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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 2011-000895 CA

FEDERAL NATIONAL)
MORTGAGE ASSOCIATION,)
)
Plaintiff,)
)
vs.)
)
[REDACTED] [REDACTED] et al.,)
)
Defendant(s).)
-----/

TRANSCRIPT OF PROCEEDING
VOLUME I (Pages 1-99)

DATE: March 20, 2014
TIME: 9:18 PM - 3:47 PM
LOCATION: Palm Beach County Courthouse
205 North Dixie Highway,
West Palm Beach, Florida 33401
BEFORE: The Honorable Susan Lubitz

This cause came to be heard at the time and place
aforesaid, when and where the following proceedings were
recorded and later transcribed by:

Carlos A. Rugel
Electronic Court Reporter
Alternative Court Reporting
4700 Sheridan Street, Suite J
Hollywood, FL 33021
P: 954.832.3563
F: 954.556.6607
www.AlternativeCourtReporting.com

A P P E A R A N C E S

FOR THE PLAINTIFF:

ERIKA HENGST, ESQ.
SHAPIRO, FISHMAN & GACHE, LLP
2424 North Federal Highway, Suite 360
Boca Raton, Florida 33431
561.998.6700
ehengst@logs.com

TRAVIS HARVEY, ESQ.
SHAPIRO, FISHMAN & GACHE, LLP
2424 North Federal Highway, Suite 360
Boca Raton, Florida 33431
561.998.6700
tharvey@logs.com

FOR THE DEFENDANT:

JAMES R. ACKLEY, ESQ.
ICE LEGAL, P.A.
1015 North State Road 7, Suite C
Royal Palm Beach, Florida 33411
561.729.0530
randy.ackley@icelegal.com

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1 P R O C E E D I N G

2 THE COURT: Okay. This is Fannie Mae versus is
3 that [REDACTED]?

4 MR. ACKLEY: Yes, Your Honor.

5 MR. HENGST: Yes.

6 THE COURT: Okay. What's happening with this
7 case?

8 MR. ACKLEY: My client is conferring with family
9 members, we're in discussions. At the moment there
10 are some preliminary matters. But, I don't know if
11 you want to hear those or have Judge Oftedal hear
12 them. Or if we have some time my client would like
13 to finish conferring with her family before she
14 decides our her discussion.

15 THE COURT: Okay. Do you want your client
16 present when you want to address the preliminary
17 matters?

18 MR. ACKLEY: It's not necessary, she's already
19 opted to just stay in the hallway until she's needed
20 as a witness.

21 THE COURT: Okay. Let's address the
22 preliminary matters then.

23 MR. ACKLEY: Yes Your Honor.

24 MS. HENGST: Your Honor depending on the outcome
25 of her conversation the preliminary matter may not

1 matter. So --

2 MR. ACKLEY: There may be a preliminary
3 un-matter.

4 MS. HENGST: Yeah so.

5 THE COURT: Well, if that's the -- okay.

6 MS. HENGST: Yeah it might be better to finish
7 the conversations to see if we can work something
8 out.

9 THE COURT: That's fine with me. On the other
10 hand sometimes the disposition of preliminary matters
11 influence the outcome. But, if you are telling me
12 that the discussion with her family may resolve the
13 preliminary matter then I'll wait.

14 MR. ACKLEY: Well, in that regard I would say
15 that the discussion and our discussions are based on
16 the fact that she's facing imminent trial and that is
17 the motivation. If, depending on what the
18 determination is with regard to our motion in limine,
19 motion for sanctions that may determine whether the
20 trial goes forward today or not. And whether or not
21 she is forced to make that decision today. So it's
22 up to Your Honor. I'm comfortable either way.

23 THE COURT: Do you want to argue the
24 preliminary matters?

25 MS. HENGST: I'd rather see what our settlement

1 discussions, how they pan out first.

2 THE COURT: Okay, all right then let's do it
3 that way.

4 MR. ACKLEY: Very good Your Honor.

5 THE COURT: Okay. She's on the phone now?

6 MR. ACKLEY: Yes, Your Honor. I went out to try
7 and catch her and she's still was talking to her
8 family.

9 THE COURT: Okay. All right we'll be in recess
10 until we are ready to address *Fannie Mae versus* [REDACTED]

11 (The proceedings are in a brief recess at 9:21 AM
12 while settlement is pending.)

13 (On the record at 9:34 AM.)

14 THE COURT: Okay. This is the case of Fannie
15 Mae versus is that Rhuturaj?

16 MR. ACKLEY: This is *Fannie Mae versus* [REDACTED]
17 [REDACTED]

18 THE COURT: Rhuturaj, okay.

19 MR. ACKLEY: And [REDACTED] [REDACTED]

20 THE COURT: [REDACTED] [REDACTED] Okay, and my
21 understanding is there's going to be a trial?

22 MR. ACKLEY: At this point, yes Your Honor.

23 THE COURT: Okay. Do you have a copy of the
24 complaint and answer that will be the basis of this
25 trial? I always look at the pleadings to make sure.

1 We don't have the court file.

2 COURT CLERK: I can print, I can print it from
3 here.

4 THE COURT: Well that would be fine. Okay.

5 COURT CLERK: Yeah defendant's answer, correct?

6 THE COURT: I want whatever complaint or
7 amended complaint is the operative document in this
8 case and whatever answer or amended answer.

9 MR. ACKLEY: There is an amended answer and
10 affirmative defense in this case.

11 THE COURT: I had a trial in which one of the
12 parties was proceeding on the wrong pleading and I
13 just want to make sure that everybody is in
14 agreement. Since that instance I always make sure I
15 have the correct pleadings.

16 MS. HENGST: There was only one complaint.
17 There was the borrower is not represented by counsel.
18 The borrower to the Note is not represented by
19 counsel. Just to be clear about that. So [REDACTED]
20 [REDACTED] is represented by counsel.

21 MR. ACKLEY: My client, I'm James Ackley on
22 behalf of [REDACTED] [REDACTED] Your Honor. She is the
23 ex-spouse of the other defendant [REDACTED] [REDACTED] And
24 the house, and she is a, she is purported a signator
25 on the Mortgage. And she has an interest in the case

1 of course.

2 MS. HENGST: So she filed an answer and an
3 amended answer.

4 THE COURT: Okay.

5 MR. ACKLEY: And we also filed a motion for
6 sanctions a motion in limine last night Your Honor.
7 May I approach the bench?

8 THE COURT: Yes you may.

9 MR. ACKLEY: Thank you. Here's a copy of our
10 motion filed yesterday.

11 COURT CLERK: Here is the complaint and the
12 answer of, I don't know how to say her name.

13 THE COURT: Well, you are representing [REDACTED]

14 [REDACTED]

15 MR. ACKLEY: That's correct, Your Honor.

16 THE COURT: Who is the current resident?

17 MR. ACKLEY: Yes, it's her homestead.

18 THE COURT: A mortgagee or one of the
19 mortgagees on the property. Okay.

20 Let me hear the argument on the failure to
21 provide the name of the records custodian within the
22 time required by the trial order.

23 MR. ACKLEY: Your Honor our -- well first of all
24 the issue here is that we have not been given
25 adequate time. And counsel has shown up with an

1 email that she sent to our firm at 2:47 on Friday the
2 14th. informing our firm that the witness change
3 would take place. But, again that's the 14th for a
4 trial today. With a weekend in the middle and our
5 attempting to prepare for trial today.

6 We're not just talking about the deposition, the
7 potential deposition for plaintiff's witness it's a
8 much larger, in a much larger context about whether
9 or not the trial order should mean anything. We
10 should be allotted a fair amount of time to prepare
11 our case. Just as plaintiff has been allotted that
12 time because we have complied with the court orders.
13 We have disclosed the witnesses and exhibits. This
14 is per se prejudicial but more, as importantly
15 ordering us or providing us with a witness this late
16 is a serious prejudice to our case in that we have
17 not been afforded the opportunity to pool other
18 attorneys to see what they know of this witness.
19 We've not been provided the opportunity to surf the
20 internet, including social media to see if there are
21 reports about this witness or disclosures by the
22 witness that are useful in assessing testimony.

23 THE COURT: Excuse me, when you're talking
24 about this witness, you're talking about the records
25 custodian?

1 MR. ACKLEY: The one that they have disclosed.
2 Oh you're talking about just that records custodian
3 disclosure? It's absolutely nondisclosure. And
4 their first response, their first Witness List on
5 January 29th it gives us nothing. And to suggest
6 that then we can take the deposition of this
7 undisclosed witness suggest one or two things.
8 Either they actually know who the witness is --

9 THE COURT: How many witnesses are we talking
10 about?

11 MR. ACKLEY: One witness.

12 THE COURT: And who is this witness? Is it a
13 records custodian or is it a witness other than a
14 records custodian?

15 MR. ACKLEY: It's a corporate representative or
16 records custodian, is serving both roles effectively.

17 THE COURT: Okay.

18 MR. ACKLEY: It's the only witness that the
19 plaintiff as I understand it intends to utilize
20 today.

21 THE COURT: Okay.

22 MR. ACKLEY: So the first disclosure on January
23 29th was six days late but that's not a big deal.
24 Gave us no, no useful information. It was, it was
25 effectively nondisclosure. And it's

1 misrepresentative to the Court to suggest that this
2 is a Witness List. There's no Witness List. There's
3 no disclosure at all.

4 On March 3rd following a January 30 email from
5 our firm we did get a name. All right well March 3rd
6 is far enough away that nobody would argue with the
7 Court if there's was a suggestion that we had enough
8 time to prepare for court. Even though it was not
9 compliant with the trial order. In as such it was
10 still not compliant with the trial order, but it
11 would have given us at least nearly a little over two
12 weeks to prepare for today.

13 Then on the 14th however to again switch and give
14 us a new witness William Rankin, I believe he's here
15 today to give us his name on basically three days
16 before trial. That doesn't give us time to do the
17 processes necessary to properly vet the witness to
18 determine whether a deposition was necessary and
19 prepare for trial to respond to any of the issues
20 that may be identified. In doing the proper vetting
21 of the witness.

22 The other thing is that standing here today I am
23 one person trying the case with proper time to vet
24 the witness our whole firm has the opportunity with a
25 different expertise that each member of the team

1 brings to the case to review the witness and
2 determine whether there's something from their
3 expertise that's appropriate. For instance looking
4 at financial documents, looking at the records
5 custodian issues. Giving us such short notice does
6 not give us the opportunity to take advantage of why
7 our client hires us, is to bring our whole firm to
8 bear in defending the case.

9 I think that's the key thing here. I would ask
10 that the witness be struck from trial or at the least
11 the case be continued to give us time to properly vet
12 with an understanding that the witness won't be
13 switched or if another witness is going to be
14 provided at trial we be given an appropriate amount
15 of time to prepare for trial.

16 THE COURT: Ms. Hengst?

17 MS. HENGST: Good morning Your Honor. Erika
18 Hengst for the plaintiff. First of all I want to
19 discuss, you know, the fact that they believe that
20 we, our violation of the trial order means that this
21 trial cannot take place today.

22 Paragraph G of the trial order discussed
23 pre-trial motions and it says all pre-trial motions
24 must be heard prior to the day of the trial. All
25 motions filed and not timely set for a hearing may be

1 deemed abandoned by the Court. No motions may be
2 heard the day of trial. What we have here is a
3 motion being heard the day of trial. Not only that
4 but I only received it this morning. I was on my
5 computer last night until a little after 6:30 PM and
6 nothing came through to me. They were advised last
7 Friday -- two parties, two attorneys at their firm
8 were advised last Friday that there had to be a
9 sudden change in the witness. And their only
10 response was that they objected to the late
11 disclosure of the witness, but they never said, you
12 know, this doesn't give us enough time to prepare for
13 trial. Or you know we would need to do a deposition.
14 They never asked me for the deposition of the prior
15 witness that was disclosed on March 3rd. They also
16 had plenty of time to try to you know file this
17 motion and get this to me before today, but instead
18 they waited until this morning. They're bringing it
19 in front of Your Honor and it says very clearly all
20 pre-trial motions must be heard prior to the day of
21 trial. Meaning this motion really should not be
22 entertained today. They waived their right to bring
23 it.

24 But I do also disagree with the fact that they
25 were not able to, you know, vet the witness, figure

1 out how they wanted to proceed you know if the, it's
2 essentially five calendar days before trial.

3 If they had come to me and they said, listen we
4 really want to depose this witness maybe we could
5 have come together with some sort of agreement to
6 continue or you know my witness has been in the
7 county pretty much this entire week so we could have
8 tried to work something out to sit him down and get
9 him to deposed if that's what they wanted to do. But
10 there's been no communication regarding that. I just
11 don't think that there's any prejudice. They didn't
12 act quickly enough in response to my email to let me
13 know that there was a problem until this morning.

14 THE COURT: Okay. With respect to any
15 documents, what documents are you objecting to or is
16 it just the witness?

17 MR. ACKLEY: The documents that were produced
18 were produced late. They did provide us with some
19 documents --

20 THE COURT: When, when were they produced?

21 MR. ACKLEY: I think on Friday, the trial
22 exhibits.

23 MS. HENGST: No, no March 7th.

24 MR. ACKLEY: March 7th well I have, that's fine,
25 these are the documents they produced Your Honor. I

1 would ask that they be limited to these documents in
2 proving their case.

3 THE COURT: Okay. The motion to strike the
4 witness is denied. The motion to limit documents is
5 denied.

6 Do you want to depose this witness now? You have
7 a court reporter if you want to depose him now I will
8 give you the time and then we can begin trial after
9 the deposition.

10 MR. ACKLEY: Your Honor it's our position that
11 deposing the witness now does not provide me the
12 opportunity to properly prepare for the deposition
13 and the prejudice is done if we move forward today.

14 THE COURT: Okay.

15 MR. ACKLEY: We don't have the appropriate
16 attorney assigned to take the deposition. We don't
17 have the time to prepare properly for taking the
18 deposition.

19 THE COURT: You can take the deposition right
20 now. I'm saying I will take a recess so that you can
21 take the deposition.

22 MR. ACKLEY: Right Your Honor, but I'm not
23 prepared to take a deposition today. The prejudice
24 to us is moving forward today regardless. We
25 wouldn't have a transcript if we moved forward. And

1 there's no point in taking a deposition today.

2 THE COURT: You certainly can take notes and
3 try to impeach the witness from your note taking.
4 You don't have to have the written deposition in
5 order to conduct an effective impeachment. If you
6 want to take the deposition you can do it now and I
7 will take a recess.

8 MR. ACKLEY: I understand and I appreciate that
9 but we, there's no point Your Honor. We wouldn't
10 have the ability to use, to truly cross without the
11 benefit of a transcript.

12 THE COURT: Okay. Let's go to trial. Does the
13 plaintiff wish to make an opening statement?

14 MS. HENGST: No, that's okay Your Honor.

15 THE COURT: Does the defendant wish to make an
16 opening statement?

17 **OPENING STATEMENT**

18 MR. ACKLEY: Sure Your Honor. We have before us
19 a case and mortgage foreclosure. In our defenses we
20 have raised questions as to authenticity of the
21 documents presented. We have raised questions with
22 respect to whether the conditions precedent have been
23 met by the plaintiff that are requisite to bring this
24 case pursuant to the contractual obligations with the
25 defendant. We have raised questions with regard to

1 whether the Promissory Note as presented and by the
2 plaintiff is a negotiable instrument that can be
3 utilized as a under the UCC code and be utilized as a
4 holder. We have raised issues with regards to the
5 verification of the complaint. The verification is
6 by a third party with no known relationship other
7 than an assertion in the verification jurat in the
8 complaint to the plaintiff. And as such we don't
9 believe that the complaint complies with the
10 requisite statutes and laws of Florida.

11 Our client was induced into default being told
12 that in order to be considered for a loan
13 modification they should stop making payments. Our
14 client was -- as such the plaintiff should be
15 prevented from brining this or prevailing in this
16 case as a result of unclean hands.

17 Furthermore based on the same argument that the
18 plaintiff induced our client into default by assuring
19 our client that they would be considered for a loan
20 mod only if they defaulted on their loan and then
21 foreclosing. The plaintiff should estopped from
22 bringing this action.

23 And furthermore the plaintiff in this action is
24 not properly registered to pursue a lawsuit in
25 Florida and as such the lawsuit, this case should not

1 proceed under as a result of that failure to register
2 in the State of Florida.

3 THE COURT: Thank you.

4 MR. ACKLEY: Thank you Your Honor.

5 MS. HENGST: Your Honor in regards to the
6 verification issue, did you want to possibly
7 entertain argument on that right now because to
8 determine if the complaint was improperly verified
9 then there's really no point in going to trial?

10 Or if you prefer to reserve all that argument we
11 would understand, as well.

12 THE COURT: Isn't that generally a motion to
13 dismiss the complaint? I mean --

14 MR. ACKLEY: We have I believe raised it in a
15 motion to dismiss, and we have reserved it as a
16 defense as well Your Honor. We don't believe the --

17 THE COURT: Was the --

18 MR. ACKLEY: I'm sorry.

19 THE COURT: Okay, excuse me. Was it addressed
20 in a motion to dismiss?

21 MR. ACKLEY: I believe so Your Honor.

22 MS. HENGST: And the dismissal was obviously
23 denied.

24 THE COURT: Let's proceed to trial.

25 MS. HENGST: Thank you Your Honor. Your Honor

1 before I call my first witness I would just ask the
2 Court to take judicial notice of the docket entry
3 number 20. It's a, I believe, Clerk default of [REDACTED]

4 [REDACTED]

5 And Your Honor I call my first witness to the
6 stand, Mr. William Rankin.

7 THE COURT: There was -- excuse me there's a
8 default?

9 COURT CLERK: It's what I'm looking for. Hold
10 on.

11 MS. HENGST: Docket entry 20.

12 COURT CLERK: 20, you said?

13 MS. HENGST: Yeah.

14 THE COURT: Why isn't this on?

15 COURT CLERK: Yes, there was. Do you want me to
16 print it for you Your Honor?

17 THE COURT: Yeah, for some reason I can't get
18 this on.

19 COURT CLERK: I'm not very good with computers
20 unfortunately.

21 THE COURT: It's plugged in. Looks like the
22 cords are in it, but why isn't -- I just want to get
23 my computer working. Wait a minute.

24 COURT CLERK: It's like the printer. I couldn't
25 get it to work because I didn't turn it on.

1 Do you still want me to print that for you Your
2 Honor? It's going to take a few minutes for that to
3 --

4 THE COURT: Okay. Why don't you print it out
5 for me?

6 COURT CLERK: Okay.

7 THE COURT: So I can verify it.

8 MR. HARVEY: Your Honor, if I may address the
9 Court for the record Travis Harvey also on behalf of
10 the plaintiff in this matter. I am second chairing
11 with my colleague here Ms. Hengst.

12 And at this time, it is anticipated that I will
13 handle any cross examination of the defendant should
14 she be called by the defense. Otherwise Ms. Hengst
15 is handling the remainder of the case.

16 THE COURT: Okay.

17 MR. HARVEY: Thank you Your Honor.

18 THE COURT: Okay. The Court takes judicial
19 notice of the default issued against, and I know I'm
20 pronouncing your name incorrectly, but [REDACTED]
21 And that was issued on July 21st of 2011.

22 MS. HENGST: Thank you Your Honor.

23 THE COURT: Call your first witness.

24 MS. HENGST: Sure. Plaintiff calls William
25 Rankin to the stand.

1 THE COURT: Do you want to swear him?

2 COURT CLERK: Do you swear or affirm that the
3 evidence you're about to give will be the truth, the
4 whole truth, and nothing but the truth?

5 THEREUPON,

6 WILLIAM RANKIN,
7 was called as a witness by the plaintiff and was duly
8 sworn by the Court Clerk and in answer to questions
9 propounded, testified as follows:

10 THE WITNESS: I do.

11 THE COURT: Please proceed.

12 MS. HENGST: Thank you.

13 **DIRECT EXAMINATION**

14 BY MS. HENGST

15 Q. Please state your name for the record.

16 A. My name is William Rankin.

17 Q. Can you please spell your last name for the
18 record?

19 A. R-A-N-K-I-N.

20 Q. And who are you employed by?

21 A. Seterus Incorporated.

22 Q. And who is the plaintiff in this lawsuit?

23 A. Fannie Mae.

24 Q. And how is Seterus related to Fannie Mae?

25 A. We act as a servicer for Fannie Mae.

1 Q. And are you authorized to testify today on
2 behalf of the plaintiff?

3 MR. ACKLEY: Objection.

4 THE COURT: Overruled.

5 A. Yes ma'am.

6 Q. And how are you authorized to testify?

7 A. We have a Power of Attorney from Fannie Mae

8 --

9 MR. ACKLEY: Objection.

10 A. -- to Seterus.

11 THE COURT: Was there an objection?

12 MR. ACKLEY: Yes Your Honor same objection.

13 It's on the foundation for his ability to testify as
14 to his authority.

15 THE COURT: That's sustained.

16 BY MS. HENGST:

17 Q. Okay. Are you authorized to testify today
18 on behalf of Fannie Mae?

19 MR. ACKLEY: Same objection.

20 THE COURT: Well, how does he know? How
21 does he know he's authorized to testify?

22 MS. HENGST: Well he'll, he will tell you
23 how he's authorized. I'll ask him how.

24 THE COURT: Well, why don't you ask him
25 before he, why don't you ask him what his, the basis

1 of his knowledge is before he testifies that he's
2 authorized to testify on behalf of Fannie Mae?

3 BY MS. HENGST:

4 Q. How do you know you're authorized to testify
5 today on behalf of Fannie Mae?

6 A. Because Seterus has a Power of Attorney from
7 Fannie Mae.

8 MR. ACKLEY: Same objection, Your Honor.

9 THE COURT: Do you have the written Power
10 of Attorney with you?

11 THE WITNESS: Yes ma'am.

12 MS. HENGST: I do Your Honor.

13 THE COURT: Oh. Okay is it marked?

14 MS. HENGST: Yeah.

15 THE COURT: Okay.

16 MS. HENGST: May I approach the witness?

17 THE COURT: Yes you may.

18 MS. HENGST: Thank you.

19 BY MS. HENGST:

20 Q. I'm handing you a document that's been
21 pre-marked as Plaintiff's Exhibit 1 for
22 identification purposes.

23 Would you please identify that document for
24 the Court?

25 (Plaintiff Exhibit No. 1, Power of Attorney,

1 premarked for identification.)

2 MR. ACKLEY: Objection authenticity,
3 hearsay.

4 THE COURT: Overruled.

5 A. This is the Power of Attorney from Fannie
6 Mae to Seterus.

7 Q. Okay. And is it customary for Fannie Mae to
8 give loan servicers that they want to act on their
9 behalf in foreclosure actions a Power of Attorney to
10 do so?

11 MR. ACKLEY: Objection foundation,
12 authenticity, hearsay.

13 THE COURT: Overruled.

14 A. Yes ma'am.

15 Q. And what is the purpose of that Power of
16 Attorney?

17 MR. ACKLEY: Same objection.

18 THE COURT: Overruled.

19 A. To give Seterus power to act on their
20 behalf.

21 THE COURT: Could you speak a little bit
22 louder please.

23 THE WITNESS: To give Seterus the
24 authorization to act on their behalf Your Honor.

25 THE COURT: Thank you.

1 BY MS. HENGST:

2 Q. And does that Power of Attorney allow you to
3 testify today in trial?

4 MR. ACKLEY: Objection hearsay,
5 authenticity.

6 THE COURT: Overruled.

7 A. Yes ma'am, it does.

8 Q. Okay, and was that document created by
9 persons at Fannie Mae who had knowledge of the
10 authority given to Seterus to act --

11 MR. ACKLEY: Objection foundation, hearsay,
12 authenticity.

13 THE COURT: Overruled.

14 A. Yes ma'am it does. It was actually executed
15 by --

16 MR. ACKLEY: I want to object to the witness
17 testifying off the document that's not in evidence
18 Your Honor.

19 THE COURT: Sustained.

20 Q. And was that document created near the time
21 that Fannie Mae gave Seterus the power to act on
22 their behalf in foreclosure actions?

23 MR. ACKLEY: Objection authenticity,
24 hearsay.

25 THE COURT: Overruled.

1 A. Yes ma'am.

2 Q. Okay, and was this document kept in the
3 records for Fannie Mae and Seterus related to this
4 loan?

5 MR. ACKLEY: Objection authenticity,
6 hearsay, foundation.

7 THE COURT: Overruled.

8 A. Yes ma'am.

9 MS. HENGST: Okay. At this time Your Honor
10 I'd ask that Plaintiff's Exhibit 1 be entered into
11 evidence under the Business Record Exception.

12 THE COURT: So admitted.

13 MR. ACKLEY: Your Honor may I voir dire the
14 witness?

15 THE COURT: Your objections are noted.
16 Okay?

17 MR. ACKLEY: Yes Your Honor.

18 THE COURT: So admitted over objection.

19 MR. ACKLEY: Thank you.

20 THE COURT: As Plaintiff's 1.

21 (Plaintiff's Exhibit No. 1, Power of
22 Attorney, admitted in evidence.)

