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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

Law Offices of David J. Stern, P.A.
900 S. Pine Island Road, Suite 400
Plantation, Florida 33324
BY: DONNA EVERTZ, ESQUIRE

ON BEHALF OF THE DEFENDANTS:

Ice Legal, P.A.
1975 Sansburys Way, Suite 115
West Palm Beach, Florida 33411
BY: THOMAS E. ICE, ESQUIRE

ON BEHALF OF THE WITNESS:

DAVID C. BAKALAR, ESQUIRE
450 N. Park Road, Suite 410
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1 A. Oh, four or five. Really not many. Four
2 or five.

3 Q. Is it always in connection with your
4 execution of documents for Stern clients?

5 A. No.

6 Q. Okay. How many cases have you given
7 depositions for your role in executing documents for
8 clients of David J. Stern, P.A?

9 A. This will be my first.

10 Q. Do you feel comfortable -- I mean you are
11 familiar with depositions? I mean, I don't need to go
12 through the formalities?

13 A. No, sir.

14 Q. No, you don't feel comfortable or --

15 A. No, you don't need to go through the
16 formalities.

17 Q. What is your job title here?

18 A. Operations Manager.

19 Q. How long have you had that job title?

20 A. Since I started.

21 Q. Fourteen years?

22 A. Yes, sir.

23 Q. I understand you joined David Stern when he
24 left Shapiro and Fishman?

25 A. Yes, sir.

1 Q. And that was 14 years ago?

2 MR. BAKALAR: Are you questioning it?

3 THE WITNESS: Yeah, 14, 15 years ago. '94.

4 BY MR. ICE:

5 Q. What are your job responsibilities as
6 Operations Manager?

7 A. It's really hard to qualify that. I do a
8 little bit of everything. I hire, fire, do some H.R., a
9 little document execution.

10 Q. Who do you report to?

11 A. David Stern.

12 Q. How many people report to you?

13 A. Directly to me, probably 60 managers report
14 directly to me.

15 Q. There's about 215 employees of David J.
16 Stern?

17 A. No, sir.

18 Q. How many?

19 A. Approximately 900.

20 Q. Hoovers has that wrong.

21 A. That was a few years ago.

22 Q. You mentioned part of your job is to
23 execute documents, correct?

24 A. Yes, sir.

25 Q. And part of that is executing assignments?

1 A. Yes, sir.

2 Q. In addition to assignments you sometimes
3 sign affidavits?

4 A. Yes, sir.

5 Q. How many documents do you sign, on average,
6 say a week?

7 A. To be honest with you, sir, I don't know.

8 Q. Do you have any way of estimating how many
9 documents you sign over a given time period?

10 A. No, sir.

11 MR. BAKALAR: Object to the form. Document
12 is vague and over.

13 THE WITNESS: Because I do sign a lot of
14 documents.

15 MR. BAKALAR: A letter is a document.

16 THE WITNESS: Right. I sign letters, I
17 signs checks, I sign -- I mean, I sign a lot.

18 BY MR. ICE:

19 Q. Fair enough. I'm interested right now in
20 documents that are filed in Stern cases such as
21 assignments, affidavits, things that you are signing on
22 behalf of David Stern clients.

23 Can you estimate --

24 MR. BAKALAR: Filed where, filed in a
25 recorder's office, in a court file? Could you be

1 more specific?

2 MR. ICE: Well, either one.

3 THE WITNESS: I don't have an estimate,
4 sir. I really don't.

5 BY MR. ICE:

6 Q. Do you sign these kinds of documents,
7 affidavits, assignments every day?

8 A. Yes, sir.

9 Q. How long do you spend each day executing
10 these kinds of documents?

11 A. Probably two hours.

12 Q. When you spend the two hours, can you
13 estimate how many of these assignments and affidavits and
14 documents you are executing you do in that two hours?

15 A. Again, I would just be giving a random
16 guess, sir. I don't know. There are four floors. There
17 are documents on every floor. It would be just a number.
18 I have no idea.

19 Q. Well, just so we can kind of get an idea.
20 I mean, we're not talking about four or five documents,
21 correct?

22 A. No, sir.

23 Q. Would you say that it's more than a
24 hundred?

25 A. If I had to guess, yes, sir.

1 Q. Okay. Is there a number where you would
2 say it's definitely not more than that?

3 A. It's definitely not more than a million. I
4 mean, I really -- I'm sorry. I really don't know.

5 Q. Okay. When you are executing these
6 documents during that two-hour period, that's every day,
7 two hours every day?

8 A. Yes, sir.

9 Q. More or less?

10 A. Yes, sir.

11 Q. It's not scheduled is what you're saying?

12 A. Right, right.

13 Q. But, on average, you would say about two
14 hours a day?

15 A. Yes, sir.

16 Q. And that's five days a week?

17 A. Yes, sir.

18 Q. Do you ever execute any on the weekend?

19 A. Yes, sir.

20 Q. How often do you execute documents on the
21 weekend?

22 A. Maybe once a month or two if we have a
23 project.

24 Q. Okay. And to do that you have to make sure
25 you have notaries --

1 A. Notaries, yes, sir.

2 MR. BAKALAR: Objection. Is that a
3 question? Are you making a statement or asking a
4 question?

5 MR. ICE: They are all questions.

6 THE WITNESS: Yes. If I were going to do
7 it on the weekends, there would be one of my
8 managers here who is a notary to notarize with me.

9 BY MR. ICE:

10 Q. How much time do you spend examining each
11 document before you sign them?

12 A. Very little.

13 Q. Do you read the document?

14 A. No.

15 Q. How often do you find an error in the
16 document that you are signing?

17 A. Are we talking about assignments? We are
18 limiting this to assignments, correct, because --

19 MR. BAKALAR: Objection to form. What do
20 you mean error? Are you asking for legal error or
21 a factual error? I'm not sure.

22 MR. ICE: Okay. Let me back up a little
23 bit.

24 BY MR. ICE:

25 Q. I am still talking about all kinds of

1 documents that you execute only because I need to know
2 how much time you would spend, on average, executing a
3 document.

4 A. Well --

5 MR. BAKALAR: You want to separate it for
6 assignments and mortgages and then --

7 THE WITNESS: Right, because we're
8 specifically talking about my understanding on
9 these is what I do as far as assignments for MERS,
10 and that's a different capacity than an affidavit
11 or something.

12 Now, the assignments are reviewed by an
13 attorney before they come to me. I do not review
14 them for errors. I simply sign them.

15 MR. ICE: Okay.

16 BY MR. ICE:

17 Q. So you would have a different procedure for
18 an affidavit?

19 A. Yes, sir.

20 Q. Because there's additional information in
21 there?

22 A. Yes, sir.

23 Q. I understand. So is it fair to say that if
24 it's an assignment you don't read it, correct?

25 A. I only make sure it's from MERS and that I

1 have signing authority for that client.

2 Q. And then you sign it?

3 A. Yes, sir.

4 Q. Have you ever found an error in one of the
5 assignments that you say I can't sign this, I have to
6 send this back?

7 A. Yes.

8 Q. Okay.

9 A. Uh-huh. Yes.

10 Q. What sort of things have you find?

11 A. I have had assignments be put on the stack
12 for me to sign that are not from MERS, that they need to
13 go to the client, you know, inadvertently prepared, but
14 we just cross them out and send them back and say I can't
15 sign this.

16 Q. Any kind of other things that you have seen
17 in the assignment that you have had to reject because it
18 wasn't something you could sign like that?

19 A. Off the top of my head, no.

20 Q. Have you ever rejected one because of a
21 date that was on the assignment?

22 A. The dates on the assignment are not filled
23 in. Only the effective dates.

24 Q. Okay. We'll get back to that later when we
25 have some actual examples we can look at.

1 How many notaries in your office currently
2 notarize your signature for assignments?

3 A. There are probably today 50.

4 Q. Do these notaries have other job
5 responsibilities in the firm or are they just here to
6 notarize?

7 A. No, sir, they have other responsibilities.

8 Q. Customarily, do they have a particular
9 title? Are they paralegals, secretaries?

10 A. They are paralegals.

11 Q. Are all of them paralegals or --

12 A. To the best of my knowledge, yes.

13 Q. Is there a particular department within
14 David J. Stern, P.A. that customarily provides the
15 notaries to notarize your signature?

16 MR. BAKALAR: Objection to form. What do
17 you mean?

18 THE WITNESS: You mean as far as --

19 MR. BAKALAR: That's a strange question.

20 MR. ICE: I'll back up a little bit.

21 BY MR. ICE:

22 Q. David J. Stern, P.A. has departments within
23 it?

24 A. Yes, sir.

25 Q. Like a litigation department?

1 A. Uh-huh.

2 Q. Was that a yes to the last question?

3 A. Yes.

4 Q. What other kinds of departments do you
5 have?

6 A. Foreclosure, bankruptcy. Is that what
7 you're asking?

8 Q. Do you call them departments or is that --

9 A. We do.

10 Q. So of the entities or groups that you call
11 departments, is it just those three?

12 A. We have a closing department. We have an
13 eviction department. We have a reinstatement department.
14 Customarily, those that notarize my signature are
15 foreclosure or bankruptcy.

16 Q. The notaries who customarily notarize your
17 signature, who do they report to?

18 A. Foreclosure paralegals generally report to
19 me. The bankruptcy paralegals report to a bankruptcy
20 supervisor.

21 Q. Who would that be right now?

22 A. Wendy Wasserman.

23 Q. Is it a job requirement for the paralegals
24 to become notaries?

25 A. No.

1 Q. How is it determined who will become a
2 notary?

3 A. Many of the paralegals that are hired are
4 already notaries when they are hired. Some become
5 notaries after they are hired.

6 Q. Does the firm encourage them to become
7 notaries?

8 A. No.

9 Q. Does the firm pay for the process for them
10 to become notaries?

11 A. Not at the present moment, no.

12 Q. Does that mean you are contemplating
13 changing that policy?

14 A. No. We used to when we were smaller. We
15 don't anymore.

16 Q. How about renewal fees for the notaries,
17 does the firm pay for that?

18 A. Some of the older paralegals they did, yes.

19 Q. No longer though?

20 A. No.

21 Q. If a notary here at the firm feels they are
22 being asked to notarize something that they shouldn't or
23 they are not doing it properly, is there someone that is
24 designated that they should go to to report that?

25 A. They should come to me.

1 Q. Is that a written policy here?

2 MR. BAKALAR: What is the policy you are
3 talking about? Is there a written policy about
4 people upset about notarizing documents, like a
5 specific notary policy?

6 MR. ICE: To come to her.

7 THE WITNESS: Well, first of all, like we
8 said, there's no requirement for anybody in here
9 to use their notary seal even if they have one.
10 Nobody is required as part of their employment
11 here to use their notary seal. Anyone who we have
12 requested to use their notary seal would do so at
13 their discretion. No one is forced to notarize
14 anything they don't want to notarize, and there
15 are a few people that have said I don't want to
16 use my seal for whatever reason. Okay.

17 BY MR. ICE:

18 Q. Are the ones who chose to use it, are they
19 paid extra because of that?

20 A. No, sir.

21 Q. You yourself are a notary, correct?

22 A. Yes, sir.

23 Q. Did you notarize any of the documents --

24 A. No, sir.

25 Q. -- here at the firm?

1 A. No, sir.

2 MR. BAKALAR: I just want to make sure of
3 the question. Could you repeat the entire
4 question because there was talking?

5 MS. EVERTZ: I think she cut you off.

6 BY MR. ICE:

7 Q. The intent of it was do you notarize any of
8 the documents here at the firm?

9 A. I do not currently notarize any of the
10 documents here, no.

11 Q. You also have the assignments witnessed by
12 members of the firm, correct?

13 A. Yes.

14 Q. How are those witnesses chosen?

15 A. Generally whoever is closest to me at the
16 moment.

17 MS. EVERTZ: That's true.

18 THE WITNESS: That's true. I mean, whoever
19 is sitting at their desk, please come with me.

20 BY MR. ICE:

21 Q. Just like the notaries, witnessing is not
22 part of their job responsibility?

23 A. No, sir.

24 Q. They can always say no?

25 A. Absolutely.

1 Q. When they come in on the weekend to
2 notarize and witness, are they paid extra for that?

3 A. Well, they would be paid over -- they would
4 be getting paid -- I wouldn't have somebody come in
5 specifically to notarize or witness. They would be here
6 for other reasons.

7 Q. I have noticed in the last few months that
8 the firm has stopped using witnesses on their
9 assignments. Are you familiar with that?

10 A. Yes, sir.

11 Q. What was the reason for that policy change?

12 MR. BAKALAR: Object to the form. Are you
13 asking for a legal conclusion?

14 MR. ICE: Is she aware for any reason.

15 THE WITNESS: I don't know.

16 BY MR. ICE:

17 Q. Do you know who made that decision?

18 A. No, actually I don't. One of our
19 attorneys. I don't know.

20 Q. How did you become aware of it?

21 A. I was told.

22 Q. So you were told before you actually
23 started to sign a notice that there was no --

24 A. Yes, the form has been changed.

25 MS. EVERTZ: Off the record.

1 (Thereupon, there was a discussion off the
2 record, after which the following proceedings were
3 had:)

4 BY MR. ICE:

5 Q. Specifically with respect to assignments
6 now, is that also something that you do every day of the
7 week?

8 A. Yes, sir.

9 MR. BAKALAR: Objection. Clarify week.
10 You mean the business week?

11 MR. ICE: The business week is what I
12 meant. That's a good catch. Thank you.

13 THE WITNESS: Yes.

14 BY MR. ICE:

15 Q. Can you describe for me the process in
16 which you execute these documents?

17 MR. BAKALAR: Which documents? Objection.

18 THE WITNESS: He's talking about
19 assignments, yeah. The assignments are placed in
20 a specific designated area within the floors that
21 I handle and periodically, throughout the day,
22 when I have time, I grab a notary and I go to that
23 specific area and I sign and notarize. Then they
24 are picked up and delivered back out to the proper
25 personnel.

