

Page 1	Page 3						
<p>IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA CIVIL DIVISION</p> <p>BANK OF AMERICA, NATIONAL ASSOCIATION, AS SUCCESSOR BY MERGER TO LASALLE BANK, N.A. AS TRUSTEE FOR THE MLMI TRUST SERIES, Plaintiff,</p> <p>vs. Case No.: 09-7541 Division: "H"</p> <p>ALBERT S. KEATON; JULIA M. KEATON; et al. Defendants.</p> <hr/> <p style="text-align: center;">TRANSCRIPT OF PROCEEDINGS</p> <p>BEFORE: THE HONORABLE BERNARD C. SILVER</p> <p>TAKEN: Pursuant to Notice</p> <p>TIME: Beginning at 1:30 p.m. Concluded at 2:45 p.m.</p> <p>DATE: July 31, 2009</p> <p>PLACE: U.S. Legal Support, Inc. Suite 701 4350 West Cypress Street Tampa, Florida 33607</p> <p>REPORTED BY: Fateema N. Channer Notary Public Certified Shorthand Reporter</p>	<p style="text-align: center;">C O N T E N T S</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;"></th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>Proceedings</td> <td style="text-align: right;">3</td> </tr> <tr> <td>Certificate of Reporter</td> <td style="text-align: right;">65</td> </tr> </tbody> </table>		PAGE	Proceedings	3	Certificate of Reporter	65
	PAGE						
Proceedings	3						
Certificate of Reporter	65						
Page 2	Page 4						
<p>1 APPEARANCES:</p> <p>2</p> <p>3</p> <p>4 ROY DIAZ, ESQ.</p> <p>5 PATRICE TEDESKO, ESQ.</p> <p>6 GAVIN MACMILLAN, ESQ.</p> <p>7 GABRIELLE STRAUSS, ESQ.</p> <p>8 MICHAEL D. WILD, ESQ.</p> <p>9 TAT-LIN ANGUS, ESQ.</p> <p>10 Smith, Hiatt & Diaz, P.A.</p> <p>11 Suite 303</p> <p>12 2691 East Oakland Park Boulevard</p> <p>13 Fort Lauderdale, Florida 33301</p> <p>14 (954) 564-0071</p> <p>15 Attorney for Plaintiff</p> <p>16</p> <p>17 RANDALL O. REDER, ESQ.</p> <p>18 Attorney at Law</p> <p>19 1319 West Fletcher Avenue</p> <p>20 Tampa, Florida 33612</p> <p>21 (813) 960-1952</p> <p>22 Attorney for Defendant</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 PROCEEDINGS</p> <p>2 1:30 P.M.</p> <p>3 THE COURT: All right. We're here on</p> <p>4 orders to show cause issued to Michael Wild. Is</p> <p>5 he here?</p> <p>6 MR. WILD: (Indicating.)</p> <p>7 THE COURT: Gabrielle Strauss?</p> <p>8 MS. STRAUSS: (Indicating.)</p> <p>9 THE COURT: Patrice Tedesko?</p> <p>10 MS. TEDESKO: Here, Your Honor.</p> <p>11 THE COURT: Gavin MacMillan?</p> <p>12 MR. MACMILLAN: Here, Your Honor.</p> <p>13 THE COURT: And Tat-Lin Angus?</p> <p>14 MS. ANGUS: Yes, Your Honor.</p> <p>15 THE COURT: And Mr. Smith I excused. All</p> <p>16 right. Will all of you stand and raise your</p> <p>17 right hands.</p> <p>18 (Whereupon, the witnesses were sworn by</p> <p>19 the Court.)</p> <p>20 THE COURT: Let the record reflect that</p> <p>21 they all said yes. Mr. Wild, would you come</p> <p>22 forward, please?</p> <p>23 MR. WILD: Yes, your Honor.</p> <p>24 THE COURT: Mr. Wild, did you attend a</p> <p>25 hearing by telephone on September the 15th of</p>						

Page 5	Page 7
<p>1 this year?</p> <p>2 MR. WILD: July.</p> <p>3 THE COURT: I mean July 15th.</p> <p>4 MR. WILD: Yes, I did, your Honor.</p> <p>5 THE COURT: And was that hearing on a</p> <p>6 motion to dismiss?</p> <p>7 MR. WILD: It was, your Honor.</p> <p>8 THE COURT: When did you become involved</p> <p>9 in that case -- in this case? This is a case of</p> <p>10 Bank of America v. Keaton. When did you become</p> <p>11 involved?</p> <p>12 MR. WILD: Well, my personal involvement</p> <p>13 began with the preparation for the motion to</p> <p>14 dismiss hearing.</p> <p>15 THE COURT: Okay. What did you do in</p> <p>16 order to prepare for it?</p> <p>17 MR. WILD: I reviewed the file, I</p> <p>18 reviewed the pleadings from opposing counsel,</p> <p>19 and I prepared my argument.</p> <p>20 THE COURT: Okay. And what was your</p> <p>21 understanding of why the Defendant was moving to</p> <p>22 dismiss?</p> <p>23 MR. WILD: They were moving to dismiss</p> <p>24 based on the fact that we did not have the note.</p> <p>25 THE COURT: And the mortgage?</p>	<p>1 MR. WILD: Your Honor, we filed a</p> <p>2 memorandum of law which stated as such.</p> <p>3 THE COURT: When did you file that?</p> <p>4 MR. WILD: I don't have that date with</p> <p>5 me.</p> <p>6 THE COURT: Well, take a look in your</p> <p>7 file.</p> <p>8 MR. WILD: I actually don't have that --</p> <p>9 that information with me, your Honor.</p> <p>10 THE COURT: Do you know the notice of</p> <p>11 filing original documents was filed July the</p> <p>12 13th, just two days before?</p> <p>13 MR. WILD: Yes. That was in preparation</p> <p>14 for our motion for summary judgment scheduled</p> <p>15 later because Hillsborough County requires you</p> <p>16 file the note and mortgage ahead of time.</p> <p>17 THE COURT: Did you tell me at the</p> <p>18 hearing on July the 15th when I asked you that</p> <p>19 regarding whether or not you had the original</p> <p>20 note you told me you did?</p> <p>21 MR. WILD: Yes, that's correct.</p> <p>22 THE COURT: And when I asked you why you</p> <p>23 were continuing to prosecute that claim, what</p> <p>24 was your response?</p> <p>25 MR. WILD: As far as Count 1?</p>
Page 6	Page 8
<p>1 MR. WILD: Well, the mortgage was</p> <p>2 recorded.</p> <p>3 THE COURT: Okay. Well, the original</p> <p>4 mortgage?</p> <p>5 MR. WILD: Yes.</p> <p>6 THE COURT: And the original assignment?</p> <p>7 MR. WILD: I don't recall if the</p> <p>8 assignment was an issue.</p> <p>9 THE COURT: Okay. When did you become</p> <p>10 involved in preparing for the motion to dismiss</p> <p>11 hearing?</p> <p>12 MR. WILD: A few days before, so --</p> <p>13 THE COURT: How many few?</p> <p>14 MR. WILD: July 12th.</p> <p>15 THE COURT: Okay. When were you aware</p> <p>16 that the original note and mortgage had already</p> <p>17 been filed?</p> <p>18 MR. WILD: We received the original note</p> <p>19 and mortgage on -- I believe it was March 23rd.</p> <p>20 THE COURT: Okay. About four months</p> <p>21 before the hearing?</p> <p>22 MR. WILD: That's correct, Your Honor.</p> <p>23 THE COURT: Okay. Did you ever bother to</p> <p>24 call the defense lawyer and tell them we have</p> <p>25 the original note and mortgage?</p>	<p>1 THE COURT: Yes, as far as --</p> <p>2 MR. WILD: It's the Lost Note count?</p> <p>3 THE COURT: Yes.</p> <p>4 MR. WILD: Well, it was two responses.</p> <p>5 One was that we were permitted to plead in the</p> <p>6 alternative. And the second response when you</p> <p>7 said, "Why don't you drop that count now?" was</p> <p>8 that the note could still be lost prior to the</p> <p>9 summary judgment. Since the note is in the</p> <p>10 court file and anyone can get the court file,</p> <p>11 then the note at that point would be removed.</p> <p>12 THE COURT: Are you aware that the courts</p> <p>13 can grant leave -- that courts can grant parties</p> <p>14 leave of court to amend pleadings?</p> <p>15 MR. WILD: I am aware that the complaint</p> <p>16 could be amended. I am aware of that.</p> <p>17 THE COURT: And you think -- you think</p> <p>18 it's appropriate to continue to move forward on</p> <p>19 a complaint which says that the note is lost</p> <p>20 when you already have the note?</p> <p>21 MR. WILD: I do feel that it is within --</p> <p>22 THE COURT: And when the note is already</p> <p>23 filed?</p> <p>24 MR. WILD: Yes, the note was already</p> <p>25 filed. But I do feel that there is nothing</p>

Page 9	Page 11
<p>1 against the rules of civil procedure in 2 continuing to pursue that count and adjudicating 3 that count at the time of summary judgment. 4 THE COURT: Why would that be? 5 MR. WILD: Well, as I said, Your Honor, 6 originally that count for the lost note when it 7 was -- when it was signed -- when the complaint 8 was signed -- we weren't aware as to whether or 9 not the note was lost. We did not have 10 possession of the note. 11 THE COURT: You were aware two days 12 later? 13 MR. WILD: Three days later, yes, Your 14 Honor. 15 THE COURT: Right. 16 MR. WILD: We were aware three days later 17 that we did have the note and the mortgage; 18 however, we are still permitted to plead in the 19 alternative. And so at the point of the motion 20 to dismiss if your Honor would have adjudicated 21 Count 1 finding that we had standing, then 22 obviously we would have stopped pursuing that 23 count, but considering that standing had not yet 24 been established and the motion for summary 25 judgment was not yet upon us, we continued to</p>	<p>1 way to get more time for the defendant. 2 THE COURT: How many complaints are you 3 responsible for? When were you admitted to the 4 bar? 5 MR. WILD: 2006. 6 THE COURT: How many complaints are you 7 personally responsible for? 8 MR. WILD: I honestly couldn't tell you a 9 number. 10 THE COURT: All right. Well, how many do 11 you think you have -- you're responsible for 12 now? 13 MR. WILD: I would say that the way that 14 our firm is divided I would personally touch 15 about one third of the firm's business. 16 THE COURT: And how much is that? 17 MR. WILD: Currently I think it's 2800 18 files. 19 THE COURT: And do all of them have a 20 count for reforeclosure of mortgage -- 21 reforeclosure of -- I mean 22 MR. WILD: You mean lost note? 23 THE COURT: Right. 24 MR. WILD: Yes, they do, your Honor. 25 THE COURT: Irrespective of whether or</p>
<p>Page 10</p> <p>1 pursue Count 1. 2 THE COURT: Did you ever bother to call 3 Mr. Reder when you found the note and two days 4 later or when he made an appearance and after he 5 filed his motion to dismiss -- 6 MR. WILD: I personally -- 7 THE COURT: -- just a minute, sir -- that 8 you had the note and you would send it to him? 9 Did you ever call him about that? 10 MR. WILD: I personally did not speak to 11 Mr. Reder until the time of the motion to 12 dismiss. 13 THE COURT: Do you think the hearing 14 could have been avoided had you called him? 15 MR. WILD: No, your Honor. 16 THE COURT: You don't? 17 MR. WILD: I don't because I am familiar 18 with -- I've handled motion to dismiss hearings 19 all the time on this exact issue, and call up 20 numerous attorneys when I have the ability to do 21 so and tell them we do have the documents -- 22 even when I appear in person in court, and say 23 we do have the documents, and they continue to 24 pursue the motion to dismiss. Because beyond it 25 being a Count 2 shrink the issues, it's also a</p>	<p>Page 12</p> <p>1 not you have the note? 2 MR. WILD: At the time that we sign the 3 complaint we don't have the note. 4 THE COURT: Okay. When you get the note, 5 you never dismiss the count or move the court to 6 dismiss the count or move the count -- move the 7 court to amend the pleadings? 8 MR. WILD: Your Honor -- 9 THE COURT: Do you? 10 MR. WILD: Well, overall we don't drop 11 the count because there is case law specifically 12 that says we are not permitted to. 13 THE COURT: Have you ever filed a motion 14 to amend your pleadings -- 15 MR. WILD: We have. 16 THE COURT: Just a minute, sir. 17 MR. WILD: Sorry. 18 THE COURT: Have you ever filed a motion 19 to amend your pleadings to drop that count? 20 MR. WILD: We have amended pleadings to 21 drop that count upon the motion of the court. 22 THE COURT: Okay. Why didn't you do it 23 in this case? You knew you already had the 24 note. You knew you already had the original 25 assignment. Why did you wait four months to</p>

