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APPEARANCES:

On behalf of the Plaintiff:

Moschowitz, Mandell, Salim & Simowitz, P.A.
800 Corporate Drive, Suite 500
Fort Lauderdale, FL 33334
Grosenthal@mmsslaw.com
GREG ROSENTHAL, ESQ.

On behalf of the Defendants:

Ice Legal, P.A.
1015 N. State Road 7, Suite C
Royal Palm Beach, FL 33411
Scott.holtz@icelegal.com
SCOTT HOLTZ, ESQ.
Thomas.prestia@icelegal.com
THOMAS PRESTIA, ESQ.

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Direct Examination by Mr. Rosenthal 3

E X H I B I T S.

Plaintiff's Exhibit No. 1 36
(Original note.)
Plaintiff's Composite Exhibit No. 2 47
(Memorandum of law)
Plaintiff's Exhibits 2A, 2B and 2C 74
(Business records.)

1 (Thereupon, the following proceedings were
2 had):

3 THE COURT: Good afternoon, everybody. Thank
4 you. Little bit of housekeeping here. Make sure I'm
5 in the right place. This is Bank of New York versus
6 [REDACTED] is that correct?

7 MR. HOLTZ: Yes, your Honor.

8 THE COURT: First of all, counsel just make
9 their appearances for the record.

10 MR. ROSENTHAL: Greg Rosenthal, Moscovitz,
11 Mandel, Salim & Simowitz for the plaintiff, Bank of
12 New York.

13 MR. PRESTIA: May it please the Court, good
14 afternoon, Your Honor, Thomas Prestia on behalf of
15 the defendants, [REDACTED] and [REDACTED]

16 MR. HOLTZ: Good afternoon, Scott Holtz on
17 behalf of [REDACTED] and [REDACTED]

18 MR. ROSENTHAL: Your Honor, along with me today
19 is bank representative for the plaintiff's
20 representative, Louis Plasse. She'll be testifying
21 this afternoon.

22 MR. PRESTIA: There's one preliminary matter
23 that we want to address prior to starting. There's a
24 pending motion for sanctions and for dismissal and
25 then in the alternative, a motion in limine that was,

1 I believe, filed on September 6th.

2 THE COURT: I have a copy of it right here.

3 MR. PRESTIA: Do you have a copy?

4 MR. ROSENTHAL: Yes, I have a copy.

5 MR. PRESTIA: Basically, your Honor, the crux
6 of this motion --

7 THE COURT: And before we get to the
8 housekeeping issue, I know the case was originally
9 set, I think, for six hours and, obviously, we're not
10 starting in the morning, we're starting in the
11 afternoon. So to the extent that we don't finish
12 today, my hope would be that we would continue
13 tomorrow in the afternoon and that would be about two
14 o'clock in the afternoon tomorrow, if you need to go
15 tomorrow and I generally afford the time of six hours
16 time between the plaintiff and defendant.

17 MR. ROSENTHAL: Your Honor, I don't know that
18 it would -- at least on my case, take that long.
19 Counsel, of course, wants to believe it would take
20 that long. I really can't speak for him. I do have
21 an issue, however, with my client's availability
22 tomorrow. She's traveling to another matter --

23 THE WITNESS: I'll be in Bartow tomorrow in a
24 deposition in the afternoon that I have to attend.

25 THE COURT: Well, if we go into tomorrow, I

1 can tell you generally trials take precedent over
2 depos. I'm sympathetic and I know that --

3 THE WITNESS: No, I'll just be in Bartow in the
4 morning so, you know --

5 THE COURT: Drive safe.

6 MR. PRESTIA: While we're on schedules, Your
7 Honor, I just want the Court to be aware, I have a
8 trial set tomorrow, I believe, it's actually here in
9 Palm Beach County, for 9A, just for scheduling
10 purposes.

11 THE COURT: And maybe we can finish today, which
12 would be great. If we can't, it would be my intent
13 to take it up sometime tomorrow afternoon and I'll
14 try to work with you guys as best I can, including
15 your representatives.

16 MR. PRESTIA: Thank you. Your Honor, as it
17 pertains to our preliminary matter motion, there was
18 a prior hearing on plaintiff's motion for extension
19 of time upon this a couple of days ago; however, the
20 Court advised counsel who attended that to address it
21 formally in front of the trial judge.

22 THE COURT: I think that was me, right?

23 MR. PRESTIA: I didn't attend the hearing. I
24 don't recall.

25 MR. ROSENTHAL: I didn't attend that hearing

1 either.

2 THE COURT: Sounds familiar. I seem to recall
3 a similar motion and I think I indicated at that
4 time, I think it was close to the start of a day or
5 two days, that it was going to take and I indicated
6 to raise the issue with the trial judge, probably me.

7 MR. PRESTIA: Well, just give Your Honor a brief
8 background. This dates back to January 20, 2009.

9 THE COURT: I read the motion and -- first off,
10 the motion references some orders that were entered
11 on April 1st, 2010 and January 28, 2011, I couldn't
12 find those in the court file or at least tried. Do
13 you have copies of those or --

14 MR. PRESTIA: Let me check. If not, is the court
15 file present?

16 THE COURT: Court file is present. So some of
17 these --

18 MR. PRESTIA: May I approach to obtain the
19 Court file?

20 THE COURT: Yeah, sure.

21 MR. PRESTIA: I don't see it in my binder.

22 And it was electronically filed April 1st,
23 motion by Bank of New York, nothing on January 9th,
24 2008.

25 MR. PRESTIA: Is that 2010, Your Honor?

1 MR. HOLTZ: Yes, it's attached -- it was --

2 MR. PRESTIA: Your Honor, it was actually
3 attached to a notice of -- the plaintiff's unopposed
4 motion to continue specially set hearing filed on
5 April 6, 2010 and it's Exhibit A, which is an order
6 specially set hearing. It's actually dated --

7 THE COURT: This is an agreed order, because
8 I'm looking -- again, I'm looking at -- I don't see
9 anything filed on April 6, 2010. I see April 15th
10 specially set hearing, is that the order?

11 MR. PRESTIA: Yes. It was before the Court on
12 April 1, that continued the evidentiary hearing until
13 such time that the plaintiff proposed discovery
14 necessary for the hearing. That agreed order was
15 entered April -- I apologize for the scrivener's
16 error within the motion, it's April 15, 2010.

17 THE COURT: That sounds familiar.

18 Well, let me ask plaintiff's counsel, does the
19 plaintiff dispute what is alleged, as far as what
20 took place?

21 MR. ROSENTHAL: Your Honor, I did want to point
22 out to you in May of 2012 --

23 THE COURT: I don't want to argument. I just
24 want to find out --

25 MR. ROSENTHAL: If an order was entered, I'm

1 not sure if it was attached to something else.

2 THE COURT: Okay. That's what I really wanted
3 to know.

4 MR. ROSENTHAL: If an order was entered, I'm not
5 sure if it was attached.

6 MR. PRESTIA: I don't know. I can bring it for
7 Your Honor.

8 THE COURT: As long as we're in agreement as
9 far as the representations are accurate as to what
10 went on, that's fine. We can just move on.

11 MR. PRESTIA: All right. Based on that, Your
12 Honor, like we said, the order was entered on
13 April 15th, then there was a prior order on
14 January 28th and a hearing on that date that
15 specifically required the plaintiff to produce the
16 following documents: One, documents responsive to
17 request number 3. Two, documents necessary for an
18 evidentiary hearing and then defendant's propounded
19 in furtherance of that court order, an evidentiary
20 hearing be held.

21 Defendant propounded requests for production
22 regarding assignment of mortgages and evidentiary
23 hearing interrogatories, which plaintiff has failed
24 to comply with.

25 So there's two court orders that --

1 THE COURT: And can I ask what was the
2 evidentiary hearing that was supposed to be? What
3 was the purpose of that hearing?

4 MR. PRESTIA: It's my understanding that there
5 was an evidentiary hearing --

6 THE COURT: And some of these documents, I
7 guess, were supposed to be produced in advance of the
8 evidentiary hearing that was --

9 MR. ROSENTHAL: Your Honor, I can speak to what
10 the evidentiary hearing was for. They were trying to
11 determine enforceability of the assignment of the
12 mortgage to my client.

13 THE COURT: All right.

14 MR. ROSENTHAL: I can -- certainly I'll have
15 more to say about about that, but I do want to let
16 him finish.

17 MR. PRESTIA: Then that order, specifically,
18 stated that there was a mutually, I guess, agreed
19 upon -- the parties mutually agreed that no case
20 dispositive actually will occur in this matter until
21 this discovery is propounded or is replied to. And as
22 of the date of this motion, and to my knowledge,
23 plaintiff has failed to comply to this. I haven't
24 seen any discovery reflecting what was included
25 within this motion.

1 THE COURT: And before I run to the plaintiff,
2 I mean, when I read the motion, I mean, on its face,
3 you know, I actually ask the question, well, why not?
4 But the other thing that struck me was the timing of
5 this, I mean, orders were entered back in 2010.
6 Apparently, there was no effort to get compliance,
7 until the eve of trial, so my other question is: Why
8 wasn't it brought up earlier? Is it proper to kind
9 of put this in your pocket and save it for trial?

10 MR. PRESTIA: The problem, Your Honor, is that
11 it -- first off, under the rules, they're required to
12 provide a response. We sought court intervention
13 after that. We have a motion to compel. The court
14 ordered an evidentiary hearing to occur and the
15 plaintiff to produce this again. So now there's two
16 court orders that the plaintiff has just thumbed its
17 nose at and is just not in compliance with.

18 THE COURT: I'm not even agreeable on that and
19 under ordinary circumstances, again, without -- I
20 don't even know what the defenses are, just on its
21 face, assuming all that's true, I might be inclined
22 to impose sanctions and, in deed, serious sanctions.
23 But my question remains the same, I mean, if it was
24 so important, why wasn't it brought up earlier? It's
25 been almost three years.

1 MR. PRESTIA: Sure. And my answer to that,
2 Your Honor, is simply that there was an agreement
3 between the parties that no case dispositive
4 proceedings or hearing will occur until we receive
5 discovery.

6 THE COURT: Where is that language -- again, I
7 know you mentioned in that, but where does it say
8 there will be no case dispositive issue to take
9 place?

10 MR. PRESTIA: It is our motion on the third
11 page -- where is it here, plaintiff's counsel -- the
12 paragraph on the last line, plaintiff's counsel
13 indicated to defense counsel that it would not
14 proceed with any hearing until all discovery has been
15 provided.

16 THE COURT: You say that was something that was
17 orally stated and it's on the record somewhere?

18 MR. PRESTIA: That I was not at the hearing, so
19 I don't want to make misrepresentation to the Court.

20 THE COURT: Well, I appreciate that. Let me
21 ask plaintiff's counsel, is that representation of
22 the fact?

23 MR. ROSENTHAL: Your Honor, I wasn't at the
24 hearing either, in fact, this case was being handled
25 by an attorney who no longer with my firm. He left

1 in mid 2011. I didn't even have the benefit of
2 talking to him in order to prepare for today's
3 hearing and, in particular, this motion. But I can
4 speak to what was done --

5 THE COURT: Is there anything else, counsel on
6 this?

7 MR. PRESTIA: I mean, Your Honor, it's our
8 position that it's a clear violation of this Court's
9 order. It's impacted our ability to conduct
10 discovery and prepare for trial. It's not as if it
11 was just a discovery request that went unanswered.
12 There's been specific court orders and the Court
13 ordered an evidentiary hearing that needed to take
14 place, which we have -- you know, not been afforded
15 the opportunity to, you know, have heard.

16 So if anything, Your Honor, we'd ask -- the
17 assignment is going to be an issue in this case.
18 It's an important part of the case that we need to
19 conduct and we need discovery to adequately prepare
20 for trial.

21 THE COURT: Okay.

22 MR. ROSENTHAL: Your Honor, you actually touched
23 on the first thing I was going to say, which is where
24 has the motion to compel been for three years? If
25 this was such an essential issue, I would think they

1 would have raised it much sooner, in fact, they
2 served pretrial discovery, two document requests and
3 a request for production in mid July, when the trial
4 order was issued.

5 My office was working on getting those
6 responses put together in concert with the client.
7 They were late. A motion to compel -- a motion to
8 compel was filed in that instance and we responded to
9 those three discovery items. The same process could
10 have been done and, indeed, should have been done, if
11 this wasn't what I believe to be a tactic. I'll
12 leave it at that, but --

13 THE COURT: Well, I mean, is it plaintiff's
14 position that the court order will be simply ignored
15 until such time --

16 MR. ROSENTHAL: Absolutely not, Your Honor, and
17 I'll tell you why. This argument of an assignment
18 being an essential part of the case is respectfully a
19 red herring. I have a case here that counsel should
20 be familiar with, because I believe they were defense
21 counsel in this case, I could be wrong on that,
22 because I worked on a bunch of these cases.

23 THE COURT: I think that case was shown to me
24 the other day.

25 MR. ROSENTHAL: I don't think so. Taylor

1 versus Bay View Loan Services. This is --

2 MR. PRESTIA: Do you have the case for me?

3 MR. ROSENTHAL: This is a case that stands for
4 the proposition that the mortgage follows the note.
5 To say that we have not --

6 THE COURT: I don't think anybody disagrees
7 with that.

8 MR. ROSENTHAL: But pertinent to this case, the
9 fact that they substantially similar to what we have.

10 THE COURT: What is this issue about --

11 MR. ROSENTHAL: I'll tell you exactly why, they
12 want to know -- the reason for this evidentiary
13 hearing was to determine when the -- when the loan
14 went into the trust, whether this predated the filing
15 of this action, whether my client had the ability to
16 enforce the note at the time of the filing of the
17 lawsuit in 2008. So to say that we have not responded
18 is not exactly correct.

19 On May 29th we filed the original note, which
20 has an endorsement on it, which I'll speak to in a
21 minute. At the same time, we filed the mortgage loan
22 schedule, which was actually one of the items
23 requested and we served it on May 2012. I sent it,
24 again, to counsel last week when I was served with
25 this motion to compel. Bottom line, the mortgage

1 loan schedule tells everyone when this loan went into
2 the trust and in this case it was -- and we'll talk
3 about it later, during the course of the case, but in
4 February of 2005.

5 This is a case where the loan was endorsed to
6 my client and the loan very clearly based on the
7 document produced, demonstrates when the loan went
8 into trust, that all predates the filing of the
9 lawsuit.

10 So to have the evidentiary hearing is, in my
11 opinion, a waste of time. We are not proceeding on
12 the assignment. We're proceeding on the
13 enforceability of the note where the mortgage
14 follows. That case that I just asked -- I just
15 handed, Your Honor, speaks to that. We have an
16 endorsed note that --

17 THE COURT: See, I'm not in a position that,
18 in fact, you are in full compliance with the prior
19 court order. These documents that have been
20 submitted satisfy the requirement of the prior court
21 orders or simply that, well, it doesn't really matter
22 because what we're requesting is really irrelevant
23 and therefore we should ignore --

24 MR. ROSENTHAL: Well, actually both, Your
25 Honor. I believe providing this information should

1 provide them with adequate information to know that,
2 A, the assignment is not anything we need to travel
3 on. We can win this case based on the endorsement on
4 the note and the mortgage loan schedule, which we've
5 provided. So both, we've complied to the extent
6 necessary and on the fact that the assignment is
7 really arouse here, Your Honor.

8 MR. PRESTIA: Just a brief response. This
9 isn't a typical type of a case where it's an open
10 endorsement. There's a specific endorsement not to
11 this plaintiff. So that is why this is a significant
12 issue and, then, obviously, if there's no open
13 endorsement, well, then that short cut to the UCC is
14 straight out the window.

15 So they have to either prove ownership and that
16 can only be done through a specific type of document,
17 which we specifically requested. And discovery,
18 whether it be through that assignment, which is going
19 to be a big issue -- at least on our part, I'm not
20 going to, you know, disclose work product before the
21 trial begins, but in our opinion it's a significant
22 issue in this case and ownership is a significant
23 issue in this case.

24 So that's why, you know, without -- we kind of
25 disclosed an evidentiary matter without conducting an

1 evidentiary hearing, but that is the purpose of an
2 evidentiary hearing to go through all of this
3 in-depth and have competent evidence submitted before
4 the Court that you can consider during this hearing
5 to make a ruling on it.

6 So that is the basis of our motion and the
7 plaintiff's failure -- you know, just because the
8 plaintiff's provide one document as part of 70 some
9 odd pages of trial exhibits is not in compliance with
10 the Court order. I mean, that's just -- I think we're
11 all in agreement on that.

12 So just because they provided -- and it's not
13 even a full document, by the way, which we will get
14 to, I guess, during the crux of the trial, but it is
15 a redacted copy of three pages of I don't know how
16 many.

17 So that is the defense's position, Your Honor,
18 and we're asking for sanctions.

19 THE COURT: Well, does the plaintiff intend to
20 rely on any documents in trial here today that have
21 not been previously produced to the defense?

22 MR. ROSENTHAL: Absolutely not.

23 THE COURT: So to the extent that I know one of
24 the remedies you ask for in your motion is that they
25 not be allowed to do that, so to the extent that

1 everything that they're going to produce has already
2 been provided, so I guess the question is: What is
3 prejudiced?

4 MR. PRESTIA: Well, the prejudice is that we
5 haven't had the ability to conduct an evidentiary
6 hearing and have all of the other documents that may
7 have information that could be beneficial to our
8 client propounded upon us.

9 So there could documents out there that -- you
10 know, they're just showing us certain portions of all
11 of these documents. I'd like to see them all so that
12 I can adequately form a defense for my client and
13 fight them on this, because something fishy is going
14 on here. We need to get to the bottom of this, so
15 that -- I mean, that's why we're seeking compliance
16 with this court order and that's why we did back in
17 2010 and that's why we said, fine, when the plaintiff
18 said, we're not going to, you know, move on any case
19 dispositive hearings until we provide you with that
20 discovery.

21 So, you know, they don't want to -- they don't
22 want to prosecute you and litigate their case, I'm
23 not going to do it for them, you know.

24 THE COURT: Okay. Well, my position is pretty
25 much as what I indicated when we began, I mean, I

1 think to -- on several extents, your client is
2 correct, it ignored court orders, defendant is
3 required to do certain things. Apparently, defendant
4 -- I mean, plaintiff didn't do certain things in a
5 timely fashion. But the ultimate issues of prejudice.

6 THE COURT: I think there also has to be some
7 blame -- I don't know if blame is the right word, but
8 the fact that these -- this late discovery -- this
9 noncompliance exists for over a period of, I think,
10 almost three years and at such time on the eve of
11 trial, that it's raised.

12 So I'm not inclined to grant the ultimate
13 sanctions that's been requested here. I do think,
14 again, plaintiff has been at least tardy and not
15 replying to any of these responses.

16 I'm also to some extent that there was an
17 evidentiary hearing that was supposed to be set
18 wasn't held either, I guess, what the only thing I'll
19 do in that regard is go through the trial and if I
20 determine there appears the defense has actually been
21 prejudiced as a result of any of the inactions, I'll
22 reconsider the issue of sanctions or whether or there
23 was a surprise of anything that comes out whether we
24 need additional discovery. But otherwise, I'll
25 prohibit, of course, the plaintiff from putting forth

1 any documents that have not been previously been
2 provided in discovery.

3 So to the extent, I guess, I'm granting the
4 motion in part and denying it in part.

5 MR. ROSENTHAL: Thank you.

6 MR. PRESTIA: And I have an order reflecting
7 the same if -- and then in light of Your Honor's
8 ruling, in order to conduct a full and adequate
9 review of the potential pieces of -- well, in light
10 of Your Honor's ruling we'd be moving for a
11 continuance due to the fact that there's outstanding
12 discovery out there that we have not been provided
13 with.

14 THE COURT: So I'm going to deny the motion for
15 a continuance, again without prejudice to
16 determine -- go through the trial, it appears to me
17 you've been prejudice, then I'll have to reconsider.

18 MR. PRESTIA: Your Honor, may I approach with
19 the orders?

20 MR. HOLTZ: May I approach to return the Court
21 file?

22 THE COURT: Sure. We probably need that.
23 Thank you.

24 MR. PRESTIA: He needs to fill that out granted
25 in part, denied in part. Thank you very much.

1 THE COURT: Have there been any stipulations in
2 regard to anything today?

3 MR. PRESTIA: No.

4 MR. ROSENTHAL: There have not, Your Honor. In
5 fact, I sent last week a proposed joint pretrial
6 stipulation and did not hear a word back from the
7 defendants.

8 MR. PRESTIA: Just for the record, Your Honor,
9 he sent it to another attorney who's not handling the
10 matter. I have not been provided with that. It
11 wasn't propounded on our service e-mail, so it hasn't
12 trickled through the cracks yet.

13 MR. ROSENTHAL: I sent it to the person who
14 sent the e-mails to me. I sent a copy to Mr. Holtz
15 as well -- two copies to Mr. Holz.

16 MR. HOLTZ: Yes, Your Honor. And there was not
17 -- it was a miscommunication between myself and this
18 other attorney who was responding, but we were not
19 intending to stipulate.

20 THE COURT: I know that the pretrial order
21 does require parties to attempt to get together and I
22 think mediate or resolve the issues.

23 MR. ROSENTHAL: I think we've tried and I don't
24 know that there's a resolution to be found,
25 unfortunately.

1 THE COURT: Well, that's not always true, but,
2 I guess, I just want to put everybody on notice, in
3 the future I expect certain compliance with that
4 beginning of that pretrial order.

5 MR. ROSENTHAL: I have a draft for Your Honor's
6 consideration but, again, it's not agreed to.

7 THE COURT: Okay. Any other preliminary
8 matters?

9 MR. PRESTIA: Yes, Your Honor.

10 THE COURT: Just helps me. Do you have a copy
11 of the proposed final judgment, so I can follow along
12 to see what the case they intend to put on, so I can
13 follow the rule?

14 MR. ROSENTHAL: If I can approach? I'll give
15 you all of my copies and I have envelopes.

16 Have you seen this?

17 MR. PRESTIA: I have not, Your Honor.

18 THE COURT: There is an extra copy. I'll give
19 you a copy of it right here.

20 MR. PRESTIA: May I approach?

21 THE COURT: Sure. Can we waive opening?

22 MR. ROSENTHAL: We can.

23 THE COURT: Is that agreed?

24 MR. PRESTIA: Until our case in chief.

25 THE COURT: Call your first witness.

1 MR. ROSENTHAL: I'd like to call Louise Plasse.

2 THE COURT: Sure. If you can come forward.

3 THE CLERK: Do you swear or affirm that the
4 testimony you will give in this cause will be the
5 truth, the whole truth, and nothing but the truth?

6 THE WITNESS: I do.

7 Thereupon,

8 LOUISE PLASSE,

9 having been first duly sworn or affirmed, was examined and
10 testified as follows:

11 MR. ROSENTHAL: Your Honor, do you need me here
12 at the podium or would you like me --

13 THE COURT: Wherever you're comfortable for the
14 court reporter. I'll be standing -- I just want to
15 think --

16 MR. PRESTIA: Sure. May I ask, if you're going
17 to be standing next to her showing her documents,
18 that we can reposition ourselves to see what he's
19 showing her.

20 THE COURT: Wherever.

21 THE WITNESS: You want me to stand, would that
22 be easier?

23 MR. ROSENTHAL: We prefer the witness remain at
24 the stand. I'll reposition myself, if necessary.

25 Preliminarily, just to head off any

1 difficulties down the road, I asked that counsel
2 identify one of the two of them who's arguing today,
3 I just -- I don't think it's proper for both to be --
4 for lack a better word, tagging.

5 MR. HOLTZ: I'll be conducting the
6 cross-examination and making objections during direct
7 examination as well as making closing argument.

8 THE COURT: Okay.

9 MR. ROSENTHAL: Thank you.

10 MR. HOLTZ: I believe my co-counsel, just to be
11 clear, will be making -- is prepared to make a motion
12 for involuntary dismissal.

13 THE COURT: That's fine. So as long as we have
14 one counsel per witness, I think is what they're
15 asking.

16 THE COURT: Is this going to be your only
17 witness today?

18 MR. ROSENTHAL: Yes. We have filed -- just
19 again for housekeeping matter, we filed an affidavit
20 of our expert on the issue of attorneys' fees. If
21 Your Honor is inclined to require live testimony,
22 we'd ask that the fees be reserved.

23 MR. HOLTZ: Your Honor, I'll be objecting.

24 THE COURT: We'll address that at the
25 appropriate time.

1 DIRECT EXAMINATION

2 BY MR. ROSENTHAL:

3 **Q. Could you please state your name?**

4 A. Louis Plasse.

5 THE COURT: Can you spell that.

6 THE WITNESS: P-l-a-s-s-e.

7 BY MR. ROSENTHAL:

8 **Q. Thank you very much. And with whom are you**
9 **employed?**

10 A. Ocwen Loan Servicing.

11 **Q. What is your job title?**

12 A. My job title is loan analyst.

13 **Q. What are your duties as a loan analyst?**14 A. In that capacity it's various duties that I do.
15 Primarily I review documents in preparation for trial,
16 including the note, the mortgage, payment history, any
17 correspondence that may transpire during the course of
18 the loan and it's just not limited to just that
19 documentation.20 **Q. And where do you find these documents that you**
21 **review in preparation for things such as your testimony**
22 **here today?**23 A. Our documents are all in our computer system in
24 a computer program, a customer service program.25 **Q. Does customer service program have a name?**

1 A. It's our CIS program.

2 **Q. CIS?**

3 A. Yes. Customer computer -- I don't know the
4 exact acronym for it, but...

5 **Q. Okay. And how long you been with Ocwen?**

6 A. A year and a half.

7 **Q. Have you always served in the same capacity**
8 **during that year and a half time?**

9 A. No, I have not.

10 **Q. Okay. What were you doing before?**

11 A. I was working contract management. Primarily, I
12 would prepare value, endorsements.

13 **Q. Okay. And how long have you been a loan**
14 **analyst?**

15 A. Six months.

16 **Q. You've had occasion to testify at trial before?**

17 A. Yes, I have.

18 **Q. And how many occasions?**

19 A. Several occasions, probably well over -- close
20 to 100 or more.

21 **Q. In a six-month period of time?**

22 A. Yes.

23 **Q. In fact, you've had occasion to act as a**
24 **witness where defense counsel served as defense counsel**
25 **in that case?**

1 MR. HOLTZ: Objection. Relevance.

2 THE COURT: Sustained as to relevance.

3 THE WITNESS: Yes, I have.

4 MR. HOLTZ: Move to strike, your Honor.

5 THE COURT: Yeah, we'll move on.

6 BY MR. ROSENTHAL:

7 **Q. Are you the person familiar with the records**
8 **pertaining to the loan in this case, including the note,**
9 **the mortgage, the default letter, the loan payment**
10 **history, the exerted redacted mortgage loan schedule for**
11 **the Novastar Funding Trust Series 2005-1?**

12 MR. HOLTZ: Objection. Improper foundation.

13 THE COURT: Overruled. You may answer.

14 THE WITNESS: Yes, I have. I am -- yes, I am.

15 MR. ROSENTHAL: Are these documents all kept --
16 Your Honor, I could actually do this one of two ways
17 and it's certainly to your pleasure. Would you like
18 me to ask the magic questions regarding
19 authentication and admissibility one at a time or in
20 a collection?

21 THE COURT: It's your burden, so whatever way
22 you're most comfortable.

23 MR. ROSENTHAL: I just don't want to waste Your
24 Honor's time, Your Honor.

25 MR. ROSENTHAL: Can I have the court file

1 because I just as soon as her review the original.
2 It's volume II.

3 THE COURT: This is volume -- no, this is
4 volume --

5 MR. ROSENTHAL: Thank you very much. Showing
6 you a document --

7 MR. HOLTZ: May I have an opportunity to see it?
8 I haven't had an opportunity to see it in the court
9 file. Thank you. If I may have one moment, Your
10 Honor.

11 BY MR. ROSENTHAL:

12 **Q. Thank you. Showing you a document that's**
13 **contained within the Court file for this action. It's**
14 **labeled adjustable rate note. You see that document?**

15 A. Yes, I do.

16 **Q. Is that document kept in the course of**
17 **regularly conducted business activity by the plaintiff?**

18 MR. HOLTZ: Objection. Improper foundation.

19 THE COURT: Sustained as to foundation.

20 BY MR. ROSENTHAL:

21 **Q. Okay. What's this document?**

22 A. This is the original adjustable rate note.

23 MR. HOLTZ: Objection, Your Honor, move to
24 strike witness's testimony as clarifying this is the
25 original that is determination that's to be made

1 THE COURT: Well, I think it was the way. I'll
2 overrule the objection.

3 BY MR. ROSENTHAL:

4 Q. What's the date of the adjustable rate note
5 that you're looking at?

6 A. December 27, 2004.

7 Q. THE COURT: What's the amount of the note?

8 MR. HOLTZ: Objection, Your Honor, he's asking
9 the witness to testify to a document not yet in
10 evidence.

11 THE COURT: Well, I guess --

12 MR. ROSENTHAL: Well, Your Honor, I'm trying to
13 establish business record, so I can admit it into
14 evidence.

15 THE COURT: Well, being nonjury, I'll overrule
16 the objection. If I determine that it's
17 inadmissible, then I'll strike it.

18 MR. HOLTZ: Thank you.

19 BY MR. ROSENTHAL;

20 Q. And what's the amount of the note?

21 A. The amount 342 and zero dollars.

22 Q. What date appears on the mortgage?

23 MR. HOLTZ: Same objection, Your Honor.

24 THE COURT: I'll give you a standing
25 objection.

1 MR. HOLTZ: I understand, Your Honor, but I
2 just -- I understand that other previous trials,
3 we've been burned on the appellate level by not
4 preserving our objections to specific questions.

5 THE COURT: Okay.

6 MR. HOLTZ: So I don't mean to offend the
7 Court, but I would like to keep making objections.

8 THE COURT: Take no offense.

9 MR. HOLTZ: I appreciate that. Thank you.

10 BY MR. ROSENTHAL:

11 **Q. What is the amount reflected on the first page**
12 **of the note?**

13 A. 342 and zero dollars.

14 **Q. How many pages is there? How many pages are**
15 **contained in this note?**

16 A. There are three pages contained within the note
17 and then there is a fourth page not numbered that's an
18 addendum to the note.

19 **Q. Okay. And is -- are the third -- is the third**
20 **page the note and the addendum to the note, do they**
21 **contain signatures?**

22 A. Yes, they did.

23 **Q. And what are the names that are -- printed**
24 **names below the signature on each page?**

25 MR. HOLTZ: Objection. Testifying from a

1 document not yet in evidence.

2 THE COURT: Overruled.

3 MR. ROSENTHAL: Thank you. You can answer.

4 THE WITNESS: [REDACTED] and [REDACTED]

5 BY MR. ROSENTHAL:

6 **Q. And that's same for the addendum to the note?**

7 A. Yes, it is.

8 **Q. Okay. How does your employer maintain loan**
9 **documents in its business records? How are they**
10 **maintained?**

11 MR. HOLTZ: Object. Improper foundation.

12 THE COURT: Overruled. You may answer.

13 MR. HOLTZ: Hearsay

14 THE COURT: Overruled.

15 THE WITNESS: Our business records are filed
16 contemporaneously within the time that transacted,
17 you know, a week or so after the transactions have
18 been completed.

19 BY MR. ROSENTHAL:

20 **Q. Okay. Is this adjustable rate note kept in the**
21 **course of regularly conducted business activity by your**
22 **employer?**

23 MR. HOLTZ: Objection. Improper foundation,
24 hearsay, lack of personal knowledge.

25 THE COURT: Overruled.

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THE WITNESS: Yes, it is.

BY MR. ROSENTHAL:

Q. Is it the regular practice of your employer to make documents such as these, including the adjustable rate note in this case?

MR. HOLTZ: Objection. Leading, lack of foundation, lack of personal knowledge and hearsay.

THE COURT: Overruled.

THE WITNESS: Yes, it is.

BY MR. ROSENTHAL:

Q. Was the document made at or near the time or from information transmitted by a person with knowledge?

MR. HOLTZ: Objection. Same objections.

THE COURT: Overruled. You may answer.

THE WITNESS: Yes, it is.

BY MR. ROSENTHAL:

Q. Your Honor, in light of the fact that -- we ask at this point that the adjustable rate be admitted into evidence as Plaintiff's Exhibit 1.

MR. HOLTZ: May I voir dire?

THE COURT: You may.

VOIR DIRE.

BY MR. HOLTZ:

Q. Thank you. Ms. Plasse, have you -- have you ever -- you never seen this note before today, have you?

1 A. Just copies.

2 Q. Okay. So this is the first -- this is the first
3 time that you had an opportunity to see this -- this
4 particular document. You're saying that this is the --
5 your testimony, this is the original note?

6 A. Yes.

7 Q. Okay. And you're basing this testimony on the
8 blue ink signatures that appear on this document?

9 A. Yes, I am.

10 Q. Now, you -- you're not holding yourself out as
11 an expert in document authentication, are you?

12 A. No, I'm not.

13 Q. You never took classes in document
14 authentication, have you?

15 A. No, I have not.

16 Q. In your work at Ocwen, are you familiar with --
17 you're familiar with the facts, they have color printing
18 capability, do they not?

19 A. Yes, they do.

20 Q. And you'd agree with me that a color printer
21 could print a document that has a blue -- what appears to
22 be a signature on it in blue ink?

23 MR. ROSENTHAL: Objection, Your Honor, he has no
24 foundation for any argument that this is a copy, let
25 alone anything, other than the original.

1 THE COURT: Is there going to be any evidence
2 or testimony that this is a forgery or something
3 other than that?

4 MR. HOLTZ: Your Honor, in our affirmative
5 defenses and our answer in affirmative defenses, we
6 specifically deny the authenticity of this note and
7 challenge the plaintiff must -- the burden is on the
8 plaintiff to establish that this is the original
9 note. They must submit the original note as part of
10 the evidence to prove the case. Simply having -- I'm
11 simply asking the witness questions that raise doubt,
12 that at least raise the issue that it is possible --
13 that just because this has blue ink signatures,
14 doesn't mean this is the original note. There has to
15 be some affirmative testimony, some affirmative
16 evidence that establishes this note's originality and
17 authenticity and my point would be, after I conclude
18 the voir dire shortly, that they have not yet
19 provided that evidence.

20 MR. ROSENTHAL: And, Your Honor, if I might,
21 their affirmative defenses lack holding of any kind
22 of factual specificity. It's a bald, general
23 assertion under Chapter 673.3081, which requires more
24 than just throwing it out there and arguing, hey, you
25 have to prove its authentication, it's original and

1 authentic. They haven't even met the pleading burden
2 of their affirmative defenses and they should not be
3 allowed to take this court down a rabbit hole and try
4 to create an issue out of --

5 MR. HOLTZ: Your Honor, I just want to -- I just
6 need to respond and say that I object to counsel's --
7 first counsel's mischaracterization as to the rabbit
8 hole.

9 And second, that those arguments could have
10 properly been raised in a motion to strike and
11 hearing on a motion to strike our affirmative
12 defenses, which is not taken place and: Our
13 affirmative defenses are before this court as pled
14 and as such, I believe it's entirely proper for me to
15 pursue this line of questioning and raise that
16 argument.

17 THE COURT: I'm going to sustain the objection,
18 unless there was a good faith bases to believe
19 that -- again, it's something other than what the
20 Court purports to be argumentative, that is forgery,
21 not genuine, there is evidentiary bases, I'll allow
22 you to go forward, but since it's a mere possibility
23 or could be a forgery, could be something else, I
24 don't think is sufficient, so I'm just going to
25 overrule the objection.

1 MR. HOLTZ: And, respectfully, that's over
2 defense's objection. We believe it's plaintiff's
3 burden to prove every element by a preponderance of
4 the evidence.

5 THE COURT: I understand. Thank you.

6 MR. HOLTZ: Thank you, Your Honor.

7 THE COURT: You may continue.

8 MR. HOLTZ: I guess, I have no -- based on the
9 Court's ruling, my voir dire is concluded. And I am
10 objecting to the introduction of the note formally
11 for the record, the lack of foundation.

12 THE COURT: Plaintiff 1 in evidence over
13 objection.

14 (Plaintiff's No. 1 was received in Evidence.)

15 MR. ROSENTHAL: Thank you, Your Honor. Is there
16 any way I could get a glass of water.

17 THE COURT: Plaintiff may continue.

18 MR. ROSENTHAL: Thank you.

19 BY MR. ROSENTHAL:

20 **Q. Showing you a copy of the document entitled**
21 **mortgage --**

22 MR. HOLTZ: Can I have an opportunity --

23 BY MR. ROSENTHAL:

24 **Q. Have you ever seen this document before?**

25 A. I have reviewed -- excuse me, reviewed a copy

1 of this in preparation for trial.

2 **Q. Where did you find a copy of this mortgage to**
3 **review it?**

4 A. It's kept within Ocwen's business records.

5 MR. HOLTZ: Objection. Move to strike the
6 witness's testimony of the business records that has
7 not yet been established.

8 THE COURT: Overruled.

9 BY MR. ROSENTHAL:

10 **Q. Could you tell the Court the date of the**
11 **mortgage?**

12 MR. HOLTZ: Objection, Your Honor, asking the
13 witness to testify from a document not yet in
14 evidence.

15 THE COURT: Over prior caveat, I'll overrule the
16 objection.

17 THE WITNESS: The date of this mortgage is
18 December 27, 2004.

19 BY MR. ROSENTHAL:

20 **Q. Same date as the date of the mortgage, correct?**

21 MR. HOLTZ: Objection, Your Honor. Relevance.

22 THE COURT: Overruled.

23 BY MR. ROSENTHAL:

24 **Q. Who's reflected as the borrowers on the**
25 **mortgage?**

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A. Borrowers are [REDACTED] and [REDACTED]

MR. HOLTZ: Move to strike. Testifying from a document not yet in evidence.

THE COURT: Overruled.

BY MR. ROSENTHAL:

Q. On page nine of nine of this document, I'm going that you identify the printed names that contains a signature above them?

MR. HOLTZ: Same objection, Your Honor.

THE COURT: Same. Overruled.

THE WITNESS: [REDACTED] and [REDACTED]

BY MR. ROSENTHAL:

Q. Is this mortgage -- well, you testified before that the mortgage is kept within Ocwen's business records, correct?

MR. HOLTZ: Objection, leading and asked and answered.