1 BY MR. ICE:

2 Q. Is this area that you are describing is
3 this a room?

4 A. On the fifth floor it's a room. On this
5 floor it's a table.

6 Q. Are those the only two floors that you have
7 documents for?

8 A. Currently, yes.

9 Q. How many floors does the firm have here?

10 A. There are three floors -- four floors in
11 this building and then one floor in the other building.

12 Q. So when you go into the room or up to the
13 table, there is a stack of documents waiting there for
14 you?

15 A. Yes.

16 Q. And you sit down, the notary sits down next
17 to you?

18 A. Uh-huh.

19 Q. Is that a yes?

20 A. Yes. Sorry.

21 Q. You sign, hand it over to the notary?

22 A. Yes.

23 Q. The notary notarizes it?

24 A. Yes.

25 Q. For the ones back when you had witnesses,

1 is the witness in the room there with you?

2 A. They were, yes.

3 Q. Did they sign before the notary signs or
4 after?

5 A. Before.

6 Q. Would it be customary that when you went
7 from floor to floor that on that different floor you
8 would have a different notary and a different witness?

9 A. Different witness. Generally same notary.

10 Q. Would it be unusual to have more than one
11 notary notarizing your signature on the same day?

12 A. No, not at all.

13 Q. Would it be unusual to have up to seven
14 notaries notarizing your signature on the same day?

15 A. On the same day? I don't know. I don't
16 know. I would guess. Sometimes I do sign four or five
17 times a day if there were a lot. There may have been two
18 or three notaries that came to the table. I don't know.
19 I never counted.

20 Q. I guess I should have asked there are some
21 occasions where you come into the room or up to the table
22 and you have more than one notary with you?

23 A. That has happened, yes.

24 Q. When you execute the assignment, do you
25 verbally acknowledge what you are executing?

1 A. Verbally acknowledge? No, sir.

2 Q. What do you do, pick up your pen and sign?

3 A. Yes, sir.

4 Q. When you are executing an affidavit as
5 opposed to an assignment, do you verbally swear to the
6 contents of the affidavit to the notary?

7 MR. BAKALAR: Objection. What type of
8 affidavit? What are you talking about?

9 MR. ICE: Any type of affidavit.

10 MR. BAKALAR: Objection to form. You mean
11 swear?

12 MR. ICE: Yes.

13 MR. BAKALAR: Go ahead.

14 THE WITNESS: No. I don't verbally swear
15 when I'm signing assignments, no.

16 BY MR. ICE:

17 Q. As a notary yourself you are familiar with
18 that requirement, correct?

19 A. No.

20 Q. Okay. Are you an officer of Mortgage
21 Electronic Registration Systems, Inc?

22 A. Yes.

23 Q. What kind of an officer of MERS are you?

24 A. Assistant secretary.

25 Q. When you say that you are the Assistant

1 secretary, what you mean is you have signing authority?

2 MR. BAKALAR: Objection to the form of the
3 question. Are you asking her or telling her?

4 MR. ICE: I'm going to tell her a statement
5 and she's going to agree with it or disagree with
6 it.

7 THE WITNESS: Say that again, sir.

8 MR. ICE: I haven't finished.

9 BY MR. ICE:

10 Q. When you say that you are an officer of
11 MERS, an assistant secretary, what you mean is you have
12 signing authority to sign as an assistant secretary of
13 MERS, correct?

14 A. Correct.

15 Q. You are not saying that you are an
16 assistant secretary in any other sense as that word, that
17 title is normally understood, correct?

18 A. No, sir.

19 Q. You agree with that statement?

20 A. Yes, sir.

21 Q. For example, you are not paid by MERS,
22 correct?

23 A. No, sir.

24 Q. When you say no, sir, you are agreeing with
25 me that you are not paid by MERS?

1 A. Correct, I'm not paid by MERS.

2 Q. You have no job duties as an Assistant --

3 MR. BAKALAR: I'm objecting to the form of
4 the question. You are not even asking her
5 questions. You are attacking her with statements.
6 You know, this is your witness, so if you have a
7 question, state it as a question.

8 MR. ICE: Maybe I should have made that
9 very clear. This is not my witness. She is a
10 hostile witness.

11 THE WITNESS: I'm not hostile.

12 MR. ICE: That's a legal term. For the
13 record, you are absolutely not hostile.

14 MR. BAKALAR: Ask a question as opposed to
15 -- there's a correct way to do it.

16 MR. ICE: Well, this is a cross examination
17 and that's what I'm doing.

18 MR. BAKALAR: It's not a cross examination.

19 MR. ICE: Well, I'll give you a standing
20 objection for that. That --

21 MR. BAKALAR: It's not a cross examination.
22 You are the initial attorney asking questions.

23 MR. ICE: Okay. Well, I'll give you a
24 standing objection on that so you don't have to
25 keep interrupting.

1 MR. BAKALAR: Okay.

2 BY MR. ICE:

3 Q. The question was you have no job duties as
4 an assistant secretary of MERS, correct?

5 A. I do not have any job duties other than
6 signing the assignments and mortgage. Does that help?

7 Q. Yes. Here, I'll try to rephrase this. Do
8 you attend any board meetings at MERS?

9 A. No, sir.

10 Q. Do you attend any meetings at all at MERS?

11 A. No, sir.

12 Q. Do you report to the secretary of MERS?

13 A. No, sir.

14 Q. Who is the secretary of MERS?

15 A. I have no idea.

16 Q. Are you involved in any governance of MERS?

17 A. No, sir.

18 Q. The authority that you are going to be
19 showing me in a little bit as we get into this deposition
20 says that you can also sign as a vice president of MERS,
21 correct?

22 A. Yes, it does.

23 Q. And in that capacity, you don't report to
24 the president of MERS, correct?

25 A. No, sir.

1 Q. Do you have any MERS employees who report
2 to you?

3 A. No, sir.

4 Q. Do you have any vote or say in any
5 corporate decisions of MERS?

6 A. No.

7 Q. Where are the MERS offices located?

8 A. I can't remember.

9 Q. How many offices do they have?

10 A. I have no idea.

11 Q. Do you know where their headquarters are?

12 A. Nope.

13 Q. Have you ever even been there?

14 A. No.

15 Q. How many employees do they have?

16 A. I have no idea.

17 Q. You have counterparts, do you not, other
18 assistant secretaries, all over the country signing as
19 MERS vice presidents and assistant secretaries?

20 A. I actually don't know. I don't know what
21 they do outside of my authority.

22 Q. You have never seen another assignment
23 signed by anyone else?

24 A. All over the country? I don't do anything
25 other than Florida so I wouldn't know.

1 Q. Well, in Florida, have you seen someone
2 else signing as an assistant secretary of MERS?

3 A. Probably.

4 Q. You, at least, have the vague idea that
5 there are others out there who are doing the same thing
6 you are doing, correct?

7 A. Sure.

8 Q. Are you aware whether or not these other
9 folks who are doing the same thing are also employees of
10 law firms doing foreclosures?

11 A. I have no idea.

12 Q. Do you know whether any of them are
13 employees of third-party foreclosure services like
14 LPS?

15 A. I have no idea.

16 Q. You know what LPS is, right?

17 A. No.

18 Q. Have you ever heard of Lender Processing
19 Services, Inc?

20 A. Heard of it.

21 Q. Does this law firm, David J. Stern, P.A.
22 do any work with LPS?

23 A. They are not a client that I am familiar
24 with off the top of my head.

25 Q. They were formerly know as FIS?

1 A. Fidelity?

2 Q. Yes.

3 A. Okay, then yes. Sorry.

4 Q. When you say yes, you mean the Stern firm
5 is doing work with them?

6 A. Yes, we are.

7 Q. Why does MERS appoint you as a vice
8 president or assistant secretary as opposed to some other
9 thing like a manager or an authorized agent?

10 A. I don't know.

11 Q. Why would MERS give you a title at all? In
12 other words, why not just give you the authority to sign
13 a mortgage from MERS?

14 MR. BAKALAR: Objection. Are you asking
15 her to speculate?

16 MR. ICE: Just if she knows.

17 THE WITNESS: I don't know.

18 BY MR. ICE:

19 Q. Are you an officer of any other
20 corporation?

21 A. I'm thinking. I don't remember. I don't
22 remember if I am. I don't think I am.

23 Q. Are you an officer of ABN Amro Mortgage
24 Group, Inc?

25 A. No.

1 Q. I'm going to show you a document.

2 MR. ICE: I'm going to let counsel look at
3 it first. I'm not going to mark it as an exhibit.
4 You can if you want. I don't need it. I just
5 want to see if that refreshes her recollection.

6 BY MR. ICE:

7 Q. Have you had an opportunity to review the
8 document?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes.

12 Q. Is that your signature on that
13 document?

14 A. It is.

15 Q. Where you sign says that you are an
16 assistant secretary of ABN Amro, correct?

17 A. Yes, it does.

18 Q. Down in the jurat I think it calls you a
19 vice president of Amro, correct?

20 A. Yes, it does.

21 Q. Are you either of those things?

22 A. No, I'm not.

23 Q. Do you have any explanation for that
24 document?

25 A. Well, this document is obviously incorrect

1 in that you wouldn't need an assignment from ABN to City
2 Mortgage anyway because it was a merger.

3 MR. ICE: Because I'm not going to attach
4 it as an exhibit, I'll just say that it's at O.R.
5 Book 22851, page 1592, Palm Beach County official
6 record.

7 BY MR. ICE:

8 Q. Do you have signing authority for any other
9 corporation?

10 A. Yes.

11 Q. What other corporation do you have signing
12 authority for?

13 A. There's a list. Off the top of my head, I
14 couldn't tell you all of them, but there are several
15 banks that we represent.

16 Q. Do they give you a title the way MERS does
17 that you can sign as an officer of that bank?

18 A. Just signing authority.

19 Q. When you sign, what does it say there by
20 your name as your authority to sign?

21 A. Affiant for affidavits.

22 Q. Does it say attorney in fact or anything
23 like that?

24 A. Yes.

25 MR. BAKALAR: Which documents are you

1 talking about?

2 THE WITNESS: Yes, the affidavits say
3 attorney in fact.

4 MR. ICE: I'm talking about the ones she's
5 talking about.

6 THE WITNESS: Yes. COA.

7 BY MR. ICE:

8 Q. Do you have any involvement in the process
9 of creating the assignment of mortgage before it gets to
10 the table where you walk in and sign it?

11 A. No, sir.

12 Q. So you wouldn't be able to comment on how
13 information gets into the assignment, like who is the
14 assignee or assignor?

15 A. Well, the title department writes up a
16 summary of what assignment is needed based on their
17 search of the public records and the documents that we
18 have. Then the title summary is passed on to the person
19 who prepares the assignment and it's reviewed by an
20 attorney and then it's passed over for me to sign.

21 Q. Let me try to clarify by putting real names
22 to what I think you just said.

23 A. Okay.

24 Q. When your title department does a title
25 search and they see that MERS is the mortgagee in the

1 public records, a determination is then made we need an
2 assignment to get it from MERS to our client, correct?

3 A. Right.

4 Q. Do you know who makes that determination?

5 A. The title department.

6 Q. Okay. And that information is then passed
7 on to an attorney, correct?

8 A. Uh-huh.

9 Q. Is that a yes?

10 A. Yes. Sorry.

11 Q. The attorney is in which department?

12 A. It's various departments.

13 Q. It wouldn't be the foreclosure department?

14 A. Well, it could be foreclosure. It could be
15 litigation.

16 Q. That brings up a good point. When does
17 this process take place? In other words, the file comes
18 in to your office from the bank?

19 A. Yes, sir.

20 Q. Typically it's the servicer?

21 A. Yes, sir.

22 Q. And they say we want to foreclose on this
23 property, correct?

24 A. Yes, sir.

25 Q. Is this process that we have been talking

1 about where it goes through title search, is that done
2 immediately?

3 A. Yes, sir.

4 Q. Okay. So at that point, no one would know
5 whether it's going to be contested or not, correct?

6 A. Well, some files do come in and go straight
7 into litigation based on what's in the title work. Could
8 be fraud or whatever they find. So, yes, some files do
9 go directly from title straight to litigation.

10 Q. Then the attorney creates the assignment,
11 correct?

12 A. No, sir, a processor creates the assignment
13 and it's given to the attorney to review.

14 Q. What is a processor?

15 A. Either a paralegal from the litigation
16 department or a processor from our first legal department
17 or a secretary of whatever attorney has the file. It
18 could be any number of people. When the file is passed
19 to them, they look at the title sheet. They prepare the
20 assignment. It goes to the attorney to review.

21 Q. The assignment, is it created from a form?

22 A. Yes, sir.

23 Q. Where there are blanks for the information?

24 A. Yes, sir.

25 Q. The entries in the form, how are they

1 populated? By that I mean is it automatically through
2 some sort of merging process or does the processor have
3 to sit there and type in the information?