Page 13	Page 15
<p>1 file it?</p> <p>2 MR. WILD: To file the note and the</p> <p>3 mortgage?</p> <p>4 THE COURT: Yes. When you had it two</p> <p>5 days after --</p> <p>6 MR. WILD: Your Honor --</p> <p>7 THE COURT: Let me finish my question.</p> <p>8 When you had it two days after the complaint was</p> <p>9 filed, why didn't you move to amend your</p> <p>10 pleadings or file a motion to dismiss that count</p> <p>11 of the complaint?</p> <p>12 MR. WILD: We are not required to dismiss</p> <p>13 a count in the complaint that is plead properly.</p> <p>14 The -- in every area of the law --</p> <p>15 THE COURT: What basis in fact do you</p> <p>16 have to move forward on the count to reestablish</p> <p>17 a note -- or a lost note when, in fact, you have</p> <p>18 it? What is the basis in fact for that?</p> <p>19 MR. WILD: Again, your Honor, it's</p> <p>20 required in this county to file the note and the</p> <p>21 mortgage with the clerk prior to any motion for</p> <p>22 summary judgment taking place. It's also a</p> <p>23 requirement that we have standing at the time we</p> <p>24 get summary judgment.</p> <p>25 Now, in this case -- in some cases we</p>	<p>1 believe that would hurt judicial efficiency more</p> <p>2 than a motion to dismiss.</p> <p>3 THE COURT: Okay. Sit down. Where is</p> <p>4 Gabrielle Strauss?</p> <p>5 MS. STRAUSS: May I approach, your Honor?</p> <p>6 THE COURT: Go ahead. How long have you</p> <p>7 been admitted?</p> <p>8 MS. STRAUSS: Your Honor, I was admitted</p> <p>9 last September.</p> <p>10 THE COURT: So not yet a year.</p> <p>11 MS. STRAUSS: No, your Honor.</p> <p>12 THE COURT: And were you primarily</p> <p>13 responsible for handling this case?</p> <p>14 MS. STRAUSS: Your Honor, I signed the</p> <p>15 complaint.</p> <p>16 THE COURT: What does that mean?</p> <p>17 MS. STRAUSS: Your Honor, the process at</p> <p>18 our firm is that the people that are in our</p> <p>19 foreclosure department get a bunch of complaints</p> <p>20 at the beginning of the day, and those are the</p> <p>21 complaints that have to go out from our -- after</p> <p>22 receiving the referral from our client. So what</p> <p>23 we do is we get the referral from our client, we</p> <p>24 look at the title exam, and make sure that the</p> <p>25 proper parties are signed. We go through the</p>
Page 14	Page 16
<p>1 don't have the note. We have a lost note and</p> <p>2 need a lost note affidavit. In this case we did</p> <p>3 have the note and the mortgage, but at the time</p> <p>4 the complaint was filed it was filed properly.</p> <p>5 It was pled properly. You, yourself, denied</p> <p>6 their motion to dismiss and found that the</p> <p>7 complaint states a cause of action correctly.</p> <p>8 At the point of rendering Count 1 moot is the</p> <p>9 point of summary judgment when you, yourself,</p> <p>10 would have found that we have standing to</p> <p>11 foreclose.</p> <p>12 THE COURT: Mr. Wild, what is the basis</p> <p>13 in fact to continue a count that seeks to</p> <p>14 reestablish a lost note when, in fact, you have</p> <p>15 the note? What is the basis for that?</p> <p>16 MR. WILD: Well, the basis is that the</p> <p>17 complaint when it was filed was filed properly.</p> <p>18 THE COURT: Well, why do you continue to</p> <p>19 pursue that count when you have the note and the</p> <p>20 mortgage? Why don't as soon as you get it just</p> <p>21 file it and move the court for an order</p> <p>22 dismissing that count? Because in all</p> <p>23 likelihood that's going to obviate a hearing on</p> <p>24 it. Don't you see that?</p> <p>25 MR. WILD: Actually, your Honor, I</p>	<p>1 complaint, make sure the correct language is in</p> <p>2 there, and then we sign the complaint. After</p> <p>3 that I had no more involvement in this case</p> <p>4 personally, your Honor.</p> <p>5 THE COURT: Well, what duty do you</p> <p>6 believe you have to make sure the allegations in</p> <p>7 the complaint are accurate?</p> <p>8 MS. STRAUSS: Your Honor, at the time</p> <p>9 that I filed the complaint the only thing that I</p> <p>10 have in front of me is the referral which does</p> <p>11 not state whether we have the note or the</p> <p>12 mortgage. So, at that moment in time the note</p> <p>13 may be lost which is why we keep Count 1, the</p> <p>14 reestablishment -- the reestablishment count,</p> <p>15 your Honor.</p> <p>16 THE COURT: All right. Did you prepare</p> <p>17 a -- the notice of filing documents back in</p> <p>18 July, July 13th?</p> <p>19 MS. STRAUSS: That is a possibility, your</p> <p>20 Honor. I did sign the Certificate of</p> <p>21 Compliance, and I wrote on there --</p> <p>22 THE COURT: Well, do you have your office</p> <p>23 file?</p> <p>24 MS. STRAUSS: I have a couple of the</p> <p>25 documents, your Honor, not the Notice of Filing.</p>

Page 17	Page 19
<p>1 I do have the Certificate of Compliance. 2 THE COURT: Deputy, show this to the 3 witness, please. 4 BAILIFF: Yes, sir. 5 THE COURT: Is that your signature? 6 MS. STRAUSS: Yes, your Honor. 7 THE COURT: And what is the document that 8 you're looking at? 9 MS. STRAUSS: It's the Notice of Filing 10 Documents, your Honor. 11 THE COURT: And what is the date on it? 12 MS. STRAUSS: July 13th, the same day, 13 your Honor, that I filed the Certificate of 14 Compliance. 15 THE COURT: Okay. And what did you file 16 that day with the clerk? 17 MS. STRAUSS: Your Honor, I filed the 18 original note, the original mortgage, as well as 19 the original assignment of mortgage. 20 THE COURT: Okay. And did you also on 21 September 13th file a motion for summary 22 judgment? 23 MS. STRAUSS: May I look through here? 24 THE COURT: You may. 25 MS. STRAUSS: Thank you. Yes, your</p>	<p>1 transferred. 2 THE COURT: How can the note be lost when 3 you filed it the same day? That pleading says 4 the note is lost, right? 5 MS. STRAUSS: That is correct, your 6 Honor. 7 THE COURT: And you signed it, right? 8 MS. STRAUSS: Correct, your Honor. 9 THE COURT: And that's a misstatement, 10 isn't it? 11 MS. STRAUSS: (No response.) 12 THE COURT: Is that statement true? 13 MS. STRAUSS: Your Honor, those were 14 the -- 15 THE COURT: Is the statement true? 16 MS. STRAUSS: With regard to this motion 17 it does say that it's lost, and I was sending it 18 to the court that same day. 19 THE COURT: Is the statement true? 20 MS. STRAUSS: (No response.) 21 THE COURT: Was the note lost on July 22 13th, 2009? 23 MS. STRAUSS: No, your Honor. 24 THE COURT: All right. You agree that 25 that pleading is false?</p>
Page 18	Page 20
<p>1 Honor. 2 THE COURT: And does it bear your 3 signature? 4 MS. STRAUSS: Yes, your Honor; however, 5 the date on this is July 13th, as well. 6 THE COURT: Right. What did I say, 7 September? 8 MS. STRAUSS: Yes. 9 THE COURT: Okay. I'm mistaken. They're 10 both filed the same day. 11 MS. STRAUSS: Your Honor, correct. If I 12 may, it was all in one package. It included our 13 motion -- 14 THE COURT: Would you take a look at 15 paragraph 7 of the summary judgment. 16 MS. STRAUSS: Yes, your Honor. The lost 17 note count, your Honor? 18 THE COURT: Read it. 19 MS. STRAUSS: The original promissory 20 note has been lost, and is not in the custody or 21 control of Plaintiff. The note was continuously 22 in possession and control of Plaintiff's 23 assignors and predecessors from the date of its 24 execution until the loss of the note and has not 25 been located or otherwise satisfied, assigned or</p>	<p>1 MS. STRAUSS: Based on the fact that we 2 had the note that day, correct. 3 THE COURT: Well, you filed it the same 4 day, so that pleading is, in fact, false, is it 5 not? 6 MS. STRAUSS: Based on the fact that I 7 did send it that day, yes, your Honor. 8 THE COURT: Okay. And it's groundless? 9 MS. STRAUSS: (No response.) 10 THE COURT: It's groundless, isn't it? 11 MS. STRAUSS: (No response.) 12 THE COURT: Is it groundless? Speak up. 13 MS. STRAUSS: Your Honor, I'm not sure I 14 know how to answer this question. 15 THE COURT: Well, what don't you 16 understand? It's false. Isn't it groundless? 17 MS. STRAUSS: It's false in the fact that 18 I did file the note and the mortgage, correct. 19 THE COURT: And it's groundless. On what 20 grounds would it be valid to file that when you 21 state that the original note is lost but you 22 filed it the very same day? How does that have 23 any basis in fact, and why isn't it groundless? 24 Explain that to me. 25 MS. STRAUSS: I can't, your Honor.</p>

Page 21	Page 23
<p>1 THE COURT: You can't. And it doesn't 2 have any merit, does it? 3 MS. STRAUSS: (No response.) 4 THE COURT: I'm waiting for an answer. 5 MS. STRAUSS: I understand, your Honor. 6 THE COURT: Well, answer me. 7 MS. STRAUSS: You're asking me if this 8 lost note allegation in our motion is 9 groundless? 10 THE COURT: Groundless, false and without 11 merit as stated in my order to appear and show 12 cause. You agree with that, don't you? 13 MS. STRAUSS: (No response.) 14 THE COURT: You're pursuing a claim that 15 is false, groundless and without merit when you 16 filed the note, the assignment, the very same 17 day that you assert that you didn't have it. 18 How does that pleading have any merit. Explain 19 it to me. I've only been a lawyer for 20 thirty-five years. Explain that to me. 21 MS. STRAUSS: I understand, your Honor. 22 THE COURT: Well, I'm waiting for an 23 explanation. Why does it have merit? 24 MS. STRAUSS: Your Honor, I don't have an 25 answer for you on this question.</p>	<p>1 if the pleading that states that the note is 2 lost or destroyed on the very same day you're 3 sending the same documents to the clerk? Why 4 would you sign such a pleading? Why wouldn't 5 you say I can't sign this because it doesn't 6 have any merit, it's false, it's groundless 7 because hear it is, here's the note, here's the 8 mortgage, here's the assignment, I'm going to 9 strike through that paragraph, we can't sign 10 this? Why wouldn't you do that? 11 MS. STRAUSS: I don't have an answer, 12 your Honor. 13 THE COURT: Okay. You may resume your 14 seat. Ms. Tedesko. 15 MS. TEDESKO: May I approach? 16 THE COURT: You may. 17 MS. TEDESKO: Yes, your Honor. 18 THE COURT: Ms. Tedesko, your name is on 19 the complaint, correct? 20 MS. TEDESKO: Correct. 21 THE COURT: What do you do as a matter of 22 course to determine whether or not the 23 allegations in the complaint that bear your name 24 are, in fact, accurate? 25 MS. TEDESKO: I also have access to our</p>
Page 22	Page 24
<p>1 THE COURT: Okay. You agree that that 2 shouldn't have been filed, do you not? 3 MS. STRAUSS: Your Honor, all I know is 4 that I sent these three documents to the -- 5 THE COURT: Well, do you review pleadings 6 before you sign them? 7 MS. STRAUSS: Of course, your Honor. 8 THE COURT: You do? 9 MS. STRAUSS: Yes. 10 THE COURT: Okay. So on July the 13th 11 you have two pleadings that you're filing, 12 right? 13 MS. STRAUSS: And a couple of other 14 documents, your Honor, yes. 15 THE COURT: Okay. And one of them says 16 that you're filing the original note, mortgage 17 and the original assignment of mortgage, 18 correct? 19 MS. STRAUSS: Correct. 20 THE COURT: And another pleading that you 21 signed says the note is lost or destroyed, 22 right? Did you read both the pleadings that you 23 were sending to the court? 24 MS. STRAUSS: Of course, your Honor. 25 THE COURT: Well, why would you sign them</p>	<p>1 file. The document that comes to our office 2 from our client has a number of items of 3 information on it. That document is used to 4 create our complaint. Our complaint is also 5 formed based on a title examination. I am the 6 manager of our area of title examination and 7 real estate. 8 THE COURT: Were you aware that the 9 complaint -- that the original documents were 10 received two days after the complaint was filed? 11 MS. TEDESKO: No. I was not aware of 12 that until this matter came before us, until I 13 received your order. Then I looked into the 14 file. 15 THE COURT: Do you know of any reason why 16 the documents -- why it took four months to file 17 the original documents in this case? 18 MS. TEDESKO: I think it just was a 19 matter of the timing for our motion and the 20 hearing of our motion, your Honor. And I am 21 saying this without having been involved in this 22 case, but I am -- this is my understanding of 23 what could have happened based on timing. 24 The documents are required to be filed 25 before a certain period of time before the</p>

Page 25	Page 27
<p>1 hearing, so we would have done it at that time 2 and not earlier more than likely. 3 THE COURT: Well, how long have you been 4 practicing? 5 MS. TEDESKO: Quite a while. I was 6 admitted in 1978. 7 THE COURT: And what sort of work have 8 you been doing for the last thirty years? 9 MS. TEDESKO: Real estate law. 10 THE COURT: '78 -- yeah, thirty years. 11 MS. TEDESKO: Real estate transactions 12 and some real estate litigation. 13 THE COURT: Have you reviewed the motion 14 to dismiss in this matter? 15 MS. TEDESKO: No, I have not. I did not 16 review the motion to dismiss. Well, I take -- I 17 take that back. I did briefly look at the 18 motion to dismiss. And I don't have it with me, 19 but if I do recall, there were two grounds that 20 I remember, and they were that -- are two -- 21 Count 1 and Count 2 of our complaint were 22 inconsistent, and then there was, I do believe, 23 the issue of the assignment of mortgage. 24 THE COURT: Ms. Tedesko, the motion -- 25 the complaint was filed March 20th, and</p>	<p>1 efficiently. With each judge here having four 2 thousand cases, two-thirds of which are mortgage 3 foreclosures, we do not have time to engage in 4 needless hearings -- at any time frankly, but 5 more particularly this time. And when your 6 office waits two days before the hearing to file 7 the original note, mortgage and assignment 8 rather than filing it -- waits four months to 9 file it rather than filing it when the -- 10 earlier or when the motion to dismiss had been 11 filed, in all likelihood the hearing could have 12 been obviated and the case could have moved on. 13 And I want to know why isn't that done? 14 MS. TEDESKO: Well, your Honor, I believe 15 that we would want to have control of the 16 documents until it was necessary to have them 17 handed over to the court. 18 THE COURT: Well, it was necessary to 19 hand over to the court two days before the 20 hearing so you could -- so as to help you defeat 21 the motion to dismiss. So why wasn't it just as 22 relevant to file it and advise Mr. Reder, hey, 23 here are the original documents; will you please 24 dismiss your motion, or what else can we do, 25 rather than taking up the court's time on a</p>
Page 26	Page 28
<p>1 according to Mr. Diaz you all received the note 2 on or about three days later, March 23rd. The 3 motion to dismiss was filed April the 16th, and 4 it asserted, among other things, primarily that 5 the grounds that the complaint should be 6 dismissed on was you didn't have the original 7 note, mortgage and assignment. Since you 8 already had that, why would it take three months 9 from the motion to be filed to file it and have 10 a hearing -- or it was just filed two days 11 before the hearing? Why wasn't it filed 12 sooner -- 13 MS. TEDESKO: Why -- 14 THE COURT: -- which could -- the 15 original note and mortgage and assignment? As a 16 thirty year lawyer, do you agree that -- and I'm 17 going to ask defense counsel this question. Do 18 you agree that in all likelihood had you filed 19 it when you received -- your office received the 20 motion to dismiss in April, it in all likelihood 21 would have obviated the need to have a hearing? 22 That's what this is all about. 23 MS. TEDESKO: I -- 24 THE COURT: This is all about time. This 25 is all about the ability to administer justice</p>	<p>1 hearing when the original documents are filed 2 two days before and nobody has an opportunity -- 3 he didn't even have them. If you're going to 4 give up custody of the documents, what 5 difference does it make if you give them up two 6 days before the hearing or two months before the 7 hearing? 8 MS. TEDESKO: Well, I think, your Honor, 9 it does make a difference. The documents are 10 out of our control for a longer period of time; 11 they're here in the courthouse. We don't know 12 where they are; we don't know what is happening 13 with them, a very good reason to continue a lost 14 note allegation. 15 THE COURT: Even though -- even though 16 you have the note? You believe that that is in 17 compliance with your duty as an officer of the 18 court that to maintain an action that says that 19 you do not have the note and mortgage when, in 20 fact, you do have the note? You think you're 21 fulfilling your duty as a lawyer? 22 MS. TEDESKO: At the time we file our 23 complaints -- 24 THE COURT: No. After. 25 MS. TEDESKO: After the complaint is</p>