THE COURT: Well, it is somewhat leading.

BY MR. ROSENTHAL:

Q. I understand. Let me change that. Okay. Is this mortgage document kept within Ocwen's business records?

MR. HOLTZ: Objection asked and answered.

THE COURT: Overruled.

THE WITNESS: Yes, it is.

1 BY MR. ROSENTHAL:

2 Q. Is it maintained in the course of Ocwen's
3 regularly done business activity?

4 MR. HOLTZ: Objection. Improper foundation and
5 personal knowledge and hearsay.

6 THE COURT: Overruled.

7 BY MR. ROSENTHAL:

8 Q. It is the regular practice of Ocwen to make
9 this mortgage -- the document that you're referring to in
10 front of you?

11 MR. HOLTZ: Objection. Relevance, lack of
12 personal knowledge, improper foundation and hearsay.

13 THE COURT: Overruled.

14 BY MR. ROSENTHAL:

15 Q. Is this document -- was this document made at
16 or near the time by or from -- transmitted by a person
17 with knowledge?

18 MR. HOLTZ: Object. Same objection.

19 THE COURT: Same ruling. Overruled. You may
20 continue.

21 THE WITNESS: Yes, it is.

22 MR. ROSENTHAL: Your Honor I would ask that --
23 well, before I do that, I'd like to refer the witness
24 to exhibit -- Plaintiff's Exhibit Number 1, which is
25 the original note in the court file having been

1 previously filed.

2 BY MR. ROSENTHAL:

3 **Q. Can you let -- can you tell the Court what**
4 **appears below the signatures on page nine of nine of the**
5 **note?**

6 A. Okay. It's a stamp endorsement from Novastar
7 endorsed over JPMorgan Chase Bank as trustee.

8 **Q. And Novastar was who?**

9 A. They were the original lender on this note.

10 **Q. Okay. And who is the plaintiff in this case?**

11 A. Bank of New York.

12 **Q. Bank of New York Mellon --**

13 MR. HOLTZ: Objection. Counsel is testifying
14 and leading the witness to answer.

15 MR. ROSENTHAL: I haven't even asked the
16 question yet, Your Honor.

17 THE COURT: Let me hear the whole question.

18 BY MR. ROSENTHAL:

19 **Q. Do you know the name of the plaintiff?**

20 MR. HOLTZ: Your Honor, objection. Counsel just
21 gave a portion of the answer that he needed from the
22 witness to the witness before asking the question.

23 THE COURT: Overruled. You may answer.

24 THE WITNESS: Bank of New York Mellon and I
25 can't complete -- but there's attached verbiage that

1 goes with it. I don't know it verbatim.

2 BY MR. ROSENTHAL:

3 **Q. I'm going to show you the style of this case --**

4 MR. HOLTZ: Objection.

5 BY MR. ROSENTHAL:

6 **Q. -- to help refresh your recollection.**

7 MR. HOLTZ: Objection, Your Honor, the witness
8 is not indicated that she needs her recollection
9 refreshed. The foundation has not been laid.

10 THE COURT: I think he indicated if she
11 recalls, but I'll overrule the objection..

12 MR. HOLTZ: May I see what you're showing the
13 witness to refresh her recollection.

14 MR. ROSENTHAL: Certainly. I'm showing her the
15 notice of filing excerpt mortgage loan schedule that
16 was filed on May 24, 2012.

17 MR. HOLTZ: Thank you.

18 BY MR. ROSENTHAL:

19 **Q. Now, having seen the name of the plaintiff on**
20 **the case style of this notice of filing, does this**
21 **refresh your recollection as to who the -- full name of**
22 **the plaintiff in this case?**

23 A. Yes, it does.

24 **Q. And who is the plaintiff -- what is the full**
25 **name of plaintiff in this case?**

1 A. The Bank of New York Mellon as successor
2 trustee under Novastar Mortgage Funding Trust 2005-1.

3 **Q. Okay. Now, let's take a look at the**
4 **endorsement, again, if we could -- it says there -- what**
5 **does it say again?**

6 MR. HOLTZ: Objection. Asked and answered.

7 THE COURT: Overruled.

8 BY MR. ROSENTHAL:

9 **Q. This is a stamped endorsement from Novastar**
10 **Mortgage, Inc., paid to the order of JPMorgan Chase Bank**
11 **as trustee for JP Morgan Bank National Association as**
12 **trustee for the Novastar Home Equity Loan Asset,**
13 **certificate series 2005-1.**

14 **Q. Can you explain to the Court why the trustee**
15 **listed as the plaintiff in this case, Bank of New York**
16 **Mellon where the endorsement reflects JP Morgan Chase**
17 **Bank as trustee?**

18 MR. HOLTZ: Objection. Improper foundation,
19 lack of personal knowledge, calls for a hearsay
20 response.

21 THE COURT: I think the question is actually,
22 do you know, right?

23 MR. ROSENTHAL: I asked if she could explain.

24 MR. HOLTZ: That's not the same.

25 MR. ROSENTHAL: I could ask her, do you know and

1 then I can could ask her can she explain if that's
2 appropriate?

3 THE COURT: Ask her how she knows?

4 BY MR. ROSENTHAL:

5 **Q. Okay. How do you know?**

6 A. Do I know, they --

7 THE COURT: Yes or no answer.

8 THE WITNESS: Yes.

9 BY MR. ROSENTHAL:

10 **Q. How do you know -- or I guess I should say,**
11 **what do you know and then I'll ask you how you know.**

12 MR. HOLTZ: No, Your Honor --

13 THE COURT: I guess, how you know is hearsay
14 if something else is objectionable.

15 BY MR. ROSENTHAL:

16 **Q. Then I'll ask, how do you know?**

17 A. How do I know based -- in preparation for trial
18 and based on my research, they are -- the Bank of New
19 York is listed as the successor to JPMorgan Chase.

20 MR. HOLTZ: Objection, Your Honor. Move to
21 strike testimony because here testimony is hearsay.

22 THE COURT: So the basis to your knowledge is
23 saying that she read, right?

24 MR. ROSENTHAL: Based on research and
25 preparation for trial.

1 THE COURT: Which is something that she read?
2 Why isn't that hearsay if her knowledge is based on
3 what somebody has told her?

4 MR. ROSENTHAL: Her knowledge is on based
5 records she read within her employer, which is
6 business records.

7 THE COURT: Okay. Still relying on business
8 records exception?

9 MR. ROSENTHAL: Yes, Your Honor.

10 MR. HOLTZ: Your Honor, there's been foundation
11 led as to anything -- any document that she's read or
12 research that's conducted as being done on records
13 that would fall within the business exception. At
14 this point the testimony that she's illicit is
15 hearsay.

16 THE COURT: And the business exception is for
17 the purpose of admitting business records?

18 MR. HOLTZ: Yes, Your Honor.

19 THE COURT: So I'm not sure the information
20 that she's relying on in response to her answer,
21 assuming it did qualify as a business record's
22 exception for purposes of putting those documents in
23 evidence, which I don't know if that's your purpose
24 or not, are you moving those documents into evidence?

25 MR. ROSENTHAL: Your Honor, I'll pulling out of

1 this my bag here additional documents that will
2 satisfy everything.

3 THE COURT: All right. Let's see.

4 MR. ROSENTHAL: I doubt that. I'll do the best
5 I can.

6 MR. HOLTZ: And, additionally, just for the
7 purpose of the record, I should add that the best
8 evidence rule would dictate that these documents be
9 put before the Court for consideration.

10 THE COURT: Preserve on this until we see what
11 he's got.

12 MR. ROSENTHAL: I apologize, Your Honor.

13 THE COURT: That's all right.

14 MR. HOLTZ: May I take a look at it?

15 MR. ROSENTHAL: You should have it already.
16 It's been filed with the Court.

17 MR. ROSENTHAL: May I have it back?

18 MR. HOLTZ: I just want to make sure I'm
19 looking at this what -- thank you.

20 Before plaintiff continues, I'll just raise it
21 now, so I would ask -- there's a -- what plaintiff is
22 intending to show the witness, it does contain
23 documentation, but there's also a memorandum of law
24 attached to it, which would not come in as evidence.
25 So I'd ask that that be separated, if you intend to

1 show it to the witness and get those documents into
2 evidence, so solely evidentiary material that's
3 presented to the witness.

4 THE COURT: Can we stipulate?

5 MR. ROSENTHAL: That's fine.

6 THE COURT: For what it's worth, if it comes
7 in, I won't consider the memorandum.

8 MR. ROSENTHAL: Anybody have a staple remover?

9 THE COURT: Like I said, I'll be a full service
10 court.

11 MR. ROSENTHAL: Thank you. You want to mark
12 this for ID at this time?

13 BY MR. ROSENTHAL:

14 **Q. As counsel mentioned, on May 24, 2012, a**
15 **memorandum of law was filed with the Court and attached**
16 **to it, which were exhibits supporting memorandum, I won't**
17 **hand you the memorandum, but I do want to show you a**
18 **series of documents, which we'll mark as the next**
19 **numbered exhibit for identification at this time as a**
20 **composite.**

21 THE COURT: Which would be what did we mark --

22 MR. ROSENTHAL: We haven't gotten passed the
23 note, Your Honor, so this would be 2.

24 THE COURT: This would will 2 for ID at this
25 time.

1 (Plaintiff's Composite Exhibit No. 2 was marked
2 for Identification.)

3 BY MR. ROSENTHAL:

4 Q. Can you identify the first document? It's
5 marked Exhibit A.

6 A. Marked Exhibit A.

7 Q. Let's just go to the first document.

8 What's the first document? Do you know what the
9 question is?

10 A. Yes, I do. Yes, I do, I'm just --

11 Q. Take all of the time you need. I just didn't
12 know if you got it.

13 A. This is a purchase agreement between -- dated
14 as of April 7, 2006, between Bank of New York and
15 JPMorgan Chase.

16 MR. HOLTZ: Objection, Your Honor. Hearsay,
17 lack of personal knowledge and testimony from a
18 document not yet in evidence.

19 THE COURT: Well, you're right. It's not in
20 evidence.

21 MR. ROSENTHAL: I've only asked her to identify
22 it.

23 THE COURT: I'll overrule the objection.

24 BY MR. ROSENTHAL:

25 Q. I'll ask you the same question regarding

1 **Exhibit B, which is part of Composite Exhibit 2 for**
2 **identification at this time. Take a look at the whole**
3 **document.**

4 **This document appears to be a portion of what's**
5 **otherwise known as Pooling & Servicing Agreement, which**
6 **is, you know, public records found on this Security**
7 **Exchange Commission website.**

8 MR. HOLTZ: Objection. Move to strike
9 testimony as irrelevant.

10 THE COURT: Overruled. I'll determine what if
11 anything --

12 BY MR. ROSENTHAL:

13 **Q. You said it's portion, so what is this -- what**
14 **would portion be?**

15 A. This is Bank of New York --

16 MR. HOLTZ: Your Honor, again, counsel is
17 asking the witness to testify from a document not yet
18 in evidence. Objections to the testimony.

19 THE COURT: Based on my prior ruling,
20 overruled.

21 THE WITNESS: The Bank of New York is -- this
22 is -- announcing that they are in agreement with
23 JPMorgan Chase acquiring their business corporate
24 trust business as JPMorgan Chase, Bank of New York
25 Retail Banking Regional Middle Market business.

1 MR. HOLTZ: Move to strike. Same as previous
2 objection, testimony from document not yet in
3 evidence.

4 THE COURT: Overruled.

5 BY MR. ROSENTHAL:

6 Q. Let me do the same and ask you if you can
7 identify the Exhibit C to Composite Exhibit 2 for
8 identification?

9 A. Again, this also appears to be a portion of the
10 Pulling & Servicing Agreement, which is, you know, found
11 on the UCC website, common knowledge. This is just
12 stating Bank of New York and their attempt to purchase
13 JPMorgan Chase.

14 MR. HOLTZ: Again, move to strike, the witness
15 testimony testifying this is common knowledge, as
16 well testimony from a document not yet in evidence.

17 THE COURT: Overruled.

18 BY MR. ROSENTHAL:

19 Q. In addition to, which I think is identified as
20 the Pooling & Servicing Agreement being available in the
21 public records, are these documents also kept as business
22 record's of the plaintiff?

23 MR. HOLTZ: Objection. Leading.

24 THE COURT: Overruled.

25 THE COURT: Yes, they are.

1 BY MR. ROSENTHAL:

2 Q. Your testimony that Bank of New York Mellon, as
3 successor trustee to JPMorgan Chase, what was that
4 testimony based upon?

5 MR. HOLTZ: Objection, Your Honor, leading.

6 THE COURT: Overruled.

7 THE WITNESS: It was based on the research that
8 I, you know, did prior to coming here today and on
9 knowledge, you know, just common knowledge that I
10 have of the business industry that these documents do
11 exist.

12 BY MR. ROSENTHAL:

13 Q. And the research that you did today, did that
14 include reviewing documents that we just went over today
15 Exhibit A, B, C, which are Composite Exhibit 2 for
16 identification?

17 MR. HOLTZ: Objection. Leading.

18 THE COURT: Overruled.

19 THE WITNESS: I reviewed portions of the
20 Pooling & Servicing Agreement, the entire document is
21 way too long to read the entire thing, but I did read
22 portions of it just to become familiar with the
23 document itself.

24 BY MR. ROSENTHAL:

25 Q. The portions you read, are those portions that

1 **are now before you as Composite Exhibit 2?**

2 A. Yes.

3 **Q. Just so we're clear, these documents are kept**
4 **in the normal course of the plaintiff's business?**

5 MR. HOLTZ: Objection. Leading and improper
6 foundation, lack of personal knowledge, hearsay.

7 THE COURT: So the question was: Are these
8 kept in the ordinary course of business; is that what
9 the question was?

10 MR. HOLTZ: And asked and answered.

11 THE COURT: Would you mind repeating the
12 question, counsel?

13 MR. ROSENTHAL: Sure. I'm sorry. I'm terribly
14 unorganized. I misplaced something. Your Honor, can
15 we take a five minute break here, so I can organize
16 myself. I apologize.

17 THE COURT: Well, let's make this our regular
18 afternoon break. We'll take about 15 minutes.

19 MR. HOLTZ: May I ask the Court to instruct the
20 witness on her responsibility as a person still under
21 oath.

22 THE COURT: I'm assuming you want me to say
23 she's not to talk about the case with counsel. Any
24 objection?

25 MR. ROSENTHAL: No, your Honor.

1 THE COURT: We'll take 15 minutes.

2 (A break was taken from 2:38 p.m. to 2:52 p.m.)

3 THE COURT: Good afternoon.

4 MR. ROSENTHAL: Your Honor, thank you very
5 much.

6 THE COURT: Sure.

7 BY MR. ROSENTHAL:

8 Q. I've misplaced some paperwork that I've now
9 found. I think where we last left off prior to our
10 break, I was asking the questions of counsel -- the
11 witness regarding Composite Exhibit 2 for identification,
12 are the documents that we have identified as Composite
13 Exhibit 2 maintained in the ordinary course of business
14 for the plaintiff?

15 MR. HOLTZ: Objection. Lack of personal
16 knowledge, hearsay, improper foundation and leading.

17 THE COURT: Overruled.

18 THE WITNESS: Yes, they are.

19 BY MR. ROSENTHAL:

20 Q. Is it a regular practice of the plaintiff to
21 make these documents and maintain them?

22 MR. HOLTZ: Objection, Your Honor. Lack of
23 foundation, lack of personal knowledge and hearsay.

24 THE COURT: Overruled.

25 BY MR. ROSENTHAL:

1 **Q. Are these -- Composite Exhibit 2 for**
2 **identification, are these documents made or near the time**
3 **by or from -- or from information transmitted by a person**
4 **with knowledge?**

5 MR. HOLTZ: Objection, Your Honor, leading,
6 lack of personal knowledge, improper foundation and
7 hearsay.

8 THE COURT: These records prepared by a person
9 with knowledge, how would they know that? I'll
10 sustain as to foundation. We're talking about these
11 are filings or information filed by SEC.

12 MR. ROSENTHAL: Part of them, yes, Your Honor,
13 and some were news releases and they were all
14 maintained and they were documents she reviewed in
15 her research prior to trial. She's already testified
16 to that. That part -- to the extent she can't
17 testify -- to the extent she can't testify about how
18 they were made or who made them, she certainly can
19 rely on them as a public record as well.

20 THE COURT: News accounts is --

21 MR. ROSENTHAL: The SEC filing of the Pooling &
22 Servicing Agreement.

23 MR. HOLTZ: I'm just going to tell, Your Honor,
24 that my understanding is a portion of this is SEC
25 filing and there's another portion, because this is a

1 composite exhibit, another portion is a news release,
2 I don't want to tip my hands, but I'm not ready to
3 object because it's not yet been moved into evidence,
4 or attempted to be moved into evidence, but that was
5 part of what I was going to object as far as
6 foundation and qualification of a business record.

7 THE COURT: I will consider for purposes of
8 your objection as to the SEC, because it's a news
9 release.

10 MR. ROSENTHAL: Okay. Does Your Honor want to
11 have to look at the news release, would that assist
12 at all in your consideration of his objection?

13 THE COURT: Well, she's being asked apparently
14 as the person who generated that news release, I
15 don't know if that's a news report or what that is.
16 That person as -- trying to look at the statute here.
17 The information contained in the report in this case
18 is news supplied by the person acting within the
19 course of a regularly conducted business and I'm not
20 sure the newspaper is going to --

21 MR. ROSENTHAL: Actually, it's not a
22 newspaper, it's a news release from the Bank of New
23 York.

24 THE COURT: Oh, I thought it was a news release
25 from the Bank of New York. Okay. That's a little bit

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different. I'll overrule the objection.

MR. ROSENTHAL: Thank you, Your Honor. So we'd ask that these documents be admitted as Exhibit 2.

MR. HOLTZ: And I object, Your Honor. May I have a brief voir dire of the witness?

THE COURT: Yes.

VOIR DIRE.

BY MR. HOLTZ:

Q. Ms. Plasse, you work for Ocwen Loan Servicing, correct?

A. Yes.

Q. You've worked there for a year and a half?

A. Yes, I have.

Q. Okay. Before then, you worked at Bank of New York?

A. No.

Q. You never worked at Bank of New York, have you?

A. No.

Q. Bank of New York Mellon?

A. No.

Q. Any subsidiary of Bank of New York?

A. No.

Q. Any parent or holding corporation of Bank of New York?

A. No.

1 Q. You've never worked at JPMorgan Chase, either?

2 A. No.

3 Q. You never worked for any subsidiaries for
4 JPMorgan Chase?

5 A. No. .

6 Q. Ever work for any parent or holding company of
7 JPMorgan Chase?

8 A. No.

9 Q. You're not familiar with the policies and
10 procedures of JPMorgan Chase -- of Bank of New York's
11 media relations department, are you?

12 A. No.

13 Q. You're not familiar -- you're not familiar if
14 it's called -- if it's called media relations versus
15 public relations, are you?

16 A. Correct.

17 Q. You have no familiarity or personal knowledge
18 of the business practices or policies and procedures of
19 Bank of New York or Bank of New York Mellon, do you?

20 A. That's correct.

21 Q. You are not familiar with policies and
22 procedures of Bank of New York or Bank of New York Mellon
23 with respect to maintenances of the documents created at
24 that institution, are you?

25 A. No, I'm not.

1 Q. In fact, let me ask you this: Bank of New
2 York -- to your knowledge, Bank of New York and Bank of
3 New York Mellon are the same entities?

4 A. To my knowledge, yes.

5 Q. But you never worked for either one?

6 A. No.

7 MR. ROSENTHAL: Objection. Asked and answered.

8 THE COURT: Overruled.

9 BY MR. ROSENTHAL:

10 Q. Okay. I'll leave that. The document referred as
11 the news release in which is Exhibit B. I believe of
12 Plaintiff's Composite 2 for identification -- well,
13 actually I guess -- yes, exhibit part of Exhibit B, right
14 it's --

15 A. Exhibit C.

16 Q. Okay. News release, that's part of Plaintiff's
17 Exhibit B or part of Composite 2 for identification.

18 A. Yes, I believe, that's what it says.

19 Q. Okay. Ocwen Loan Servicing had nothing to do
20 with the preparation off that news release, did it?

21 A. No -- yes, they did.

22 Q. Even if they did, you're not familiar with the
23 media relations and public relations of department
24 policies and procedures of Ocwen Loan Servicing, are you?

25 A. No, I'm not.

1 Q. Let's talk about the rest of that exhibit, the
2 pages that precede that news release in Exhibit B. As
3 part of Plaintiff's Composite 2 for identification, you
4 testified that those are portions -- those are portions
5 of the Pooling & Servicing Agreement that relates to this
6 case?

7 A. Yes.

8 Q. Okay. Well, that's -- that's a portion of a
9 much larger document; is it not?

10 A. Absolutely, yes.

11 Q. Okay. But the entire -- but the entirety of
12 that document is not contained within Exhibit B of
13 Plaintiff's Composite 2, is it?

14 A. No, it's not.

15 Q. So it's not here today?

16 A. No.

17 Q. You don't have it with you?

18 A. No.

19 Q. And a portion of that document that are not
20 contained within Exhibit B of Composite -- Plaintiff's
21 Composite Exhibit 2 for identification, they deal with
22 the rules and regulations regarding the setup or rather
23 regarding inclusion of certain loans within the trust, do
24 they not?

25 A. Yes.

1 Q. They set forth certain requirements that loans
2 have to meet in order to be placed in the trust, do they
3 not?

4 A. Yes.

5 Q. So you agree that those documents -- that those
6 rules and regulations would have a necessary bearing on
7 whether or not this loan qualified to put into that
8 trust?

9 A. Yes.

10 Q. And, again, that information is not before the
11 Court today?

12 A. No, it's not.

13 Q. It's not included in this exhibit?

14 A. No, it's not.

15 Q. But it does exist?

16 A. It does. It's public knowledge.

17 Q. You used the phrase, common knowledge, before
18 in talking about your research, your common knowledge of
19 the industry combined with your research led you to
20 believe -- led you to know why JP -- why Bank of New York
21 Mellon is successor to JP Morgan Chase Bank as trustee?

22 A. Correct.

23 Q. What common knowledge, specifically, are you
24 talking about that gave you that knowledge?

25 A. Just my knowledge of working on assorted

1 endorsements, not necessarily this specific endorsement,
2 but other endorsements, you know, like Bank of New York.

3 **Q. Your -- in Plaintiff's Exhibit A, which is part**
4 **of Plaintiff's Composite 2 for identification, you**
5 **previously identify that as the portion -- portion of the**
6 **purchase agreement between JPMorgan Chase Bank and Bank**
7 **of New York?**

8 A. Yes.

9 **Q. And that's in regard to a specific loan?**

10 A. Purchase agreement speaks specifically to this
11 particular loan.

12 **Q. Okay. And it doesn't speak to this particular**
13 **loan, then it doesn't really matter with regard to**
14 **whether or not this loan -- Bank of New York Mellon has**
15 **standing to bring this particular action, does it?**

16 A. No.

17 **Q. Now, you also said that now you were not -- you**
18 **already testified that you've never worked at JPMorgan**
19 **Chase Bank and you've never worked at Bank of New York,**
20 **so you, yourself were ever a party to this purchase and**
21 **assumption agreement, correct?**

22 A. Correct.

23 **Q. You did not prepare this document?**

24 A. Correct.

25 **Q. You were not there when it was closed?**

1 A. Correct.

2 Q. You were not there when they negotiation took
3 place between JPMorgan Chase Bank and Bank of New York?

4 A. No, I was not.

5 Q. Okay. And you do not have any personal
6 knowledge, did you, as to how this document was
7 maintained and recorded at either JPMorgan Chase Bank or
8 Bank of New York?

9 MR. ROSENTHAL: Your Honor, I'm going to object
10 at this point. It's outside of the scope of what I
11 had her testify to.

12 MR. HOLTZ: Your Honor, he had the witness
13 testify that this is a business record that was kept
14 in the ordinary course of business of the plaintiff
15 in this case who is Bank of New York Mellon and I
16 don't believe she's qualified to do that and that's
17 what I'm going into on voir dire.

18 MR. ROSENTHAL: And at no point did I even
19 illicit testimony that said that she was present at
20 any of those closings or agreements, nor do I feel
21 like I need to

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

24 BY MR. ROSENTHAL:

25 Q. Please answer, if you can.

1 A. Can you repeat?

2 Q. Absolutely. You -- now, since you've already
3 testified that you never worked at JPMorgan Chase Bank or
4 the Bank of New York, you cannot -- you have no personal
5 knowledge, do you, as to how this document would have
6 been created, ordered or maintained at either of those
7 institutions?

8 A. No, I do not.

9 MR. HOLTZ: Thank you. Your Honor, at this time,
10 again, I object to the introduction of these
11 documents. The witness is not sufficiently qualified
12 to establish the trustworthiness or the reliability
13 of these to satisfy the business record exception of
14 the hearsay rule and inadmissible hearsay.

15 Additionally, moving to strike her testimony
16 from these documents based on these documents and any
17 testimony that was based on her research for these
18 documents as they are hearsay, have not been
19 established to be business records and thus should be
20 kept out and I was actually trying to find out --
21 seems to me, maybe you're all not able -- there's a
22 recent case that came out in the last week or so on
23 issue a business record and regarding, I guess,
24 servicing agent, who was not a party to the prior --

25 MR. HOLTZ: If I may approach and I'll show

1 counsel. I have another copy for, Your Honor.

2 THE COURT: This is one of those kind of stand
3 up and take notice come out. This assumes -- the one
4 I've seen --

5 MR. HOLTZ: Yeah, it's just to -- I didn't mean
6 to look over your shoulder, but the case the Judge is
7 referring to is Yang and Romeo versus Sebastian Lakes
8 Condominium Association. It's 4D12-3363 and 3364,
9 Fourth DCA case. Essentially, I believe, Your Honor's
10 referring to the portion that counsel can look to on
11 page five.

12 THE COURT: Thank you.

13 MR. HOLTZ: As to the management company
14 records, is the words in that first paragraph,
15 complete paragraph on that page?

16 THE COURT: Counsel, are you familiar with the
17 case?

18 MR. ROSENTHAL: Actually, this is the first
19 time I'm looking at it, Judge. Also that's not the
20 first time that's happened to me, so...

21 THE COURT: And reading from page five of this
22 particular case, which is the paragraph that explains
23 that such an affidavit is inadmissible because we
24 relied on data supplied by the loan servicer with
25 whose procedures he ws even less familiar. He could

1 state that the data in the affidavit was accurate
2 only insofar it replicated the numbers derived from
3 the company's computer system. We therefore held
4 that the bank failed to present competent,
5 substantial evidence of the amount owed under the
6 mortgage.

7 Here, the management company's employee
8 indicated that she could not testify as to the
9 starting balance, She never worked with the prior
10 accountant, and was unfamiliar with how the records
11 were kept. She could not confirm that the prior
12 accountant used acceptable accounting practices and
13 she was unable to authenticate the data obtained from
14 the prior accountant as accurate. She could not
15 testify that the condo lien was valid and the
16 husband's claim he pre-paid the assessments prior to
17 the takeover was untrue.

18 So I think the defense counsel is making the
19 same argument here that basically she has this
20 information in front of her that basically is
21 information from the lender source that was generated
22 from another entity for which she's not familiar and
23 that doesn't qualify as coming in as a business
24 record.

25 MR. ROSENTHAL: Except, Your Honor, and again

1 having only reviewed this minimally, I think it's
2 distinguishable in this case, because she works for
3 the loan servicer and she's able to testify, not just
4 about the documents that are maintained in her
5 employer computer system, but her as the loan
6 servicer. There's the attorney, in fact, of the
7 plaintiff and it's available -- whatever's available
8 with the plaintiff is available to her as well. Not
9 to mention, the fact that the Pooling & Servicing
10 Agreement that she testified to, that speaks to this
11 acquisition by Bank of New York of JPMorgan Chase
12 Trust business is public record.

13 So if this isn't split on all fours with this
14 case, we have public record component common, which
15 also takes it outside of hearsay, I guess, he can
16 continue with his voir dire, unless he's done.

17 THE COURT: What's your response to the public
18 record?

19 MR. HOLTZ: Well, I have a couple of things.
20 First of all, Your Honor, the first I would say
21 they're not entirely relying on public records that
22 the news -- news release or, I guess, public record
23 and purchase agreement is public, unless it's --
24 unless there's documentation that's been filed and
25 made public and as far as the Pooling & Servicing

1 Agreement, which may qualify as a public record. I'm
2 not entirely sure that is. I'm not going to commit
3 myself to that.

4 But assuming it was, what they present to, Your
5 Honor, is excerpts from that Pooling & Servicing
6 Agreement, leaving out whole -- the vast majority of
7 the document, which the witness has already testified
8 is a large document that contains very specific rules
9 and regulations that go directly to the heart of the
10 matter of whether or not this particular loan
11 qualifies to be put in this trust and was properly
12 placed in that trust at the time of the loan's
13 closing.

14 Those elements are not present before, Your
15 Honor. I would -- to that I would invoke the rule of
16 completeness and say that they have to provide the
17 entire document to the Court and put that into
18 evidence if they want, Your Honor, to rely on that.
19 And they're travelling under that document as a
20 public record, to get evidence.

21 Additionally, Your Honor, I have to disagree
22 with counsel's characterization of the witness's
23 qualification to testify as attorney, in fact,
24 because she works for the servicer. That would only
25 matter if there was no teeth, there was no substance

1 to the business records exception. If it's simply
2 that any document produced by a business in the
3 course of business, is automatic -- is able to get in
4 as an exception to hearsay, but that's not -- we all
5 know that's not what the rule says. The rule is in
6 place because not every record, not every document,
7 not everything generated by a business is -- has a
8 sufficient amount of trustworthiness and reliability
9 for the Court to accept it as truth and to ignore the
10 fact that is really a valid court assertion that's
11 being made for the truth of the matter asserted.

12 Here, Your Honor, this witness has testified
13 quite truthfully that she is in no way qualified to
14 speak to the reliability of trustworthiness of
15 documents, she's in no way qualified to testify to
16 the fact to who made these records, who generated
17 them, at what time, if they were contemporaneously to
18 the time or not, that they were made by someone with
19 public knowledge.

20 She can't testify to the requisite -- she can
21 be an attorney, in fact, all she wants, still can't
22 testify to the specific requirements that the
23 business records exception to the hearsay rule
24 requires and as such, these records -- and this is
25 the witness before you, these records cannot come in.

1 That's my response.

2 MR. ROSENTHAL: Your Honor, she actually did
3 testify to those questions and she testified in the
4 affirmative. She testified to that on that basis
5 that based on the documents that she reviewed in
6 research of both within Ocwen and as a result of
7 Ocwen as servicer and attorney in fact for the
8 plaintiff. She's the best witness to testify about
9 Bank of New York's status as the successor trustee.

10 I will add that Your Honor can take judicial
11 notice as well of Bank of New York's successor
12 trustee -- I should say Bank of New York Mellon as
13 successor trustee of JPMorgan Chase because,
14 obviously, this is not the first -- first lawsuit
15 predicated on endorsement such as this. This is a
16 transaction that occurred several years ago and has
17 -- and has public knowledge based not only on the
18 news release, but the Pooling & Servicing Agreement,
19 which the Court -- counsel said, I haven't produced
20 the full document.

21 I've made available -- I've produced that which
22 is pertinent to this case and counsel certainly is
23 welcome to provide Your Honor with any additional
24 items within the Pooling & Servicing Agreement that
25 he believes somehow undermines my case. I don't

1 think the document of completeness requires me to
2 provide you the entire Pooling & Servicing Agreement
3 where 98 percent of it has nothing to do with what
4 we're here. He certainly has every right and
5 opportunity to bring in that, which I haven't brought
6 in, to try undermines whatever it is I'm trying to
7 do.

8 THE COURT: He says he doesn't have it.

9 MR. ROSENTHAL: It's available publicly, Your
10 Honor, I don't know why he wouldn't have it.

11 MR. HOLTZ: Your Honor, I'd just like to say
12 that this is exactly arms, all fours, square with the
13 exact situation in the first -- as described in the
14 first paragraph on page five of the opinion in Yang.
15 The witness in that case employed all of the quote,
16 magic words, a phrase that plaintiff's counsel
17 employed before beginning direct examination asking,
18 Your Honor, if he should use -- just have her testify
19 to the magic words or he should go one by one.

20 And then on cross-examination, just like on
21 this voir dire, it is found that while the witness
22 answered affirmatively to those question, cross
23 examination belied that there was no -- that those
24 affirmative answers were not grounded in any real
25 fact.

1 MR. ROSENTHAL: And that's not what we're --

2 MR. HOLTZ: And that's what we have here, Your
3 Honor. That's exactly what we have here. He's using
4 circular logic to say that her research on these
5 documents qualifies her to testify to their
6 reliability in essence and that is not the correct
7 application of the business exception and it's simply
8 circular logic and fraud argument.

9 THE COURT: What about, again, the public
10 records issue?

11 MR. HOLTZ: And, again, I'll say that only --
12 that only goes to one portion -- possible, one
13 portion of this composite exhibit.

14 THE COURT: And that portion is the?

15 MR. HOLTZ: Are the excerpts of the Pooling &
16 agreement which, again, the witness did not have any
17 hand creating.

18 Additionally, Your Honor, the rule of
19 completeness -- what the rule -- I would say that the
20 rule of completeness here would say that it's for,
21 Your Honor, as trier of fact, to decide what, you
22 know, to make what weight of what evidence, not for
23 plaintiff's counsel to decide what's pertinent and
24 for, Your Honor, to decide as judge to determine
25 whether something is relevant or irrelevant. It is

1 not proper, in our opinion, for the plaintiff's
2 counsel to cherry pick portions of evidentiary
3 material of documents and present them as evidence in
4 whole cloth.

5 THE COURT: Well, actually the rule of
6 completeness as I understand it, is not quite exactly
7 as you portray here as would be because somebody
8 produced one page of a document or a paragraph or
9 portion of a document or a transcript or an excerpt
10 requires that the entire document be admitted. The
11 rule of completeness is so that one doesn't get the
12 false impression of the question that provided it,
13 may have put it in a different light or in order to
14 get a full understanding of the content and import of
15 the statement, you need to consider the entire
16 paragraph or -- but to say that they're putting in
17 several pages or excerpt and then requires the whole
18 document may or may not matter and have any relevance
19 at all to anything in this case, because as you said,
20 you haven't been seen. So you don't know whether
21 it's -- that's the case or may not have nothing to do
22 with anything.

23 MR. HOLTZ: Well, Your Honor, the witness has
24 testified that the portions that were not included
25 deal specifically with the rules and regulations that

1 set up the trust that would have included the
2 qualifications that this loan had to have met in
3 order to be included in the trust and if the loan is
4 not in the trust or was improperly placed in the
5 trust, then that goes directly to the issue of
6 standing, which is much at the heart of this case,
7 Your Honor.

8 So I don't see how we can -- how we can say
9 that those portions are not really relevant. The
10 witness herself testified to the relevance and,
11 again, Your Honor, to boil it down and I know I've
12 said a lot and I appreciate Your Honor lenience. But
13 to boil it down, in essence the witness -- the
14 witness is testifying to these things based on her
15 research, which Your Honor's allowed us to go into as
16 to what document supported the research and the
17 document that she's using to support that research,
18 are all hearsay that only come in really as a
19 business record and as she -- as no one here is
20 competent to testify to the sufficient -- with
21 sufficient qualifications to the business record
22 exception. Those documents are still inadmissible
23 hearsay, rendering her testimony.

24 THE COURT: Last word.

25 MR. ROSENTHAL: Thank you, Your Honor. In his

1 last recitation of wrapping up, he ignored what Your
2 Honor has asked him twice about, which is what about
3 public records and the Pooling & Servicing Agreement
4 is available to everybody. It's available to you,
5 me, defense counsel, if they want to go on the SEC
6 website, they can find it. You know, I believe that
7 we have established the admissibility of the business
8 record, but beyond that point it's public record as
9 well. This witness is certainly --

10 THE COURT: Not all of that is public record,
11 is it?

12 MR. ROSENTHAL: Well, I guess the news release,
13 probably would not be.

14 MR. HOLTZ: And the purchase agreement.

15 MR. ROSENTHAL: But, Your Honor, you can -- as
16 I said before, Your Honor, can take judicial notice
17 of this transaction, as well. It's common knowledge
18 that Bank of New York Mellon acquired the trust
19 business of JPMorgan Bank.

20 THE COURT: I was anticipating that and,
21 obviously, this issue has been raised a more
22 particular case would be pertinent and I think it's
23 somewhat a close call that these are public records,
24 which I think on a limited basis, anyway, concedes, I
25 think, the rule of completeness does apply and

1 require that the inadmissibility of that particular
2 document be denied because of the entire document.

3 So I'll overrule the objection on those
4 grounds. As far as whether or not the properly
5 predicated or otherwise been laid for the business
6 records exception, I do think it's somewhat of a
7 close call in this instance, but I do think factually
8 there's more distinctions in between the case that's
9 cited and the situation here at hand, given her
10 relationship with the plaintiff.

11 So for the reasons that the plaintiff was
12 indicated, I'm going to overrule the objection. I'll
13 admit --

14 MR. ROSENTHAL: Composite.

15 THE COURT: -- 2A, B, C over objection of
16 defense.

17 (Plaintiff's No. 2A, 2B, 2C were received in
18 Evidence.)

19 MR. ROSENTHAL: Do you have a little sticky?

20 THE COURT: I think the clerk has.

21 MR. ROSENTHAL: Do you want me to do that last
22 or do it one at a time and hand them to the clerk?

23 THE COURT: She'll mark them.

24 MR. ROSENTHAL: Your Honor, I'm not going to
25 take the original, Exhibit 1, so I'll ask her to mark

1 that as Exhibit 1, because it's in here.

2 THE CLERK: The only way I can mark this as an
3 exhibit, Your Honor, if there's an order telling me
4 to do that or we can take judicial notice.