23 BY MS. HENGST:

24 Q. Okay so Fannie Mae gave Seterus the
25 authority to speak today at trial on their behalf in

1 this foreclosure action.

2 MR. ACKLEY: Objection she's testifying now.

3 THE COURT: Sustained.

4 BY MS. HENGST:

5 Q. Are you familiar with the defendant's loan
6 in this foreclosure action?

7 A. Yes ma'am.

8 MR. ACKLEY: Objection hearsay,
9 authenticity.

10 THE COURT: Overruled.

11 Q. And how are you familiar with the loan in
12 this foreclosure action?

13 MR. ACKLEY: Same objection.

14 THE COURT: Overruled.

15 A. I researched the loan in preparation for
16 this trial.

17 Q. And what exactly did you research?

18 MR. ACKLEY: Same objection.

19 THE COURT: Overruled.

20 A. The business records on file with us. Just
21 for example the Note, copies of the Note excuse me,
22 the copy of the Mortgage, collection notes. Just the
23 general business records on this loan.

24 Q. Okay, and was Seterus the loan servicer on
25 this loan from the origination?

1 A. No ma'am.

2 MR. ACKLEY: Objection hearsay,
3 authenticity.

4 THE COURT: Overruled.

5 A. No ma'am.

6 Q. Do you have knowledge of who originally
7 serviced this loan?

8 MR. ACKLEY: Objection hearsay,
9 authenticity.

10 THE COURT: Overruled.

11 A. Yes ma'am. It was Chase Home Finance.

12 Q. Okay and so did, how did Seterus get
13 involved with this loan?

14 MR. ACKLEY: Same objection.

15 THE COURT: Overruled.

16 A. We received the transfer from Chase as a
17 servicer for Fannie Mae.

18 MS. HENGST: Okay so this loan was transferred
19 to you during a loan transfer process?

20 A. Yes ma'am.

21 MR. ACKLEY: Objection hearsay,
22 authenticity.

23 THE COURT: Overruled.

24 Q. Do you recall approximately when the loan
25 was transferred to Seterus?

1 MR. ACKLEY: Same objection.

2 THE COURT: Overruled. Do, can we just
3 assume that you have a standing objection to hearsay,
4 authenticity to every, all the testimony by this
5 witness as opposed to my making a ruling --

6 MR. ACKLEY: The same objection as to those
7 issues yes Your Honor.

8 THE COURT: Okay thank you. If you an
9 additional objection certainly I'll entertain it.

10 MR. ACKLEY: Thank you Your Honor.

11 THE COURT: Okay.

12 MR. HARVEY: If I may? Excuse me. Travis
13 Harvey again for the plaintiff in this case. If
14 there is going to be such a standing objection that
15 obviously creates somewhat of an unclear record
16 should this matter be appealed. The plaintiff would
17 just ask that at the end of a presentation of all
18 evidence the Court does make such a ruling in
19 response to what those same objections are in
20 assuming the time is right that those objections have
21 been overruled and the plaintiff, and the Court finds
22 that the evidence and testimony are properly admitted
23 not withstanding those objections.

24 THE COURT: Okay.

25 MR. ACKLEY: That then creates prejudice to

1 our case if there is an objection that is sustained
2 then presumably --

3 THE COURT: The problem is it's very
4 difficult to follow the testimony if after every
5 sentence, you know, there's an objection. So I'm
6 trying to understand the testimony while preserving
7 everybody's right.

8 So as I say you know you have a standing,
9 the defendant has a standing objection to this
10 witness's testimony based on hearsay, foundation
11 --

12 MR. ACKLEY: And authenticity.

13 THE COURT: And authenticity. And if you
14 are concerned about any appellate issues remind me at
15 the end of his testimony to make a ruling, okay?

16 MR. HARVEY: Yes Your Honor.

17 THE COURT: Let's proceed.

18 BY MS. HENGST:

19 Q. Just to recap you had stated that Seterus
20 was transferred this loan from the former loan
21 servicer which was JPMorgan Chase, is that correct?

22 A. Yes.

23 Q. Okay. And how exactly did Seterus obtain
24 the records in this loan?

25 A. Through a boarding process.

1 Q. And can you please --

2 THE COURT: I'm sorry I didn't hear?

3 THE WITNESS: Through a boarding process.

4 THE COURT: Boarding?

5 THE WITNESS: Yes ma'am, boarding. Loan
6 boarding.

7 BY MS. HENGST:

8 Q. Can you please explain to the Court what the
9 loan boarding process is?

10 MR. ACKLEY: Your Honor there's a lack of
11 predicate for this witness to have this understanding
12 of this process. I would object.

13 THE COURT: I'm going to sustain the
14 objection on this.

15 MS. HENGST: Okay I'll ask another question.

16 BY MS. HENGST:

17 Q. How long have you been with Seterus?

18 A. For two years.

19 Q. And do you have knowledge of their loan
20 boarding process?

21 MR. ACKLEY: Objection lack of predicate
22 Your Honor.

23 THE COURT: What are your duties with
24 Seterus?

25 THE WITNESS: I'm a Foreclosure Litigation

1 Officer. Actually I prep, I research the business
2 records and prep for trial.

3 THE COURT: And what are your duties with
4 respect to your job title exactly?

5 What do you do every day in preparation for
6 foreclosure litigation?

7 THE WITNESS: I research the business
8 records.

9 THE COURT: And how long have you been
10 doing this for Seterus?

11 THE WITNESS: This particular job I've been
12 with for going on seven months.

13 THE COURT: What did you do for Seterus
14 before this particular job title?

15 THE WITNESS: Prior to this I was a
16 Foreclosure Analyst. I completed fee request and
17 assisting our attorney network in providing them with
18 documents that was needed for trial. And prior to
19 that I was a Collection Specialist.

20 THE COURT: All for Seterus?

21 THE WITNESS: Yes ma'am.

22 THE COURT: Prior to your employment with
23 Seterus, did you work in the mortgage foreclosure
24 area?

25 THE WITNESS: No ma'am.

1 THE COURT: Okay. Now do you have knowledge
2 with respect to the boarding procedures at Seterus?

3 THE WITNESS: Yes ma'am, I'm familiar with
4 the boarding procedures.

5 THE COURT: Go ahead.

6 BY MS. HENGST:

7 Q. Could you please advise the Court of what
8 the boarding procedure is for Seterus?

9 MR. ACKLEY: I'd like to renew my objection
10 Your Honor. If I may proffer for the Court I think
11 what we've just heard is the witness testify that his
12 background to testify on these issues has been raised
13 in preparation for litigation. Not supervising a
14 department, not participating in the actual process.
15 I would object to his testifying on these issues.

16 THE COURT: Overruled, go ahead.

17 MS. HENGST: Thank you.

18 THE WITNESS: Could you repeat the question?

19 BY MS. HENGST:

20 Q. Could you please advise the Court of what
21 the boarding process is at Seterus?

22 A. Well, initially --

23 THE COURT: Mr. Rankin I'm going to ask to
24 speak louder. I'm really having problems hearing
25 you.

1 A. I apologize. Initially we start by sending
2 the prior servicer instructions on how we would want
3 the information to be transferred over to us. That's
4 the first step in the process.

5 Secondly, we then look at the information that
6 has been transferred over. The preliminary data to
7 make sure and insure that is correct for us such as
8 the borrower's name, phone numbers, addresses as far
9 as mailing addresses, property address. We
10 cross-reference that information.

11 THE COURT: How do you verify that
12 information where you say you cross-reference it,
13 with what?

14 THE WITNESS: With the information we have in
15 our, that we're inputting into our system and the
16 information we have from the prior servicer.

17 THE COURT: Okay.

18 THE WITNESS: And thirdly we put the data
19 into a query which checks it for correction and if
20 it's not correct we cross-reference it then with the
21 loan documents to insure for accuracy.

22 MS. HENGST: Okay thank you.

23 BY MS. HENGST:

24 Q. So what would happen if there was an
25 inaccuracy found during the boarding process?

1 MR. ACKLEY: Objection improper
2 hypothetical.

3 THE COURT: Overruled.

4 A. If there was an improper or error found
5 during that portion of the boarding process then an
6 actual individual would go in and correct the data.

7 Q. Okay. So in addition to the data coming
8 over from the prior servicer does Seterus receive
9 documents as well?

10 A. Yes.

11 MR. ACKLEY: Objection hearsay, predicate.

12 THE COURT: Overruled.

13 A. Yes ma'am.

14 Q. And did Seterus receive, or does Seterus
15 receive all the documents in the business records for
16 each loan when it takes it on?

17 MR. ACKLEY: Objection calls for
18 speculation.

19 THE COURT: Overruled.

20 A. Yes ma'am, we do. We receive documents from
21 correspondence sent from a prior servicer all the way
22 to if a breach letter was sent from the prior
23 servicer.

24 Q. Okay, and what does Seterus do with those
25 documents?

1 MR. ACKLEY: Lack of predicate.

2 THE COURT: Overruled.

3 A. We put them into our, into our business
4 records in relation to the loan.

5 Q. Okay. And so is it your testimony that
6 Seterus checks all the loans that they receive for
7 accuracy and if something was inaccurate they would
8 correct it?

9 MR. ACKLEY: Objection misstates the
10 testimony.

11 THE COURT: Sustained.

12 BY MS. HENGST:

13 Q. Do you believe that the documents taken on
14 after they go through the boarding process that they
15 are trustworthy?

16 MR. ACKLEY: Objection speculative.

17 THE COURT: Sustained. He just testified
18 to how he verifies it.

19 MS. HENGST: Okay I'll move on then. Okay.

20 BY MS. HENGST:

21 Q. Are you familiar with Seterus's record
22 keeping system?

23 A. Yes ma'am.

24 Q. And what kind of records does Seterus keep
25 in its record keeping system?

1 A. Anything related to the loan we keep it in
2 the business records under the specific loan number
3 that's in relation to the loan.

4 Q. Okay. And are those records, is there a
5 policy and procedure for Seterus as to how to keep
6 those records?

7 A. Yes ma'am.

8 MR. ACKLEY: Objection.

9 Q. And are the records, are there different
10 departments within Seterus that are responsible for
11 creating records that are uploaded to the loan?

12 A. Yes ma'am.

13 Q. And what is the policy and procedure at
14 Seterus if you have knowledge as to when these
15 records must be created after a certain event occurs?

16 MR. ACKLEY: Objection lack of foundation,
17 lack of predicate and calls for speculation.

18 MS. HENGST: I asked if he had knowledge.
19 If he doesn't have knowledge he can say he does not
20 know.

21 THE COURT: Overruled.

22 A. Yes ma'am.

23 Q. And what is the time period that Seterus
24 holds their employee responsible for creating a
25 record after an event occurs?

1 MR. ACKLEY: Same objection.

2 THE COURT: Overruled.

3 A. With my experience with Seterus they are
4 input into the system at or around the time of
5 occurrence. And no later than twenty-four hours.

6 MS. HENGST: Thank you. Okay. I am showing
7 you a document that we've marked as Plaintiff's
8 Exhibit 2 for identification purposes.

9 (Plaintiff's Exhibit No. 2, the Note, marked
10 for identification.)

11 BY MS. HENGST:

12 Q. Can you please identify this document for
13 the Court?

14 A. Yes ma'am. This is the Note in the --

15 MR. ACKLEY: I'm sorry the same objection
16 Your Honor as to standing. It's the same objection
17 you've given me standing objection to I apologize.

18 THE COURT: Okay.

19 A. This is the original Note in reference to
20 the subject loan today.

21 Q. Okay. And why do you believe that that's an
22 original Note?

23 MR. ACKLEY: Same objection.

24 A. Because I can see the blue ink marks.

25 Q. Okay. And who does the Note appear to be

1 signed by?

2 MR. ACKLEY: Objection predicate.

3 THE COURT: Overruled.

4 A. The Note is --

5 MR. ACKLEY: It's not, I would also object
6 Your Honor I believe the witness is going to be
7 testifying from having read the document. And it is
8 suspect from a document that's not in evidence at
9 this point.

10 THE COURT: Overruled.

11 A. The Note is signed by [REDACTED] [REDACTED] I have
12 trouble pronouncing the first name.

13 Q. And did you review a copy of the original
14 Note in your business records in preparation for
15 today's trial?

16 A. Yes ma'am.

17 Q. And did the, is the copy that you reviewed
18 resemble the one in front of you?

19 A. Yes ma'am.

20 MS. HENGST: Okay. Your Honor I'd ask for
21 the original Note to be entered into evidence
22 pursuant to Florida Statute 90.902 Part 8, it's a
23 self-authenticating document.

24 MR. ACKLEY: I'm going to object Your Honor
25 I don't believe that this is actually, that that

1 Statute actually holds that that is a
2 self-authenticating document.

3 Moreover I would question the testimony
4 we've received today. This witness has testified as
5 to originality of the Note without any qualifications
6 to do so. And has testified as to the signator from
7 my understanding from reading from the Note that has
8 not been entered into evidence or authenticated. We
9 would object to the authenticity of the documents
10 presented by plaintiff and I would again articulate
11 that objection.

12 THE COURT: Objection overruled. The
13 original Note is admitted into evidence as
14 Plaintiff's 2.

15 (Plaintiff's Exhibit No. 2, the Note,
16 admitted in evidence.)

17 MS. HENGST: Thank you.

18 BY MS. HENGST:

19 Q. Can you please read from that Note and
20 advise the Court the date that it was executed?

21 A. April the 27th 2006.

22 Q. And the date, excuse me the property that
23 secures the loan for that Note?

24 A. 622 Gazetta Way, West Palm Beach, Florida
25 33413.

1 Q. And who is loan originator?

2 A. Chase, JPMorgan Chase Bank.

3 Q. And are there any endorsements evident on
4 that Note?

5 A. Yes ma'am.

6 Q. And what does the endorsement say?

7 A. It's endorsed to blank.

8 Q. Okay. I'll take that back, thank you.

9 MR. ACKLEY: Your Honor with regard to the
10 standing objection I would like to articulate that
11 our concern is that they would have to be, our
12 objections would have to be overruled automatically
13 as a matter of course. And I would appreciate it if
14 you could rule as to whether that's what was
15 happening here?

16 THE COURT: I overruled your objection to
17 the admissibility of the Note. What else are you
18 asking?

19 MR. ACKLEY: I'm speaking about the standing
20 objection as to foundation, hearsay and authenticity.
21 Because our concern is that we don't want to waive
22 those objections for appeal. And --

23 THE COURT: Okay. I'm overruling your
24 objections if that's what you're asking me to do.

25 MR. ACKLEY: As a standing overruling all of

1 our objections as to foundation, hearsay and
2 authenticity?

3 THE COURT: Yes.

4 MR. ACKLEY: We are concerned that --

5 THE COURT: That's with respect to the
6 original Note, is that what you're referring to?

7 MR. ACKLEY: That's what, with respect to
8 this witness's testimony which we're objection to
9 standing --

10 THE COURT: Yes, yes I just can't follow
11 the testimony if you object after every sentence that
12 he testifies to. It's disconcerting.

13 MR. ACKLEY: I understand Your Honor.

14 THE COURT: So I'm trying to reach an
15 accommodation. So that you're rights are preserved.
16 I don't know how else to do it.

17 MR. ACKLEY: And it's not my intention, I'm
18 sorry, it's not my intention to be difficult. We're
19 just concerned that that may not stand, provide the
20 due process protection for our clients on appeal.
21 The issues that we've raised with regard to
22 authenticity of all the documents that have been
23 cited by the plaintiff and with regard to this
24 witness's testimony and authenticity of the documents
25 and the hearsay issues. We want to make sure that

1 those are clearly protected for our client moving
2 forward to appeal. And I'm not sure how to
3 accommodate that.

4 If I understand your ruling at this point
5 it's a standing objection as to foundation, hearsay
6 and authenticity. And you are as a matter of course
7 overruling each of those objections as they may be
8 raised in the trial, is that correct?

9 THE COURT: Yes. Okay?

10 MR. ACKLEY: Thank you Your Honor.

11 BY MS. HENGST:

12 Q. How did Fannie Mae come into possession of
13 the original Note?

14 A. I'm sorry?

15 Q. How did Fannie Mae or Seterus on Fannie
16 Mae's behalf come into possession of the original
17 Note for this loan?

18 MR. ACKLEY: Calls for speculation.

19 THE COURT: Overruled.

20 A. From JPMorgan Chase Bank.

21 Q. Okay. Was this a document that was
22 transferred during the loan transfer process?

23 MR. ACKLEY: Same objection.

24 THE COURT: Overruled.

25 A. Yes ma'am.

1 Q. And do you have knowledge of and I apologize
2 if you stated this already but do you have knowledge
3 of when the loan transfer took place for this loan?

4 MR. ACKLEY: Same objection.

5 THE COURT: Overruled.

6 A. We began servicing the loan on August the
7 1st, 2010.

8 MS. HENGST: Okay. I'm showing you another
9 document that is going to be marked as Plaintiff's
10 Exhibit 3 for identification purposes.

11 (Plaintiff's Exhibit 3, the Mortgage, marked
12 for identification.)

13 BY MS. HENGST:

14 Q. I'm showing you what's been marked as
15 Plaintiff's Exhibit 3 for identification purposes.

16 Can you please identify that document for the
17 Court?

18 MR. ACKLEY: Objection predicate.

19 THE COURT: Overruled.

20 A. Yes ma'am. This is the Mortgage.

21 Q. And is that an original or a copy of the
22 Mortgage?

23 A. It appears to be an original.

24 Q. And what makes you think it's an original?

25 MR. ACKLEY: Same objection.

1 THE COURT: Overruled.

2 A. The blue ink.

3 Q. And is that document recorded?

4 A. Yes ma'am.

5 Q. And where is that document, what county is
6 that document recorded in?

7 A. In Palm Beach County, Florida.

8 Q. Your Honor, I apologize. Who does that
9 document appear to be signed by?

10 MR. ACKLEY: I would object Your Honor.
11 There's no foundation for this or background for this
12 witness to make that.

13 THE COURT: Overruled.

14 A. By [REDACTED] and [REDACTED]

15 MS. HENGST: Thank you. Your Honor at this
16 time I'd ask for the original Mortgage to be entered
17 into evidence as Plaintiff's Exhibit 3 as a record
18 effecting an interest in property under Florida
19 Statute 90.803 Subsection 14 and also as a recorded
20 document.

21 MR. ACKLEY: We would object Your Honor.
22 May I voir dire the witness?

23 THE COURT: No you can cross examine when
24 it comes time to cross examine.

25 So admitted over objection as Defendant's,

1 excuse me so admitted over objection as Plaintiff's
2 3.

3 (Plaintiff's Exhibit No. 3, the Mortgage,
4 admitted in evidence.)

5 MS. HENGST: Thank you Your Honor.

6 BY MS. HENGST:

7 Q. Can you please identify from the document in
8 front of you the date that it was executed?

9 A. April the 27th, 2006.

10 Q. And can you please identify the loan
11 originator?

12 MR. ACKLEY: Same objection.

13 THE COURT: Overruled.

14 A. JPMorgan Chase Bank.

15 Q. And a property address that is securing,
16 that's stated on the Mortgage as securing the loan?

17 A. 622 Gazette Way, West Palm Beach.

18 Q. Thank you. What is the present status of
19 this loan?

20 MR. ACKLEY: Objection speculation, lack of
21 foundation, predicate.

22 THE COURT: Sustained.

23 BY MS. HENGST:

24 Q. Do you have knowledge of what the present
25 status of this loan is?

1 A. Yes ma'am, I do.

2 Q. And what is your knowledge of the present
3 status?

4 A. That the loan is default.

5 MR. ACKLEY: Same objection.

6 THE COURT: What's your knowledge based on?

7 THE WITNESS: On my review of the business
8 records.

9 THE COURT: Overruled.

10 BY MS. HENGST:

11 Q. I'm sorry once again what is your answer?
12 What is the status of the loan?

13 A. It's in default.

14 Q. And what is the standard practice in the
15 industry when a loan goes into default?

16 What does the servicer do at that point?

17 MR. ACKLEY: Objection relevance.

18 THE COURT: Overruled.

19 A. At that point when a loan enters into
20 default we then send out a breach letter.

21 Q. And is that Seterus's policies and
22 procedures?

23 A. Yes ma'am.

24 MR. ACKLEY: Same objection.

25 THE COURT: Overruled.

1 Q. Do you acknowledge whether that's that the
2 standard business practice for loan servicers?

3 MR. ACKLEY: Objection relevance.

4 THE COURT: Overruled.

5 A. Yes ma'am.

6 MR. ACKLEY: Your Honor just to clarify that
7 when I am adding objections they're in addition to
8 the standing objection. Is that correct?

9 THE COURT: Okay.

10 MR. ACKLEY: Thank you.

11 THE COURT: Let's go back to the original
12 method of your objecting after every sentence. That
13 way I can make a ruling okay.

14 MR. ACKLEY: Thank you.

15 MR. HARVEY: Thank you Your Honor.

16 BY MS. HENGST:

17 Q. Okay, you stated that the standard business
18 practice when a loan goes into default is to send out
19 a breach letter.

20 What is the purpose of the breach letter?

21 MR. ACKLEY: Objection speculation, lack of
22 foundation, authenticity, hearsay.

23 THE COURT: Overruled.

24 A. To notify the borrower that the loan is in
25 default.

1 MS. HENGST: I'm showing you a document that
2 will be marked as Plaintiff's Exhibit 4 for
3 identification purposes.

4 (Plaintiff's Exhibit No. 4, the breach
5 letter marked for identification.)

6 BY MS. HENGST:

7 Q. Do you recognize this document?

8 A. Yes ma'am.

9 MR. ACKLEY: Objection hearsay,
10 authenticity.

11 THE COURT: Overruled.

12 A. Yes ma'am.

13 Q. And what is this document?

14 A. This is the breach letter.

15 MR. ACKLEY: Same objection.

16 THE COURT: Overruled.

17 Q. Did Seterus send out the breach letter on
18 this loan?

19 MR. ACKLEY: Same objection lack of
20 foundation, hearsay, authenticity.

21 THE COURT: Overruled.

22 A. No ma'am.

23 Q. Do you have knowledge of who did send out
24 the breach letter on this loan?

25 MR. ACKLEY: Same objection.

1 THE COURT: Overruled.

2 A. Yes ma'am it was Chase.

3 Q. How did Seterus obtain a copy of the breach
4 letter on this loan?

5 MR. ACKLEY: Objection hearsay, lack of
6 authenticity.

7 THE COURT: Overruled.

8 A. Via the boarding process.

9 Q. Can you please elaborate on that? What do
10 you mean by the boarding process?

11 A. Basically the process when a loan is
12 transferred from servicer to servicer all the
13 documents including collection notes, the breach
14 letter in this case is transferred over to the new
15 servicer.

16 Q. Okay. What would it mean if Seterus was
17 transferred a loan that was in default, but there was
18 no breach letter?

19 MR. ACKLEY: Objection foundation, hearsay,
20 lack of authenticity, speculation.

21 THE COURT: Could you repeat the question I
22 didn't hear, I didn't hear it?

23 MS. HENGST: What would it mean if Seterus
24 was transferred a loan that was in the default and
25 there was no breach letter?

1 THE COURT: And what's your objection?

2 MR. ACKLEY: Speculation, Your Honor. It's
3 also based on hearsay and it's, the document is based
4 on documents that lack authenticity.

5 THE COURT: Overruled.

6 MR. ACKLEY: It's a hypothetical, as well;
7 an improper hypothetical.

8 THE COUR: You can answer the question.

9 A. Thank you. If you, if we did not receive we
10 would assume that the breach letter was not sent.

11 Q. Okay. So what does it mean that in the,
12 this loan when it was transferred from Chase the
13 prior servicer that included in those documents was a
14 breach letter?

15 What does that mean?

16 MR. ACKLEY: Same objection.

17 THE COURT: Overruled.

18 A. It would mean that the breach letter was
19 sent.

20 Q. Okay. What is Seterus's policies and
21 procedures regarding when a loan is in default and a
22 breach letter needs to be sent?

23 MR. ACKLEY: Objection speculation and
24 hearsay.

25 THE COURT: Overruled.

1 A. Can you repeat the question?

2 Q. Do you have knowledge of what the policies
3 and procedures are at Seterus regarding when a loan
4 first goes into default and a breach letter needs to
5 be created?

6 Do you know what those policies and procedures
7 are?

8 A. Yes ma'am.

9 THE COURT: What's the relevancy of the
10 policies of Seterus if Chase send out the breach
11 letter?

12 MS. HENGST: Well, I'm going to then ask
13 him, whether the policies and procedures for Seterus
14 are a standard business practice in the industry and
15 therefore whether that may also apply to Chase.

16 MR. ACKLEY: I'm going to object to the
17 relevance of this line of testimony Your Honor. The
18 issue of industry standard is not relevant. It's a
19 contractual obligation under the Mortgage that we're
20 addressing.

21 THE COURT: Do you have knowledge of
22 Chase's policies and procedures with respect to
23 sending out the breach letter?

24 THE WITNESS: Yes ma'am. I mean we all go in
25 the mortgage industry we follow a normal standard as

1 he just pointed out which the Mortgage dictates. So
2 I would assume that Chase would follow the standards
3 under the mortgage as we do.