Page 29	Page 31
<p>1 filed I believe we have two choices if there is 2 something -- you know, using your words, we have 3 these documents, we now know that we have them. 4 I don't believe that we can dismiss one count of 5 our complaint. I believe we would have to 6 dismiss our entire complaint and -- 7 THE COURT: That's a shallow argument. 8 That's a shallow argument, and you know it. You 9 know you can file the document. You know you 10 could file the document with the court. You 11 know you can move the court to dismiss Count 1 12 and you can get an order on that. You know that 13 you can amend the complaint -- move to amend the 14 complaint. You know those things, do you not? 15 MS. TEDESKO: I know that we can move to 16 have the complaint amended. I don't believe 17 that we can ask for a dismissal of one count of 18 the complaint. 19 THE COURT: You can. There's case law to 20 the effect that with court order -- you can't do 21 it voluntarily, but with court order you can get 22 an order dismissing one count. But even if you 23 couldn't -- which you can -- but even if you 24 can, you could file a motion to amend the 25 complaint saying we wish to amend the complaint</p>	<p>1 you, to correct the name in the complaint, to 2 reset a foreclosure date? You do that, don't 3 you? 4 MS. TEDESKO: We send letters like that, 5 yes, to follow procedures, not as a -- 6 THE COURT: And you don't believe -- you 7 don't believe that filing a motion to amend the 8 complaint would obviate the hearing on a motion 9 to dismiss? You don't believe that? 10 MS. TEDESKO: Well, I think that it would 11 take as much of the court's time either way. 12 THE COURT: Okay. 13 MS. TEDESKO: So what we do is we would 14 go to the -- look to our motion for summary 15 judgment and our hearing for summary judgment 16 and find at that time that Count 1 is moot, and 17 it is -- 18 THE COURT: It's apparent to me that you 19 and your law firm believe that it's proper to 20 continue to proceed under a count that has no 21 basis in fact merely to hold on to the original 22 documents, and that you misrepresent things to 23 the court merely to hold on to the original 24 documents, and, in fact, continue to 25 misrepresent to the court pleadings that are</p>
Page 30	Page 32
<p>1 because at one time we didn't know whether or 2 not we had the note and mortgage and assignment, 3 but now we know we do and there's no reason for 4 us to proceed under Count 1 to establish a lost 5 note. You know you can do that with thirty 6 years of experience, don't you? 7 MS. TEDESKO: We don't feel that it's 8 expedient for us to do that and -- 9 THE COURT: Oh. So you would rather 10 waste the court's time having a hearing that is 11 unnecessary rather than wasting -- spending your 12 time on something on filing a motion to amend 13 the complaint. Is that what it's about? 14 MS. TEDESKO: No, not at all, your Honor. 15 THE COURT: Well, then, why don't you 16 feel it's your duty to do that? Explain that to 17 me. 18 MS. TEDESKO: We don't look at it as a 19 waste of our own time. We actually do think in 20 terms of the waste of the court time and the 21 party's time -- all parties time because we 22 can't always amend without leave of court. We 23 have to have leave of court -- 24 THE COURT: Well, you send letters to 25 judges all the time on an ex parte basis, don't</p>	<p>1 groundless, false and without merit as 2 Ms. Strauss testified even after you have the 3 documents. 4 MS. TEDESKO: Our pleadings are not 5 groundless. They are not without merit or 6 false. We do not do any of those things, your 7 Honor. 8 THE COURT: Did you look at the motion 9 for summary judgment? 10 MS. TEDESKO: As a matter of fact I am 11 sorry, but I did not. I heard what was just 12 spoken here. 13 THE COURT: And do you believe that the 14 motion for summary judgment where it says in 15 paragraph 7 that the note has been lost when in 16 fact the same day that the note and mortgage and 17 assignment have been filed, you don't think 18 that's a groundless pleading? 19 MS. TEDESKO: No. At worse, your Honor, 20 that was an oversight. It can -- the motions 21 for summary judgment are filed long before the 22 actual hearings for summary judgment and -- 23 THE COURT: Well, if it was filed the 24 same day in this case by the same person -- and 25 I don't know for the life of me how the same</p>

Page 33	Page 35
<p>1 person can file a -- file the original documents 2 on the one hand, and claim that they're lost on 3 the other hand on the same day. If the person 4 reads it they wouldn't be able to do that. 5 MS. TEDESKO: Well, your Honor, we are 6 looking to the hearing for the summary 7 judgment -- on the motion for summary judgment. 8 As I said, it can be months later from that 9 time. 10 THE COURT: So that gives you -- that's a 11 basis for filing a false pleading that says 12 that. 13 MS. TEDESKO: We -- no. 14 THE COURT: So you're saying that 15 pleading is accurate. 16 MS. TEDESKO: Our pleading -- oh. I'm 17 sorry. 18 THE COURT: You're saying the pleading 19 for summary judgment is accurate. 20 MS. TEDESKO: I'm sorry. I was 21 thinking -- I thought you were referring to our 22 complaint, not the motion. 23 THE COURT: What's accurate about that 24 paragraph of the motion for summary judgment? 25 Nothing, is it?</p>	<p>1 THE COURT: Well, look at it. 2 MS. TEDESKO: -- to make that decision. 3 THE COURT: Look at it. 4 MR. DIAZ: The answer is no. 5 THE COURT: Mr. Diaz? 6 MR. DIAZ: I apologize. 7 MS. TEDESKO: Well, I will not take the 8 court's time to read this entire file. 9 THE COURT: No. Take -- no. The motion 10 for summary judgment is tagged. You found it? 11 MS. TEDESKO: Yes, I looked at the -- 12 THE COURT: Look at paragraph 7. 13 MS. TEDESKO: Yes. And that follows our 14 complaint obviously. It follows the allegations 15 of our complaint. So in this situation we had 16 the note and mortgage. 17 THE COURT: Knowing what you know now -- 18 MS. TEDESKO: By the time -- 19 THE COURT: Knowing what you know now 20 would you file that motion for summary judgment 21 with paragraph 7 in it when you the same day 22 file the original documents? You stand by that? 23 MS. TEDESKO: This would be -- more than 24 likely this would have been modified at that 25 time. But as I said, it could very well have</p>
Page 34	Page 36
<p>1 MS. TEDESKO: Well, as I said, I think 2 that what we are looking to is a situation of 3 down the road when we aren't going to have 4 months before the hearing something possibly 5 happen during that period of time and -- 6 THE COURT: Well, then -- but you're 7 stating in the motion for summary judgment 8 itself that the note has been lost, and you're 9 filing the note the same day, and you're saying 10 to me that that motion is accurate? Am I 11 mishearing you? 12 MS. TEDESKO: I said that our motion 13 anticipates our hearing, which is -- 14 THE COURT: So you stand -- 15 MS. TEDESKO: -- a long way off. 16 THE COURT: Do you stand by that motion? 17 MS. TEDESKO: I stand by our pleadings 18 and our -- 19 THE COURT: Do you think as -- whatever 20 you know today -- whatever you know today, would 21 you still refile that motion if you filed the 22 original note and mortgage and assignment? 23 Would you still file that same pleading today? 24 MS. TEDESKO: I would have to look at the 25 entire file --</p>	<p>1 been an oversight. It is not any deliberate act 2 to -- 3 THE COURT: I didn't -- 4 MS. TEDESKO: -- commit any kind of 5 falsity to the court. 6 THE COURT: You're required to read the 7 pleadings before you sign them as a lawyer, 8 aren't you? 9 MS. TEDESKO: Yes. 10 THE COURT: All right. Give the file 11 back. 12 THE COURT: Mr. Reder, stand to be sworn, 13 please. 14 (Whereupon, Mr. Reder was sworn by the 15 court.) 16 THE COURT: Mr. Reder, do you represent 17 the defendants in this matter, Albert and Julia 18 Keaton? 19 MR. REDER: Yes, I do. 20 THE COURT: When were you advised that 21 the Plaintiff in this matter had the original 22 note and mortgage? 23 MR. REDER: At the hearing on the motion 24 to dismiss. 25 THE COURT: And I have in my notes that</p>

Page 37	Page 39
<p>1 you filed the motion to dismiss in April of 2 2009.</p> <p>3 MR. REDER: Yes, your Honor.</p> <p>4 THE COURT: And the hearing was about 5 three months later; is that right?</p> <p>6 MR. REDER: Yes, your Honor.</p> <p>7 THE COURT: I think it's almost exactly 8 three months. July 15th. Mr. Reder, had you 9 been provided with the original note or had the 10 original note, mortgage and assignment -- well, 11 let me ask you this: Was your motion to dismiss 12 largely, if not entirely, based upon the fact 13 that the original note, mortgage and assignment 14 had not been filed?</p> <p>15 MR. REDER: Yes, your Honor.</p> <p>16 THE COURT: Had you been provided with 17 that sooner than the day of the hearing, would 18 the hearing have taken place?</p> <p>19 MR. REDER: I can categorically say, your 20 Honor, no, because in another case I had the 21 exact same thing happen. When they sent the 22 note, what we did was stipulate to an order and 23 sent it in to the judge and I canceled the 24 hearing.</p> <p>25 THE COURT: How long have you been</p>	<p>1 THE COURT: Thank you. Mr. Diaz, do you 2 wish to be heard?</p> <p>3 MR. DIAZ: Yes, your Honor.</p> <p>4 THE COURT: Proceed.</p> <p>5 MR. DIAZ: First of all, I apologize to 6 the court for us having to be here today. I 7 will explain a little bit to the court how our 8 firm operates.</p> <p>9 We have procedures in place to avoid this 10 type of thing from happening. Those procedures 11 failed. When it comes to motions to dismiss, we 12 have a procedure in place where when a motion to 13 dismiss is received, we review the motion to 14 dismiss and we prepare a draft, a memorandum of 15 law in response to the motion to dismiss. Most 16 of the cases that we're receiving, the motion to 17 dismiss includes a variety of different 18 allegations, not just a note allegation, an 19 inconsistency allegation or any of those type.</p> <p>20 What we do in motions where the 21 allegation is that we do not have possession of 22 the note, or in the case where they're attacking 23 Count 1, what we do is we file a memorandum of 24 law, we explain our basis for the pleading, but 25 then we state that in the event we're in receipt</p>
Page 38	Page 40
<p>1 practicing law?</p> <p>2 MR. REDER: I've been a member of the 3 Florida Bar since 1979. I have been 4 practicing -- actually practicing as an attorney 5 since 1986.</p> <p>6 THE COURT: All right. And how much time 7 did you expend in preparing the motion to 8 dismiss and attending the hearing?</p> <p>9 MR. REDER: I don't have my time records 10 with me right now. I would estimate preparing 11 the motion to dismiss between two and two 12 and-a-half, three and-a-half hours.</p> <p>13 THE COURT: And does that include 14 attendance at the hearing?</p> <p>15 MR. REDER: No. The attendance at 16 hearing, again, another two and-a-half to three 17 hours.</p> <p>18 THE COURT: Okay. And do you typically 19 charge by the hour?</p> <p>20 MR. REDER: Yes, I do.</p> <p>21 THE COURT: What is your hourly rate?</p> <p>22 MR. REDER: \$300 an hour.</p> <p>23 THE COURT: Okay. Mr. Diaz, you wish to 24 cross-examine him?</p> <p>25 MR. DIAZ: No, your Honor.</p>	<p>1 of the original document, that we are in the 2 receipt of original documents, we attach copies 3 of the original documents, and that gets filed 4 with the court and we ask -- we take the 5 position that the basis of the motion to dismiss 6 is moot. We have a standard procedure where we 7 submit that memorandum of law to opposing 8 attorneys and we ask them to agree to an order. 9 That did not happen in this case. I've looked 10 at the docket, I've looked at the file. I don't 11 have a good explanation for why, but I will tell 12 you that that is not a routine thing that 13 happens in motions to dismiss -- our motion to 14 dismiss practice. Routinely the greater 15 majority of the time we follow that procedure, 16 and that procedure worked very, very 17 effectively.</p> <p>18 The second procedure that we have in our 19 office is that when we do receive original 20 documents, the motion for summary judgment, it 21 actually has a point when it's being drafted 22 there's a question, Do you have the original 23 documents? And that question gets answered yes 24 or no, and depending on how that question gets 25 answered, the appropriate pleading appears in</p>