5 MR. ROSENTHAL: Offer.

6 THE COURT: I'll just take judicial notice of
7 this.

8 MR. HOLTZ: Over -- again, that's over defense
9 --

10 THE COURT: Over objection, of course.
11 Can I keep this, because I'm sure it's going to
12 come up again?

13 MR. ROSENTHAL: Can I keep my copy, as well?

14 THE COURT: You can continue.

15 MR. ROSENTHAL: Your Honor, having reviewed the
16 Court file, it was my understanding that there was an
17 original or certified copy of the mortgage as well.
18 I didn't see it in there. So what I'd like to do is I
19 can ask the Court, since I've asked the questions on
20 the admissibility of this witness on the mortgage, I
21 ask that a copy be marked as Exhibit Number 3 then,
22 I'll replace it with a certified copy. I thought
23 there was one in the Court file. There doesn't
24 appear to be, so if Your Honor is okay with that,
25 that's what I'd like to do.

1 THE COURT: I'm not sure what you want to do.

2 MR. ROSENTHAL: I don't have a certified copy
3 of the mortgage here today. I believe -- I believe
4 there was one previously filed. Having reviewed the
5 court file this afternoon, I noticed that there
6 wasn't one in there.

7 THE COURT: Is the copy certified?

8 MR. ROSENTHAL: Yes. What I'd like to do is
9 mark this copy, not a certified copy as Exhibit 3 and
10 then replace it when I do get a certified copy.

11 MR. HOLTZ: Objection, Your Honor, you know I
12 think the case law is clear that the plaintiff has to
13 the original note and mortgage to present to the
14 Court as evidence in support of their claim to
15 judgment. They don't have it here. I'm sure, you
16 know, I don't know why it's not present, why it's not
17 in the Court file, if counsel thought it was. But
18 the fact remains that this is a key piece of evidence
19 that, you know, the witness was never shown the
20 original. There's no -- we've had an opportunity to
21 challenge the authenticity or originality of that
22 mortgage, if we were allowed to do so and, Your
23 Honor, at this point I object to any copy being put
24 in specifically of this mortgage.

25 THE COURT: So there's no certified copy that

1 exists at all?

2 MR. ROSENTHAL: Well, my understanding was
3 there was one previously filed. It appears I was
4 incorrect in that belief. So what I'm trying to do is
5 have a copy admitted, then we'll replace with a
6 certified copy when I obtain the certified copy and
7 call my office and have that done in short order as
8 possible. I think this is a, Your Honor, ministerial
9 minute act. I don't think it's certainly anything
10 that is -- he's objecting, but I don't think it's
11 anything that was really objectionable. This is a
12 housekeeping matter, Your Honor.

13 MR. HOLTZ: I couldn't disagree more. The
14 authenticity of the note and mortgage is directly an
15 issue of foreclosure matter. I think case law is
16 clear on that, without the original mortgage to
17 present and introduce into evidence, placing a copy
18 into evidence does -- is, you know, is simply
19 allowing plaintiff to continue with its case, when
20 it's not able to provide the sufficient evidence to
21 prove it.

22 MR. ROSENTHAL: And I can, Your Honor, represent
23 as an officer of the court, that is a certified copy
24 of the mortgage will be identical to this document
25 with the exception of Exhibit B at the bottom, which

1 was the exhibit label to my complaint and it won't
2 say, obviously, this is not a certified copy across
3 the middle of it.

4 THE COURT: Well, I'll conditionally allow it
5 with the understanding that you timely submit it
6 before the close of the case or certainly before say,
7 the close of evidence in the case, if possible.

8 MR. ROSENTHAL: I will do the absolute best I
9 can to get the -- I don't know how quickly the
10 recording office, you know, I don't know how quickly
11 in terms of getting things certificated, but I'll do
12 my best.

13 MR. HOLTZ: And, Your Honor, in addition to my
14 previous objection, I'd also like to add that counsel
15 is testifying and also I would object because based
16 on the fact that we have not had an opportunity to
17 cross examine the witness on originality of that
18 mortgage.

19 THE COURT: Well, the certified copy is
20 submitted, I'll give you an opportunity to inquire on
21 that issue, if you'd like.

22 MR. HOLTZ: Understand, Your Honor.

23 THE COURT: You may continue.

24 MR. ROSENTHAL: Mark this as 3.

25 THE COURT: Conditionally.

1 MR. ROSENTHAL: It's in the court file. Is she
2 allowed to put the stamp on the file for the note
3 that's in the court file?

4 THE COURT: I don't think you need to put a
5 stamp on it. The Court can take judicial notice.

6 MR. ROSENTHAL: Your Honor, if I can take two
7 minutes to rush out to make a call to my office to
8 get that certified copy process started, that might
9 benefit everyone.

10 THE COURT: Okay. We'll take a five-minute
11 break.

12 (A short break was taken from 3:25 p.m. to 3:31
13 p.m.)

14 MR. ROSENTHAL: I took a short break outside to
15 get the wheels in motion to get a certified copy of
16 the judgment. We will have it rather quickly.

17 BY MR. ROSENTHAL:

18 **Q. Ms. Plasse, on your research and review of the**
19 **records that are now of your -- of Ocwen and plaintiff**
20 **and the documents that have been admitted into evidence**
21 **as Exhibit 2, are you aware of when the Bank of New York**
22 **Mellon acquired or become the successor trustee and**
23 **acquired the trust business as JPMorgan Chase Bank?**

24 MR. HOLTZ: Objection. Hearsay, lack of
25 personal knowledge, lack of foundation.

1 THE COURT: To the exhibit that are now in
2 evidence, I'll overrule the objection.

3 THE WITNESS: May I examine?

4 MR. ROSENTHAL: Sure.

5 THE WITNESS: April 7, 2006.

6 BY MR. ROSENTHAL:

7 Q. Next document I'm going to show you is an
8 excerpt of a redacted mortgage loan schedule for Novastar
9 Mortgage Funding Trust Series 2005-1 --

10 MR. HOLTZ: Counsel, may I see that, please?

11 MR. ROSENTHAL: Absolutely.

12 BY MR. ROSENTHAL:

13 Q. Can you identify that document for the Court?

14 A. This is a copy of the mortgage loan schedule.

15 Q. And what is that mortgage loan schedule part
16 of?

17 A. It's part of the Pooling & Servicing Agreement.

18 It's usually attached or an addendum to the Pooling &
19 Servicing Agreement.

20 Q. Okay. There is Exhibit 1 entitled Initial
21 Mortgage Loan Schedule, that is redacted, but for one
22 entry on this document, can you tell the Court what that
23 one entry is?

24 MR. HOLTZ: Objection, Your Honor, asking the
25 witness to testify from a document not yet in

1 evidence, hearsay, improper foundation, lack of
2 personal knowledge.

3 THE COURT: Overruled.

4 WITNESS: The one entry on here indicates the
5 customer's name is [REDACTED] abbreviated along with
6 their address, the date that it went into the Pooling
7 & Servicing Agreement and the amount of the --
8 original amount of the note.

9 MR. HOLTZ: Objection, Your Honor, move to
10 strike, it's speculation. There's no way for the
11 witness to know that that is [REDACTED] abbreviated or
12 there needs to be some foundation laid.

13 THE COURT: What is abbreviated?

14 MR. ROSENTHAL: The abbreviation, T-r-o-t-m,
15 then the 8058 Via Balsano address that is the subject
16 of today's trial.

17 THE COURT: I'll overrule the objection.

18 BY MR. ROSENTHAL:

19 **Q. You indicated before that the schedule one is**
20 **redacted, do you know why -- what other items would have**
21 **appeared on those documents -- on this initial schedule,**
22 **but that were redacted?**

23 MR. HOLTZ: Objection, Your Honor, lack of
24 personal knowledge, calls for improper foundation.

25 THE COURT: Overruled.

1 MR. HOLTZ: Also calls for speculation, Your
2 Honor.

3 THE COURT: Overruled.

4 THE WITNESS: The other items that would be on
5 this would also include other accounts, mortgages
6 that are also part of this Pooling & Service
7 Agreement.

8 BY MR. ROSENTHAL:

9 Q. And just so I understand, the other items on
10 that initial loan schedule are loans by other borrowers
11 relating to other properties, having nothing to do with
12 this case; is that correct?

13 MR. HOLTZ: Objection. Leading.

14 THE COURT: Sustained as to leading.

15 BY MR. ROSENTHAL:

16 Q. Well, what -- explain to me what other items
17 would be on that initial loan schedule.

18 A. There would be other loans that would part of
19 this mortgage loan schedule. That were not any in
20 relation to this loan and it's pulling this group of
21 loans.

22 MR. HOLTZ: Objection. Move to strike, lack of
23 personal knowledge, improper foundation.

24 THE COURT: Overruled.

25 BY MR. ROSENTHAL:

1 **Q. Is the mortgage loan purchase agreement and the**
2 **Exhibit 1, initial mortgage loan schedule, is that**
3 **document maintained in the regularly conducted business**
4 **activity of the plaintiff?**

5 MR. HOLTZ: Objection. Calls for a hearsay
6 response, lack of personal knowledge, lack of
7 foundation.

8 THE COURT: Overruled.

9 BY MR. ROSENTHAL:

10 **Q. You can answer.**

11 A. Yes.

12 **Q. Is it the regular practice of the plaintiff to**
13 **make a document such as the mortgage loan purchase**
14 **agreement and the attached initial mortgage loan**
15 **schedule?**

16 MR. HOLTZ: Same objection and calls for
17 speculation.

18 THE COURT: Overruled.

19 THE WITNESS: Yes, it is.

20 BY MR. ROSENTHAL:

21 **Q. Is this document made at or near the time by or**
22 **from information transmitted by a person with knowledge?**

23 MR. HOLTZ: Same Objection.

24 THE COURT: Overruled.

25 THE WITNESS: Yes, it is.

1 MR. ROSENTHAL: Your Honor, we'd ask that the
2 mortgage loan purchase agreement and the redacted
3 initial mortgage loan schedule be admitted as the
4 next numbered exhibit, which I believe is 4, just so
5 -- before I anticipate what you're going to say, the
6 mortgage loan purchase agreement is not part of this.
7 It's the cover page and the table of contents
8 together with the Exhibit 1 as redacted.

9 THE COURT: Counsel.

10 MR. HOLTZ: I object, Your Honor, I ask for a
11 brief voir dire.

12 THE COURT: Okay.

13 VOIR DIRE.

14 BY MR. HOLTZ:

15 Q. May I see the document, Ms. Plasse?

16 You testified that these -- well, first of all,
17 you testified that the fifth page and I believe this is
18 in order, the fifth page of this redacted mortgage loan
19 schedule, correct?

20 A. Yes.

21 Q. Okay. And in so redacted -- in it being
22 redacted, there's only one line of information, one line
23 of text in the middle of this page?

24 A. Yes.

25 Q. There's no other information on this page,

1 correct?

2 A. No.

3 Q. And you have -- you've never seen other
4 information on this page, have you?

5 A. In preparation for trial, I looked at the
6 entire, you know, located this loan and I would have seen
7 other loans and in order to find this.

8 Q. So you've seen a unredacted copy of this
9 mortgage?

10 A. Yes.

11 Q. Okay. And you're certain that the information
12 that is contained in this redacted version is exactly
13 identical to the information that you saw in the non
14 redacted version of this information?

15 A. Yes, I am.

16 Q. You looked at how many pages of information
17 regarding this loan in representation for this trial?

18 MR. ROSENTHAL: Objection. Relevance, Your
19 Honor.

20 THE COURT: What is the relevancy as far as
21 admissibility?

22 MR. HOLTZ: Well, Your Honor, it's crucial for
23 this information to the exact time as information
24 that was prepared from the loan, from the non
25 redacted version. This is simply a redacted version.

1 What we have, Your Honor, on its face, is not
2 readily discernable as a redacted version; for
3 example, a full page of printed material with
4 everything blacked out, except there will be a
5 one-line text in the middle of the page. I'm simply
6 asking to ascertain the reliability of her testimony
7 as to her ability to recall that this is exactly the
8 same information as she saw in the non redacted and
9 in order to do that, I'm also asking how much
10 information she looked at total for her to be able to
11 recall with specificity that what she's looking at
12 here, matches up exactly with the non redacted
13 version.

14 THE COURT: I'll hear an answer, then whatever
15 way I think is -- so I'll overrule the objection.
16 You can answer.

17 BY MR.HOLTZ:

18 **Q. Thank you.**

19 A. Question again.

20 **Q. Sure. How much information -- how many pages of**
21 **documents, how many pages of information did you look at**
22 **in preparation for testifying at this trial today?**

23 MR. ROSENTHAL: Objection. Again, just for the
24 record on relevance.

25 THE COURT: Overruled. You may answer.

1 THE WITNESS: I can't give you a specific
2 number of pages. I did review a fair amount of
3 documents. I can't give you a set number, because I
4 don't recall and I didn't count them.

5 BY MR. ROSENTHAL:

6 Q. Sure. And you were looking at primarily
7 electronic form, weren't you?

8 A. Yes.

9 Q. So you're looking at a computer screen and you
10 look through things like the loan payment history, did
11 you not?

12 A. Yes.

13 Q. Sequences -- long sequences of numbers and
14 numerical data?

15 A. Yes.

16 Q. And this would be another sequence of numerical
17 and letter data, correct?

18 A. Yes.

19 Q. And it's not -- would you agree on its face,
20 specific information in this purported redacted loan
21 schedule, is not readily identifiable as a sentence or
22 some form of easily discernable information, correct?

23 MR. ROSENTHAL: Objection. I'm not even sure I
24 understand.

25 THE COURT: Interesting. I think I understand.

1 But I don't know if the witness understood.

2 THE WITNESS: I don't think I understand it.

3 BY MR. HOLTZ:

4 Q. Okay. Sure. This information that's on this
5 page that you're looking at here, the last page of -- I
6 don't know if this was given a number -- did we give this
7 a number for identification?

8 MR. ROSENTHAL: I think 4 for identification.

9 BY MR. HOLTZ:

10 Q. If you look at the last page of Plaintiff's 4
11 for identification purpose, this information -- you would
12 agree with me, it's not in the forming of a sentence,
13 correct? Like a sentence in the English language?

14 A. No.

15 Q. In order to read -- in order to understand this
16 information -- you had to have some knowledge of what the
17 information was about, right? It's not readily apparent
18 on its face?

19 A. Yeah, you have to have some knowledge.

20 Q. It's a combination of a sequence of letters and
21 numbers, is it not?

22 A. Yes.

23 Q. So you're telling me that despite having looked
24 at other pages, substantial amount, in your own words or
25 a lot of the other pages --

1 MR. ROSENTHAL: Objection. Mischaracterizes
2 her testimony.

3 BY MR. HOLTZ:

4 Q. Looking at a fair amount of other material --
5 in that other material -- I'll step back -- in that other
6 material that you reviewed, would you agree that a
7 significant portion of it was also numerical data, other
8 data that was not in written English form?

9 A. Yeah, I'll say that's true.

10 Q. So having reviewed that fair amount of the
11 other information, your testimony here today is that you
12 can remember with specificity that this information
13 printed on this sheet is exactly identical to the
14 information available on the non redacted mortgage loan
15 schedule?

16 A. Yes, I can say that.

17 Q. Okay. Now, this mortgage loan schedule, this
18 isn't public record, is it?

19 A. I don't believe the mortgage loan schedule is.

20 Q. And this mortgage loan schedule was prepared by
21 Bank of New York Mellon, correct?

22 A. I believe so, yes.

23 Q. You never worked for Bank of New York, correct?

24 A. No.

25 Q. You've never prepared a mortgage loan schedule

1 for Bank of New York Mellon, have you?

2 A. No.

3 Q. You never prepared loan schedules for Ocwen,
4 have you?

5 A. No.

6 Q. To your knowledge, Ocwen doesn't even produce
7 mortgage loan schedules, does it?

8 A. Not to my knowledge.

9 Q. Okay. And you're not familiar -- you are not
10 personally familiar with the policies and procedures of
11 Bank of New York Mellon with respect to the creation of
12 the mortgage loan schedule, are you?

13 A. No.

14 Q. Can you see that document?

15 A. Sure.

16 Q. Do me a favor, on the first page of this --
17 well, first of all, this mortgage loan schedule, your
18 testimony was that -- and it was in response to a
19 question from counsel, was that attached to the Pooling &
20 Servicing agreement?

21 A. Yes.

22 Q. Okay. Not the mortgage purchase agreement?

23 A. No.

24 Q. So it would -- it would be incorrect for me to
25 say that the mortgage loan schedule in question here is

1 attached to the mortgage purchase agreement between
2 Novastar mortgage and JPMorgan Chase Bank?

3 A. I'm not sure I understand your question.

4 Q. Okay. Would I be correct in saying that the
5 mortgage loan schedule in question here, is attached to a
6 mortgage purchase agreement between Novastar Mortgage and
7 JPMorgan Chase Bank?

8 A. It's attached to the Pooling & Servicing
9 Agreement.

10 Q. Okay. Could you please -- okay. I'm going to
11 direct your attention to 1, 2, 3, 4, 5, 6, 7, 8 lines
12 down from the front first page of Plaintiff's Exhibit 4
13 for identification.

14 What's that line say?

15 A. Dated as of February --

16 Q. Oh, did I miscount. Well, the line right above
17 that has a date on it.

18 A. This is mortgage loan purchase agreement.

19 Q. Okay. And the mortgage loan schedule that
20 you're referring to, that's on the back -- that's
21 attached to the back of this agreement, is it not?

22 A. Yes.

23 Q. So you were incorrect when you said that is
24 attached to the Pooling & Service Agreement, correct?

25 A. Well, by attached, I mean, it's -- if it's not

1 in the Pooling & Servicing Agreement, per se, in some
2 cases it is directly attached to the Pooling & Servicing
3 Agreement, but it is -- you know, knowledge that I have
4 obtained, if it's not attached as an additional document.

5 **Q. Okay. Your testimony before Pooling &**
6 **Servicing Agreement is public record, correct?**

7 A. Yes.

8 **Q. Your testimony here now on this voir dire was**
9 **that the mortgage loan schedule is not public record,**
10 **correct?**

11 A. No, it's not public knowledge because there's
12 account numbers, there's personal information that cannot
13 be put out there.

14 **Q. Okay. So if the mortgage loan schedule is not**
15 **public record, but the Pooling & Servicing Agreement is**
16 **public record, how is that attached to the Pooling &**
17 **Servicing Agreement?**

18 A. I don't know if attached is the proper word,
19 but it is -- I guess maybe you could call it an addendum,
20 if this would be proper terminology. I don't know the
21 exact terminology, but it's part of the document.

22 **Q. But it's not readily available to anyone -- to**
23 **any member of the public who searches for that document?**

24 A. No.

25 **Q. Now, again, this mortgage loan purchase**

1 agreement to which mortgage loan schedule is attached,
2 it's not between anyone with Bank of New York Mellon; is
3 it?

4 A. No, it's not.

5 Q. Its between Novastar, Wachovia and JPMorgan
6 Chase Bank; is it not?

7 A. Yes.

8 Q. So your testimony earlier on this voir dire
9 that this has to do with Bank of New York Mellon, is
10 incorrect?

11 A. Well, it has the same series of numbers as Bank
12 of New York Mellon.

13 Q. Okay. But you don't actually know because you
14 never worked for Bank of New York Mellon?

15 A. No.

16 Q. So you're not familiar with their records?

17 A. No, I'm not.

18 Q. Your not familiar with any documents that are
19 produced or kept by Bank of New York Mellon?

20 A. No, I'm not.

21 Q. Just like you're not familiar, personally with
22 the records kept by JPMorgan Chase Bank, are you?

23 A. No.

24 Q. And you're not familiar with the policies and
25 procedures at either institution for the maintenance and

1 **recording of such documents and information, are you?**

2 A. No, I'm not.

3 MR.HOLTZ: Your Honor, at this time, I move --
4 again, I object to the introduction of this and it's
5 improper foundation. This witness is not qualified
6 to enter these records into evidence. I cite to the
7 Yang and Romeo case, as well as the fact that -- that
8 the -- and I move to strike this witness's testimony
9 based on this document and about the contents of this
10 document as well as all inadmissible hearsay.

11 THE COURT: Well, sounds like an even more
12 close case to what we've talked about. Your
13 response.

14 MR. ROSENTHAL: Your Honor, the witness
15 testified previously about the acquisition of
16 JPMorgan Chase assets, trust business by Bank of New
17 York Mellon. We have connected those dots right
18 there. What she's testifying to is a document that is
19 the mortgage loan purchase agreement with the
20 mortgage loan schedule identifying those loans,
21 including this one, that's part of the trust. That's
22 the plaintiff in this case. Okay.

23 THE COURT: But the exception is, she doesn't
24 have any idea who generated, who prepared, whether
25 it's accurate or not accurate. Aren't those all

1 prerequisites to establish the hearsay rule of the
2 business records?

3 MR. ROSENTHAL: I agree with they are, but I
4 believe she does have the ability to testify to them
5 because this document is business record of not only
6 the servicer, but the successor trustee.

7 THE COURT: Well, who is going to lay that
8 predicate? She can't lay that predicate. Somebody
9 from the successor trustee might be able to lay that,
10 I think this is a business record and they are kept
11 in the ordinary course of business and it's a person
12 with knowledge, it was prepared at or about the time.
13 She's not able to testify to that, I don't think.

14 MR. ROSENTHAL: I think there's case law out
15 there, Judge, and I believe it's the Wamco case. I
16 don't have the citation to it at this point, but that
17 case stands for the proposition that a successor
18 servicer certainly can testify about documents, about
19 business records maintained on a particular loan by a
20 prior servicer.

21 THE COURT: I think it said if it's a successor
22 trustee, you couldn't do that. The successor can
23 certainly testify on point, if they followed all
24 these things that occurred after, but unless they
25 have some knowledge, I think this case --

1 MR. ROSENTHAL: The Wamco case deals with the
2 use of loan payment history generated by a private --
3 prior servicer that the present servicer has the
4 ability to rely on, provided that certain conditions
5 are met.

6 THE COURT: Are you familiar --

7 MR. HOLTZ: I am familiar with the case he's
8 talking about, Your Honor. And I can tell you is, I
9 agree -- I agree somewhat with plaintiff's counsel's
10 assessment of the Wamco case in that it does say that
11 prior servicer can rely on certain records of -- or
12 current servicer records. I have a few responses to
13 that, of course.

14 The first, Your Honor, is that here, we're not
15 talking about a similar situation because what we're
16 talking about here goes directly to the heart of
17 plaintiff's standing. Although we're dealing with
18 loan payment histories and loan payment records, here
19 what we're talking about are documents that were
20 generated by the owners, not the servicer, but by the
21 owner of this -- of this loan to establish that this
22 particular loan is actually owned by the owner.

23 Assuming for a second, that plaintiff's counsel
24 has, in fact, successfully linked up JPMorgan Chase
25 and Bank of New York Mellon and that that link

1 exists, that link only matters if the loan in
2 question was originally owned by JPMorgan Chase Bank
3 that it could be transferred to Bank of New York
4 Mellon.

5 The way to establish whether or not this loan
6 was owned by JPMorgan Chase is through the mortgage
7 loan schedule which would place it in a pool of loans
8 that this trust owns and that JPMorgan Chase Bank
9 was the trustee to ever transfer it for that trust to
10 then go to a subsequent trustee. This is not a matter
11 of a servicer relying on a previous servicers
12 records. What we have here are documents that goes
13 directly to the heart of the issue of ownership and
14 this witness is not qualified to testify to that. And
15 it's much akin to the Yang case.

16 Additionally, there has to be indicia of
17 reliability. Wamco, in addition to its holding, as
18 there are other requirements that must be met that go
19 to indicia, reliability.

20 Here, Your Honor, we did not have those indicia
21 of reliability because this witness is not qualified
22 in any way to testify to those indicia of reliability
23 because she herself testified she has absolutely no
24 idea as to the policies and procedures at JPMorgan
25 Chase Bank. I didn't ask her, I certainly would

1 appreciate the opportunity to go back and ask her,
2 but I'll proffer to the Court, she's going to say the
3 same thing about Novastar because she never worked at
4 Novastar. She never worked at JPMorgan Chase Bank
5 and her familiarity with these documents has to be in
6 question, Your Honor. Even that was not established.

7 She testified on direct examination this is
8 attached to the Pooling & Servicing Agreement. It's
9 not. It's clearly on its face attached to the
10 mortgage loan purchase agreement, a completely
11 separate document. This is not a public record. The
12 Pooling & Servicing is a public record. There's a
13 question as to whether or not the witness has
14 understood the difference between that.

15 Additionally, this witness thought that --
16 originally testified that this document reflects
17 information generated by Bank of New York Mellon,
18 when this agreement is clearly involving Novastar
19 Wachovia and JPMorgan Chase Bank. It has nothing to
20 do with Bank of New York Mellon.

21 Clearly, Your Honor, this witness was reading
22 from this document when she testified on direct, she
23 has no personal knowledge as to any of the issues
24 surrounding this document or what it means for the
25 purpose of this case and she has no independent

1 knowledge outside of what she's read and what she was
2 led through by answering the magic words question by
3 plaintiff's counsel, to testify to get this record in
4 under the business records exception. She simply
5 can't do that. It's inadmissible hearsay, Your
6 Honor.

7 And the Yang and Romeo case is squarely on
8 point, while Wamco is both distinguishable and
9 clearly retreated from in the more current Yang and
10 Romeo case out of the Fourth District.

11 MR. ROSENTHAL: Your Honor, I haven't had the
12 opportunity to read the entire Yang case, but in my
13 brief, you know, overview of it, I didn't see that
14 Wamco was created from, specifically, or by
15 reference. So I'll leave that for Your Honor to
16 consider.

17 Not only that, Your Honor, but the not and the
18 mortgage in this case, which has already been
19 admitted -- admittedly over defendant's objections,
20 are documents also generated, created at the time,
21 December 2004, when Novastar was the lender. Yet this
22 defendant -- yet this witness could testify about it
23 as a business record, as a servicer for the plaintiff
24 successor trustee of this -- of this loan -- of the
25 trust that this loan is a part of. I don't see how

1 it's any different that this mortgage loan purchase
2 agreement and the attached mortgage loan schedule
3 that references this loan was also generated by the
4 original lender Novastar was a part of -- and this
5 document as the note and mortgage becomes -- and are
6 business records of the trust entity and successor
7 trustee, Bank of New York Mellon, as the servicer for
8 Ocwen and the attorney in fact for the successor
9 trustee, just like she's entitled to and able to
10 testify about the admissibility of the note and
11 mortgage that traveled the same road as this document
12 does. She's able to testify to this document, as
13 well.

14 MR. HOLTZ: Your Honor, I know you're about to
15 rule, I just want to say, though, that counsel --
16 it's the second time in arguments, that counsel
17 referred to plaintiff as the attorney in fact for the
18 trust for subsequent trustee, there's -- that's
19 simply an assertion that is not in evidence and
20 should be considered by this court. The witness has
21 never testified as such. No document indicating
22 power of attorney has ever been introduced into
23 evidence for this court to consider and so I don't
24 think at this point that that should be relevant to
25 any discussion that we're having on this issue.

1 Additionally, I think it's up to counsel to --
2 if that is established, to also establish what its
3 relevance means because simply because she's the
4 attorney in fact, if she were, would mean she can
5 enter into certain things and testify to certain
6 things about the subsequent trustee, but it doesn't
7 mean that she still has the ability or the requisite
8 knowledge to testify about business records of an
9 entity that is not the subsequent trust.

10 Maybe at best, it gets sent back, but now he's
11 asking you to use that as a chain to go back,
12 business records are not from her company, but from
13 the subsequent trustee to business records of the
14 trustee before that to business records of the
15 original lender and that's a chain that's simply a
16 bridge too far, Your Honor.

17 MR. ROSENTHAL: Your Honor, to take his
18 analogy, if I might, to take --

19 THE COURT: I need to rule on this soon, so...

20 MR. ROSENTHAL: Okay. To take his analogies a
21 step farther. It's a bridge we've already traveled
22 allowing the note and mortgage to be admitted through
23 this witness.

24 THE COURT: Was I wrong then?

25 MR. ROSENTHAL: I don't believe you were, Your

1 Honor. And I don't think you do. And give me a
2 moment to, again, read the Yang case.

3 THE COURT: Once again looking at the language
4 in this case and specifically, here, the management
5 company's employee indicated she could not testify as
6 starting the balance. She never worked with the
7 prior accountant, and was unfamiliar with how the
8 records were kept. She could not confirm that the
9 prior accountant used acceptable accounting
10 practices, and she was unable to authenticate the
11 data obtained from the prior accountant as accurate.
12 She could not testify that the condo's lien was valid
13 and the husband's claim of having pre-paid the
14 assessments prior to the takeover was untrue and I
15 understand they were talking about an accountant and
16 I've got to say, it sounds like the same here. I
17 don't see where this witness has any knowledge.

18 Any of those things that took place, how they
19 were maintained, other than she has the original
20 records. But other than business records exception,
21 that doesn't automatically makes them business
22 records. I mean, I think in this case that came out
23 it was somewhat of a game changer and I mean, in
24 terms, of the way we all -- at least previously
25 handled public records, business records exceptions.

1 I just distinguish in my mind how this is
2 different substance to Yang. I'm inclined to sustain
3 the objection.

4 MR. ROSENTHAL: Thank you, Your Honor.

5 BY MR. ROSENTHAL:

6 **Q. Are you aware of any defaults under the note**
7 **and motgage at issue in this case?**

8 A. Yes, I am.

9 **Q. What events or event of default under the note**
10 **and mortgage in this case?**

11 MR. HOLTZ: Objection. Vague.

12 THE COURT: I'll overrule.

13 BY MR. ROSENTHAL:

14 **Q. What is the event of default or events of**
15 **default, if there is more than one under the note or**
16 **mortgage?**

17 MR. HOLTZ: Objection. Calls for a hearsay
18 response.

19 THE WITNESS: Can you rephrase the question.

20 BY MR. ROSENTHAL

21 **Q. You reviewed -- have you reviewed the records**
22 **relevant to this case?**

23 A. Yes, I have.

24 MR. HOLTZ: Objection. Move to strike
25 records -- objection, mischaracterization of record.

1 THE COURT: Overruled.

2 THE WITNESS: Yes, I have.

3 BY MR. ROSENTHAL:

4 Q. And based on your review of the records in this
5 case, have you determined whether or not this loan is
6 currently in good standing or if it's in default?

7 MR. HOLTZ: Objection. Calls for a hearsay
8 response, records are not before the Court, your
9 Honor.

10 THE COURT: What records are you, specifically,
11 talking about?

12 MR. ROSENTHAL: The note and the mortgage which
13 are actually in evidence.

14 THE COURT: Okay. Are you talking about things
15 that are in evidence?

16 MR. ROSENTHAL: Yes.

17 THE COURT: And there is a question that's
18 defined only to those items that are in evidence,
19 those records?

20 MR. ROSENTHAL: Yes.

21 THE COURT: Okay. I'll overrule the objection.
22 You can answer.

23 THE COURT: Yes.

24 BY MR. ROSENTHAL:

25 Q. Yes, what?

1 A. I'm sorry, they are currently in default.

2 **Q. Do you know what the event of default was?**

3 A. There was a default letter notice that was sent
4 to the customer.

5 **Q. What did the borrower not do that rendered this**
6 **loan in default?**

7 MR. HOLTZ: Objection, Your Honor. Calls for
8 speculation. Also calls for a hearsay response, lack
9 of personal knowledge and lack of foundation.

10 THE COURT: To the extent the question is based
11 on, again, those items reviewed that are in evidence,
12 I'll overrule the objection.

13 THE WITNESS: Based on the information that I
14 reviewed, they stopped making payments a few years
15 ago. I want to say 2008, I believe, is when they
16 stopped making payment; May, 2008.

17 MR. HOLTZ: Your Honor, I move to strike. This
18 is based -- her testimony is on based the information
19 she's reviewed. It's not based on the evidence and
20 as such is based on inadmissible hearsay.

21 THE COURT: Going back, what records, so I'm
22 clear, what's that last answer?

23 MR. ROSENTHAL: Your Honor, maybe I should show
24 her the loan payment history first and she'll be able
25 to figure out the event -- or I thought she could

1 figure it out from the note and the mortgage with the
2 schedules attached. I'll ask her --

3 MR. HOLTZ: If I may have a moment to --

4 MR. ROSENTHAL: Certainly.

5 MR. HOLTZ: Thank you.

6 BY MR. ROSENTHAL:

7 **Q. Handing you -- well, rather than tell you what**
8 **it is, can you tell the Court what that document is?**

9 A. It is a copy of the payment history.

10 **Q. For what loan?**

11 MR. HOLTZ: Objection. It's calling for the
12 witness to testify from a document not yet in
13 evidence.

14 THE COURT: Overruled.

15 THE WITNESS: For [REDACTED] and [REDACTED]

16 [REDACTED]

17 BY MR. ROSENTHAL:

18 **Q. For the loan that we're here for today?**

19 A. Yes, sir. 8058 Via Bolzano, if it's pronounced
20 correctly, at the Lake Worth address.

21 MR. HOLTZ: And can I move to strike the
22 witness's testimony as hearsay, based on hearsay,
23 lack of personal knowledge, lack of foundation and
24 testimony from a document not yet in evidence?

25 THE COURT: I'll allow the document coming into

1 evidence. Overruled.

2 BY MR. ROSENTHAL:

3 **Q. Is this document kept in the ordinary course of**
4 **business at Ocwen?**

5 A. Yes, it is.

6 MR. HOLTZ: Objection. Same objections, Your
7 Honor.

8 THE COURT: Overruled.

9 MR. HOLTZ: And it's overruled as to all our
10 objections?

11 THE COURT: Yes.

12 BY MR. ROSENTHAL:

13 **Q. Is it the regular practice at Ocwen to make and**
14 **maintain loan payment histories similar to the one in**
15 **front of you?**

16 A. Yes, it is.

17 MR. HOLTZ: Same objections.

18 THE COURT: Overruled.

19 BY MR. ROSENTHAL:

20 **Q. Is the loan payment history made at or near the**
21 **time by information transmitted by a person with**
22 **knowledge?**

23 MR. HOLTZ: Same objection and also leading.

24 THE COURT: Overruled.

25 THE WITNESS: Yes, it is.

1 BY MR. ROSENTHAL:

2 **Q. And based on your review of the loan payment**
3 **history, are you able to determine if a default occurred**
4 **and if so, when a default occurred?**

5 MR. HOLTZ: Objection, Your Honor, he's directly
6 asking the witness to testify from a document that is
7 not yet admitted into evidence.

8 THE COURT: I'll overrule the objection.

9 THE WITNESS: Based on what the -- what I have
10 reviewed, based on this document, the last regular
11 payment appears to have been 4/1/2008.

12 BY MR. ROSENTHAL:

13 **Q. And what does that tell you?**

14 MR. HOLTZ: And, again, Your Honor, I object to
15 this line -- entire line of questioning as for the --

16 THE COURT: Well, why don't you rephrase the
17 question?

18 BY MR. ROSENTHAL:

19 **Q. Are you able to determine the date of the**
20 **default based on your review of this loan payment**
21 **history?**

22 MR. HOLTZ: Objection. Leading.

23 THE COURT: Overruled.

24 THE WITNESS: Yes, I am.

25 BY MR. ROSENTHAL:

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Q. What is the date of default?

MR. HOLTZ: Objection. Asked and answered.

THE COURT: The last payment was made, I'm not sure -- you may answer.

THE WITNESS: The payment to date -- the last regular payment was 4/1/2008. So the date of default would've been May 1, 2008 because there's no payment after 4/1/2008.

MR. ROSENTHAL: Your Honor, we would ask this -- this loan payment history be admitted as the next numbered exhibit, which I believe is 4.

MR. HOLTZ: Your Honor, I object. And I would ask for the Court's indulgence to voir dire.

THE COURT: For a brief voir dire?

MR. HOLTZ: Yes.

MR. ROSENTHAL: Do you need this?

MR. HOLTZ: Yes, please. Thank you.

BY MR. ROSENTHAL:

Q. Ms. Plasse, Ocwen Loan Servicing wasn't the original servicer on this loan, correct?

A. Yes.

Q. There was a prior loan servicer, correct?

A. Yes.

Q. That was Saxon Loan Servicing?

A. Yes, it was.

1 Q. You never worked for Saxon Loan Servicing, have
2 you?

3 A. No, I have not.

4 Q. You're not familiar with their policies and
5 procedures with regard to recordkeeping, are you?

6 A. No, I'm not.

7 Q. You're not familiar with the policies and
8 procedures of Saxon with regards to the excepting of
9 payments from customers, are you?

10 A. No, I'm not.

11 Q. You're not familiar with the policies and
12 procedures from Saxon Loan Services with regards to the
13 recording of payments received from customers?

14 A. No, I'm not.

15 Q. You're not your familiar with the policies and
16 procedures of Saxon Loan Servicing with regard to
17 applying late fees or charges, are you?

18 A. No.

19 Q. You're not familiar with the policies and
20 procedures of Saxon Loan Servicing with regards to the
21 imposition forced placed base tax or forced placed
22 insurance, are you?

23 A. No, I'm not.

24 Q. Now, the majority of the records that you are
25 looking -- that are part of Plaintiff's Exhibit 5, they

1 don't come from Ocwen Loan Servicing, do they?

2 A. No, they do not.

3 Q. They're records of Saxon, aren't they?

4 A. Yes.

5 Q. And, again, you never worked in the payment
6 department at Saxon?

7 A. No.

8 Q. Never worked in any department at Saxon, have
9 you?

10 A. No.

11 Q. If I may turn your attention -- here, I'll help
12 you. If I may turn here to the second to the last page
13 of Plaintiff's Exhibit 5 for identification, see the
14 bottom of the print in there. The bottom printing there,
15 the last line of printing, there's a date there, right,
16 what is that date?

17 A. 5/1/2008.

18 Q. What is the entry description?

19 A. Prior servicer fee.

20 Q. Okay. And is there an amount in there?

21 A. Yes.

22 Q. What's that amount?

23 A. \$10,671.95.

24 Q. Now, you never -- now, never having worked at
25 Saxon, you don't know how they came up with that number,

1 do you?

2 A. No, I do not.

3 Q. You don't know if that number represents any
4 specific application of fees, do you?

5 A. No, I do not.

6 Q. You don't know on what dates those fees were
7 incurred?

8 A. No.

9 Q. You don't know why they were incurred?

10 A. No, I do not.

11 Q. For all you know, they could have just been
12 made up and added to the account information, correct?

13 A. They could be, but I don't believe that to be
14 the case.

15 Q. Okay. Now, that figure that adds -- that goes
16 into the amount due and owing that you calculated for
17 this loan, isn't it?

18 A. To my knowledge, yes.

19 Q. You don't know the fees -- you don't know what
20 the property inspection fees generated -- you don't know
21 the property inspection fees generated by Saxon, do you?