4 A. Both.

5 Q. What would determine whether it's one way
6 or the other way?

7 A. Well, there are certain pieces of
8 information that are encoded into our system. For
9 example, the legal description, that would merge in.
10 They wouldn't retype the legal description. However,
11 assignee would have to be typed in.

12 Q. And the assignor?

13 A. Yes.

14 Q. How about the date that the document is
15 being executed?

16 A. That is handwritten in later or it's
17 supposed to be handwritten in later.

18 Q. By the notary?

19 A. Yes.

20 Q. When you sign the document is the date
21 already filled in?

22 A. No.

23 Q. The data that you are talking about that
24 does merge automatically, where does that come from?

25 A. It comes from our data base which is

1 populated from the referral. Some of it is automated,
2 some of it is typed in and reviewed by an attorney.

3 Q. I will try to translate that for people
4 like me. What you are saying is some of the information
5 in your data base actually comes from your client, the
6 servicer?

7 A. Yes.

8 Q. And is that also an electronic transfer
9 process?

10 A. Yes.

11 Q. Okay. So, can you pull up a screen and
12 look at this data in the same way that your client can
13 pull up a screen and look at that data?

14 A. Yes.

15 Q. Does anyone at David J. Stern, P.A. check
16 the accuracy of that data that's coming from the
17 servicer?

18 A. Yes.

19 Q. Who does that?

20 A. The attorneys.

21 Q. What do they do to check the accuracy?

22 A. They review the file. They review the
23 information that's given. I mean, they match it to the
24 title work, you know, or whatever information that we
25 have.

1 Q. Well, for our purposes, when we are talking
2 about the assignment, the legal description would be
3 primarily what they need to check to make sure that's
4 correct?

5 MR. BAKALAR: I'm going to object. That's
6 a legal conclusion. I mean, if you are asking the
7 jobs of the attorney and that's the most important
8 part of the attorney's role in reviewing a file is
9 beyond the scope of what Cheryl is here for.

10 BY MR. ICE:

11 Q. You can answer if you know the answer.

12 MR. BAKALAR: Hello. She doesn't know.
13 Are you asking her for the legal --

14 MR. ICE: I know you are not telling her
15 that she doesn't know.

16 THE WITNESS: Everything that's in the file
17 is reviewed by an attorney. Whatever pieces of
18 information we use are reviewed by an attorney.

19 BY MR. ICE:

20 Q. Okay. I guess all I was trying to do was
21 to narrow down that really it looks to me, and correct me
22 if I'm wrong, that the only thing that would really come
23 from the servicer and be merged into this file from their
24 data would be the legal description, correct?

25 A. No. The mortgage date, the default date,

1 which might not be on an assignment, but you are talking
2 about any document prep that we use, any information from
3 the client. There's a lot of information that comes from
4 the client. The borrower name, you know, that comes from
5 the client and then it's checked against the title
6 search.

7 Q. Okay. So beyond the legal description, the
8 name of the borrower --

9 A. The property address.

10 Q. Right.

11 A. I mean, which may not be on the assignment,
12 but --

13 Q. Right. And I do want to try to focus on
14 the assignment just so we can move this along.

15 A. Okay.

16 Q. What I'm looking at here as possibly being
17 data coming from the servicer, it would be the legal
18 description?

19 A. Okay.

20 Q. The borrower's name?

21 A. Correct. The assignee's name.

22 Q. The assignee's name, which would be an
23 instruction from your client, correct?

24 A. Correct.

25 Q. Anything else that you can think of that

1 would come from the servicer?

2 A. No.

3 MR. ICE: I'll have this marked as
4 Exhibit A.

5 (Thereupon, the document referred to was
6 marked as Defendants' Exhibit A for
7 Identification, after which the following
8 proceedings were had:)

9 BY MR. ICE:

10 Q. You have been handed a document that has
11 been marked as Exhibit A to your deposition. Do you
12 recognize that document?

13 A. Yes, sure. It's an assignment.

14 Q. Is that your signature on the assignment?

15 A. It is my signature.

16 Q. In this assignment, you are signing as the
17 assistant secretary of Mortgage Electronic Registration
18 Systems, Inc., correct?

19 A. Correct.

20 Q. Is this assignment the assignment for
21 the mortgage executed by [REDACTED]

22 [REDACTED]

23 A. Yes.

24 Q. Do you have any reason to believe this is
25 not the assignment for the case that we're here to talk

1 about today?

2 A. No, sir.

3 MR. BAKALAR: I'm sorry?

4 MR. ICE: I asked did she have any reason
5 to believe it's not.

6 MR. BAKALAR: Okay.

7 BY MR. ICE:

8 Q. Do you recognize the signatures of the
9 witnesses?

10 A. Yes.

11 Q. One of them is a Shakira --

12 A. Beersingh, B-E-E-R-S-I-N-G-H.

13 Q. What department does she work in?

14 A. Foreclosure.

15 Q. And it's also witnessed by Marie Salmon,
16 S-A-L-M-O-N?

17 A. Yes.

18 Q. And she also notarized this document,
19 correct?

20 A. Yes.

21 Q. What department does she work in?

22 A. Foreclosure.

23 Q. Do they report to you?

24 A. Yes.

25 Q. Up above where the witnesses sign, it says

1 it was signed in the presence of those witnesses. Did
2 you sign this in their presence?

3 A. Yes.

4 Q. In the jurat, you acknowledge you are the
5 assistant secretary for and on behalf of MERS, correct?

6 A. Yes.

7 Q. How did you acknowledge that to her?

8 A. They know that I have the MERS power of
9 attorney. It's available for all the employees to view.

10 Q. So just to be clear, you didn't verbally
11 say I am the assistant secretary etc., etc., correct?

12 A. No, sir.

13 Q. The affidavit says that it was prepared by
14 David J. Stern, Esquire, himself, correct?

15 MR. BAKALAR: Objection. Are you talking
16 about --

17 MR. ICE: That's the assignment. Thank
18 you.

19 MR. BAKALAR: By the way, this says Exhibit

20 B.

21 THE WITNESS: That's our Exhibit B.

22 MR. ICE: Let me start over.

23 BY MR. ICE:

24 Q. Exhibit A, which is the assignment,
25 indicates at the top it was prepared by David J. Stern,

1 Esquire, himself, correct?

2 A. Should be a P.A. there instead of an
3 Esquire.

4 Q. Right, because Mr. Stern doesn't actually
5 physically prepare any assignments?

6 A. No.

7 Q. Does the firm, David J. Stern, P.A., get
8 paid separately for preparing the assignment, and by
9 separately, I mean separate from whatever fees they
10 charge for their legal services?

11 A. No, we don't charge for preparing these
12 MERS assignments.

13 Q. I noticed in some cases the client or the
14 servicer or sometimes the FIS does the assignments
15 instead of David Stern, even though it's your case,
16 correct?

17 A. Yes.

18 Q. In those instances, do you get paid less
19 than the instances where you have to do the assignments?

20 A. No.

21 Q. Same question as to affidavits. Does the
22 firm get paid separately from what it gets paid for its
23 legal services to prepare and execute affidavits?

24 A. No, sir.

25 Q. When did you execute Exhibit A?

1 A. October 20th, 2008.

2 Q. You are reading the date off of the
3 assignment, correct?

4 A. Yes, sir.

5 Q. You don't have any independent
6 recollection?

7 A. No, sir.

8 Q. Is the date that appears on the document a
9 reliable indicator of when it was executed?

10 A. Yes, sir.

11 Q. Who put the date October 20th, 2008 on that
12 assignment?

13 A. It should have been Marie Salmon.

14 Q. When you say should have been, it's because
15 she's the notary?

16 A. Yes.

17 Q. Does she also fill the date up above where
18 you sign?

19 A. Yes.

20 Q. Is that done before you sign it?

21 A. No, sir.

22 Q. Following the date of October 20th, 2008,
23 there is another date where it says, "But effective as of
24 the 4th day of September, 2008?"

25 A. Uh-huh.

1 Q. Is that a yes?

2 A. I'm sorry. Yes, sir.

3 Q. Who puts that date in there?

4 A. That is typed in by the processor.

5 Q. Who tells the processor or how does the
6 processor decide what date to put in there?

7 A. We train them to put in that date.

8 Q. In your training, what do you tell them to
9 do?

10 A. To put in the date that the file was
11 referred to us for foreclosure.

12 Q. Is that policy written anywhere?

13 A. No, sir, I don't think so.

14 Q. Do you know how the decision was made that
15 the date that should go in there is the date that the
16 case was referred to the law firm?

17 A. No, sir.

18 Q. You don't know who made that decision?

19 A. No, sir.

20 Q. How did you become aware that that was what
21 the policy is?

22 A. That's the way I was trained, sir.

23 Q. Who, when you were being trained, told you
24 that?

25 A. I don't remember.

1 Q. To your knowledge as the corporate officer
2 executing this document, did any physical transfer of the
3 mortgage take place on the 4th of September, 2008?

4 A. That would be information I wouldn't have,
5 sir.

6 Q. Okay. And, in fact, this assignment is not
7 an affidavit?

8 A. Correct.

9 Q. You don't actually swear to anything that's
10 in this assignment, correct?

11 A. Correct.

12 Q. All you're doing is acknowledging that you
13 are executing this as an officer of MERS?

14 A. Correct.

15 Q. You have no personal knowledge that
16 anything happened with respect to the transfer of this
17 mortgage on September 4th, 2008?

18 A. No, sir.

19 Q. No, sir meaning you don't have any personal
20 knowledge?

21 A. No, sir, I don't have any personal
22 knowledge.

23 Q. Do you know when this case was filed?

24 A. No, sir, I don't.

25 Q. Is it true that the date of September 4,

1 2008 was chosen in order to retroactively create a cause
2 of action for your firm's client?

3 MR. BAKALAR: Objection. You're asking for
4 a legal conclusion.

5 THE WITNESS: I can't answer that question,
6 sir.

7 Would it be okay if we take a bathroom
8 break?

9 MR. ICE: Absolutely.

10 (Thereupon, a recess was taken, after which
11 the following proceedings were had:)

12 BY MR. ICE:

13 Q. Going back to Exhibit A, do you still have
14 that in front of you there?

15 A. Sure.

16 Q. It states that MERS resides at or care of
17 Wells Fargo Bank, Ft. Mill, South Carolina, correct?

18 A. Yes.

19 Q. We've already established you don't know if
20 MERS has its own headquarters somewhere, correct?

21 A. Correct.

22 Q. It also says that Deutsche Bank National
23 Trust Company, etc., etc., and the whole name of the
24 Plaintiff there in the trust also resides at or is
25 located at America's Servicing Company, correct?

1 A. Uh-huh.

2 Q. Is that a yes?

3 A. Yes.

4 Q. Which is also at 3476 Stateview Boulevard
5 in Ft. Mill, South Carolina, correct?

6 A. Correct.

7 Q. What is the relationship between Wells
8 Fargo Bank and America's Servicing Company?

9 A. I don't know.

10 Q. Nevertheless, this document appears to have
11 them being located at the exact same address, correct?

12 A. Yes.

13 Q. And Deutsche Bank obviously has a physical
14 location apart from Wells Fargo, correct?

15 A. I don't know.

16 MR. BAKALAR: Objection.

17 THE WITNESS: I don't know.

18 BY MR. ICE:

19 Q. Do you know where Wells Fargo Home Mortgage
20 is located?

21 A. In Ft. Mill, South Carolina.

22 Q. At that address?

23 A. Yes.

24 Q. What is the relationship between Wells
25 Fargo Home Mortgage and Wells Fargo Bank, NA?

1 A. I don't know the exact relationship.

2 Q. And do you know the relationship between
3 either of those two and America's Servicing Company?

4 A. No, sir.

5 Q. Is MERS a client of your firm?

6 A. No.

7 Q. Is Wells Fargo Bank, NA a client of your
8 firm?

9 A. Yes.

10 Q. Is there a written agreement between Wells
11 Fargo Bank, NA and David J. Stern, P.A. for legal
12 services?

13 A. Yes.

14 Q. Is America's Servicing Company a client of
15 the firm?

16 A. Directly, no.

17 Q. What do you mean by directly, no?

18 A. I'm not sure of the direct relationship
19 between America's Servicing and Wells Fargo. There is a
20 relationship. I don't know what it is.

21 Q. Are there cases in which America's
22 Servicing Company appears as the plaintiff in which David
23 J. Stern appears as the attorney representing that
24 plaintiff?

25 A. I don't know.

1 Q. Is Wells Fargo Home Mortgage a client of
2 David J. Stern, P.A?

3 A. Yes.

4 Q. Just to be clear, before I had asked about
5 Wells Fargo Bank, NA?

6 A. Uh-huh.

7 Q. Is that a yes?

8 A. Yes.

9 Q. Is there a written agreement between Wells
10 Fargo Home Mortgage and David J. Stern, P.A. for legal
11 services?

12 A. Off the top of my head, I do not know.

13 Q. Is Deutsche Bank National Trust Company a
14 client of David J. Stern, P.A?

15 A. No.

16 Q. Exhibit A also says that MERS is assigning
17 the note, correct?

18 A. Yes.

19 Q. Did MERS ever have any ownership of the
20 note in order to assign it?

21 A. Yes.

22 Q. When did it acquire ownership of the note?

23 A. I do not know.

24 Q. Why is it that you believe MERS had
25 ownership of the note?

1 A. The title work would reflect that.

2 Q. Again, in your capacity as a MERS officer,
3 isn't it true that MERS never owns notes?

4 A. I do not know the answer to that
5 question.

6 MR. ICE: Mark this as Exhibit B, please.

7 (Thereupon, the document referred to was
8 marked as Defendants' Exhibit B for
9 Identification, after which the following
10 proceedings were had:)

11 BY MR. ICE:

12 Q. Have you had an opportunity to look at
13 what's been marked as Exhibit B to your deposition?

14 A. Yes, sir.

15 Q. Do you recognize that document? I will
16 stipulate that it's only the first three pages of the
17 document because it's quite larger than --

18 A. Do I recognize what it is or this specific
19 document?

20 Q. Let's start generally with what it is.

21 A. Generally, yes, I know what this is.

22 Q. What is it?

23 A. It's a mortgage.

24 Q. And, specifically, does it appear to be the
25 mortgage relating to the case that we're here to talk

1 about today?