Page 41	Page 43
<p>1 the motion for summary judgment. In this case 2 that error occurred. And what should have 3 been -- the paragraph language that should have 4 been included in the motion for summary judgment 5 is that the documents were found or were 6 located, they're in our possession and the count 7 is moot.</p> <p>8 What we do is as practice, your Honor, 9 instead of amending we deal with the lost note 10 issues by way of pursuing it through the summary 11 judgment. With our practice and the method that 12 we use in our practice when it works, it doesn't 13 raise -- it doesn't take us to these issues, 14 because what happens is we resolve it early on 15 when we get the motion unless. There's other 16 reasons in the motion, then we have a hearing on 17 those if opposing counsel doesn't agree. But I 18 will say that what we do in our memorandum in 19 response to motion for summary -- motions to 20 dismiss is we hit every issue and we reply to 21 every issue to try to resolve the issue without 22 a hearing. Our letter that gets generated has a 23 request for us to confer and reach an agreed 24 order. A great percentage of the time, your 25 Honor -- a tremendous percentage of the time</p>	<p>1 sound like much, when you have probably -- I 2 probably have, you know, I don't know, couple 3 thousand or more foreclosure cases and I have 4 hearings all the time on this issue -- I'm not 5 saying your firm, but other firms, as well. 6 When you start multiplying that times a number 7 of hearings, it adds up in addition to the time 8 that it takes to leave whatever you're doing, 9 have the hearing and then go back to what you 10 were doing. It's kind of like when you were in 11 college or law school you get up, the phone 12 rings and, you know, even if it's a ten minute 13 call you're away from your thought process for 14 maybe a half an hour. And you multiple that 15 out, you know, just a few times a week it adds 16 up.</p> <p>17 And there's no point -- and, you know, I 18 understand your argument that you want to hold 19 on to the note, but to me that doesn't cut 20 anything because sooner or later you're going to 21 have to give it up.</p> <p>22 MR. DIAZ: I'd like to respond to that. 23 THE COURT: And if you're going to give 24 it up, give it up sooner so that we all know you 25 have it, and we could move on to the merits of</p>
Page 42	Page 44
<p>1 defense attorneys will not agree with us, and 2 they have their motives for that, and I won't 3 comment on that, but I will tell you --</p> <p>4 THE COURT: I know that. 5 MR. DIAZ: Right. 6 THE COURT: And I know in the scheme of 7 things that you're not going to come to an 8 agreement every time. 9 MR. DIAZ: Correct. 10 THE COURT: But -- and I'll let you 11 continue. But, Mr. Diaz, my motive in this case 12 why we're here today is not to punish anybody, 13 okay? That's not my motive. My motive here is 14 to try and -- to make lawyers understand that we 15 are in gridlock. We have no extra time. And I 16 didn't speak to Mr. Reder at all about this. He 17 only -- I don't know that would be proper or 18 not, but I didn't speak with him. 19 MR. DIAZ: I understand. 20 THE COURT: But I knew intuitively that 21 had the motion -- had the original documents 22 been filed soon after the motion to dismiss had 23 been filed, that the hearing would not have 24 occurred and I could have saved maybe fifteen 25 minutes. And while fifteen minutes doesn't</p>	<p>1 the case. 2 MR. DIAZ: Let me respond to that issue. 3 We are sensitive to the original 4 documents. We've had situations occur where we 5 filed original documents in cases, gone to 6 motion for summary judgment, it was deferred or 7 otherwise dealt with, and the documents were 8 lost with the court, and it caused a problem. 9 So I will tell you we are absolutely sensitive 10 to that. However, what I will tell you is we're 11 not holding back -- we're not holding back the 12 documents, and we're not prosecuting a lost note 13 count while we have the documents so that we can 14 have both sides of the fence. 15 THE COURT: But you were in this case. 16 You didn't file the documents for four months. 17 MR. DIAZ: Judge, this was a mistake. 18 THE COURT: All right. 19 MR. DIAZ: And I'm sitting here coming 20 out of my skin, as I'm sure you can see, because 21 I'm listening to your questioning and your line 22 of questioning, and I have my attorneys who know 23 that I'm sitting right behind them frozen and 24 deer in headlights, and this was a very simple 25 answer for each and every one of them. There</p>

Page 45	Page 47
<p>1 was a mistake in this file. And I will tell 2 you, Judge, we do -- we work very hard, very 3 hard not to make mistakes in our files. We have 4 processes in place so that we have as little 5 hearing need as possible. 6 Just for some background, just so you 7 understand, my partners a forty year board 8 certified real estate lawyer, a thirty year 9 board certified real estate lawyer. I'm a 10 twenty-one year commercial litigation lawyer. 11 We're real lawyers. We're not foreclosure 12 lawyers. Our practice -- we were bank lawyers 13 and our practice evolved in this direction, and 14 we followed the opportunity. We work very hard. 15 We have training sessions with our attorneys, 16 with our young attorneys. Every other week we 17 have meetings with them. We've constantly go 18 over issues. We constantly are tweaking 19 policies. We're constantly changing all of the 20 requirements that each county is imposing, 21 administrative orders that are coming out. I 22 personally am involved on a first -- on a 23 first-level basis with the task force that's 24 talking to the supreme court and making 25 recommendations. I was involved in the</p>	<p>1 in the State of Florida. We're expected to do 2 that for \$1300. So, yes, you will see a 3 pleading with all of the names of the attorneys 4 that sign pleadings because our computer system 5 is not sophisticated enough that we can't get it 6 sophisticated to identify the attorney that's 7 going to sign it. So just like I see in cases 8 where I'm involved with Akerman Senterfitt, with 9 Adorno & Yoss, I see -- you'll see a partner's 10 name, another partner, an associate. We do that 11 kind of practice. We do practice in the 12 alternative. But I'm telling you this was a 13 mistake. Our procedures in our office are to 14 deal with motions to dismiss by way of 15 memorandum, a brief with case law, not just some 16 silly response. We give a thorough response 17 with case law with supporting documentation, and 18 in those cases when we do have the lost note, we 19 do deal with those by advising the other side, 20 which we didn't do in this, and it was a 21 mistake. And I don't have an explanation for 22 the mistake other than we're dealing with volume 23 just like everybody else and we're trying to 24 keep it under control, but every once in a while 25 one slips away. And our motions shouldn't have</p>
Page 46	Page 48
<p>1 administrative order that came out of West Palm 2 Beach for mandatory mediation. I am the go-to 3 person for Fannie Mae when they have issues in 4 Florida. I'm telling you that this -- you found 5 what I'd like to believe is the needle in the 6 haystack. And I'm telling you that the fact 7 that that motion for summary judgment pled the 8 lost note allegation, that was a mistake and 9 Ms. Strauss missed it. That's what happened, 10 and that's why she couldn't tell you because 11 that was the answer. She missed it. 12 We -- as you know, we're overwhelmed, 13 you're overwhelmed, we're all overwhelmed. I 14 want to assure you that our systems and our 15 processes -- and, Judge, we can't do this any 16 other way. I mean we have to do this by way of 17 process. We have to do it in as much of a 18 vacuum -- the pieces have to be in a vacuum in 19 order to control and in order to be able to 20 properly prosecute these for \$1300. We're 21 completing a piece of litigation -- and people 22 smirk when I call it litigation, but we're 23 filing a complaint and getting to the end of the 24 complaints, and we're expected to do that. The 25 fee that's been established is a reasonable fee</p>	<p>1 pled the lost note count because we have a 2 system in place to catch that. This was a 3 mistake, and at that point I concede the point. 4 THE COURT: All right. 5 MR. DIAZ: And I apologize. 6 THE COURT: I appreciate your candor. I 7 really do, Mr. Diaz. Let me ask you this: You 8 know, I can only speak for my division, and I 9 can only unless there's an administrative order 10 which we may look into to try and reduce this. 11 Before I tell you to do what I have in mind I'd 12 like to hear from you. 13 What I'm considering is, with respect to 14 all the cases you have in my division -- that 15 is, Division H -- that you file the original 16 note and mortgage and assignment of mortgage 17 within fifteen days, or you file an affidavit of 18 lost note within fifteen days. Why can't you do 19 that? So the issue would be -- so we would know 20 whether or not -- because eventually if -- and 21 look, I've had lots of pleadings where -- I'm 22 just saying generically from all the law firms 23 that are handling the foreclosures, and many of 24 them do say in the beginning we don't have the 25 note, we don't have the note, we don't have the</p>

Page 49	Page 51
<p>1 note; come for a summary judgment hearing they 2 have the note. And we have hearings on that, 3 and we have hearings on motion to dismiss just 4 like this case, and a day or two or maybe the 5 day of the hearing they find the note and say, 6 you know what -- come on. It's like why are we 7 here? Why are we here taking up everybody's 8 time when you had it? And what I'm thinking is, 9 if you don't have the note you're going to have 10 to have a lost note affidavit. If you have the 11 note you're going to have to file it anyway, and 12 my position is I want you to file the note 13 within -- the original note and assignment 14 within fifteen days of your filing the 15 complaint, or file the lost note affidavit 16 within fifteen days. What's wrong with that? 17 MR. DIAZ: Let me respond. Two points. 18 Number one is we don't necessarily get the 19 original documents in fifteen days. In this 20 case we happened to get the documents pretty 21 close to the timeline. There's times where we 22 don't get the documents for a much more 23 significant period of time. 24 As I've stated in my memorandum in 25 response to this, the way the industry works is</p>	<p>1 here's the other issue -- 2 THE COURT: Why do you -- I'll let you 3 get to the other. Why do you need to file the 4 complaint? In this particular case -- and it 5 may be an aberration. In this particular case 6 you got the original documents two days after. 7 And I mean, you know, hindsight is always 20/20, 8 but had you waited -- I guess I don't even know 9 now. Had you had -- do you ever file in the 10 alternative -- this is a question I didn't even 11 think of before. Do you ever file an 12 alternative cause of action for the lost note 13 when, in fact, you have the note? 14 MR. DIAZ: If we -- our process and our 15 procedure if we get -- and this is -- there's a 16 very small number of files. It's actually one 17 client that's a tiny client that we have who 18 actually sends us their complaints with original 19 documents, and that client we don't -- we file 20 without the lost note unless there's a lost 21 note. 22 We have another client who has -- we had 23 a -- we had a meeting. You can't believe how 24 much goes into this to make these kinds of 25 decisions. We had a meeting because we wanted</p>
Page 50	Page 52
<p>1 there's two categories of records custodians. 2 In every event the records custodian is an 3 independent entity, if you will. If a servicer 4 has the wrong records custodian, that records 5 custodian is usually an off-site premises in a 6 building that's established for -- you know, to 7 withstand any potential destruction from 8 hurricanes or other natural acts. 9 And what happens is the process commences 10 where they're going to go through, they're going 11 to request the originals, the originals go from 12 that records custodian either directly to us or 13 directly to the servicer who then turns around 14 and directly sends it to us. And until we have 15 the physical documents in our hands we don't 16 know. And often times, your Honor, what we 17 receive is a folder that has a lost note 18 affidavit in it and there is no original or a 19 photocopy. It's at that point that we know what 20 we're dealing with on that issue, okay. So we 21 plead in the alternative just like every -- 22 THE COURT: That part doesn't bother me. 23 MR. DIAZ: So here's where we are. The 24 fifteen day rule might not work because I might 25 not get the documents in fifteen days. But</p>	<p>1 to pilot what would it be like if we just 2 stopped filing the lost note counts, because we 3 don't look for this additional work. We don't 4 want additional labor in these cases. We don't 5 want additional delay. We don't want to give 6 defense lawyers opportunities to delay cases. 7 I'm not speaking to counsel here, but there are 8 counsel out there that do do that, and they 9 practice that way. So what we did is I had a 10 meeting with this particular client, and I said 11 let's do a pilot project. I as a matter of 12 practice do not like setting up a rule for an 13 exception. 14 THE COURT: Right. 15 MR. DIAZ: And in this case in my 16 office -- I can't speak for any of the others, 17 the original documents I would say is -- or the 18 lost documents is the exception. We probably 19 only have maybe 10 percent of our files where 20 there's actually an original document problem. 21 So we had a meeting with this client, we 22 requested permission to do this. We requested 23 permission to file their cases without the lost 24 note count. We're going to monitor to see what 25 the cost factor is, because the clients are cost</p>

Page 53	Page 55
<p>1 sensitive to it, and what's going -- whether or 2 not there's going to be a benefit to it. What I 3 suspect in the majority of the cases is there's 4 going to be zero benefit because defense lawyers 5 are still going to find reasons to file a motion 6 to dismiss. And I had this discussion with 7 Judge Bailey on the Supreme Court task force, 8 and we had this exact discussion, and I asked 9 her a question. How many of these motions to 10 dismiss do you actually grant? If we've 11 properly pled it and the motion to dismiss is 12 denied because it was properly pled, then who's 13 filing the documents that are really causing 14 problem here? And I can say probably 2 percent 15 of the cases that we have a motion to dismiss on 16 the lost note count that's properly pled is 17 granted. They're always dismissed. But having 18 said that, I do understand. I understand your 19 position. I understand her position. She's 20 saying take as much away as you can at the 21 inception. So we are piloting that right now 22 with one of our clients to see how that's going 23 to -- whether or not there's going to be a 24 benefit to that, and whether or not we're going 25 to be able to streamline some of this by doing</p>	<p>1 a hearing potentially, have objection. There's 2 a whole other process. 3 THE COURT: There's usually not a 4 hearing. 5 MR. DIAZ: And there might not be, but I 6 have had -- I've had attorneys object. Not -- 7 let me say, if you go down in Miami/Dade County 8 and take a random sampling you would be stunned. 9 You would have one of these order to show cause 10 hearings everyday, and I wouldn't be invited to 11 any of them. That would happen. 12 So, let me just suggest to you that we 13 can deal with your concern. We can deal with 14 your concern by assuring that when we get the 15 original instruments -- not your just division, 16 every division. When we get the original 17 instruments we do a filing that notifies the 18 court and the parties the original documents 19 have been received. I don't have to file a 20 motion. I don't necessarily have to file a 21 motion to amend the complaint. If you know I 22 have the documents and the opposing counsel 23 attorneys know I have the documents, then we 24 have a moot issue. And if we're doing that and 25 we're doing that subject to making a mistake --</p>
Page 54	Page 56
<p>1 it that way, and that may very well happen. But 2 I will represent to you that the procedures we 3 have in our office which are subject to a 4 mistake, the procedures we have is if we have 5 the note we don't file that complaint. 6 Here is the other issue that -- as to why 7 filing the original documents so early is a 8 problem. As I'm sure you know, everybody, 9 everybody servicer, every lender, every investor 10 is aggressively working lost litigation. 11 There's the HAMP program came out by -- that was 12 handed down by the president. They're all 13 working on Fannie moratoriums, Freddie Mac 14 moratoriums. Everybody in the industry is 15 desperately trying to do lost mitigation. 16 They're stacked; they're spending millions of 17 millions of dollars in that effort. 18 The reason -- one of the reasons we filed 19 the original documents at the time that we're as 20 close to the time that we're actually seeking 21 judgment, is because if there is a loan that 22 does resolve in lost litigation I have to turn 23 those documents back over to the client. Now 24 I'm going to have to file a motion with the 25 court to get the documents, file a motion, have</p>	<p>1 but let's assume we're doing that in 99 percent 2 of the cases, we've resolved this for 99 percent 3 of the cases, and we don't have to release the 4 original documents. 5 I can't be clear enough when I tell you 6 it is not our practice to prosecute a claim for 7 a lost note when we know we have the note. It 8 is absolutely unequivocally not our practice. 9 THE COURT: Well, I think it would be 10 helpful if when you receive the original -- 11 first of all, I would like to know why -- why 12 you -- why is it necessary -- a lot of these -- 13 a lot of the complaints for foreclosure I've 14 seen the property has been vacant for months. 15 And what you're telling me is in many 16 instances -- probably in most instances -- 17 you're filing the complaint with the lost note 18 count because you don't know whether or not 19 you're going to get the note? 20 MR. DIAZ: Correct. 21 THE COURT: So my initial reaction is, 22 well, if a lot of these properties are vacant 23 for months, what difference does it make if you 24 file the complaint on March 1 or March 30, if by 25 March 30 you'll know you have the -- whether or</p>