22 A. Not off the top of my head, no.

23 Q. You don't know if they are the same as the ones
24 that are charged at Ocwen, do you?

25 A. No. Perhaps they, you know, they may have used

1 a different company to do the property inspection. They
2 all vary.

3 Q. Thank you. And the default that you're speaking
4 to, the last regular payment of default, all that
5 information, that comes from the records of Saxon,
6 doesn't it?

7 A. Yes. But Saxon records are now our records --

8 Q. Okay.

9 A. -- once we purchase the Saxon portfolio.

10 Q. Those are -- but those records were generated
11 by Saxon?

12 A. Yes, they were.

13 Q. They were presumably input by Saxon employees?

14 A. Yes.

15 Q. Using Saxon's policies and procedures?

16 A. Yes.

17 Q. Which you were never familiar with and you
18 were, again, never a Saxon employee?

19 A. No.

20 MR. HOLTZ: Your Honor, at this time I object to
21 the introduction of these records pursuant to the
22 case, Yang and Romeo. This witness is not qualified
23 to testify as to the reliable or trustworthiness of
24 records, as these records are -- or at least a
25 portion of these records that deal with records

1 generated by Saxon.

2 THE COURT: Okay. Counsel, again, how is this
3 different from the Yang case?

4 MR. ROSENTHAL: This argument is actually
5 identical to the Wamco case that I cited to Your
6 Honor before.

7 THE COURT: I guess I need to see a copy.

8 MR. ROSENTHAL: Yeah, I think I would like to
9 get a copy. I didn't bring it with me. Do you have
10 the ability to pull it up.

11 THE COURT: I do.

12 MR. ROSENTHAL: I think if you type in Wamco,
13 you should be able to get it very quickly.

14 THE COURT: I don't have the ability to print
15 it out.

16 THE WITNESS: Excuse me, Your Honor, may I run
17 to the ladies room?

18 THE COURT: I never denied that request.

19 THE WITNESS: Drank too much water today.

20 (Louise Plasse exited the courtroom at 4:16
21 p.m.)

22 THE COURT: You don't have the case cite, but
23 you have the -- how do you spell Wamco?

24 MR. HOLTZ: It's W-a-m-c-o. It's Wamco VII,
25 Roman numeral I.

1 THE COURT: Was it 2005?

2 MR. ROSENTHAL: That sounds about right.

3 MR. ROSENTHAL: Sounds about right again.

4 MR. PRESTIA: What was the case cite, Your
5 Honor?

6 THE COURT: I'm sorry, 903 So. 2d. 230. You'll
7 give me a moment, then I'll let you look at it.

8 THE COURT: We need a new printer.

9 (Lousie Plasse enters the courtroom at 4:18
10 p.m.)

11 THE COURT: If you don't mind me reading -- try
12 to read slow, because I think this is an issue we're
13 talking about: At trial Wamco presented evidence,
14 including business records, regarding the amount
15 outstanding on the loans. The guarantors challenged
16 the admissibility of the records, asserting that they
17 contained hearsay. They argued WAMCO obtained the
18 balance information from Bank of America at the time
19 WAMCO acquired the loans and that balance information
20 constituted hearsay. WAMCO acquired the loans and
21 that the balance information constituted hearsay.
22 WAMCO responded that its documents were admissible as
23 business records and that received from the
24 information in those records, along with witness
25 testimony, properly established the amounts due.

1 The record reflects that Robert Grauer
2 testified for WAMCO. He is a vice president of WAMCO
3 and a vice president of its related company, First
4 City Servicing, which services loans for WAMCO.
5 Grauer's duties include overseeing collections of
6 loans that WAMCO purchases, and he was personally
7 involved in servicing the March and October loans.
8 Grauer testified that the beginning numbers on the
9 outstanding balances were the numbers received from
10 Bank of America at the time WAMCO purchased the loans
11 The numbers were put into First City's computer
12 system, on WAMCO's behalf, and kept in the normal
13 course of business. Entries related to payments and
14 balance adjustments were made and maintained in the
15 ordinary course of First City's business

16 Grauer testified that the loan payment
17 histories reflected payments at the time they were
18 made and the outstanding balances. He stated that
19 WAMCO relied on the documentation and balance
20 information that it received from Bank of America at
21 the time WAMCO purchased the loans. He indicated that
22 while he did not know the specific person at Bank of
23 America who would have put information into the Bank
24 of America system, he knew how bank loan accounting
25 systems worked and the procedures were

1 "bank-acceptable accounting systems." He added that
2 he reviewed the records that WAMCO and First City
3 received from Bank of America, and he described the
4 process that WAMCO and First City use to verify the
5 accuracy of information received in connection with
6 loan purchases. He explained that at the time of a
7 loan purchase "we put in on our system, the files
8 that are delivered to us. We go through the files,
9 check for the accuracy, anything that seems out of
10 line, go through the file, reading it to get a good
11 idea of the history of the loan, look at the payment
12 histories, et cetera, and then make an initial
13 contact with the customer."

14 Over the Guarantors' objections the trial court
15 admitted exhibits 10 and 17 (WAMCO's loan payment
16 histories for the March and October loans) into
17 evidence as WAMCO's business records. In admitting
18 exhibit 10 the trial court stated that the payment
19 history was admitted but that the Guarantors had "a
20 right to take issue with the beginning number."
21 Grauer also testified, over objection, as to the
22 amounts due for each of the loans

23 We agree with WAMCO that the trial court erred
24 in concluded that there was a lack of admissible
25 evidence and a failure of proof as to the outstanding

1 loan balances. The trial court properly admitted
2 exhibits 10 and 17 into evidence as business records
3 of WAMCO.

4 These documents, together with Grauer's
5 testimony, constituted competent, substantial
6 evidence to prove WAMCO's damages.

7 Section 90.803(6) provides that records may be
8 excluded from evidence if "the sources of information
9 or other circumstances show lack of trustworthiness."
10 Yet here, in admitting exhibit 10, the trial court
11 stated that the payment history was admitted as a
12 record of WAMCO's but that the Guarantors had the
13 right to challenge the beginning number. The
14 Guarantors did not demonstrate, and nothing in the
15 record establishes, that the loan information WAMCO
16 received from Bank of America was suspect or
17 untrustworthy or that the balances that WAMCO claimed
18 as due were incorrect.

19 Because WAMCO met its burden and properly
20 established the amounts due under the loans through
21 Grauer's testimony and exhibits 10 and 17, we reverse
22 the trial court's determination that WAMCO failed to
23 prove its damages

24 Okay. So why is this different than Yang?

25 MR. HOLTZ: Okay. Well, first, Your Honor, I'll

1 just remind the Court that the Second DCA opinion is
2 different and is contradictory in someways to the
3 Fourth DCA opinion in Yang and Romeo. And that's, of
4 course, my opinion that the Fourth DCA opinion is a
5 binding decision --

6 THE COURT: Well, let me ask you this, how does
7 it contradict --

8 MR. HOLTZ: I don't think --

9 THE COURT: -- does it really bear on -- as I
10 read this Wamco decision on trustworthiness, I mean,
11 in Yang there was really an issue -- there was
12 testimony and evidence that payments have been made,
13 if I recall correctly and the witness couldn't
14 testify as to that, so that became a real issue and
15 to whether that was trustworthy.

16 Here it stated in Wamco, seems like the Court
17 is saying, well, nothing is -- they don't have that
18 situation. There's nothing on record that indicates
19 that the information there relied on that the
20 information was unreliable, so...

21 MR. HOLTZ: I can distinguish it, Your Honor,
22 and I do apologize for standing before you and
23 holding a phone, but my partner pulled up the case on
24 West Law on the phone, if I can refer to it, Your
25 Honor.

1 The key point in Wamco, I think, Your Honor,
2 hones in right on it, it was establishment of some
3 level of trustworthiness. Now, the witness for Wamco
4 in that trial, testified that they were relied on
5 documents that Wamco relied on the documentation and
6 balance information received from Bank of America at
7 the time Wamco purchased the loans and he knew and he
8 could testify that he knew how bank loan accounting
9 systems worked and that the procedures were bank
10 acceptable accounting systems. And he also added
11 that he personally reviewed the records they received
12 from Bank of America and described the process that
13 they used to verify the accuracy of the information,
14 received in connection with loan purchases.

15 That is not square with the testimony that's
16 present before you, Your Honor, in the instant case,
17 because Ms. Plasse cannot -- has not so far testified
18 to any of those things that would give this court
19 indicia of trustworthiness or this initial
20 figure coming from the prior loan servicer.

21 In fact, her testimony was that she had
22 absolutely no knowledge of the policies and
23 procedures in place at Saxon with respect to the
24 collection of payments with respect to the recording
25 of collection payments and with respect to the

1 application of late fees, to the respect of the
2 application of charging of the other fees at Saxon.

3 This is a witness who has not akin to the
4 witness Wamco. And because their testimony is so
5 drastically different, Your Honor, this situation is
6 not akin to the situation presented to the Court in
7 Wamco and as a result, this court should be guided
8 rather by a more similar situation, which I contend
9 is a situation presented to the Court in Yang and
10 Romeo, which is a witness who comes to the stand and
11 testifies that they have no knowledge, whatsoever of,
12 the company's policies and procedures, the figures,
13 the trustworthiness and reliability of data coming
14 from a prior individual, prior to the entry of the
15 corporation or the entity for which they -- for which
16 this witness has testified.

17 That is exactly the situation in Yang and
18 Romeo, not the situation in Wamco, but the situation
19 that's before Your Honor today. I mean, Ms. Plasse
20 testified on voir dire directly to, the heart of the
21 matter. It very well could be, according to her
22 testimony, the only evidence before, Your Honor, was
23 that that figure of 10,000 and change dollars, that
24 is listed as prior servicer fees, could be completely
25 made up and added onto the account. She doesn't know,

1 because she can't testify to the fact that Saxon used
2 bank acceptable accounting procedures. She can't
3 testify to having -- and she hasn't testified in any
4 way to establishing the voracity or any way verifying
5 records that came from Saxon to Ocwen Loan Servicing.

6 I'll proffer to the Court, Your Honor, that
7 this witness can't do so. She is not qualified to do
8 so, because she has already testified she has
9 absolutely no idea what they did at Saxon. It's not
10 like Wamco.

11 THE COURT: Okay.

12 MR. ROSENTHAL: She's not required to know what
13 Saxon did or how, when. She's only required to
14 testify about what -- trustworthiness of the end
15 product, the documents --

16 THE COURT: Well, how can she testify -- I
17 mean, she can testify to the -- I know she can
18 testify to some of the data, but how is she going to
19 testify at all to what Saxon did, I mean, I think she
20 was candidly straightforward about the fact she
21 really don't show how those numbers, I mean, is that
22 a fair statement, she doesn't know how those numbers
23 were generated?

24 MR. ROSENTHAL: No, I have to think she was
25 asked if she knows who generated the numbers and what

1 procedures were at Saxon as far as generating those
2 numbers and I think it's her testimony as far as
3 that -- like you said, she was candid and truthful
4 and I don't think that's the standard in Wamco. I
5 think all that the successor servicer needs to
6 testify to is if -- is the trustworthiness of the
7 numbers received by the prior servicer.

8 THE COURT: Well, I may agree, but how can she
9 testify to the trustworthiness of those numbers that
10 she received from Saxon, and she doesn't know
11 anything about how those numbers were generated, to
12 base an opinion about whether or not they were
13 generated in accordance with -- I don't know,
14 banking, accounting standards, I think that was the
15 term that was used. I think -- let me just find the
16 quote, I think she said Saxon records are our
17 records. I mean, that seems to be the position,
18 whatever we get, they become our records, therefore
19 they must be truthful.

20 MR. ROSENTHAL: Well, Your Honor, I haven't had
21 the opportunity to ask her what was done at the time
22 Saxon or Ocwen received the information from Saxon,
23 so perhaps we can short circuit this by some
24 additional questions.

25 MR. HOLTZ: I'd just like to note for the

1 record, that the witness has been present for this
2 discussion, but just for the purposes of the record.

3 THE COURT: Go ahead. She's under oath.

4 MR. HOLTZ: No, I'm not making any inferences.

5 THE COURT: No, I know you're not.

6 DIRECT EXAMINATION

7 BY MR. ROSENTHAL:

8 Q. Ms. Plasse, obviously you testified previously
9 that you've been in your position in for six months?

10 A. Yes.

11 Q. So you were not even employed with Ocwen at the
12 time of the transfer of the loan servicing from Saxon to
13 Ocwen; is that correct?

14 A. That's correct.

15 Q. However, is this the first time you've
16 encountered a loan where mid stream the servicer changed
17 from Saxon to Ocwen?

18 MR. HOLTZ: Objection. Leading and relevance.

19 THE COURT: Well, I'll overrule it on both
20 counts. I'll determine that later. Go ahead.

21 THE WITNESS: This is not my first time that
22 I've encountered a prior servicer, whether it be
23 Saxon or any other servicer. Part of Ocwen's
24 procedures when we do acquire a new servicer, there
25 is a system of checks and balances that are required,

1 that we have set up as a company that -- to best of
2 my knowledge, are comparable throughout the entire
3 business industry of loan servicing.

4 MR. HOLTZ: Move to strike, lack of personal
5 knowledge, hearsay, lack of foundation and relevance.

6 THE COURT: I'll overrule.

7 BY MR. ROSENTHAL:

8 **Q. And you said to your knowledge, how did you**
9 **come to have that knowledge?**

10 A. As part of my training for this position, there
11 were certain areas of the industry that we need to be
12 familiar with, so that we can properly testify in court.

13 **Q. Okay. When you reviewed the loan payment**
14 **history in representation for your appearance in court**
15 **today, did you review both the loan payment history**
16 **generated by Ocwen and the loan payment history generated**
17 **by Saxon?**

18 A. Yes, I did.

19 **Q. And in your review of the loan payment history**
20 **generated by Saxon, did you have occasion to determine**
21 **its trustworthiness?**

22 MR. HOLTZ: Objection, Your Honor, hearsay,
23 lack of foundation, lack of personal knowledge and
24 calls for speculation.

25 THE COURT: Overruled.

1 THE WITNESS: As I stated before, when Ocwen
2 purchases a serving platform, portfolios, whether it
3 was Saxon or any other servicer of portfolio. We
4 have certain standards that we follow within our
5 company and to my knowledge it is the standard
6 throughout the business industry of loan servicing
7 when we do acquire new loan portfolios. We have a
8 certain amount of time with which to enter data into
9 our system. Once we acquired the portfolio, their
10 documents that are associated with each individual
11 loan, become our documents.

12 BY MR. ROSENTHAL:

13 **Q. Can you --**

14 MR. HOLTZ: Objection. I just want to move to
15 strike her testimony, hearsay, lack of foundation,
16 lack of personal knowledge,.

17 THE COURT: Overruled.

18 BY MR. ROSENTHAL:

19 **Q. Can you explain the procedures that Ocwen uses**
20 **in determining the accuracy and the reliability of the**
21 **prior servicer loan payment history before their loan**
22 **payment history becomes part of Ocwen loan payment**
23 **history?**

24 A. It is -- it's called -- it's called a boarding
25 process and once the file actually comes into our

1 possession, again, whether it's Saxon or some other prior
2 servicer, we enter that information, we scan that
3 information in your system and then it's placed as a --
4 there's a system of checks and balances to make sure that
5 everything is accurate, whether it be payment history,
6 whether it be payments that were applied to the account,
7 whether it be certain documentation associated with that
8 account and then it is checked again, checked two or
9 three times prior to it actually being put into our
10 system completely.

11 MR. HOLTZ: Move to strike, Your Honor,
12 witness's testimony, hearsay, lack of personal
13 knowledge, lack of foundation.

14 THE COURT: Overruled.

15 BY MR. ROSENTHAL:

16 **Q. And how do you come to have knowledge of this**
17 **checks and balances system that you just described?**

18 MR. HOLTZ: Objection. Leading.

19 THE COURT: Overruled.

20 THE WITNESS: This is -- it's documented within
21 our company as part of our boarding process. There's
22 actually a document that is called boarding process,
23 part of my training that I have studied and reviewed
24 with my fellow counterparts.

25 BY MR. ROSENTHAL:

1 MR. ROSENTHAL: Your Honor, just as a
2 housekeeping concern, it's 4:35 and I don't know,
3 Your Honor, going past 5 o'clock, I have school-age
4 children that I need to attend to.

5 THE COURT: Normally, I don't go past five.

6 MR. ROSENTHAL: I just didn't know if you
7 were -- I just needed to schedule --

8 THE COURT: Okay. Hopefully I can make a ruling
9 and I hope we'll maybe be able to determine how much
10 time we're going to need on this.

11 BY MR. HOLTZ:

12 Q. This document -- there's an actual document
13 called boarding procedures?

14 A. Yes.

15 Q. You don't know -- you don't have that document
16 with you here today?

17 A. I don't know if I have it with me, per se. I
18 don't know. I just switched my computer bag. I don't
19 know if I put it with you other stuff.

20 Q. We can agree it's not in evidence, right?

21 A. No.

22 Q. And it's not -- so it's not before the Court
23 for consideration, is it?

24 A. No.

25 MR. HOLTZ: You testified -- well, at this

1 point, Your Honor, I move to strike the witness's
2 testimony pursuant to the best evidence rule. She
3 was testifying of boarding procedure as a means of
4 attesting the reliability of the records; however,
5 that is boarding procedure is apparently memorialized
6 in a document that would serve as the best evidence
7 for how that procedure, what that procedure is and
8 how it's carry out. The witness has testified from
9 that document.

10 THE COURT: I'll overrule the objection.

11 BY MR. HOLTZ:

12 Q. Now, you also testified to -- let's talk about
13 the boarding process. You said that that information is
14 entered, then there's a system of checks and balances?

15 A. Yes.

16 Q. Okay. Specifically -- the information,
17 specifically, you don't know how the information is
18 actually checked and verified, do you?

19 A. I know that our loan set up department, when it
20 comes down to the payment history, they check it for
21 accuracy.

22 Q. Okay. You don't know how they check it for
23 accuracy?

24 A. No, I don't know specifically how they check
25 it.

1 Q. You personally don't check it for accuracy?

2 A. No, I'm not in that department.

3 Q. You've never been in that department either,
4 have you?

5 A. I have visited but, no, I never worked in that
6 department.

7 Q. And you never supervised with anyone who works
8 in that department?

9 A. No.

10 Q. And so your only familiarity was the policies
11 and procedures of that department comes from what someone
12 at Ocwen told you about that department, correct?

13 A. Yes.

14 Q. That was part of your training, correct?

15 A. Yes.

16 Q. Your training to appear here today as a
17 witness?

18 A. Yes.

19 Q. And just the same, you've never actually
20 boarded a document, have you?

21 A. No.

22 Q. So you don't have personal knowledge about
23 whether or not the policies and procedures that are put
24 in place for boarding are actually followed by those who
25 boarded documents, do you?

1 A. I don't know per se that they're followed but,
2 you know, based on the information that I reviewed and
3 the fact that I have certain documents available to me, I
4 have to believe they're following accordingly.

5 **Q. Of the information that you review, though, is**
6 **the information at least in part boarded by that**
7 **department, correct?**

8 A. Correct.

9 **Q. And it's information that you, yourself have**
10 **testified you don't personally check for accuracy?**

11 A. Correct.

12 **Q. So you also said that there's a certain**
13 **standard that is followed and it's the business industry**
14 **standard. You don't know if that industry standard is**
15 **the same as bank acceptable accounting practices, do you?**

16 A. No, I do not.

17 **Q. You're not familiar with bank accounting**
18 **acceptable accounting procedures, are you?**

19 A. No, I'm not.

20 **Q. The training that you've received does not give**
21 **-- any training that you received has not explained to**
22 **you what bank acceptable accounting procedures are, do**
23 **they?**

24 A. No.

25 **Q. And you don't know if Saxon followed bank**

1 **accounting -- bank acceptable accounting procedures in**
2 **their recordkeeping?**

3 A. No. I do not, but I have to assume that they
4 did.

5 Q. Okay. Well, we can talk about your assumption,
6 but let's talk about -- I'm really am asking about what
7 you know, you don't even know if Ocwen follows bank
8 **acceptable accounting procedures, do you?**

9 A. I would have to say, yes, I do because I work
10 for the company and I represent them. So I would say,
11 yes, they do follow.

12 Q. **Bank acceptable accounting procedures?**

13 A. I would say that they do.

14 Q. **Even if you don't know what bank acceptable**
15 **accounting procedures are?**

16 A. Well, I would assume that it's certain setup
17 rule and guidelines they have to adhere to.

18 Q. **Okay. But, again you're assuming and you don't**
19 **know?**

20 A. Okay. Then I don't know.

21 Q. **This -- now, you said they check the balances**
22 **for accuracy?**

23 A. Yes.

24 Q. **But you just -- but you testified earlier that**
25 **since you don't know anything about the Saxon records,**

1 you don't know what these fees are in the first place
2 that are listed at the beginning of the entry of the
3 records that say prior servicer fee, do you?

4 A. Again, I don't work in this department, so I
5 don't know.

6 Q. You don't know if Saxon was the initial
7 servicer on this loan, do you?

8 A. To the best of my knowledge, they were.

9 Q. But there could have been a prior servicer?

10 A. Absolutely could have been.

11 Q. And if there was, their records would have
12 theoretically been like you're claiming Saxon records are
13 put into for Ocwen's records, correct?

14 A. Absolutely.

15 Q. Now, the records of the prior servicer, would
16 they have been checked for reliability by Ocwen when
17 Saxon's records were boarded into Ocwen -- into Ocwen's
18 system?

19 A. Yes, they would have.

20 Q. And how would they have been checked different
21 from Saxon's system?

22 A. They would have been checked exactly the same
23 way, anything that comes from a prior servicer and if
24 there was a prior servicer to that servicer, all of those
25 documents come into our system. They check for accuracy

1 and, you know, the system is in place for checks and
2 balances.

3 **Q. And, again, that is what was told by the people**
4 **who trained you, correct?**

5 A. Yes.

6 MR. HOLTZ: Your Honor, at this time, again, I
7 renew my objection to the entry of these payment
8 records coming in. I think the witness's testimony
9 has established that this is directly on point with
10 Yang and Romeo and completely distinguishable to the
11 situation in Wamco. In Wamco there was an individual
12 who testified, specifically, to his knowledge that
13 Bank of New York followed bank accepted accounting
14 principles that the Court could rely on that for some
15 indicia of reliability and trustworthiness of those
16 records, even if that individual from Wamco couldn't
17 testify necessarily to the specificity with which
18 those policies and procedures were followed by Bank
19 of America.

20 Here we have a witness who not only claimed --
21 who not only admittedly to her credit, not familiar
22 with bank acceptable accounting procedures and
23 whether those procedures which would give this court
24 some indicia of reliability, were followed at the
25 prior servicer or that of her own company.

1 She's relying on her testimony solely on what
2 has been told to her by people who trained her at
3 Ocwen.

4 In Wamco, that individual who testified
5 personally reviewed the records from Bank of America
6 and looked at the reliability for their accuracy.
7 Here this witness is relying on the policies and
8 procedures that she's been told about, not employed
9 herself, in reviewing the accuracy and the
10 reliability of the records by other individuals at
11 Ocwen. She's relying on strictly on hearsay
12 statements that are memorialized in a document that
13 is not yet before Your Honor, that is not in evidence
14 to consider and even if it were, this individual as
15 she has testified, would not be qualified to tell,
16 Your Honor, with any reliability or any personal
17 direct knowledge that those procedures were in place
18 at the bank, were in place at Ocwen or Saxon. They
19 were followed at Saxon or Ocwen and as such, this
20 simply is someone who is saying, these records are
21 now our records and, thus, since our records come in
22 as business records.

23 And, Your Honor, Yang and Romeo says that is
24 not the case.

25 THE COURT: If that were the situation, I would

1 agree with you and if that was the situation, perhaps
2 until the most recent testimony but, I mean, in Yang,
3 the testifying witness had more personal knowledge
4 and that person was Grauer reviewed most of the
5 records and could attest to their accuracy.

6 So here this witness, though, has said that
7 it's the practice of the company when they get a
8 portfolio like it or they get documents from a prior
9 servicing agent, like Saxon, that the documents --
10 there's a boarding proces that's in place, although
11 somewhat vague on exactly how it's done, that the
12 files are reviewed and that is scanned into the
13 system, that there is a checks and balances in place,
14 that they checked two or three times, I think she
15 said to determine their accuracy, that the loan set
16 up department reviews the payment history for
17 accuracy and in the absence of any other evidence
18 that we have in --

19 MR. HOLTZ: Yang.

20 THE COURT: Yang Okay. In Yang, while there
21 was actually testimony to the contrary that they
22 weren't reliable. They were significant
23 inaccuracies; isn't that enough to carry the burden?

24 MR. HOLTZ; I don't think so, Your Honor, I
25 think the difference is that in Wamco, not only did

1 the witness have personal knowledge through the
2 records in question, not only did that witness have
3 knowledge as to bank acceptable accounting procedures
4 and really to industry standards, rather than just
5 parroting what someone had trained them to say about
6 maintaining -- be upholding industry standards, but
7 that witness, specifically, had knowledge about the
8 prior servicer, about Bank of America --

9 THE COURT: Grauer was, you know, better in this
10 regard. Grauer had more personal information, was
11 more personally involved. I don't know that Yang
12 stands for the proposition it has to be at that level
13 of expertise, if you will or being informed or
14 personally involved but certainly, again, it
15 ultimately comes down to, is it trustworthy? That's
16 what we're talking about. Is it trustworthy? Is
17 there a minutia of reliability based upon the review
18 process that's in place.

19 And like I said, but for the recent testimony,
20 I have sustained the objection, but I think on
21 balance, this is more like Wamco, than it is Yang and
22 I'm satisfied, at least, on the sufficient
23 reliability based on the checks and balances that are
24 in place to the numerous reviews that occur. Even if
25 this witness, herself, isn't personally involved as

1 to how those checks and balances were or specifically
2 involved in the boarding process, so I'm going to
3 overrule the objection.

4 MR. ROSENTHAL: Thank you, Your Honor.

5 THE COURT: What number is that, then.

6 MR. ROSENTHAL: I believe it's 5.

7 THE COURT: I'll admit 5 into evidence.

8 (Plaintiff's No. 5 was received in Evidence.)

9 THE COURT: Maybe this is good time to break.

10 MR. PRESTIA: I have it in my notes as 5.

11 THE COURT: I got to say, both sides make good
12 argument.

13 MR. HOLTZ: Thank you.

14 MR. PRESTIA: Just for the purpose of
15 scheduling, you said we're going to resume tomorrow,
16 I have to advise the court, prior to the start of
17 trial, I also have another trial, I just want --

18 THE COURT: And this can be heard off the
19 record.

20 (A discussion was held off the record from 4:47
21 p.m. to 4:49 p.m.)

22 MR. ROSENTHAL: I'm sorry, Your Honor -- I
23 didn't mean to interrupt you -- just so the exhibits
24 are correct, was 4 the mortgage loan schedule?

25 MR. PRESTIA: This was not entered into

1 evidence 4 for identification purposes was the
2 mortgage loan, I think, it was the purchase
3 agreement.

4 MR. ROSENTHAL: Which the Court is not
5 admitted.

6 MR. PRESTIA: So that was for identification, 4
7 and then 5 for identification, however you want to
8 bring it in.

9 THE WITNESS: It one was not labeled. That one
10 was not labeled.

11 THE COURT: Given how far or how not so far
12 we've gone, how much time do you need?

13 MR. HOLTZ: Three hours.

14 MR. PRESTIA: Nine hours.

15 THE COURT: And another three hours, be able to
16 finish --

17 MR. ROSENTHAL: I don't think it's going to take
18 that long.

19 THE COURT: If we have run over, would you be
20 able to --

21 MR. ROSENTHAL: I can make arrangements. It
22 was scheduled at 9 o'clock this morning, so I didn't
23 think to make arrangements today.

24 THE COURT: Well, let's, plan on being a
25 little bit over, if we can talking about 5:30, then

1 we can finish. Let's say if could all be ready at,
2 let's say 2 o'clock ready to start at 2.

3 MR. PRESTIA: Just before we break, I'd just
4 like to preserve some issues for the record.
5 Specifically, pursuant to the pretrial motion, Your
6 Honor's, pretrial ruling pertaining to the request
7 for production, regarding trust documentation we
8 would, obviously, renew our prior motion.

9 Additionally, Your Honor, the plaintiff, I
10 believe, Number 2, which was the portion of the
11 purchasing and servicing -- Pooling & Servicing
12 Agreement- - well, the document contained within
13 Composite Exhibit 2, would have been directly, I
14 guess, sought after within these requests for
15 production, regarding trust documentation and we are,
16 obviously, prejudiced now they have been admitted
17 into evidence as part of Plaintiff's Composite 2
18 regarding that.

19 So I would move to strike Plaintiff's Exhibit 2
20 on the basis of discovery violations of the Court's
21 prior ruling and, Your Honor's, pretrial ruling and
22 plaintiff's assertion, I guess, in the prior hearing
23 all of the discovery is irrelevant and now, we are
24 now relying on this type of evidence in trying to
25 prove up his case.

1 MR. ROSENTHAL: Your Honor, the document that
2 he's --

3 THE COURT: I'm sorry, you're not finished.

4 MR. ROSENTHAL: I'm sorry. You're not
5 finished.

6 MR. PRESTIA: I think that out sums it up.

7 MR. ROSENTHAL: The documents that are admitted
8 as Composite Exhibit 2 were attached to a memorandum
9 of law filed on May 24, 2012. Counsel has had these
10 documents all along. To argue now that they're
11 somehow prejudiced or surprised by my use of them is
12 dubious.

13 MR. PRESTIA: And if we could ask the Court to
14 take judicial notice of plaintiff's exhibit list,
15 which was filed in this matter, which does not list
16 these documents on there.

17 So, you know, the defense was not put on notice
18 nor did the defense have the opportunity to obtain
19 all of the discovery regarding the trust loan
20 documents, which may have, you know, revealed some
21 exculpatory information, specifically, as it relates
22 to the Pooling & Agreement as only a portion of it
23 was entered into evidence.

24 So there's an issue, Your Honor, that's why
25 these issues were raised pretrial and efforts to

1 resolve this before they got into evidence, which is
2 now passed.

3 MR. ROSENTHAL: And, again, the Pooling &
4 Servicing Agreement as has been established is public
5 records able to be obtained from the SEC by everyone,
6 including the defendant. I'm not sure why waiting
7 three years to argue about the lack of discovery
8 without seeking to compel that discovery until a week
9 before trial and then argue that they didn't give me
10 publically available documents is a argument that --

11 THE COURT: Like I said, the plaintiff is not
12 completely blameless in this case --

13 MR. ROSENTHAL: And I'm not suggesting that we
14 are, Your Honor. I'm not. But we have produced both
15 to the Court and to counsel the mortgage loan
16 schedule which, obviously, Your Honor sustained
17 objection to and we have produced documents that has
18 been admitted, Exhibit 2, so to say that there's any
19 kind of prejudice at all, again, I disagree with.

20 MR. PRESTIA: Let me just -- I'm sorry, Your
21 Honor, for purposes of the trial order is to put the
22 parties on notice as to what the issues are going to
23 be in the case, specifically, as it pertains to the
24 exhibits lists. That puts us on notice that what
25 they going to use at trial. This was not one of the

1 trial exhibits that was not one of the exhibits
2 listed and, therefore, just because it was attached
3 to some memorandum of law somehow in the past five
4 years of litigation, does not, you know, put us on
5 notice that they're going to be using them at trial.

6 So as pertains to plaintiff's argument, I
7 believe it's unfounded and I believe that it is --
8 this pertains to exhibit lists at trial by ambush,
9 specifically, when we asked for these documents
10 relating to the trust three years ago and they just
11 sat on the Court order and failed to comply with it.
12 Now, they're trying to flip it on us for not
13 enforcing it.

14 Well, we did a motion to compel and we got an
15 additional order saying, yes, provide this and then
16 they failed to do that.

17 THE COURT: I like I said, I think there's
18 enough blame to go on both. I'm really referring --
19 -- although you had a meritorious argument, I don't
20 think you need to stick it in your pocket and wait to
21 the day of trial. I think you had an obligation to
22 bring that to the Court before the very day of trial
23 or day or two before trial. I'm not convinced that
24 anybody was sufficiently prejudiced.

25 I'll deny the pending motion.

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Anything else you want to address, counsel?

MR. PRESTIA: Not at this time, Your Honor.

2 o'clock tomorrow?

THE COURT: 2 o'clock. Okay.

(The trial adjourned at 4:54 p.m.)

C E R T I F I C A T E

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I, DAWN S. McCONNELL, Court Reporter, State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 18th day of September, 2013

Dawn S. McConnell

Dawn S. McConnell



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APPEARANCES:

On behalf of the Plaintiff:

Moschowitz, Mandell, Salim & Simowitz, P.A.
800 Corporate Drive, Suite 500
Fort Lauderdale, FL 33334
Grosenthal@mmsslaw.com
GREG ROSENTHAL, ESQ.

On behalf of the Defendants:

Ice Legal, P.A.
1015 N. State Road 7, Suite C
Royal Palm Beach, FL 33411
Scott.holtz@icelegal.com
SCOTT HOLTZ, ESQ.
Thomas.prestia@icelegal.com
THOMAS PRESTIA, ESQ.

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1 (Thereupon, the following proceedings were
2 had):

3 THE COURT: Good afternoon everybody. All be
4 seated. Looks like we're all set to go to where we
5 left off.

6 Okay. Just a housekeeping matter, yesterday
7 you conditionally admitted Exhibit 2, which was a
8 copy of the mortgage on the condition that we provide
9 a certified copy. I do have that and that's admitted
10 as Exhibit Number 2.

11 MR. PRESTIA: Just in terms of numbering, I
12 have the Number 2 as a composite.

13 MR. ROSENTHAL: Number 3, you're correct. I
14 apologize.

15 THE COURT: Exhibit Number 3.

16 MR. HOLTZ: Your Honor, I am, again, renewing
17 my objection to introduce what's now coming --
18 attempting to come in as Plaintiff's Exhibit 3. My
19 position is that it needs -- the original mortgage
20 needs to be presented into evidence, a copy of --
21 even a certified copy is not sufficient evidence for
22 the plaintiff to introduce to prove the foreclosure
23 judgment they're entitled to foreclosure.

24 THE COURT: I'll overrule the objection.

25 MR. HOLTZ: And also hearsay, Your Honor,

1 authenticity, lack of personal knowledge, lack of
2 foundation.

3 THE COURT: Overruled. Over objections you
4 previously made over objection.

5 BY MR. ROSENTHAL:

6 **Q. Ms. Plasse, I'm going to ask you to look at**
7 **this document dated June 18, 2008, addressed to [REDACTED] and**
8 **[REDACTED] at the subject address.**

9 MR. HOLTZ: Objection. Counsel testifying from
10 the document not yet in evidence.

11 THE COURT: As I indicated in the prior
12 exhibit, I'll overrule the objections subject to its
13 admissibility. If it's admitted, then I'll strike
14 it.

15 MR. ROSENTHAL: And, Your Honor, again, I
16 apologize for addressing counsel, but I'd ask that my
17 questions be finished before the objection starts.

18 THE COURT: That's a reasonable request.

19 MR. ROSENTHAL: Thank you.

20 MR. HOLTZ: I apologize.

21 BY MR. ROSENTHAL:

22 **Q. Can you identify for the Court what this**
23 **document is?**

24 A. This is a copy of the default notice dated June
25 18, 2008 to [REDACTED] and [REDACTED] 8058 Via Bolzano,

1 Lake Worth, Florida 33467. This gives the customer
2 30 days with which to cure the default. This was also
3 sent via certified mail. There was a receipt to this, as
4 well.

5 MR. HOLTZ: Your Honor, I move to strike the
6 witness's testimony. First, as testimony of a
7 document not yet in evidence, understanding Your
8 Honor's prior ruling. Also move to strike this was
9 testimony under narrative. This was not a question
10 pending that she was answering.

11 THE COURT: Overruled.

12 BY MR. ROSENTHAL:

13 **Q. Ms. Plasse, is this a document found within the**
14 **business records of your employer, Ocwen?**

15 MR. HOLTZ: Objection, calls for speculation,
16 lack of personal knowledge, hearsay and improper
17 foundation.

18 THE COURT: Overruled.

19 THE WITNESS: Yes, this document is within our
20 records.

21 BY MR. ROSENTHAL:

22 **Q. And is it kept in the course of regularly**
23 **conducted business activity of Ocwen?**

24 MR. HOLTZ: Objection. Same objections, in
25 addition, leading.

1 THE COURT: Overruled.

2 BY MR. ROSENTHAL:

3 Q. Is it the regular practice of Ocwen to maintain
4 documents?

5 MR. HOLTZ: Same objection, Your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: Yes, it is.

8 BY MR. ROSENTHAL:

9 Q. And is this a document made at or near the time
10 by or from or information transmitted by a person with
11 knowledge?

12 MR. HOLTZ: Same objections, Your Honor.

13 THE COURT: Overruled.

14 THE WITNESS: Yes, it is.

15 BY MR. ROSENTHAL:

16 Q. Now, yesterday, Ms. Plasse, you testified about
17 the boarding process relating to loans who might have
18 been serviced by a prior servicer into Ocwen; is that
19 right?

20 A. Yes.

21 Q. Was this document a part of the boarding
22 process relating to this loan, since that was being
23 serviced by Saxon and then become serviced by Ocwen?

24 A. As I said yesterday, yes, all of our documents
25 are maintained in our system, as well as any other

1 information that is associated with this loan, whether it
2 be correspondence or other payment history?

3 MR. HOLTZ: Move to strike. Nonresponsive.

4 THE COURT: Overruled.

5 BY MR. ROSENTHAL:

6 **Q. Was this document vetted in the same manner in**
7 **which Saxon's loan payment history was vetted by Ocwen**
8 **during and part of the boarding process?**

9 MR. HOLTZ: Objection. Leading. Also a
10 compound question.

11 THE COURT: I don't think so, overruled.

12 THE WITNESS: Yes.

13 BY MR. ROSENTHAL:

14 **Q. Can you describe that -- the boarding process**
15 **as it relates to this default letter?**

16 MR. HOLTZ: Objection. Calls for a hearsay
17 response.

18 THE COURT: Overruled.

19 THE WITNESS: As I said yesterday, when Ocwen
20 purchases a servicing platform, whether it's Saxon or
21 any other servicer platform, we have a series of
22 checks and balances in place that we do as part of
23 boarding our new loans. And in doing that, not only
24 do we check for accuracy with the payment history and
25 any payments that have been made applied, but we also

1 check for accuracy on any document that may or may
2 not be associated with associated loans.