2 A. Yes, it does.

3 Q. Again, just so everyone is on the same page
4 literally, I have only attached the first three pages.

5 A. Okay.

6 Q. I want to draw your attention to a couple
7 of things on here. Would you agree that the mortgage
8 here states that the Lender is WMC Mortgage Corp?

9 A. Yes.

10 Q. And that the document says that MERS is the
11 mortgagee under this security instrument?

12 A. Yes.

13 Q. Are you familiar with where it says that
14 MERS is acting as a nominee for the Lender?

15 A. I see that, yes.

16 Q. Can you show me where that is?

17 A. Over here. See?

18 Q. Thank you. Do you know what that means to
19 be a nominee?

20 A. No, sir.

21 Q. Or, more specifically, do you know what
22 MERS means when it uses that word?

23 A. Mortgage Electronic Registration Systems?

24 Q. No, what MERS means when they use the term
25 nominee?

1 A. Oh, okay. No, sir.

2 Q. I want to draw your attention to the third
3 page towards the top. The paragraph that starts.
4 "Together with." And about the third sentence, the one
5 that starts with, "All of the foregoing."

6 A. Okay.

7 Q. Do you see that it says, "MERS holds only
8 legal title to interests granted by Borrower in this
9 Security Instrument?"

10 A. Yes.

11 Q. And then it goes on, "But, if necessary to
12 comply with law or custom, MERS," and here's that word
13 again, "(as nominee for Lender and Lender's successors
14 and assigns) has the right: to exercise any of and all of
15 those interests," and then it goes on, "including, but
16 not limited to, the right to foreclose and sell the
17 property."

18 A. Okay.

19 Q. Do you have any reason to dispute that the
20 borrower, you know, because it says right there the
21 borrower understands and agrees to all of that, that
22 that's what the borrower agreed to?

23 MR. BAKALAR: Objection. You're asking her
24 to go inside the mind of the borrower?

25 MR. ICE: No. I'm asking if she has any

1 reason to dispute that as she's sitting here
2 today.

3 THE WITNESS: I don't.

4 BY MR. ICE:

5 Q. When you executed the assignment, which is
6 Exhibit A, was MERS acting on its own behalf or on behalf
7 of some other entity?

8 A. I don't think I understand the question.

9 Q. Well, we talked a couple of places where
10 MERS is the nominee for the Lender and its assigns,
11 correct?

12 A. Okay.

13 Q. When you executed it, were you executing it
14 solely on behalf of MERS; in other words, MERS acting on
15 its own behalf or was MERS acting as the nominee for some
16 other entity?

17 A. I don't think I can answer the question.

18 Q. Is the reason that you can't answer the
19 question because you don't know?

20 A. Okay. Because I don't know. We'll go with
21 that.

22 Q. Well, I don't want to bully you into an
23 answer that you are not comfortable with. Is there
24 another reason why you say you can't answer it?

25 A. No.

1 Q. Okay. When you signed the assignment, when
2 you executed the assignment as a MERS officer, was MERS
3 acting as a nominee of WMC Mortgage Company?

4 MR. BAKALAR: You asked the same
5 question --

6 THE WITNESS: Yeah, I think that's the same
7 question, isn't it?

8 BY MR. ICE:

9 Q. Well, it's more specific now.

10 A. Okay. I still can't answer the question.

11 Q. Because you don't know?

12 A. Because I don't know.

13 Q. Was it acting as a nominee of Deutsche Bank
14 National Trust Company?

15 A. I can't answer that question. I don't
16 know.

17 MR. ICE: Mark this as Exhibit C, please.

18 (Thereupon, the document referred to was
19 marked as Defendants' Exhibit C for
20 Identification, after which the following
21 proceedings were had:)

22 BY MR. ICE:

23 Q. You have now been handed a document marked
24 as Exhibit C to your deposition. Do you recognize that
25 document?

1 A. No, sir.

2 Q. Have you ever seen anything like it before?

3 A. I have, yes.

4 Q. Can you tell us what it is?

5 A. Looks like a printout from the MERS web
6 site.

7 Q. I will represent to you that that document
8 is something we received directly from MERS as a result
9 of our discovery request to them.

10 A. Okay.

11 Q. Can you read the information that is on
12 there?

13 A. Yes.

14 Q. Do you know what MIN stands for?

15 A. It's the number that MERS assigns to their
16 documents, their mortgages.

17 Q. Does it stand for MERS Identification
18 Number?

19 A. Yes, sir.

20 Q. What is a MIN Summary?

21 A. I don't know, sir.

22 Q. What is the document entitled Milestones?

23 A. It appears to be information relating to
24 this mortgage.

25 Q. Why do you say it appears to be relating to

1 this mortgage?

2 A. Because this is the first time I have seen
3 it. I'm just looking at it now. That's what it appears
4 to be.

5 Q. Well, let me draw your attention to the
6 first page. It does have [REDACTED] name on it
7 and the MIN number matches that of Exhibit B, which is
8 the mortgage, correct?

9 A. Yes.

10 Q. Does anyone at the law firm of David J.
11 Stern, P.A. have access to this information directly, in
12 other words, can they pull that up on their computer?

13 MR. BAKALAR: I am objecting. You know,
14 you said you got this in discovery.

15 MR. ICE: Yes.

16 MR. BAKALAR: Okay.

17 BY MR. ICE:

18 Q. The pending question is does anyone here --
19 let's start with the MERS officer. Do you have direct
20 access to this information?

21 A. No, I do not.

22 Q. Are you aware of anyone at the firm who
23 does?

24 A. I believe that the title department does,
25 yes.

1 Q. Why do you believe that?

2 A. Because I know that they have looked up MIN
3 numbers in title searches.

4 Q. Do you know who it is in the title
5 department that would have that access?

6 A. Carol Whitlow, W-H-I-T-L-O-W.

7 Q. Did anyone at the Law Firm of David J.
8 Stern, P.A. consult this MERS information to determine
9 what entity should be the mortgagee?

10 A. I can't answer that question.

11 Q. You see that it indicates that the servicer
12 is America's Servicing Company?

13 A. Yes, sir.

14 Q. Do you have any reason to dispute that
15 that's the case?

16 A. No, sir.

17 Q. You see that it shows that the investor is
18 Morgan Stanley Mortgage Capital Holdings, Inc., correct?
19 It's on the first page.

20 A. Okay.

21 Q. Do you know what the term investor means on
22 the MIN Summary?

23 A. Yes, sir.

24 Q. What does it mean?

25 A. The investor on the mortgage.

1 Q. In that case, what do you mean when you say
2 the word investor?

3 A. Most of the loans that we foreclose have
4 investors that pay money to the banks on these loans.
5 Most of these loans have investors or insurers backing
6 them.

7 Q. Are you talking about certificate holders
8 of the trust?

9 A. Not necessarily always certificate holders,
10 no.

11 Q. Well, let's take a look at page 2 starting
12 at the bottom, and I say at the bottom because if you
13 notice the dates, they go from earliest date at the
14 bottom to the more recent date up towards the top and, of
15 course, the bottom most is registration, correct?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes.

19 Q. Do you know what it means to register on
20 the MERS System?

21 A. No.

22 Q. Directly above that, you see that there was
23 a transfer of beneficial rights on June 28th of 2006,
24 correct?

25 A. Yes, sir.

1 Q. And if you look over in the right-hand
2 column, you will see it says New Investor and it gives a
3 MERS Identification Number for that investor, Morgan
4 Stanley Credit Corporation. Do you see that?

5 A. Yes, sir.

6 Q. And below that it says Old Investor and,
7 again, there's a number, and it says WMC Mortgage
8 Company. Do you see that?

9 A. Yes, sir.

10 Q. From your earlier testimony and from the
11 mortgage that's still in front of you, you know that WMC
12 Mortgage Company was the original Lender on this loan,
13 correct?

14 A. Yes, sir.

15 Q. So would that help you to understand that
16 investor means the Lender or the owner of the note?

17 MR. BAKALAR: Objection. You are making
18 assumptions. Object to the form of that question.

19 THE WITNESS: The investor and the Lender
20 are not necessarily the same. Freddie Mac loans
21 are not -- Freddie Mac is not the Lender.

22 BY MR. ICE:

23 Q. But Freddie Mac is the owner of the
24 note?

25 A. No.

1 Q. Who is the owner of the note?

2 MR. BAKALAR: I'm going to object to this
3 whole line. Let's go back to this case and this
4 document.

5 BY MR. ICE:

6 Q. Well, if there was a transfer of beneficial
7 rights on June 28th, 2006 from the original Lender to
8 Morgan Stanley Credit Corp., wouldn't that lead you to
9 believe that Morgan Stanley Credit Corp. is now the owner
10 of the mortgage loan?

11 MR. BAKALAR: I'm going to object to the
12 form of the question.

13 BY MR. ICE:

14 Q. Okay. You may answer.

15 A. No.

16 Q. So it is your testimony as a MERS officer
17 that the term investor as used by MERS in its own
18 tracking information does not refer to the owner of the
19 note?

20 MR. BAKALAR: I'm going to object to that.
21 She's here on her authority to sign a piece of
22 paper based upon that and everything going beyond
23 it is --

24 MR. ICE: Okay. If she doesn't know the
25 answer, she can say she doesn't know.

1 THE WITNESS: Okay. I don't know.

2 BY MR. ICE:

3 Q. Continuing with the milestone, do you see
4 that there was another transfer of beneficial interest in
5 December of '07 to Morgan Stanley Mortgage Capital
6 Holding, Inc?

7 A. Okay.

8 Q. Do you see that?

9 A. Yes.

10 Q. And that's the same entity that's on the
11 first page as the investor, correct?

12 A. Yes.

13 Q. Now, the trust that is the plaintiff in
14 this case was formed in 2006, correct?

15 A. How would I know that, sir?

16 MR. BAKALAR: Objection.

17 BY MR. ICE:

18 Q. Well, the name of the plaintiff is Deutsche
19 Bank National Trust Company, As Trustee for Morgan
20 Stanley ABS Capital 1 Inc. Trust 2006-HE4?

21 A. Okay.

22 Q. Does that refresh your recollection as to
23 when this trust would have been formed?

24 MR. BAKALAR: Objection again.

25 MR. ICE: If she doesn't know, she doesn't

1 know. I'm just asking what her knowledge is.

2 MR. BAKALAR: Asking what her knowledge is
3 of when a trust on Wall Street was formed?

4 MR. ICE: Yes.

5 THE WITNESS: I have no knowledge of when
6 the trust was formed, sir.

7 BY MR. ICE:

8 Q. I want you to assume for the purposes of my
9 next question that it was, in fact, formed in 2006 and
10 ask you if the information that you are looking at here
11 in the MERS tracking data indicates that there were
12 transfers to entities other than the trustee after the
13 trust was formed?

14 A. I would be answering that question based on
15 what's in front of me. I don't know the truth of any of
16 this.

17 MR. BAKALAR: She's not here to interpret
18 MERS internal documents and --

19 THE WITNESS: Exactly.

20 MR. BAKALAR: -- codes. The only thing she
21 can do is sign a document for MERS. You are
22 asking her to do things beyond her scope.

23 MR. ICE: I understand.

24 BY MR. ICE:

25 Q. Did you or anyone at this Stern firm check

1 with MERS whether the assignment you executed was to the
2 right party?

3 A. No, I didn't, sir.

4 Q. Did anyone else?

5 A. Not to my knowledge.

6 Q. Did you or anyone else at the Stern firm
7 check with the servicer whether the assignment you
8 executed was to the right party?

9 A. We prepared the assignment based on the
10 instructions given to us by the servicer, yes.

11 Q. Did anyone at the servicer check with
12 MERS whether the assignment was going to the right
13 party?

14 A. Not to my knowledge.

15 Q. When you signed the mortgage assignment in
16 this case, were you relying on information as to the
17 ownership of the note and mortgage from any source other
18 than the servicer?

19 MR. BAKALAR: Objection to form. You're
20 asking if she's relying on things when she signed
21 it? I just -- I went blank for a second. Can you
22 repeat it, please? I'm sorry.

23 MR. ICE: It is a long question.

24 MR. BAKALAR: Can you change the form a
25 little bit?

1 BY MR. ICE:

2 Q. I believe you have already said that the
3 instructions came from the servicer, correct?

4 A. Yes, they did.

5 Q. So this question is did you look other than
6 that, did you rely on anything other than those
7 instructions from the servicer to decide who this
8 assignment should go to?

9 MR. BAKALAR: Objection. You previously
10 asked her regarding her research and she's already
11 told you the only thing she does is sign them. So
12 you are saying the same thing again.