Page 57	Page 59
<p>1 not you know -- you'll know at that point 2 whether or not you have the original note, and 3 you could at least eliminate -- I agree with you 4 you're not going to eliminate all motions to 5 dismiss, but you're going to eliminate that 6 ground for motion to dismiss, and in this case 7 you would have eliminated this motion to 8 dismiss.</p> <p>9 MR. DIAZ: The reason is, your Honor, our 10 clients who are all -- well, not all -- who are 11 also federally governed are under a mandate to 12 proceed with these cases on a certain timeline. 13 Fannie Mae and Freddie Mac have designated 14 timeline because these are all investments, and 15 they're monitoring and they're managing 16 investments, and in this world that we're living 17 in now they're managing losses. So what our 18 clients do is our clients come to us as 19 attorneys and say we need to file -- once we 20 pull the trigger and we're going to file the 21 foreclosure, we need to file it as soon as 22 possible. And here are the things that happen.</p> <p>23 A large percentage of borrowers that the 24 clients cannot reach to do loss mitigation, 25 which they all start doing at the point of</p>	<p>1 loan under HAMP or under another program they 2 can move back in.</p> <p>3 So we're dealing with so many different 4 variables, and everybody is really trying to do 5 the right thing. The investor is trying to 6 protect the investment and minimize their 7 losses. Fannie Mae is trying to help 8 homeowners. The court system with 9 administrative orders and mandatory mediation, 10 they're trying to help homeowners. And it's a 11 mess. I can't describe it any other way. But 12 we're all working this process. We're all -- in 13 my office. I'm speaking for my office. We are 14 absolutely acting in good faith. We have 15 processes that are good-faith solid processes, 16 and I can tell you that this case was the 17 exception. And I've never had -- I've never 18 been called -- ever been called on an order to 19 show cause in a circuit court in my career, and 20 I've never had an attorney in any of my offices 21 called on an order to show cause like this. And 22 I can tell you we do everything we can, and we 23 work very, very hard to prevent the kind of 24 mistakes that you've now seen in this case, and 25 we will continue to tighten it down. But what I</p>
Page 58	Page 60
<p>1 default, at the point of sending out the demand 2 letter they all start lost mitigation. The 3 majority of the clients that they actually 4 engage in lost mitigation with, it happens after 5 they've been served. And so what the clients do 6 -- and, again, they're managing losses. They're 7 saying let's get these filed and let's get these 8 borrowers served; we can start the weeding 9 process.</p> <p>10 This is a discussion that I've been 11 having with Judge Bailey. How do we identify 12 and weed the files for mandatory mediation? How 13 do we identify the nonowner occupied? How do we 14 identify the vacant properties? Her analogy is 15 a highway. We need different exits. We need to 16 be able to get these kinds of cases going. What 17 her and I are talking about and what I'm 18 recommending to the Supreme Court is a fast 19 track process for the -- for the nonowner 20 occupied or the vacant properties. But then I 21 have a conversation with Fannie Mae, and Fannie 22 Mae says, well, we don't necessarily want to 23 rule out a nonowner occupied because it could be 24 that they're not occupying it because they feel 25 that there's no hope, but if we can modify their</p>	<p>1 would ask is that you can consider let us 2 proceed with the understanding that we will upon 3 obtaining a motion to dismiss or upon obtaining 4 the original documents we can file a notice with 5 the court. I can set that up. We can file a 6 notice with the court that says we have the 7 original documents, and we could provide the 8 other side with a copy of the original 9 documents. We have that process in place. I 10 can tighten up that process so that we minimize 11 this kind of an issue.</p> <p>12 THE COURT: All right. I'm going to 13 grant that, although I came in with a different 14 thought in mind of requiring as I indicated a 15 minute ago that you file either a lost note 16 affidavit or the original documents. But I can 17 tell you I will allow you because I -- because I 18 can understand why you would want to hold on to 19 the original note and assignment based upon the 20 reasons you've given me. But on the other hand, 21 letting opposing counsel know -- well, filing 22 them two days before the hearing by mail without 23 letting opposing counsel know is a mistake. And 24 so what I am going to require that your firm do, 25 and I can only require it -- I think it would be</p>

Page 61	Page 63
<p>1 helpful in all cases, but I can only require it 2 in my division because I only have jurisdiction 3 over my division, is to require in all cases 4 that as soon as you receive the original note, 5 mortgage and assignment that you notify opposing 6 counsel, you know, I think irrespective of 7 whether or not there's a motion to dismiss or 8 not on the lost note count that we -- whatever 9 you draft the language -- we are now in receipt 10 -- we're holding on to the original documents; 11 we will be filing them, but here is a true and 12 correct copy of the same, or, you know, words to 13 that effect. And I think that would obviate a 14 number of hearings. Nothing is going to be 100 15 percent, but it would obviate motions -- at 16 least obviate motions to dismiss on those 17 grounds. And if there's some contest on whether 18 or not or argument you do have the originals, 19 you know, we can deal with that on motions for 20 production or whatever. But if this doesn't 21 work then I'm going to go to something -- my 22 original Plan A, and that is going to make you 23 file either a lost note affidavit or the 24 original documents within fifteen days. But, 25 you know, I appreciate your candor and, you</p>	<p>1 than \$150 an hour -- 2 THE COURT: Yeah, but you have thousands 3 of cases. 4 MR. DIAZ: Well, but I don't have 5 thousands of cases where I do this. I don't 6 have thousands of cases where I have to appear 7 and appear at a hearing -- and appear at this 8 type of a hearing. If I have a contested case 9 or a litigating case, we get paid \$150 an hour, 10 and that's what the courts have recognized as a 11 reasonable hourly rate. And I would 12 respectfully request -- I wouldn't argue his 13 actual time because I haven't seen any records, 14 and I'm not in a position to do that, but what I 15 would respectfully request is that the court 16 honor what's been viewed throughout the State of 17 Florida as a reasonable hourly rate in a 18 foreclosure action, and I would request that the 19 hourly rate be based on \$150 which is what we 20 get paid. 21 THE COURT: Okay. I'm going to deny that 22 request, and I'm going to order you to pay him 23 \$1500 within twenty days and pay the cost of the 24 court reporter for being here. 25 THE COURT: We retained her, so we'll pay</p>
Page 62	Page 64
<p>1 know, these are very, very difficult times, and 2 the courts are working as hard as we can with 3 extremely reduced staff. So that will be part 4 of my order. 5 In light of Mr. Reder's testimony, I'm 6 going to order your firm pay \$1500 within twenty 7 days from today. 8 MR. DIAZ: Can I respond to that -- 9 THE COURT: You can. 10 MR. DIAZ: -- part of it because I didn't 11 get a chance to? The only thing I would ask 12 with all due respect is this: As I stated, I've 13 been practicing law for over twenty years. The 14 attorney's fee -- the hourly attorney's fee rate 15 that the court has recognized as a reasonable 16 hourly rate throughout the State of Florida is 17 \$150 an hour. And I understand as an attorney 18 practicing as long as Mr. Reder has that under 19 normal circumstances that his hourly rate would 20 not be an offensive rate; however, he's engaged 21 in the practice -- in an area of practice that 22 the court has already recognized what standard 23 rates and what reasonable rates may be. And I 24 am equally as qualified as an attorney as 25 Mr. Reder is, and I would not be awarded more</p>	<p>1 her. 2 THE COURT: Okay. Anything else? 3 MR. DIAZ: No, your Honor. 4 THE COURT: Thank you. Have a safe trip 5 home. 6 MR. DIAZ: Your Honor, I'm sorry. One 7 last thing. Are you going to -- you will enter 8 an order regarding finding that my associates 9 have shown cause, and that they're not going to 10 be held in contempt? I understand the sanction 11 component, and that, I imagine, is against my 12 law firm and I -- 13 THE COURT: The sanctions component is 14 57.105 and the inherent authority of the court 15 to sanction pleadings -- 16 MR. DIAZ: Understood. 17 THE COURT: -- that admittedly are 18 improper. I'm going to find -- yes, I'll find 19 that they're not in willful contempt of court, 20 but I'm -- I'm making a finding that they are 21 not in willful contempt of court and will 22 prepare the order to that effect. 23 MR. DIAZ: Very good. Thank you. 24 25</p>

1 STATE OF FLORIDA
2 COUNTY OF HILLSBOROUGH
3 I, FATEEMA N. CHANNER, Court Reporter for the
4 Circuit Court of the Thirteenth Judicial Circuit of the
5 State of Florida, in and for Hillsborough County,
6 DO HEREBY CERTIFY that I was authorized to
7 and did, through the use of computer-aided
8 transcription, transcribe the shorthand report of the
9 proceedings and evidence in the above styled cause, as
10 stated in the caption hereto, and that the foregoing
11 pages, numbered -- through --, inclusive constitute a
12 true and correct transcription of the shorthand report
13 of said proceedings and evidence, to the best of my
14 ability.
15 IN WITNESS WHEREOF, I have set my hand in the
16 City of Tampa, County of Hillsborough, State of
17 Florida, this -- day of --, 2005.

18
19
20 
21 FATEEMA N. CHANNER 

A	<p>aberration 51:5</p> <p>ability 10:20 26:25 65:14</p> <p>able 33:4 46:19 53:25 58:16</p> <p>absolutely 44:9 56:8 59:14</p> <p>access 23:25</p> <p>accurate 16:7 23:24 33:15,19 33:23 34:10</p> <p>act 36:1</p> <p>acting 59:14</p> <p>action 14:7 28:18 51:12 63:18</p> <p>acts 50:8</p> <p>actual 32:22 63:13</p> <p>addition 43:7</p> <p>additional 52:3 52:4,5</p> <p>adds 43:7,15</p> <p>adjudicated 9:20</p> <p>adjudicating 9:2</p> <p>administer 26:25</p> <p>administrative 45:21 46:1 48:9 59:9</p> <p>admitted 11:3 15:7,8 25:6</p> <p>admittedly 64:17</p> <p>Adorno 47:9</p> <p>advise 27:22</p> <p>advised 36:20</p> <p>advising 47:19</p> <p>affidavit 14:2 48:17 49:10,15 50:18 60:16 61:23</p> <p>aggressively 54:10</p> <p>ago 60:15</p> <p>agree 19:24 21:12 22:1 26:16,18 40:8 41:17 42:1 57:3</p> <p>agreed 41:23</p> <p>agreement 42:8</p> <p>ahead 7:16 15:6</p> <p>Akerman 47:8</p> <p>al 1:9</p> <p>Albert 1:9 36:17</p> <p>allegation 21:8 28:14 39:18,19 39:21 46:8</p> <p>allegations 16:6 23:23 35:14 39:18</p> <p>allow 60:17</p> <p>alternative 8:6 9:19 47:12 50:21 51:10,12</p> <p>amend 8:14 12:7 12:14,19 13:9 29:13,13,24,25 30:12,22 31:7 55:21</p> <p>amended 8:16 12:20 29:16</p> <p>amending 41:9</p> <p>America 1:4 5:10</p> <p>analogy 58:14</p> <p>and-a-half 38:12,12,16</p> <p>Angus 2:6 4:13 4:14</p> <p>answer 20:14 21:4,6,25 23:11 35:4 44:25 46:11</p> <p>answered 40:23 40:25</p> <p>anticipates 34:13</p> <p>anybody 42:12</p> <p>anyway 49:11</p> <p>apologize 35:6 39:5 48:5</p> <p>apparent 31:18</p> <p>appear 10:22 21:11 63:6,7,7</p> <p>appearance 10:4</p> <p>appears 40:25</p> <p>appreciate 48:6 61:25</p> <p>approach 15:5 23:15</p> <p>appropriate 8:18 40:25</p> <p>April 26:3,20 37:1</p> <p>area 13:14 24:6 62:21</p> <p>argue 63:12</p> <p>argument 5:19 29:7,8 43:18 61:18</p> <p>asked 7:18,22 53:8</p> <p>asking 21:7</p> <p>assert 21:17</p> <p>asserted 26:4</p> <p>assigned 18:25</p> <p>assignment 6:6 6:8 12:25 17:19 21:16 22:17 23:8 25:23 26:7,15 27:7 30:2 32:17 34:22 37:10,13 48:16 49:13 60:19 61:5</p> <p>assignors 18:23</p> <p>associate 47:10</p> <p>associates 64:8</p> <p>ASSOCIATI... 1:4</p> <p>assume 56:1</p> <p>assure 46:14</p> <p>assuring 55:14</p> <p>attach 40:2</p> <p>attacking 39:22</p> <p>attend 4:24</p> <p>attendance 38:14,15</p> <p>attending 38:8</p> <p>attorney 2:9,11 2:13 38:4 47:6 59:20 62:17,24</p> <p>attorneys 10:20 40:8 42:1 44:22 45:15,16 47:3 55:6,23 57:19</p> <p>attorney's 62:14 62:14</p> <p>authority 64:14</p> <p>authorized 65:6</p> <p>Avenue 2:12</p> <p>avoid 39:9</p> <p>avoided 10:14</p> <p>awarded 62:25</p> <p>aware 6:15 8:12 8:15,16 9:8,11 9:16 24:8,11</p>	<p>20:6 24:5,23 37:12 60:19 63:19</p> <p>basis 13:15,18 14:12,15,16 20:23 30:25 31:21 33:11 39:24 40:5 45:23</p> <p>Beach 46:2</p> <p>bear 18:2 23:23</p> <p>began 5:13</p> <p>beginning 1:17 15:20 48:24</p> <p>believe 6:19 15:1 16:6 25:22 27:14 28:16 29:1,4,5 29:16 31:6,7,9 31:19 32:13 46:5 51:23</p> <p>benefit 53:2,4 53:24</p> <p>BERNARD 1:15</p> <p>best 65:13</p> <p>beyond 10:24</p> <p>bit 39:7</p> <p>board 45:7,9</p> <p>borrowers 57:23 58:8</p> <p>bother 6:23 10:2 50:22</p> <p>Boulevard 2:7</p> <p>brief 47:15</p> <p>briefly 25:17</p> <p>building 50:6</p> <p>bunch 15:19</p> <p>business 11:15</p>	
		B	
		<p>back 16:17 25:17 36:11 43:9 44:11,11 54:23 59:2</p> <p>background 45:6</p> <p>Bailey 53:7 58:11</p> <p>BAILIFF 17:4</p> <p>bank 1:4,4 5:10 45:12</p> <p>bar 11:4 38:3</p> <p>based 5:24 20:1</p>	
			C
			<p>C 1:15 2:1 3:1 4:1</p> <p>call 6:24 10:2,9 10:19 43:13 46:22</p>