3 MR. HOLTZ: Move to strike, hearsay, lack of
4 personal knowledge, improper foundation.

5 THE COURT: Overruled.

6 BY MR. ROSENTHAL:

7 **Q. Is there a principal balance due -- found in**
8 **the default letter?**

9 MR. HOLTZ: Your Honor, objection, calls for
10 the witness to testify from a document not yet in
11 evidence. Calls for hearsay.

12 THE COURT: Overruled.

13 THE WITNESS: Yes, there's a principal balance.

14 BY MR. ROSENTHAL:

15 **Q. And during the boarding process, was that**
16 **principal balance analyzed to determine for its accuracy?**

17 MR. HOLTZ: Objection, hearsay, lack of
18 personal knowledge, improper foundation.

19 THE COURT: Overruled.

20 THE WITNESS: Yes.

21 MR. ROSENTHAL: Your Honor, at this time we'd
22 ask that the default letter dated June 18, 2008, be
23 admitted into evidence as Plaintiff's Exhibit
24 Number 6.

25 THE COURT: I assume there's an objection?

1 MR. HOLTZ: Yes, Your Honor. And to no
2 surprise, if I may voir dire the witness?

3 THE COURT: Another brief voir dire.

4 MR. HOLTZ: As brief as it gets.

5 VOIR DIRE.

6 BY MR. HOLTZ:

7 Q. Ms. Plasse, now, you don't know what department
8 at Saxon prepared this default letter, do you?

9 A. No, I do not.

10 Q. You, in fact, don't even know whether or not
11 this letter was prepared in house at Saxon or by some
12 third party provider that Saxon hires to sent out default
13 letters?

14 A. I do not know that, but while -- like I said
15 yesterday, as part of the business industry and the fact
16 that I've been in the financial industry for a number of
17 years, the fact that Saxon are a reputable business, I
18 would say this letter was sent out on the date that it
19 was dated.

20 Q. Okay. You just said that Saxon is a reputable
21 business, you're basing that on what personal knowledge
22 of Saxon's business practices?

23 A. I don't have specific personal knowledge, but I
24 do know in the industry, everybody has guidelines they
25 must adhere to.

1 **Q. So -- and everybody always adheres to those**
2 **guidelines?**

3 A. I would hope so, yes.

4 **Q. So there's never been, for example, a large**
5 **scale crisis involving fraud and fraudulent activity**
6 **conducted by mortgage loan services and mortgage**
7 **providers?**

8 A. No, there absolutely has.

9 **Q. So, in other words, then, you would agree with**
10 **me that though there maybe standards, not everyone**
11 **follows them always.**

12 A. No, not everybody does.

13 **Q. Not even the major corporations?**

14 MR. ROSENTHAL: Objection, Your Honor, I think
15 we're far afield of what's relevant as far as whether
16 or not this witness is capable of testifying as to
17 this document.

18 THE COURT: I think we're all generally aware
19 of problems in the industry.

20 MR. HOLTZ: Well, Your Honor, I agree, but the
21 witness just put that directly at issue, because
22 she's basing her testimony on the admissibility of
23 this document based on her -- on her belief that
24 Saxon, a company she never worked for, is a reputable
25 company.

1 THE COURT: I've given you some latitude,
2 you've been -- you've gotten out from her that not
3 everyone follows the standards, that there are
4 breaches, so I think you made your point.

5 BY MR. HOLTZ:

6 Q. Understood. And you don't know -- you don't
7 have any actual knowledge that Saxon -- you have no
8 actual knowledge that this letter was ever sent?

9 A. I don't have any personal knowledge, no, but I
10 believe that -- again, like I said yesterday, once their
11 records become our records, we have to base it on that
12 that in our -- in our business and other businesses that
13 if it says it's dated June 18th, that's the date that it
14 went out.

15 Q. Okay. I understand that's your belief, but
16 it's a yes or no question, you don't have knowledge?

17 A. I don't.

18 MR. ROSENTHAL: Objection. Argumentative.
19 She's answered the question.

20 THE COURT: I think the question is a yes or no
21 question: Does she have personal knowledge?

22 MR. ROSENTHAL: She answered, then explained.

23 THE COURT: Answer it yes or no.

24 THE WITNESS: No.

25 BY MR. HOLTZ:

1 Q. Okay. And you -- you would have no way of
2 knowing whether this letter was sent because it was never
3 sent by Ocwen?

4 A. That is correct.

5 Q. And you're not even -- well, there is
6 nothing --

7 THE COURT: You've run out of questions.

8 THE WITNESS: One can only hope.

9 BY MR. HOLTZ:

10 Q. There's no canceled postage on this letter?

11 A. No, there is not.

12 Q. Okay. There is no envelope on this letter?

13 A. No.

14 Q. This is not a -- this is not the actual letter
15 that if it was sent, would've been sent?

16 MR. ROSENTHAL: Object to the form of the
17 question.

18 BY MR. HOLTZ:

19 Q. Okay. I'll rephrase it. This is a computer
20 printout or computer reprint of a letter that was
21 purportedly sent, correct?

22 A. Correct.

23 Q. And this would have been generated by -- well,
24 you don't even know actually who generated this letter,
25 do you?

1 A. I would say that Saxon Mortgage generated
2 because their name is on the letter.

3 **Q. But your only basis for that information is the**
4 **fact that the name is on the letter?**

5 A. Yes.

6 **Q. Doesn't come from any independent personal**
7 **knowledge?**

8 A. No.

9 MR. HOLTZ: Your Honor, at this time I'm going
10 to object to this coming in. The witness has
11 testified that she has no actual knowledge as to
12 whether or not this letter was sent, who generated
13 this letter, she has no way of knowing if, you know,
14 where this letter came from other than it appears in
15 her records now. But the actual origin of the letter
16 and its trustworthiness and reliability at the time
17 it was created, whenever it was recreated. This
18 witness can't testify to it.

19 THE COURT: She wouldn't have to have personal
20 knowledge that the letter was actually sent --
21 assuming this is a business record, he can testifying
22 doesn't have to have personal knowledge of all those
23 things, if it otherwise qualifies as a business
24 record.

25 MR. HOLTZ: I agree on that point, Your Honor,

1 but the witness's testimony was that she doesn't --
2 -- was that she didn't -- she doesn't know who
3 generated the letter or --

4 THE COURT: Saxon generated the letter.

5 MR. HOLTZ: But her sole basis for that is the
6 fact that Saxon's name appears on the letter.
7 There's no way of knowing if the words Saxon -- if
8 Saxon did it or if a third party did it, who
9 generated it, who kept it and who maintained it and
10 this witness's testimony previous to this is she's
11 never worked at Saxon. She's never worked at any of
12 their departments. She has no personal knowledge,
13 other than what she's been told of how her own
14 records are kept, which says nothing of how those
15 records were keep.

16 THE COURT: Basically, this a similar analysis
17 at least with the last exact exhibit and, again, the
18 Wamco versus Yang, right, analysis and
19 trustworthiness, again, being the key. I think this,
20 you know, my prior ruling in that exhibit compels the
21 same ruling in this exhibit. So I'm going to
22 overrule the objection. I'll admit this as
23 Plaintiff's 3, I believe.

24 MR. ROSENTHAL: Plaintiff's 5 -- excuse me 6.

25 THE COURT: You have 5 already?

1 THE CLERK: I have 5.

2 THE COURT: Then this is 6. The clerk is never
3 wrong.

4 MR. ROSENTHAL: Absolutely. Your Honor, since
5 we talked about this distinction, this decision
6 between Wamco and Yang, while I respect Your Honor's
7 ruling as it relates to the proposed Exhibit Number
8 4, I believe it was the mortgage loan purchase
9 agreement and schedule, I ask that we readdress that
10 issue and the basis of Wamco and, in addition, to a
11 Federal Northern District of Illinois case --

12 MR. HOLTZ: Your Honor --

13 MR. ROSENTHAL -- because I believe that's -- if
14 I could --

15 MR. HOLTZ: I don't mean to interrupt, but I
16 have to have objection to this whole -- I don't know
17 what to call it, motion?

18 THE COURT: Well, let's hear the argument.
19 I'll let you respond.

20 MR. ROSENTHAL: The argument is Yang case
21 distinguishable from the case that we have at bar.
22 And the reason being is we've got this case, a large
23 financial institution who are buying and selling
24 bundles of loans, which is significantly different
25 circumstances than what was in the Yang case, which

1 as you recall, homeowner's association case dealing
2 with one transaction -- one loan -- or one lien
3 situation and an assessment situation that was
4 dealing with one count --

5 THE COURT: I thought the difference was -- I
6 don't want to spend a lot of time re-arguing it --

7 MR. ROSENTHAL: No, I understand.

8 THE COURT -- as we have before, but the
9 difference between that exhibit, as I recall, and the
10 last two exhibits that the Court admitted was these
11 two exhibits relate to a records of the prior
12 servicing agent, Saxon, which wasn't the case with
13 the other exhibit. And as -- and I think in that
14 instance, basically, the witness did basically
15 testify, well, we got the records, so if they're
16 their records, they must be our records. There was
17 no evidence regarding this due diligence, this
18 checking process --

19 MR. ROSENTHAL: Your Honor, in light --

20 THE COURT: -- this boarding process, any of
21 those other things that, at least in the other
22 exhibits, provided to me with a significant indicia
23 of reliability that related and admit those records.

24 MR. ROSENTHAL: Your Honor's absolutely correct
25 about that. And I wanted to just bring to Your

1 Honor's attention, a case from the Northern District
2 of Illinois Federal Court that deals identically with
3 that very situation and your concern is the mortgage
4 loan schedule comes all the way back in time from the
5 original lender and how can this witness from the
6 successor servicer, Ocwen, testifying as to that
7 record, in this case answers that question and
8 answers it in the affirmative for my client's
9 position.

10 And in order for Your Honor to make a fully
11 informed ruling on the issue, I want to bring to your
12 attention and at least give you the opportunity to
13 look at it.

14 THE COURT: Okay. Well, I'll move on. I'll
15 look at the decision, counsel.

16 MR. HOLTZ: And, Your Honor, I must object
17 again. First of all, to this re-visiting of an issue
18 that's already been settled by Your Honor at this
19 point in the middle of direct examination on a
20 completely different exhibit. We are going back to a
21 previous exhibit that has already been settled and --

22 THE COURT: As I indicated, I'll read the
23 opinion, if I think it warrants coming back to
24 revisiting this issue, I'll give everybody notice of
25 that. I understand your concern. Once the Court

1 makes a ruling, you'd like to have some confidence on
2 my ruling and then move on. Occasionally, it happens
3 that something's been overruled if there's some
4 additional authority that neither side was aware of.
5 I appreciate what counsel brings to my attention.
6 I'd rather correct, if there are any errors, correct
7 them now, then go up on appeal.

8 MR. ROSENTHAL: And that's all I was trying
9 to -- -- I respect Your Honor's ruling yesterday.

10 THE COURT: But I'll take a look at it and at
11 the appropriate time I'll look at it and I'll
12 indicate what I think is worth re-visiting.

13 MR. HOLTZ: I would just like to point out or
14 remind the Court as I'm sure as you're aware, this
15 would -- for whatever value this case may have and I
16 haven't had an opportunity to look at it yet, that it
17 would be merely persuasive authority as opposed to
18 the binding authority of the Yang case over the
19 Fourth District.

20 THE COURT: I understand. Move on.

21 BY MR. ROSENTHAL:

22 **Q. Ms. Plasse, I want to show you the next**
23 **document. Could you identify the title of this document?**

24 A. This document is entitled Power of Attorney.

25 THE COURT: This being 7? Is there going to be

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MR. ROSENTHAL: I believe so, yes.

BY MR. ROSENTHAL:

Q. And who is the printed name below the signature on this document?

MR. HOLTZ: Objection, Your Honor, calls for witness to testify to a document not yet in evidence.

THE COURT: Overruled.

THE WITNESS: The printed name is [REDACTED]

BY MR. ROSENTHAL:

Q. And is this a document found in Ocwen records?

MR. HOLTZ: Objection, Your Honor, leading, calls for speculation and calls for a hearsay response, lack of personal knowledge, lack of foundation.

THE COURT: Overruled.

THE WITNESS: Yes, it is found within our records.

BY MR. ROSENTHAL:

Q. And is it a document kept in the regularly conducted business activity of Ocwen?

MR. HOLTZ: Objection. Leading, calls for speculation, calls for hearsay, lack of personal, lack of foundation.

THE COURT: Overruled.

1 BY MR. ROSENTHAL:

2 Q. And is it the regular practice of Ocwen to
3 maintain this document?

4 A. Yes, it is.

5 MR. HOLTZ: Same objections, Your Honor, move
6 to strike.

7 THE COURT: Overruled.

8 MR. ROSENTHAL: Your Honor, at this time I'd
9 ask that this document be identified and marked as
10 Exhibit Number 7 for plaintiff.

11 THE COURT: Voir dire.

12 MR. HOLTZ: May I see it? I didn't have an
13 opportunity.

14 MR. ROSENTHAL: I haven't asked her any
15 pertinent questions on it, but I do want to keep in
16 evidence before I did that to head off any
17 objections.

18 MR. HOLTZ: No, objection.

19 THE COURT: That's 7 in evidence, then.

20 (Plaintiff's No. 7 was received in Evidence.)

21 MR. ROSENTHAL: Thank you. Move to bring it
22 over to the clerk.

23 THE COURT: I guess it's time for me to renew
24 the water. Anybody need water?

25 MR. ROSENTHAL: No.

1 THE COURT: Do you need any water?

2 MR. PRESTIA: No.

3 MR. HOLTZ: No, but I appreciate it, Your
4 Honor.

5 THE COURT: I don't normally do it.

6 MR. HOLTZ: Can I reserve, Your Honor.

7 MR. ROSENTHAL: Thank you. I'm fighting a head
8 cold and I'm currently losing.

9 BY MR. ROSENTHAL:

10 Q. And what does this Power of Attorney do, based
11 on your review?

12 A. This Power of Attorney, it appoints [REDACTED]
13 [REDACTED] as -- to be a true and lawful attorney for me,
14 gives her authority to sign on his behalf.

15 Q. And when you say, his behalf, who are you
16 speaking to?

17 A. [REDACTED]

18 Q. Okay. And I don't have exhibit -- the note and
19 mortgage in front of me, but I can fix that. So hold on,
20 please.

21 And the signature on Exhibit 1, which is the
22 original note, on this signature line that's listed [REDACTED]
23 [REDACTED] what does the signature state?

24 A. It is a printed signature of [REDACTED] by
25 [REDACTED] his wife, attorney in fact.

1 **Q. Exhibit Number 3, let's take a look at the**
2 **addendum to the note before we move on. The handwritten**
3 **notations above this printed name, [REDACTED] is what?**

4 A. That's [REDACTED] his attorney in fact.

5 **Q. [REDACTED]**

6 A. [REDACTED] by [REDACTED] his attorney
7 in fact.

8 **Q. Oh, okay. And let me show you Exhibit**
9 **Number 3, which is a certified copy of the mortgage,**
10 **turning to page 14, 16 and please tell the Court what**
11 **appears above the printed name [REDACTED]**

12 A. [REDACTED] by [REDACTED] his attorney
13 in fact and it's dated 12/27/04.

14 MR. ROSENTHAL: Your Honor, I provided you with
15 my post judgment.

16 THE COURT: Yes.

17 MR. ROSENTHAL: Can I have at least one copy?

18 THE COURT: Here you go. Thank you.

19 BY MR. ROSENTHAL:

20 **Q. Ms. Plasse, I'm showing you the proposed final**
21 **judgment, please review the document.**

22 MR. HOLTZ: I'm sorry.

23 BY MR. ROSENTHAL:

24 **Q. Please review the amounts set forth in the**
25 **judgment.**

1 MR. HOLTZ: Objection, Your Honor, I object to
2 the witness being shown the proposed final judgement.
3 This is a document that is obviously prepared in
4 preparation for -- and in anticipation of litigation.
5 It is not a business record. It has no evidentiary
6 value and there's no reason for it here.

7 THE COURT: He's telling her to review it. Let
8 me find out where counsel's going, then I'll
9 entertain your objection.

10 BY MR. ROSENTHAL:

11 Q. Please review the amounts in the proposed final
12 judgment.

13 A. Okay.

14 Q. Now, yesterday you testified -- you testified
15 that you reviewed the loan payment history in this case;
16 is that correct?

17 MR. HOLTZ: Objection. Leading.

18 THE COURT: Sustained.

19 BY MR. ROSENTHAL:

20 Q. Have you reviewed the loan payment history in
21 this case?

22 A. Yes, I have.

23 Q. Have you reviewed my firm's bills and --
24 regarding fees and costs incurred in this case?

25 MR. HOLTZ: Objection. Relevance.

1 THE COURT: What's the relevant issue?

2 MR. ROSENTHAL: Well, I wanted to make sure
3 that the amounts in the judgment are consistent with
4 what the plaintiff is seeking today.

5 MR. HOLTZ: And, Your Honor, this is exactly
6 what I foresaw happening, which is why I objected at
7 the time the witness was presented with this proposed
8 final judgment. Counsel is attempting to shortcut
9 the whole burden of having to prove that whatever
10 numbers are contained in the final judgment are
11 proved by the evidence by essentially having the
12 witness confirm those figures verbally and then
13 relying on that as evidence that the figures are
14 correct.

15 THE COURT: Well, I don't know that her
16 statement could be enough information that these
17 figures are necessarily correct. Merely that's what
18 he's seeking or that's what the plaintiff is seeking.

19 MR. ROSENTHAL: Yeah, and consistent with what
20 her review of the documents already in evidence
21 reflect.

22 MR. HOLTZ: She was confirming the evidence,
23 Your Honor. He's asking her to comment on the
24 evidence. And, additionally, he's doing it
25 improperly through having her confirm the final

1 judgment, which is not a piece of evidence and he's
2 having her testify to the veracity.

3 THE COURT: I don't think there would be no
4 difference if he wrote the numbers down on a black
5 board, would it?

6 MR. HOLTZ: No, Your Honor, I do think it would
7 be different, because the difference is that he has
8 -- if the witness gave the numbers and he wrote them
9 on the black board and showed them and said these are
10 the numbers as a visual aide that would be one thing.
11 But what he's doing is he's showing the final
12 numbers, the numbers they have to prove that they are
13 owed in order to win on the judgement and then asking
14 her to confirm them. He's giving her the answer that
15 he's -- essentially, counsel's giving the witness the
16 answer that he's -- to the question that he's asking
17 and then asking her to answer that question.

18 THE COURT: I'm not going to overrule the
19 objection. You can answer.

20 THE WITNESS: I'm sorry.

21 BY MR. ROSENTHAL:

22 **Q. I believe my question was: Are the amounts set**
23 **forth in the final judgment consistent with the loan**
24 **payment history that's already in evidence?**

25 MR. HOLTZ: Objection, Your Honor, I don't

1 believe that was counsel's question, if we could have
2 the --

3 MR. ROSENTHAL: Madam court reporter, could you
4 read back the last question --

5 (Thereupon, a portion of the record was read by
6 the reporter.)

7 MR. ROSENTHAL: I'm going to withdraw that last
8 question.

9 BY MR. ROSENTHAL:

10 **Q. I'm showing you the loan payment history that's**
11 **Exhibit Number 5 into evidence, plaintiff.**

12 **What's the principal due on this loan?**

13 A. Principal balance is 332,099.70.

14 **Q. And I'm showing you Exhibit Number 6, which is**
15 **the default letter. What does the default letter state**
16 **as the balance due?**

17 A. 332,099.70.

18 **Q. Did the plaintiff accelerate the amount due on**
19 **the note and mortgage in this case?**

20 MR. HOLTZ: Objection. Calls for a hearsay
21 response, lack of personal knowledge.

22 THE COURT: Overruled.

23 THE WITNESS: Yes.

24 BY MR. ROSENTHAL:

25 **Q. Has the plaintiff retained my law firm to**

1 **represent it in connection with this action?**

2 MR. HOLTZ: Objection. Relevance. Your Honor,
3 this witness is not -- this line of questioning is
4 going to go to attorney fees, which should not be
5 part of this final judgment, should be -- case law
6 clear that that ought to be reserved on and testimony
7 to the reasonableness of attorneys fees and
8 attorneys' fees in general should be done by an
9 expert later at an evidentiary hearing, not by this
10 witness now.

11 THE COURT: I thought you asked me to do that
12 at the beginning of trial.

13 MR. ROSENTHAL: That's fine. I didn't see any
14 harm in asking the question now.

15 THE COURT: Well --

16 MR. ROSENTHAL: She's not going to be here at
17 the evidentiary hearing. I think it's still -- the
18 next step for the plaintiff.

19 THE COURT: Well, if she's not going to be here
20 for that, I'll go ahead and take your testimony now
21 on that issue; understanding that the Court's
22 reserving on the issue to if and when fees are
23 entered.

24 MR. HOLTZ: And that's over our objection.

25 THE WITNESS: And the question, again, was?

1 BY MR. ROSENTHAL:

2 Q. Has the plaintiff retained my law firm to
3 represent it in this action?

4 THE WITNESS: Yes, we have.

5 BY MR. ROSENTHAL:

6 Q. And has the plaintiff agreed to pay my law firm
7 an agreed upon fee for my services rendered?

8 MR. HOLTZ: Objection, Your Honor, this is
9 improper testimony, improper and calls for
10 speculation, hearsay, lack of foundation, this
11 witness has no knowledge.

12 THE COURT: Overruled.

13 THE WITNESS: Yes.

14 BY MR. ROSENTHAL:

15 Q. You still have it. I'll straighten it out.

16 Ms. Plasse, based on your review of Ocwen's
17 records, are you able to determine when the loan at issue
18 in this case evidenced by the original note, which is
19 Exhibit 1 of the mortgage certified, which is Exhibit 3,
20 became part of the plaintiff's trust in this case?

21 MR. HOLTZ: Objection. Leading.

22 THE COURT: Overruled.

23 THE WITNESS: The date on this is December 24th
24 or December 27th, I'm sorry, 2004.

25 MR. HOLTZ: Move to strike. Non-responsive.

1 THE COURT: Overruled.

2 BY MR. ROSENTHAL:

3 Q. Do you know if the original -- do you know if
4 the loan in this case as evidenced by the original note,
5 certified copy of the mortgage become apart of the
6 plaintiff's trust prior to the filing of this lawsuit?

7 MR. HOLTZ: Objection. Leading, Your Honor,
8 counsel is testifying.

9 THE COURT: I think the question is: Do you
10 know? Does the question suggest the answer? Not
11 necessarily. So I'll overrule the objection.

12 THE WITNESS: Yes.

13 BY MR. ROSENTHAL:

14 Q. And how do you know?

15 MR. HOLTZ: Objection. Calls for hearsay, lack
16 of foundation, lack of personal knowledge.

17 THE COURT: Well, I don't know -- we'd have to
18 go ahead and hear her answer.

19 THE WITNESS: Based on my research, based on my
20 brief review of the Pooling & Servicing Agreement,
21 based on the dates on the Pooling & Servicing
22 Agreement, based on the information that has been
23 provided to me by my, you know, training, all of the
24 loans have to be in the Pooling & Servicing Agreement
25 by the close of the Pooling & Servicing Agreement.

1 So it has to be there on or about the date of the
2 closing of the Pooling & Servicing Agreement.

3 MR. HOLTZ: Move to strike witness's testimony,
4 hearsay, clearly relying on documents not yet in
5 evidence.

6 THE COURT: Is she relying on documents that
7 are already in evidence?

8 MR. ROSENTHAL: Pardon, Your Honor?

9 THE COURT: Is she relying on documents that
10 are already in evidence?

11 MR. ROSENTHAL: She's relying on the documents
12 that she's reviewed prior -- in preparation for this
13 trial.

14 THE COURT: So those are documents that are in
15 evidence and already admitted as business records?

16 BY MR. ROSENTHAL:

17 **Q. Are any of the documents -- are any of the**
18 **documents that you've reviewed in order to assist you in**
19 **answering that question in evidence?**

20 MR. HOLTZ: Objection. Leading. And
21 additionally, Your Honor, this is -- I have to object
22 to this whole exchange, unfortunately, I believe this
23 was improper. Essentially, now, the witness has been
24 told what needs to be set in order for her to answer
25 this question, so that her answer -- previous answer

1 is not based on hearsay. I don't expect her -- how
2 could she possibly answer anything other than what is
3 necessary for her to -- for her employer to prevail
4 in this case.

5 THE COURT: Well, I suspect that she says her
6 answer is based on documents that are in evidence and
7 if they're not, then -- my suspicion is that you'd be
8 able to bring that up if she's relying on matters
9 that are outside of the evidence, but I'll leave that
10 up to you on cross. So I'll overrule the objection.
11 You can answer.

12 THE WITNESS: I don't recall if the Pooling &
13 Servicing Agreement was put into evidence yesterday.
14 I don't recall, to my knowledge.

15 MR. ROSENTHAL: It was not.

16 THE WITNESS: It was to the -- well, it's based
17 on, you know, just by working knowledge, the
18 knowledge that I do to prepare for every trial that I
19 go to. This is something that I do on a daily basis
20 in preparation for trial.

21 MR. HOLTZ: Judge, I move to strike the
22 witness's testimony as non-responsive.

23 THE COURT: Then I lost track of what the
24 actual original question was? What was the original
25 question?

1 MR. HOLTZ: Can we have the court reporter read
2 back the last question?

3 THE COURT: Well, if we have to, we have to.

4 (Thereupon, a portion of the record was read by
5 the reporter.)

6 THE COURT: So, apparently, her answer is based
7 on the item not yet in evidence. So to the objection
8 of hearsay, how do you respond to that?

9 MR. ROSENTHAL: I guess, my primary argument
10 is, I guess, discuss that case that I provided to
11 Your Honor and deal with it at this point in time,
12 because the document that she can rely on presently
13 is not in evidence. I believe it should be but, you
14 know, if Your Honor has ruled -- if Your Honor is
15 inclined to re-visit it, we can address it then.

16 THE COURT: Well, at this point I'll sustain
17 the objection as of now, if we go back and ultimately
18 change my decision, that happens, but we can --

19 MR. ROSENTHAL: And subject to that, Your
20 Honor, I have no more questions for the witness. I'd
21 like to reserve the opportunity to ask further
22 questions, if Your Honor is inclined.

23 THE COURT: Well, sure. Okay.

24 MR. HOLTZ: Okay. Your Honor, before -- I saw
25 you looking at the clock, I don't know if Your Honor

1 was thinking we might take a break.

2 I would just like to move to strike at this
3 point -- move to strike the witness's testimony --
4 prior testimony as based -- is based on hearsay, with
5 lack of personal knowledge, lack of foundation.

6 THE COURT: Okay. Overrule your objection. Do
7 you want to -- how much longer do you think you'll be
8 on cross?

9 MR.HOLTZ: Half hour to an hour. I think I've
10 covered already a lot in the voir dire.

11 THE COURT: Let's take a regular afternoon
12 break now and we'll come back in. We'll take
13 20 minutes to review that case. Counsel, what
14 specific head note? I think I have an idea.

15 MR. ROSENTHAL: Actually, I think page four,
16 head note four really covers it.

17 MR. PRESTIA: I'm sorry, counsel, I don't have
18 a head note on page 4.

19 MR. ROSENTHAL: I think primary focus should be
20 first full paragraph on page four.

21 THE COURT: One says as record.

22 MR. ROSENTHAL: Yes.

23 THE COURT: All right. Court is in recess.

24 (A break was taken from 3:02 p.m. to 3:26 p.m.)

25 THE COURT: Be seated again. Thank you. Okay.

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Cross.

MR. HOLTZ: Thank you.

CROSS-EXAMINATION

BY MR. HOLTZ:

Q. Okay. Ms. Plasse, I guess this is close quarters at the moment, so I'll remain at the podium for now.

You know who the plaintiff is in this case, right?

A. Yes.

Q. And that's -- who would that be?

A. Bank of New York.

Q. Bank of New York. That's a New York registered bank?

A. As far as I know, yes, they are.

Q. Okay. Thank you. But you, yourself work for Ocwen Loan Servicing?

A. Yes, I do.

Q. And your job title as you testified in direct is as a loan analyst?

A. Yes.

Q. And that's how you've been so employed for the last six months at Ocwen?

A. Yes.

Q. Let's talk a little bit about your job duties

1 and training at Ocwen. You received training to be a
2 loan analyst, didn't you?

3 A. Yes.

4 Q. In fact, I think I heard you mention you're
5 going to train tomorrow?

6 A. Correct. Correct.

7 Q. You received training as a loan analyst when
8 you first started working as a loan analyst at Ocwen?

9 A. Yes.

10 Q. Let's talk about the initial training for a
11 second. There was one-on-one training, was there not?

12 A. Yes, there was one-on-one training.

13 Q. And that was a -- with someone from the
14 in-house counsel department?

15 A. It was training with not only in-house counsel
16 but also with my peers.

17 Q. Okay. Your peers meaning people who were also
18 trained to be a loan analyst?

19 A. People that have been loan analysts
20 considerably longer than I have.

21 Q. What's that called loan -- it's the loan
22 analyst department, what department does your position
23 fall in at Ocwen?

24 A. Our legal department.

25 Q. Now, this one-on-one training involved role

1 **playing, did it not?**

2 A. To some extent, yes.

3 Q. And that would be training -- and the training
4 and role playing was focused on testifying as a witness
5 at trials and depositions.

6 A. Yes.

7 Q. And the training that you received in how to
8 testify, it dealt with substantive matters and style
9 matters as well?

10 A. Yes.

11 Q. And the substantive matters, those would
12 include things like the business records of Ocwen?

13 A. Yes.

14 Q. How they're kept?

15 A. Yes.

16 Q. You were -- in fact, you were told that the
17 records are kept in the normal course of business at
18 Ocwen, were you not?

19 A. Yes.

20 Q. And you were told that the documents and the
21 information that Ocwen has in their system is made by
22 someone with knowledge -- personal knowledge about that
23 information, correct?

24 A. Yes.

25 Q. And you were told by your trainer or during

1 your training, that those -- that that information was
2 made at or near the time of the events -- whatever events
3 it is supposed to be memorializing, correct?

4 A. Yes.

5 Q. In fact, your basis for the testimony that
6 you've provided on direct examination with regard to this
7 specific exhibit, regarding when it was created, how it
8 was created, by whom, that's all based on the information
9 that was told to you at your training to be a loan
10 analyst at Ocwen, was it not?

11 MR. ROSENTHAL: Objection. It mischaracterizes
12 her testimony on direct. I believe she said that was
13 part of what was the foundation for her testimony.

14 THE COURT: Again, I read the testimony. I'll
15 overrule the objection. If there's a dispute in her
16 testimony, I'll resolve that.

17 THE WITNESS: And I'm sorry again.

18 BY MR. HOLTZ:

19 Q. Sure. The testimony that you provided on
20 direct with regard to each piece of evidence, as far as
21 how it was maintained, how that document was created, how
22 it was maintained, whether by who it was made by, when it
23 was made, all that information, your belief for all that
24 testimony is based on your training that you received at
25 Ocwen to be a loan analyst, correct?

1 A. Yes.

2 Q. So it's not based on any personal observation
3 of any of those material facts?

4 A. No, I don't --

5 MR. ROSENTHAL: Objection. Mischaracterizes
6 her testimony in that regard.

7 THE COURT: Well, she can answer yes or no.

8 THE WITNESS: No.

9 BY MR. HOLTZ:

10 Q. Thank you. Part of your training you were
11 provided handout or printed material, were you not?

12 A. To some extent, yes.

13 Q. To what extent?

14 A. Just copies of, you know, depositions and, you
15 know, just informational type of stuff.

16 Q. You were given memorialized -- or you were
17 given documents relating to the policies and procedures
18 of various Ocwen departments, were you not?

19 A. Yes.

20 Q. And you read those?

21 A. Yes.

22 Q. And it's from your reading of these documents
23 that you testified here today regarding the policies and
24 procedures of Ocwen departments in which you do not work,
25 correct?

1 A. Correct.

2 Q. So you've -- in those departments in which you
3 -- those departments which you never worked, you never
4 personally observed the operation of those policies and
5 procedures, correct?

6 A. No, Ocwen is a big place.

7 Q. Of course.

8 A. So it would be hard for me to go to all of
9 those departments.

10 Q. Absolutely. And just the same, it would be
11 hard for you to observe how the individuals who work in
12 those departments live up to those policies and
13 procedures, correct?

14 A. That's correct.

15 Q. Certainly, you couldn't do that in every case?

16 A. No.

17 Q. Also, couldn't have done it in this particular
18 case with regard to the information regarding this
19 particular loan?

20 A. That is correct.

21 Q. You were designated someone at Ocwen to be the
22 trial witness in this case, were you not?

23 A. Yes, I was.

24 Q. And that was -- it -- it was only after that
25 assignment to be a witness in this case that you

1 **even became familiar with the loan in this case, correct?**

2 MR. ROSENTHAL: Your Honor, I object to this
3 line of questioning. It's outside the scope of my
4 direct examination. When she was chosen to serve as
5 the witness in this case, has not anything to do with
6 what I brought before on direct examination. So he's
7 certainly not able to go beyond what I asked.

8 THE COURT: In the alternative, he can question
9 her in his case in chief? Is that the route you want
10 to go, I mean, it is outside the scope?

11 MR. ROSENTHAL: If -- Your Honor, I understand
12 what you're saying, if it short circuits the process,
13 I'll withdrawal the objection and allow it to take
14 place here. So as long as I'm not going to see her
15 on their case in chief.

16 THE COURT: Okay. Well, I don't -- I can't
17 answer that question, but sounds like the objection
18 is withdrawn. So you can answer.

19 THE WITNESS: Please repeat.

20 BY MR. HOLTZ:

21 **Q. I understand. Been a long day.**

22 **Ms. Plasse, the question was: You were not**
23 **familiar with this loan or the documents relating to the**
24 **loan before you were assigned as trial witness in this**
25 **case, correct?**

1 A. That's correct.

2 **Q. And that assignment happened when?**

3 A. Our assigning of assignments happens
4 periodically, I mean, I could have gotten this assignment
5 two, three weeks ago. It just depends on the litigation
6 intake mailbox that the requests come into.

7 **Q. Okay. So I just want to be clear for the**
8 **record, your testimony today is you received this**
9 **assignment about two or three ago?**

10 MR. ROSENTHAL: Objection. That's not her
11 testimony.

12 THE COURT: Well, he's trying to clarify. So
13 you can answer.

14 THE WITNESS: It could have been. I don't
15 recall the exact date that I received the assignment.

16 BY MR. HOLTZ:

17 **Q. Could it have been sooner?**

18 A. I don't believe so. I don't recall, though.

19 **Q. And could it have been much more beyond -- much**
20 **further, you know, past that, in the past?**

21 A. It won't have been too far -- really much more
22 than a month ago.

23 **Q. So would it be fair to say it was relatively**
24 **recently; is that a fair characterization?**

25 A. Yes.

1 Q. Thank you. And when you reviewed these
2 documents relating to this case, that was -- you'd agree
3 with me, that it was with an eye towards litigation?

4 A. Yes.

5 Q. You knew that case was already -- you knew the
6 loan was already in default?

7 A. Yes.

8 Q. And you knew that there was already a complaint
9 filed?

10 A. Yes.

11 Q. And you knew there was trial date approaching?

12 A. Yes.

13 Q. You're paid by Ocwen, correct, to be here
14 today?

15 A. Yes.

16 MR. ROSENTHAL: Objection, Your Honor, it's
17 also outside of the scope of direct examination. I
18 don't see how this is relevant.

19 THE COURT: Well, I guess payment always goes
20 to bias. You can answer.

21 THE WITNESS: Yes, I am paid by Ocwen.

22 BY MR. HOLTZ:

23 Q. And you're paid by Ocwen to testify at trial,
24 such as this and at depositions, correct?

25 A. That's the majority of my job description, yes.

1 **Q. So you would agree you're a professional**
2 **witness?**

3 A. I wouldn't say I'm a professional witness, but
4 that's part of my job description, yes.

5 **Q. There was manual that you received in your**
6 **training, correct?**

7 A. Yes.

8 **Q. And that manual is not here today, is it?**

9 A. No.

10 **Q. You don't have to carry that manual with you?**

11 A. No.

12 **Q. Now, that manual has specific information**
13 **regarding subjects in which you're expected to testify at**
14 **trial?**

15 A. Yes.

16 **Q. And outside of what is contained in the manual,**
17 **you don't have other knowledge of those subjects, do you?**

18 A. No. From time to time we not only have
19 manuals, but we also have on-line training that we take
20 that just keeps us abreast of different information.

21 **Q. And the manual and all on-line training that**
22 **you referred to, that's all created by Ocwen, correct?**

23 A. Yes.

24 **Q. All provided to you by Ocwen?**

25 A. Yes.

1 Q. And it's all designed, you'd agree, to help you
2 testify better on Ocwen's behalf?

3 A. I would say, yes.

4 Q. And it's on the basis of the material that
5 you've been provided by Ocwen, that provided your
6 testimony here today in court, correct?

7 A. That is correct.

8 Q. You testified several times in direct as to
9 general industry practices, general business tactics.

10 A. Uh-huh.

11 Q. You've been at Ocwen one and a half years?

12 A. Correct.

13 Q. And at what point in your time at Ocwen did you
14 become acquainted with business practices -- the general
15 industry standards in business practices?

16 MR. ROSENTHAL: Objection, Your Honor, on the
17 relevance -- the question is: When did she become
18 aware of the practice or is she aware of the
19 practice?

20 THE COURT: The question is: When during her
21 employment did she become aware of the business
22 practices?

23 MR. ROSENTHAL: Fine. I apologize.

24 THE WITNESS: I guess, I would have to say
25 probably right from the very beginning, I mean, from

1 the beginning of being hired at Ocwen. Again, not
2 only was I, you know, trained hands on, also have
3 manuals and based on the on-line training it was, you
4 know, information that is, you know, shared with us.