4 THE COURT: Were the standards promulgated?

5 THE WITNESS: The standards or what the
6 Mortgage states?

7 THE COURT: The standards for proceeding
8 under a Mortgage.

9 Where are they promulgated?

10 You say you follow the normal standards in
11 the industry.

12 THE WITNESS: Yes ma'am.

13 THE COURT: So you would assume that Chase
14 did to?

15 THE WITNESS: Yes ma'am.

16 THE COURT: Who devises the standards and
17 where are they promulgated?

18 THE WITNESS: Well I would say they're
19 devised from the mortgage as far as the standards on
20 how to service, that we all service under, when loans
21 transfer we all service under the same Mortgage. So
22 we can't really deviate from what the Mortgage states
23 and how it states to be done.

24 MR. ACKLEY: If I may Your Honor the witness
25 had not testified to that. With his testimony with

1 regard to Chase's practices is entirely assumption.
2 There's no basis whatsoever for this witness to
3 testify to Chase practices or other industry
4 practices for that matter.

5 THE COURT: Do you want to respond to that?

6 MS. HENGST: Yes Your Honor. What I'm
7 trying to elicit is that if he knows that Seterus
8 handles a default in a loan a certain way that step
9 one, step two, step three are taken because that's
10 what the Mortgage requires. And that's just a
11 standard business practice across the industry for
12 all loan servicers. Then he can rely on the fact
13 that, you know, a servicer that came before them
14 would follow that same practice because it's just
15 what's required in the industry.

16 I mean every industry has their own you know
17 sort of practice that they have to follow. Attorneys
18 have their own you know they have their standard
19 business practices as well on how to handle cases and
20 how to handle files and information and it's just
21 every industry acts that way.

22 So if he has knowledge that Seterus does it
23 a certain way and that that practice is similar and
24 the same as the standard business practice that he
25 can rely on the fact that when they got records from

1 the previous loan servicer they're trustworthy
2 because they would follow the same sort of business
3 practice as they do.

4 MR. ACKLEY: I would be vehemently object
5 Your Honor. What counsel has just explained is
6 they're trying to avoid having to have a qualified
7 witness to enter the documents into evidence. Under
8 the Hearsay Business Records Exception of the Hearsay
9 Rule.

10 If this witness has no knowledge of the
11 other servicer's practices this witness has no
12 knowledge of the other servicer's practice and has no
13 basis to do so.

14 MS. HENGST: Your Honor there's plenty of
15 case law that says that a person working you know in
16 this case a loan, a loan servicing company their
17 knowledge can be based on the review of the business
18 file. And that can include documents from prior loan
19 servicers.

20 MR. ACKLEY: And if --

21 THE COURT: And there's just a case that
22 come out that I would say within the past two or
23 three months that dealt with this same issue. Where
24 a servicer recently acquired a loan and tried to
25 testify to the business practices of a prior servicer

1 and the Court said that was insufficient. And I want
2 to know if anybody has that case.

3 MR. ACKLEY: I do Your Honor. I believe
4 you're referring to the *Yang* case.

5 MR. HARVEY: Or is Your Honor referring to
6 *SunTrust* case?

7 THE COURT: I don't know which case because
8 I read it within the past three months. So I'm not
9 sure.

10 MR. ACKLEY: I have a copy of the *Yang* for
11 you and for counsel. Your Honor may I approach?

12 THE COURT: This is not the case I'm
13 referring to. I have read this case. There's
14 another more recent case.

15 MR. HARVEY: Your Honor if I may approach I,
16 kind of hard to respond appropriately to the Court
17 and to counsel when we're trying to kind of guess
18 what case we're case referring to. We believe it may
19 this case, and we believe it can be distinguished on
20 several grounds.

21 THE COURT: Well, then let me read it first
22 okay. My apologies for not remembering the name of
23 the case.

24 MR. ACKLEY: I think at this point this case
25 is directly on point Your Honor.

1 (The Court reviews documents.)

2 THE COURT: Okay. Let me hear your
3 argument it's not the association case. That's an
4 older case.

5 MR. ACKLEY: Very good, thank you.

6 MR. HARVEY: Your Honor, I may if it please
7 the Court my colleague handles the direct examination
8 of my witness here. As counsel has of course pointed
9 objecting to every single question, interrupting the
10 flow of the presentation of our case here. And
11 properly I will be handling any objections or case
12 law comes up, so my colleague can of course focus on
13 the examination of the witness. I believe we have
14 counsel's objections, so it would be his point to
15 argue the case.

16 THE COURT: Well the Court raised the
17 issue, how can this witness whose employer has been
18 servicing the loan since 2010?

19 How can he testify to the procedures
20 conducted by JPMorgan Chase, and/or its servicer?

21 MR. HARVEY: Your Honor that's a different
22 question then what this case addresses. And again
23 since this is counsel's objection so we would believe
24 we would have the right to rebut his arguments. If
25 the Court wishes us to address it first then give us

1 a chance to rebut any arguments but counsel will
2 gladly do so. As the Court has raised this query to
3 us. If that's the format you wish to follow Your
4 Honor I'll address the issue.

5 This case is very different than what we
6 have here. This case deals with a witness who
7 basically admitted to not having seen any records or
8 anything prior to trial. There was clearly a lack of
9 foundation at least as represented by the appellate
10 court in their opinion here for any records or
11 testimony that were introduced at trial. That is not
12 the case that we have here. The witness on the stand
13 Mr. Rankin has testified to reviewing the records of
14 his employer relative to this loan. Those records do
15 include documents that came from a prior servicer
16 through the boarding process which he already
17 testified to. He's also testified that those records
18 go through a bit of an audit to insure their accuracy
19 to insure that the prior servicer did in other words
20 what it needed to do. So the records that he is
21 referring to at least in this case are his own
22 records and not the records of a prior servicer.
23 These records were obtained in the normal course of
24 business through the boarding process and uploaded
25 timely into his employer's system of record. Thereby

1 making them integrated into Seterus's records. And
2 therefore still allowed to be admitted under the
3 Business Records Exception Rule. Because they are in
4 fact their records.

5 Now there's questions as to the information
6 within those records. The plaintiff believes that's
7 a question for weight not necessarily admissibility.
8 The test for business records is that they have been
9 created pursuant to a standard policy followed by
10 that employer that meets the four prongs for
11 admissibility. The witness has testified on several
12 occasions to the admissibility of other records and
13 how those records come into their possession how they
14 come to be created and maintained in a timely and
15 proper manner. So this record, we would proffer will
16 fall into that and has fallen into that category
17 based upon the witness's testimony.

18 So the situation we have here is very
19 different that the case Your Honor has before you.
20 And a sufficient foundation has been laid to that
21 these are records of his employer. Now if we're
22 getting into procedures and policies that is a
23 different question than what that case stands for and
24 that is different than necessary the admissibility
25 question. What that evidence stands for and what can

1 be inferred from the evidence and what the weight to
2 be given to the existence of that evidence, is a
3 decision for the Court. We're simply laying the
4 foundation to the business record to have this be
5 admitted into evidence. Which would believe we are
6 doing and have done because again these are copies of
7 records maintained by Seterus Inc. on behalf of
8 Fannie Mae for which this witness is employed by and
9 is familiar with their record policies and procedures
10 and has testified as such.

11 MR. ACKLEY: If I may Your Honor?

12 THE COURT: Go ahead.

13 MR. ACKLEY: This witness has presented us a
14 proponent for the admissibility of a record now that
15 was created by a third party. And this witness has
16 testified that his understanding of that third
17 party's behavior is based on assumptions. Counsel
18 for plaintiff has attempted to suggest that there is
19 some nebulous industry standard and that this witness
20 can testify based on that nebulous standard. I would
21 suggest that this witness has no basis as the
22 proponent of this record to testify as to whether the
23 record was made at or near the time of the event.
24 That this record was made by or from information
25 transmitted by a person with knowledge. That this

1 record was kept in the ordinary course of regularly
2 conducted business activity and that it was a regular
3 practice of the business to make such a record.

4 Moreover, I would suggest this witness is
5 incapable to testify whether the underlying
6 circumstances of the creation of this record were
7 trustworthy to the point that they met the necessary
8 circumstances of trustworthiness to apply the
9 Business Record Exception.

10 This witness knows nothing of the third
11 party that created the record that they are, they
12 purportedly created the record that they're trying to
13 enter into evidence. We don't even know if the Chase
14 entity that is on the record created the record. In
15 many cases third party vendors create these letters
16 for the lenders. We don't know that. This witness
17 can't tell us that. This witness has no basis to
18 testify as to this document.

19 THE COURT: Okay, all right. I've heard
20 argument. Your objection is overruled. The Court is
21 satisfied that this witness is competent to testify
22 as to the preparation of the default letter or notice
23 of acceleration, whatever it's entitled to in this
24 particular instance.

25 Okay please proceed.

1 MR. HARVEY: Thank you Your Honor.

2 BY MS. HENGST:

3 Q. Mr. Rankin when a loan first goes into
4 default what is the policy and procedure for
5 notifying the borrower of that status?

6 MR. ACKLEY: Objection improper
7 hypothetical.

8 THE COURT: Overruled.

9 A. When the loan goes into default, the proper
10 procedure is that we mail out the demand letter
11 excuse me, no sooner than thirty days after the
12 default date.

13 Q. Okay, and what is the purpose once again of
14 that demand letter.

15 MR. ACKLEY: Same objection as well as
16 authenticity and hearsay.

17 THE COURT: Overruled.

18 A. The purpose of the demand letter is let them
19 know, let the borrower know first that there has been
20 a default. That the, that the loan is in default.
21 Secondly to let them know how to cure the default,
22 the amount to cure the default, the amount to cure
23 the default and the date that is has to be cured by.

24 MR. ACKLEY: I would also object to
25 relevancy, Your Honor.

1 THE COURT: Overruled.

2 A. And also to let them know the consequences,
3 to inform them of the consequences if the default is
4 not cured by that date.

5 Q. And this breach letter are there specific
6 departments in Seterus that are required to manage
7 whether a breach letter needs to be sent?

8 A. Yes ma'am.

9 MR. ACKLEY: Objection foundation, hearsay.

10 THE COURT: Was this breach letter in your
11 business records when you took over the loan?

12 THE WITNESS: Yes ma'am.

13 MS. HENGST: He testified to that
14 previously.

15 THE COURT: Then why are we asking all
16 these other questions? This is Seterus's procedures.

17 MS. HENGST: Well, I was trying to make it
18 to the industry standards to get this into entered
19 into evidence as a business record. I have to meet
20 certain requirements.

21 THE COURT: Okay, go ahead.

22 BY MS. HENGST:

23 Q. Is it the standard business practice for
24 particular departments to manage breaches of a loan?

25 MR. ACKLEY: Same objection.

1 THE COURT: Overruled.

2 A. Yes ma'am.

3 Q. Okay, and this document is now within the
4 business records of Seterus, is that correct?

5 MR. ACKLEY: Objection authenticity,
6 hearsay, moreover the fact that the plaintiff is
7 referring to the business records doesn't make them
8 business records Your Honor.

9 THE COURT: Overruled.

10 A. I'm sorry could you repeat the question
11 please?

12 Q. Is this breach letter now within the
13 business records of Seterus's for this loan?

14 MR. ACKLEY: Objection authenticity,
15 hearsay.

16 THE COURT: Overruled.

17 A. Yes ma'am.

18 MS. HENGST: Your Honor I ask for this
19 breach letter to be admitted into evidence pursuant
20 to Florida Statute 90.803 Subsection 6 as a Business
21 Record Exception to the Hearsay Rule?

22 MR. ACKLEY: We would object Your Honor.
23 May I voir dire the witness?

24 THE COURT: No. So moved into evidence
25 over objection of defendant. This is Plaintiff's

1 Exhibit 4.

2 (Plaintiff's Exhibit No. 4, the breach
3 letter, admitted in evidence.)

4 MS. HENGST: Thank you Your Honor.

5 BY MS. HENGST:

6 Q. Can you please read off of that breach
7 letter and advise the Court of who it was addressed
8 to?

9 A. This was addressed to [REDACTED] [REDACTED] address 622
10 Gazetta Way, West Palm Beach, Florida 33413.

11 Q. And what is the date on that letter?

12 MR. ACKLEY: Objection authenticity,
13 hearsay.

14 THE COURT: Overruled.

15 A. March the 1st 2010.

16 THE COURT: I'm sorry March the?

17 THE WITNESS: March the 1st 2010, ma'am.

18 Q. And when did this loan go into default?

19 MR. ACKLEY: Objection authenticity,
20 hearsay, foundation.

21 THE COURT: Overruled.

22 A. January the 1st 2010.

23 Q. Did, do you have knowledge of whether the
24 borrower ever responded to this letter?

25 MR. ACKLEY: Objection authenticity,

1 hearsay.

2 THE COURT: Overruled.

3 A. No ma'am.

4 Q. Did the borrower ever attempt to cure the
5 default?

6 MR. ACKLEY: Same objection.

7 THE COURT: Overruled.

8 A. No ma'am.

9 Q. And so presently what is the status of this
10 loan?

11 MR. ACKLEY: Same objection.

12 THE COURT: Overruled.

13 A. This loan is in default.

14 Q. Thank you. What is Seterus's
15 responsibilities regarding managing the payment
16 account for a loan?

17 MR. ACKLEY: Objection relevance, hearsay,
18 authenticity.

19 THE COURT: Overruled.

20 A. Could you repeat the question?

21 Q. What is Seterus's responsibility, loan
22 servicing responsibility regarding managing the
23 payments for a loan?

24 MR. ACKLEY: Same objection.

25 THE COURT: Overruled.

1 A. We input them into a system that keeps track
2 of the payments incoming payments, outgoing payments.
3 Any payments that we might have made to insurance or
4 tax entities. And alongside with the payments that
5 borrower would have made on the account.

6 Q. You received this loan from JPMorgan Chase
7 in 2010 but this loan had been originated years prior
8 to that.

9 How did you obtain the records from payments made
10 before Seterus became involved?

11 MR. ACKLEY: Same objection, authenticity,
12 foundation, hearsay.

13 THE COURT: Overruled.

14 A. Via the boarding process.

15 Q. And what kind of documents were obtained
16 from Chase during that boarding process?

17 MR. ACKLEY: Same objection.

18 THE COURT: Overruled.

19 A. All the documents I know I spoke on earlier
20 including the payment history.

21 Q. Okay. What is, did Seterus take any action
22 to verify that the loan payment history from the
23 prior servicer was accurate?

24 MR. ACKLEY: Same objection.

25 THE COURT: Overruled.

1 A. Yes ma'am.

2 Q. And what would have happened if during the
3 boarding process they discovered that there was error
4 with the prior servicer's loan payment history?

5 MR. ACKLEY: Same objection, as well as
6 improper hypothetical.

7 THE COURT: Overruled.

8 A. We would have made the correct, the
9 necessary corrections. Along with contacting the
10 borrower in that case to see how they made, would
11 have wanted the corrections to be made.

12 For instance if there was an overpayment we would
13 address the borrower to ask them if they wanted the
14 payment to be refunded or applied to the next month
15 installment.

16 MS. HENGST: Thank you. And I apologize to
17 Your Honor.

18 THE COURT: Let's just move along.

19 MS. HENGST: Okay. I'm showing you a
20 document that will be marked Plaintiff's Exhibit 5
21 for identification purposes. It's a composite
22 actually.

23 (Pleading's Composite Exhibit No. 5, loan
24 payment histories from Seterus and Chase, marked for
25 identification.)

1 BY MS. HENGST:

2 Q. I'm showing you this document. Do you
3 recognize it?

4 A. Yes ma'am.

5 Q. And what do you recognize it to be?

6 MR. ACKLEY: Objection hearsay,
7 authenticity, lack of foundation.

8 THE COURT: Overruled.

9 A. This appears to be the payment history from
10 Seterus Incorporate as well as the payment history,
11 the payment history for Chase.

12 Q. And is the Chase loan payment history --
13 strike that.

14 Where did you get the Chase loan payment history
15 supplied to me for today's trial?

16 MR. ACKLEY: Objection authenticity,
17 hearsay, lack of foundation, lack of predicate.

18 THE COURT: Overruled.

19 A. From our business records.

20 Q. What is the business practice regarding when
21 to make an entry in the loan payment history after a
22 payment is received or a disbursement is made on a
23 loan?

24 MR. ACKLEY: Same objection.

25 THE COURT: Overruled.

1 A. The persons that make the entry at or around
2 the time that the transaction is processed.

3 Q. Okay, and are there particular departments
4 that are tasked with the responsibilities of managing
5 payments made or disbursements made and then
6 reflecting them on the loan payment history?

7 MR. ACKLEY: Same objection, as well as
8 speculation.

9 THE COURT: Overruled.

10 A. Yes ma'am.

11 Q. And are these loan payment histories
12 maintained in Seterus's business records?

13 MR. ACKLEY: Same objection.

14 THE COURT: Overruled.

15 A. Yes ma'am.

16 Q. And is it the business policy to, is it
17 Seterus's practice to follow its business policies
18 and procedures when creating and maintaining these
19 loan payment histories?

20 MR. ACKLEY: Same objection.

21 THE COURT: Overruled.

22 A. Yes ma'am, it is.

23 MS. HENGST: All right. Your Honor I'd ask
24 for the composite Exhibit 5 loan payment history of
25 the prior service and Seterus the present servicer to

1 be entered into evidence as Plaintiff's Exhibit 5
2 pursuant to 90.803 Subsection 6 the Business Record
3 Exception to hearsay.

4 MR. ACKLEY: I know this will come as a
5 surprise Your Honor, but we object. We object for a
6 number of reasons. Not only to hearsay, but the fact
7 that this hearsay and there's no valid exception to
8 Hearsay Rule that can be applied to this document but
9 moreover this is a summary document. The plaintiff
10 has filed with their Exhibit List the most recent
11 Exhibit List that they intend to use summaries but we
12 were never given an opportunity to see the underlying
13 documents. As a summary under 90.956 we need to be
14 given the opportunity to view the underlying
15 documents has not been provided.

16 MS. HENGST: Your Honor the summary that
17 opposing counsel is referring to is our judgment
18 figures. I do not intend to use those today or enter
19 them into evidence because I was not able to provide
20 them the underlying documents in time before trial.
21 I can elicit testimony regarding how loan payment
22 histories what they look like in his system. If you
23 want to insure that this is the full and complete
24 accounting. But this is not a summary and I'm not
25 entering it into evidence as a summary.

1 MR. ACKLEY: But, whether she's offering it
2 as summary or not that's what it is. It is a summary
3 of all of the invoices and payments and alleged
4 invoices and payments made. We haven't had an
5 opportunity to see any of those.

6 THE COURT: Objection overruled. So
7 admitted into evidence as Plaintiff's 5.

8 (Plaintiff's Composite Exhibit No. 5, loan
9 payment histories from Seterus and Chase, admitted in
10 evidence.)

11 MS. HENGST: Thank you Your Honor.

12 MR. ACKLEY: Your Honor I just want the
13 record to be clear, the objection wasn't merely a
14 summary. But as well the fact that this witness is
15 testifying as to records that were created by a third
16 party that he's proved show no background or capacity
17 to testify regarding.

18 THE COURT: I understand.

19 MR. ACKLEY: Thank you.

20 THE COURT: Objection overruled.

21 BY MS. HENGST:

22 Q. When is the last payment received on this
23 loan?

24 MR. ACKLEY: Objection hearsay, authenticity,
25 lack of foundation, lack of predicate.

1 THE COURT: Objection overruled.

2 MS. HENGST: You can read off the document
3 if that will help.

4 (Witness reviews document.)

5 A. December of 2009.

6 Q. Okay so the default date for this loan is
7 the following month which would be January 1st 2009
8 is that correct?

9 MR. ACKLEY: Same objection.

10 MS. HENGST: Or January 1st 2010 my
11 apologies.

12 MR. ACKLEY: Same objection.

13 THE COURT: Overruled.

14 A. Yes ma'am.

15 BY MS. HENGST:

16 Q. And is the plaintiff trying to seek
17 reimbursement of the unpaid principal balance in this
18 lawsuit?

19 A. Yes ma'am.

20 MR. ACKLEY: Objection hearsay, lack of
21 authority or lack of authenticity. That's not it.

22 THE COURT: Have you completed your
23 objection?

24 MR. ACKLEY: I think so yeah.

25 THE COURT: Overruled. Go ahead.

1 BY MS. HENGST:

2 Q. What is the unpaid principal balance?

3 MR. ACKLEY: Same objection.

4 THE COURT: Overruled.

5 A. \$403,216 --

6 THE COURT: I'm sorry \$400 and --

7 THE WITNESS: 3,216.74.

8 THE COURT: Okay.

9 MS. HENGST: Your Honor would it be helpful
10 if I handed you our proposed final judgment so you
11 can follow along with the numbers?

12 THE COURT: Yes.

13 MS. HENGST: Okay. Please show opposing
14 counsel. We can hand it up later.

15 MR. ACKLEY: Is there a copy that we can
16 have?

17 THE COURT: I'll make a copy.

18 MS. HENGST: I have one I'm sure Your Honor.

19 THE COURT: If you need to have another
20 copy made let me know.

21 MR. ACKLEY: We would appreciate a copy so I
22 can follow.

23 MS. HENGST: I have a copy for him.

24 MR. ACKLEY: Your Honor my understanding
25 this is not being offered being into evidence. This

1 is merely --

2 THE COURT: That's true, just an as
3 assistance to the Court to follow along with the
4 witness's testimony.

5 MR. ACKLEY: Thank you Your Honor.

6 BY MS. HENGST:

7 Q. Is the plaintiff seeking reimbursement of
8 unpaid interest in this loan?

9 MR. ACKLEY: Objection hearsay,
10 authenticity, lack of foundation.

11 THE COURT: Sustained, I'm sorry overruled.

12 A. Yes ma'am.

13 Q. And what was the interest rate applied to
14 this loan if you have knowledge of that information?

15 MR. ACKLEY: Same objection.

16 THE COURT: Overruled.

17 A. I do know it was six point -- I can't recall
18 the exact number if I can look in my notes I can
19 recall.

20 Q. Would the original Note help you to identify
21 that?

22 A. Yes ma'am.

23 THE COURT: Why don't we keep the evidence
24 up here so that it's accessible once the Clerk marks
25 it?

1 Q. Please take a look at the Plaintiff's
2 Exhibit 2 let me know if that refreshes your
3 recollection as to the interest rate applied? Did
4 that refresh your recollection?

5 A. Yes ma'am.

6 Q. And what is the interest rate applied?

7 A. 6.2 --

8 MR. ACKLEY: Same objection.

9 A. 65.

10 THE COURT: Overruled.

11 Q. And is the plaintiff seeking reimbursement
12 of disbursements made for taxes?

13 MR. ACKLEY: Same objection.

14 THE COURT: Overruled.

15 A. Yes ma'am.

16 Q. And approximately do you have knowledge
17 approximately how much plaintiff is seeking
18 reimbursement for taxes?

19 MR. ACKLEY: Objection to hearsay,
20 authenticity.

21 THE COURT: Overruled.

22 A. Yes ma'am.

23 Q. And what is that approximate amount?

24 MR. ACKLEY: May I ask what all this is
25 referring to?

1 MS. HENGST: Taxes that were paid on behalf
2 of the borrower.

3 MR. ACKLEY: What document is he looking at?

4 MS. HENGST: He has the loan payment history
5 in front of him? Exhibit 5.

6 A. There are several tax entries on here. So
7 the totals before ranging from around approximately
8 \$4200 to \$3900.

9 THE COURT: Do you need a calculator?

10 THE WITNESS: Yes ma'am. If I could I could
11 use my phone, it's no problem.

12 THE COURT: I have a calculator.

13 THE WITNESS: Your Honor.

14 MR. ACKLEY: Your Honor would it be all
15 right with the Court if I were to get something to
16 drink?

17 THE COURT: Excuse me?

18 MR. ACKLEY: Would it be all right with the
19 Court if I got something to drink.

20 THE COURT: Oh sure. Do you want to take a
21 break now? Does anybody need a break?

22 MR. ACKLEY: I just need to wet my whistle.

23 THE COURT: Sure let's --

24 MS. HENGST: That's fine I don't mind doing
25 that myself. Just running out to the --

1 THE COURT: Why don't we take a five minute
2 break okay. We'll get you a calculator, we'll
3 reconvene at 11:00.

4 MR. ACKLEY: And it's all right if I have --

5 THE COURT: Absolutely, absolutely.

6 (Recess was taken from 10:55 AM to 11:05 AM
7 after which the following proceedings were had:)

8 THE COURT: Please be seated.

9 MR. ACKLEY: Your Honor if I may before we begin
10 or continue I think, I believe the case if I may
11 approach, the case you were referring to in our
12 previous discussion was *Hunter* out of the 1st DCA.
13 This may or may not be it, but it's along the same
14 lines that we had discussed earlier.