<p>called 10:14 59:18,18,21 canceled 37:23 candor 48:6 61:25 caption 65:10 career 59:19 case 1:7 5:9,9,9 12:11,23 13:25 14:2 15:13 16:3 24:17,22 27:12 29:19 32:24 37:20 39:22 40:9 41:1 42:11 44:1,15 47:15 47:17 49:4,20 51:4,5 52:15 57:6 59:16,24 63:8,9 cases 13:25 27:2 39:16 43:3 44:5 47:7,18 48:14 52:4,6 52:23 53:3,15 56:2,3 57:12 58:16 61:1,3 63:3,5,6 catch 48:2 categorically 37:19 categories 50:1 cause 4:4 14:7 21:12 51:12 55:9 59:19,21 64:9 65:9 caused 44:8 causing 53:13 certain 24:25 57:12 Certificate 3:4 16:20 17:1,13 certified 1:23 45:8,9 CERTIFY 65:6</p>	<p>chance 62:11 changing 45:19 Channer 1:22 65:3,20 charge 38:19 choices 29:1 circuit 1:1,1 59:19 65:4,4 circumstances 62:19 City 65:16 civil 1:2 9:1 claim 7:23 21:14 33:2 56:6 clear 56:5 clerk 13:21 17:16 23:3 client 15:22,23 24:2 51:17,17 51:19,22 52:10 52:21 54:23 clients 52:25 53:22 57:10,18 57:18,24 58:3 58:5 close 49:21 54:20 college 43:11 come 4:21 42:7 49:1,6 57:18 comes 24:1 39:11 coming 44:19 45:21 commences 50:9 comment 42:3 commercial 45:10 commit 36:4 complaint 8:15 8:19 9:7 12:3 13:8,11,13 14:4,7,17 15:15 16:1,2,7 16:9 23:19,23</p>	<p>24:4,4,9,10 25:21,25 26:5 28:25 29:5,6 29:13,14,16,18 29:25,25 30:13 31:1,8 33:22 35:14,15 46:23 49:15 51:4 54:5 55:21 56:17,24 complaints 11:2 11:6 15:19,21 28:23 46:24 51:18 56:13 completing 46:21 compliance 16:21 17:1,14 28:17 component 64:11,13 computer 47:4 computer-aided 65:7 concede 48:3 concern 55:13 55:14 Concluded 1:18 confer 41:23 consider 60:1 considering 9:23 48:13 constantly 45:17 45:18,19 constitute 65:11 contempt 64:10 64:19,21 contest 61:17 contested 63:8 continue 8:18 10:23 14:13,18 28:13 31:20,24 42:11 59:25 continued 9:25 continuing 7:23</p>	<p>9:2 continuously 18:21 control 18:21,22 27:15 28:10 46:19 47:24 conversation 58:21 copies 40:2 copy 60:8 61:12 correct 6:22 7:21 16:1 18:11 19:5,8 20:2,18 22:18 22:19 23:19,20 31:1 42:9 56:20 61:12 65:12 correctly 14:7 cost 52:25,25 63:23 counsel 5:18 26:17 41:17 52:7,8 55:22 60:21,23 61:6 count 7:25 8:2,7 9:2,3,6,21,23 10:1,25 11:20 12:5,6,6,11,19 12:21 13:10,13 13:16 14:8,13 14:19,22 16:13 16:14 18:17 25:21,21 29:4 29:11,17,22 30:4 31:16,20 39:23 41:6 44:13 48:1 52:24 53:16 56:18 61:8 counts 52:2 county 1:1 7:15 13:20 45:20 55:7 65:2,5,16 couple 16:24</p>	<p>22:13 43:2 course 22:7,24 23:22 court 1:1 4:3,7,9 4:11,13,15,19 4:20,24 5:3,5,8 5:15,20,25 6:3 6:6,9,13,15,20 6:23 7:3,6,10 7:17,22 8:1,3 8:10,10,12,14 8:17,22 9:4,11 9:15 10:2,7,13 10:16,22 11:2 11:6,10,16,19 11:23,25 12:4 12:5,7,9,13,16 12:18,21,22 13:4,7,15 14:12,18,21 15:3,6,10,12 15:16 16:5,16 16:22 17:2,5,7 17:11,15,20,24 18:2,6,9,14,18 19:2,7,9,12,15 19:18,19,21,24 20:3,8,10,12 20:15,19 21:1 21:4,6,10,14 21:22 22:1,5,8 22:10,15,20,23 22:25 23:13,16 23:18,21 24:8 24:15 25:3,7 25:10,13,24 26:14,24 27:17 27:18,19 28:15 28:18,24 29:7 29:10,11,19,20 29:21 30:9,15 30:20,22,23,24 31:6,12,18,23 31:25 32:8,13 32:23 33:10,14</p>
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33:18,23 34:6 34:14,16,19 35:1,3,5,9,12 35:17,19 36:3 36:5,6,10,12 36:15,16,20,25 37:4,7,16,25 38:6,13,18,21 38:23 39:1,4,6 39:7 40:4 42:4 42:6,10,20 43:23 44:8,15 44:18 45:24 48:4,6 50:22 51:2 52:14 53:7 54:25 55:3,18 56:9 56:21 58:18 59:8,19 60:5,6 60:12 62:9,15 62:22 63:2,15 63:21,24,25 64:2,4,13,14 64:17,19,21 65:3,4 courthouse 28:11 courts 8:12,13 62:2 63:10 court's 27:25 30:10 31:11 35:8 create 24:4 cross-examine 38:24 Currently 11:17 custodian 50:2,4 50:5,12 custodians 50:1 custody 18:20 28:4 cut 43:19 Cypress 1:21	D 2:5 4:1 date 1:19 7:4 17:11 18:5,23 31:2 day 15:20 17:12 17:16 18:10 19:3,18 20:2,4 20:7,22 21:17 23:2 32:16,24 33:3 34:9 35:21 37:17 49:4,5 50:24 65:17 days 6:12 7:12 9:11,13,16 10:3 13:5,8 24:10 26:2,10 27:6,19 28:2,6 48:17,18 49:14 49:16,19 50:25 51:6 60:22 61:24 62:7 63:23 deal 41:9 47:14 47:19 55:13,13 61:19 dealing 47:22 50:20 59:3 dealt 44:7 decision 35:2 decisions 51:25 deer 44:24 default 58:1 defeat 27:20 defendant 2:13 5:21 11:1 defendants 1:10 36:17 defense 6:24 26:17 42:1 52:6 53:4 deferred 44:6 delay 52:5,6 deliberate 36:1 demand 58:1	denied 14:5 53:12 deny 63:21 department 15:19 depending 40:24 Deputy 17:2 describe 59:11 designated 57:13 desperately 54:15 destroyed 22:21 23:2 destruction 50:7 determine 23:22 Diaz 2:3,6 26:1 35:4,5,6 38:23 38:25 39:1,3,5 42:5,9,11,19 43:22 44:2,17 44:19 48:5,7 49:17 50:23 51:14 52:15 55:5 56:20 57:9 62:8,10 63:4 64:3,6,16 64:23 difference 28:5 28:9 56:23 different 39:17 58:15 59:3 60:13 difficult 62:1 direction 45:13 directly 50:12 50:13,14 discussion 53:6 53:8 58:10 dismiss 5:6,14 5:22,23 6:10 9:20 10:5,12 10:18,24 12:5 12:6 13:10,12	14:6 15:2 25:14,16,18 26:3,20 27:10 27:21,24 29:4 29:6,11 31:9 36:24 37:1,11 38:8,11 39:11 39:13,14,15,17 40:5,13,14 41:20 42:22 47:14 49:3 53:6,10,11,15 57:5,6,8 60:3 61:7,16 dismissal 29:17 dismissed 26:6 53:17 dismissing 14:22 29:22 divided 11:14 division 1:2,7 48:8,14,15 55:15,16 61:2 61:3 docket 40:10 document 17:7 24:1,3 29:9,10 40:1 52:20 documentation 47:17 documents 7:11 10:21,23 16:17 16:25 17:10 22:4,14 23:3 24:9,16,17,24 27:16,23 28:1 28:4,9 29:3 31:22,24 32:3 33:1 35:22 40:2,3,20,23 41:5 42:21 44:4,5,7,12,13 44:16 49:19,20 49:22 50:15,25 51:6,19 52:17	52:18 53:13 54:7,19,23,25 55:18,22,23 56:4 60:4,7,9 60:16 61:10,24 doing 25:8 43:8 43:10 53:25 55:24,25 56:1 57:25 dollars 54:17 draft 39:14 61:9 drafted 40:21 drop 8:7 12:10 12:19,21 due 62:12 duty 16:5 28:17 28:21 30:16
				E
				E 2:1,1 3:1 4:1,1 earlier 25:2 27:10 early 41:14 54:7 East 2:7 effect 29:20 61:13 64:22 effectively 40:17 efficiency 15:1 efficiently 27:1 effort 54:17 either 31:11 50:12 60:15 61:23 eliminate 57:3,4 57:5 eliminated 57:7 engage 27:3 58:4 engaged 62:20 enter 64:7 entire 29:6 34:25 35:8 entirely 37:12 entity 50:3 equally 62:24

error 41:2	extremely 62:3	34:23,25 35:8	64:8,20	57:13
ESQ 2:3,4,4,5,5		35:20,22 36:10	finish 13:7	front 16:10
2:6,11	F	39:23 40:10	firm 11:14 15:18	frozen 44:23
establish 30:4	fact 5:24 13:15	44:16 45:1	31:19 39:8	fulfilling 28:21
established 9:24	13:17,18 14:13	48:15,17 49:11	43:5 60:24	
46:25 50:6	14:14 20:1,4,6	49:12,15 51:3	62:6 64:12	G
estate 24:7 25:9	20:17,23 23:24	51:9,11,19	firms 43:5 48:22	G 4:1
25:11,12 45:8	28:20 31:21,24	52:23 53:5	firm's 11:15	Gabrielle 2:5
45:9	32:10,16 37:12	54:5,24,25	first 39:5 45:22	4:7 15:4
estimate 38:10	46:6 51:13	55:19,20 56:24	56:11	Gavin 2:4 4:11
et 1:9	factor 52:25	57:19,20,21	first-level 45:23	generated 41:22
event 39:25 50:2	failed 39:11	60:4,5,15	Fletcher 2:12	generically
eventually 48:20	faith 59:14	61:23	Florida 1:1,21	48:22
everybody	false 19:25 20:4	filed 6:17 7:1,11	2:8,12 38:3	getting 46:23
47:23 54:8,9	20:16,17 21:10	8:23,25 10:5	46:4 47:1	give 28:4,5
54:14 59:4	21:15 23:6	12:13,18 13:9	62:16 63:17	36:10 43:21,23
everybody's	32:1,6 33:11	14:4,4,17,17	65:1,5,17	43:24 47:16
49:7	falsity 36:5	16:9 17:13,17	folder 50:17	52:5
everyday 55:10	familiar 10:17	18:10 19:3	follow 31:5	given 60:20
evidence 65:9,13	Fannie 46:3	20:3,22 21:16	40:15	gives 33:10
evolved 45:13	54:13 57:13	22:2 24:10,24	followed 45:14	go 15:6,21,25
ex 30:25	58:21,21 59:7	25:25 26:3,9	follows 35:13,14	31:14 43:9
exact 10:19	far 7:25 8:1	26:10,11,18	force 45:23 53:7	45:17 50:10,11
37:21 53:8	fast 58:18	27:11 28:1	foreclose 14:11	55:7 61:21
exactly 37:7	Fateema 1:22	29:1 32:17,21	foreclosure	goes 51:24
exam 15:24	65:3,20	32:23 34:21	15:19 31:2	going 14:23 23:8
examination	federally 57:11	37:1,14 40:3	43:3 45:11	26:17 28:3
24:5,6	fee 46:25,25	42:22,23 44:5	56:13 57:21	34:3 42:7
exception 52:13	62:14,14	54:18 58:7	63:18	43:20,23 47:7
52:18 59:17	feel 8:21,25 30:7	files 11:18 45:3	foreclosures	49:9,11 50:10
excused 4:15	30:16 58:24	51:16 52:19	27:3 48:23	50:10 52:24
execution 18:24	fence 44:14	58:12	foregoing 65:10	53:1,2,4,5,22
exits 58:15	fifteen 42:24,25	filing 7:11 16:17	formed 24:5	53:23,24 54:24
expected 46:24	48:17,18 49:14	16:25 17:9	Fort 2:8	56:19 57:4,5
47:1	49:16,19 50:24	22:11,16 27:8	forty 45:7	57:20 58:16
expedient 30:8	50:25 61:24	27:9 30:12	forward 4:22	60:12,24 61:14
expend 38:7	file 5:17 7:3,7,16	31:7 33:11	8:18 13:16	61:21,22 62:6
experience 30:6	8:10,10 13:1,2	34:9 46:23	found 10:3 14:6	63:21,22 64:7
explain 20:24	13:10,20 14:21	49:14 52:2	14:10 35:10	64:9,18
21:18,20 30:16	16:23 17:15,21	53:13 54:7	41:5 46:4	good 28:13
39:7,24	20:18,20 24:1	55:17 56:17	four 6:20 12:25	40:11 59:14
explanation	24:14,16 26:9	60:21 61:11	24:16 27:1,8	64:23
21:23 40:11	27:6,9,22	find 31:16 49:5	44:16	good-faith 59:15
47:21	28:22 29:9,10	53:5 64:18,18	frankly 27:4	governed 57:11
extra 42:15	29:24 33:1,1	finding 9:21	Freddie 54:13	go-to 46:2