5 BY MR. HOLTZ:

6 **Q. So your testimony about your knowledge -- your**
7 **general of industry standards and the business is based**
8 **on your one and a half years at Ocwen?**

9 A. Not just that. It's not just based on that.
10 I've been in the financial industry for a better part of
11 my adult career.

12 **Q. Okay. But your testimony was just that it's --**
13 **the information that you testified out today is based on**
14 **what you learned since coming to Ocwen?**

15 A. That is correct.

16 MR. HOLTZ: Okay. Now, you've done a lot of --
17 actually, can I have moment, Your Honor.

18 Your Honor, at this time I renew my motion --
19 previously made motion to strike both the witness's
20 testimony on direct examination and all of the
21 exhibits that have been introduced, specifically,
22 with regard to her testimony on direct examination.
23 The witness has just testified that the information
24 she relied on in this testimony all comes from the
25 inadmissible hearsay. It's based on her training

1 materials that she was given, the training she was
2 given at Ocwen to testify as a witness in this case.

3 And as far as, specifically, to each exhibit,
4 Your Honor, plaintiff's counsel attempted to lay the
5 predicates -- the requisite predicates to establish
6 each exhibit as a business record that would allow it
7 to come in as an exception to the rule against
8 hearsay. However, now the witness has just testified
9 that her basis for testifying to each of those
10 predicates was, again, based on not only personal
11 knowledge or on any actual knowledge that she has,
12 but rather on what she was told by other people at
13 Ocwen and by training materials and manuals she was
14 provided at Ocwen. So she has no qualification,
15 whatsoever, to testify to any of those prerequisites
16 for having been met.

17 THE COURT: Again, most of the issues you touch
18 on there -- to the extent the Court orders have been
19 expounded upon, I think go to the weight and the
20 admissibility, so I'll overrule the objection.

21 Any further cross?

22 MR. HOLTZ: Yes, Your Honor, may I see the
23 exhibit first?

24 MR. ROSENTHAL: She has them.

25 THE WITNESS: I think I have the majority of

1 them.

2 BY MR. HOLTZ:

3 Q. I'm showing you what's been previously entered
4 into evidence as Plaintiff's Exhibit Number 6, do you
5 recognize that as the default or demand or breach letter,
6 correct?

7 A. Yes.

8 Q. And all those terms mean the same thing, right?

9 A. Yes.

10 Q. Now, we already touched a little bit on this
11 voir dire on this exhibit, but I want go a little further
12 now on cross examination.

13 This default letter, it was not prepared by
14 Ocwen, correct?

15 A. That is correct.

16 Q. In fact, you don't -- other than what is
17 printed on that actual document, you don't have any real
18 knowledge or personal knowledge, as to who created that
19 document, correct?

20 MR. ROSENTHAL: Objection. Asked and answered
21 in his voir dire.

22 THE COURT: I think it was.

23 MR. HOLTZ: Well, Your Honor, then we are sort
24 of limited and then there's a lot of objections. I
25 just want -- I think that's the only question I

1 asked -- I was allowed to ask, if I could just ask
2 that and then lead to the next question.

3 THE COURT: We'll give you a little bit of
4 latitude. If it's too far, then I'm going to shut
5 you down.

6 MR. HOLTZ: Understood, Your Honor.

7 BY MR. HOLTZ:

8 **Q. You don't know who actually wrote that letter,**
9 **right?**

10 A. No. I don't know personally, no.

11 **Q. Just the same, you don't know if that letter**
12 **was recently sent, correct?**

13 MR. ROSENTHAL: Objection. Asked and answered.

14 THE COURT: I believe it was answered.

15 MR. HOLTZ: But I believe counsel objected and
16 it was sustained. So I don't know if that answer is
17 actually in that -- that testimony is actually in
18 evidence or not.

19 THE COURT: I don't recall the objection --
20 sustaining the objection. I think probably in the
21 interest of time we better allow you to go forward.
22 You can answer the question.

23 THE WITNESS: What's the question again?

24 BY MR. HOLTZ:

25 **Q. You don't know if that was sent, right?**

1 A. Based on information that I have been presented
2 in front of me, based on the date, the fact that there's
3 return receipt, I would say that, yes, it was sent.

4 **Q. There's no return receipt that's signed,**
5 **though, right, just shows that one was generated?**

6 A. Yes.

7 **Q. Anyone can generate a return receipt?**

8 A. Yes, they can.

9 **Q. It doesn't mean they actually have sent the**
10 **document that's attached to that return receipt, correct?**

11 A. That is correct.

12 **Q. And there's nothing -- you'd agree there's**
13 **nothing in this exhibit that provides any independent**
14 **evidence, whatsoever, that that was actually sent?**

15 MR. ROSENTHAL: Objection. Asked and answered
16 both in voir dire and two seconds ago.

17 THE COURT: Sounds like a common rule ground,
18 so I'll sustain the objection.

19 BY MR. HOLTZ:

20 **Q. You see no marks made by the United States**
21 **Postal Service, do you?**

22 A. The second page does say United States Postal
23 Service up here, so I don't know if this is, you know,
24 scanned it into the mail.

25 **Q. Is there a stamp on there?**

1 A. It's first class mail postage and fees paid by
2 the United States Postal Service.

3 **Q. But it's not canceled, right?**

4 A. No.

5 **Q. I can put -- you can put a stamped envelope and
6 never send it, right?**

7 A. Yes.

8 MR. ROSENTHAL: Objection, Your Honor, that's a
9 speculative question and it's akin to the same
10 question. Asked and answer several times now.

11 THE COURT: Well, I think I'll overrule the
12 objection.

13 BY MR. HOLTZ:

14 **Q. I'd like turn to the actual -- the content of
15 that letter. Take a moment to familiarize yourself with
16 Exhibit 6, please.**

17 **Tell me is there -- this letter doesn't give a
18 specific amount that has to be paid to cure the default,
19 does it?**

20 A. No, it does not. It's just, you know, the
21 principal balance is on the letter.

22 **Q. Okay. Principal balance is not what has to
23 be -- not the amount that has to be paid to cure the
24 default, is it?**

25 A. No.

1 Q. Thank you. I'll take that back from you.
2 Thank you very much. I ask you to go to -- now showing
3 you what has been marked in evidence as Plaintiff's
4 Exhibit 5, it's payment history, correct?

5 A. Yes.

6 Q. Now, it's based on this exhibit that you come
7 up with the amount that is owed on this loan, correct?

8 A. Yes.

9 Q. How exactly do you come up with that number
10 from that document?

11 Please explain to the Court --

12 THE COURT: I'm sorry, the question is: How
13 did you come up with that document?

14 MR. HOLTZ: I'm asking the witness to please
15 explain to the Court how she comes up with the number
16 that is the amount that is owed on the loan from that
17 payment history.

18 THE WITNESS: Personally, I do not come up with
19 the amount that is owed on this. This is something
20 that is generated from Ocwen's point of view and this
21 is generated from our loan serving department, our
22 payment department, you know, it's based on payments
23 that would have been paid and adjusted accordingly of
24 the, you know -- at the time payments are made. So
25 whatever the outstanding balance is, prior to the

1 last -- or, you know, last -- the last payment was
2 made is, you know, according to our records is what
3 is owed.

4 BY MR. HOLTZ:

5 **Q. So there's a number -- there's a number on**
6 **there -- a final number on there that tells you the**
7 **amount that's due on the loan -- the total amount that's**
8 **being sought by the plaintiff today?**

9 A. Well, it's broken down. It's broken down
10 showing the principal balance, escrow -- escrow, tax,
11 escrow disbursements, late charge, waiver, insurance
12 escrow. It's broken down.

13 **Q. Okay. Tell me what the late charges that are**
14 **due you on this loan according to this payment history?**

15 A. Bear with me a moment.

16 **Q. Uh-huh.**

17 A. This loan principal balance it shows the escrow
18 balance adjustment, tax escrow, dispersement, late charge
19 waivers and insurance escrow, abbreviated and it's broken
20 down accordingly in the amount of 54,441,78, 4,360.94,
21 375.75 and the last one is 6,354.88.

22 **Q. Which of those are the late fees?**

23 A. I don't see anything that says late fees per
24 se.

25 **Q. Okay. Now, you -- you're testifying here today**

1 as corporation representative of Ocwen, are you not?

2 A. Yes.

3 Q. And being designated as corporate
4 representative, you're being designated as the person
5 with the most knowledge about this loan, correct?

6 A. Yes.

7 Q. So your testimony is the person with the most
8 knowledge about this loan is that you can't find the late
9 fees in the payment history?

10 A. I don't see it listed here.

11 Q. Okay. So it's not contained in this document?

12 A. No.

13 MR. ROSENTHAL: Objection. She's saying that
14 she doesn't see it here --

15 THE COURT: What's the legal objection?

16 MR. ROSENTHAL: It mischaracterizes the
17 testimony.

18 THE COURT: So if it's not there, she can
19 answer that question.

20 THE WITNESS: I'm sorry?

21 BY MR. HOLTZ:

22 Q. My question: So it's -- I mean, I can see it's
23 not there.

24 A. I didn't -- I don't see it listed here, no.

25 Q. You see the principal balance being owed --

1 **what was the principal balance being owed, you say?**

2 A. 332,099.70.

3 **Q. What about the amount of 342,771.65, what does**
4 **that represent?**

5 A. I believe that would also indicate some late
6 fees, but I don't see that it's broken down there.

7 **Q. Okay. So that's not the principal balance?**

8 A. No.

9 **Q. But, again, there's no way of showing how those**
10 **late fees were calculated from this document?**

11 A. No.

12 **Q. Would that be contained in some other document?**

13 A. I believe. I don't know if it's part of our
14 records here today, but I know from my personal review of
15 document that it's broken down elsewhere, yes.

16 **Q. Okay. But those records are not here today?**

17 A. Right.

18 MR. HOLTZ: I move to strike the witness's
19 testimony -- any testimony at any point as to late
20 fees as the witness has demonstrated that that
21 testimony would be based on inadmissible hearsay
22 based on records that are not before the Court.

23 THE COURT: I'll address that in closing
24 argument.

25 MR. HOLTZ: Very good.

1 BY MR. ROSENTHAL:

2 Q. Now, you said that -- you said in your
3 testimony on direct that the records that Ocwen received
4 from the prior loan servicer were during the boarding
5 process, correct?

6 A. Uh-huh.

7 Q. And you told the Court that this boarding
8 process is something that you've never done, right,
9 personally?

10 A. No.

11 Q. Never worked in the boarding department?

12 A. No.

13 Q. Your only knowledge of the boarding department
14 comes from the document entitled, boarding procedure,
15 correct?

16 A. That is correct.

17 Q. And that was provided to you by your trainer at
18 Ocwen?

19 A. Yes.

20 Q. And it was given to you in preparation for
21 testimony in situations such as this, correct?

22 A. That is correct.

23 Q. And you'd agree that Ocwen wants to prevail at
24 this foreclosure trial, correct?

25 A. Absolutely.

1 Q. Want to recover the property and sell it?

2 A. I'll say, yes.

3 MR. HOLTZ: If I could have one more moment,
4 Your Honor.

5 THE COURT: Certainly.

6 BY MR. HOLTZ:

7 Q. Bank of New York is involved in this case as
8 trustee of a trust, correct?

9 A. Correct.

10 Q. Actually, it's as to -- it would be entirely
11 accurate as successor trustee, correct?

12 A. Yes.

13 Q. And Bank of New York Mellon -- Bank of New York
14 Mellon as successor trustee in dealing with a trust that
15 was originally put together by originally involved loans,
16 originated loans by Novastar, correct?

17 A. Correct.

18 Q. And that understanding -- your understanding is
19 based on the caption of the case -- the style of the
20 case?

21 A. I guess, yes.

22 Q. And now -- Bank of -- you already testified on
23 direct, correct, that Bank of New York -- that you've
24 never worked for Bank of New York Mellon?

25 A. That's correct.

1 Q. You've never worked for Bank of New York?

2 A. That is also correct.

3 Q. You never worked for Bank of New York,
4 Incorporated, right?

5 A. No.

6 Q. And Bank of New York, Incorporated is not the
7 same as Bank of New York, Mellon, correct?

8 A. Yes.

9 MR. HOLTZ: Your Honor, I think at this time I
10 have no further questions.

11 THE COURT: Any redirect?

12 MR. ROSENTHAL: I just have three or four
13 brief, I hope, redirect questions.

14 Ms. Plasse, you gave -- no, that's not it.

15 MR. HOLTZ: Are you looking for the default,
16 Exhibit 6?

17 REDIRECT EXAMINATION

18 BY MR. ROSENTHAL:

19 Q. Counsel, asked you on cross examination if this
20 default letter contained any dollar amount in which the
21 borrower was advised that they had to pay to cure the
22 default, do you remember that question?

23 MR. HOLTZ: Objection. Mischaracterization of
24 my question.

25 THE COURT: Overruled.

1 BY MR. ROSENTHAL:

2 Q. Could you please take a look regarding the
3 section right there, it says loan number, it says the
4 creditor, it says the servicer and then says amount in
5 default; do you see that amount?

6 A. Yes, I do.

7 Q. What's that amount?

8 MR. HOLTZ: Objection. Leading.

9 THE COURT: Overruled.

10 THE WITNESS: 5,725.62.

11 BY MR. ROSENTHAL:

12 Q. Okay. Please take a look at the two paragraphs
13 below that. Can you please read what that paragraph
14 states?

15 MR. HOLTZ: Objection, Your Honor, the document
16 speaks for itself.

17 THE COURT: I don't have it in front of it,
18 so...

19 MR. ROSENTHAL: Your Honor, I'll be happy to
20 give you my copy, so you can read along.

21 THE COURT: How much more are you --

22 MR. ROSENTHAL: As far as this issue, this is
23 the last question.

24 THE COURT: Well, let's continue.

25 THE WITNESS: This letter demands that you pay

1 the amount in default as stated above within 30 days
2 from the date of this letter. The curity, plus the
3 regular payment, late charges or fees that may come
4 due during the 30-day period.

5 BY MR. HOLTZ:

6 **Q. So this default letter -- does this default**
7 **letter advise the borrower what they have to do to cure**
8 **this default within 30 days?**

9 MR. HOLTZ: Objection. Leading.

10 THE COURT: Overruled.

11 THE WITNESS: Yes, it does.

12 BY MR. ROSENTHAL:

13 **Q. And, Counsel, asked you on cross-examination if**
14 **you were aware that Bank of New York Mellon is the**
15 **successor trustee for trust created by Novastar, correct?**

16 A. Yes.

17 **Q. He asked you on cross-examination who was the**
18 **plaintiff in this case; do you recall that question?**

19 A. Yes, I do.

20 **Q. Do you recall what you answered?**

21 MR. HOLTZ: Objection, Your Honor, relevance.

22 Asked and answered.

23 THE COURT: Why don't you rephrase it.

24 BY MR. ROSENTHAL:

25 **Q. Okay. Who is the plaintiff in this case?**

1 MR. HOLTZ: Objection, Your Honor.

2 BY MR. ROSENTHAL:

3 Q. I'm showing you the style of the case --

4 MR. HOLTZ: Objection, Your Honor, counsel is
5 showing the plaintiff -- counsel is showing the
6 witness a document that is not in evidence, just
7 some -- just handing her a document, I don't know
8 what he's handing her and --

9 MR. ROSENTHAL: Your Honor --

10 MR. HOLTZ: I don't really see the relevance.

11 MR. ROSENTHAL: -- just so there's no question
12 about who she's -- who's the plaintiff in this case
13 that he elicited testimony that Bank of New York
14 Mellon was plaintiff and Bank of New York Mellon as
15 trustee of a trust, and I just want to make sure that
16 she's aware and can identify the plaintiff in this
17 case and if --

18 THE COURT: I think the question was proper,
19 who was the plaintiff, I think the fact that you were
20 showing her a document --

21 MR. ROSENTHAL: Okay. Then I'm not going to
22 show her the document.

23 BY MR. ROSENTHAL:

24 Q. Who is the plaintiff in this case?

25 A. The Bank of New York Mellon as successor

1 trustee.

2 MR. HOLTZ: Your Honor, I have to object and I
3 want to put the court on notice for the record, the
4 witness is looking at the copy of final judgment that
5 she -- when she just answered the question.

6 BY MR. ROSENTHAL:

7 **Q. Let the record reflect that I've taken away the**
8 **final judgment and I'll ask the question again: Who is**
9 **the plaintiff in this case?**

10 MR. HOLTZ: Your Honor, I object, at this point
11 her testimony has already been tainted. I move to
12 strike her prior testimony. I move to strike the
13 question.

14 THE COURT: Well, what would be the difference
15 if she wanted to look at the documents to refresh her
16 recollection?

17 MR. ROSENTHAL: That was going to my next
18 statement, if she was unable to do that.

19 MR. HOLTZ: But, Your Honor, the witness has
20 never -- the witness answered my question direct --
21 my questions on cross-examination, she never
22 indicated her recollection needs to be refreshed.

23 THE COURT: Well, as of right now, I'll sustain
24 the objection, unless it can be established that she
25 needs her recollection refreshed.

1 BY MR. ROSENTHAL:

2 Q. Do you recall the question counsel asked you on
3 cross-examination as to who was the plaintiff in this
4 case?

5 MR. HOLTZ: Objection. Relevance.

6 THE COURT: Overruled.

7 THE WITNESS: Yes, I do.

8 BY MR. ROSENTHAL:

9 Q. And as you sit here now, the answer that you
10 gave on cross examination was an accurate answer as to
11 the plaintiff in this case?

12 MR. HOLTZ: Objection. Bolstering.

13 THE COURT: Overruled.

14 THE WITNESS: Yes.

15 MR. ROSENTHAL: Okay. Your Honor, I don't have
16 any further questions. Thank you.

17 THE COURT: I believe the witness may step on
18 down.

19 Plaintiff rest?

20 MR. ROSENTHAL: Yes, Your Honor. Subject to
21 your discussion of admissibility of that mortgage
22 loan schedule, which we can do at your leisure.

23 Does the defense plan to call any witness?

24 MR. PRESTIA: May we have a minute to speak
25 with our client?

1 THE COURT: Sure. We'll take five.

2 MR. PRESTIA: We do -- obviously, we have a
3 motion before that --

4 THE COURT: I understand. I'm just trying to
5 get a timeline.

6 MR. PRESTIA: Okay. I can step out and speak
7 with her, but --

8 THE COURT: Take a couple of minutes.

9 MR. HOLTZ: Before -- well, before we make our
10 formal motion for an involuntary dismissal at this
11 time, I would -- upon plaintiff's resting, Your
12 Honor, I'd like to renew my previous motions to
13 strike witness's testimony and strike the exhibits,
14 strike witness's testimony based on hearsay, lack of
15 personal knowledge, lack of foundation and on hearsay
16 and move to strike exhibits on the same grounds.

17 THE COURT: Overruled. You want to take a
18 minute?

19 MR. PRESTIA: Yes, Your Honor. Thank you very
20 much.

21 MR. HOLTZ: May I be excused?

22 (A short break was taken from 4:04 p.m. to 4:09
23 p.m.)

24 THE COURT: Back on record.

25 MR. PRESTIA: Your Honor, I did speak to my

1 client. I do not believe we will be presenting any
2 live witness testimony in our case in chief.

3 THE COURT: Okay. Then before I entertain any
4 motions, I guess we'll briefly re-visit this issue by
5 way of reconsideration of the Court's prior ruling in
6 regards to exhibits.

7 MR. ROSENTHAL: 4, I believe.

8 THE COURT: And 4 was what again?

9 MR. ROSENTHAL: It was the mortgage loan
10 purchase agreement and attached redacted mortgage
11 loan -- initial mortgage loan schedule that only had
12 this loan listed. All other loans were redacted.

13 THE COURT: Is it -- it -- defense had an
14 opportunity to review this?

15 MR. PRESTIA: Briefly, just argument, I mean, I
16 would be happy to give you my take on it.

17 THE COURT: I'll give you two or three minutes
18 a piece. Go ahead.

19 MR. ROSENTHAL: Thank you, Your Honor. You
20 having the read case during the break, I don't want
21 to revisit what you've already read, but I did want
22 to point out -- I believe, this case is much more in
23 line and on point to the one we're here for today,
24 than the Yang case. While, admittedly, the Yang case
25 is a Florida case and this is a Northern District of

1 Illinois Federal case.

2 This case deals with what we're dealing with
3 here today, which is a large financial institution
4 and servicers associated with large financial
5 institutions and services associated with large
6 financial institutions who oftentimes buy and sell
7 loans in bulk.

8 Okay. And this is an identical situation here
9 and to take the position that counsel has invited you
10 to and the Yang case suggested, you should -- just
11 doesn't square with the reality of today's financial
12 situation, I mean, we've got large banks. It's a
13 common practice as this case says, financial
14 institutions buys and sells loans and it refers to
15 case in Beal, determine it's normal business practice
16 to maintain accurate business record.

17 So if the Court's concerned about the mortgage
18 loan schedule, as trustworthiness and its
19 reliability, such that my client can use it as a
20 business record of it's own, I think this case
21 absolutely finds that documents such as the one we're
22 seeking to have admitted, the mortgage loan -- the
23 initial mortgage loan schedule, is exactly the kind
24 of document created by the initial lender that a
25 subsequent and, you know, a third person down the

1 chain servicer like Ocwen, is entitled to rely on.

2 And to find otherwise, would require --
3 actually, it would render the ability of banks and
4 financial institutions to assign the mortgage loan,
5 and that's certainly not what Your Honor is intending
6 to conclude.

7 And it's -- what it does, it creates
8 impossibility. Your ruling yesterday would require
9 that this case -- for this case -- for the plaintiff
10 to prevail that you would have to find somebody from
11 Novastar to give testimony about that mortgage loan
12 schedule and the mortgage loan purchase agreement and
13 based on this Krawcdyk case, K-r-a-w-c-d-y-k versus
14 Centurion Capital, Incorporated for the record, and
15 it's 2009, Westlaw, 395458 Northern District of
16 Illinois, February 18, 2009.

17 As in this case, this is a case where the Court
18 concluded that the bank was not required to have
19 testimony from a witness with personal knowledge
20 regarding the maintenance, the predecessor's business
21 records because the bank's reliance on this type of
22 recordkeeping while others rendered the records, the
23 equivalent of the bank's own records.

24 And you heard my witness say -- you heard Ms.
25 Plasse say yesterday that the loan payment history

1 from Saxon is the only -- is a record of Ocwen now,
2 it's their own, it passed through the boarding
3 process, as did the default letter, as did this
4 mortgage loan purchase agreement and mortgage
5 schedule.

6 This case couldn't be anymore on all fours with
7 the situation we have here. If Your Honor's
8 concerned about -- I think Your Honor actually read
9 from Yang yesterday and you read what -- I'm trying
10 to find --

11 THE COURT: Let me ask you at this point the
12 question. Again, I read the case that you gave me,
13 and I also had the opportunity during the break just
14 to memorialize it and a number cites and I actually
15 since I looked at -- I printed one.

16 MR. PRESTIA: May I approach?

17 THE COURT: Sure. The Voyer case. That's the
18 2013. It cites to both of the cases that have been
19 given me and to the Beal case.

20 MR. ROSENTHAL: It states to the Yang case --

21 THE COURT: I'm sorry. The case that you --
22 Beal case.

23 MR. ROSENTHAL: Right.

24 THE COURT: And, again, all speaks about the
25 problematic approach that has to be given to these

1 records, talking about commerce and all sorts of
2 practical applications you've given, it certainly
3 seems -- you know, what I'm ruling based on these
4 cases, I'd be inclined-- I question -- the question
5 is counsel alluded to these cases are well and fine,
6 but the federal district case Massachusetts or other
7 jurisdiction although admittedly the business records
8 exceptions is, you know, vitually identical to the
9 same business records exception that's been
10 incorporated in the evidence code here in Florida.

11 MR. ROSENTHAL: If Your Honor is hung up on the
12 concept on Yang case is binding on you, I think we
13 can argue that it's distinguishable on its facts.

14 THE COURT: Well, how is it distinguishable, I
15 guess, what I really need to do, so...

16 MR. ROSENTHAL: Do you have the Yang case in
17 and front of you, Your Honor?

18 THE COURT: Yes, I do have it in front of me.

19 MR. ROSENTHAL: The case is called
20 Glarium, G-l-a-r-i-u-m versus LaSalle Bank National
21 Association, if I can approach. I'll give this to
22 you. I believe Your Honor even read from the Yang
23 case, the portion of --

24 THE COURT: I think I read almost the whole
25 case.

1 MR. ROSENTHAL: I recall a portion in Glarium
2 that was actually blocked, quoted in Yang. And the
3 reason the Glarium case, Your Honor, is pointed out
4 in footnote 2, which this is a Fourth District Court,
5 Glarium, 83 So. 2d. 780. I don't believe Glarium or,
6 in fact, Yang really intends to do what the defendant
7 would have you believe it does. Take a look at foot
8 note number 3.

9 MR. PRESTIA: Do you have a copy for me?

10 MR. ROSENTHAL: Sure. I apologize. There you
11 go. Says the law does not require and relies on
12 computerized bank records to be record custodians who
13 enter or created any data, nor must it be identified
14 by entry of the data into the computer.

15 And this last sentence is a key one, the law is
16 also clear, that there is no per se rule precluding
17 the admission of computerized business records
18 acquired from a prior loan servicer. This says right
19 there, that we're not creating a bright line rule
20 either in Glarium or in the case that's cited in
21 Yang. We're not coming in here and saying that prior
22 -- an acting servicer cannot rely on business records
23 of a prior servicer.

24 Your Honor, in this case has admitted evidence,
25 the loan payment history, the default letter, all

1 business records of prior servicer. I think what Your
2 Honor is hung up on is the fact that the mortgage
3 loan purchase agreement and mortgage loan initial
4 mortgage loan schedule didn't originate from a prior
5 servicer, but farther down the line they originated
6 with the original lender, Novastar.

7 The Northern District Illinois --

8 THE COURT: What I was also hung up on, again,
9 on the issue of reliability -- at least as far as the
10 records that the Court did admit, there was some
11 testimony that there was a boarding process that
12 efforts of due diligence to affirm the accuracy of
13 those records and all those things were done,
14 admittedly, not to the satisfaction of the defense.
15 Wasn't that testimony regarding this exhibit?

16 MR. ROSENTHAL: But, if necessary, I can recall
17 this witness because I rested my case subject to this
18 issue, and try to illicit that testimony, if Your
19 Honor is inclined to do that.

20 But beyond that, this is a document that's
21 inheritably reliable. It originated with the lender
22 and thats the note and mortgage did and this servicer
23 is entitled to rely on it as it would be the note and
24 mortgage itself.

25 MR. PRESTIA: I objection to counsel

1 testifying. It's not what the witness -- it's not
2 what's before you in evidence.

3 THE COURT: I'll consider all argument.

4 MR. ROSENTHAL: Okay.

5 THE COURT: Well, did you consider -- let's face
6 it, it got everybody's attention -- got my attention,
7 I mean, would Yang just to be an extension of
8 existing case law? Do you consider it to be a
9 departure?

10 MR. ROSENTHAL: Would I consider Yang to be,
11 either the case that's distinguished on its facts,
12 that's not applicable to a situation such as this
13 where we have large financial institutions buying and
14 selling loans in bulk. What we have in Yang, is one
15 loan or one loan dealing with a homeowner's
16 association, where you have record custodians for the
17 association, not being able to rely on a prior
18 records created by an accountant. It's a unique
19 situation on its facts that I don't think can be
20 extended to a situation that we have in front of us.
21 Especially, when you consider that the reasoning set
22 for this Northern District of Illinois case, which
23 does deal with our fact situation. It does deal with
24 what we've got here and to really to consider Yang
25 over this situation, would create real issue in

1 situations like this, where you have a servicer who
2 is entitled to rely on documents generated by the
3 original lender.

4 THE COURT: Response?

5 MR. PRESTIA: Yes, your Honor. Let me just
6 start with the Krawcdyk case, since this is what
7 brought this whole argument about. This
8 specifically, I think that we could all agree this is
9 an a Illinois case, a Federal Court out of Illinois.
10 Furthermore, it's a summary judgement. This is not a
11 trial.

12 Also, if you read the facts of the case, I
13 think dealt with actual -- the payments and the
14 amounts, that if you go on page -- I think it was
15 very interesting as I read through it, page 5, you
16 can go through the detail of what this witness who
17 testified in this case -- in the Krawcdyk case
18 actually knew -- and I direct your attention to the
19 first paragraph about halfway down, rather a
20 custodian or otherwise qualified witness must explain
21 the record keeping procedures of the organization and
22 testify that she has knowledge of the procedure under
23 which the records were created.

24 And you can go down to the line on the
25 previously set forth principles, as well as those

1 specified by the court in Beal, this court finds that
2 Centurion Integrated Capital on records into its own,
3 relied upon them in daily operation.

4 Then if you keep on going down, Your Honor, it
5 goes through what this witness actually testified to
6 her knowledge. Plaintiff, let's see -- halfway down
7 there attests she had personal knowledge of
8 Centurion's recordkeeping. She's competent to
9 testify to those matters. She reviewed and is
10 familiar with the records relating to the plaintiff's
11 debt.

12 Then it goes on into the next paragraph up at
13 the top right portion of the page and it goes through
14 what this witness actually knows and that's what is
15 in dispute here. This witness before you today, Your
16 Honor, is Ms. Plasse was very candid with the Court
17 and I applaud her. She said, I don't know the
18 records of Novastar. I don't know the records of
19 Bank of New York, New York Mellon, I don't know
20 anything other than what is Ocwen, because I wasn't
21 an employee.

22 And that is what Glarium, you know -- counsel
23 directed you to the footnote on that page, but if you
24 look at the actual specifics of Glarium, for the
25 record, LaSalle Bank National Association, 83 So. 3d.

1 780 Fourth DCA case out of 2011, which obviously is
2 binding on this court as well my understanding of
3 Yang, Fourth DCA as well.

4 So now we're back in our home turf here talking
5 about what the Fourth DCA has ruled upon, not what
6 the Illinois court has ruled upon.

7 But in Glarium, if we look at that case, as to
8 the facts on there, in this case the witness had no
9 personal knowledge as to when or how those entries of
10 the previous servicer were made. That case relied on
11 data supplied from a prior servicer with those
12 procedures he was even less familiar with.

13 So there is some indicia that he was familiar
14 with something there. That's not the case of Ms.
15 Plasse here.

16 Furthermore, Orsini, was the witness's
17 statement that data in the affidavit was accurate
18 only insofar as it's replicated the numbers derived
19 from the company's computer system. As it pertains
20 to the documents, Ms. Plasse never saw that document
21 prior to yesterday's direct examination.

22 And then in Glarium, again, Orsini had no
23 knowledge of how the company data was produced and he
24 was not competent to authenticate that data.

25 Accordingly this case, Orseni's statements

1 could not be admitted under section 90.8036(a)
2 business records exceptions.

3 So in Glarium, they actually excluded this
4 evidence and what counsel pointed out to you was
5 actually a footnote stating that it's not a blanket
6 rule. And while that's fine, we're not saying it's a
7 blanket rule, but I'm relying to the facts before you
8 and the evidence before you today. She had no
9 knowledge.

10 So if we go to Yang, which is also binding on
11 this court, same exact situation, again, this person
12 in Yang had no knowledge as to how those records were
13 maintained, when they were maintained by, who was the
14 person with knowledge, all of the proper predicate
15 questions, as the Court refers to it in the opinion,
16 magic words, which I found comical that opposing
17 counsel brought up at the inception of the matter.

18 So it's not a matter of this Krawcdyk case.
19 It's a matter before the Fourth DCA and what is
20 binding on this court to follow it. It's clear that
21 by the witness's own testimony, sworn under oath,
22 that she has no knowledge as to this particular
23 document.

24 So while I think that -- I think Glarium is
25 applicable as -- insofar as the facts of it, as well

1 as Yang. And I don't believe that the Krawcdyk case
2 is even persuasive and, again, relied on that
3 witness's knowledge. That's what brings the
4 trustworthiness -- that allows in the
5 trustworthiness, Your Honor. If the witness has the
6 knowledge, fine. But that's just not the case before
7 us today, Your Honor. It's a completely different
8 situation. And counsel -- sounds like counsel's
9 argument is hinging on the fact -- well, then, you
10 know our business model, for lack of a better term,
11 will fail. Well, that's completely the case.

12 There's other avenues that they can take.
13 94.902, Subsection 11. They could have explored that
14 option. They chose not to. It's not a matter of
15 what kind of impact this will have on his client, the
16 bank. It's a matter of what rules are dictated that
17 we must follow and I think it's very clear about the
18 case law that's provided to Your Honor as well the
19 Florida Rules of Evidence. I think that --

20 THE COURT: The evidence is not crystal clear, I
21 mean, this issue -- is -- at least that is crystal
22 clear to me.

23 MR. ROSENTHAL: Your Honor, can I have a brief
24 rebuttal.

25 THE COURT: I notice that the other case that I

1 referred to, Voyer, footnote 5, that says: While an
2 individual receiving a document from a business
3 generally cannot solely by virtue of having received
4 the document, place sufficient foundation for
5 admitting the document as a business record of an
6 issuing business. An exception exists when a
7 business receiving the information acting in the
8 regular course of business integrates the information
9 received in the business records and relies on the
10 day-to-day operation and surrounding circumstances of
11 the note and mortgage.

12 MR. ROSENTHAL: I think that's what we have
13 here.

14 THE COURT: In fairness to the defense, I know
15 that part of that is quotes, which actually comes out
16 of the Illinois Evidence Code. So it might be that
17 their evidence code provides for that exception,
18 which apparently ours does not.

19 MR. PRESTIA: Additionally, Your Honor -- well
20 ours does not and I agree with you on that. And even
21 if you're persuaded by that, there's no testimony
22 that they rely on any of that in their day-to-day
23 operation. That testimony was not elicited from this
24 witness.

25 THE COURT: I thought there was testimony to

1 effect several times basically argument that we get
2 these records, these are the ones we're always relying
3 on when we process these loans or takeover this
4 paper, I thought -- paraphrasing, but I generally
5 know what her testimony was.

6 MR. PRESTIA: It was my understanding that she
7 did not have any knowledge as to how this record was
8 maintained, created or stored at Bank of New York
9 Mellon and/or Novastar or any other --

10 THE COURT: That part may be true.

11 MR. PRESTIA: So then it questions the indicia
12 of reliability, Your Honor, not to mention that what
13 was produced an excerpt by plaintiff's own admission.
14 So it's --

15 THE COURT: I guess what I'm having trouble with
16 and I admit, I'm somewhat on the fence on this issue
17 and apologize for that, is that on one hand we have
18 these federal cases and these cases that talk about
19 practicalities of the situation and these kinds of
20 large business transactions for this huge movement of
21 paper and that it's recognizing that practicality and
22 seems to me in construing the business record's
23 exception from a rather liberal fashion, and the
24 argument is -- to me here today that, well, Judge,
25 the Florida cases that we have really isn't an

1 aberration. You need to go to specific cases on its
2 fact. In no way does the Florida courts intend to
3 make a radical departure, if you will, from the
4 generally accepted construction of the business code,
5 business records exception, as reflected on these
6 other things, because if they did, they're going to
7 turn our whole business up on its head, because this
8 is a practical matter where the servicer no longer
9 exists, where companies go bankrupt, and they're out
10 of business, and I think it's impossible for us to do
11 this.

12 And, you know I don't mind being a pioneer, but
13 if I am, I want to make sure I'm on good grounds and
14 so I am concerned that, you know, the ruling in this
15 particular case, you know, may have extreme
16 ramifications on holding in this particular case
17 without any clear definition from the Florida courts
18 as to whether this -- what they really intended.
19 That's what I'm traveling under.

20 MR. PRESTIA: Understood, Your Honor. I mean, I
21 think we both understood and that's why I'm not
22 wearing a robe.

23 THE COURT: And, you know, some people said
24 this is going to be so boring when you get into here.
25 So far this exercise has been anything but, you know,

1 it's just not an evidentiary -- you know, it is an
2 evidentiary question. But it has ramifications beyond
3 that and I recognize that.

4 And at the risk of appearing schizophrenic, I'm
5 reversing my ruling and allow it only because I don't
6 think I got -- and I've had a chance since yesterday
7 to reread Yang and the cases as well as the federal
8 case and I'm just not convinced that at this point in
9 time, Yang goes as far as defense is indicating that
10 I -- I think my original analysis of it may have been
11 incorrect. But I say that with no extreme degree of
12 confidence. Defense made a very good argument that
13 Yang does compel a result that I originally gave in
14 this particular case.

15 And so I think it's a meritorious argument that
16 defense has argued it well. But ultimately, again,
17 I'm putting it in over objection. I am going to
18 admit the exhibit.

19 MR. ROSENTHAL: This is exhibit --

20 MR. PRESTIA: May I see it, please.

21 MR. ROSENTHAL: Your Honor --

22 THE COURT: And I suspect a copy of this
23 hopefully we will get some clarification on this. So
24 it would make everybody's jobs down the road easier.

25 MR. PRESTIA: That's coming in as what?

1 MR. ROSENTHAL: I think --

2 THE COURT: Number 4 over objection, of course.
3 (Plaintiff's No. 4 was received in Evidence.)

4 MR. PRESTIA: Your Honor, at this time the
5 defense would move for a motion of involuntary
6 dismissal based on the following, excuse me, in
7 advance, I'm pretty long winded. So I can make an
8 accurate record. Let me just get organized.

9 THE COURT: Well, I need to conclude by five.
10 Not going to be that long winded.

11 MR. PRESTIA: No. Now, there's a couple of --
12 there's plenty of deficiencies in the plaintiff's
13 case and I'm going to go through them one by one,
14 Your Honor.

15 Number one, Your Honor, plaintiff is not
16 registered to do business in Florida and therefore
17 barred from filing this action in the Florida court.
18 And may I approach with the statutes and case law
19 reflecting this?

20 THE COURT: Sure.

21 MR .PRESTIA: Your Honor, at a prior hearing,
22 there was a motion to take judicial notice of Florida
23 Department of State Records, the division
24 corporation, which indicates that no corporation
25 within the name of Bank of New York Mellon is

1 registered to do business within Florida. It is
2 clear, I guess, from the style of the case that the
3 plaintiff in this action is, Bank of New York Mellon
4 as trustee, as trustee under Novastar Mortgage
5 funding 2005-1.