15 THE COURT: Well let me, let me read this.
16 Let's finish with his testimony then I'll hear
17 argument.

18 MR. ACKLEY: Very good thank you.

19 THE COURT: After the direct testimony okay.
20 That would give us all a chance to read it. Okay.

21 BY MS. HENGST:

22 Q. Okay. So to get back on track I believe my
23 last question to you was, how much the plaintiff was
24 seeking reimbursement of for taxes?

25 MR. ACKLEY: Objection hearsay,

1 authenticity, lack of foundation, lack of predicate.

2 THE COURT: Overruled.

3 A. Yes ma'am the amount of taxes we're seeking
4 is \$16,557.19.

5 Q. Thank you. And how did you obtain that
6 calculation?

7 A. By looking at the payment history.

8 Q. So those amounts were reflected on the
9 payment history?

10 MR. ACKLEY: Same objection.

11 THE COURT: Overruled.

12 A. Yes ma'am.

13 Q. Thank you. And what payment history in
14 particular are you looking at?

15 A. The Seterus --

16 MR. ACKLEY: Same objection.

17 THE COURT: Overruled.

18 A. The Seterus payment history.

19 Q. And what is the earliest entry of taxes on
20 the Seterus loan payment history?

21 MR. ACKLEY: Same objection.

22 THE COURT: Overruled.

23 A. 11/18/2010.

24 Q. Was this amount incurred before or after
25 Seterus took over this loan?

1 MR. ACKLEY: Same objection.

2 THE COURT: Overruled.

3 A. After.

4 Q. Thank you. And is the plaintiff seeking
5 reimbursement of any property and casualty insurance
6 or hazard insurance as it's sometimes called?

7 MR. ACKLEY: Same objection hearsay,
8 authenticity.

9 THE COURT: Overruled.

10 MR. ACKLEY: Foundation, lack of predicate.

11 A. Yes ma'am.

12 Q. And is that amount stated on the loan
13 payment history as well?

14 MR. ACKLEY: Same objection.

15 THE COURT: Overruled.

16 A. Yes there are several entries.

17 Q. So for the property and casualty or hazard
18 insurance as it's called how much is the plaintiff
19 seeking reimbursement of?

20 MR. ACKLEY: Same objection.

21 THE COURT: Overruled.

22 A. Give me one second and I'll calculate it.
23 \$7,700.

24 Q. Okay. And where excuse me where are you
25 looking in order to get those amounts?

1 MR. ACKLEY: Same objection.

2 THE COURT: Overruled.

3 A. The payment history, Seterus's payment
4 history.

5 Q. Okay, and what is the earliest entry for
6 insurance?

7 MR. ACKLEY: Same objection.

8 THE COURT: Overruled.

9 A. 4/1/2011.

10 Q. Was this entry made before or after Seterus
11 took over this loan?

12 A. After.

13 Q. Thank you. Is the plaintiff seeking
14 reimbursement of pre-acceleration late charges in
15 this loan?

16 MR. ACKLEY: Objection hearsay, lack of
17 authenticity, foundation, predicate.

18 THE COURT: Overruled.

19 A. Yes ma'am.

20 Q. And do you have knowledge of that amount?

21 MR. ACKLEY: Same objection.

22 THE COURT: Overruled.

23 A. I can't recall.

24 Q. Is there a document that I can provide you
25 that would refresh your recollection?

1 A. What were the fees again, I'm sorry?

2 Q. Pre-acceleration late charges.

3 A. Yes ma'am. I can't think of the name of the
4 document.

5 Q. Would the breach letter help with that?

6 A. We haven't discussed it yes, yes ma'am.

7 Q. Okay. I'm going to show you Plaintiff's
8 Exhibit 4 to help you refresh your recollection.

9 Please review this document and see if you can
10 figure out if there's pre-acceleration late charges
11 listed there.

12 MR. ACKLEY: I'm going to renew my objection
13 to this Exhibit as well as to this witness testifying
14 from the Exhibit. There's lack of foundation, lack
15 authenticity, lack of predicate, and its hearsay.

16 THE COURT: Overruled.

17 By MS. HENGST:

18 Q. Did that refresh your recollection?

19 A. Yes ma'am.

20 Q. And how much is the plaintiff seeking
21 reimbursement for pre-acceleration late charges?

22 MR. ACKLEY: Same objection.

23 A. \$222.60.

24 MS. HENGST: And Your Honor I'd ask the
25 Court to take judicial notice of a couple of docket

1 entries, as well to substantiate our damages. Docket
2 entry 12 which evidences the, it was a receipt for
3 plaintiffs tendering money for the complaint and lis
4 pendens filing fee.

5 MR. ACKLEY: I would object to that Your
6 Honor.

7 THE COURT: Overruled.

8 MS. HENGST: And of, I'm sorry.

9 THE COURT: Docket 12?

10 COURT CLERK: Oh, docket 12?

11 MS. HENGST: Docket entry 12, yeah.

12 COURT CLERK: I thought you meant paragraph.
13 I'll print it up.

14 MS. HENGST: I'm also going to ask for
15 judicial notice of docket entry 21.

16 MR. ACKLEY: I would object to the plaintiff
17 proffering these amounts without proper
18 documentation. I don't believe it's authenticated
19 just because it's entered into the docket. I don't
20 believe they properly laid the foundation for these
21 numbers to be added to potential damages in this
22 case.

23 THE COURT: You're talking about the court
24 cost, the affidavits referring to court cost?

25 MR. ACKLEY: If they have the affidavits

1 that's one thing but what we're saying is hearsay.
2 It's something that a Clerk wrote in a docket. We
3 don't know that accurately reflects what's actually
4 been paid.

5 THE COURT: She's, aren't you printing out
6 the actual affidavit.

7 COURT CLERK: Docket 12 is a summons, right?

8 MS. HENGST: Yeah.

9 COURT CLERK: Okay I'm printing that right
10 now. And 12 --

11 THE COURT: Does the summons contain, no
12 the --

13 COURT CLERK: We don't want anything that
14 contains our signature.

15 MS. HENGST: There's a receipt. It was,
16 maybe it's not exactly 21. But, it showed a receipt
17 for an alias summary.

18 MR. ACKLEY: I would just ask that if
19 they're asking to claim damages they should have
20 documents, the proper documentation for those
21 damages. Not docket entries Your Honor.

22 MS. HENGST: And we do have an affidavit
23 Your Honor.

24 THE COURT: All right.

25 MS. HENGST: It's in my final judgment

1 packet in front of you along with the supporting
2 documentation. But the docket entries that I'm
3 asking for you to take judicial notice of are part of
4 the Court's docket and it's certainly proper to the
5 Court to simply look at what they charged us to carry
6 out certain actions like filing the lawsuit,
7 recording the lis pendens and filing an alias
8 summons.

9 COURT CLERK: Is this the one you want? I
10 want to make sure this is right.

11 THE COURT: Yeah.

12 MR. ACKLEY: May I approach also and look at
13 while it's there? Thank you.

14 THE COURT: If I consider it I will
15 certainly give you a copy.

16 MR. ACKLEY: Thank you.

17 COURT CLERK: Yeah I can give you a copy when
18 I find the right one.

19 MS. HENGST: I guess it doesn't have a
20 number like 21 underneath it, it says receipt. I
21 don't know if that's a docket to printout or if
22 that's a notation.

23 COURT CLERK: So you need the receipt for the
24 alias summons?

25 MS. HENGST: I mean if Your Honor could just

1 take judicial notice, I'm not sure how that works.

2 COURT CLERK: The receipt, and what was the
3 other one?

4 MS. HENGST: It was, it was 10.

5 COURT CLERK: Oh 10.

6 MR. ACKLEY: Are these the documents that
7 are in the Court file. I'm not quite, I'm not
8 following. I apologize.

9 COURT CLERK: Yes.

10 THE COURT: Yes. Apparently according to
11 counsel they are.

12 MS. HENGST: I'm sorry it's -- oh I'm sorry
13 it's after what's filed right here, receipt for
14 payment.

15 COURT CLERK: Okay you're looking for
16 receipts. Okay. It wasn't stamped so I can't print
17 it.

18 THE COURT: This is number 12?

19 COURT CLERK: Right after 12, there's a
20 receipt for payment. Which is a summons and then
21 right afterwards on January 20th there's a receipt
22 for payment.

23 THE COURT: I just see a summons.

24 COURT CLERK: Oh you see you're on a
25 different, I'm on banner so. Maybe it doesn't show.

1 It wouldn't show there, probably. That's probably
2 just showing the actual docket entries.

3 MR. ACKLEY: I truly don't mean to be
4 difficult Your Honor. But I do believe plaintiff
5 actually needs receipts rather than references and
6 docket entries. I don't believe, I believe its
7 hearsay. And there's no exception of the docket that
8 I'm aware of.

9 COURT CLERK: Yeah yours isn't showing it.

10 THE COURT: Okay. Now what are you asking
11 me to take judicial notice of?

12 MS. HENGST: Of the Court's docket. They
13 required a payment from the plaintiff to file the
14 alias summons and serve an alias summons and also to
15 file this lawsuit. Those amounts are reflected on
16 the docket. It shows the receipt and the amount. I
17 mean, again we have an affidavit.

18 MR. ACKLEY: I would address the affidavit
19 separately Your Honor. If the plaintiff intends to
20 ask for reimbursement or as an element of damages, an
21 amount then they need some evidence to that effect.
22 I don't believe docket entries is evidence.

23 THE COURT: Well, I have a receipt for
24 payment of \$1,978.10.

25 COURT CLERK: Yes, that's it.

1 MR. ACKLEY: I guess my question Your Honor
2 is is that a receipt or is that a docket entry by a
3 member of the Clerk's staff?

4 COURT CLERK: No it's not a docket entry.
5 This is showing that we received the money.

6 MR. ACKLEY: By -- but again it's an entry
7 by a member of the Clerk's staff into the docket.
8 It's not actually a proper receipt.

9 THE COURT: I'm going to consider the
10 affidavit after you present your testimony. I'm
11 going to consider the, an affidavit.

12 Did you say, should I find for the
13 plaintiff, did you say you included the affidavit in
14 the proposed judgment?

15 MS. HENGST: Yes, it's towards the back Your
16 Honor, along with the supporting documentation.

17 MR. ACKLEY: I'm afraid I don't have a copy,
18 I would appreciate a copy.

19 THE COURT: I'm going to give it to you
20 right now. There's an original affidavit of cost.

21 Can we make a copy of this please?

22 COURT CLERK: Yes.

23 THE COURT: Thank you. Is this the
24 original?

25 COURT CLERK: This is the original.

1 THE COURT: Okay.

2 COURT CLERK: This is the copy.

3 THE COURT: The Court takes judicial of the
4 Court file which contains a receipt for payment of
5 \$1,978.10.

6 MS. HENGST: Thank you Your Honor. Just a
7 couple more questions we're almost done here.

8 BY MS. HENGST:

9 Q. Do you have knowledge whether the, whether
10 my law firm had to request the Court to serve the
11 defendants in this lawsuit?

12 MR. ACKLEY: Objection hearsay,
13 authenticity.

14 MS. HENGST: I asked if he had knowledge
15 Your Honor. If he doesn't have knowledge then he can
16 say he --

17 THE COURT: Of whether or not?

18 MS. HENGST: My firm had to ask the Court or
19 had to serve parties in this action for this lawsuit?

20 THE COURT: What's the relevancy of that
21 question?

22 MS. HENGST: Well we're going to be seeking
23 reimbursement of those fees as well.

24 THE COURT: I'll overrule the objection. I
25 mean I don't know. You can answer the question if

1 have.

2 A. Yes ma'am.

3 Q. Okay. And did the, did the plaintiff also
4 conduct any property inspections on the property?

5 MR. ACKLEY: Same objection, hearsay,
6 authenticity, lack of foundation, lack of predicate.

7 THE COURT: Overruled.

8 A. Yes ma'am.

9 Q. And are they seeking reimbursement of those
10 fees as well?

11 MR. ACKLEY: Same objection.

12 THE COURT: Overruled.

13 A. Yes ma'am.

14 Q. And just one final question for right now.
15 Your knowledge that makes up your testimony during
16 today's trial is that based on the business records
17 that have entered into evidence today?

18 MR. ACKLEY: Objection hearsay,
19 authenticity, lack of foundation, lack predicate.

20 THE COURT: Overruled.

21 A. That is correct.

22 MS. HENGST: No more questions at this time Your
23 Honor.

24 THE COURT: All right. What I'm going to do is
25 take a five minute break to give everyone a chance to

1 review the case that was presented by defendant.

2 MR. HARVEY: Your Honor plaintiff's counsel is
3 familiar with the case. If the Court wishes to
4 address it now the plaintiff's ready to proceed.

5 THE COURT: Well I'd like to read it first.

6 MR. HARVEY: Absolutely Your Honor.

7 THE COURT: Okay so let's take a five minute
8 recess and I'll let you know as soon as I'm finished
9 reading it. And then I can hear argument on it okay?

10 MR. ACKLEY: Thank you Your Honor.

11 MS. HENGST: Thank you.

12 THE COURT: All right the Court is in recess.

13 (Recess was taken from 11:21 AM to 11:28 AM
14 after which the following proceedings were had:)

15 THE COURT: Okay I've read the case of *Lewis B.*
16 *Hunter versus Aurora Loan Services* is an appellate
17 decision from the 1st District Court of Appeals. I
18 think this was the case I was referring to.

19 Okay. Let me just hear argument from defendant's
20 counsel because he's the one who's objecting and
21 claiming that this witness's testimony is
22 inadmissible. And if we could keep it, you know I've
23 read the case and if we could keep it to about five
24 minutes per side I would appreciate it.

25 MR. ACKLEY: Absolutely Your Honor.

1 THE COURT: Okay.

2 MR. ACKLEY: I think Your Honor we've actually
3 articulated most of the issues relevant to this
4 witness's testimony. But as the *Hunter* case
5 illustrates the issue is whether or not the Business
6 Records Exception can be applied to allow a document
7 into, into evidence.

8 In this case I would suggest that certainly the
9 payment records and the so called default letter and
10 the entries of the documents produced by Chase. This
11 witness has testified and his understanding of the
12 practices of Chase are based on assumptions. There's
13 been some reference to some tenuous industry
14 standard. Well, *Hunter* itself addresses the fact
15 that industry standard isn't adequate to get the
16 testimony in. In this case the witness has testimony
17 is not able to substantiate when the records were
18 made. He's unable to substantiate whether the
19 information that contained arrived from a person with
20 knowledge. He's unable to substantiate whether Chase
21 regularly makes such records and indeed whether the
22 records belong to Chase in the first place. And that
23 is straight out of the *Hunter* case and it is
24 absolutely applicable here in this case. The witness
25 has been very clearly shown not to have the requisite

1 knowledge to be able to enter these documents into
2 evidence pursuant to the business records exception.

3 THE COURT: Okay thank you.

4 MR. HARVEY: Thank you Your Honor. Travis
5 Harvey again for the plaintiff in this matter. And
6 to the extent counsel's argument says our witness in
7 this matter does not know where these records came
8 from, does not know what went into their creation is
9 complete inaccurate. The witness in this case has
10 testified that the records before this Court are
11 copies of his employer's records. That they were
12 boarded in a service transfer from the prior
13 servicer. These records undergo an audit. And if
14 there's anything that comes back within that audit
15 they then verify the records again and look for any
16 errors on the hard copies of the records themselves.

17 He's testified that the records before this Court
18 here today Your Honor are not another entity's
19 records. They may have come initially from another
20 entity but the records here are in fact Seterus
21 records held on behalf of Fannie Mae as Seterus is
22 the servicer. And this is a critical distinction
23 Your Honor because in the case that counsel is
24 relying upon it's completely inapplicable. The case
25 of *Hunter versus Aurora Loan Services* Your Honor.

1 One primarily is standing. And to the extent that's
2 there's dicta in there that addresses records at
3 large and the type of evidence via testimony or
4 tangible that was submitted in support in that case.
5 There's significant distinction factors excuse me at
6 play here. One the witness in that case admitted he
7 did know whose records he was looking at. He did not
8 know where they came from. He couldn't even testify
9 that the records he in fact was testifying to were
10 the records of his own employer. Whether or not they
11 were obtained by a prior servicer, not, he really had
12 no knowledge of what he was looking at. He was
13 familiar with the names of the loan, he was familiar
14 with industry standard and he was familiar those
15 things by and large only. That's not the case that
16 we have here. Where the witness has again identified
17 whose records in front of him and before this Court,
18 his employer's. He's familiar with his employer
19 record creation and keeping practices. He knows
20 where these records came from. And therefore he has
21 sufficiently laid the foundation for bear admittance
22 and also sufficiently given testimony to show his
23 knowledge to be able to testify about these records.

24 And as specifically cited by the *Hunter* suit Your
25 Honor is the *Wamco* case. And this is on page 7 Your

1 Honor. About halfway down through that page and
2 really about two-thirds of the way down through that
3 first paragraph. The Court cites *Wamco* and
4 distinguishes it from that case and parenthetically
5 it shows that *Wamco* found Business Records Exception
6 satisfied where loan servicer's records incorporated
7 payment data from previous servicer and officer of
8 current servicer testified he had worked on the loan
9 at issue and verified the payment data and described
10 his company's verification process. This is the
11 situation we have before this Court Your Honor. It's
12 not the *Hunter* decision it's the *Wamco* decision of
13 where testimony has been given regarding the
14 verification process that is undertaken when a new
15 loan is boarded and how the records are then
16 integrated into their system. And those are the
17 records we have before us here today.

18 THE COURT: Okay. Let me make a ruling.
19 Because I also was going to cite the Court citation
20 of *Wamco* in which this witness really satisfied all
21 of the requirements that the 1st DCA thought were
22 necessary when a new servicer takes over. The
23 procedures from a prior servicer. The only portion
24 of the *Wamco* criteria that may not have been
25 emphasized by this witness was that he worked the

1 loans as issue.

2 However I also note that Seterus took over the
3 loan on August 1st of 2010 after the default occurred
4 and after the breach letter had been sent out. So
5 there would have been no reason for this witness to
6 work on the loan. All the other requirements of
7 *Wamco* have been satisfied by this witness's
8 testimony.

9 And I really want to thank Mr. Ackley for
10 providing this to me because it was bothering me in
11 the back of my mind that this case existed and I was
12 concerned about it. So yeah, that's my ruling if the
13 4th disagrees with me, please no further argument.
14 We've, you know your preserved your, your objections
15 adequately I'm sure. If the 4th disagrees with me so
16 be it. But at least I'm satisfied that this
17 witness's testimony has satisfied the requirements of
18 *Wamco* and thank you.

19 MR. ACKLEY: You can keep that if you want Your
20 Honor.

21 THE COURT: Oh thanks, I appreciate that. Okay
22 let's start cross examination and in terms of the
23 court cost which plaintiff is attempting to include
24 in the judgment I am going to consider it. She's
25 rested and I told her, while she hasn't rested her

1 case. So wait until after this has been concluded to
2 request my consideration should I find judgment in
3 favor of the plaintiff. Okay cross examination.

4 MR. ACKLEY: Thank you Your Honor. May I?

5 THE COURT: Sure.

6 MR. ACKLEY: Thank you. Your Honor and counsel
7 the exhibit marked number 3 is falling apart. I
8 would ask if the Clerk could staple it so it doesn't
9 separate while we handle it.

10 THE COURT: Do we have copies of these exhibits
11 for the Court so I can follow along during cross
12 examination?

13 MS. HENGST: Yes. They have hole punches in
14 them, if that's okay Your Honor?

15 THE COURT: That's fine as long as they don't
16 have any notations, okay. You have copies for
17 yourself?

18 MS. HENGST: Oh, yes. The only thing I don't
19 have a copy of is the Power of Attorney.

20 COURT CLERK: I can make a copy if you want.
21 I'll be happy to do it.

22 THE COURT: Okay, if you would.

23 MS. HENGST: This is the Note, Mortgage, breach
24 letter, and the loan payment histories.

25 THE COURT: Do you have the Power of Attorney

1 is that what it is?

2 MR. ACKLEY: I don't have a copy but that's the
3 Power of Attorney Your Honor.

4 COURT CLERK: Okay I'll go make a copy.

5 MR. ACKLEY: Very good thank you.

6 THE COURT: If you'd make two copies I'd
7 appreciate it.

8 COURT CLERK: Okay.

9 THE COURT: Do we need a copy of the payment
10 history?

11 MS. HENGST: Yeah if I can look at what I
12 provided you I think it's different. Yeah this first
13 paper is correct, but this one is not admitted into
14 evidence. I don't think I have an extra copy of that
15 one. I apologize Your Honor.

16 THE COURT: That's okay. Okay. Does everybody
17 had the necessary copies of the documents that have
18 been introduced into evidence?

19 (Proceedings continued in Volume II.)

20

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)
3 COUNTY OF PALM BEACH)

4 I, Carlos A. Rugel, Electronic Reporter, do
5 hereby certify that I transcribed the notes of Rinat
6 Katz of the proceedings before the Honorable S.
7 Lubitz; and that the foregoing transcript, pages 1
8 through 98 is a true transcript of said notes to the
9 best of my ability.

10 I FURTHER CERTIFY that I am not a relative,
11 employee, or attorney, or counsel of any of the
12 parties, nor am I a relative or employee of any of
13 the parties' attorney or counsel connected with the
14 action, nor am I financially interested in the
15 action.

16 DATED this 14th day of May, 2014 in Broward
17 County, Florida

18 _____
19 Carlos A. Rugel
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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 2011-000895 CA

FEDERAL NATIONAL)
MORTGAGE ASSOCIATION,)
)
Plaintiff,)
)
vs.)
)
[REDACTED] [REDACTED] et al.,)
)
Defendant(s).)
-----/

TRANSCRIPT OF PROCEEDING
VOLUME II (Pages 100-210)

DATE: March 20, 2014
TIME: 9:18 AM - 3:47 PM
LOCATION: Palm Beach County Courthouse
205 North Dixie Highway,
West Palm Beach, Florida 33401
BEFORE: The Honorable Susan Lubitz

This cause came to be heard at the time and place
aforesaid, when and where the following proceedings were
recorded and later transcribed by:

Carlos A. Rugel
Electronic Court Reporter
Alternative Court Reporting
4700 Sheridan Street, Suite J
Hollywood, FL 33021
P: 954.832.3563
F: 954.556.6607
www.AlternativeCourtReporting.com

A P P E A R A N C E S

FOR THE PLAINTIFF:

ERIKA HENGST, ESQ.
SHAPIRO, FISHMAN & GACHE, LLP
2424 North Federal Highway, Suite 360
Boca Raton, Florida 33431
561.998.6700
ehengst@logs.com

TRAVIS HARVEY, ESQ.
SHAPIRO, FISHMAN & GACHE, LLP
2424 North Federal Highway, Suite 360
Boca Raton, Florida 33431
561.998.6700
tharvey@logs.com

FOR THE DEFENDANT:

JAMES R. ACKLEY, ESQ.
ICE LEGAL, P.A.
1015 North State Road 7, Suite C
Royal Palm Beach, Florida 33411
561.729.0530
randy.ackley@icelegal.com

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1 (Proceedings continued from Volume I:)

2 **CROSS EXAMINATION**

3 BY MR. ACKLEY:

4 Q. Mr. Rankin?

5 A. Yes sir.

6 Q. I'd like to show what's been entered into
7 evidence as Plaintiff's Exhibit No. 1.

8 In your testimony you suggested that this was
9 kept as a regular course, in the regular course of
10 business by Fannie Mae, is that correct?

11 A. By Fannie Mae?

12 Q. Yes.

13 A. I'm not understanding your question. Are
14 you saying that Fannie Mae keeps a copy of this?

15 Q. I'm sorry. I didn't mean to talk over you.
16 Can you repeat your question?

17 A. I was saying are you saying does Fannie Mae
18 keep a copy of this Power of Attorney?

19 Q. That was my understanding of your testimony
20 earlier, is that true?

21 A. Yes sir.

22 Q. Okay, and you testified that this is a
23 document that's created by Fannie Mae in the regular
24 course of business?

25 A. Yes sir.

1 Q. Okay. I guess you've never worked for
2 Fannie Mae, have you?

3 A. No sir, I haven't.

4 Q. Where is their headquarters?

5 A. Texas.

6 Q. Fannie Mae is?

7 A. Yes sir.

8 Q. And have you been there?

9 A. No sir, I haven't.

10 Q. Have you read their policies and procedures?

11 A. In relation to our servicing agreement. Yes
12 sir.

13 Q. You've read Fannie Mae's policies and
14 procedures?

15 A. No sir, no sir I'm sorry I misunderstood.

16 Q. All right. You've never read their policies
17 and procedures have you, Fannie Mae's policies and
18 procedures, right?

19 A. No sir.

20 Q. Okay. And you've never worked for Fannie
21 Mae.

22 Have you ever generated documents for Fannie Mae
23 to execute?

24 MS. HENGST: Objection Your Honor, outside
25 the scope of direct.

1 THE COURT: Overruled.

2 A. Could you repeat the question?

3 MR. ACKLEY: Could you repeat the question
4 for me please?

5 COURT REPORTER: One second. One second
6 sorry.

7 Question: "You've never worked for Fannie
8 Mae. Have ever generated documents for Fannie Mae to
9 execute?"

10 MS. HENGST: Objection, vague and confusing
11 Your Honor. For Fannie Mae on their behalf or
12 working for them. It's just not clear.