grant 8:13,13 53:10 60:13	haystack 46:6	59:8,10	inception 53:21	issued 4:4
granted 53:17	headlights 44:24	honestly 11:8	include 38:13	issues 10:25 41:10,13 45:18 46:3
great 41:24	hear 23:7 48:12	honor 4:10,12 4:14,23 5:4,7 6:22 7:1,9 9:5 9:14,20 10:15 11:24 12:8 13:6,19 14:25 15:5,8,11,14 15:17 16:4,8 16:15,20,25 17:6,10,13,17 18:1,4,11,16 18:17 19:6,8 19:13,23 20:7 20:13,25 21:5 21:21,24 22:3 22:7,14,24 23:12,17 24:20 27:14 28:8 30:14 32:7,19 33:5 37:3,6,15 37:20 38:25 39:3 41:8,25 50:16 57:9 63:16 64:3,6	included 18:12 41:4	items 24:2
greater 40:14	heard 32:11 39:2	6:22 7:1,9 9:5 9:14,20 10:15 11:24 12:8 13:6,19 14:25 15:5,8,11,14 15:17 16:4,8 16:15,20,25 17:6,10,13,17 18:1,4,11,16 18:17 19:6,8 19:13,23 20:7 20:13,25 21:5 21:21,24 22:3 22:7,14,24 23:12,17 24:20 27:14 28:8 30:14 32:7,19 33:5 37:3,6,15 37:20 38:25 39:3 41:8,25 50:16 57:9 63:16 64:3,6	includes 39:17	judges 30:25
gridlock 42:15	hearing 4:25 5:5 5:14 6:11,21 7:18 10:13 14:23 24:20 25:1 26:10,11 26:21 27:6,11 27:20 28:1,6,7 30:10 31:8,15 33:6 34:4,13 36:23 37:4,17 37:18,24 38:8 38:14,16 41:16 41:22 42:23 43:9 45:5 49:1 49:5 55:1,4 60:22 63:7,8	18:1,4,11,16 18:17 19:6,8 19:13,23 20:7 20:13,25 21:5 21:21,24 22:3 22:7,14,24 23:12,17 24:20 27:14 28:8 30:14 32:7,19 33:5 37:3,6,15 37:20 38:25 39:3 41:8,25 50:16 57:9 63:16 64:3,6	inclusive 65:11	judgment 7:14 8:9 9:3,25 13:22,24 14:9 17:22 18:15 31:15,15 32:9 32:14,21,22 33:7,7,19,24 34:7 35:10,20 40:20 41:1,4 41:11 44:6 46:7 49:1 54:21
ground 57:6	hearings 10:18 27:4 32:22 43:4,7 49:2,3 55:10 61:14	HONORABLE 1:15	inconsistency 39:19	judicial 1:1 15:1 65:4
groundless 20:8 20:10,12,16,19 20:23 21:9,10 21:15 23:6 32:1,5,18	held 64:10	hope 58:25	inconsistent 25:22	Julia 1:9 36:17
grounds 20:20 25:19 26:5 61:17	help 27:20 59:7 59:10	hour 38:19,22 43:14 62:17 63:1,9	independent 50:3	July 1:19 5:2,3 6:14 7:11,18 16:18,18 17:12 18:5 19:21 22:10 37:8
guess 51:8	helpful 56:10 61:1	hourly 38:21 62:14,16,19 63:11,17,19	indicated 60:14	jurisdiction 61:2
<hr/> H <hr/>	hereto 65:10	hours 38:12,17	Indicating 4:6,8	justice 26:25
H 1:7 48:15	hey 27:22	hurricanes 50:8	industry 49:25 54:14	<hr/> K <hr/>
half 43:14	Hiatt 2:6	hurt 15:1	information 7:9 24:3	Keaton 1:9,9 5:10 36:18
HAMP 54:11 59:1	highway 58:15	<hr/> I <hr/>	inherent 64:14	keep 16:13 47:24
hand 27:19 33:2 33:3 60:20 65:15	Hillsborough 1:1 7:15 65:2,5 65:16	identify 47:6 58:11,13,14	initial 56:21	kind 36:4 43:10 47:11 59:23 60:11
handed 27:17 54:12	hindsight 51:7	imagine 64:11	instances 56:16 56:16	kinds 51:24
handled 10:18	hit 41:20	imposing 45:20	instruments 55:15,17	
handling 15:13 48:23	hold 31:21,23 43:18 60:18	improper 64:18	intuitively 42:20	
hands 4:17 50:15	holding 44:11 44:11 61:10		investment 59:6	
happen 34:5 37:21 40:9 54:1 55:11 57:22	home 64:5		investments 57:14,16	
happened 24:23 46:9 49:20	homeowners		investor 54:9 59:5	
happening 28:12 39:10			invited 55:10	
happens 40:13 41:14 50:9 58:4			involved 5:8,11 6:10 24:21 45:22,25 47:8	
hard 45:2,3,14 59:23 62:2			involvement 5:12 16:3	
			irrespective 11:25 61:6	
			issue 6:8 10:19 25:23 41:20,21 41:21 43:4 44:2 48:19 50:20 51:1 54:6 55:24 60:11	

58:16	lawyers 42:14	59:7	56:24,24,25	misstatement
knew 12:23,24	45:11,12,12	lost 8:2,8,19 9:6	matter 23:21	19:9
42:20	52:6 53:4	9:9 11:22	24:12,19 25:14	mistake 44:17
know 7:10 20:14	leave 8:13,14	13:17 14:1,2	32:10 36:17,21	45:1 46:8
22:3 24:15	30:22,23 43:8	14:14 16:13	52:11	47:13,21,22
27:13 28:11,12	Legal 1:20	18:16,20 19:2	mean 5:3 11:21	48:3 54:4
29:2,3,8,9,9,11	lender 54:9	19:4,17,21	11:22 15:16	55:25 60:23
29:12,14,15	letter 41:22 58:2	20:21 21:8	46:16 51:7	mistaken 18:9
30:1,3,5 32:25	letters 30:24	22:21 23:2	mediation 46:2	mistakes 45:3
34:20,20 35:17	31:4	28:13 30:4	58:12 59:9	59:24
35:19 42:4,6	letting 60:21,23	32:15 33:2	meeting 51:23	mitigation 54:15
42:17 43:2,2	let's 52:11 56:1	34:8 41:9 44:8	51:25 52:10,21	57:24 58:2,4
43:12,15,17,24	58:7,7	44:12 46:8	meetings 45:17	MLMI 1:5
44:22 46:12	life 32:25	47:18 48:1,18	member 38:2	modified 35:24
48:8,19 49:6	light 62:5	49:10,15 50:17	memorandum	modify 58:25
50:6,16,19	likelihood 14:23	51:12,20,20	7:2 39:14,23	moment 16:12
51:7,8 54:8	26:18,20 27:11	52:2,18,23	40:7 41:18	monitor 52:24
55:21,23 56:7	line 44:21	53:16 54:10,15	47:15 49:24	monitoring
56:11,18,25	listening 44:21	54:22 56:7,17	merely 31:21,23	57:15
57:1,1 60:21	litigating 63:9	58:2,4 60:15	MERGER 1:4	months 6:20
60:23 61:6,12	litigation 25:12	61:8,23	merit 21:2,11,15	12:25 24:16
61:19,25 62:1	45:10 46:21,22	lot 56:12,13,22	21:18,23 23:6	26:8 27:8 28:6
Knowing 35:17	54:10,22	lots 48:21	32:1,5	33:8 34:4 37:5
35:19	little 39:7 45:4		merits 43:25	37:8 44:16
	living 57:16	M	mess 59:11	56:14,23
L	loan 54:21 59:1	M 1:9	method 41:11	moot 14:8 31:16
labor 52:4	located 18:25	Mac 54:13 57:13	Miami/Dade	40:6 41:7
language 16:1	41:6	MacMillan 2:4	55:7	55:24
41:3 61:9	long 15:6 25:3	4:11,12	Michael 2:5 4:4	moratoriums
large 57:23	32:21 34:15	Mae 46:3 57:13	millions 54:16	54:13,14
largely 37:12	37:25 62:18	58:21,22 59:7	54:17	mortgage 5:25
LASALLE 1:4	longer 28:10	mail 60:22	mind 48:11	6:1,4,16,19,25
Lauderdale 2:8	look 7:6 15:24	maintain 28:18	60:14	7:16 9:17
law 2:11 7:2	17:23 18:14	majority 40:15	minimize 59:6	11:20 13:3,21
12:11 13:14	25:17 30:18	53:3 58:3	60:10	14:3,20 16:12
25:9 29:19	31:14 32:8	making 45:24	minute 10:7	17:18,19 20:18
31:19 38:1	34:24 35:1,3	55:25 64:20	12:16 43:12	22:16,17 23:8
39:15,24 40:7	35:12 48:10,21	manager 24:6	60:15	25:23 26:7,15
43:11 47:15,17	52:3	managing 57:15	minutes 42:25	27:2,7 28:19
48:22 62:13	looked 24:13	57:17 58:6	42:25	30:2 32:16
64:12	35:11 40:9,10	mandate 57:11	mishearing	34:22 35:16
lawyer 6:24	looking 17:8	mandatory 46:2	34:11	36:22 37:10,13
21:19 26:16	33:6 34:2	58:12 59:9	misrepresent	48:16,16 61:5
28:21 36:7	loss 18:24 57:24	March 6:19	31:22,25	motion 5:6,13
45:8,9,10	losses 57:17 58:6	25:25 26:2	missed 46:9,11	6:10 7:14 9:19

9:24 10:5,11 10:18,24 12:13 12:18,21 13:10 13:21 14:6 15:2 17:21 18:13 19:16 21:8 24:19,20 25:13,16,18,24 26:3,9,20 27:10,21,24 29:24 30:12 31:7,8,14 32:8 32:14 33:7,22 33:24 34:7,10 34:12,16,21 35:9,20 36:23 37:1,11 38:7 38:11 39:12,13 39:15,16 40:5 40:13,20 41:1 41:4,15,16,19 42:21,22 44:6 46:7 49:3 53:5 53:11,15 54:24 54:25 55:20,21 57:6,7 60:3 61:7 motions 32:20 39:11,20 40:13 41:19 47:14,25 53:9 57:4 61:15,16,19 motive 42:11,13 42:13 motives 42:2 move 8:18 12:5 12:6,6 13:9,16 14:21 29:11,13 29:15 43:25 59:2 moved 27:12 moving 5:21,23 multiple 43:14 multiplying 43:6	<hr/> N <hr/>	32:16 34:8,9 34:22 35:16 36:22 37:9,10 37:13,22 39:18 39:22 41:9 43:19 44:12 46:8 47:18 48:1,16,18,25 48:25 49:1,2,5 49:9,10,11,12 49:13,15 50:17 51:12,13,20,21 52:2,24 53:16 54:5 56:7,7,17 56:19 57:2 60:15,19 61:4 61:8,23 notes 36:25 notice 1:16 7:10 16:17,25 17:9 60:4,6 notifies 55:17 notify 61:5 number 11:9 24:2 43:6 49:18 51:16 61:14 numbered 65:11 numerous 10:20 N.A 1:5	58:20,23 occupying 58:24 occur 44:4 occurred 41:2 42:24 offensive 62:20 office 16:22 24:1 26:19 27:6 40:19 47:13 52:16 54:3 59:13,13 officer 28:17 offices 59:20 off-site 50:5 oh 30:9 33:16 okay 5:15,20 6:3 6:9,15,20,23 12:4,22 15:3 17:15,20 18:9 20:8 22:1,10 22:15 23:13 31:12 38:18,23 42:13 50:20 63:21 64:2 once 47:24 57:19 operates 39:8 opportunities 52:6 opportunity 28:2 45:14 opposing 5:18 40:7 41:17 55:22 60:21,23 61:5 order 5:16 14:21 21:11 24:13 29:12,20,21,22 37:22 40:8 41:24 46:1,19 46:19 48:9 55:9 59:18,21 62:4,6 63:22 64:8,22 orders 4:4 45:21	59:9 original 6:3,6,16 6:18,25 7:11 7:19 12:24 17:18,18,19 18:19 20:21 22:16,17 24:9 24:17 26:6,15 27:7,23 28:1 31:21,23 33:1 34:22 35:22 36:21 37:9,10 37:13 40:1,2,3 40:19,22 42:21 44:3,5 48:15 49:13,19 50:18 51:6,18 52:17 52:20 54:7,19 55:15,16,18 56:4,10 57:2 60:4,7,8,16,19 61:4,10,22,24 originally 9:6 originals 50:11 50:11 61:18 overall 12:10 oversight 32:20 36:1 overwhelmed 46:12,13,13	<hr/> P <hr/>
		<hr/> O <hr/>			
		O 2:11 3:1 4:1 Oakland 2:7 object 55:6 objection 55:1 obtaining 60:3,3 obviate 14:23 31:8 61:13,15 61:16 obviated 26:21 27:12 obviously 9:22 35:14 occupied 58:13		P 2:1,1 4:1 package 18:12 PAGE 3:2 pages 65:11 paid 63:9,20 Palm 46:1 paragraph 18:15 23:9 32:15 33:24 35:12,21 41:3 Park 2:7 part 50:22 62:3 62:10	

parte 30:25	37:18 39:9,12	potential 50:7	65:13	question 13:7
particular 51:4	45:4 48:2 60:9	potentially 55:1	process 15:17	20:14 21:25
51:5 52:10	Plaintiff 1:6 2:9	practice 40:14	43:13 46:17	26:17 40:22,23
particularly	18:21 36:21	41:8,11,12	50:9 51:14	40:24 51:10
27:5	Plaintiff's 18:22	45:12,13 47:11	55:2 58:9,19	53:9
parties 8:13	Plan 61:22	47:11 52:9,12	59:12 60:9,10	questioning
15:25 30:21	plead 8:5 9:18	56:6,8 62:21	processes 45:4	44:21,22
55:18	13:13 50:21	62:21	46:15 59:15,15	Quite 25:5
partner 47:10	pleading 19:3,25	practicing 25:4	production	
partners 45:7	20:4 21:18	38:1,4,4 62:13	61:20	<hr/> R <hr/>
partner's 47:9	22:20 23:1,4	62:18	program 54:11	R 2:1 4:1
party's 30:21	32:18 33:11,15	predecessors	59:1	raise 4:16 41:13
Patrice 2:4 4:9	33:16,18 34:23	18:23	project 52:11	RANDALL 2:11
pay 62:6 63:22	39:24 40:25	premises 50:5	promissory	random 55:8
63:23,25	47:3	preparation	18:19	rate 38:21 62:14
people 15:18	pleadings 5:18	5:13 7:13	proper 15:25	62:16,19,20
46:21	8:14 12:7,14	prepare 5:16	31:19 42:17	63:11,17,19
percent 52:19	12:19,20 13:10	16:16 39:14	properly 13:13	rates 62:23,23
53:14 56:1,2	22:5,11,22	64:22	14:4,5,17	reach 41:23
61:15	31:25 32:4	prepared 5:19	46:20 53:11,12	57:24
percentage	34:17 36:7	preparing 6:10	53:16	reaction 56:21
41:24,25 57:23	47:4 48:21	38:7,10	properties 56:22	read 18:18
period 24:25	64:15	president 54:12	58:14,20	22:22 35:8
28:10 34:5	please 4:22 17:3	pretty 49:20	property 56:14	36:6
49:23	27:23 36:13	prevent 59:23	prosecute 7:23	reads 33:4
permission	pled 14:5 46:7	26:4	46:20 56:6	real 24:7 25:9
52:22,23	48:1 53:11,12	primarily 15:12	prosecuting	25:11,12 45:8
permitted 8:5	53:16	26:4	44:12	45:9,11
9:18 12:12	point 8:11 9:19	prior 8:8 13:21	protect 59:6	really 48:7
person 10:22	14:8,9 40:21	probably 43:1,2	provide 60:7	53:13 59:4
32:24 33:1,3	43:17 48:3,3	52:18 53:14	provided 37:9	reason 24:15
46:3	50:19 57:1,25	56:16	37:16	28:13 30:3
personal 5:12	58:1	problem 44:8	Public 1:23	54:18 57:9
personally 10:6	points 49:17	52:20 53:14	pull 57:20	reasonable
10:10 11:7,14	policies 45:19	54:8	punish 42:12	46:25 62:15,23
16:4 45:22	position 40:5	procedure 9:1	Pursuant 1:16	63:11,17
phone 43:11	49:12 53:19,19	39:12 40:6,15	pursue 9:2 10:1	reasons 41:16
photocopy	63:14	40:16,18 51:15	10:24 14:19	53:5 54:18
50:19	possession 9:10	procedures 31:5	pursuing 9:22	60:20
physical 50:15	18:22 39:21	39:9,10 47:13	21:14 41:10	recall 6:7 25:19
piece 46:21	41:6	54:2,4	P.A 2:6	receipt 39:25
pieces 46:18	possibility 16:19	proceed 30:4	p.m 1:17,18 4:2	40:2 61:9
pilot 52:1,11	possible 45:5	31:20 39:4		receive 40:19
piloting 53:21	57:22	57:12 60:2	<hr/> Q <hr/>	50:17 56:10
place 1:20 13:22	possibly 34:4	proceedings	qualified 62:24	61:4
		1:13 3:3 65:9		