13 MR. ICE: Okay.

14 BY MR. ICE:

15 Q. You may answer.

16 A. Right, I don't review that.

17 Q. Do you know whether anyone at the firm
18 relies on any information other than what comes from the
19 servicer?

20 A. Well, as I said, there is a title search,
21 so whatever information they pick up from the title
22 search compiled with what they get from the servicer is
23 what they use to determine the proper entity.

24 Q. The proper entity who will be doing the
25 assignment, correct?

1 A. And who to assign to as well.

2 Q. It's your testimony that the assignee will
3 show up in the public records?

4 MR. BAKALAR: Objection. She --

5 THE WITNESS: No, sir, that's not my
6 testimony. I said whatever information they pick
7 up in the title search which may include something
8 from MERS. I don't know. I don't do the title
9 searches.

10 BY MR. ICE:

11 Q. Does MERS owe a fiduciary duty to the
12 original Lender to make sure the mortgage gets assigned
13 to the --

14 MR. BAKALAR: Objection. You're calling
15 for legal conclusions.

16 THE WITNESS: I have no idea.

17 MR. ICE: Did you get my whole question?

18 THE COURT REPORTER: No.

19 MR. ICE: Okay. Let me repeat the
20 question.

21 MR. BAKALAR: And I'll object. Go ahead.

22 MR. ICE: I'll even give you a standing
23 objection. Like I said, I have to get through
24 this to show what she knows and doesn't know.

25

1 BY MR. ICE:

2 Q. Does MERS owe a fiduciary duty to the
3 original Lender to make sure the mortgage gets assigned
4 to the proper entity?

5 MR. BAKALAR: I will object to that based
6 upon the form of the question and your request
7 that the deponent provide legal conclusions.

8 BY MR. ICE:

9 Q. You may answer.

10 A. I have no idea.

11 Q. Does MERS owe a fiduciary duty to the
12 current note holder to make sure that that entity becomes
13 the mortgagee?

14 MR. BAKALAR: So we have an agreement on a
15 standing objection?

16 MR. ICE: Yes.

17 MR. BAKALAR: Objection. Same objection.

18 THE WITNESS: Same answer. I have no
19 idea.

20 BY MR. ICE:

21 Q. As a person with authority to sign as an
22 officer of MERS, do you have a duty to make sure MERS
23 complies with its fiduciary duties?

24 MR. BAKALAR: Objection. Same previous
25 objection.

1 THE WITNESS: I would answer no.

2 MR. ICE: Please mark this as Exhibit D.

3 (Thereupon, the document referred to was
4 marked as Defendants' Exhibit D for
5 Identification, after which the following
6 proceedings were had:)

7 BY MR. ICE:

8 Q. I am handing your counsel now what has been
9 marked as Exhibit D to your deposition.

10 A. Okay.

11 Q. I will represent to you that's the notice
12 for your deposition today in this case.

13 A. Okay.

14 Q. Does that appear to be, correct?

15 A. Yes.

16 Q. Have you seen that before today?

17 A. Yes.

18 Q. And one of the things the notice asks is
19 for you to bring some documents with you today, correct?

20 A. Yes.

21 Q. And that's on Exhibit A. The first item on
22 Exhibit A of Exhibit D, the Corporate Resolution valid on
23 October 20th, 2008, permitting employees of the Law
24 Offices of David J. Stern to sign as assistant secretary
25 of Mortgage Electronic Registration Systems, Inc., MERS,

1 to assign the lien of a mortgage loan attached to the
2 amended complaint in this case. Did you bring anything
3 with you today that is responsive to that?

4 A. Yes.

5 Q. What did you bring?

6 A. The Agreement for Signing Authority.

7 Q. Anything else?

8 MS. EVERTZ: Corporate Resolution.

9 MR. BAKALAR: This document may cover most,
10 if not all, of what you asked for actually.

11 MR. ICE: I didn't agree with you but we'll
12 see.

13 MR. BAKALAR: Have you seen it?

14 MR. ICE: Not yet.

15 MS. EVERTZ: Here.

16 MR. ICE: Is this my copy?

17 MS. EVERTZ: Yes.

18 BY MR. ICE:

19 Q. Do you have a Corporate Resolution?

20 MS. EVERTZ: It's in there.

21 THE WITNESS: It's attached.

22 MR. ICE: Thank you. I'll correct my last
23 statement.

24 Let's mark the Corporate Resolution as

25 Exhibit E.

1 (Thereupon, the document referred to was
2 marked as Defendants' Exhibit E for
3 Identification, after which the following
4 proceedings were had:)

5 BY MR. ICE:

6 Q. The document that you handed me entitled
7 Mortgage Electronic Registration Systems, Inc. Corporate
8 Resolution is now marked as Exhibit E, correct?

9 A. Yes.

10 Q. Have you ever seen that document before
11 today?

12 A. Yes.

13 Q. When is the first time you saw it?

14 A. I'm guessing 2006.

15 Q. That's because it was executed in 2006?

16 A. Yes, sir.

17 Q. Did you have any role in negotiating it?

18 A. No, sir.

19 Q. Have you ever consulted that document to
20 determine whether you had authority to sign for MERS in a
21 particular case?

22 A. Yes.

23 Q. How often have you done that?

24 A. I don't know, sir.

25 Q. When you consulted it, what have you looked

1 for? What is it you were trying to confirm?

2 A. Just to make sure I had signing authority
3 for that particular bank.

4 Q. That particular bank would be what?

5 A. Wells Fargo Bank, NA.

6 Q. The first paragraph says that you're
7 authorized to assign the lien of any mortgage loan
8 registered on the MERS System registered to Wells Fargo
9 Home Mortgage, a Division of Wells Fargo Bank, NA or its
10 designee, right?

11 A. Yes.

12 Q. Now, assign the lien in layman's terms
13 means the assignment of mortgage that we are all talking
14 about today?

15 A. Yes.

16 Q. In this particular case, is the mortgage
17 loan registered on the MERS System?

18 A. Yes.

19 Q. Is it registered to Wells Fargo Home
20 Mortgage a Division of Wells Fargo Bank, NA?

21 A. No.

22 Q. Are you therefore not authorized to sign a
23 particular assignment of mortgage in this case?

24 MR. BAKALAR: Objection. Calls for a legal
25 conclusion.

1 BY MR. ICE:

2 Q. You may answer.

3 A. I don't believe that to be the case because
4 America's Servicing Company has a relationship with Wells
5 Fargo and its designees so I believe that my signing this
6 was appropriate.

7 Q. So you believe that America's Servicing
8 Company is a designee of Wells Fargo Bank, NA?

9 A. Yes.

10 Q. Is that evidenced anywhere?

11 A. In this case? It is evidenced somewhere
12 sir. I don't have the documentation. I don't think it's
13 in this file, but yes.

14 Q. You have seen a document that designates
15 America's Servicing Company such that you can sign for
16 MERS for anything registered to them?

17 MR. BAKALAR: Objection to the form. That
18 wasn't even a question.

19 BY MR. ICE:

20 Q. Did you understand the question?

21 A. Yes.

22 Q. You can answer.

23 A. I believe that exists, yes.

24 Q. What is that document called?

25 A. I don't know, sir.

1 Q. If I wanted to ask for it from Plaintiff's
2 counsel, what would I ask for?

3 MR. BAKALAR: Objection. You cannot be
4 asking this witness for your own legal strategy.
5 I mean --

6 MR. ICE: I'm asking her to identify the
7 document. That's not a legal strategy.

8 MR. BAKALAR: You're asking her to prepare
9 your Request for Production.

10 BY MR. ICE:

11 Q. You may answer the question.

12 A. I don't know, sir.

13 Q. Where is that document kept?

14 A. I don't know, sir.

15 Q. Is there anyone at David J. Stern Law Firm
16 who checks to see if the mortgage loan is registered to
17 Wells Fargo Home Mortgage a Division of Wells Fargo Bank,
18 NA or its designee, America's Servicing Company?

19 A. I don't know.

20 Q. When it says registered to, what does that
21 mean in MERS lingo?

22 MR. BAKALAR: Objection. You're, again,
23 asking for her interpretation of MERS internal
24 documents.

25

1 BY MR. ICE:

2 Q. You may answer.

3 A. I don't know.

4 (Thereupon, a recess was taken, after which
5 the following proceedings were had:)

6 BY MR. ICE:

7 Q. The second sheet of this resolution that
8 you have in front of you has your name on it as one of
9 the persons appointed to sign on behalf of MERS, correct?

10 A. Yes.

11 Q. It has two other people listed there?

12 A. Yes.

13 Q. The Corporate Resolution authorizes you
14 also to sign as a vice president, correct?

15 A. Yes.

16 Q. Why did you choose to execute the documents
17 as an assistant secretary rather than a vice president?

18 A. No reason.

19 Q. In this particular case MERS is also a
20 defendant, correct?

21 A. Yes.

22 Q. So your firm, the firm you work for, is
23 pursuing a case on behalf of Deutsche Bank against MERS
24 while, at the same time, you are signing an assignment as
25 a MERS officer to help Deutsche Bank win the case against

1 MERS, correct?

2 A. Yes.

3 Q. Do you see any conflict there?

4 MR. BAKALAR: Objection.

5 THE WITNESS: No.

6 BY MR. ICE:

7 Q. Does David J. Stern, P.A. have any
8 agreement in writing from MERS waiving that conflict?

9 A. I don't know.

10 MR. ICE: Let' mark the next exhibit.

11 (Thereupon, the document referred to was
12 marked as Defendants' Exhibit F for
13 Identification, after which the following
14 proceedings were had:)

15 BY MR. ICE:

16 Q. I have handed you what's now been marked as
17 Exhibit F which is the Agreement for Signing Authority
18 that you brought with you today, correct?

19 A. Okay. Yes.

20 Q. In paragraph 1, it says that this agreement
21 is limited to those cases or those mortgages, those
22 duties -- let me rephrase --

23 MR. BAKALAR: Are you reading the right
24 paper?

25 THE WITNESS: I see what you're looking

1 at.

2 BY MR. ICE:

3 Q. The Agreement for Signing Authority?

4 A. Okay. Paragraph 1?

5 Q. Paragraph 1. Let me make sure I'm looking
6 at the same thing you are. What is the date on that
7 one?

8 A. March 28th, 2006.

9 Q. Yes. The paragraph that's marked with the
10 number 1.

11 MR. BAKALAR: The first one that says 1
12 that starts out, "The purpose?"

13 MR. ICE: Yes.

14 THE WITNESS: Okay.

15 BY MR. ICE:

16 Q. I'm going to restart my question. It says
17 that the purpose of this agreement is to give you signing
18 authority or whoever is named in that Corporate
19 Resolution we just looked at, correct?

20 A. Yes.

21 Q. Whenever the loan is registered on the MERS
22 System and shown on the MERS System to be serviced by
23 Member, correct?

24 A. Yes.

25 Q. And Member, in this case, is defined in the

1 title as Wells Fargo Home Mortgage a division of Wells
2 Fargo Bank, NA, correct?

3 A. Yes.

4 Q. You already testified that the MERS System
5 does not show that this loan is serviced by Wells Fargo
6 Home Mortgage a division of Wells Fargo Bank, NA?

7 MR. BAKALAR: Objection. That's not what
8 she testified. You have not even questioned --
9 even asked her who services this loan.

10 BY MR. ICE:

11 Q. You can answer the question.

12 A. What am I answering? I didn't understand.

13 Q. Is the loan that we're here to talk about
14 today shown on the MERS System to be serviced by Wells
15 Fargo Home Mortgage a division of Wells Fargo Bank, NA?

16 MR. BAKALAR: I'm going to object because
17 we don't have the MERS System here and all you did
18 was hand her a sheet of paper dated three months
19 ago. So you want to rephrase or clarify it?

20 MR. ICE: No. I want her to answer.

21 THE WITNESS: According to the paper that
22 you gave me to look at, no.

23 BY MR. ICE:

24 Q. And in this case, unlike the Corporate
25 Resolution, it doesn't say designee, does it?

1 A. This paper does not say that in that
2 paragraph, no.

3 Q. Paragraph 2 talks about an agreement
4 between Wells Fargo Bank, NA and MERS. Do you see that?
5 It says, "...has signed an agreement of membership that
6 is incorporated herein by reference." Do you have that
7 with you today?

8 A. The agreement of membership? I don't think
9 we have it here today, no.

10 Q. Okay. Does the law firm have that
11 somewhere?

12 A. I don't know.

13 Q. It goes on to say, "Member has entered into
14 a separate contract with Vendor to perform certain
15 services for Member," correct?

16 A. Yes, that's what it says.

17 Q. And the vendor in this case is the Law
18 Offices of David J. Stern, P.A., correct?

19 A. Okay.

20 Q. Do you disagree with that?

21 A. No.

22 Q. Do you have with you today that separate
23 contract between Wells Fargo Home Mortgage a division of
24 Wells Fargo Bank, NA and the Vendor, David J. Stern, P.A.?

25 A. Did you ask for it?

1 Q. My question is did you bring that with you
2 today?

3 A. I don't know. We brought what you asked
4 for. Did you ask for it?

5 Q. I asked for whatever gave you the signing
6 authority and this references that document and, in fact,
7 it incorporates that document by reference.

8 MR. BAKALAR: You have whatever is
9 responsive to the Request for Production.

10 MR. ICE: Nobody is blaming her for not
11 bringing it. I'm just asking her if she has it.

12 THE WITNESS: I don't -- I didn't bring a
13 separate document. If you don't have it, then I
14 guess we didn't bring it.