13 MR. ACKLEY: I'll rephrase that's fine.

14 THE COURT: Okay.

15 BY MR. ACKLEY:

16 Q. Have you ever generated any documents for
17 Fannie Mae on their behalf?

18 A. Have I generated? No sir.

19 Q. Do you have any idea, may I see the document
20 please? Thank you.

21 Do you have any idea who Shaniqua Singleton is?

22 A. I believe she's a secretary.

23 Q. All right, and how do you know that?

24 A. By her signature on there and the signature
25 block says she's as a Secretary of Fannie Mae.

1 Q. All right. So the only way you know of her
2 is by her signature on this document?

3 A. Correct. I've never personally met her no.

4 Q. Okay, what Barbara Cushman? Do you know who
5 Barbara Cushman is?

6 A. Yes sir she's a Vice President.

7 Q. And you know that the same way because you
8 read it on this document?

9 A. That is correct.

10 Q. You have no independent knowledge of that,
11 right?

12 A. That is correct.

13 Q. Did you have anything to do with the
14 production of this document at all?

15 A. No sir.

16 Q. And have you had anything to do with
17 negotiations with Fannie Mae or have you ever been
18 involved in contract negotiations with Fannie Mae on
19 behalf of Seterus?

20 A. No sir.

21 Q. Have you ever worked in Seterus's department
22 that does that?

23 A. No sir.

24 Q. Have you ever lived in Oregon?

25 MS. HENGST: Objection relevance.

1 THE COURT: What's the relevancy?

2 MR. ACKLEY: The document that he has
3 testified that he has knowledge to and on which his
4 testimony that the entrance in evidence is based says
5 that he has knowledge and background in this
6 document. Evidently according to the document as it
7 reads on his own it's been recorded in Oregon. So
8 I'm just trying to find out how he has any background
9 whatsoever to testify to regarding this document.

10 THE COURT: The objection is sustained.
11 Move on.

12 MR. ACKLEY: Okay.

13 BY MR. ACKLEY:

14 Q. In what departments have you worked in at
15 Seterus?

16 MS. HENGST: Objection, asked and answered.

17 THE COURT: Overruled.

18 A. I worked in the Collections Department late
19 and early stage and also the Foreclosure Department.

20 Q. Have you ever worked in the Title Services
21 Department?

22 A. No sir, I have not.

23 Q. All right. You've never read the policies
24 and procedures of the Title Services Department of
25 Seterus, have you?

1 MS. HENGST: Objection relevance.

2 THE COURT: Overruled.

3 A. No sir.

4 MR. ACKLEY: All right at this point Your
5 Honor I renew my objection to this document being
6 entered into evidence. I think the witness has shown
7 that he has no background whatsoever to authenticate
8 this document. We have challenged the authenticity.

9 THE COURT: The objection is overruled.

10 BY MR. ACKLEY:

11 Q. Would you remind me what entity was it that
12 owned the loan before it was, you asserted it was
13 transferred to Seterus?

14 MS. HENGST: Objection Your Honor to
15 relevance. We didn't talk about ownership.

16 THE COURT: Overruled.

17 A. You said what entity?

18 MR. ACKLEY: I'm sorry, counsel is correct.

19 BY MR. ACKLEY:

20 Q. What entity was servicing the loan prior to
21 Seterus?

22 A. Chase Bank.

23 Q. Chase Bank National Association or a
24 servicer, entity of Chase?

25 A. Servicer entity if I recall correctly.

1 Q. Okay. And when did, when you assert that
2 Seterus first took over servicing this loan?

3 A. Are you giving this to me?

4 Q. We'll refer to it.

5 A. Okay. We started servicing the loan August
6 the 1st 2010.

7 Q. Prior to that point you were not the
8 custodian, Seterus was not the custodian of the
9 document, is that correct?

10 A. That is correct.

11 Q. When did Seterus first have possession of
12 the Note that's been marked as exhibit and entered
13 into evidence as exhibit, Plaintiff's Exhibit 2?

14 MS. HENGST: Objection asked and answered,
15 relevance.

16 THE COURT: Overruled.

17 A. You say when did we come into possession of
18 the original?

19 Q. Yes.

20 A. Well, Fannie Mae actually had possession of
21 the original. I can't recall the acquisition date.

22 Q. Are any of the documents that are in
23 evidence would give you any recollection or reflect
24 when the acquisition took place?

25 A. I do not believe so.

1 Q. You've never been employed by Chase,
2 correct?

3 A. That is correct.

4 Q. You've never, clearly as a result you've
5 never supervised any employees at Chase, correct?

6 A. Correct.

7 Q. At what point did Fannie Mae obtain
8 possession of the Note, the original Note that's been
9 marked and entered into evidence as Exhibit Number 2?

10 MS. HENGST: Objection asked and answered.

11 THE COURT: Overruled.

12 A. Could you repeat the question?

13 Q. At what point did Fannie Mae obtain
14 possession of the document that's been marked and
15 entered into evidence as Plaintiff's Exhibit number
16 2?

17 MS. HENGST: Objection relevance.

18 THE COURT: Overruled.

19 A. I do not recall the date that they became in
20 possession of the Note.

21 Q. Is there any document that would refresh
22 your recollection that's been entered into evidence
23 today?

24 A. That Fannie Mae?

25 Q. Yeah.

1 A. No sir.

2 Q. Prior to today have you ever seen the
3 document that's before you and has been marked and
4 entered into evidence as Exhibit Number 2 for the
5 Plaintiff?

6 A. The original Note?

7 Q. Yes.

8 A. No sir.

9 Q. Prior to today you'd only seen images, is
10 that correct?

11 A. I've seen a copy of it, yes sir I have.

12 Q. When did you first see a copy of this
13 document?

14 A. It would have had to have been last week.

15 Q. And that was strictly in anticipation of
16 your preparation for this litigation, is that
17 correct?

18 A. Yes sir.

19 Q. There are more, there are several copies of
20 the Note, is that correct? I mean we have them
21 attached to our documents.

22 A. Yeah, yeah, I'm sure there is.

23 Q. All right. The copy of the Note attached to
24 the complaint in this case is a copy of the original,
25 is that your understanding?

1 A. The copy of the Note attached to the --

2 Q. Complaint.

3 A. Complaint. Could you repeat the question
4 I'm sorry.

5 Q. It's a copy of the original as far as you
6 know?

7 A. This here?

8 Q. The copy that's attached to the complaint is
9 a copy of that original, is that a fair assumption?

10 A. No sir.

11 Q. Okay. Where would that copy come from?

12 A. I'm assuming a copy that the attorney's
13 office had or a copy made off the original.

14 Q. Okay. You're not a handwriting expert are
15 you?

16 A. No sir, I'm not.

17 Q. And you don't know [REDACTED] [REDACTED] personally,
18 do you?

19 A. No sir, I do not.

20 Q. To your knowledge have you ever met [REDACTED]

21 [REDACTED]

22 A. Not to my knowledge.

23 MS. HENGST: Objection relevance.

24 THE COURT: Overruled.

25 Q. Do you know Gayle Rogers by any chance?

1 A. No sir.

2 Q. Do you know who Gayle Rogers is?

3 A. No sir.

4 MS. HENGST: Objection relevance.

5 THE COURT: Overruled.

6 Q. If I recall your testimony you testified
7 that those were original signatures on this document,
8 is that correct?

9 A. Yes sir.

10 MS. HENGST: Objection, mischaracterizing
11 testimony. I can elaborate.

12 THE COURT: If you want to because I
13 remember his testimony was that they were, that this
14 was an original document and these were signatures on
15 an original document.

16 MS. HENGST: I asked him who it appears to
17 be signed by, he stated that. And I asked him how he
18 thought it, or why he thought it was original and he
19 said because of the blue ink. I didn't ask him if
20 the signatures were, you know, that direct question.

21 THE COURT: Okay. Well the inference is
22 still there. So go ahead. What's the question?

23 MR. ACKLEY: I'm afraid I lost it. I guess
24 I'll go back and ask it.

25 BY MR. ACKLEY:

1 Q. Your assumption that these were original
2 signatures was based on the fact that it's in blue
3 ink, is that correct?

4 A. That is correct.

5 Q. Today since you're not a handwriting expert
6 which you testified to, do you have any other basis
7 for telling us that this, these are original
8 signatures?

9 These, you interpret these be original
10 signatures?

11 MS. HENGST: Your Honor I would object this
12 is a self-authenticating document that's already
13 entered into evidence.

14 THE COURT: I know that but this is cross
15 examination so I'm going to give him some leeway but
16 let's, you know, let's move, pick up the pace please.

17 A. No sir.

18 Q. Okay. Just to clarify you said you don't
19 know [REDACTED] [REDACTED]

20 You don't recognize his signature independently
21 seen here on this document, do you?

22 A. That is correct.

23 Q. All right. Looking at this document can you
24 tell us how much the principal balance due is from
25 Exhibit Number 2, that you allege is due?

1 A. The principal amount that was at this point?

2 Q. That's due today.

3 A. No sir.

4 Q. How about the interest, you know the
5 interest rate but you tell us how much interest is
6 due today from looking at the Promissory Note?

7 A. No sir.

8 Q. How about late fees? Can you determine late
9 fees from looking at the Promissory Note?

10 A. No sir.

11 Q. Can you determine -- you can't determine how
12 many, how much is due in taxes on that property by
13 looking at the Promissory Note, can you?

14 A. No sir.

15 Q. Neither can you tell us if there's any, or
16 how much insurance is due from looking at the Note,
17 can you?

18 A. No sir.

19 Q. So you would have to look at other documents
20 if you wanted to get those numbers into evidence in
21 the case today, wouldn't you?

22 A. Correct.

23 Q. What's the loan number for this loan?

24 Is it reflected on Exhibit Number 2?

25 A. No sir.

1 MR. ACKLEY: Thank you. Your Honor at this
2 point I will renew my objection to the entry into
3 evidence of Exhibit Number 2 based on the fact that
4 this witness has no basis to testify as to its, that
5 it's an original document and that it is properly
6 before the Court. It's hearsay and has not been
7 qualified or laid the proper foundation for its entry
8 into evidence. It's not a self-authenticating
9 document. Under Florida Law self-authentication
10 applies to signatures and this witness had testified
11 he has no knowledge of the signatures.

12 THE COURT: Your objection is overruled.

13 BY MR. ACKLEY:

14 Q. Mr. Rankin I'd like to show you what's been
15 marked and placed into evidence as Exhibit Number 3,
16 Plaintiff's Exhibit Number 3.

17 As you look at that, prior to today have you seen
18 that document?

19 A. I've seen a copy of the document.

20 Q. So today is the first day you've seen what's
21 been marked and entered into evidence as Plaintiff's
22 Exhibit Number 3?

23 A. Yes sir.

24 Q. So far before today you've seen images or
25 copies photo copies, is that correct?

1 A. That is correct.

2 Q. Prior to, well when did your company first
3 go, when did Seterus first come into possession of
4 this document?

5 A. Of the original?

6 Q. Yes.

7 A. We're not in possession of the original. We
8 haven't been.

9 Q. Okay. Who has been in possession of the
10 original?

11 A. I'll assume either our attorneys -- well not
12 from the first, Fannie Mae.

13 Q. Do you have any records to reflect that?

14 A. No sir.

15 Q. So that's assumption you actually don't know
16 do you?

17 I'm sorry?

18 A. Are you asking is it an assumption?

19 Q. It's an assumption, correct?

20 A. Correct.

21 Q. You have no knowledge of when the physical
22 transfer of the document that's been placed into
23 evidence as Exhibit Number 2 was transferred to the
24 plaintiff if it was transferred to the plaintiff, do
25 you?

1 A. Correct.

2 THE COURT: You talking about the Note or
3 the Mortgage?

4 MR. ACKLEY: It's Number 2 it's the
5 Mortgage.

6 THE COURT: No the Mortgage is Number 3.

7 MR. ACKLEY: I'm sorry Number 3. My
8 apologies you're correct. I was referring to the
9 Mortgage. Let me restate that question.

10 BY MR. ACKLET:

11 Q. You have no knowledge of when the Mortgage
12 Exhibit Number 3 was transferred if it was
13 transferred to the plaintiff, do you?

14 A. That is correct.

15 Q. Do you have any knowledge of the basis on
16 which the Mortgage was transferred from Chase to
17 Fannie Mae?

18 A. Could you elaborate on what you mean by
19 basis?

20 Q. Why was it transferred from Chase to Fannie
21 Mae?

22 A. No sir.

23 Q. And with regard to Exhibit Number 3 you have
24 no knowledge of when that transfer took place,
25 correct?

1 MS. HENGST: Objection asked and answered.

2 THE COURT: Sustained.

3 BY MR. ACKLEY:

4 Q. Do you have any knowledge of what department
5 at Seterus would hold -- strike that.

6 Has Seterus ever had possession of the Mortgage
7 prior to today?

8 A. No sir.

9 MR. ACKLEY: All right. May I see the document
10 again? Your Honor I would renew my objection to
11 entry of evidence of Exhibit Number 3. Based on the
12 fact this witness has no knowledge, personal
13 knowledge or otherwise of the document and its
14 authenticity and cannot testify as to the foundation
15 necessary to obtain, or apply an exception to the
16 Hearsay Rule.

17 THE COURT: Your objection is overruled. We're
18 going to break for lunch now. Okay, and we will
19 reconvene at 1:30 PM. Okay, the Court is in recess
20 and I again I want to remind the witness please don't
21 discuss your testimony with your attorneys because
22 you're still under oath for cross examination.

23 THE COURT: Yes ma'am.

24 MS. HENGST: Okay.

25 MR. ACKLEY: Thank you Your Honor.

1 THE COURT: The Court is in recess.

2 (Luncheon recess was taken from 12:02 PM to
3 1:40 PM after which the following proceedings were
4 had:)

5 THE COURT: Okay Court is back in session. Mr.
6 Rankin will you please take stand. I'll remind you
7 you're still under oath and this is the resumption of
8 cross examination.

9 THE WITNESS: Yes ma'am.

10 COURT REPORTER: Excuse me Your Honor can you
11 just give me one second?

12 THE COURT: Sure.

13 COURT REPORTER: Thank you.

14 THE COURT: Tell me when you're ready.

15 COURT REPORTER: My system is not working.

16 THE COURT: It's okay just take it easy.

17 THE COURT: Ready?

18 COURT REPORTER: Thank you, yes.

19 THE COURT: Please proceed.

20 MR. ACKLEY: Thank you.

21 **CONTINUED CROSS EXAMINATION**

22 BY MR. ACKLEY:

23 Q. You earlier testified that you worked for
24 Seterus for about two years now is that correct?

25 A. Seterus yes sir.

1 Q. Seterus yeah. About two years?

2 A. Yes.

3 Q. And you have not worked in the field before
4 that?

5 A. No sir, I haven't.

6 Q. In those two years you've never managed
7 loans have you?

8 A. I guess it would depend on what you mean by
9 managed loans.

10 Q. All right that's a fair question let me
11 rephrase the question.

12 You've never managed payment receipt for the
13 loans, have you?

14 A. I've never managed it no. I have accepted
15 payments though yes sir.

16 THE COURT: I'm sorry I didn't hear your
17 response and again I'm going to ask you to please
18 speak a little louder.

19 THE WITNESS: I said no sir I have not
20 managed loans but I have accepted loans.

21 Q. Loans or payments?

22 A. I mean I'm sorry. Payments.

23 Q. All right. You're here today your title
24 today is what?

25 A. Corporate Litigation Corporate Officer.

1 Q. All right. And the --

2 A. Foreclosure Litigation Corporate Officer I'm
3 sorry. I apologize.

4 Q. You've done this about seven months?

5 A. Yes. Going on seven months.

6 Q. And did you receive -- strike that. I
7 apologize.

8 Part of your role now is to testify in cases such
9 as this, is that correct?

10 A. Yes sir it is.

11 Q. Roughly how much of the time are you
12 involved in testifying on cases what percentage say
13 each week are you testifying?

14 A. Depending on the week I would say about
15 40/60. 40% in, not in court but 40% of my day is on
16 the road during the week. So about anywhere from two
17 to four days a week I'm traveling.

18 Q. And the rest of the time you're, what are
19 you doing?

20 A. I'm in the office.

21 Q. Preparing for trial?

22 A. In some instances yes sir.

23 Q. What else?

24 A. While I'm in the office also I do
25 participate in the execution of documents and review

1 and assisting our attorneys in receiving
2 documentation that they might need in preparation for
3 trial.

4 Q. When you say execution of documents things
5 like interrogatories?

6 A. Yes sir.

7 Q. So you're not involved in the day to day
8 business of handling loans and handling clients, are
9 you?

10 A. No sir.

11 Q. Prior to this position that you've done for
12 the last seven months what was the title that you had
13 before?

14 A. Before that is was a Foreclosure Analyst.

15 Q. And you were also working with attorneys at
16 that time?

17 A. In a sense yes sir. That was more so
18 approval and denial of fees and requesting
19 documentation to prove that fees were owed.

20 Q. So again it was in anticipation of
21 litigation or preparation for litigation?

22 A. For the most part, yes.

23 Q. And it was only the last seven months that
24 you've been asked to testify on behalf of Seterus, is
25 that correct?

1 A. Yes sir.

2 Q. What kind of training did you receive?

3 A. I received in-house training --

4 MR. HARVEY: Your Honor I object to the
5 extent that training may imply any attorney/client
6 communications with the witness. And I'm going to
7 ask that that question be rephrased to discount any
8 privileged material or information that the witness
9 may inadvertently disclose.

10 THE COURT: You know I don't know what
11 you're referring to until he begins to respond. So
12 you know please, please either be more specific or
13 wait until he starts to respond to the question.

14 MR. HARVEY: Well, Your Honor waiting to
15 respond to the question would by virtue of waiting
16 could possibly allow privileged information to be
17 disclosed in the Court. I would just ask that
18 counsel effectively rephrase the question to not go
19 into any attorney/client matters or anything that
20 counsel be it in-house or counsel in this matter has
21 disclosed to the witness.

22 THE COURT: Do you understand what the
23 objection is?

24 THE WITNESS: In a sense, yes.

25 THE COURT: You do?

1 THE WITNESS: To certain point yes.

2 THE COURT: Okay. And do you understand
3 that to the extent that any attorney/client
4 conversation should not be disclosed in this trial?
5 Do you understand that you have an obligation not to
6 disclose them?

7 THE WITNESS: I do now, yes.

8 THE COURT: Okay now with respect to this
9 case and/or any other cases that may relate to
10 attorney/client conversations is that what you're
11 referring to?

12 MR. HARVEY: Yes Your Honor including any
13 in-house counsel as they would still be attorneys and
14 any communications with the witness would have been
15 deemed to have been made under attorney/client
16 communications or otherwise protected.

17 THE COURT: Okay. I mean in-house counsel
18 are attorneys.

19 MR. HARVEY: Absolutely which is why I must
20 make that clarification in even in-house would
21 qualify in which I'm objecting.

22 THE COURT: Okay. So again with those
23 guide lines in mind please try to adhere to them.

24 THE WITNESS: I'll try.

25 THE COURT: Okay, all right. And if again

1 the witness testifies to the matters that you're
2 objecting to just please stand up and object.

3 MR. HARVEY: Yes Your Honor.

4 THE COURT: Please proceed.

5 MR. HARVEY: Thank you.

6 A. With my training initially when I started
7 the position I was trained by people that had been in
8 the position prior to me just basically going over a
9 lot of the procedures and things that would be looked
10 at and asked upon me in Court. And also I did a
11 shadowing for one week with a colleague of with mine.

12 Q. Did you do role playing?

13 A. Yes sir.

14 Q. Okay. And without getting into the content
15 of your conversation did you describe how to testify,
16 the nature of testimony and how to testify?

17 MR. HARVEY: Objection Your Honor that goes
18 to part of what communications may be. Any positive
19 or negative response in a sense implies what the
20 nature of those communications would be. I would ask
21 that question be stricken and counsel be asked to
22 move on regarding any communications with counsel
23 in-house or external.

24 THE COURT: Overruled. That, that calls
25 for a yes or no. It doesn't call for a question

1 about the content of the communication. So you can
2 answer that.

3 THE WITNESS: Yes. Could you repeat the
4 question?

5 BY MR. ACKLEY:

6 Q. When you received this training from your
7 colleagues and in the firm did they give training as
8 to how to testify when you're in court?

9 A. Not per se how to testify. Just more so how
10 to prep and how to acknowledge the documents and
11 certain things to look for in the documents.

12 Q. All right. Who is providing this training
13 to you?

14 A. A colleague of mine.

15 Q. Is that colleague an attorney?

16 A. No sir.

17 Q. You testified that about forty percent of
18 the time you're on the road doing testimony. And the
19 rest the time you're preparing for testimony is that
20 correct?

21 A. Well, during my travel I do prepare also in
22 between, yes.

23 Q. All right. Did your colleague explain to
24 you what words to use when describing business
25 records?

1 A. Not to my recollection.

2 Q. All right. When you review the documents or
3 review the records for a case do you review them on
4 the computer or in paper copies?

5 A. Depends on my setting. If I'm for just for
6 instance in a hotel then it would most likely be on
7 my computer unless I have a hard copy with me. If
8 I'm in the office, me personally I print the
9 documents.

10 Q. You print them from the computer system?

11 A. Yes.

12 Q. What computer system do you use?

13 A. For housing the documents?

14 Q. Yeah.

15 A. It's an imaging system called SCI.

16 Q. Is this also the system that other
17 departments of the bank use?

18 A. For the same images?

19 Q. For where the records are kept, right?

20 A. Yes.

21 Q. Are there any other computer systems that
22 you access in preparing for trial?

23 A. Yes. I do look at the loan notations just
24 to see if there's any loss mitigation or anything
25 going on. It's in a system called Pulse. Let's see

1 of course I use LPS.

2 Q. What is LPS?

3 A. It's basically a system that we use to
4 correspond with the attorneys I guess you could say.
5 To provide them what they need. They request certain
6 things through that system.

7 Q. Am I correct in understanding that the
8 images are kept in the SCI system?

9 A. That is correct.

10 Q. Do you have any idea what SCI stands for?

11 A. Securitized Computer, Security Computerized
12 Imaging.

13 Q. I see. Okay so we've talked about Pulse,
14 SCI and LPS.

15 Are there any other computer systems that you use
16 in preparing for trial?

17 A. I'm trying to think. That's all I can
18 recall right now.

19 Q. Do you happen to know if these are the same
20 systems that Chase used or uses?

21 A. No sir.

22 Q. You don't know?

23 A. No sir.

24 Q. Do you happen to know if Fannie Mae uses any
25 of these systems?

1 A. No sir.

2 Q. What training did you receive to utilize
3 these systems?

4 A. Well everyone who works at Seterus under
5 goes a three month training initially from being
6 hired. That's the training that teaches you how to
7 utilize and navigate the systems during the first
8 three months of your employment.

9 Q. All right. And that's where you learned how
10 to use Pulse, SCI and LPS?

11 A. Yes sir.

12 Q. And everybody learns these three systems?

13 A. Yes sir.

14 Q. In your current position do you supervise
15 anybody?

16 A. No sir, I do not.

17 Q. In you previous, immediately previous
18 position did you supervise anybody?

19 A. No sir.

20 Q. In preparing for this case do you, do you
21 review the entire loan file for the subject Mortgage
22 and Note or do you just select documents that you
23 review?

24 A. I wouldn't say I review the whole entire
25 loan file, no.

1 Q. I'm going to show you what's been marked
2 into evidence as Exhibit Number 4.

3 Is it fair to say that you first observed -- or
4 why don't you tell us, when was the first time you
5 saw that document?

6 A. It would be last week.

7 Q. Last week?

8 A. Yes sir.

9 Q. Where did you see it?

10 A. I believe I was in the office.

11 Q. Okay. When you say last week was it on
12 Friday or earlier in the week?

13 A. I was in the office on Wednesday.

14 Q. So you were preparing for this case last
15 Wednesday?

16 A. Yes sir.

17 Q. And again what systems do image it on or
18 view it on?

19 A. SCI is the imaging system.

20 Q. Do you know who put the data into SCI?

21 A. There's numerous people who put the data
22 into SCI.

23 Q. You don't know who put this in image in?

24 A. I don't know who put this image in, no sir.

25 Q. You don't have any idea who at Chase would

1 have, well I'm going to rephrase that.

2 Is it actually an image or is this a
3 reconstructed document that the computer prints out
4 from processing software do you know?

5 Do you see a photo copy image or like a scanned
6 image or is it a reconstruction?

7 A. Yes. It's a scanned image.

8 Q. A scanned image. Do you know who at Chase,
9 you don't know who at Chase was responsible for
10 creating this letter, do you?

11 A. No sir.

12 Q. Do you know if Chase created the letter or
13 did have a third party vendor that creates it for
14 them?

15 A. I do not know.

16 Q. So you don't know what policies and
17 procedures they have as to when the letter would be
18 sent as far as what would trigger it to be sent do
19 you?