received 6:18 24:10,13 26:1 26:19,19 39:13 55:19	removed 8:11	11:7,11 15:13	scheduled 7:14	16:20 22:6,25
receiving 15:22 39:16	rendering 14:8	resume 23:13	scheme 42:6	23:4,5,9 36:7
recognized 62:15,22 63:10	reply 41:20	retained 63:25	school 43:11	47:4,7
recommenda... 45:25	report 65:8,12	review 22:5 25:16 39:13	seat 23:14	signature 17:5 18:3
recommending 58:18	REPORTED 1:22	reviewed 5:17 5:18 25:13	second 8:6 40:18	signed 9:7,8 15:14,25 19:7 22:21
record 4:20	reporter 1:23 3:4 63:24 65:3	right 4:3,16,17 9:15 11:10,23 16:16 18:6 19:4,7,24 22:12,22 36:10 37:5 38:6,10 42:5 44:18,23 48:4 52:14 53:21 59:5 60:12	see 14:24 44:20 47:2,7,9,9 52:24 53:22	significant 49:23
recorded 6:2	represent 36:16 54:2	rings 43:12	seeking 54:20	silly 47:16
records 38:9 50:1,2,4,4,12 63:13	request 41:23 50:11 63:12,15 63:18,22	road 34:3	seeks 14:13	SILVER 1:15
Reder 2:11 10:3 10:11 27:22 36:12,14,16,19 36:23 37:3,6,8 37:15,19 38:2 38:9,15,20,22 42:16 62:18,25	requested 52:22 52:22	routine 40:12	seen 56:14 59:24 63:13	simple 44:24
Reder's 62:5	require 60:24,25 61:1,3	Routinely 40:14	send 10:8 20:7 30:24 31:4	sir 10:7 12:16 17:4
reduce 48:10	required 13:12 13:20 24:24 36:6	ROY 2:3	sending 19:17 22:23 23:3 58:1	Sit 15:3
reduced 62:3	requirement 13:23	rule 50:24 52:12 58:23	sends 50:14 51:18	sitting 44:19,23
reestablish 13:16 14:14	requirements 45:20	rules 9:1	sensitive 44:3,9 53:1	situation 34:2 35:15
reestablishment 16:14,14	requires 7:15	S	sent 22:4 37:21 37:23	situations 44:4
referral 15:22 15:23 16:10	requiring 60:14	S 1:9 2:1 3:1 4:1	Senterfitt 47:8	skin 44:20
referring 33:21	reset 31:2	safe 64:4	September 4:25 15:9 17:21 18:7	slips 47:25
refile 34:21	resolve 41:14,21 54:22	sampling 55:8	SERIES 1:5	small 51:16
reflect 4:20	resolved 56:2	sanction 64:10 64:15	served 58:5,8	smirk 46:22
reforeclosure 11:20,21	respect 48:13 62:12	sanctions 64:13	servicer 50:3,13 54:9	Smith 2:6 4:15
regard 19:16	respectfully 63:12,15	satisfied 18:25	sessions 45:15	solid 59:15
regarding 7:19 64:8	respond 43:22 44:2 49:17 62:8	saved 42:24	set 60:5 65:15	soon 14:20 42:22 57:21 61:4
release 56:3	response 7:24 8:6 19:11,20 20:9,11 21:3 21:13 39:15 41:19 47:16,16 49:25	saying 24:21 29:25 33:14,18 34:9 43:5 48:22 53:20 58:7	setting 52:12	sooner 26:12 37:17 43:20,24
relevant 27:22	responses 8:4	says 8:19 12:12 19:3 22:15,21 28:18 32:14 33:11 58:22 60:6	shallow 29:7,8	sophisticated 47:5,6
remember 25:20	responsible 11:3		shorthand 1:23 65:8,12	sorry 12:17 32:11 33:17,20 64:6

spending 30:11 54:16	streamline 53:25	40:4 41:13 53:20 55:8	64:7	31:11,16 33:9 34:5 35:8,18
spoken 32:12	Street 1:21	taken 1:16 37:18	things 26:4	35:25 38:6,9
stacked 54:16	strike 23:9	takes 43:8	29:14 31:22	40:15 41:24,25
staff 62:3	stunned 55:8	talking 45:24 58:17	32:6 42:7 57:22	42:8,15 43:4,7
stand 4:16 34:14 34:16,17 35:22 36:12	styled 65:9	Tampa 1:21 2:12 65:16	think 8:17,17 10:13 11:11,17 24:18 28:8,20 30:19 31:10 32:17 34:1,19 37:7 51:11 56:9 60:25 61:6,13	49:8,23 54:19 54:20 63:13
standard 40:6 62:22	submit 40:7	task 45:23 53:7	thinking 33:21 49:8	timeline 49:21 57:12,14
standing 9:21,23 13:23 14:10	SUCCESSOR 1:4	Tat-Lin 2:6 4:13	third 11:15	times 43:6,15 49:21 50:16 62:1
start 43:6 57:25 58:2,8	suggest 55:12	Tedesko 2:4 4:9 4:10 23:14,15 23:17,18,20,25 24:11,18 25:5 25:9,11,15,24 26:13,23 27:14 28:8,22,25 29:15 30:7,14 30:18 31:4,10 31:13 32:4,10 32:19 33:5,13 33:16,20 34:1 34:12,15,17,24 35:2,7,11,13 35:18,23 36:4 36:9	Thirteenth 1:1 65:4	timing 24:19,23
state 1:1 16:11 20:21 39:25 47:1 62:16 63:16 65:1,5 65:16	Suite 1:20 2:7	telephone 4:25	thorough 47:16	tiny 51:17
stated 7:2 21:11 49:24 62:12 65:10	summary 7:14 8:9 9:3,24 13:22,24 14:9 17:21 18:15 31:14,15 32:9 32:14,21,22 33:6,7,19,24 34:7 35:10,20 40:20 41:1,4 41:10,19 44:6 46:7 49:1	tell 6:24 7:17 10:21 11:8 40:11 42:3 44:9,10 45:1 46:10 48:11 56:5 59:16,22 60:17	thought 33:21 43:13 60:14	title 15:24 24:5 24:6
statement 19:12 19:15,19	Support 1:20	telling 46:4,6 47:12 56:15	thousand 27:2 43:3	today 34:20,20 34:23 39:6 42:12 62:7
states 14:7 23:1	supporting 47:17	ten 43:12	thousands 63:2 63:5,6	told 7:20
stating 34:7	supreme 45:24 53:7 58:18	terms 30:20	thirty 25:8,10 26:16 30:5 45:8	touch 11:14
stipulate 37:22	sure 15:24 16:1 16:6 20:13 44:20 54:8	testified 32:2	thirty-five 21:20	track 58:19
stopped 9:22 52:2	suspect 53:3	testimony 62:5	thorough 47:16	training 45:15
Strauss 2:5 4:7 4:8 15:4,5,8,11 15:14,17 16:8 16:19,24 17:6 17:9,12,17,23 17:25 18:4,8 18:11,16,19 19:5,8,11,13 19:16,20,23 20:1,6,9,11,13 20:17,25 21:3 21:5,7,13,21 21:24 22:3,7,9 22:13,19,24 23:11 32:2 46:9	sworn 4:18 36:12,14	Thank 17:25 39:1 64:4,23	thought 33:21 43:13 60:14	transactions 25:11
	system 47:4 48:2 59:8	thing 16:9 37:21 39:10 40:12 59:5 62:11	thousand 27:2 43:3	transcribe 65:8
	systems 46:14		thousands 63:2 63:5,6	TRANSCRIPT 1:13
	T		three 9:13,16 22:4 26:2,8 37:5,8 38:12 38:16	transcription 65:8,12
	T 3:1,1		tighten 59:25 60:10	transferred 19:1
	tagged 35:10		time 1:17 7:16 9:3 10:11,19 11:1 12:2 13:23 14:3 16:8,12 24:25 25:1 26:24 27:3,4,5,25 28:10,22 30:1 30:10,12,19,20 30:21,21,25	tremendous 41:25
	take 7:6 18:14 25:16,17 26:8 31:11 35:7,9		time 1:17 7:16 9:3 10:11,19 11:1 12:2 13:23 14:3 16:8,12 24:25 25:1 26:24 27:3,4,5,25 28:10,22 30:1 30:10,12,19,20 30:21,21,25	trigger 57:20
			thousand 27:2 43:3	trip 64:4
			thousands 63:2 63:5,6	true 19:12,15,19 61:11 65:12
			three 9:13,16 22:4 26:2,8 37:5,8 38:12 38:16	TRUST 1:5
			tighten 59:25 60:10	TRUSTEE 1:5
			time 1:17 7:16 9:3 10:11,19 11:1 12:2 13:23 14:3 16:8,12 24:25 25:1 26:24 27:3,4,5,25 28:10,22 30:1 30:10,12,19,20 30:21,21,25	try 41:21 42:14 48:10
			thousand 27:2 43:3	trying 47:23 54:15 59:4,5,7 59:10
			thousands 63:2 63:5,6	turn 54:22

turns 50:13	vacuum 46:18 46:18	46:24 47:1,22	world 57:16	13th 7:12 16:18
tweaking 45:18	valid 20:20	47:23 50:20	worse 32:19	17:12,21 18:5
twenty 62:6,13 63:23	variables 59:4	52:24 53:24	wouldn't 23:4	19:22 22:10
twenty-one 45:10	variety 39:17	54:19,20 55:24	23:10 33:4	1319 2:12
two 7:12 8:4	variety 39:17	55:25 56:1	55:10 63:12	15th 4:25 5:3
9:11 10:3 13:4	viewed 63:16	57:16,20 59:3	wrong 49:16	7:18 37:8
13:8 22:11	volume 47:22	59:12,12 61:10	50:4	16th 26:3
24:10 25:19,20	voluntarily 29:21	we've 44:4 45:17	wrote 16:21	1978 25:6
26:10 27:6,19	vs 1:7	53:10 56:2		1979 38:3
28:2,5,6 29:1	<hr/> W <hr/>	WHEREOF 65:15	<hr/> Y <hr/>	1986 38:5
38:11,11,16	wait 12:25	Wild 2:5 4:4,6	yeah 25:10 63:2	<hr/> 2 <hr/>
49:4,17 50:1	waited 51:8	4:21,23,24 5:2	year 5:1 15:10	2 10:25 25:21
51:6 60:22	waiting 21:4,22	5:4,7,12,17,23	26:16 45:7,8	53:14
two-thirds 27:2	waits 27:6,8	6:1,5,7,12,14	45:10	2:45 1:18
type 39:10,19	want 27:13,15	6:18,22 7:1,4,8	years 21:20 25:8	20th 25:25
63:8	43:18 46:14	7:13,21,25 8:2	25:10 30:6	20/20 51:7
typically 38:18	49:12 52:4,5,5	8:4,15,21,24	62:13	2005 65:17
	58:22 60:18	9:5,13,16 10:6	Yoss 47:9	2006 11:5
<hr/> U <hr/>	wanted 51:25	10:10,15,17	young 45:16	2009 1:19 19:22
understand	wasn't 26:11	11:5,8,13,17	<hr/> Z <hr/>	37:2
20:16 21:5,21	27:21	11:22,24 12:2	zero 53:4	23rd 6:19 26:2
42:14,19 43:18	waste 30:10,19	12:8,10,15,17	<hr/> \$ <hr/>	2691 2:7
45:7 53:18,18	30:20	12:20 13:2,6	\$1300 46:20	2800 11:17
53:19 60:18	wasting 30:11	13:12,19 14:12	47:2	<hr/> 3 <hr/>
62:17 64:10	way 11:1,13	14:16,25	\$150 62:17 63:1	3 3:3
understanding	31:11 34:15	willful 64:19,21	63:9,19	30 56:24,25
5:21 24:22	41:10 46:16,16	wish 29:25	\$1500 62:6	303 2:7
60:2	47:14 49:25	38:23 39:2	63:23	31 1:19
Understood	52:9 54:1	withstand 50:7	\$300 38:22	33301 2:8
64:16	59:11	witness 17:3	<hr/> 0 <hr/>	33607 1:21
unequivocally	weed 58:12	65:15	09-7541 1:7	33612 2:12
56:8	weeding 58:8	witnesses 4:18	<hr/> 1 <hr/>	<hr/> 4 <hr/>
unnecessary	week 43:15	words 29:2	1 7:25 9:21 10:1	4350 1:21
30:11	45:16	61:12	14:8 16:13	<hr/> 5 <hr/>
use 41:12 65:7	weren't 9:8	work 25:7 45:2	25:21 29:11	564-0071 2:8
usually 50:5	West 1:21 2:12	45:14 50:24	30:4 31:16	57.105 64:14
55:3	46:1	52:3 59:23	39:23 56:24	<hr/> 6 <hr/>
U.S 1:20	we'll 63:25	61:21	1:30 1:17 4:2	65 3:4
	we're 4:3 39:16	worked 40:16	10 52:19	<hr/> 7 <hr/>
<hr/> V <hr/>	39:25 42:12	working 54:10	100 61:14	7 18:15 32:15
v 5:10	44:10,11,12	54:13 59:12	12th 6:14	
vacant 56:14,22	45:11,11,19	62:2		
58:14,20	46:12,13,20,22	works 41:12		
		49:25		

35:12,21 701 1:20 78 25:10				
<hr/> 8 <hr/>				
813 2:13				
<hr/> 9 <hr/>				
954 2:8 960-1952 2:13 99 56:1,2				