15 BY MR. ICE:

16 Q. Okay. Paragraph 4, the first sentence
17 says, "The parties agree that Member," again that's that
18 servicing company, "will provide all necessary
19 information and instructions to Vendor," which is the law
20 firm, "to perform certain duties where MERS acts as the
21 mortgagee of record." Do you see that?

22 A. Yes, I do.

23 Q. In this case, this would be the information
24 that came from the servicer that you talked about earlier
25 about who should be the assignee, correct?

1 A. Correct.

2 Q. So the member in this case complied with
3 that requirement?

4 A. Correct.

5 Q. Do you have those instructions with you
6 here today?

7 A. Yes.

8 Q. May I see that?

9 MR. BAKALAR: Which ones are you talking
10 about?

11 THE WITNESS: The vendor instructions
12 to Deutsche Bank, the referral information
13 page.

14 MS. EVERTZ: [REDACTED]

15 THE WITNESS: Yeah, [REDACTED], Deutsche Bank.

16 MR. BAKALAR: Do you get paid for this? Do
17 you have a witness fee check for her? Did you
18 bring that?

19 MR. ICE: It's \$10.

20 THE WITNESS: Great.

21 MS. EVERTZ: That covers the water.

22 MR. BAKALAR: Might as well get them to pay
23 something. I don't know why I just thought of
24 that.

25 You want some copies?

1 MR. ICE: Yes, make a couple, please.

2 This will be Exhibit G.

3 (Thereupon, the document referred to was
4 marked as Defendants' Exhibit G for
5 Identification, after which the following
6 proceedings were had:)

7 BY MR. ICE:

8 Q. You know have what has been marked as
9 Exhibit G to your deposition and that is the instructions
10 from the servicer that you provided me?

11 A. Yes.

12 Q. I see it is printed out from a secure web
13 site with the name of vendorscape?

14 A. Yes.

15 Q. Is that some sort of propriety software
16 that is used for exchanging this information?

17 A. Yes.

18 Q. So at the bottom of the first column where
19 it says Beneficiary Name, the name of Deutsche Bank
20 National Trust Company is listed?

21 A. Yes.

22 Q. Along with the name of a trust,
23 correct?

24 A. Yes.

25 Q. Is that the servicer's instruction as to

1 who should be the assignee on the mortgage?

2 A. Yes -- not on the mortgage, on the
3 assignment.

4 Q. On the assignment. Thank you. Is there
5 any separate compensation agreement for services provided
6 under this agreement for signing authority?

7 MR. BAKALAR: Objection. You already asked
8 that.

9 THE WITNESS: You did.

10 BY MR. ICE:

11 Q. What was the answer?

12 A. The answer was no.

13 Q. Number 2 on the list of items to bring with
14 you, it will probably save time if I just reference it by
15 the number because we're already attaching it as an
16 exhibit, did you bring anything responsive to request
17 number 2 that you haven't given me already?

18 A. What is request number two?

19 MS. EVERTZ: Would you tell us what the
20 request was because we don't have it in front of
21 us?

22 MR. BAKALAR: "All lists of Certifying
23 Officers associated with the Corporate Resolution
24 produced in response to Request for Production No.
25 1 valid on October 20, 2008." That's what you're

1 talking about?

2 MR. ICE: Yes.

3 MS. EVERTZ: And that was already produced.

4 THE WITNESS: That was the attachment.

5 BY MR. ICE:

6 Q. You have produced everything responsive to
7 that?

8 A. Yes, sir.

9 Q. How about to number 3?

10 A. We've produced that, correct. There's
11 nothing else to produce.

12 Q. What you're producing is responsive to
13 that?

14 A. Yes, sir.

15 Q. How about number 4?

16 A. Which is what we produced, the Agreements
17 for Signing Authority.

18 Q. Number 5?

19 A. We gave you the Corporate Resolution.

20 Q. Okay. Nothing else that you have today
21 that would be responsive to that?

22 A. No, sir.

23 Q. Number 6, I believe we have addressed that?

24 A. The answer would be there's nothing.

25 MR. BAKALAR: Just to confirm number 5,

1 "All Corporate Resolutions of MERS granting
2 employees of Law Offices of David J. Stern, P.A.
3 or Cheryl Samons authority to execute an
4 assignment of mortgage as an Assistant secretary
5 or Vice President of MERS, where the assignment is
6 from MERS to a Member...where that assignee Member
7 is not the current promissory note holder or shown
8 to be registered to the Member on a MERS System."

9 So you are asking for -- because now I'm
10 confused. You're asking for a co-resolution to
11 assign a loan to someone who does not own the
12 loan; is that correct?

13 MR. ICE: Correct. It's the flip side of
14 what you have already given me.

15 BY MR. ICE:

16 Q. I could ask the question differently by
17 saying is there any other Corporate Resolution similar to
18 what you have already given me but gives you powers
19 beyond those that are shown in what you have given me?

20 A. No.

21 Q. Okay. Good catch though. Back to number
22 6. Oh, we did that one. Number 7?

23 A. We have produced.

24 MS. EVERTZ: There is actually nothing to
25 produce other than what we have produced.

1 BY MR. ICE:

2 Q. Just so we're all clear, what you are
3 producing responsive to that would be Exhibit G?

4 A. Correct.

5 Q. Number 8 references a Request for
6 Production and asks you to bring with you today all the
7 documents responsive to that Request for Production. Do
8 you see that?

9 A. Yes.

10 Q. Do you have that Request for Production in
11 front of you?

12 MR. BAKALAR: Do you have it? Are you
13 saying you subpoenaed someone who is a non-party
14 for Request for Production given to somebody
15 else?

16 MR. ICE: I just used it as a reference to
17 the document so I didn't have to list them all
18 over again.

19 MR. BAKALAR: What, specifically, are you
20 looking for?

21 MS. EVERTZ: This is one we had a problem
22 to be honest. For each Request for Admission
23 which we hadn't gotten, so we didn't respond to
24 number 1. Any and all documents that evidence an
25 equitable transfer of the Mortgage from the

1 original mortgagee, Mortgage Electronic
2 Registration Systems, there's nothing to produce
3 in response to that because MERS never had an
4 equitable interest.

5 MR. ICE: Well, I don't want you to sit
6 here and read all your answers from the Plaintiff.

7 BY MR. ICE:

8 Q. My question to you is, and I'm skipping
9 number 1, although I'm not stipulating that you did not
10 receive those; in fact, I am stating just the opposite,
11 but as to number 2, do you have any documents that
12 evidence an equitable transfer of the mortgage from the
13 original mortgagee, MERS, to Plaintiff on September 4th,
14 2008?

15 A. No.

16 Q. Did you bring any documents responsive to
17 the request for any and all documents that evidence a
18 physical transfer of the mortgage from MERS to Plaintiff
19 on September 4th, 2008?

20 A. No.

21 Q. Do you have any such documents that you
22 didn't bring?

23 A. Me personally, no.

24 MR. BAKALAR: Don't you think that should
25 be directed to the Plaintiff --

1 THE WITNESS: Right.

2 MR. BAKALAR: -- as opposed to someone who
3 signs a piece of paper pursuant to a signing
4 authority?

5 MR. ICE: They were, but she executed a
6 document saying that the assignment was effective
7 as of September 4, 2008, so as that --

8 MR. BAKALAR: She has already testified --

9 MR. ICE: -- executor of the documents, I'm
10 asking her what documents she has.

11 MR. BAKALAR: She has already previously
12 testified she hasn't looked at it.

13 MR. ICE: True. Now I'm asking for the
14 documents.

15 MR. BAKALAR: You asked them for the
16 Request for Production.

17 MR. ICE: I asked everyone. I even asked
18 MERS.

19 MR. BAKALAR: Okay. All right. Well, I
20 think we have produced everything that's in this
21 person's custody or control.

22 BY MR. ICE:

23 Q. Do you have anything responsive to number 4
24 of that request?

25 MS. EVERTZ: There's nothing to produce in

1 response to that.

2 MR. BAKALAR: Is the request for anything
3 and all associated with the assignment of like her
4 signing authority regarding the assignment of
5 mortgage or -- you have already gone through
6 number 3, any and all documents, and then you're
7 asking my client if she brought any and all
8 documents that evidence a transfer of the
9 beneficial interest in the Promissory Note or
10 Mortgage to either MERS or the Plaintiff and
11 you're asking my client -- let me -- you're asking
12 my client to produce to you documents that the
13 Plaintiff intends to introduce?

14 MR. ICE: Well, you've skipped on number 5.
15 I will withdraw number 5. Like I said, I just
16 used it as a short cut.

17 MR. BAKALAR: I think it's safe to say that
18 we have no other documents and if it certainly
19 comes to light that we do have something, then we
20 will certainly produce it.

21 MR. ICE: Okay.

22 BY MR. ICE:

23 Q. Are you aware of any disciplinary actions
24 by MERS against either the servicer in this case or David
25 J. Stern, P.A?

1 A. No.

2 MR. BAKALAR: I'm sorry, was that
3 disciplinary action by MERS?

4 MR. ICE: Yes.

5 This will be Composite Exhibit H.

6 (Thereupon, the documents referred to were
7 marked as Composite Exhibit H for Identification,
8 after which the following proceedings were had:)

9 MR. BAKALAR: What is that?

10 MS. EVERTZ: Composite of assignments that
11 were executed.

12 BY MR. ICE:

13 Q. Just so everyone is clear, the big exhibit
14 numbers where it says Exhibit A at the bottom right-hand
15 corner, that's from because it was attached to another
16 motion.

17 MR. BAKALAR: This whole document would be
18 considered Composite Exhibit H for purposes of
19 this deposition and we're not to look at the bold
20 black letters.

21 MR. ICE: Right, although I might refer to
22 them from time to time to be quicker.

23 BY MR. ICE:

24 Q. Let's start with the first one there which
25 is an assignment of mortgage that you signed, correct?

1 A. Yes.

2 Q. That's your signature, yes?

3 A. Yes, it is.

4 Q. And your signature was notarized by Valerie
5 Nemes?

6 A. Yes.

7 Q. And it was executed on June 19th, 2007?

8 A. That's the date on the document, yes.

9 Q. Do you have any reason to believe that's
10 not the date that it was actually executed?

11 A. No.

12 Q. When we talked earlier, you mentioned that
13 the notary fills in that date on the jurat, correct?

14 A. They normally do, yes. This one appears to
15 be typed as opposed to hand filled in.

16 Q. Do you have any explanation for that?

17 A. I don't. I didn't prepare the document.

18 Q. From all of the ones that you execute on a
19 daily basis is that unusual that it's typed in there?

20 A. It is not the way that I normally see them,
21 but sometimes it appears that it is being typed in, yes.

22 Q. As a notary yourself you wouldn't sign it
23 that way, correct?

24 A. No.

25 Q. When you are executing it as the assistant

1 secretary, you are not looking down to see if that date
2 is in there or even if it's correct, correct?

3 A. No.

4 Q. I would like you to turn the page to the
5 second page of that exhibit. You will see that's a
6 printout from the court docket of West Palm Beach, Palm
7 Beach courthouse docket and it shows that this particular
8 case, the Acosta case, was filed on June 22nd of '07?

9 A. Okay.

10 Q. So --

11 MR. BAKALAR: With all due respect, we
12 don't have verification that this loan is
13 associated with this exact court docket. It could
14 be. I mean there's no case number on here, so.

15 MR. ICE: There is a case number on it.

16 THE WITNESS: On the assignment?

17 MR. ICE: On the assignment, no. You'll
18 have to accept my representation that it does for
19 the purposes of the questions.

20 BY MR. ICE:

21 Q. Assuming that's the case and that's the
22 date that it was filed, the assignment was executed three
23 days before the case was filed?

24 A. Okay.

25 Q. Okay. Turn the page now and you will see a

1 printout from MyFlorida.com Notary Public Commission
2 Detail for Valerie Nemes, correct?

3 A. Yes.

4 Q. And it shows that the issue date for her
5 commission was August 20th of 2008, correct?

6 A. That's what it says, yes.

7 Q. So how is it possible that this was
8 notarized on June 19th, 2007 over a year before she was
9 issued that commission?

10 A. I can't testify to that. I didn't notarize
11 it.

12 Q. Okay. Do you know what the real date this
13 was executed?

14 A. I don't off the top of my head because I
15 don't remember this particular piece of paper.

16 Q. Is there any way to reconstruct that
17 now?

18 A. Not to my knowledge, no.

19 Q. Would you agree with the statement that
20 this assignment was backdated so that it would appear to
21 have been executed right before the case was filed?

22 A. No, I would not.

23 Q. Michele Grant is one of the witnesses on
24 that assignment, correct?

25 A. Yes.

1 Q. What department does she work in?

2 A. Litigation.

3 Q. Is it unusual for someone in litigation to
4 be witnessing an assignment?

5 A. No.

6 Q. What department is Valerie Nemes in?

7 A. Litigation.

8 Q. Does that indicate to you that the case was
9 already in litigation?

10 A. No, sir.

11 Q. Why would a witness and a notary from the
12 litigation department be --

13 A. It could just be that I happened to see
14 them that day and said come with me. I mean there are a
15 lot of employees here. There's no rhyme or reason for
16 what day anybody signs or notarizes for me. It's whoever
17 I find.

18 Q. Turn to the next page. It's an assignment
19 of mortgage involving a mortgage executed by Bret James.
20 Do you see that?