20 A. What would trigger it?

21 Q. Well you don't know in Chase what specific
22 event would trigger them sending the letter do you?

23 A. The default?

24 Q. Correct.

25 A. That would be the default.

1 Q. And you're basing that on what?

2 A. On standard business practices.

3 Q. But you don't know from personal knowledge
4 how Chase, what the Chase policy and procedure is do
5 you?

6 A. No sir.

7 Q. If it was a third party vendor you don't
8 know how they're compensated for generating the
9 letter since you don't know if they had a third party
10 vendor, isn't that correct?

11 A. Correct.

12 Q. And you don't have any knowledge as to who
13 at Chase if it was Chase generating the letter who at
14 Chase would generate the letter, do you?

15 A. That is correct.

16 Q. Do you have any record of from Chase or
17 anywhere that reflects that this was actually mailed
18 like a postal receipt or a record with a tracking
19 number?

20 A. No sir.

21 Q. You've never supervised the maintenance of
22 default letters, have you?

23 A. That is correct.

24 Q. In fact you don't have any evidence that
25 this letter was actually sent at all do you, other

1 than the image that you're relying on. Isn't that
2 correct?

3 A. Yes sir.

4 Q. You don't have any independent knowledge of
5 whether or not [REDACTED] [REDACTED] or [REDACTED] [REDACTED] actually
6 received the letter, a letter if it was sent, do you?

7 A. No sir.

8 Q. Can I see that for a minute, please? Thank
9 you.

10 In looking at the letter that's Exhibit Number 4
11 the letter does not give a specific date by which the
12 default must be cured, does it?

13 MS. HENGST: I object Your Honor. This
14 document's in evidence and it speaks for itself.

15 MR. ACKLEY: Your Honor counsel had the
16 witness testifying from their evidence on this letter
17 earlier. I don't think it's asking too much to have
18 him clarify this one point.

19 THE COURT: Overruled.

20 A. It does not give a specific date I believe
21 it states 32 days within, the default has to be cured
22 within 32 days of the mailing date.

23 Q. But, that's not a specific date is it?

24 A. Well that is a specific date technically.

25 Q. I'm going to show you what's been marked and

1 entered into evidence as Plaintiff's, Plaintiff's
2 Composite Exhibit Number 5. You recall that Exhibit
3 I'm sure.

4 A. Thank you.

5 Q. The data on that record reflected in that
6 exhibit, it's your testimony that a great deal of
7 that data was entered in by Chase or another servicer
8 not by Seterus, isn't that correct?

9 A. That is correct.

10 Q. And Seterus began entering data on what day?

11 A. On the payment history?

12 Q. Yeah.

13 A. Okay.

14 (Witness reviews document.)

15 Looks like the first data entry that Seterus
16 entered was on November 18th, 2010.

17 Q. November 18, 2010?

18 A. Yes sir.

19 Q. How many entries are there from November
20 18th on?

21 A. Seven.

22 Q. Seven? And how many pages of data are there
23 in that composite Exhibit on that payment history?

24 A. On Seterus or all together?

25 Q. All together.

1 A. Okay. A total of 15 pages sir.

2 Q. And on average how many entries are there
3 per page would you guess?

4 A. The first page of the Chase payment history
5 is a little bit shorter, not really. On all fifteen
6 pages 113.

7 Q. A 113 entries?

8 A. Yes.

9 Q. And only seven of those are Seterus entries?

10 A. That is correct.

11 Q. How many departments enter data from
12 Seterus?

13 A. One department.

14 Q. What department was that?

15 A. Transaction Processing Department.

16 Q. You don't work in that department do you?

17 A. That is correct.

18 Q. You've never worked in that department have
19 you?

20 A. That is correct.

21 Q. And as result you've never supervised anyone
22 working in that department have you?

23 A. Correct again.

24 Q. And we already established that you've never
25 worked for Chase. So you've never worked in any of

1 the departments of Chase that enter data, is that
2 correct?

3 A. Yes, that is correct.

4 Q. And you, you're relying on this loan payment
5 history when you give the numbers or testify to the
6 numbers that you say are due by to the plaintiff,
7 isn't that correct?

8 A. I'm sorry I missed the middle part?

9 Q. You're relying on the data reflected in this
10 payment history when you tell this Court how much you
11 say the plaintiff is owed by the defendants, isn't
12 that correct?

13 A. Yes sir. I do believe this information to
14 be truthful.

15 Q. All right. Other than preparing for this
16 trial you've never had any interaction with this
17 loan. That's what you testified to before correct?

18 A. To my recollection no.

19 Q. Is there a Collections Department at
20 Seterus?

21 A. Yes sir.

22 Q. Do they attempt to collect on overdue loans?

23 A. Do they?

24 Q. Yes.

25 A. Yes sir, they do.

1 Q. Tell me what does the Transactions
2 Department do at Seterus?

3 A. Basically they monitor and they monitor and
4 develop, well monitor the system which houses the
5 payment, the payment data, the payment entries as far
6 as incoming and outgoing payments.

7 Q. Where is that department located?

8 A. It's actually located in Oregon, Beaverton,
9 Oregon. And we also have a small department or small
10 team in North Carolina.

11 Q. All right. Where in North Carolina?

12 A. In --

13 MS. HENGST: Objection, relevance.

14 THE COURT: What's the relevancy?

15 MR. ACKLEY: Your Honor I'm, I of course
16 didn't have an opportunity to get into this before.
17 I'm just trying to verify that this witness has
18 absolutely no interaction with the records that are
19 reflected in this document. And has no basis to
20 testify to the veracity of this document or any of
21 the entries in it.

22 THE COURT: Okay. The objection is
23 sustained. Ask another question please.

24 BY MR. ACKLEY:

25 Q. What systems do they use to create the

1 payment history?

2 A. It's part of the Pulse system.

3 Q. So the Transactions Department uses the
4 Pulse system to enter data in the payment history?

5 A. The payment, this payment history this
6 printout is actually generated from the Pulse system
7 which houses all the loan information. When a data
8 entry's made in the Pulse and this needs to be
9 generated they use Pulse to generate this printout
10 that you see. It's not going to be seen like this in
11 the system. It's similar but it's not like as laid
12 out as the generation of the payment history.

13 Q. And what system did Chase use?

14 A. That I do not know?

15 Q. So who took the data from Chase and put into
16 Pulse?

17 A. That would be our Loan Boarding Department.
18 And a lot of the data that's actually transferred
19 over from Chase is electronically transferred from
20 system to system.

21 Q. Do you have anything to do with the
22 maintenance of that system?

23 A. Do I?

24 Q. Yeah.

25 A. No sir.

1 Q. Have you ever had anything to do with it?

2 A. No sir, not at all.

3 Q. Do you know how it works?

4 A. The transfer?

5 Q. Yeah.

6 A. No sir, not exactly.

7 Q. You don't, it's fair to say you don't
8 oversee the use of the Pulse system or the system
9 that transferred the data, do you?

10 A. That is correct.

11 Q. So you don't know any of the people that put
12 in the data that's reflected in that payment history,
13 isn't that correct?

14 A. You say, do I know them?

15 Q. Yeah.

16 A. I actually do have a friend that works in
17 the department. But as far as their relation to
18 this, no.

19 Q. All right. And you don't know the extent of
20 their knowledge when they put the data in or how they
21 got their knowledge?

22 A. I know they go through rigorous training.

23 Q. The -- let me see that for a minute. Thank
24 you.

25 So when we look at Exhibit number 5 in fact

1 they're two different documents here, right?

2 A. That is correct.

3 Q. The top page is the extent of the Seterus
4 document?

5 A. Yes sir.

6 Q. And all of the rest was, is the document
7 from Chase, is that correct?

8 A. That is correct.

9 Q. And you testified that the Transactions
10 something department, what's the name of the
11 department entered the data?

12 A. Transaction Processing Department.

13 Q. Processing Department is that, are they
14 responsible for the escrow entries here?

15 A. Yes sir. Any payment going in and out
16 they're responsible for.

17 Q. What insurance, can you tell me what
18 insurance is being paid for all of those payments?

19 A. What did you say, what insurance?

20 Q. What kind of insurance?

21 A. Hazard insurance.

22 Q. Do you know with whom?

23 A. At this point it looks like to be QB First
24 Insurance and United Property and Casualty.

25 Q. So they're two insurance companies providing

1 insurance?

2 A. Yes sir, it does appear to be.

3 Q. And do you know who made insurance, whether
4 any insurance payments were made when it was under
5 the control and being serviced by Chase?

6 A. By Chase?

7 Q. Yes.

8 A. I don't believe so, but just let me double
9 check it. Yes, it does look like they made a payment
10 to the homeowner's insurance.

11 Q. Do you know what insurance company?

12 A. No sir, it doesn't say.

13 Q. Do you have any knowledge as to who would
14 have input that data?

15 A. Someone who worked for Chase, I presume.

16 Q. There's only one payment made for insurance
17 by Chase?

18 A. Since the loan went into default, yes.

19 MS. HENGST: Your Honor, I object to the
20 relevance of this questioning regarding insurance.

21 THE COURT: Didn't you answer the question?

22 THE WITNESS: Yes, yes ma'am.

23 MS. HENGST: Oh I'm sorry I apologize I
24 didn't hear him answer.

25 BY MR. ACKLEY:

1 Q. Transactions Processing are they responsible
2 not for just the data entry but also for the managing
3 of the payments made to outside entities like the tax
4 authorities and the insurance companies?

5 A. Yes, yes, I do believe so.

6 Q. Have you ever supervised, you don't
7 supervise anybody, you've never supervised anybody in
8 those, in that department have you?

9 A. Unfortunately, no.

10 Q. Do you know the time frame for posting a
11 payment once it's paid to the insurance company?

12 A. Within 24 hours.

13 Q. How do you know that?

14 A. Through my training that's what I was
15 taught. And from what I can tell that that's what
16 happens on the regular operating of the business.

17 THE COURT: Again I'm going to remind you
18 to please keep your voice --

19 THE WITNESS: I apologize I'm sorry. I keep
20 focusing on him but yes ma'am that's, that's to my --

21 THE COURT: I heard that but your voice is
22 getting lower and lower.

23 THE WITNESS: Yeah I'm sorry okay.

24 THE COURT: Please speak up.

25 BY MR. ACKLEY:

1 Q. Have you, is there a payment posting policy
2 for insurance payments to your knowledge?

3 A. A payment posting?

4 Q. Policy?

5 A. Not to my knowledge.

6 Q. What about for on tax payments?

7 A. Not to my knowledge.

8 Q. Have you ever read, you've never read the
9 policies in Chase Bank, have you?

10 A. No sir, I haven't.

11 Q. And you don't know if the policies at Chase
12 are the same as the policies at Seterus, do you?

13 A. Not for a fact. But all I can rely are the
14 standardized business practices.

15 Q. And how do you know the standardized
16 business practices?

17 A. From being in the business for the last two
18 years.

19 Q. And that's the only basis of that, that,
20 there's nothing printed to your knowledge?

21 A. Of standardized business practices in the --

22 Q. Right.

23 A. No sir.

24 Q. In the last two years in your, the two
25 positions we've talked about your current position

1 and the previous position both of which were focused
2 on litigation.

3 You had another position with Seterus before
4 that, right?

5 A. Yes sir.

6 Q. How long were you in the position?

7 A. For a year and, a year and a month almost.

8 Q. Roughly one year?

9 A. Yeah.

10 Q. Plus one month maybe?

11 A. Yeah. Yes sir.

12 Q. Did you work with other servicers in that
13 position?

14 A. With other servicers of mortgages?

15 Q. Right.

16 A. No.

17 Q. So you actually don't have any personal
18 knowledge of the different policies and procedures of
19 the other servicers, do you?

20 A. No personal knowledge, no sir.

21 Q. Your job responsibility at this point is
22 only to review documents in anticipation of
23 litigation and supporting your attorneys, isn't that
24 correct?

25 A. And supporting my attorneys, yes sir.

1 Q. So you have nothing to do with the
2 maintenance of the records for the business do you?

3 A. That is correct.

4 Q. Can you show me how the outstanding interest
5 was figured or calculated in this case?

6 A. Can I show you?

7 Q. Yeah.

8 A. What do you mean by show you like just
9 explain to it or?

10 Q. If we show you the, the amount that
11 plaintiff alleges was owed on the date that the loan
12 went into default can you calculate for us what the
13 outstanding interest due today would be?

14 A. I can try --

15 MS. HENGST: Objection Your Honor relevance.

16 MR. ACKLEY: This is highly relevant Your
17 Honor.

18 THE COURT: Overruled. He testified to
19 what the outstanding interest was certainly counsel
20 can inquire as to how that calculation was made.

21 BY MR. ACKLEY:

22 Q. Can you show us how to do that?

23 A. I can show you.

24 Q. All right. Would you do so please? Do you
25 need a calculator, do you have a calculator?

1 A. I've got one right here.

2 Q. If I understand correctly per your testimony
3 --

4 MS. HENGST: Your Honor if I may just bring
5 an objection to this line of testimony and
6 questioning? The calculation of and the interest
7 rate is just a ministerial matter. It's just, a
8 calculation and I'm not sure why we have to make the
9 witness go through a calculation or go through the
10 you know the method of calculating when it's
11 something, he's testified that it was one interest
12 rate.

13 THE COURT: Well, please tell the Court how
14 the interest rate is calculated. I'm not going to
15 require you to go through the calculation. Tell the
16 Court --

17 THE WITNESS: Well basically the interest
18 rate is calculated by, is based on the standardized
19 per diem that's in relation to the loan. And I
20 believe when we calculated the payment calculated up
21 to the trial date. The, well the interest, the
22 interest on. We calculated up to the trial date in
23 hopes that the judgment would be granted on that
24 date. And the interest will reflect from the default
25 date to the date.

1 BY MR. ACKLEY:

2 Q. And how did you calculate that?

3 A. I did not calculate it personally.

4 Q. How did you confirm it?

5 A. How did I confirm it?

6 Q. Did you confirm the number or you're just
7 relying on what was presented --

8 A. I'm relying on the business records, yes
9 sir.

10 Q. Is it safe to say that you're relying on the
11 business records to tell you how much the late fees
12 are due that you didn't calculate or independently
13 confirm those either?

14 A. The late fees yes sir. I mean, yes.

15 Q. When you say business records which business
16 records are you referring to?

17 A. Our payment history.

18 Q. So --

19 A. And in addition to the payment history our
20 business records in Pulse which lays out each late
21 fee that's assessed on the account.

22 Q. And who calculated the number that's
23 reflected in Pulse?

24 A. I'm sorry?

25 Q. Who calculated the number that's reflected

1 in Pulse?

2 Do you rely on software or does somebody enter
3 that data?

4 A. I believe they do both. We have well my
5 personal person that I talk to in reference to the
6 payment history his name is Glen. He actually does
7 both when he does his.

8 Q. But you don't?

9 A. I don't calculate them at all, no sir.

10 Q. You don't have the Pulse system with you
11 here today, do you?

12 A. I do not.

13 Q. It's safe to say Glen's not here either
14 today?

15 A. That is the truth.

16 Q. Can you tell us in the Chase portion of
17 Exhibit 5 there's reference to fast pee fade, or fast
18 paid fee, can you tell us what that is?

19 A. I believe it's the same thing that we call a
20 Speedpay fee. Which is a fee assessed.

21 Q. This is very important. If you don't answer
22 no I would ask that you're --

23 A. Okay, no I don't actually know.

24 MR. HARVEY: Objection Your Honor counsel is
25 testifying and instructing the witness on how to

1 answer the question.

2 THE COURT: Sustained. To best of your
3 knowledge please respond to the question.

4 THE WITNESS: To the best of my knowledge
5 it's a fee that assessed when making a payment over
6 the phone.

7 BY MR. ACKLEY:

8 Q. And how do you have that knowledge of what
9 Chase is calling a fast fee paid?

10 A. I don't have the knowledge of what Chase is
11 calling fast, fast, may I, may I see the what you're
12 referring to please?

13 Q. I'm juggling, it's fast pay fee. Do you
14 know what that is?

15 A. It appears to be the same thing I was
16 referring to. But I'm not positive on it. So no I
17 don't, I can't speak on it.

18 Q. All right. I'm going to show you on entry
19 Number 36 on Page 9 of 14 in the Chase document
20 there's an escrow adjustment.

21 Can you tell me what that adjustment was made
22 for?

23 (Witness reviews document.)

24 A. It appears to be a payment made to the
25 escrow.

1 Q. Do you know what it was for?

2 A. Taxes and insurance escrow.

3 Q. Do you know that or is that an assumption?

4 A. No sir, I do not. That is an assumption,
5 yes sir.

6 Q. Okay. So you don't actually know do you?

7 A. Not from the Case, no.

8 Q. On item number 48 there's something called
9 unapplied.

10 Can you tell me what that is?

11 MR. HARVEY: Your Honor I'm going to object
12 to the line of questioning. The records are in
13 evidence and they speak for themselves. Counsel's
14 tedious attempt to question every single random entry
15 he chooses to look at inside the records they
16 themselves is beyond the scope of the purpose of the
17 cross examination. If he has pronged the evidence
18 the Court may waive the evidence but that should be
19 addressed after counsel puts forth some sort of
20 counterevidence. The records are here, they speak
21 for themselves and they've been admitted into
22 evidence. And again they speak for themselves.

23 THE COURT: Objection overruled.

24 (Witness reviews document)

25 A. No I'm not familiar with this.

1 Q. Items Number 53 and 54 on Page 7 are also
2 unapplied.

3 Can you tell us what those are?

4 MS. HENGST: Objection asked and answered.

5 MR. ACKLEY: These are different items Your
6 Honor.

7 THE COURT: Overruled.

8 (Witness reviews document.)

9 A. Well, I see what it is now. It's actually,
10 it looks like where the payment was made, but not
11 paid in full so it was unapplied to the balance. And
12 then in essence when the remaining came in it was
13 then applied.

14 Q. All right, and you're drawing that
15 conclusion based on?

16 A. Based on my just looking at the payment
17 history right just now.

18 Q. Right here, right now.

19 A. Yes sir.

20 Q. All right. Have you looked at those before?

21 A. Yeah I've seen it before I just didn't.

22 Q. On pages 1 and 2, well first of all let's go
23 back to the previous, those previous unapplied.
24 That's a conclusion you're drawing from what you're
25 seeing today you're assuming that, right?

1 A. Yes sir.

2 Q. All right. On pages 1 and 2 do you see the
3 number of corporate well let's just start at Line
4 106, can you tell me what that is?

5 (Witness reviews document.)

6 A. No sir.

7 Q. How about the next Line 107 or what's
8 immediately below it?

9 A. 105.

10 Q. 105, I'm sorry.

11 A. No sir.

12 Q. How about the next line? Let's keep going.
13 Do you know what any of those corporate advances are
14 for?

15 A. No sir, I do not.

16 Q. All right, thank you. Is it safe to say
17 that on Page 2 there's a corporate advance reflected
18 but you don't know what that's for either?

19 A. Let me take a look real quick. Yes sir.

20 Q. Okay. You don't have any of the receipts
21 reflecting any of those payments or charges with you
22 here today, do you?

23 A. That is correct.

24 Q. In fact we don't know what they are, is that
25 correct?

1 A. In specific?

2 Q. Right. We don't know what they are, we
3 don't know those --

4 A. The corporate advances?

5 Q. Right.

6 A. Yes.

7 MR. ACKLEY: Your Honor based on the testimony
8 this afternoon with the witness I am compelled to
9 again object to the entry into evidence of Exhibit
10 Number 5. The plaintiff has not only testified that
11 he has no background to establish any of the
12 foundation requisite to establish the business
13 records exception for the entry of this document into
14 evidence. But he has testified that as to specific
15 charges on the document that he had previously
16 testified that were valid charges he doesn't know
17 what they are. Therefore we don't have any evidence
18 supporting these payments and we don't have the
19 requisite knowledge to establish a foundation to get
20 this document into evidence. I respectfully request
21 that we strike the witness's testimony and that we
22 strike the document from evidence.

23 THE COURT: The objection is overruled. The
24 evidence 1 through 5 remains in evidence.

25 MR. ACKLEY: But there, with regard to number 4

1 I would also renew my objection Your Honor. And
2 again I requested the witness's testimony to be
3 struck. Again he has no, none of the requisite
4 background or capacity to testify as to who drafted
5 this letter, how it was drafted, whether it was
6 actually mailed. Whether it was actually in fact a
7 letter generated at the time that is reflected on
8 date of the letter. He's just said that it has come
9 to us we have and he's basically just testifying form
10 what he's been told to testify. There is no basis
11 for the foundation to allow this document into
12 evidence.

13 THE COURT: Objection overruled.

14 MR. ACKLEY: In addition Your Honor the summary
15 objection applies as well to the loan payment
16 history. Again it was a summary and we were not
17 provided the underlying documents to reflect the
18 numbers.

19 THE COURT: Overruled.

20 MR. ACKLEY: May I have a second Your Honor?

21 THE COURT: Go ahead.

22 MR. HARVEY: Your Honor is I could for the
23 record can we have a ruling on counsel's last
24 objection.

25 THE COURT: It's overruled.

1 MR. HARVEY: Thank you.

2 MR. ACKLEY: Your Honor that's the end of my
3 cross.

4 THE COURT: Okay. Any redirect?

5 MS. HENGST: Please, Your Honor. Your Honor
6 with your permission may I show after showing
7 opposing counsel a copy of the complaint that was
8 filed in this action with the exhibits. I marked it
9 as Plaintiff's Exhibit 6 for identification purposes
10 if you'd like me to do it that way.

11 (Plaintiff's Exhibit No. 6, the complaint,
12 marked for identification.)

13 THE COURT: Okay.

14 MS. HENGST: I'm not going to enter it into
15 evidence I just want to be able to show it to the
16 witness.

17 THE COURT: Okay.

18 **REDIRECT EXAMINATION**

19 BY MS. HENGST:

20 Q. I'm showing you what's been entered into
21 evidence as Plaintiff's Exhibit 2 and also what's
22 been pre-marked as Plaintiff's Exhibit 6 for
23 identification purposes. Have you had an opportunity
24 to review Plaintiff's Exhibit 6 for identification
25 purposes before today's trial?

1 A. Yes ma'am.

2 Q. And what is that document?

3 A. It's the complaint.

4 Q. And can you please advise the Court of the
5 attachments to the complaint?

6 MR. ACKLEY: I would say the document speaks
7 for itself and I would object.

8 MS. HENGST: That's fine. Then just the
9 first Exhibit to the complaint can you please
10 identify that for Court?

11 A. Hang on a second.

12 Q. If should have a piece of paper in front of
13 it that says Exhibit A.

14 A. A copy of the Note for the subject loan.

15 Q. Okay can you please take a look at that copy
16 that's attached to the complaint and compare it to
17 the original that's before you as well which is
18 Plaintiff's Exhibit 1.

19 A. Yes ma'am.

20 Q. And is the copy that was attached to the
21 complaint substantially the same as the original?

22 MR. ACKLEY: I would object Your Honor. The
23 document speaks for itself.

24 THE COURT: Overruled.

25 A. Yes ma'am.

1 Q. And how did my firm obtain a copy of the
2 Note that's attached to the complaint?

3 MR. ACKLEY: Objection hearsay,
4 authenticity.

5 A. A copy --

6 THE COURT: Sustained.

7 Q. Do you have knowledge of how my firm
8 obtained a copy of the Note for the, that's attached
9 to the complaint?

10 THE COURT: Well that doesn't address the
11 basis for the objection.

12 MS. HENGST: Well if he has knowledge of
13 where it would have come from then --

14 MR. ACKLEY: It would still lack the
15 foundation Your Honor.

16 MS. HENGST: I can move on that's fine.
17 It's okay. I'll take the Note back just so we keep
18 everything together and the complaint as well.

19 BY MS. HENGST:

20 Q. When you were preparing for today's trial
21 you stated that you reviewed your business records,
22 is that correct?

23 A. That is correct.

24 Q. And the name on the loan that you reviewed
25 and the address on the loan that you reviewed in

1 preparation for today's trial is that the same name
2 and address that is listed on the documents in
3 evidence today?

4 MR. ACKLEY: Objection hearsay,
5 authenticity.

6 THE COURT: Overruled.

7 A. Yes ma'am.

8 Q. You also testified during your
9 cross-examination that you received training
10 regarding the policies and procedures for Seterus, is
11 that correct?

12 A. Yes ma'am.

13 Q. Did you receive training for other
14 departments?

15 A. No ma'am.

16 Q. Did you receive training as to how other
17 departments function?

18 MR. ACKLEY: Objection hearsay.

19 THE COURT: Overruled.

20 A. Yes ma'am.

21 Q. So you do have knowledge of how other
22 departments at Seterus work?

23 MR. ACKLEY: Objection hearsay.

24 THE COURT: Overruled.

25 A. That is correct.

1 Q. What department is tasked with the duty of
2 uploading documents during the boarding process?

3 MR. ACKLEY: Hearsay, authenticity,
4 objection Your Honor.

5 THE COURT: Overruled.

6 A. Uploading the documents?

7 Q. Yes.

8 A. That would be our Loan Quality Assurance
9 Department.

10 Q. And they upload all the documents to the SCI
11 system, is that correct?

12 MR. ACKLEY: Same objection.

13 THE COURT: Overruled.

14 A. That is correct. The documents that's not
15 received electronically yes.

16 Q. Okay. So if they looked through loans, a
17 loan that they received that was in default and they
18 did not see a breach letter do you have knowledge of
19 what they do at that point?