6 Bank of New York Mellon, like I said is not
7 registered to do business in Florida pursuant to
8 section 607.0501, subsection 5, Florida statute
9 provides as follows: A corporation may not maintain
10 any action in the Court in the state of incorporation
11 compliance with the provisions of this section or
12 607.1507, as applicable and then it goes into the
13 payment and whatnot. But be that as it may, there's
14 no evidence presented to Your Honor that they are in
15 compliance with Florida statute 607.0501, subsection
16 5 and 607,0501 and specifically, the Florida
17 Department of State Division Corporation has no
18 corporation with the name Bank of New York Mellon.

19 And then attached to that paperclip of case and
20 statutes I give you, was Empire Electric Corporation
21 V. RJ Hunt Construction Company, 264 So. 2d. 114.
22 It's a Florida Fourth Division -- District of Court
23 of Appeals case from 1972. And in that case the
24 Fourth DCA, obviously, and is binding on this court,
25 held that a company that failed to comply with the

1 statutory requirements to file reports and pay
2 capital taxes would be barred from maintaining an
3 action in court. The Court ruled that even when --
4 even when a delinquent company had already obtained
5 the default judgment, the proper remedy to it is to
6 arrest judgment and withhold executing on pending
7 corporation's compliance with the law.

8 And then, alternatively, under 607.1501
9 subsection (1) and 607.1502 subsection (1) of Florida
10 statutes, they provide that a foreign corporation
11 doesn't obtain a certificate of authority from the
12 Department of State not only to transact business in
13 Florida but to access Florida's courts.

14 So plaintiff has failed to plead any exemption
15 from the regular requirements under 607.1501 and
16 failed to produce any evidence for Your Honor. In
17 fact, they produced completely contrary that when Mr.
18 Holtz questioned this witness on direct examination,
19 he specifically asked, I believe it was one of the
20 first questions, as to where this Bank of New York
21 Mellon or -- I'm sorry, yeah, where the plaintiff is
22 chartered and this witness said, New York.

23 So they failed to comply with 607.1501
24 subsection (5) and the other statute that I set forth
25 for Your Honor, and therefore they're not able to

1 bring this action within a Florida court.

2 THE COURT: Just take them one at a time.

3 MR. ROSENTHAL: Your Honor, two things, It's my
4 understanding that banking associations are exempt
5 from this registration requirement under PPR770, I
6 don't have the case cite, but the plaintiff's name in
7 this case PPR770, I can pull that from West Law or
8 you can through your iPad, if you need it.

9 Also, I don't read 6071 the same way that
10 counsel does. Paragraph one says foreign corporations
11 may not transact business in this state, until
12 obtaining a certificate of authority. Paragraph two
13 it says, the following activities among others, do
14 not constitute transacting business, maintaining
15 defending or settling any proceeding is one of them.

16 According to this statute, that does not
17 constitute transacting business. So I don't believe
18 there's a requirement to -- as I read this definition
19 decision, I don't -- I don't see a requirement to
20 have to obtain a certificate of authority in order to
21 maintain, defend, or settle any proceeding.

22 And if you go to by paragraph G, it also says
23 create or acquire indebtedness, mortgages, security
24 interests, all these things do not constitutes
25 transacting business under paragraph two.

1 So if you -- if you take this statute as it's
2 written, paragraph one, says may not transact
3 business. Paragraph two says these -- the following
4 items are not -- does not constitute transacting
5 business. So I read the statute to mean there's no
6 certificate of authority required.

7 Again, paragraph A and paragraph G are what
8 we're here for today; maintaining, defending or
9 settling any proceeding. And paragraph G is creating
10 or acquiring indebtedness, mortgages, security
11 interest on real property. Those items do not
12 constitute transactions. So the statute that he
13 cited, I don't think there's no requirement for
14 certificate of authority.

15 MR. PRESTIA: If you read what he's -- counsel
16 is referring to, creating or acquiring indebtedness,
17 that would be executing the mortgage or note, sure
18 that's not what I am talking about, Your Honor. What
19 I am talking about is bringing this court proceeding.

20 THE COURT: What about maintaining and
21 defending or settling proceeding?

22 MR. PRESTIA: It's my understanding that the
23 statute is applicable to a national corporations,
24 National association, NA's which Bank of New York
25 Mellon is not.

1 MR. ROSENTHAL: Well, there's Statutes about
2 foreign corporations. This statute is cited in their
3 affirmative defenses, Judge. The case that I cite
4 does relate to national banking associations and the
5 preemption of the National Banking Act as it relates
6 to the registration requirement in Florida under of
7 607.

8 So, admittedly, there might be an issue of Bank
9 of New York Mellon is not a national banking
10 association, but I don't even think we need to get
11 there, because if you read the statute right here,
12 we're not transacting business here today.

13 THE COURT. Yeah, I agree. Deny the motion on
14 that basis. What's the next.

15 MR. PRESTIA: Yes, Your Honor. As it pertains
16 to condition precedent, Your Honor, paragraph 22 of
17 the mortgage specifically states for the requirements
18 that plaintiff must prove at the trial or at least
19 must prove that they have complied with it prior to
20 being able to accelerate the letter or the note.

21 And, specifically, when one of those
22 requirements were to send a default letter via first
23 class mail and also advise the borrower as to the
24 amount to cure the default on the default letter.

25 Now, specifically within this witness's

1 cross-examination, Mr. Holtz asked her, you agree
2 with me that there's no amounts to cure the default
3 on this default letter. This witness testified in
4 the affirmative, yes, I agree. I don't see anything
5 relating to that.

6 THE COURT: I anticipate counsel will say on
7 cross, I mean, re-direct that he brought out another
8 portion of the paragraph of that letter, as well
9 that -- I think is going to be his position as cured
10 any problem; am I correct on this that?

11 MR. ROSENTHAL: Yes, sir.

12 THE COURT: What is your response to that?

13 MR. PRESTIA: First off -- well, I don't
14 believe that -- may I see the exhibit? I think it's
15 8. The problem, yeah, they read an amount, \$5,725.62;
16 however, it says -- hold on, let me see if I can just
17 find the part here. Your Honor, my recollection of
18 the witness testified that there was late charges and
19 other amounts due and owing in addition to the
20 \$5,725.62 figure that she testified, I believe, on
21 redirect.

22 So pursuant that it is not in compliance with
23 paragraph 22 of the mortgage as it does not put the
24 buyer on notice -- borrower on notice as to what the
25 true and full amounts due and owing are.

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Additionally, Your Honor --

THE COURT: You mean aside from just the unpaid balance and interest, you're talking about more specifically --

MR. PRESTIA: She testified there was additional fees and I believe late charges that were not included within this \$5,725.62 figure and so even if the buyer -- she didn't testify to this, but the argument, even if the borrower was to pay the \$5,725.62 figure, she's not in compliance with the default because additional outstanding fees and late charges, other fees that the witness testified to needed to be paid.

THE COURT: Well, is the borrower put on notice in a general sense as opposed to a specific sense in the letter that they would be liable for these additional sums such as \$241.15 that she would be liable for the payment of those fees?

MR. PRESTIA: Paragraph 22 of the mortgage is very explicit and specifically says, the bank must do X,Y and Z. It's actually numbered 1, 2,3, 4, I believe. And one of those numbers is to provide notice as to the full amount due and owing and provide them 30 days to cure that amount due and owing or acceleration will take place.

1 THE COURT: Well, in position, your position is,
2 the borrower needs to know to write a check for X,
3 I'm going to be back in good standing.

4 MR. PRESTIA: Exactly.

5 THE COURT: And if I don't know what X is, then
6 there's no way that I can comply.

7 MR. PRESTIA: Exactly. And what this letter is
8 deficient in that since there's additional fees and
9 other late charges that allegedly -- according to the
10 witness, needed to be paid to come, I guess, current
11 on the amount owed.

12 THE COURT: Response?

13 MR. ROSENTHAL: Can I have the letter, please.
14 Thank you. Okay. Your Honor, the paragraph in the
15 mortgage requiring notice to the borrower has been
16 sufficiently complied. They have been told the amount
17 due. They've been given -- they gave in this default
18 letter a number for the borrower to call. The reason
19 why there's no specific definitive number, as you
20 know interest and late charges accrue. And so it's an
21 impossibility that there's an exact amount. And so
22 it's an impossibility. And the fact that they were
23 given an amount due, phone number to contact and the
24 information that late charges and interest may accrue
25 is substantial compliance to the paragraph in the

1 mortgage that required notice.

2 MR. PRESTIA: The problem, Your Honor paragraph
3 22 is very specific. It says the notice shall
4 specify, then it goes on to the default, the action
5 required to cure the default, so on and so forth.

6 So according to counsel's own argument, my
7 client had to call up the number to find out what the
8 amount is due and owing. That's not proper.

9 THE COURT: Well, the argument is it would be
10 an impassability to do what you request because from
11 day-to-day that amount changes based on the
12 interest -- the daily rate of interest how -- so it's
13 an impossibility, you know, somebody got a notice on
14 on the 15th, by the time they received it they might
15 decide to write a check three days later --

16 MR. ROSENTHAL: Or 30 days later.

17 THE COURT: Yeah, so I mean -- always.

18 MR. PRESTIA: Your Honor, the bank has the
19 option to cease any further late payments or interest
20 from the date of acceleration. They've had the
21 option to do that and failed to do that. And they're
22 the ones that created this mortgage, the original
23 lender at least is the one that creates the mortgage
24 and imposes the terms within the mortgage. So they
25 put this burden on themselves to comply -- excuse me,

1 to comply with acceleration by the clause in
2 paragraph 22.

3 Now, they've come before you and say, well,
4 I've substantially complied and, you know, I
5 understand the burden on myself, but that's should be
6 good enough. Well, it's not. Your Honor, it's
7 specific. It's shall specify. And by opposing
8 counsel's own argument, he agrees that the number
9 that's reflected on this, is not the number to cure
10 that default.

11 So they are not in compliance with paragraph
12 22 of this.

13 MR. ROSENTHAL: Your Honor, number 1, I
14 disagree. Number 2, I think this argument is one of
15 prejudice. The fact that the borrower didn't pay
16 anything either 30 days or anytime thereafter to
17 certainly come in here and say --

18 MR. PRESTIA: Objection. Mischaracterizes
19 first off. Second off, facts not in evidence,
20 counsel.

21 MR. ROSENTHAL: The facts are in evidence, Your
22 Honor. She's testified --

23 THE COURT: Aside from that, again, I think
24 counsel as, in this case -- if not the impossible
25 burden, is not all overly acquired. I do think

1 substantial compliance. So I'll -- I guess, what are
2 arguing right now motions --

3 MR. PRESTIA: In part of a motion for
4 involuntary dismissal.

5 THE COURT: Okay. That's what I thought. So to
6 that extent, I'll deny the motion.

7 MR. PRESTIA: My next part of the motion, Your
8 Honor, has to do with the evidence that has been
9 presented and the lack thereof of evidence as it
10 pertains to the business records -- the alleged
11 business records of this entity.

12 Specifically, Your Honor, under *Israel v State*
13 *993 So. 2d. 952*, Florida Supreme Court case, 2008,
14 the witness that plaintiff had brought before Your
15 Honor needs to be a qualified witness, one who is
16 well-enough acquainted with the activity to give the
17 testimony.

18 Furthermore, in *Mizin v. M & I Bank* *67 So. 3d.*
19 *1129*, Florida First DCA case, 2011, judgment of
20 foreclosure bench trial as this one, that court was
21 reversed where a bank's only witness had no knowledge
22 as to the preparation or maintenance of the documents
23 offered by the bank. I think completely applicable to
24 the testimony that we have heard before -- during
25 this trial. This witness had no knowledge as to the

1 preparation or maintenance of any of these records.
2 What she is solely replying on was as soon as they're
3 placed within Ocwen's computer system, then according
4 to her, it's a business record and that's basically
5 the predicate that was laid to admit these documents.
6 There was no testimony and she even admitted that she
7 has no knowledge as to anything that occurred prior
8 to her opening that computer, which was, I think, on
9 cross-examination she said within the last month. So
10 under Mizin case, I believe that this witness is not
11 a qualified witness.

12 Furthermore, Your Honor, in the Halt v Grimes,
13 261 So. 2d. 528, Florida Third DCA case out of 1972,
14 records were properly excluded where there was no
15 testimony as the mode of preparation of these
16 records, nor was there a witness testifying in
17 regards to the records and the relationship of
18 custodian or other qualified person.

19 MR. ROSENTHAL: Do you have a copy of these
20 cases?

21 MR. PRESTIA: I do.

22 MR. PRESTIA: Furthermore, Your Honor, in
23 Speciality Linings, Incorporated v BF Goodrich
24 Corporation, 532 So. 2. 1121, Florida Second DCA,
25 1988, that there the testimony was insufficient under

1 the business records exception to hearsay with the
2 manager in that case, like Ms. Plasse, in this case
3 admitted that he was not a custodian, did not prepare
4 statements or supervised anyone who did. The manager
5 in that case, Darre, was not the custodian of the
6 statement. He was not otherwise a qualified witness.
7 He was not in charge of the activity constituting the
8 usual business practices. He admitted that neither
9 he nor anyone under her supervision prepared such
10 statements. Darre was not well acquainted with the
11 activity to give the testimony and he admitted that
12 he was not familiar with any of the transaction
13 represented by the computerized statement that's
14 exactly what she admitted.

15 THE COURT: I mean, of course, this is very
16 similar to the arguments that co-counsel made during
17 the admissibility of these documents that are in
18 question and I think standard on the general
19 proposition they've already been made in advance. And
20 I recognize that that's an issue, but I think I
21 already discussed and a ruled on this.

22 I think you know my ruling of admissibility are
23 dispositive. So I'm going to deny that.

24 MR. PRESTIA: My last ground is that of
25 standing. Now, in order for the plaintiff to have

1 proved standing in this case, there is basically two
2 different ways, they can take the UCC shortcut, which
3 I believe, you know, these courts are very familiar
4 with where there's an endorsement in blank on the
5 note. Well, that's not the case here, Your Honor, so
6 they have to prove ownership and they failed to do
7 that in this case. I'll tell you why.

8 Specifically, what the whole argument was we
9 have beat to a dead horse on, was relating to the
10 mortgage loan purchasing agreement and I don't know,
11 Your Honor, had an opportunity to review what is
12 admitted into evidence as Defense Exhibit 4, but what
13 you see is a cover page, a table of contents, a page
14 that's says, Exhibit 1, initial loan schedule, one
15 page with some information on it. Then when
16 Mr. Holtz cross-examined the witness, she said there
17 was a series letters and numbers and she wasn't sure
18 what they meant. She did say that she believes that
19 they were regarding this loan, but did not know one
20 way or another, as I believe, she said this was the
21 first time she saw this document. So be that as it
22 may --

23 MR. ROSENTHAL: I don't want to interrupt, but
24 I do want to object in this sense that he's
25 mischaracterizing what her testimony was, but I'll --

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THE COURT: You can make that point.

MR. PRESTIA: Your Honor admitted into evidence as Defense -- Plaintiff's Exhibit 4, is not -- there is nothing in this document which shows actual purchase agreement. Plaintiff failed to produce any competent evidence to show any type of transfer between Novastar Mortgage and JPMorgan Chase which would then transfer, I guess, to Bank of New York Mellon as trustee. So there's kind of -- we're playing connect the dots here. It starts with Novastar Mortgage and they need to show you that it now ends with Bank of New York Mellon as trustee and they need to show that this loan was entered into that trust on or before that closing date.

In fact, there's been no competent evidence, no evidence, period, which would show the transfer of ownership. There is nothing in this document that shows any purchase agreement, that was the plaintiff's own choice, I guess, not to -- I don't know why he didn't, but the evidence is not before you.

Your Honor, there is table of contents and this sole page and may I approach for, Your Honor --

THE COURT: Sure.

MR. PRESTIA: This page which references a of

1 numbers and letters. There is nothing in there,
2 nothing in that and I ask you to review it because
3 there's no verbiage in there that shows the actual
4 purchase agreement and what was the consideration
5 that was exchanged, what the purchase agreement
6 actually entails.

7 So there's been no evidence that there has been
8 a transfer.

9 THE COURT: Okay. Counsel.

10 MR. ROSENTHAL: Your Honor, there absolutely
11 has been evidence presented to the Court that's been
12 admitted into evidence that shows the transfer of
13 this loan. In particular the endorsement from
14 Novastar, the original lender to JPMorgan Chase.

15 In addition, we have admitted into evidence the
16 witness's testimony regarding the fact that Bank of
17 New York Mellon, successor trustee, which gives the
18 plaintiff in this case, Bank of New York, trustee, as
19 successor to Bank of York Mellon, success or trustee
20 under the Novastar Mortgage Funding Trust 2005-1.
21 The reason that document was admitted into evidence,
22 is we went through great length and Your Honor went
23 through great efforts to consider the issue and to
24 demonstrate when that transfer occurred.

25 I didn't attach the purchase agreement because

1 I don't need to to demonstrate when that transfer
2 trance occurred. I attached the pertinent document --
3 the pertinent part of the initial mortgage loan
4 schedule and I redacted everything, other than the
5 loan that's at issue here today. That's the document
6 in front of you shows that said it was an initial --
7 this loan was part of the initial loan schedule as --
8 --

9 THE COURT: Where does it show that in this
10 document?

11 MR. ROSENTHAL: The loan is identified and that
12 is --

13 THE COURT: Is that the number that's being
14 talked about?

15 MR. ROSENTHAL: He called it a series of
16 numbers and letters, but what it says is T-r-o-t-m,
17 with the defendant's address, which is the subject of
18 this foreclosure. And what also is the borrower -- is
19 the date on which this loan became part of the
20 mortgage loan purchase agreement, when it went into
21 the trust and that's relevant, Your Honor, because he
22 is going to tell you that the loan has to be in the
23 plaintiff's possession prior to plaintiff filing the
24 suit, which was done.

25 THE COURT: And the last number, 342,000, is

1 that the principal amount?

2 MR. ROSENTHAL: That was the initial loan, Your
3 Honor, not the current principal balance.

4 THE COURT: And the address, which is the Via
5 Bolson address.

6 MR. ROSENTHAL: Yes. The numbers and letters
7 are identification for this loan.

8 THE COURT: And the 2/23/2005 --

9 MR. ROSENTHAL: Is the date that it went into
10 the trust.

11 MR. PRESTIA: I'm going to object as counsel is
12 testifying in this stuff -- his testimony was not
13 elicited as a witness because they could not, because
14 she had no knowledge.

15 MR. ROSENTHAL: It was sustained. It was
16 sustained.

17 MR. PRESTIA: Excuse me. Even worse than --

18 MR. ROSENTHAL: It's not anymore.

19 MR. PRESTIA:: Well, it's not before, Your
20 Honor, and I would object to any and all argument
21 that counsel has just made. Move to strike it. It
22 was not in evidence before this court --

23 THE COURT: Well, it's exhibits --

24 MR. PRESTIA: Sure. An explanation as to what
25 -- what does certain things mean on the document.

1 Those objection were sustained and not part of this
2 trial.

3 Furthermore, Your Honor, as I was stating
4 before they produced a table of contents. There's 36
5 pages allegedly -- that showed the actual crux of
6 this purchase agreement. How could we rely on a cover
7 page and table contents and some blank piece of paper
8 that has a series of letters and numbers on it that
9 showed this mortgage was in this trust on or before
10 the filing of this action. It's impossible to do that
11 based upon the evidence before you.

12 There's nothing that plaintiff -- plaintiff
13 didn't provide the purchase agreement. There is no
14 proof, there's no evidence as to this transfer. So
15 for all we know, that there's a closed endorsement on
16 that note from Novastar to JPMorgan Chase and that's
17 where it ends, because plaintiff has failed to
18 produce to this court with evidence sufficient to
19 that to show the transfer.

20 And it's clear that under McClain v JPMorgan
21 Chase, Your Honor, that case stands for the
22 proposition that the plaintiff must -- and counsel is
23 well aware of this, I'm sure, as he's the one that
24 brought it up, that the plaintiff must prove either
25 the timing of the endorsement and they have -- well,

1 first off, that's separate issue, but they must prove
2 standing at the inception of the lawsuit as well as
3 today. And they failed to do so. They have not
4 provided any competent evidence, any evidence,
5 period, reflecting that transfer and when this
6 transfer occurred.

7 So we're at a loss here, Your Honor. Counsel
8 wants you to rely on a cover page and a blank piece
9 of paper that has one line and a series of numbers.

10 THE COURT: Well, the one line series of
11 numbers, I agree with counsel, there's no reason to
12 supply the entire document. What's pertinent is the
13 particular loan agreement and, I mean, and I just --
14 this just -- if it was just some random letters and
15 numbers, I'd be inclined to agree, but it seems to me
16 that counsel has been able to acquire.

17 So I'm going to deny the motion, based upon
18 standing.

19 MR. PRESTIA: I renew my pretrial motion as it
20 pertains to the request for production for loan trust
21 documents where exact reason. I don't know what else
22 is included in this purchase agreement as I have not
23 been provided that through discovery. There could
24 be, for all we know, 36 pages of information that
25 Bank of New York Mellon or JPMorgan is not, you know,

1 did not have ownership of this.

2 So, again, I would renew my prior request for
3 production and now, obviously, it's prejudice to us
4 as we have not been able to, one, continue a full
5 cross examination and, two, see what the rest of that
6 document contains within it.

7 THE COURT: Okay. Thank you. Does that conclude
8 your motion?

9 MR. PRESTIA: So can I have a ruling on that?

10 THE COURT: Oh, sorry. I'm sorry. The
11 renewed -- I guess it's a renewed.

12 MR. PRESTIA: Yes and yes.

13 THE COURT: Okay. Same ruling. Overrule the
14 objection.

15 MR. PRESTIA: Just so the record is clear, I
16 would renew my motion to exclude any and all
17 documents that refer to any loan trust -- any loan
18 trust document that was my motion.

19 THE COURT: Then I'll deny the motion.

20 MR. PRESTIA: One second. I believe that
21 concludes or exhausted -- I do want to take a brief
22 minute to talk with counsel, because there's some
23 evidence that we need to potentiality admit.

24 THE CLERK: Do you have Exhibit Number 2?

25 MR. PRESTIA: Sorry.

1 THE COURT: We're running past five. How much
2 time are you going to need?

3 MR. PRESTIA: One minute, Your Honor.

4 MR. ROSENTHAL: Your Honor, I'm willing to
5 waive closing agreement.

6 MR. PRESTIA: I'm sorry. Based upon Your
7 Honor's ruling as it pertains to Exhibit Number 5, we
8 have to produce some evidence, so we would like to
9 recall Ms. Plasse in our case chief and I did make
10 representation to the Court that weren't going to
11 produce life testimony, however, things have changed
12 since Your Honor's recent ruling. I don't know how
13 Your Honor wants to handle for scheduling purposes.
14 I'll be ready to proceed if everyone else is.

15 THE COURT: Well, the issue is I know I can
16 say, we have people in the courtroom.

17 MR. PRESTIA: I understand.

18 THE COURT: I can finish this tomorrow. I know
19 you can you come back first thing in the morning.

20 MR. HOLTZ: You need to be got aware that I
21 have -- I have trial set for tomorrow in Dretza, is
22 the defendant's name. I don't know --

23 THE COURT: That might -- I think I might have
24 that. I'm back up for Judge Stern and maybe set it
25 for 1:30. -- well, let's back here tomorrow at 9.

1 THE WITNESS: I'll take that up with my boss.

2 MR. PRESTIA: It's court ordered.

3 MR. PRESTIA: I will represent her testimony
4 will not be near an hour.

5 THE COURT: Okay. We'll be back and finish up
6 tomorrow at 9 o'clock. Thank you.

7 (The trial adjourned at 5:09 p.m.)

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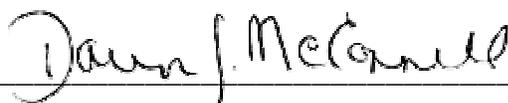
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C E R T I F I C A T E

- - -

I, DAWN S. McCONNELL, Court Reporter, State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 25th day of August, 2010



Dawn S. McConnell



IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2008-CA-026484

THE BANK OF NEW YORK, as Successor
Trustee Under NOVASTAR MORTGAGE
FUNDING TRUST 2005-1,

Plaintiff,

vs.

 et al.,

Defendants.

TRANSCRIPT OF TRIAL

Volume 3 of 3

Pages 1 - 55

DATE: Friday, September 13, 2013
TIME: 9:22 o'clock, a.m.
PLACE: Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401
BEFORE: Honorable Richard Oftedal
Circuit Court Judge

This cause came on to be heard at the time and
place aforesaid. The following proceedings were
reported by:

Roger Watford, RPR/FPR
U.S. Legal Support, Inc.
444 West Railroad Avenue
Suite 300
West Palm Beach, Florida 33401
(561) 835-0220

1 APPEARANCES:

2
3 ON BEHALF OF THE PLAINTIFF:

4 MOSKOWITZ, MANDELL, SALIM & SIMOWITZ, P.A.
5 800 Corporate Drive
6 Suite 500
7 Fort Lauderdale, Florida 33334
8 954-491-2000
9 grosenthal@msslaw.com
10 BY: GREG HOWARD ROSENTHAL, ESQ.

11
12
13 ON BEHALF OF THE DEFENDANTS:

14 ICE LEGAL, P.A.
15 1015 North State Road Seven
16 Suite D
17 Royal Palm Beach, Florida 33411
18 561-729-0530
19 tom@icelegal.com
20 BY: THOMAS PRESTIA, ESQ.
21 SCOTT HOLTZ, ESQ.
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I N D E X

WITNESS	PAGE
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Certificate of Reporter:	
	55

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
Defendant's No. 1	Printout from Florida Department of State	20

1 THE COURT: Good morning, everybody. I
2 believe we left off yesterday where the plaintiff
3 had rested. The defense indicated they wanted to
4 call Ms. Plasse again?

5 MR. HOLTZ: Yes, Your Honor.

6 MR. ROSENTHAL: When we last left
7 yesterday defendants were going to call Ms. Plasse
8 in their case in chief. I received word late
9 yesterday from defense counsel that they have
10 decided not to, but my case, plaintiff's case,
11 rested subject to recalling her after Your Honor
12 considered the issue of the admissibility of the
13 mortgage loan schedule, which Your Honor initially
14 did not admit, but yesterday they came to court and
15 did agree to admit it.

16 At that point I felt like I needed to ask
17 her questions because when I asked her questions
18 yesterday about when the loan went into the trust
19 the issue came up, was there any document in
20 evidence she relied upon, and at that point in time
21 there wasn't. Now there is, though. And I only
22 need to ask five minutes worth of questions.

23 MR. HOLTZ: Your Honor, I would object to
24 reopen the case and the testimony. It would be
25 cumulative. I think this ground was already

1 covered by the plaintiff through her testimony and
2 Your Honor's rulings on her research would not be
3 affected by this testimony and it would simply be
4 duplicative of the testimony that has already been
5 elicited by the plaintiff.

6 THE COURT: I have some latitude as far as
7 reopening it. I don't see any prejudice. I will
8 sustain any objections to cumulative at the time.
9 I assume it's something I haven't heard before.

10 MR. ROSENTHAL: It would be relating to
11 questions she couldn't answer yesterday.

12 THE COURT: Let's go forward.

13 MR. ROSENTHAL: Okay.

14 THEREUPON,

15 LOUISE PLASSE,

16 was called as a witness herein, and having been first
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ROSENTHAL:

20 **Q Ms. Plasse, showing you Plaintiff's Exhibit**
21 **Number 4, can you identify for the Court what**
22 **Plaintiff's Exhibit Number 4 is?**

23 A This is a copy of the mortgage loan purchase
24 agreement dated February 1, 2005.

25 **Q Can you please refer to the initial mortgage**

1 loan schedule attached to it?

2 A Yes.

3 Q Is the initial mortgage loan schedule redacted
4 such that the only information remaining is that which
5 relates to the loan we are here for today?

6 MR. HOLTZ: Objection, asked and answered,
7 and cumulative.

8 THE COURT: Overruled. You may answer.

9 THE WITNESS: Yes.

10 BY MR. ROSENTHAL:

11 Q Does this mortgage loan schedule provide you
12 with any information as to when the loan at issue in
13 this case went into the plaintiff's trust?

14 MR. ROSENTHAL: Objection, asked and
15 answered, and cumulative.

16 THE COURT: Overruled.

17 THE WITNESS: Yes, it does.

18 BY MR. ROSENTHAL:

19 Q And when was that?

20 A 2/23/05.

21 Q So did the loan go into the plaintiff's trust
22 prior to the filing of this lawsuit?

23 MR. HOLTZ: Objection, calls for a hearsay
24 response, lack of personal knowledge, lack of
25 foundation.

1 THE COURT: Overruled. You may answer.

2 THE WITNESS: Yes, it did.

3 MR. ROSENTHAL: I have no more questions,
4 Your Honor.

5 MR. HOLTZ: May I have one moment, Your
6 Honor?

7 THE COURT: Sure.

8 (Pause in proceedings.)

9 CROSS-EXAMINATION

10 BY MR. HOLTZ:

11 Q Ms. Plasse, you have Exhibit 4 in front of
12 you?

13 A Yes.

14 Q Nothing in that document tells you that Bank
15 of New York Mellon was the trustee of any trust that
16 indicates that loan was put into, correct?

17 MR. ROSENTHAL: Objection, Your Honor, it
18 couldn't.

19 THE COURT: Is that a legal objection?

20 MR. ROSENTHAL: I will withdraw it, Your
21 Honor.

22 THE COURT: Okay. You may answer.

23 THE WITNESS: The question again?

24 BY MR. HOLTZ:

25 Q My question was: There's nothing in that

1 document that tells you that, if the loan was put into a
2 trust, that Bank of New York Mellon is the trustee of
3 that trust?

4 A It lists J. P. Morgan Chase Bank as trustee,
5 so no.

6 Q And there's nothing contained in Exhibit 4
7 that actually references any part of the actual purchase
8 agreement or the terms of that purchase agreement,
9 correct?

10 A No, there's nothing in here.

11 Q There's no page that shows any execution of
12 that purchase agreement, correct?

13 A Not with this information, no.

14 MR. HOLTZ: No further questions. Thank
15 you, Your Honor.

16 THE COURT: Anything else?

17 MR. ROSENTHAL: No, Your Honor.

18 THE COURT: Thank you. I think you can
19 finally step down.

20 THE WITNESS: Thank you.

21 THE COURT: Okay, everybody has rested,
22 correct?

23 MR. ROSENTHAL: Yes, Your Honor.

24 MR. PRESTIA: No, Your Honor, we have not.
25 That was, the plaintiff reopened his case.

1 THE COURT: I thought you were going to
2 call a witness and decided not to.

3 MR. PRESTIA: I did. But we recalled the
4 witness before.

5 THE COURT: Certainly.

6 MR. PRESTIA: I would like to address one
7 issue that I don't believe I addressed yesterday in
8 my motion for involuntary dismissal, and that issue
9 is based on Exhibit 2, and, along with the's
10 plaintiff's witness testimony from yesterday where
11 she said specifically, she was asked:

12 "You've never worked for Bank of New York,
13 Incorporated, right?"

14 The witness answered:

15 "No."

16 "And Bank of New York, Incorporated, is
17 not the same as Bank of New York Mellon, correct?"

18 The witness answered:

19 "Yes."

20 Your Honor, if you look at Exhibit 2,
21 along with 4 that she was just questioned on, there
22 is nothing that connects the dots from Novastar
23 Mortgage to Bank of New York Mellon. And I have
24 the Exhibit 2 here. May I approach?

25 THE COURT: Sure.

1 MR. PRESTIA: The plaintiff failed to
2 prove in this case that Bank of New York Mellon had
3 standing through these purchase agreements or other
4 evidence that has been presented to you, Your
5 Honor. The transfers that are in evidence and are
6 before Your Honor to consider are for Bank of New
7 York, Incorporated, which is a totally different
8 entity, not the same company, and by the witness's
9 own admission, not the plaintiff in this case.

10 So, if the plaintiff approved -- anyone
11 may have potential standing in this. It is the
12 Bank of New York, Incorporated, not the Bank of New
13 York Mellon. So, based upon that ground, Your
14 Honor, we would be moving for an involuntary
15 dismissal based upon the lack of evidence.

16 THE COURT: It's a standing issue?

17 MR. PRESTIA: Exactly.

18 MR. ROSENTHAL: Your Honor, may I take a
19 look at the exhibit?

20 THE COURT: Sure.

21 THE COURT: You were able to bring up the
22 trial transcript?

23 MR. PRESTIA: Yes, we got a rough copy
24 late last night.

25 MR. ROSENTHAL: Your Honor, Bank of New

1 York Mellon is the plaintiff in this case. They
2 are part and partial to the entity that is the
3 acquiring entity on those documents.

4 MR. PRESTIA: Objection, not in evidence,
5 counsel testifying.

6 THE COURT: Well, what is the evidence
7 that supports the fact that, as counsel said, what
8 connects the dots between Novastar and Bank of New
9 York Mellon?

10 MR. ROSENTHAL: Bank of New York Mellon is
11 the successor trustee to J. P. Morgan Chase.
12 That's what was testified to. That's what these
13 documents indicate.

14 MR. PRESTIA: I would submit the exact
15 opposite. The documents indicate this transfer
16 went straight to Bank of New York, Incorporated,
17 and it's very clear on its face, Your Honor.
18 Specifically, it says --

19 THE COURT: Okay, I need to follow along.
20 We're looking at Exhibit 1 here?

21 MR. PRESTIA: We're looking at Exhibit 2.

22 THE COURT: And Exhibit 2 is the --

23 MR. PRESTIA: The front page has Exhibit A
24 and then it says, "Agreement of Resignation and
25 Assumption, dated October 1st, 2006, by and among

1 J. P. Morgan Chase Bank, National Association, the
2 resigning trustee, and the Bank of New York, the
3 successor trustee." Then it says, "Whereas,
4 pursuant to the purchase and assumption agreement,
5 dated April 7, 2006, the purchase agreement by and
6 between the Bank of New York Company, Incorporated,
7 and J. P. Morgan Chase & Company caused the
8 resigning trustee to transfer to successor trustee
9 its rights, duties and obligations as trustee under
10 various agreements listed," and then it goes to
11 list the various agreements.

12 But there's not even one scintilla of
13 evidence which would give Bank of New York Mellon
14 any rights to this mortgage. This is an improper
15 foreclosure, to say it politely, Your Honor. This
16 is not the right entity, by any means. I think
17 it's clear on its face.

18 THE COURT: Where does Bank of New York
19 Mellon first appear?

20 MR. PRESTIA: It does not in any document.

21 MR. ROSENTHAL: Your Honor, Bank of New
22 York Mellon is part and partial of the entity that
23 acquired the loans, that acquired the trustee
24 status from J. P. Morgan Chase. Those are the
25 documents that memorialize that transfer. And I

1 believe the testimony supports that. I think what
2 they're focusing on is my witness's knowledge, or
3 potential lack thereof, of any possible differences
4 between Bank of New York Mellon and Bank of New
5 York, Inc. They spent this whole trial telling
6 you --

7 THE COURT: You agree there's a
8 difference, right?

9 MR. ROSENTHAL: No, I don't agree that
10 there's a difference.

11 THE COURT: One and the same entity, Bank
12 of New York and --

13 MR. ROSENTHAL: I think Bank of New York
14 Mellon is part and partial of the entity that's
15 part of those purchase agreements. And they spent
16 this whole trial telling you that she doesn't know
17 a thing about Bank of New York Mellon or Bank of
18 New York, Inc, Novastar or J. P. Morgan, anything
19 other than Ocwen, and now they want you to take her
20 word for the fact that Bank of New York, Inc, is
21 somehow separate from Bank of New York Mellon.
22 Those are the documents that Bank of New York
23 Mellon relies upon as the successor trustee for
24 J. P. Morgan Chase.

25 THE COURT: Well, you are saying there's

1 no legal distinction between Bank of New York
2 Mellon and Bank of New York, Inc.?

3 MR. ROSENTHAL: I think they are part of
4 the entity that acquired J. P. Morgan Chase's
5 business, trust business, yes.

6 THE COURT: Again, is there anything in
7 this document that, to use the term counsel used,
8 that connects the dots? The Bank of New York
9 Mellon doesn't appear anywhere in this document,
10 does it?

11 MR. ROSENTHAL: In my brief review it, no.
12 But I don't think that's dispositive. I think Bank
13 of New York Mellon is part and partial to the Bank
14 of New York entity that acquired the trust business
15 of J. P. Morgan Chase.

16 THE COURT: That may be the bank, but what
17 is the entity?

18 MR. ROSENTHAL: I think evidence shows
19 that and she testified to that.

20 THE COURT: What evidence shows that?

21 MR. ROSENTHAL: The witness's testimony
22 and the documents in front of you.

23 THE COURT: Well, the documents in front
24 of me, New York Mellon is not even mentioned, the
25 evidence in front of me, apparently New York Mellon

1 is not even mentioned.

2 MR. ROSENTHAL: That doesn't mean that
3 Bank of New York Mellon isn't part of the Bank of
4 New York entity that acquired J. P. Morgan's trust
5 business.

6 THE COURT: Maybe not. But then what
7 does, her testimony?

8 MR. ROSENTHAL: Yes.

9 THE COURT: What was her testimony?

10 MR. ROSENTHAL: Her testimony was that
11 Bank of New York Mellon was the successor trustee
12 for J. P. Morgan Chase.

13 THE COURT: What is that based upon?

14 MR. ROSENTHAL: Her testimony from a
15 review of that document and her review of the
16 records.

17 THE COURT: Based upon a review of this
18 document, it does not even mention Bank of New York
19 Mellon.

20 MR. ROSENTHAL: I understand what the
21 hang-up is, Judge, but the Bank of New York entity
22 that's referenced in that document, Bank of New
23 York Mellon is part and partial of that Bank of New
24 York entity.

25 MR. PRESTIA: First of all, there has been

1 no evidence of that presented to Your Honor,
2 whether it be through documentation or this
3 witness's testimony. And, furthermore, the witness
4 herself admitted that she has no knowledge as to
5 anything that occurred between Bank of New York,
6 Incorporated, or Bank of New York Mellon or any
7 other entity. She was very candid with the Court
8 on that. So now counsel I guess is asking you to
9 not find his own witness credible.

10 First of all, there's no evidence at all
11 that shows Bank of New York Mellon had any type of
12 ownership in this matter and to make that
13 assumption I believe is just improper. But even, I
14 think, even if you were going to assume that, which
15 I do think is improper, there's well settled law
16 that says a parent corporation does not have
17 standing to bring forth an action of a subsidiary.
18 So, even if Your Honor is persuaded by what I don't
19 believe there's any evidence on, the law is still
20 pretty clear on the issue, Your Honor.