21 A. Yes, sir.

22 Q. That's your signature on that document?

23 A. Yes, sir.

24 Q. It's notarized by Michelle Camacho?

25 A. Yes, sir.

1 Q. And it purports to be executed on
2 November 1st, 2007?

3 A. Yes, sir.

4 Q. Do you see on the following page that this
5 particular case was filed November 29th of '07?

6 MR. BAKALAR: I'll object to that again
7 because you are providing nothing other than a
8 similar name. I mean how do you even verify this
9 is the same document? How do you verify that this
10 the right case? It doesn't even have the full
11 plaintiff. What are you doing here?

12 MR. ICE: If you are suggesting that I
13 somehow cooked all of these up --

14 MR. BAKALAR: Absolutely not. No. I'm
15 just saying there's nothing, you know, tying the
16 two together. I'm certainly not making any
17 improper assertions against you. I can promise
18 you that.

19 MR. ICE: There's only a certain number of
20 cases where the Bank of New York is the plaintiff,
21 Bret James is the defendant and the attorney is
22 David Stern. You are welcome to dispute it later.
23 I'm just making the representation that there is a
24 connection.

25 MR. BAKALAR: Okay.

1 BY MR. ICE:

2 Q. If that is the filing date, then the
3 purported execution date is about 28 days before the
4 filing date, correct?

5 A. Correct.

6 Q. Turn a couple of pages to get to the
7 commission detail for Michelle Camacho.

8 MR. BAKALAR: Are we passing the next
9 assignment which is marked in bold Exhibit C?

10 MR. ICE: Not permanently but, yes, we're
11 going to the one that's marked Exhibit D.

12 MR. BAKALAR: Okay.

13 BY MR. ICE:

14 Q. Do you see that her commission wasn't
15 issued until March 25th of '08?

16 A. Yes.

17 Q. And that would be about four or five months
18 after this assignment was executed, correct?

19 A. Correct.

20 Q. In this particular case, this particular
21 assignment, unlike the first one, she actually did
22 handwrite in the date, right?

23 A. Yes.

24 Q. Do you recognize that as her
25 handwriting?

1 A. No.

2 Q. But the general procedure would be that she
3 would be the one to write that in?

4 A. Yes.

5 Q. You can see that she actually changed the
6 date from September to November?

7 A. I see that.

8 Q. Do you have any explanation how she was
9 able to stamp this document with a stamp that wouldn't be
10 issued for another few months?

11 A. No, sir.

12 Q. Would you agree with me that this document
13 is falsely backdated?

14 A. No, sir, I wouldn't.

15 Q. Do you have an explanation other than being
16 backdated?

17 A. Mistake. There would be no purpose in
18 backdating an assignment.

19 Q. Let's go back to the page that is the
20 assignment of mortgage for Phillip Nuciola.

21 MR. BAKALAR: Exhibit C on the bottom?

22 MR. ICE: Exhibit C2, yes.

23 BY MR. ICE:

24 Q. Do you see that's another assignment of
25 mortgage that you executed as assistant secretary of

1 MERS?

2 A. Yes.

3 Q. That's your signature?

4 A. Yes.

5 Q. And it's witnessed by Michelle Camacho

6 again?

7 A. Yes.

8 Q. And notarized by Michelle Camacho?

9 A. Yes.

10 Q. On December 14th of '07?

11 A. Yes.

12 Q. Again, she or someone handwrote in those
13 dates, correct?

14 A. Yes.

15 Q. And once again, that would be before her
16 commission was ever issued?

17 MR. BAKALAR: Objection. Are you asking
18 her to testify when someone's notary commission
19 was issued?

20 MR. ICE: No. The question is the date
21 that's on this assignment predates her commission
22 by a little under three months.

23 MR. BAKALAR: The document is self-evident,
24 but this is a printout of a web site. It's not an
25 official document. What is your question?

1 BY MR. ICE:

2 Q. Do you have any explanation for that?

3 A. No.

4 Q. Do you know what the real date that that
5 was executed?

6 A. No.

7 Q. I refer you on the next page to a document
8 that purports to say that the case was filed on
9 January 18th, 2008. Do you see that document?

10 MR. BAKALAR: Which one?

11 MR. ICE: Nuciola.

12 BY MR. ICE:

13 Q. Do you see that date?

14 A. Yes.

15 Q. So, once again, the date of the assignment
16 is prior to the date of filing, correct?

17 A. Yes.

18 Q. Turn to the next assignment which is for
19 Adrian Gonzalez.

20 THE WITNESS: Are we going to do this on
21 every one? Do we have to?

22 MR. BAKALAR: The question is whether we're
23 going to go through every assignment here.

24 MR. ICE: Yes.

25 MR. BAKALAR: He wants you to answer. Go

1 ahead.

2 THE WITNESS: Do I have to say the same
3 thing on every single assignment? I'm just
4 asking. Because I can tell you I don't remember.
5 I sign a lot. You're going to ask me if I think
6 it was backdated. I'm going to tell you no. I'm
7 going to tell you I don't know what the mistake
8 is. I don't know if I want to answer the same
9 question every single time.

10 MS. EVERTZ: It seems redundant. Say how
11 many are there. Same answer as to all.

12 THE WITNESS: Right. I don't have an
13 explanation for you other than mistake or --

14 MS. EVERTZ: Sloppiness?

15 THE WITNESS: Sloppiness, yeah. Other than
16 that, I can't really say.

17 MR. ICE: If you will stipulate that all 21
18 of these are executed with a date that is before
19 the notary's commission was ever issued --

20 MR. BAKALAR: Based upon your --

21 THE WITNESS: Based upon what you are
22 giving me. I don't know if they are renewals, if
23 they used an old stamp. I don't know. I don't
24 know. I don't know going into their notaries so
25 I'm just saying.

1 BY MR. ICE:

2 Q. You are a notary?

3 A. I am a notary. I don't use my notary here,
4 but.

5 Q. And when it gets renewed, how often does it
6 get renewed?

7 A. Every X number of years. I don't remember
8 off the top of my head.

9 Q. I'll represent to you it's every four
10 years.

11 A. Okay.

12 Q. When it gets renewed every fourth year, you
13 get a new stamp, right?

14 A. Correct.

15 Q. And it has a new expiration date on it?

16 A. Yes, it does.

17 Q. Okay. So we don't have to look at these
18 commission details. I did this for your convenience.

19 A. Okay.

20 Q. If you just look at the document itself,
21 you will see that the expiration date is more than four
22 years after the execution date.

23 A. Okay.

24 Q. Which means that unless they are capable of
25 time travel, they couldn't have used that stamp that

1 wasn't going to be issued until after this document was
2 executed?

3 A. Okay.

4 Q. Will you stipulate that that's the case in
5 all 21 of these assignments?

6 MR. BAKALAR: Hold on. Let's go off the
7 record a second.

8 (Thereupon, there was a discussion off the
9 record during which Ms. Evertz was out of the
10 room. After which, the following proceedings were
11 had:)

12 MR. BAKALAR: The deponent will stipulate
13 that the document entitled Exhibit E, Assignment
14 of Mortgage, regarding the mortgage executed by
15 Adrian Gonzalez, that the notary seal which
16 expires November 8th, 2011 -- excuse me, that the
17 expiration date of the notary seal of November
18 8th, 2011 is more than four years subsequent to
19 the date appearing on the documents notarized,
20 correct?

21 THE WITNESS: Yes.

22 MR. BAKALAR: We stipulate to that. The
23 next one is Exhibit G regarding the assignment of
24 mortgage executed by Donna Rae Thompson.

25 (Ms. Evertz enters the room.)

1 MR. ICE: Just for the record, all of these
2 are part of Composite Exhibit G. So you are
3 referring to the one --

4 MR. BAKALAR: That's Composite Exhibit H.

5 So I just did Donna Rae Thompson. We
6 stipulate that the expiration of the notary seal
7 of 4-13-2012 is greater than four years from the
8 date that appears -- well, the notary section is
9 October 5th, 2007. Well, September 26th, 2008,
10 would not be.

11 Is that one you want to separate? Well,
12 let's do these first.

13 The next one is labeled Exhibit I that's
14 part of Composite Exhibit H. We will stipulate
15 that the notary seal, which expires on May 1st,
16 2012, is greater than four years from the date
17 that appears on the notary section of February
18 17th, 2007.

19 The next assignment of mortgage regarding
20 Samuel Anicette, I will stipulate that the notary
21 seal, which expired on May 1st, 2012, is greater
22 than four years from the date that appears on the
23 notary section.

24 The next one, this is regarding a mortgage
25 signed by Rogerio D. Silva. It appears -- let me

1 double check the notary here. Okay. Yeah. I
2 will stipulate that the notary seal expiration
3 date of September 10th, 2011 is greater than four
4 years from the date -- actually, no, it's not.
5 Yes, it is. Okay. Greater than January 9th,
6 2007. Okay.

7 The next document is an assignment executed
8 by James Nicks. That one is pretty much cut out,
9 you have to admit. It was notarized by Elizabeth
10 Davila. The notary block is pretty stamped out.
11 I can't read it very clear, but based upon the
12 commission detail on this one provided, it
13 indicates that the expiration date is
14 September 10th, 2011, which was more than four
15 years after the date which appears on the notary
16 section assignment of mortgage.

17 MR. ICE: And even though the date part is
18 illegible, at least on my copy I can see the 2011.

19 MR. BAKALAR: It appears to be the same
20 document. I mean it says -- looking at the
21 commission number it's Elizabeth Davila. So
22 unless they have some documents to show that this
23 isn't the same Elizabeth Davila, I agree with you
24 on that one, too.

25 MR. ICE: The problem is that they do get

1 renewed and so I want to make sure that that stamp
2 that you are looking at says 2011 rather than
3 earlier.

4 (The witness leaves the room.)

5 MR. BAKALAR: Can I see your copy? Maybe
6 it's better.

7 I see 2011, yes.

8 The next document is assignment of mortgage
9 from Richard Stranahan. It's actually Elizabeth
10 Davila again and I would stipulate that the
11 expiration date is four years -- greater than four
12 years from the date that appears on the notary
13 section.

14 The next document is regarding Donnie
15 Beasley and notarized by Elizabeth Pagan. I would
16 stipulate that the expiration date of July 26th,
17 2010 is more than four years after the date upon
18 which the document -- the date referenced in the
19 notary section.

20 The next document is McVay, Rose McVay. I
21 would stipulate that the expiration date of the
22 notary seal is greater than four years from the
23 date which appears in the notary section.

24 The next one is Francisco Echeverri. I
25 would stipulate that Ericka Iglesias notarized

1 this. Actually, the next two documents, we have
2 Francisco Echeverri, the next one is William
3 Arenas and the next one is Francisco Javier
4 Carvajal and the next one is Gene Briscoe and the
5 next one is Veronica V. Vidaurre, a single man,
6 and the next one is Joseph Boudreau, the next one
7 is Kleyton Tartarotti, all these appear to be
8 notarized by Ericka Iglesias.

9 Let me verify real quick. Let's see. Her
10 expiration date appears to be May 12th (sic).
11 I'll stipulate that all the documents -- the
12 expiration date for her seal on all the documents
13 is greater than four years from the date that
14 appears in the notary section.

15 Next, the mortgage signed by Adrian
16 Gonzalez. I thought we did that already.

17 (The witness returns to the room.)

18 THE WITNESS: We did do Adrian Gonzalez
19 already. Adrian Gonzalez was the one you were on
20 when I left.

21 MR. ICE: We have a duplicate.

22 MR. BAKALAR: So I'm going to ignore that
23 one. It speaks for itself.

24 The last one is a mortgage in the name of
25 Joao Furiado, recorded 10-3-08 in Book 22889,

1 page 1352 in Palm Beach, notarized by Terry Rice.
2 Let me confirm the information. I would stipulate
3 that the notary seal expiration date is May 19,
4 2012, which is more than four years from the date
5 which appears in the notary section. However,
6 with regards to Terry Rice, I also indicate that
7 the commission detail presented is a renewal.
8 There's a possibility that she was a notary and
9 maybe used a different seal.

10 MR. ICE: But the point is that the notary
11 stamp on the document itself expires May 19th,
12 2012 --

13 MR. BAKALAR: And I'm stipulating to that,
14 correct.

15 MR. ICE: Renewal or not, she could not
16 possibly have had that stamp when this document
17 was notarized.

18 MR. BAKALAR: Also, I just want --
19 everything that I stipulated to is on the face of
20 the documents so I agree with it all. I'm just --
21 also for the record, Ericka Iglesias, all of her
22 documents were done with a renewal certificate.
23 The commission detail indicates it's renewal.
24 There were a number with Ericka. I don't believe
25 anyone here could testify as to anything further

1 other than what's on the face of the documents.

2 MR. ICE: Right.

3 MR. BAKALAR: I just want to confirm any
4 other renewals.

5 MS. EVERTZ: I'm pretty sure Valerie is a
6 renewal.

7 MR. BAKALAR: Valerie Nemes is a renewal.
8 Michelle Camacho is also a renewal. Ericka
9 Iglesias we discussed.

10 MR. ICE: Just to address the renewal issue
11 to make the record clear, we are not saying that
12 they weren't notaries at the time on the face of
13 the assignment. What we're saying is that the
14 stamp that was used didn't exist at the time of
15 the notarization.

16 MR. BAKALAR: The stipulation stands on its
17 face.

18 (Thereupon, a recess was taken, after which
19 the following proceedings were had:)

20 MR. ICE: Given that stipulation, let me
21 just address the specific problems. Did we ever
22 get a stipulation on the one where there were two
23 dates?