20 MR. ACKLEY: Objection hearsay.

21 THE COURT: Overruled.

22 A. If it was in default and the breach letter
23 was not in the documents that were sent over from the
24 prior servicer?

25 Q. Correct that's what I asked.

1 A. Yes ma'am. At that point then they would do
2 the research on the loan to insure that it was in
3 default. And normally they would probably start the
4 process to send out a default letter.

5 Q. Okay. Based on your job duties as at
6 Seterus and the training that you've received at
7 Seterus and also just based on your, performing your
8 daily functions at Seterus, if a loan has passed
9 through the boarding process, do you believe that the
10 information contained within that loan whether it be
11 form Seterus or from a prior servicer, do you believe
12 that that information is trustworthy and accurate?

13 MR. ACKLEY: Objection hearsay,
14 authenticity.

15 THE COURT: Well based on those objections
16 overruled.

17 MR. ACKLEY: And also speculation Your
18 Honor.

19 THE COURT: Sustained. It's legal
20 conclusion for the trier or something for the trier
21 of fact to determine based on what's been introduced
22 during the trial.

23 MS. HENGST: Okay I'll rephrase.

24 BY MS. HENGST:

25 Q. If a document makes it through the boarding

1 process and it's within the business records for
2 Seterus do you trust the information?

3 MR. ACKLEY: Objection hearsay,
4 authenticity, speculative.

5 THE COURT: Overruled.

6 A. Yes ma'am, I do.

7 Q. You stated that when payments are made by a
8 borrower they have to be posted to the loan payment
9 history no later than 24 hours.

10 But what is the policy regarding when
11 disbursements are made for insurance or tax payments?

12 What's the standard for posting those to the loan
13 payment history?

14 MR. ACKLEY: Objection hearsay,
15 authenticity, lack of foundation.

16 THE COURT: Overruled.

17 A. The same policy.

18 Q. And I'm sorry, what is that policy?

19 A. The 24 hours within, at or around the time
20 or within 24 hours.

21 Q. Okay. And my final question is during
22 cross-examination opposing counsel had you go through
23 Chase's loan payment history. And he asked you some
24 questions about different corporate advances.

25 Is the plaintiff seeking reimbursement of

1 corporate advances made by Chase in its final
2 judgment?

3 MR. ACKLEY: Objection.

4 THE COURT: Overruled.

5 MR. ACKLEY: Hearsay, authenticity.

6 THE COURT: Overruled.

7 A. I do not believe so.

8 Q. Okay. You stated on your original direct
9 examination the amounts for taxes and insurance that
10 the plaintiff was seeking reimbursement for in its
11 final judgment.

12 Do you recall where those payments were all
13 listed, which loan payment history, Chase's loan
14 payment history or Seterus's loan payment history?

15 MR. ACKLEY: Objection hearsay,
16 authenticity.

17 THE COURT: Overruled.

18 A. Seterus.

19 MS. HENGST: Thank you. No further questions
20 Your Honor.

21 THE COURT: Thank you. You can step down.

22 THE WITNESS: Thank you.

23 (The witness steps down.)

24 MS. HENGST: Your Honor he has trials upstairs
25 in 6K. Would you like him to stay until we rest or

1 could he be excused?

2 THE COURT: I'd like him to stay until you
3 rest.

4 MS. HENGST: Okay.

5 THE COURT: Do you have any other evidence at
6 this time?

7 MS. HENGST: Your Honor I'd like to call to the
8 stand [REDACTED] [REDACTED]

9 MR. ACKLEY: May I leave please to get my
10 client?

11 THE COURT: Oh sure.

12 MR. ACKLEY: Thank you.

13 (Mr. Ackley leaves the courtroom to get his
14 client and returns with his client.)

15 THE COURT: Please remain standing and raise
16 your right-hand.

17 COURT CLERK: Do you swear or affirm that the
18 evidence you're about to give will be the truth, the
19 whole truth, and nothing but the truth?

20 THEREUPON,

21 [REDACTED] [REDACTED]
22 was called as a witness by the plaintiff and was duly
23 sworn by the Court Clerk and in answer to questions
24 propounded, testified as follows:

25 THE WITNESS: Yes.

1 MS. HENGST: Your Honor before I get started
2 with questioning I had stated that I have shown the
3 previous witness Plaintiff's Exhibit 6 for
4 identification purposes which was a copy of the
5 complaint it was filed with the Court I would ask
6 Your Honor just to take judicial notice of the copy
7 of the Note that's attached to that which does bear a
8 blank endorsement.

9 THE COURT: You want the Court to take judicial
10 notice of the complaint and the attached copy of the
11 Note?

12 MS. HENGST: Right which bears the blank
13 endorsement.

14 THE COURT: Okay. The Court takes judicial
15 notice of it.

16 MS. HENGST: Thank you.

17 THE COURT: But you have a blank endorsement on
18 the original?

19 MS. HENGST: Correct. I'll just take all these
20 too. May I approach the witness Your Honor?

21 THE COURT: Yes you may.

22 **DIRECT EXAMINATION**

23 BY MS. HENGST:

24 Q. Can you state your name for the record?

25 A. [REDACTED] [REDACTED]

1 Q. And can you please spell that for the
2 record?

3 A. [REDACTED] and last name [REDACTED]

4 Q. Thank you. I've put in front of you what's
5 been marked as Plaintiff's Exhibit 1. It's already
6 been entered into evidence. That document is the
7 original Note in this loan.

8 MR. ACKLEY: That's, Exhibit 1 is the --

9 MS. HENGST: I'm sorry Plaintiff's Exhibit
10 2. My apologies. It's Plaintiff's Exhibit 2. Which
11 has been entered into evidence and that is the
12 original Note before you.

13 MR. ACKLEY: I would object to counsel's
14 representation that it's the original Note. There's
15 been testimony to that fact but I don't believe it's
16 been established.

17 THE COURT: Overruled.

18 BY MS. HENGST:

19 Q. Have you ever seen this document before?

20 A. No.

21 Q. Did you sign this document?

22 A. No.

23 Q. Okay. I'm showing you now Plaintiff's
24 Exhibit 3 which has been entered into evidence. Have
25 you ever seen this document before?

1 A. Yes.

2 Q. And what is this document?

3 A. I don't know. It looks like Mortgage.

4 Q. Did you sign this document?

5 A. Yes.

6 Q. Who did you sign this document along with?

7 A. My husband.

8 Q. And are you still married to him right now?

9 A. Yes.

10 Q. You are still married? Are you living in
11 the property?

12 A. Yes.

13 Q. And is that the property that's listed on
14 page 3 of that Mortgage towards the bottom?

15 A. Yes.

16 Q. I'm showing you also Plaintiff's Exhibit 4
17 which has been entered into evidence.

18 Have you ever seen this document before?

19 A. No.

20 Q. I'm sorry I didn't hear you.

21 A. No.

22 Q. Okay. Are you still making payments on the
23 loan?

24 A. No --

25 MR. ACKLEY: Objection lack of foundation.

1 A. -- I don't know basically.

2 THE COURT: Overruled.

3 MS. HENGST: I was asking you a separate, I
4 can take that document sorry.

5 MR. ACKLEY: I also object in that assumes
6 facts not in evidence Your Honor.

7 THE COURT: Sustained.

8 BY MS. HENGST:

9 Q. Did you ever make payments on this loan?

10 A. Me myself, no.

11 Q. Who made payments on this loan?

12 A. My husband.

13 Q. Okay. While you were married or I apologize
14 -- strike that, you are still married.

15 Do you know when he, do you have knowledge of
16 when the last payment was that he made?

17 A. No.

18 Q. Do you have knowledge whether he's still
19 making payments?

20 A. No.

21 MR. ACKLEY: Objection.

22 Q. You do not have knowledge that he's still
23 making --

24 MR. ACKLEY: Hearsay.

25 THE COURT: Are you withdrawing your

1 objection or are you objecting?

2 MR. ACKLEY: No, I'm objecting its hearsay
3 Your Honor. She's testified she hasn't made any
4 payments and now she's being asked about payments
5 made by another party.

6 THE COURT: Well she said she doesn't have
7 any knowledge. So overruled. Go ahead.

8 BY MS. HENGST:

9 Q. Have you ever contacted or -- strike that.
10 Did you ever contact Chase on this loan?

11 A. Me?

12 Q. Yes did you ever contact Chase to ask them
13 questions about your loan?

14 MR. ACKLEY: I would object Your Honor. The
15 testimony that will be elicited at this point from
16 both witnesses is that this witness is not on that
17 loan, it's not her loan.

18 THE COURT: That doesn't, overruled. She
19 can still contact Chase with regard to the loan you
20 know.

21 MR. ACKLEY: Except counsel referred to it
22 as her loan.

23 THE COURT: Okay. Well please refer to it
24 as the loan.

25 MS. HENGST: The loan okay. I'll rephrase

1 my question.

2 BY MS HENGST:

3 Q. Did you personally ever contact Chase
4 regarding the loan?

5 A. Yes.

6 Q. And did you ever contact Seterus regarding
7 the loan?

8 A. Seterus what's that?

9 Q. The, I can't, did you ever -- when's the
10 last time you contacted the bank regarding the loan?

11 A. Long time ago 2010.

12 Q. 2010, okay. And did you ever contact the
13 bank Chase to try to work on a loan modification?

14 A. Yes.

15 Q. Okay. And what was the result of those
16 attempts?

17 A. They said they would get back with the
18 document, with the packet. They will do all the work
19 and send it back.

20 Q. And why were you in need of a loan
21 modification at that point in time?

22 A. Because we couldn't afford the house at that
23 time.

24 Q. Do you have knowledge whether your husband
25 was making payments at that time?

1 A. Yes.

2 Q. Okay. And are you paying the taxes for the
3 loan?

4 A. Yes, I think so.

5 Q. Okay. So are you personally making tax
6 payments or is your husband making tax payments?

7 A. I guess he's making.

8 Q. Payments? And where is your husband right
9 now?

10 A. He's not in Florida. He's not in Florida.

11 Q. Okay. Do you have knowledge that he was
12 subpoenaed to be here today?

13 A. No.

14 THE COURT: Where is he? You say he's not
15 in Florida where is he?

16 THE WITNESS: He's a consultant so he
17 travels. Se he's probably in Philadelphia, Delaware
18 or Maryland.

19 THE COURT: Where is he living?

20 THE WITNESS: He lives in Maryland.

21 THE COURT: All right.

22 BY MS. HENGST:

23 Q. And are you making insurance payments on the
24 loan?

25 MR. ACKLEY: I would object to the form of

1 the question believe it or not. I'm not sure that
2 insurance was made on the loan Your Honor. I would
3 ask that counsel rephrase with insurance on the loan?

4 THE COURT: Sustained.

5 BY MS. HENGST:

6 Q. Are you making insurance payments on the
7 home?

8 A. Insurance payment on the home, I don't know.

9 Q. Okay. All right do you understand what this
10 lawsuit is about?

11 MR. ACKLEY: Objection Your Honor.

12 THE COURT: What's the basis of your
13 objection?

14 MR. ACKLEY: The form, it's ambiguous.

15 THE COURT: Sustained.

16 BY MS. HENGST:

17 Q. Do you understand that there's a
18 foreclosure, a mortgage foreclosure lawsuit against
19 you and your husband?

20 A. Yes.

21 Q. Do you understand what, why this lawsuit was
22 brought against you and your husband?

23 A. Yes.

24 Q. What is your understanding as to the reason
25 the lawsuit was brought against you and your husband?

1 A. I guess he didn't pay, must have missed
2 payments so.

3 MS. HENGST: Okay. No further questions as this
4 time.

5 MR. HARVEY: Your Honor if I may --

6 MS. HENGST: I'm sorry. So you said, I
7 apologize Your Honor.

8 BY MS. HENGST:

9 Q. In 2010 you said you contacted Chase.
10 Was the only reason you contacted Chase was to
11 discuss loan modification?

12 A. Yeah, to discuss loan modification and what
13 are the options and, yeah.

14 Q. Okay. Your husband made the payments on the
15 loan, is that correct?

16 A. Yes, he did make payments.

17 Q. Okay, and was he also responsible for
18 handling any correspondences that came in about the
19 Mortgage?

20 A. Yes.

21 Q. And did he take care of all the Mortgage
22 bills that came in or any letters from the bank that
23 came in?

24 A. Yes.

25 Q. Did you ever see any of those letters or

1 anything like that?

2 A. No.

3 Q. No? Do you know that he received these
4 types or letters though from the bank regarding
5 notices and stuff like that?

6 A. No I don't know.

7 MR. ACKLEY: Objection calls for speculation.

8 MS. HENGST: You don't?

9 THE COURT: I'll sustain, she just answered the
10 question but I'll sustain the objection.

11 MS. HENGST: Okay no more questions. Thank you.

12 THE COURT: Cross?

13 MR. ACKLEY: Yes Your Honor.

14 **CROSS EXAMINATION**

15 BY MR. ACKLEY:

16 Q. [REDACTED] [REDACTED] when you contacted Chase you were
17 attempting to obtain a loan modification on your
18 loan, isn't that correct?

19 A. Yes.

20 THE COURT: Please answer out loud because
21 the Court Reporter has to take your response and she
22 can't interpret a nod of the head.

23 THE WITNESS: Got it, sorry.

24 BY MR. ACKLEY:

25 Q. And you were at that time when you contacted

1 Chase you and your husband were communicating to each
2 other about your communications with Chase, isn't
3 that correct?

4 A. Yes.

5 Q. When you contacted Chase didn't they tell
6 you that you could not receive a loan modification
7 unless you were to fall behind in your payments?

8 MR. HARVEY: Objection Your Honor, counsel
9 is testifying and leading the witness.

10 MR. ACKLEY: I'm on cross Your Honor.

11 THE COURT: Sustained. That calls for a
12 hearsay statement by Chase in quotes? It's not a
13 statement by a party opponent. You haven't
14 identified the person who made those statements to
15 her.

16 MR. ACKLEY: You're right, you're right.
17 That's correct. Thank you Your Honor.

18 THE COURT: I appreciate your
19 acknowledgement that I'm correct.

20 MR. ACKLEY: All right let's take a little a
21 few minutes and, when you contacted --

22 THE COURT: Let me tell you, you have to
23 identify the person and the status of that person and
24 that depends on whether or not you get the statement
25 into evidence so.

1 MR. ACKLEY: Correct. Thank you Your Honor.

2 BY MR. ACKLEY:

3 Q. Do you remember the name of the person you
4 spoke to at Chase or did you speak to more than one
5 person at Chase?

6 A. Yes.

7 Q. Do you remember the names of any of those
8 people?

9 A. No.

10 Q. Do you remember the dates that you contacted
11 Chase?

12 A. I'd have to look I might have a packet from
13 them.

14 Q. Where would that be?

15 A. At home probably.

16 Q. You don't have it here with you today?

17 A. No.

18 Q. In 2010 was you husband living with you here
19 in Florida?

20 A. No.

21 Q. Okay. When you receive mail in your house
22 who opens the mail in your house when it comes to
23 your house?

24 A. My husband.

25 Q. When he wasn't living in Florida who would

1 open the mail?

2 A. He directed all the mail to himself.

3 MR. ACKLEY: I see. Okay that's all I have.

4 Thank you very much.

5 THE COURT: Any re-direct?

6 MS. HENGST: No we're good.

7 THE COURT: Thank you ma'am you can step down.

8 (The witness steps down.)

9 [REDACTED] Thank you. Does the plaintiff have
10 any other evidence to present?

11 MS. HENGST: No, Your Honor. The only thing I
12 ask is for you to take, I guess, first of all make a
13 ruling they was a standing objection for a period of
14 time during the trial and you said that at the close
15 of this you would make a ruling on the standing
16 objection. Opposing counsel's standing objection.
17 And then the other issue that I would want to raise
18 is also the affidavit of cost. Whether Your Honor
19 would take judicial notice of those amounts?

20 THE COURT: Okay, with the respect to the
21 standing objections that I tried to institute at the
22 beginning of the trial in an effort to expedite the
23 testimony. I'm overruling those standing objections
24 for the portion of that trial that they occurred.

25 With respect to the affidavit should I find for

1 the plaintiff the only cost that I will include is
2 the payment for the filing file in the amount of
3 \$1978.10 because that's a matter of the Court record.
4 What I will do unless they can be substantiated I'm
5 assuming that counsel is objecting to the other cost
6 unless they can be identified I retain jurisdiction
7 to consider and award additional cost.

8 MS. HENGST: So Your Honor I mean I would just
9 ask to enter the affidavit into evidence I presume
10 that's objected to.

11 MR. ACKLEY: That's absolutely objected to Your
12 Honor. Your Honor I'm unaware of whether the
13 affidavit includes charges for attorney's fees which
14 we would object to as well and request an evidentiary
15 hearing in the event that the Court finds for the
16 plaintiff.

17 MR. HARVEY: We did not.

18 THE COURT: They don't, it's only cost. But
19 we're just take a look at what, I did review it
20 before. Do you want to take a look at the cost? I
21 thought I had given a copy.

22 MR. ACKLEY: I thought so too and I don't see
23 it. Let me just, it must be here. I have it right
24 here.

25 MS. HENGST: So Your Honor's not going to take

1 judicial notice of that alias summons receipt that
2 was on the docket?

3 THE COURT: I don't see it. Again the only
4 thing I see is the filing fee. Where is the alias
5 summons?

6 MS. HENGST: Madame Court Clerk could you pull
7 that up?

8 COURT CLERK: Let me see if I can find it. Do
9 you know around when it was, it doesn't have to be
10 exact.

11 MS. HENGST: It was October 7, 2011.

12 COURT CLERK: Maybe the docket was wrong.
13 Affidavit of loss original. Let me see it might be
14 imaged.

15 MS. HENGST: Right under docket entry 21 on my
16 court's docket.

17 COURT CLERK: Okay.

18 THE COURT: I have an alias summons issued but
19 that's not what you're referring to.

20 MS. HENGST: It's the receipt for that. The
21 docket entries are number 21 as ordered to transfer
22 and then there's an entry that's not numbered and it
23 says receipt for payment October 7, 2011. Docket
24 entry 22 is an affidavit of lost original.

25 THE COURT: Wait a minute. I have a payment of

1 \$10?

2 MS. HENGST: Correct?

3 THE COURT: Is that what you're referring to?

4 MS. HENGST: Yes Your Honor. We're seeking
5 reimbursement of that as well for damages.

6 THE COURT: Oh okay. I have that, that's
7 docket well it's, it doesn't have a docket number.
8 Okay that's \$10. So that I'll also take judicial of
9 the \$10.

10 MS. HENGST: Thank you, Your Honor.

11 THE COURT: But, on the other cost if you want
12 to file it I'm filing it but that's boot strapping
13 your request for cost. I'm not going to take
14 judicial notice of the affidavit just because it's in
15 the Court file.

16 MS. HENGST: Right no that's okay. We don't, we
17 don't need it to be filed then.

18 MR. HARVEY: We'll take that and give it back
19 Your Honor we'll submit it as.

20 THE COURT: I'll retain jurisdiction should I
21 enter judgment in your behalf.

22 MR. HARVEY: Yes, Your Honor.

23 THE COURT: Okay.

24 MS. HENGST: I believe that was --

25 THE COURT: Is there any other mattes?

1 MS. HENGST: Your Honor I believe that was it.
2 I'm sorry Your Honor at this time our plaintiff would
3 rest and we would ask for final judgment in our
4 favor.

5 THE COURT: Okay, with respect to the
6 sufficiency of the affidavit on the complaint. The
7 complaint is in evidence and you can make argument
8 with respect to that, okay?

9 MS. HENGST: I'm sorry. I don't understand.
10 There's not an affidavit attached to the complaint.

11 THE COURT: Defendant questioned, I'm sorry.
12 The verification.

13 MS. HENGST: Oh okay.

14 THE COURT: On the complaint.

15 MR. ACKLEY: That's right Your Honor.

16 THE COURT: And that's a matter of, I mean I'll
17 take judicial notice of the complaint and you and
18 make argument with respect to the sufficiency.

19 MR. HARVEY: Your Honor I apologize for
20 clarification I thought the Court denied that
21 argument at the beginning of trial as that was part
22 of the motion to dismiss. And that motion to dismiss
23 has already been denied simply because counsel
24 reassert in their answer to affirmative defenses does
25 not make it still a proper argument before this

1 Court.

2 THE COURT: No. You misinterpreted my ruling.
3 I asked had it been previously denied and you said
4 yes. Then I said well let's go to trial I suppose I
5 didn't it make it clear. That certainly doesn't
6 preclude counsel from making the argument on closing
7 arguments. Okay? Okay.

8 MS. HENGST: We rest.

9 THE COURT: So you rest okay.

10 (Plaintiff rests.)

11 MR. ACKLEY: Prior to presenting the defense
12 case Your Honor I would respectfully move the Court
13 for involuntary dismissal of the case. The basis for
14 the motion is that I don't believe the plaintiff has
15 overcome the defenses that have been raised in the
16 case. And I don't believe that the plaintiff has
17 established cause of action to justify damages in the
18 case.

19 Specifically the authenticity of the documents
20 has not been established. The witness that was
21 testifying here today has shown himself not to be
22 qualified to enter the documents into evidence and
23 for those documents to be considered as evidence
24 against the defense in this case. In particular the
25 witness had shown complete lack of capacity to

1 testify regarding the exhibits and data entered prior
2 to the assumption of servicing of the loan by
3 Seterus. And specifically has been unable to provide
4 the foundation and underlying elements of the
5 foundation for Business Records Exception to allow
6 those documents in. I understand there has been a
7 ruling by virtue of my motion for involuntary
8 dismissal we raise our objections and preserving
9 those objections.

10 In addition Your Honor in the presentation of the
11 plaintiff's case the plaintiff's own witness has
12 testified that there are multiple copies of the
13 original Note in the case with the endorsement in
14 blank on those copies. What has not established at
15 any point during the case to this point is when in
16 fact the plaintiff came into possession of the Note
17 if it is being used as a negotiable instrument.
18 Under 673 the plaintiff must have under *McClean* and
19 other cases must possession at the time the lawsuit
20 is brought. What we know is that they had an image
21 of, a copy of the Note. We have no evidence as to
22 when plaintiff came into possession of the Note in
23 order to bring this lawsuit. So there has been an
24 absence of standing alleged and they have not
25 overcome that allegation of the lack of standing.

1 With regard to the verification we have a Power
2 of Attorney from the plaintiff Fannie Mae to Seterus.
3 We have nothing of any sort entered into evidence in
4 this case or offered into evidence in this case
5 showing any relationship between the entity that
6 signed and verified the complaint IBM something,
7 something, and the plaintiff. There is no basis for
8 a relationship to support the verification or to
9 validate that verification and that verification does
10 not meet any standard in Florida and it certainly
11 doesn't meet the standard 2.10 since February of
12 2010.

13 With regard to the registration the plaintiff is
14 required to be a registered entity in Florida.
15 Fannie Mae has not registered in Florida and we would
16 argue that they aren't qualified to bring this
17 lawsuit as a result of that.

18 Fundamentally Your Honor we have not had cogent
19 confident testimony to support the claim by the
20 plaintiff in this case and the case should be
21 dismissed as a result.

22 THE COURT: Do you want to respond?

23 MS. HENGST: Yes Your Honor. First of all I
24 object to any argument that goes to the weight of the
25 case or affirmative defenses that may be preserved in

1 defendant's answer. A motion for involuntary
2 dismissal at this point in time which is the point in
3 time after the plaintiff has presented its
4 case-in-chief. It's only supposed to be determined
5 on a basis of whether or not the plaintiff has made a
6 prima facie case for a mortgage foreclosure cause of
7 action which is what we're here before Your Honor.
8 And that would entail the Court to determine whether
9 we, you know, had evidence or had documents entered
10 into evidence regarding the Note that was to or a
11 loan that was taken out. A default on that loan and
12 how much we're seeking reimbursement for. At this
13 stage to determine the motion for involuntary
14 dismissal the Court is not supposed to weigh the
15 evidence that to determine whether we proved standing
16 or whether we proved the breach letter was sent.
17 Whether we proved all the damages that we're seeking.
18 But rather very simply whether we put on our case and
19 that the prima facie case was made.

20 Defendant's arguments regarding the affirmative
21 defenses that were preserved in the answer I think
22 that's an improper argument at this point in time.
23 He's put on no evidence to prove his defenses. Just
24 because they're laid down doesn't mean that I have to
25 disprove and avoid each one of them in my case. He

1 has to prove up his defenses and we haven't gotten to
2 that point in time yet so I think the Court should
3 disregard those arguments.