21 THE COURT: Well, I am going to reserve on
22 this motion, take a look at it.

23 MR. PRESTIA: Your Honor, may I make a
24 suggestion that we submit bench briefs?

25 THE COURT: You were kind of reading my

1 mind. We can go through closing and give you an
2 opportunity to submit a brief memo on that. I
3 don't know if that's an argument you anticipated or
4 not. So I will give you an opportunity for that.

5 MR. PRESTIA: I assume he would have
6 considered it, as it's part of his burden to prove
7 standing, so it's pretty clear from his documents.

8 THE COURT: It kind of came up, you know,
9 it wasn't part of yesterday's motion, it came up
10 the first time today, and that's what I meant by
11 that.

12 MR. PRESTIA: Okay.

13 THE COURT: Are you ready to argue,
14 counsel?

15 MR. ROSENTHAL: Yes, sir.

16 THE COURT: Any other evidence?

17 MR. PRESTIA: Yes, Your Honor. Just as
18 part of the defendant's case in chief, we ask that
19 the Court take judicial notice of the printout of
20 the Florida Department of State, Division of
21 Corporations, showing that the Bank of New York,
22 Incorporated --

23 MR. ROSENTHAL: Your Honor, I object if he
24 is intending to bring this document into evidence.
25 He has told me prior to trial that there were no

1 documents that he intended to present at trial,
2 there would be nothing, there would be no exhibits.

3 MR. PRESTIA: Your Honor, using
4 plaintiff's own terminology, this is a publicly
5 available document. It was obviously brought up as
6 rebuttal, I guess in our case in chief but really
7 as a rebuttal, to the ruling yesterday allowing
8 that mortgage loan purchasing agreement to be
9 entered, so we kind of had to change our views on
10 what would be admitted and what would not be
11 admitted.

12 Additionally, Your Honor, we have
13 submitted an exhibit list, which I believe this
14 exhibit is listed on, so the plaintiff was on
15 notice as to --

16 THE COURT: Well, that would be
17 dispositive. The objection was, in fact, on the
18 witness list?

19 MR. ROSENTHAL: Except, Your Honor, I
20 asked them to provide me the exhibits on the
21 exhibit list and when I asked that the response I
22 got was, "We will not be using any exhibits," so if
23 you have it on the list and don't provide it when
24 requested and then have it be used at trial after
25 that, I think that is improper.

1 MR. PRESTIA: Your Honor, if he goes to
2 sunbiz.org, anyone could pull this up, it's very
3 easy, and it was listed specifically on the exhibit
4 list.

5 THE COURT: And this is to be used for the
6 purpose of what?

7 MR. PRESTIA: To show that Bank of New
8 York Mellon is not a company that is listed within
9 the Florida Department of State, Division of
10 Corporations.

11 THE COURT: Is that in dispute?

12 MR. ROSENTHAL: I think, actually, Your
13 Honor, you ruled on that issue yesterday. If it
14 goes to the issue of being a foreign entity, you
15 have already determined that they can maintain
16 suit, so I'm not even sure what it's for today.

17 MR. PRESTIA: I understand Your Honor's
18 ruling on that; however, my renewed motion for
19 involuntary dismissal, there is, I did want to
20 reargue it.

21 THE COURT: Well, I understand the
22 plaintiff's concern as to the way the motion is
23 coming in, but I don't see any concerns, and, in
24 fact, it was previously listed before and I don't
25 think that it involved really a matter that is in

1 dispute, so I will go ahead and admit this. Is
2 that going to be the defense's first exhibit?

3 MR. PRESTIA: Yes, Your Honor.

4 THE COURT: Okay.

5 (Defendant's Exhibit Number 1 received
6 in evidence.)

7 MR. PRESTIA: Your Honor, after speaking
8 with my colleague, at this time the defense would
9 rest.

10 THE COURT: Thank you. You both want to
11 waive closing or you want closing?

12 MR. PRESTIA: We have another motion, Your
13 Honor.

14 THE COURT: Okay, I'm sorry.

15 MR. HOLTZ: Your Honor, I don't know if
16 this procedurally makes sense, but I will propose
17 it to the Court for the purpose of judicial
18 economy. We were not going to waive closing. What
19 I think we could do, though, perhaps, I don't know
20 exactly how this would work, we could perhaps
21 combine the motion for involuntary dismissal and
22 the closing argument.

23 MR. ROSENTHAL: Your Honor, you already
24 heard the motion for involuntary dismissal both
25 yesterday and renewed today. I don't know that you

1 should or could hear another one.

2 MR. HOLTZ: What counsel just argued was a
3 renewal of our first or, yes, renewal of our first
4 motion for involuntary dismissal. This would be
5 our second motion for involuntary dismissal where
6 the standard has changed. I am certainly not going
7 to rehash what counsel just articulated to the
8 Court.

9 THE COURT: I believe they are entitled to
10 make a motion at the close of the evidence.

11 MR. PRESTIA: Right, so...

12 MR. ROSENTHAL: Which I believe I thought
13 they did yesterday. If it's only limited to
14 something they didn't cover yesterday...

15 THE COURT: Well, they put on the case
16 today. Okay. Obviously, if it a rehash, the Court
17 has already ruled on it.

18 MR. HOLTZ: I am going to renew and
19 reaffirm any previously made arguments that were
20 made in the first motion for involuntary dismissal,
21 including this last discussion that will be briefed
22 to Your Honor.

23 THE COURT: Okay.

24 MR. HOLTZ: However, now that the standard
25 has changed and we must be looking at it at the

1 close of all the evidence, again, I will reraise,
2 or not reraise, but raise again the issue of
3 registration and the plaintiff's failure to
4 register as a corporation.

5 Yesterday at the first motion for
6 involuntary dismissal the Court found that, due to
7 the exception, mainly in Subsection 2 or Section 2,
8 Subsections (A), (G) and (H) applied to Bank of New
9 York Mellon, so that, even though they are a
10 foreign corporation, I think the evidence has shown
11 that with the addition of, certainly the addition
12 of our exhibit that came in in our case in chief,
13 the Bank of New York Mellon, as listed as the
14 plaintiff in this case, is not a registered
15 corporation with the State of Florida, it's a
16 foreign corporation.

17 So then the question comes before the
18 Court whether or not the plaintiff corporation had
19 to register. Plaintiff's counsel ably made the
20 argument that by maintaining a suit, particularly
21 one that involves collection of mortgages and
22 making collections of debts, that is not
23 transacting business within the meaning of Florida
24 Statute 106.1051.

25 However, Your Honor, that is not the test.

1 I am going to point the Court to the case of
2 Batavia, Limited versus United States of America,
3 by and through its agency, the Department of
4 Treasury, Internal Revenue Service, appellee, 393
5 So.2d, 1207, and, Your Honor, I provided a copy to
6 counsel, I have provided a copy to the Court.

7 That case stands for the proposition that,
8 well, two propositions really; first, it stands for
9 the proposition that, in order for a foreign
10 corporation to benefit from the exceptions to the
11 statute requiring former corporations to register
12 with the State of Florida by claiming they are not
13 transacting business, they must solely be not
14 transacting business, and that it is affirmatively,
15 it's an affirmative burden of the plaintiff to
16 prove that as a foreign corporation they are not
17 transacting business in the State of Florida and,
18 thus, do not have to register in order to bring an
19 action in the State of Florida.

20 Here, Your Honor, there has been, at the
21 close of all the evidence before this Court, there
22 is simply no evidence before this Court, there has
23 been no testimony from the witness, there has been
24 no document admitted into evidence for the Court to
25 consider that has proven --

1 THE COURT: Where in that case does it
2 actually say that the burden in this case is with
3 the plaintiff to demonstrate that the foreign
4 corporation is not doing business?

5 MR. HOLTZ: Your Honor, specifically, I am
6 looking on the second page of the printed opinion.
7 There's the first full paragraph on the right-hand
8 column, it starts with headnotes 2 and 3 at the
9 bottom, and the last sentence says, "However, this
10 complaint makes no allegation that this is the only
11 type of business transacted by Batavia Limited in
12 Florida, thus entitling it to the benefits, if any,
13 afforded it under the statute. This shall be
14 rectified upon remand."

15 We can infer from reading this that the
16 Court is requiring that there be an allegation in
17 the complaint that they specifically pled that, in
18 order to qualify for the exceptions to the
19 requirement for Florida corporations to register in
20 the State of Florida, that they plead that their
21 only business or that their only activity in the
22 State of Florida is not transacting business under
23 the meaning of the statute. Here they haven't done
24 so nor have they provided any evidence to prove
25 that that is the case.

1 And I believe we have page 3, the first
2 full paragraph on the left-hand column, headnote 4
3 and 5, "Accordingly, the trial judge may require
4 Batavia Limited to provide such limited information
5 as would alleviate his concerns short of
6 registration." And that whole paragraph starts by
7 saying, "We hold that the trial judge cannot force
8 Batavia Limited to register as a foreign
9 corporation in order to maintain this suit;
10 however, we do not hold that a trial judge can make
11 no further inquiry into Batavia Limited's activity
12 as a foreign corporation."

13 Again, Your Honor, there has to be proof,
14 and, because it has to be specifically pled by the
15 plaintiff, my argument is that they have the
16 burden, they have to plead it and they have to
17 prove it, especially considering in our answer and
18 affirmative defenses we assert that they are a
19 foreign corporation who is conducting business in
20 Florida and has failed to register with the State
21 of Florida.

22 So, Your Honor, based on this, they cannot
23 bring suit here today because they have not met
24 their burden of; one, specifically pleading that
25 they have pled these exceptions to the transaction

1 of business of a foreign corporation in Florida
2 apply to them in the first place; and second, by
3 providing Your Honor no evidence whatsoever, that's
4 the case.

5 THE COURT: As I read this case, I'm not
6 sure I read this as saying that it's required to
7 plead what you say is pled. If you read further,
8 it looks like in this case that the trial judge,
9 him or herself, was actually concerned about what
10 business was being transacted and the nature of the
11 corporation.

12 In the second sentence, footnotes 4 and 5,
13 it says, "The trial judge has the inherent power to
14 prevent abuse of its processes and procedures and
15 we know that a trial judge who was concerned over
16 the unusual nature of the corporation as parent of
17 Grand Cayman Islands Corporation," and it says,
18 "Nothing in the statute prohibits the trial judge
19 from inquiring into the nature of appellant's
20 activities."

21 So the trial judge was so concerned, in
22 fact, that I guess he ordered them to actually
23 register before allowed them to maintain the suit.
24 You can't do that, but you certainly can go in and
25 find out what the nature of this is to prevent any

1 abuse. So I haven't digested this fully, but I
2 understand that you are saying that it has failed
3 if the defendant doesn't plead the fact that they
4 are not doing business, transacting or doing
5 business in the State of Florida.

6 MR. HOLTZ: Your Honor, my response to
7 that would be that I understand, you know,
8 certainly Your Honor's first reading of this, but I
9 think that the case is clear in that the Court says
10 or rather the Court refers to the fact that the
11 plaintiff in that case, just like the plaintiff in
12 this case, was trying to avail themselves of the
13 benefit of an exception, of exceptions to the
14 requirement that foreign corporations register in
15 the State of Florida, and my reading of this is
16 that, specifically I go back to that first quote
17 that I read to the Court from the second page of
18 the opinion, "This complaint makes no allegation
19 that this is the only type of business transacted
20 by Batavia in Florida, thus entitling it to the
21 benefits."

22 Even before that the express wording of
23 the statute, same paragraph, says, "Obviously
24 enacted for the purpose of attracting foreign
25 corporation investments, it specifically excludes

1 from registration Batavia Limited, which is seeking
2 to foreclose on a mortgage, note and deed." That
3 was their position. And it cites to some cases,
4 Corporate Air Fleet of Tennessee, Incorporated,
5 versus Ellis, 324 So.2d 719, a Second DCA case,
6 1975, and Al Wilson's Powerful Displays,
7 Incorporated, versus Morgan Adhesive, Incorporated,
8 259 So.2d, 156, Florida Third DCA, 1972.

9 It refers to the predecessor statute of
10 the current registration statute, but with the same
11 exceptions, (G) and (H), and it says what these
12 cases already permitted, i.e., "Foreign
13 corporations may sue on notes executed and
14 delivered in Florida without qualifying to do
15 business in Florida. However, this complaint makes
16 no allegation that this is the only type of
17 business transacted by Batavia Limited in the
18 Florida, thus entitling it to the benefits, if any,
19 afforded under this statute."

20 And I think what the Court is saying there
21 is, if this is the only business that you are
22 availing yourself of in Florida, if this is the
23 only activity that you are conducting in Florida,
24 this suing on executed promissory notes in the
25 State of Florida, then fine, you are a foreign

1 corporation, you don't have to register, and that
2 seems to be a settled point of law, but I think the
3 inference is certainly there and the reasoning
4 throughout the case and the holding in the case
5 supports the proposition that what the Court is
6 saying there is, if that is not all you are doing,
7 then you have to register with the State of Florida
8 in order to bring this kind of action, you are not
9 entitled to avail yourselves of the benefits of
10 these loopholes and that the complaint does not
11 plead that they are entitled to these benefits.

12 So, if there's no pleading that says that
13 the plaintiff is entitled to avail themselves of
14 these benefits, and in this case, in the instant
15 case, there has been absolutely no affirmative
16 evidence that was put on by plaintiff that
17 demonstrates that the plaintiff is entitled to
18 avail themselves of these benefits, then this Court
19 should not extend the benefits to the plaintiff
20 because it is their burden to demonstrate by
21 pleading and by presenting competent evidence, if
22 it's denied, as it is in our answer in affirmative
23 defenses, that they are entitled to such a benefit.

24 And at the close of all the evidence the
25 defendant's position is that they have not met that

1 burden and, as such, Your Honor at this point
2 should dismiss the cause because they have not
3 shown that they are entitled to bring this action.

4 MR. ROSENTHAL: Your Honor, I share your
5 view on the initial reading of this case as well.
6 Everything beyond the word "inference" that he just
7 said is what he wants you to rely on, but in the
8 very nature of the word "inference" it's not in
9 this case. He wants you to read into this case all
10 of the requirements that, as he pled, that somehow
11 Bank of New York Mellon is doing something other
12 than what we're here for today, which is maintain
13 loans in the State of Florida and, if necessary,
14 come to court to enforce them.

15 THE COURT: The opinion of the Court did
16 require the plaintiff, I guess it was going to come
17 back before the Court for retrial, did require them
18 to plead that, so why were they required to plead
19 that if, in fact, it was not an obligation, that
20 they had an affirmative duty on the part of the
21 plaintiff?

22 MR. ROSENTHAL: I think we have actually
23 pled that. We did allege that the plaintiff is a
24 banking association, and, as far as what a banking
25 association does, they make loans and they enforce

1 them if necessary, so I don't see that there's a
2 pleading requirement that we haven't met, and I
3 don't think there was a testimonial issue that she
4 didn't address.

5 This is not transacting business under the
6 statute. And one thing I did want to touch on,
7 this is a case that deals with the predecessor
8 statute, the one we're dealing with now, and, of
9 course, not having been aware that this argument
10 was going to be made today, I thought it was
11 disposed of yesterday, I didn't have occasion or
12 even, I would have thought, the need to do a
13 legislative history analysis of any changes between
14 the prior statute and the current one, and we're
15 assuming from his argument that there has been
16 none.

17 THE COURT: Have you done any research to
18 see if there are any changes in the statute?

19 MR. HOLTZ: Your Honor, I have not. If
20 Your Honor would like us to go more into that
21 issue, I would ask, you know, but I think, first
22 let me say that I think the language and the
23 specific language that's cited from that
24 predecessor statute in the case itself exactly
25 mirrors the language that's present in the current

1 statute, 607.1.501, with respect to the applicable
2 section and subsections, but if Your Honor is not
3 satisfied with that, I would ask for the
4 opportunity to include this argument or more
5 information on this issue in the briefs that Your
6 Honor has invited counsel to submit with regard to
7 the other issue between the difference in the
8 banks.

9 THE COURT: Counsel, is there something
10 you want me to look at?

11 MR. ROSENTHAL: If Your Honor is requiring
12 us to provide briefs on the subject, I would be
13 happy to.

14 THE COURT: When I say briefs, I don't
15 want to put too much of a burden on you. We have
16 been through the trial, and I don't want to give
17 you additional stuff to do, but since you are
18 already going to be doing one, why don't you just
19 address this as well, and again briefly, in the
20 brief.

21 If there's any other cases that bear on
22 this particular issue, I suspect it's probably not
23 a lot that this comes up on, I haven't fully had a
24 chance to digest this opinion as well, nor do any
25 of us know whether the statute itself has changed,

1 which might require contrary rulings, so I think
2 that is an issue that needs to be addressed, so,
3 once again, I will reserve ruling on this
4 particular aspect of your motion.

5 MR. HOLTZ: Understood, Your Honor.

6 Judge, I believe I have already renewed
7 for the record the previous arguments that were
8 made at the first motion for involuntary dismissal
9 and the previous reraising of that motion, so with
10 that being preserved, Your Honor, at this time we
11 simply ask the Court to grant our motion for
12 involuntary dismissal.

13 THE COURT: I will deny the motion with
14 the exception of those two issues that I have
15 reserved ruling on.

16 MR. PRESTIA: A housekeeping matter, Your
17 Honor, in terms of the briefs, could we allow
18 enough time so that we can get a full copy of the
19 three days of the trial transcript so that we can
20 submit the briefs? How much time were you inclined
21 to allow?

22 THE COURT: Well, I will leave it up to
23 counsel, within reason, as to how much time.

24 MR. PRESTIA: Ten business days, is that
25 possible?

1 THE COURT: Would that be all right with
2 you?

3 MR. ROSENTHAL: Yes, Your Honor.

4 THE COURT: I don't want to require briefs
5 either, so both of you may submit your briefs
6 within ten business days of today, if you can.

7 MR. ROSENTHAL: If there's some difficulty
8 in getting the trial transcript, can we ask for an
9 extension of time?

10 MR. PRESTIA: That would be agreeable.

11 THE COURT: I am not going to deny a
12 reasonable request like that, but hopefully it can
13 be done within ten days. If you do just a short
14 extension, you can send me a brief order to that
15 effect, and we won't have to print anything on the
16 UMC.

17 MR. PRESTIA: Thank you, Your Honor.

18 THE COURT: For closing, I have a pretty
19 good idea of the issues, so I am going to limit
20 your closing to 15 minutes apiece.

21 MR. ROSENTHAL: That's fine, Judge. As I
22 said yesterday, based on everything you have seen,
23 I don't know that closing is necessary.

24 THE COURT: You can waive it if you want
25 to.

1 MR. ROSENTHAL: Not if they are not going
2 to, Your Honor, but I don't see any point in
3 dragging this out any longer, but 15 minutes is
4 certainly fine.

5 MR. HOLTZ: Fifteen minutes is certainly
6 more than enough.

7 THE COURT: All right.

8 MR. ROSENTHAL: Your Honor, thank you very
9 much for giving us the time necessary to get
10 through this. We started on Wednesday. I was here
11 at 9 o'clock and we started at 1:30. Thank you
12 again for giving us your time.

13 THE COURT: That's why I'm here.

14 MR. ROSENTHAL: Plaintiff's case is a very
15 simple one, although after the last three days, you
16 know, I'm sure you are -- well, I will leave it at
17 that. Anyway, the bottom line here is that we have
18 demonstrated unquestionably the plaintiff's ability
19 to foreclosure on its mortgage and to recover on
20 its note.

21 The evidence shows in this case that the
22 original note, originally by the lender, made by
23 the lender Novastar, signed by these defendants,
24 with [REDACTED] signing as attorney-in-fact
25 for her husband, [REDACTED] on December 27th,

1 2004, the limited power-of-attorney or the
2 power-of-attorney is in evidence, so there's no
3 question as to Patricia's ability to --

4 THE COURT: It is now. It wasn't before.

5 MR. ROSENTHAL: There's no question as to
6 her ability to sign on his behalf. There has been
7 no argument from the defense side that I have heard
8 that even called that into question. In fact,
9 that's the only time counsel did not object to the
10 admission of a document into evidence. So we have
11 a note. We have a note that was endorsed to J. P.
12 Morgan Chase, as trustee for the trust at issue in
13 this case. We have Bank of New York Mellon as a
14 successor trustee.

15 You heard testimony from my witness,
16 Louise Plasse, on the note, you heard her testify
17 about the documents relating to the successor
18 trustee status of the Bank of New York Mellon as a
19 successor trustee to J. P. Morgan Chase. You will
20 receive additional briefs on the subject, but
21 suffice it to say that we have connected the dots
22 from the original lender to the plaintiff suing in
23 this case both the trust and the successor trustee.
24 That's in the style, the plaintiff's style of the
25 case.

1 We have provided Your Honor with a
2 certified copy of the mortgage, again signed by
3 these defendants, with [REDACTED] signing
4 through a power-of-attorney on behalf of her
5 husband, [REDACTED] We have presented a default
6 letter that unquestionably provides a principal
7 balance and an amount due at that time, June 18th,
8 2008.

9 We have a default, as testified to by my
10 client, by the witness, Ms. Plasse. We have an
11 acceleration, as testified to by Ms. Plasse. We
12 have a loan payment history that's in as evidence
13 in this case that demonstrates the amount due. She
14 testified to the figures in the proposed final
15 judgment. All of the affirmative defenses raised
16 by the defense have been treated either in
17 argument, in voir dire or in their motions for
18 involuntary dismissal, and I will just treat them
19 briefly one-by-one.

20 They tried to argue about the authenticity
21 of the documents. The note is itself the
22 authenticating instrument. You sustained their
23 objection when they were trying to create an issue
24 that simply doesn't exist, and you heard them make,
25 present no facts or evidence today disputing the

1 authenticity of the signatures on the note and
2 mortgage or the note and mortgage itself. So that
3 affirmative defense fails.

4 The registration issue I believe is a red
5 herring. I addressed yesterday the fact that the
6 statute that is currently in place doesn't apply to
7 this fact pattern. We have a bank that is entitled
8 to maintain suit and that's what we're doing. We
9 are not transacting business under 607.15.01, you
10 addressed and denied that, understanding you kind
11 of allowed that door to be reopened and to be
12 further briefed. But the argument regarding the
13 notice of default, I think again my witness
14 satisfactorily demonstrated that these defendants
15 were sent a notice of default.

16 The burden on the plaintiff in a case like
17 this, on the lender, is to send it, they don't have
18 to prove that the defendant received the notice of
19 default, and I think that is a distinction you may
20 want to be aware of. I am not anticipating
21 anything, but you may want to be aware of it when
22 you hear the closing on the defense side of things.
23 The witness for the plaintiff demonstrated and
24 testified that the default letter was sent, she
25 testified there was an amount due set forth in it

1 and that they had an opportunity and a period of
2 time, 30 days, to cure it.

3 You heard the testimony that, not only was
4 it not cured, today there hasn't been any payment.
5 There haven't been any payments made on this loan
6 for five years. So we can't get too far afield of
7 what we have here. We have a note and a mortgage
8 that unquestionably was signed by these parties.
9 They were given the opportunity to cure the default
10 once the default occurred in May of 2008 and no
11 payment was made since.

12 So we can get lost sometimes in all the
13 other arguments that have been made over the last
14 three days, but that is the primary issue in this
15 case, do we have a note, do we have a mortgage, do
16 we have a plaintiff that's entitled to sue on it.
17 We have established that. And do we have a debt
18 that hasn't been paid? The answer to all these
19 questions is yes.

20 I am trying to go through the other
21 defenses that they have asserted in their answer.
22 I think I've covered all of their affirmative
23 defenses, Your Honor. If you give me one quick
24 second, I want to make sure we have touched all
25 bases. I am talking as quickly as I can, because I

1 know we have 15 minutes.

2 Okay, Your Honor, their fifth affirmative
3 defense wasn't even argued, and that's plaintiff's
4 action is barred by unclean hands. They presented
5 no evidence, no testimony, nothing whatsoever that
6 would support an argument of unclean hands, so I
7 think that argument fails as a matter of law.

8 They have made an argument that the
9 plaintiff failed to join an indispensable party.
10 There has been no testimony presented by the
11 defendant on that issue, so I think that's also an
12 argument that fails.

13 And I think I have addressed every one of
14 their other defenses during the course of my
15 closing. I would just leave Your Honor by saying
16 that plaintiff has met its burden in this case,
17 they have demonstrated the plaintiff is the one
18 entitled to bring suit, to maintain this action and
19 to recover both an action for foreclosure of the
20 mortgage and to recover on the note.

21 And I thank you for your time.

22 THE COURT: Okay, thank you.

23 Is the defense ready?

24 MR. HOLTZ: Yes, your Honor. And I know
25 you are excited to hear me talk again. Thank you,

1 Your Honor, for giving this case the consideration
2 that it's due, and I hope you have enjoyed this
3 hardy welcome to the foreclosure division.

4 THE COURT: I've enjoyed it very much.

5 MR. HOLTZ: Your Honor, plaintiff's
6 counsel indicated that this is a simple case, and I
7 think that at the conclusion of this three-day
8 odyssey we can agree that this is anything but a
9 simple case. And the fact remains that now Your
10 Honor has repeatedly throughout the course of the
11 trial referred to the weight of the evidence versus
12 admissibility and now we get to talk about the
13 weight of that evidence.

14 The bulk of that evidence, the bulk of the
15 inferences and usefulness of that evidence that
16 plaintiff is relying on in this case all comes from
17 what was said on the witness stand and comes down
18 to the credibility and the knowledge of the witness
19 they brought. Now, Ms. Plasse testified admirably,
20 in that she testified completely truthfully.
21 Unfortunately for the plaintiff, her truthful
22 testimony was essentially that she has absolutely
23 no idea about anything that has to do with the
24 facts in this case.

25 Your Honor, you will recall that she

1 testified that she has absolutely no idea about
2 anything having to do, and I think it has been
3 evident through her testimony, anything having to
4 do with the business practices of Bank of New York
5 Mellon or Bank of New York or J. P. Morgan Chase
6 or, frankly, of Saxon or Ocwen. And I say that,
7 Your Honor, because on cross-examination it
8 couldn't have been any clearer. Ms. Plasse told
9 this Court that everything that she has testified
10 to is based on what has been told to her by her
11 trainers and the other people who work at Ocwen and
12 the documents they gave her.

13 All of these things are designed to
14 prepare her to be a professional witness who comes
15 in for the bank to testify on the bank's behalf at
16 a proceeding at which the bank hopes to prevail.
17 Her testimony can't be given any real weight or
18 credibility, given that obvious motivation and bias
19 for her testifying the way she did.

20 And let's evaluate, setting that aside for
21 a second, let's evaluate the actual quality of that
22 testimony, because literally anyone could go and
23 sit in that chair and have plaintiff's counsel show
24 them exhibits, put documents in front of their face
25 and read off those documents. That is not credible

1 evidence, Your Honor. That is the witness being
2 led through the magic words, questions, to
3 theoretically qualify those documents as business
4 records and then simply parroting whatever they say
5 to get them before this Court. The quality of that
6 evidence simply isn't there.

7 The next thing I want to talk about is
8 specifically with regard to the exhibits. First of
9 all, the burden is not on the defense to prove or
10 to disprove the authenticity of the original note
11 and mortgage. The issue is that the plaintiff has
12 to prove that they have, that what they are
13 submitting to the Court in evidence, is in fact an
14 original. They haven't done so. They have not
15 been able to do so, because this witness wasn't
16 qualified to do so, because she can't really
17 testify to much of anything.

18 All she could testify to was what she had
19 been told to tell Your Honor, what she had been
20 told to say, that Ocwen has policies and
21 procedures, except that she's never operated under
22 them, she's never had personal experience in
23 dealing with them, she's never supervised anyone
24 that had to do them, she never worked in any
25 department that had to deal with these policies and

1 procedures. She knows about them because she has
2 been told about them, but she couldn't give this
3 Court any specific application of any of those
4 policies and procedures or describe in any detail
5 how they operate at Ocwen and specifically how they
6 operate to ensure the trustworthiness and
7 reliability of the documents that are now before
8 Your Honor for consideration.

9 And, because she failed to do so, I think,
10 Your Honor, you can take everything that comes
11 before you as exhibits and evidence with a heavy
12 grain of salt to the point that it simply does not
13 meet the burden of proving this case by a
14 preponderance of the evidence.

15 And that just goes, mind you, from the
16 records that come from Ocwen, because, as far as
17 the other records, I know Your Honor already ruled
18 on their admissibility before, Your Honor, for
19 example, the payment records in their totality,
20 which include records from a prior servicer, a
21 prior servicer which this witness again told this
22 Court candidly she has absolutely no idea about how
23 their records were made or how they were maintained
24 before at Ocwen.

25 All she could tell you was from the point

1 that they can't, theoretically, she couldn't even
 2 really do that, tell you what happened to those
 3 records once they come to Ocwen, but for the years
 4 preceding that time she has absolutely nothing to
 5 say.

6 Now, Your Honor, in considering that point
 7 and considering the broader point of accepting
 8 records that are now in Ocwen's system but having
 9 come from prior sources, Your Honor took into
 10 account the totality of the circumstances,
 11 recognizing that this case is not going to be
 12 decided in a vacuum, to which I would say two
 13 things that I would ask this Court to keep in mind
 14 as you make your decision on the judgment in this
 15 case.

16 First, I would remind the Court that this
 17 case ought to be decided solely on the merits of
 18 this individual case and the merits that this
 19 individual, the quality of this individual
 20 witness's testimony and the evidence before Your
 21 Honor, and that Your Honor should not bring into
 22 account what might happen to the loan servicing
 23 industry or to other loan services if Your Honor
 24 were to find that this --

25 THE COURT: I am not going to base my

1 decision based upon external factors. It will be
2 based upon what the evidence is in this case and
3 what I've seen in this case.

4 MR. HOLTZ: I appreciate that, Your Honor.
5 The other thing I would say is this: That the
6 plaintiff had a remedy that could cure this
7 situation, a remedy to the situation, and I think
8 this has a bearing on, again, the weight that Your
9 Honor places on the evidence before you, both the
10 testimony and the documentary evidence that Your
11 Honor can consider in making this decision,
12 plaintiff had an easy solution available to them to
13 remedy this situation.

14 One can have a custodian of records
15 provide a business records certification by use of
16 written notice to the opposing party in order to
17 get those records certified as being kept in the
18 regular course of business and to satisfy the
19 business records exception.

20 A perfect example, when I was a prosecutor
21 at the state attorney's office, in any case
22 involving a 911 call you would never necessarily
23 have the ability to call the 911 operator who took
24 that call or the supervisor from the call center,
25 but when you get the CD of the 911 tape it comes

1 with the already signed and notarized affidavit
2 from the business records custodian of the police
3 department to certify that this is, in fact, an
4 accurate and true business record that is kept in
5 the normal course of business, that it was made at
6 or near the time by a person with knowledge, and
7 then it comes into evidence.

8 THE COURT: Of course, the other side can
9 object with a timely objection.

10 MR. HOLTZ: Absolutely, Your Honor. But
11 the point is that that is an avenue that can be
12 explored that plaintiff chose not to do, and I
13 think it's up to this Court to wonder why they
14 would not avail themselves of such a remedy to at
15 least attempt to qualify these records through
16 someone who actually has some knowledge as to these
17 indicia of reliability, as to the trustworthiness
18 of these records that are now before Your Honor,
19 that come about Your Honor through the testimony of
20 a witness who admittedly has absolutely no idea at
21 all about any of these things.

22 Your Honor, another perfect example would
23 be the default letter. Plaintiff's counsel argues
24 that there has been sufficient evidence to show
25 that it was sent. I don't know how we get there

1 when you have a witness who doesn't know who
2 generated the letter, can't speak to the creation
3 of the record that puts that letter in a computer
4 system or how that record was maintained. Her
5 evidence or her explanation for knowing that it was
6 sent was reading the date off of it and saying that
7 it had a return receipt, an unreturned, unsigned
8 return receipt that the witness admitted could be
9 generated by anybody, and a date printed on it.

10 I could write September 13th, 2013 on a
11 letter, hand it to the witness, and that could be
12 her evidence that it was sent, and I could have
13 never sent that letter. That is not evidence.
14 That is not proof, Your Honor. All that is is just
15 reading from the document that's before her. There
16 has been no evidence to this Court that shows that
17 the plaintiff met the burden of strict compliance,
18 which is the law in the State of Florida, with
19 regard to proving that they have complied with the
20 conditions precedent, in this case in paragraph 22
21 of the mortgage.

22 Your Honor has previously discussed
23 substantial compliance. That is not enough. They
24 have to strictly comply. They must meet the
25 contractual obligation of the conditions precedent

1 in paragraph 22 in order to prevail her today and
2 they have not put before Your Honor one shred of
3 competent evidence to demonstrate that they have
4 done so. All they have is someone who admittedly
5 doesn't know anything involving the facts of this
6 case saying that, based on the date printed on the
7 letter, and she has absolutely no idea where it
8 came from or how it was maintained, says that it
9 was sent. That is not a preponderance of the
10 evidence. That's a nothing of the evidence. And
11 that's, in microcosm, is the entirety of the
12 plaintiff's case.

13 What you have here is, another example
14 would be plaintiff counsel's argument that we have
15 failed to prove or to sufficiently raise our
16 affirmative defense of failure to join an
17 indispensable party. That would be based on this
18 witness's testimony partially that links up J. P.
19 Morgan Chase and, according to the documents, Bank
20 of New York, Incorporated, which there's no
21 evidence to show that Bank of New York,
22 Incorporated, has any relationship to Bank of New
23 York Mellon, so at that point, Your Honor, I think
24 at the very least we have demonstrated they failed
25 to join an indispensable party.

1 And again I would submit to you that to
2 base anything on this witness's testimony, to rely
3 on the evidence, specifically in Plaintiff's
4 Exhibit 4, which is an agreement involving three
5 entities, Novastar, Wachovia Bank and J. P. Morgan
6 Chase Bank, about which this witness testified
7 clearly that she has absolutely no idea from Adam
8 about any of them or how they operate or what
9 they've done or what they do or what they did, a
10 table of contents, a page that says Exhibit 1,
11 Initial Mortgage Loan Schedule that has absolutely
12 no markings on it other than that and a cut-off
13 thing at the top that says Mortgage Loan Purchase
14 Agreement, that's just a xerox copy of some
15 computer printout that has no way of authenticating
16 itself or no way of demonstrating it's actually
17 part of anything, and then a blank piece of paper
18 with what may be half of a name, part of an
19 address, a sequence of numbers, and the witness who
20 attempts to explain this document has absolutely no
21 relevance because she undermines her own
22 credibility by saying she has absolutely no idea
23 about anything having to do with this document
24 other than she knows that that somehow means that
25 the loan regarding this particular defendant on

1 this particular property address was placed in a
2 trust, a trust which she still can't link up
3 through any testimony and has never been linked up
4 to the plaintiff in this case, Bank of New York
5 Mellon, as successor trustee.

6 THE COURT: You have about one minute
7 left.

8 MR. HOLTZ: That's perfect because I was
9 about to say, in sum, what we have here today or
10 what we've had here for the past three days is a
11 witness who, unfortunately for the plaintiff, was
12 unable to actually give Your Honor any context or
13 any real meaning to any of these documents, and so
14 the weight has to be that of a feather. What Your
15 Honor has here is a case of inferences and
16 assumptions that plaintiff is asking you to make,
17 and they are asking you to make them on things that
18 do not exist in the evidence, and they can't exist
19 in the evidence, because the witness they brought
20 could never testify to them, she has absolutely no
21 idea about any of them, and at the end of the day
22 that's not meeting their burden, which is proving
23 this case by a preponderance of the evidence.

24 In failing to have done so, they have not
25 only not been able to prove that they should have

1 been able to bring this action in the first place,
 2 they have also not proven by any preponderance of
 3 the evidence, given the witness's own testimony
 4 that she doesn't even know where the figures from
 5 the prior servicer come from or even if they are
 6 made up, if Your Honor was to find a judgment in
 7 favor of the plaintiff, there is no way in the
 8 alternative that you could find for them to have
 9 any monetary amount, because they have not
 10 sufficiently established the amount that they would
 11 be owed on this judgment.

12 So, Your Honor, the only option really, in
 13 the interest of justice, is to find for the
 14 defendant. But I will leave you with this: If
 15 Your Honor is still inclined, with all of this, to
 16 somehow find for the plaintiff, then I beg you to
 17 find for the plaintiff with a judgment of zero
 18 dollars, because this witness simply was not
 19 competent to testify in any way to the actual
 20 amount that they are claiming.

21 Thank you.

22 THE COURT: Thank you.

23 So the time line was ten days I think we
 24 said?

25 MR. PRESTIA: Ten business days, Your

1 Honor, yes.

2 THE COURT: Ten business days. I won't
3 sit on it once I receive those. I will try to get
4 an order out. I have the proposed orders of the
5 plaintiff. One thing I would ask, when you send me
6 your submission, would you send me the proposed
7 final judgment in the event the Court does enter
8 something along those lines.

9 MR. ROSENTHAL: Your Honor already has
10 them.

11 THE COURT: I know. But send me a disk.

12 MR. ROSENTHAL: Sure. I can email it to
13 you.

14 THE COURT: That will be fine. And the
15 other side, the same thing.

16 MR. PRESTIA: Yes, Your Honor. One thing,
17 Your Honor, I would ask that on the second page all
18 of the figures relating to attorney's fees be
19 struck.

20 THE COURT: Yes, I think we agreed to
21 that.

22 MR. ROSENTHAL: I won't include that.

23 MR. PRESTIA: Okay. Thank you, Your
24 Honor.

25 MR. ROSENTHAL: Thank you, Judge.

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THE COURT: All right. With that,
everybody have a great weekend.

MR. PRESTIA: You too, Your Honor. Thank
you very much.

MR. ROSENTHAL: Thank you, Judge.

(Hearing concluded at 10:33 o'clock, a.m.)

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CERTIFICATE OF REPORTER

I, Roger Watford, FPR, RPR, certify that I was authorized to and did stenographically report the foregoing proceedings, and that this transcript, pages 1 through 55, is a true and complete record of my stenographic notes.

Dated this 14th day of September, 2013.

Roger Watford

Roger Watford, FPR/RPR
Court Reporter