24 MR. BAKALAR: No.

25 MR. ICE: Let's talk about that. Is that

1 Shannon? Yes. It's the Shannon Smith
2 notarization.

3 MR. BAKALAR: Yes, I see it. Okay. What
4 do you propose the stipulation be?

5 MR. ICE: I guess just that the printed
6 date of October 5th, 2007 is more than four
7 years --

8 MR. BAKALAR: From the expiration date of
9 her notary that appears on the face of the
10 document?

11 THE WITNESS: I think it's clear that the
12 printed date is not when she notarized it. It's
13 when it was typed and whoever typed it, typed it
14 in and she notarized it.

15 MR. BAKALAR: I will stipulate that she
16 notarized it on the September 26th date and that
17 she affixes her notary seal and that it conflicts
18 with a date before it.

19 MR. ICE: Right.

20 MR. BAKALAR: I agree the dates aren't the
21 same.

22 MR. ICE: Right. There is a conflict in
23 the notarization saying that Cheryl Samons
24 appeared before her on October 5th, 2007 and yet
25 she signed it on September 26th of '08, correct?

1 You stipulate to that?

2 MR. BAKALAR: Yes.

3 MR. ICE: Let me ask the witness.

4 BY MR. ICE:

5 Q. That would be a mistake to have a different
6 date in the jurat than the date that she's actually
7 signing, right?

8 A. Yes.

9 Q. Now, I want to take you to the Arenas
10 mortgage assignment which is the second Ericka Iglesias
11 notarization.

12 MR. BAKALAR: What is the exhibit label?

13 MR. ICE: It doesn't have any.

14 MR. BAKALAR: Which one is it? What is
15 the borrower's name?

16 MR. ICE: Arenas.

17 BY MR. ICE:

18 Q. I want to draw your attention to the date
19 on that one which was a Sunday, I believe?

20 MR. BAKALAR: Are you asking whether it was
21 a Sunday? I don't know what day it was.

22 BY MR. ICE:

23 Q. Do you know whether or not that's a Sunday?

24 A. Off the top of my head, no, sir, I don't
25 recall.

1 Q. When you talked earlier about appearing on
2 weekends to notarize documents, would that include
3 Sundays?

4 A. Sure.

5 Q. I want to draw your attention also to the
6 recorded date of 6-16-2008 and --

7 A. Which would lead one to assume that there
8 is a mistake on whoever typed in this date and it was
9 supposed to say 2008 and it says 2007 because if you look
10 at the date we filed the complaint, it was March of '08.
11 It appears to me that the processor typing this
12 incorrectly put the date of 2007.

13 Q. Would you also agree it would be highly
14 improbable for this to sit around in your office for a
15 year before it gets recorded?

16 A. One would hope. One would hope.

17 Q. Now, you notice that Ericka also witnessed
18 this as did Raquel Vargas, right?

19 A. Yes.

20 Q. If you go to the next one, same witnesses,
21 same notary and same record date, correct?

22 A. Correct.

23 Q. And turn to the next one, same witnesses,
24 same notary, same record date, correct?

25 A. Correct.

1 Q. The next one, same witnesses, same notary,
2 same record date and I'm up to Vidaurre.

3 A. I see that. It looks -- well, I'm
4 speculating.

5 Q. After we get done, I'll ask my question.
6 I'm just pointing out all of these so far, and I'm on the
7 next one which is Boudreau has the same witnesses, the
8 same notary and the same recording date, correct?

9 A. Yes.

10 Q. And the next one which is Tartarotti has
11 the same witnesses, the same notary and the same record
12 date?

13 A. Yes.

14 Q. Would you say because they are all recorded
15 on the same day and all notarized and witnessed by the
16 same two people that it's likely that they were all
17 executed on the same day?

18 A. It's a possibility.

19 Q. Yet the execution dates vary for a whole
20 year from February of '07 all the way to February of '08?

21 A. Yes.

22 Q. Do you have any explanation for that?

23 A. No, sir, I don't.

24 Q. The notaries we have mentioned so far are
25 they all still employees of the firm?

1 A. Yes.

2 Q. Now, this problem of notarizing with stamps
3 that haven't been issued yet, that's been brought to your
4 attention before this deposition, correct?

5 A. Correct.

6 Q. Let me carve out Terry Rice because I don't
7 think until today I mentioned any assignment notarized by
8 Terry Rice?

9 A. Right.

10 Q. But as far as the others, you are aware
11 that this issue had come up about assignments executed
12 with stamps that didn't exist yet?

13 A. Correct.

14 Q. Are all of these notaries still notarizing
15 documents here at David J. Stern, P.A?

16 A. Yes.

17 Q. Has the firm done anything to discipline
18 any of these notaries?

19 A. Discipline, no.

20 Q. Reprimand?

21 A. I would not use the word reprimand, no.

22 Q. Retrain?

23 A. Retrain, yes.

24 Q. Have there been any changes to any
25 procedures here at David J. Stern, P.A. to ensure this

1 doesn't happen anymore?

2 A. Yes.

3 Q. What changes have been made?

4 A. We have changed the form so that there's
5 less likelihood of this type of thing happening, and we
6 have, although we still allow them to notarize documents,
7 I have fewer people that I pick on a daily basis to come
8 with me to make sure everything is -- they are maybe
9 perhaps more experienced or just I use less people than I
10 used to. I didn't prohibit them from notarizing anything
11 but they don't follow me to the assignment table anymore.

12 Q. Who among these are the more experienced
13 ones that you still use?

14 A. Well, Terry Rice is one of the oldest
15 employees here. She's been here well over ten years.
16 She would, you know, be one of those people.

17 Q. Did you want to add anything to what you
18 said?

19 A. No.

20 Q. When you say change the form, what changes
21 were made to the form?

22 A. We changed the form -- we had actually, I
23 believe, changed the form prior to this coming out to
24 eliminate any potential issues with the effective dates
25 and making sure that nobody was typing the dates in. We

1 instructed everybody that nobody is to have the dates
2 typed in when they process the form to avoid this
3 problem.

4 Q. Any other changes to the form?

5 A. Not that I can recall.

6 Q. Was one of the changes to the form to put
7 in an effective date?

8 A. I believe that was changed before this came
9 up, sir. I don't recall the exact date, but I would say
10 that it was changed before this ever came up.

11 Q. Were you aware of an occasion when David
12 Stern was reprimanded by the Florida Bar for professional
13 misconduct regarding potentially misleading affidavits?

14 A. Yes.

15 Q. What is your knowledge about that?

16 A. My knowledge was that there was a case and
17 there was a Florida Bar reprimand. That's all I know.

18 Q. Were you involved in any way in that case
19 or that --

20 A. We're talking 2002, 2001, if I recall
21 correctly? Are we talking about --

22 MR. BAKALAR: Be specific. Objection to
23 the form of the question.

24 MR. ICE: I think it was in 2003, but don't
25 hold me to that.

1 THE WITNESS: 2003 with respect to
2 affidavits filed in a court, yes, I was involved
3 in that. I don't recall a lot of what happened.
4 It was many years ago.

5 BY MR. ICE:

6 Q. Did you have to testify or make an
7 affidavit about that?

8 A. I had my deposition taken with respect to
9 that, yes.

10 Q. Do you recall what it was that was
11 potentially misleading about the affidavits?

12 MR. BAKALAR: Objection to the form.

13 THE WITNESS: I don't --

14 MR. BAKALAR: Hold on. Which case are you
15 talking about? You know, I want to be more
16 specific as to the form of your question on what
17 you are talking about with regard to that. Did
18 you say Florida Bar reprimand?

19 MR. ICE: Yes.

20 MR. BAKALAR: Okay.

21 THE WITNESS: Well, first of all, I'm a
22 little confused and I don't know if we need to go
23 off the record, but it wasn't about any affidavits
24 that I signed and has nothing to do with me. So
25 I'm not sure what you're asking me to testify to

1 because it has nothing to do with what we're
2 talking about here.

3 BY MR. ICE:

4 Q. Okay. Well, that was part of the question.
5 I need to know if you were involved, you know, anything
6 that you signed?

7 A. It had absolutely nothing to do with
8 anything that I signed, no.

9 Q. Did it have to do with dates of execution?

10 A. No, it did not.

11 MR. ICE: I don't have any further
12 questions for this deposition. Do you?

13 MR. BAKALAR: No.

14 (Thereupon, there was a discussion off the
15 record, after which the following proceedings were
16 had:)

17 CROSS EXAMINATION

18 BY MS. EVERTZ:

19 Q. Going back to Exhibit C where it says that
20 the investor -- I think you already testified that the
21 investor was --

22 A. Morgan Stanley Capital Holdings.

23 Q. Right, and I think that the question was
24 was that consistent with who the Plaintiff is? Can you
25 just -- from the assignment of mortgage, would you say

1 that the assignee is the same as the Plaintiff in this
2 case?

3 MR. ICE: Objection. Leading.

4 THE WITNESS: I would say that it's the
5 same. It just has a trustee in front of it.

6 BY MS. EVERTZ:

7 Q. Who would be the investor then? What is
8 the trust?

9 A. Morgan Stanley ABS Capital Inc. Trust.

10 Q. So that would be consistent?

11 A. Yes.

12 MS. EVERTZ: That's all I wanted to know.

13 MR. ICE: May I see that.

14 REDIRECT EXAMINATION

15 BY MR. ICE:

16 Q. I need to understand your last question and
17 answer on cross. Are you saying that because the
18 Plaintiff's name in this case, Deutsche Bank National
19 Trust Company as Trustee for Morgan Stanley ABS Capital
20 Inc. Trust, 2006-HE4, is the same as the investor listed
21 on Exhibit C, which says Morgan Stanley Mortgage Capital
22 Holdings Inc?

23 A. I believe that they are the same. I
24 believe the verbiage is a little different, but they are
25 same.

1 Q. Well, is it true that the only thing that's
2 the same are the words Morgan Stanley?

3 A. Morgan Stanley Capital Holdings.

4 Q. Capital is in there as is Inc. Any other
5 similarities?

6 A. I'm not looking at it, but no.

7 Q. Let's make sure you look at it. I'm
8 looking at this style and the investor.

9 A. Capital Holdings Inc. That's what it says
10 back here. It's a little bit different, but.

11 Q. Well, one is a trust and one is a company,
12 right? Is that right?

13 A. It doesn't matter. We have to go by the
14 beneficiary that the client provides us.

15 MR. BAKALAR: May I clear up? Are you
16 done?

17 MR. ICE: No.

18 Did I get an answer to that last question?

19 (Thereupon, the requested portion was read
20 back, after which the following proceedings were
21 had:)

22 BY MR. ICE:

23 Q. When it says Deutsche Bank National Trust
24 Company as Trustee for --

25 MR. BAKALAR: Objection to what document

1 you mean by pertaining when you say it.

2 MR. ICE: Any document that lists the name
3 of the Plaintiff.

4 MR. BAKALAR: Okay.

5 BY MR. ICE:

6 Q. Plaintiff's name is Deutsche Bank National
7 Trust Company, as Trustee for Morgan Stanley ABS Capital
8 1 Inc. Trust 2006-HE4?

9 A. Okay.

10 Q. Everything after the 4, which would be
11 Morgan Stanley ABS Capital 1 Inc. Trust 2006-HE4, is the
12 name of the trust?

13 A. Okay.

14 Q. Correct?

15 A. Yes.

16 Q. That's not the name of a company?

17 A. Are you asking me or telling me?

18 Q. I'm asking you.

19 MR. BAKALAR: What is your question?

20 Objection to the form of the question. It doesn't
21 seem like you're asking any questions.

22 MR. ICE: Objection noted. You can answer.

23 THE WITNESS: I don't know.

24 BY MR. ICE:

25 Q. Do you know what the initials ABS stand for

1 in the trust's name?

2 A. No.

3 MR. ICE: That's all I have.

4 MR. BAKALAR: I'll make it very brief.

5 CROSS EXAMINATION

6 BY MR. BAKALAR:

7 Q. Turn to Exhibit C. As a matter for
8 clarification, have you ever seen Exhibit C prior to
9 today?

10 A. No.

11 Q. Do you typically review documents similar
12 to Exhibit C from MERS prior to executing assignments of
13 mortgages?

14 A. No.

15 MR. BAKALAR: That's it. Waive.

16 (Thereupon, the proceedings were concluded
17 at 5:40 p.m. and the witness was excused.)

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C E R T I F I C A T E of O A T H

The State of Florida,)
County of Broward .)

I, the undersigned authority, certify that
CHERYL SAMONS did personally appeared before me on the
20th day of May, 2009 and was duly sworn.

WITNESS my hand and official seal this 31st of
May, 2009.

Ruthanne Machson



RUTHANNE MACHSON, Court Reporter

Notary Public - State of Florida

Commission No. DD 774525

Expires March 31, 2012

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C E R T I F I C A T E

The State of Florida,)
County of Broward.)

I, RUTHANNE MACHSON, Court Reporter and Notary Public in and for the State of Florida at large, do hereby certify that I was authorized to and did stenographically report the deposition of CHERYL SAMONS; that a review of the transcript was not requested; and that the foregoing pages, numbered from 1 to 118, inclusive, are a true and correct transcription of my stenographic notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

DATED this 31st day of May, 2009.

Ruthanne Machson

RUTHANNE MACHSON, Court Report
Notary Public - State of Florida
Commission No. DD 774525
Expires March 31, 2012

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