4 THE COURT: Okay thank you. Your motion for
5 involuntary dismissal is denied.

6 You want to present any evidence?

7 MR. ACKLEY: Yes Your Honor. Could I request a
8 one or two minute recess just to run next door and
9 come right back?

10 THE COURT: Sure.

11 MR. ACKLEY: Thank you Your Honor.

12 MS. HENGST: And Your Honor do you need my
13 witness any longer.

14 THE COURT: You're excused.

15 THE WITNESS: All right.

16 MR. ACKLEY: I would like to ask him just a few
17 questions in my case if that's all right.

18 THE COURT: Okay.

19 MR. ACKLEY: I'll be right back Your Honor.

20 THE COURT: Okay.

21 MR. ACKLEY: It's a very short.

22 (Off the record.)

23 (On the record.)

24 THE COURT: Okay please proceed.

25 MR. ACKLEY: May I call Mr. Rankin up to the

1 stand.

2 THE COURT: Mr. Rankin I remind you you're
3 still under oath.

4 MR. RANKIN: Yes ma'am.

5 **DIRECT EXAMINATION**

6 BY MR. ACKLEY

7 Q. Mr. Rankin can you, do you have any evidence
8 whatsoever of what was conveyed to the defendants in
9 this case as to how they may or may not be able to
10 reestablish your loan?

11 Have you seen any evidence of that in the file?

12 MR. HARVEY: Objection Your Honor relevance.

13 MR. ACKLEY: One of the, two of the defenses
14 Your Honor. Unclean hands, inducement into default
15 and estoppel, inducement into default. What I'm
16 trying to show is that the defendants were in fact
17 induced to stop making payments to the plaintiff and
18 then the plaintiff filed foreclosure rather than
19 carrying out its --

20 THE COURT: Why don't you -- well what's
21 the basis of your objection?

22 MR. HARVEY: Well Your Honor now that he's
23 said that I have a couple more objections but I
24 haven't actually got into that. One the testimony
25 before this Court by his own client indicated he

1 spoke with Chase Home Finance about modifying the
2 loan. Chase Home Finance is not here so obviously
3 there's a lack of foundation and predicate to ask
4 this witness about that.

5 Moreover, I would say he's asking our client
6 questions which his own client has clearly refuted in
7 saying that there current with their loan and
8 attempted to try to modify. So again I think one
9 there's no relevance and I think there's a lack of
10 foundation and predicate to address this, counsel's
11 questions with this witness.

12 THE COURT: Okay let me just say this,
13 statements on business records may be hearsay. You
14 understand that?

15 MR. ACKLEY: I do understand Your Honor.

16 THE COURT: As opposed to the entry of
17 figures. So if there are statements you know first
18 establish what if any records he reviewed if he can
19 respond in the affirmative okay. And then we'll see
20 whether or not his statements can be introduced.

21 MR. ACKLEY: Very good. Thank you Your
22 Honor.

23 MR. HARVEY: So sustained as to the
24 foundation or if counsel rephrasing his question? I
25 just want the record clear.

1 THE COURT: At this point it's sustained as
2 to form.

3 MR. HARVEY: Yes Your Honor.

4 BY MR. ACKLEY: Did you review any records that
5 would reflect information as to what advice the
6 defendants were given if any with regard to modifying
7 their loan? Is that --

8 THE COURT: That's fine. The specific
9 enough.

10 A. Yes sir I did.

11 Q. And was there any information regarding if
12 advice was given to the defendants on how to modify
13 their loan?

14 MR. HARVEY: Objection Your Honor hearsay,
15 foundation. He's asking about what the client, what
16 --

17 THE COURT: I understand. That's
18 sustained. Because again the problem goes to who
19 gave that advice, what --

20 MR. ACKLEY: Fair enough Your Honor. I'll
21 rephrase.

22 BY MR. ACKLEY:

23 Q. Was the records you reviewed did they
24 reflect advice given by Seterus or given by another
25 entity?

1 A. I reviewed not necessarily advice but
2 comments to where we had spoke to the borrower [REDACTED]
3 [REDACTED] in reference to the loan and in reference to his
4 options in the loan comments yes sir.

5 Q. When you say we are you referring to Seterus
6 or Chase?

7 A. Seterus.

8 Q. Do you have those documents here today?

9 A. I do not. They would be in Pulse.

10 Q. Do you have recollection of what those --
11 strike that.

12 Do you have recollection of what that advice
13 consisted of?

14 MR. HARVEY: Objection Your Honor, hearsay.

15 THE COURT: Sustained. Look any evidence
16 has to be specific.

17 MR. ACKLEY: I agree Your Honor.

18 THE COURT: And has to identify the people
19 who may have been responsible.

20 BY MR. ACKLEY:

21 Q. Do you recall who gave that advice at
22 Seterus?

23 A. An exact name, no sir.

24 MR. ACKLEY: All right, that's all I have thank
25 you Your Honor.

1 THE COURT: Okay. Any questions?

2 MR. HARVEY: No Your Honor.

3 THE COURT: Thank you. You can step down.

4 MR. HARVEY: Your Honor with that I apologize.

5 May our witness be excused and we can try to get, we
6 can get back in touch with him if the Court needs it.

7 THE COURT: Yes, yes. Call your next witness.

8 MR. HARVEY: Thank you.

9 (The witness steps down.)

10 MR. ACKLEY: [REDACTED] [REDACTED] can you take the stand
11 again please? Will you take the stand please?

12 [REDACTED] [REDACTED] Sure.

13 MR. ACKLEY: Thank you.

14 THE COURT: [REDACTED] [REDACTED] I remind you you're still
15 under oath. Is it [REDACTED] or [REDACTED]

16 [REDACTED] [REDACTED] [REDACTED] is how I say it.

17 THE COURT: [REDACTED] [REDACTED] [REDACTED] You're still under
18 oath.

19 [REDACTED] [REDACTED] Yes thank you.

20 **DIRECT EXAMINATION**

21 MR. ACKLEY

22 Q. If I recall your testimony earlier it was
23 that you did stop making payments on the loan that's
24 the subject of this case, is that correct?

25 A. Yeah.

1 Q. Can you tell us why you stopped making those
2 payments?

3 MR. HAVEY: Objection Your Honor asked and
4 answered earlier during her cross examination.

5 MR. ACKLEY: I don't believe this question
6 was actually asked during the cross Your Honor.

7 THE COURT: Again if the statements refer
8 to what she may have been told by Chase I've already
9 ruled that that's inadmissible. If you are looking
10 for other evidence --

11 MR. ACKLEY: I'm actually trying to get the
12 state of mind rather than explicit directions.

13 MR. HARVEY: Your Honor if we may side bar
14 with the witness's testimony but I think I can
15 articulate my objection a little bit more clearly and
16 we can address it that way.

17 THE COURT: Say that again.

18 MR. HARVEY: Your Honor I apologize, I just
19 ask if we may just have a momentarily side bar I
20 don't want to possibly influence the witness's
21 testimony but I can articulate my objection more
22 clearly.

23 THE COURT: Okay. Wait a minute.

24 (Sidebar:)

25 MR. HARVEY: Your Honor, that's all right.

1 We'll handle it on cross.

2 THE COURT: What's your objection?

3 MR. HARVEY: Well, my objection is asked
4 answered. The witness has already testified in
5 response to counsel's questions as to why they
6 stopped making payments. They couldn't afford, that
7 they cannot afford the house. She said they could
8 not afford the house. They stopped making payments
9 because they could not afford the house.

10 THE COURT: Again, I'm ruling what I ruled
11 regarding the hearsay. Even though it maybe a state
12 of mind based on hearsay evidence as to what somebody
13 may have told her from Chase, so I am going to ask
14 you to refrain from asking her that question, if
15 that's what you're trying to do. If you're trying to
16 elicit something else.

17 MR. ACKLEY: I would like this to be on the
18 record. The problem is Your Honor is the plaintiff's
19 witness has been allowed to testify through Chase
20 hearsay this whole trial. All of those numbers are
21 hearsay as well.

22 THE COURT: But, I've made a ruling that --

23 MR. ACKLEY: I understand and I'm not
24 fighting your ruling.

25 THE COURT: I have made a ruling with

1 respect to what you're trying to introduce in a
2 different basis.

3 MR. ACKLEY: Yes, Your Honor.

4 THE COURT: That's the ruling.

5 MR. ACKLEY: Very good.

6 MR. HARVEY: Thank you.

7 (Sidebar concluded.)

8 MR. ACKLEY: Your Honor that's all I have.

9 THE COURT: Okay thank you. You may step down.
10 Okay. Let me, I assume you have no rebuttal
11 evidence.

12 MR. HARVEY: Well, I don't know if counsel's
13 done with his case?

14 MR. ACKLEY: We're done.

15 THE COURT: He said that's all he had.

16 MR. HARVEY: I know he's done with the witness
17 for this case, I apologize Your Honor.

18 THE COURT: Oh okay. You rest?

19 MR. ACKLEY: I rest Your Honor.

20 (Defense rests.)

21 THE COURT: Okay.

22 MR. HARVEY: No, Your Honor the plaintiff has no
23 rebuttal evidence to introduce at this point in time.

24 THE COURT: Okay. Plaintiff rest all right.
25 Let me hear closing argument. If you would I'm not

1 requiring it.

2 MS. HENGST: I'll just be very quick Your Honor.

3 **CLOSING ARGUMENT**

4 BY MS. HENGST: Your Honor you heard testimony
5 today from Seterus who has a Power of Attorney to act
6 on behalf of the plaintiff of this foreclosure action
7 which Federal National Mortgage Association. That
8 they took over the loan servicing on behalf of Fannie
9 Mae prior to the date that this complaint was filed.
10 That they obtained through the boarding process and
11 properly verified and fact checked all records from
12 the prior loan servicer which was JPMorgan Chase who
13 actually originated this loan. JPMorgan Chase had
14 the loan when this loan went into default and did
15 send out the breach letter. But because of the
16 rigorous boarding procedures at Seterus they were
17 able to determine that everything with this loan was
18 accurate and that there were no issues with payments
19 that were reflected or any amounts on the loan
20 payment history or the fact that this loan was in
21 breach. And it was right for foreclosure action.
22 Which is why we're here before you today.

23 There are some affirmative defenses that are
24 before the Court that have been preserved in an
25 answer by the co-mortgagor [REDACTED] [REDACTED] Her husband who

1 signed the Note he has been defaulted. He did not
2 wish to participate in this foreclosure action and
3 never filed any response to the complaint. So the
4 person who is tied to the Note who is liable for the
5 loan in this issue is defaulted and had basically
6 admitted all the claims asserted in the, in our
7 complaint. Which also includes the fact that Fannie
8 Mae has standing to bring this lawsuit. Which also
9 includes the paragraph regarding the fact that all
10 conditions precedent have been complied with prior to
11 the filing of this lawsuit. That condition precedent
12 is the notice of breach prior to the acceleration of
13 the lawsuit. So the person who's liable here and on
14 the hook here for the money for the fact that, and
15 you heard testimony he was the one who was making the
16 payments. He's the one who received the bills to
17 make the Mortgage payments. He's the one who
18 received all the notices and correspondences and he
19 had everything forwarded to his address wherever that
20 was at that point in time. He's the one who has
21 basically admitted to all the allegations in the
22 complaint because he's defaulted on, in this lawsuit
23 and does not wish to contest anything that we're
24 trying to seek today. I think that's very important
25 to remember particularly in weighing the evidence. I

1 would also argue that although the affirmative
2 defenses have been laid down by the co-mortgagor I
3 don't think that or I believe that there's an
4 argument to be made that she's not tied to the Note.
5 She's only tied to the property. She's not liable
6 for any of the money and the instrument that
7 determines whether there's standing in this lawsuit
8 is the Note. That was admitted into evidence and you
9 took judicial notice of the fact that the copy that
10 was attached to the complaint had a blank endorsement
11 on it. And you heard testimony that it's the same
12 copy as the original. So I think an argument can be
13 made that the co-mortgagor the person who's laying
14 the affirmative defenses regarding standing is not a
15 party to the instrument that determines whether
16 there's standing or not. So I'm not sure if that
17 argument is really hers to make in the first place.

18 In addition although she is a party to the
19 Mortgage in Paragraph 22 which determines or which
20 binds the service to provide notice of a default
21 after a default in the loan occurs. Although she is
22 a party to that instrument we were under no
23 obligation to give her particular notice of the
24 default because she is not the person who is
25 responsible to pay the money in the first place.

1 Again, she didn't sign the Note. She's not
2 responsible for the money portion of this, of this
3 agreement. So I also believe that any arguments
4 regarding whether the conditions precedent was met is
5 not really hers to make. It was her husband's and
6 again he was defaulted and chose not to participate
7 in this lawsuit.

8 And I guess I'll address the rest of the
9 arguments regarding affirmative defenses that were
10 laid out in a rebuttal argument if that's how you'd
11 like it to be done. Or else I can address them right
12 now in my closing.

13 THE COURT: You can address in a brief rebuttal
14 argument.

15 MS. HENGST: Great thank you.

16 **CLOSING ARGUMENT**

17 BY MR. ACKLEY: Your Honor I would renew my
18 motion for involuntary dismissal at this time. In
19 addition in closing a number of points raised by
20 counsel I'd like to address as well as just generally
21 that I'd like to close. With regard to counsel's
22 closing the suggestion that [REDACTED] [REDACTED] does not
23 have a right to notice under the mortgage is just
24 contrary to the terms of the contract. The contract
25 is very clear as a mortgagee, mortgagor she, the

1 mortgagee has an obligation to give notice of an
2 attempt to accelerate. The fact that the
3 co-defendant has defaulted in no way obviates the
4 plaintiff of the obligation to satisfy the conditions
5 precedent by prior to bringing this lawsuit.
6 Moreover under Paragraph 22 the terms of Paragraph 22
7 are very clear cut. Acceleration remedies, lender
8 shall give notice to borrower prior to acceleration
9 following borrower's breach of any covenant or
10 agreement in this security instrument. But not prior
11 to acceleration under Section 18. The notice such
12 specify the default, the action required to cure the
13 default, a date, a date of not less than 30 days from
14 the date of notice is given to the borrower by which
15 the default must be cured. And (d) failure to cure
16 the default on or before the dates specified in the
17 notice may result in acceleration of sums secured by
18 the security instrument. Foreclosure by judicial
19 proceeding and sale of the property. The notice
20 shall further inform the borrower of the right to
21 reinstate after acceleration and the right to assert
22 in the foreclosure proceedings the non-existence of a
23 default or other defense of borrower to acceleration
24 and foreclosure.

25 Your Honor there was no date given in this

1 letter. There was a reference to a number of days
2 but that didn't satisfy the notice requirement as
3 specified in very clear language in bold print in
4 Paragraph 22. Moreover, the letter that was
5 presented into evidence by the plaintiff other than
6 missing that particular element does not provide all
7 of the other elements of the notice that is required.

8 In fact the provision that the borrower may be
9 able to clarify or rectify the default is not, is
10 specifically missing in the letter the language. The
11 notice shall further inform borrower of the right to
12 reinstate after acceleration and the right to assert
13 in the foreclosure proceedings the nonexistence of a
14 default or any other defense of borrower to
15 acceleration and foreclosure. I would again
16 articulate that the plaintiff's witness has failed to
17 prove the prima facie case for foreclosure in this
18 action because the plaintiff has been able to prevent
19 or provide cogent evidence of the debt and the
20 obligations of the defendant to the plaintiff.

21 I would reiterate that the standing issue has
22 been missed by the fact that there's been no evidence
23 whatsoever that the plaintiff had the possession of
24 an endorsed Note on the date the lawsuit was brought.
25 Rather plaintiff's witness has testified that there

1 was an image attached to the complaint no suggestion
2 when that original came to the plaintiff. Only that
3 an image of the Note was attached to the complaint
4 which the witness also testified there are many
5 images available and have been of the Note. Again
6 the verification issue is a significant issue here.
7 We have a third party unrelated to this case
8 supposedly verifying the complaint for the plaintiff
9 with no basis to do so and no authority to do so. I
10 think that's the substance of the case Your Honor.

11 Thank you.

12 THE COURT: Thank you.

13 MS. HENGST: Your Honor just a quick rebuttal.
14 Regarding the breach letter the affirmative defense
15 regarding the breach letter is preserved in the
16 second affirmative defense. Part one there's two
17 parts to that affirmative defense. And the
18 affirmative defense I don't think, the plaintiff's
19 burden when they're saying a condition precedent has
20 been met under Florida Rules of Civil Procedure 1.120
21 is to state that has been met generally. That's what
22 the rule states. When a person wants to challenge
23 the happening of the condition precedent that same
24 rule says that they need to do so with specificity
25 and particularity. And if you don't lay down

1 affirmative defense in a pleading that argument is
2 waived. I think that the argument brought up in
3 opposing counsel's closing arguments have not been
4 preserved and I think they're waived and should be
5 not considered when weighing the evidence. The
6 reason I state that is because again the second
7 affirmative defense part one, their affirmative
8 defense states that plaintiff failed to satisfy all
9 conditions precedent. And then they quote Paragraph
10 22 from the mortgage. Then it says, "Defendant did
11 not receive the notice of default required by the
12 Note and Mortgage. Defendant therefore alleges
13 plaintiff failed to comply with these requirements in
14 one or more respects. Which include but are not
15 limited to first of all plaintiff came in after the
16 default occurred. Plaintiff did not send this letter
17 but none the less the reasons that they failed the
18 condition precedent could be because plaintiff failed
19 to mail the notice or the notice wasn't timely or the
20 notice does not contain the required language."

21 They've done plenty of discovery throughout the
22 course of this lawsuit. They definitely got copies
23 of the demand letter. And they could have amended
24 their affirmative defenses to state with specificity
25 and particularity what was wrong with the demand

1 letter. Which could have included some of the
2 arguments made today but he failed to, opposing
3 counsel or the defendant failed to preserve those
4 specific arguments. So I think that the argument is
5 legally insufficient and shouldn't be considered when
6 weighing the evidence.

7 In regards to the verification of the complaint
8 Your Honor. The verification complies with Florida
9 Rule of Civil Procedure 1.110(b) and Florida Statute
10 92.525. There's case law out there particularly I'm
11 speaking to *U.S. Bank National Association versus*
12 *Wanio-Moore*. Which I have the last law citation it's
13 2013WL 1348245. It's a 5th DCA case from 2013. And
14 the Court in that case said that the court cannot
15 read more into the rule than the plain languages
16 dictates. Florida Rule of Civil Procedure 1.110(b)
17 provides that the, a certain statement must be placed
18 on foreclosure complaints. And that the plaintiff
19 cannot file that complaint unless that statement is
20 there. And when this complaint was filed the entity
21 that verified the complaint on the plaintiff's behalf
22 was the entity that was best able to make that
23 statement on their behalf. And to testify, to state
24 that all the facts contained in the complaint were
25 true and accurate. So this, this argument was

1 brought up in a motion to dismiss and the Court did
2 not determine that the verification was improper and
3 that it would cause a dismissal at that point in
4 time. I certainly don't think it would be
5 appropriate to dismiss the case at this higher level.
6 Particularly where we're at in the case ready for a
7 judgment.

8 And I don't believe any other defenses were
9 really raised other than again the standing issue.
10 The affirmative defense regarding standing is number
11 three and it basically states that plaintiff lacks
12 standing because the Promissory Note is not
13 negotiable. That argument is laid out very clearly
14 in the affirmative defense but is not what opposing
15 counsel argued here today. So it says that the
16 affirmative defense says that plaintiff alleges that
17 its holder, but if can't be the holder because the
18 Note's not a negotiable instrument basically. And I
19 do believe that we properly asserted our standing and
20 that the evidence which has all admitted into
21 evidence proves that. That's it.

22 THE COURT: Okay. The Court finds that the
23 verification is sufficient on the verified amended
24 complaint or verified complaint.

25 In addition, the Court also finds that the

1 plaintiff has proved its case by the preponderance of
2 evidence and the Court will issue a judgment in favor
3 of the plaintiff. And we'll just go over the figures
4 in the final judgment that are supported by the
5 evidence.

6 The principal due on the Note and Mortgage in the
7 amount of \$403,216.74. The interest in the amount of
8 \$114,902.96. I don't remember title search expenses.
9 Was that on the --

10 MS. HENGST: That's a cost we'll have that
11 stricken Your Honor.

12 THE COURT: The taxes in the amount of
13 \$16,557.19. The filing fee in the amount of \$1,900
14 well this says 68 the actually I believe the Court
15 record says 70 but that includes, does that include
16 the property inspections?

17 MS. HENGST: No, I believe that included the lis
18 pendens recording. Because we do both at the same
19 time.

20 THE COURT: What I'm saying is that the filing
21 fee was \$1,978.10 on final judgment it's \$1,968.50.
22 It's \$10 less on the final judgment. Am I correct in
23 that? Just pull it up.

24 COURT CLERK: You want me to pull it up again.
25 Oh wait a minute I've got the file right here. Just

1 give me one minute. I believe you're correct Your
2 Honor.

3 MS. HENGST: And I believe we had to tender an
4 amount for the filing fee and the recording of the
5 lis pendens at one time. Which is why we would have
6 given one check. But, I believe we just separated
7 them in the final judgment. So if Your Honor finds is
8 \$10 is left over then we'll discount the lis pendens.

9 THE COURT: The filing fee for lis pendens is
10 listed as \$11.60 that doesn't amount to the \$10.

11 MS. HENGST: Right that's what I'm saying we
12 could just subtract the \$1.60.

13 THE COURT: Just take a look and verify for me.
14 Am I correct?

15 COURT CLERK: Okay now.

16 THE COURT: Yeah I have it. It's \$1,978.10.
17 So I'm going to change that. Now the filing fee for
18 lis pendens I'm striking. Publication for service
19 I'm striking. And the private process servier I'm
20 striking. Those are all cost that were not verified.
21 I'm leaving in the cost for the alias summons because
22 that was matter of Court record in the amount of \$10.
23 The pre-acceleration late charges of \$60 that was
24 testified to and is on business records as was the
25 insurance amounts. Although the attorney, I'm sorry

1 the witness aggregated them but his testimony was the
2 aggregation of the two individual amounts that are on
3 the final judgment. Now the escrow overdraft from
4 prior service I don't remember testimony to that so
5 I'm striking that.

6 MS. HENGST: Your Honor I believe that escrow
7 overdraft is a credit.

8 THE COURT: That's what I thought it was but I
9 didn't hear because it's in parenthesis. All right
10 then I'll leave it. Unless you object.

11 MR. ACKLEY: I do not object Your Honor.

12 THE COURT: Okay let me, let me just --

13 MS. HENGST: And the property inspections are
14 stricken as well Your Honor?

15 THE COURT: Yes. Okay. I'm going to give you
16 my calculator if I can find it. I know the witness
17 had it. It's still there? Okay and I'm going to ask
18 you to recalculate the amount in the judgment.

19 MS. HENGST: Sure.

20 THE COURT: You just wait right there. Okay.
21 This is the final judgment according to the amounts
22 that I have included in the final judgment based on
23 the testimony. If you would review them and then
24 verify the amount to Mr. Ackley. All five, all five
25 exhibits there?

1 MS. HENGST: Your Honor would you like us just
2 to put in the new total. We've come to the same
3 total.

4 THE COURT: Yes. And I'll initial it as long
5 as you both agree to that.

6 MR. HARVEY: And Your Honor the plaintiff asks
7 for the next available sale date.

8 THE COURT: The next available sale date is 30
9 days from today's date. Which would be April 22nd.

10 MR. HARVEY: What's the next one after that?

11 THE COURT: 35 days, April 24th.

12 MR. HARVEY: April 24th.

13 THE COURT: You want April 24th?

14 MR. HARVEY: Yes, Your Honor.

15 THE COURT: Now, are you requesting that I
16 retain jurisdiction to consider award of additional
17 costs or are you conceding that you're not going to
18 try to collect them?

19 MR. HARVEY: No Your Honor we will concede
20 everything as is.

21 THE COURT: Okay. Does that say 543?

22 MS. HENGST: 543.

23 THE COURT: Okay.

24 MS. HENGST: If we have whiteout maybe I could
25 make that more clear.

1 THE COURT: Well is this clear enough to you?
2 Let me just make sure that it's clear enough to the
3 Clerk.

4 COURT CLERK: If it's supposed to be 543 right?

5 THE COURT: Yeah. Want me to go over it?

6 MR. ACKLEY: \$543,958.

7 THE COURT: Okay the 3 is not clear.

8 MR. HARVEY: Counsel you still have the total
9 with you, right?

10 MR. ACKLEY: \$543,958.

11 MR. HARVEY: Hold on, hold on. I'm going to
12 white it out so I don't want to lost any of it.

13 MR. ACKLEY: No problem.

14 MR. HARVEY: All right \$543 --

15 MR. ACKLEY: 958.52.

16 THE COURT: The Court is adjourned and you're
17 excused.

18 (The proceedings were concluded at 3:47 PM.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Carlos A. Rugel, Electronic Reporter, do hereby certify that I transcribed the notes of Rinat Katz of the proceedings before the Honorable S. Lubitz; and that the foregoing transcript, pages 100 through 209 is a true transcript of said notes to the best of my ability.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 14th day of May, 2014 in Broward County, Florida

Carlos A. Rugel