

MR. JACOBS: You're welcome, Judge.

(OFF THE RECORD)

(Thereupon, the hearing was concluded at 3:19 p.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF BROWARD

I, Mya Alvena, Court Reporter, certify that I was authorized to and did report the hearing of The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders Walt, Inc., Alternative Loan Trust 2007-0A4 Mortgage Passthrough Certificates, Series 2007-0A4 Passthrough Certificates, Series 2007-0A4 vs. Ryan Atkin; and that the transcript is a true and correct record of my notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 29th day of May 2018.

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Mya Alvena, Court Reporter